

Commodity Futures Trading Commission
CEA CASES

NAME: A. E. MOOERS CO., INC. AND FRANK H. TOTMAN, SR.

CITATION: 31 Agric. Dec. 997

DOCKET NUMBER: 190

DATE: AUGUST 3, 1972

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(No. 14,714)

In re A. E. MOOERS CO., INC. and FRANK H. TOTMAN, SR. CEA Docket No. 190.
Decided August 3, 1972.

Futures commission merchant -- Minimum financial requirements -- Failure to meet -- False financial reports -- Stipulation -- Denial of trading privileges

The respondents have consented to the issuance of an order against them to cease and desist from the activities set forth herein and ordering the denial of trading privileges to them as set forth herein.

Earl L. Saunders, for complainant.

Thomas O. Bither, Houlton, Maine, for respondent.

Decision by Donald A. Campbell, Judicial Officer

DECISION AND ORDER

PRELIMINARY STATEMENT

This is an administrative proceeding under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*), instituted by a complaint and notice of hearing issued on May 19, 1972, under sections 6(b) and 6(c) of the Act (7 U.S.C. 9 and 13b). The respondents are charged with violating sections 4f and 6(b) of the Commodity Exchange Act (7 U.S.C. 6f and 9) and section 1.17 of the regulations issued under the Act (17 CFR 1.17).

No hearing has been held in this proceeding. The respondents have filed a stipulation under section 0.4(b) of the rules of practice (17 CFR 0.4(b)) in which they (1) admit the facts hereinafter set forth in paragraphs 1 and 2 of the Findings of Fact, (2) admit, for the purposes of this proceeding and for such purposes only, the facts hereinafter set forth in paragraph 3 of the Findings of Fact, (3) waive the report of the Hearing Examiner, and (4) consent to the entry of the order contained herein.

FINDINGS OF FACT

1. Respondent A. E. Mooers Co., Inc., is now, and was at all times material herein, a corporation organized and existing under the laws of the State of Maine, with its offices at 93 Bangor Street, Houlton, Maine 04730. The corporation was, at all times material herein, a registered futures commission merchant under the Commodity Exchange Act, engaged in trading in commodities for future delivery for the accounts of customers and holding for such customers sums of money, representing deposits of margins by and trading profits accruing to such customers.

2. Respondent Frank H. Totman, Sr., an individual whose business address is the same as that of the corporate respondent, is now, and was at all times material herein, President of the corporation and at all such times the operations of the corporation were under his direction and control.

3. During the period from June 30, 1969, through July 26, 1971, the corporate respondent, while engaged in business as futures commission merchant under the Commodity Exchange Act, failed to meet the minimum financial requirements prescribed by section 1.17 of the regulations (17 CFR 1.17) issued by the Secretary of Agriculture under section 4f of the Act (7 U.S.C. 6f), and concealed such failure by submitting reports to the Commodity Exchange Authority on CEA Form 1-FR which purported to show that the respondent corporation met such requirements when, in truth and in fact it did not:

(a) The corporation submitted a financial report on Form 1-FR to the Commodity Exchange Authority as of June 30, 1969, signed by respondent Frank H. Totman, Sr., which purported to show that its current assets exceeded its current liabilities by an amount in excess of \$ 93,000 and that it met the minimum financial requirements prescribed by section 1.17 of the regulations, whereas such was not the case. Analysis of a financial statement of the respondent firm as of June 30, 1969, prepared for it by Brooks & Carter, its outside certified public accountants, reveals that, when the items shown as current assets and current liabilities on such statement are classified in accordance with the definitions contained in section 1.17 of the regulations, the financial statement showed current liabilities of over \$ 240,000 and current assets of approximately \$ 135,000 which were not shown on the report on Form 1-FR. Further, the analysis of the aforesaid financial statement reveals that as of June 30, 1969, the

respondent corporation's current liabilities exceed its current assets by approximately \$ 14,000.

(b) The respondent corporation submitted a financial report on Form 1-FR to the Commodity Exchange Authority as of December 31, 1969, signed by respondent Frank H. Totman, Sr., which purported to show that its current assets totaled almost \$ 150,000 while its current liabilities were less than \$ 50,000, and that it met the minimum financial requirements prescribed by section 1.17 of the regulations. Examination of the books and records of the respondent corporation by the Commodity Exchange Authority revealed that this report, like the report of June 30, 1969, failed to show the respondent firm's true financial condition. Although the report showed as a current asset the cash surrender value of life insurance policies in an amount of \$ 56,472.16, it did not show that such policies had been assigned to the Houlton Trust Company as collateral for an indebtedness of \$ 47,568.50. Further, the report showed as the respondent firm's total current liabilities money borrowed amounting to only \$ 47,532, whereas the firm's books showed that as of December 31, 1969, it had current liabilities consisting of money owed to the Houlton Trust Company of approximately \$ 84,000 and owed to the First National Bank of Houlton, \$ 25,000, a total of about \$ 109,000.

