

Commodity Futures Trading Commission
CEA CASES

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

DOCKET NUMBER: 190

DATE: MAY 19, 1972

DOCUMENT TYPE: COMPLAINT

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re: A. E. Mooers Co., Inc., and Frank H. Totman, Sr., Respondents

CEA Docket No. 190

Complaint and Notice of Hearing Under the Commodity Exchange Act

There is reason to believe that the respondents have violated the Commodity Exchange Act (7 U.S.C. 1 et seq.) and the regulations made pursuant thereto, and in accordance with the provisions of sections 6(b) and 6(c) of