(c) The respondent corporation submitted a financial report on Form 1-FR to the Commodity Exchange Authority as of June 30, 1970, signed by respondent Frank H. Totman, Sr., which purported to show that its current assets exceeded its current liabilities by approximately \$ 50,000 and that it met the minimum financial requirements prescribed by section 1.17 of the regulations, whereas such was not the case. Analysis of the financial statement of the respondent corporation as of June 30, 1970, prepared for the firm by the aforementioned accounting firm of Brooks & Carter reveals that, when the items shown as current assets and current liabilities on such statement are classified in accordance with the definitions contained in section 1.17 of the regulations, the financial statement showed current liabilities of approximately \$ 219,000 and current assets of approximately \$ 51,000 which were not shown on the report on Form 1-FR. Further, the analysis of the aforesaid financial statement reveals that as of June 30, 1970, the respondent corporation's current liabilities exceeded its current assets by almost \$ 118,000.

(d) The respondent corporation submitted a financial report on Form 1-FR to the Commodity Exchange Authority as of December 31, 1970, signed by respondent Frank H. Totman, Sr., which purported to show that its current assets totaled approximately \$ 88,000 while its current liabilities totaled only \$ 36,000, and that it met the minimum financial requirements prescribed by section 1.17 of the regulations. Examination of the books and records of the respondent corporation by the Commodity Exchange Authority revealed that this report, like the reports of June 30, 1969, December 31, 1969, and June 30, 1970, failed to show the firm's true financial condition. Although the report showed as a current asset the cash surrender value of life insurance policies in an amount of \$ 60,751.91, it did not show that such policies had been assigned to the New York Life Insurance Company as collateral for an indebtedness of approximately \$ 53,500. Further, the report showed as the respondent firm's total current liabilities money borrowed amounting to only \$ 36,000, whereas the firm's books showed that as of December 31, 1970, it had current liabilities consisting of money borrowed from the New York Life Insurance Company, Houlton Trust Company, Summers Fertilizer Co., Inc., Corenco Corporation and the First National Bank of Houlton, totaling approximately \$ 206,000.

(e) Examination of the respondent corporation's books and records by the Commodity Exchange Authority as of May 28, 1971, revealed that as of such date the firm's current liabilities exceeded its current assets by approximately \$ 136,000.

CONCLUSIONS

By reason of the facts set forth in the Findings of Fact, it is concluded that, as charged in the complaint, the respondents violated section 4f and 6(b) of the Commodity Exchange Act (7 U.S.C. 6f and 9) and section 1.17 of the regulations issued under the Act (17 CFR 1.17). The complainant states that the administrative officials of the Commodity Exchange Authority have carefully considered the stipulation submitted by the respondents. The administrative officials believe that the prompt entry of the proposed order would constitute a satisfactory disposition of this case, serve the public interest and effectuate the purposes of the Act. The complainant recommends that the stipulation be accepted and the proposed order be issued. It is concluded that the complainant's recommendation should be adopted.

ORDER

The respondents, A. E. Mooers, Co., Inc., and Frank Totman, Sr., are prohibited from trading on or subject to the rules of any contract market for a period of eighteen months and all contract markets shall refuse all trading privileges to the said respondents during this period. Such prohibition and refusal shall apply to all trading done and positions held directly by the said respondents or either of them, either for their own accounts or as the agents or representatives of any other person or firm, and also to all trading done and positions held indirectly through persons or firms owned or controlled by the said respondents or any of them, or otherwise. This order shall not apply to the respondents acting as agent for F. J. Reardon Company in accepting orders and margins and transferring said orders and margins to said firm in which capacity they have acted since resigning as a Clearing House Member on July 26, 1971.

The respondents, and each of them, shall cease and desist from:

- (1) Engaging as futures commission merchant within the meaning of the Commodity Exchange Act without meeting the minimum financial requirements of the Act and the regulations thereunder;
- (2) Willfully making any material false or misleading statement in any report or application filed under the Commodity Exchange Act;
- (3) Willfully omitting to state any material fact in connection with any such application or report;

(4) Willfully causing, aiding, counselling, commanding or inducing any person to engage in any act or practice from which the respondents are directed to cease and desist by this order.

The period of the denial of trading privileges to the respondents, specified in the first paragraph of this order, shall become effective on the 30th day after the date of this order. The cease and desist provisions of this order, set forth in the second paragraph of this order, shall become effective on the date of service of this order upon the respondents.

A copy of this decision and order shall be served upon each of the parties and on each contract market.

LOAD-DATE: June 9, 2008

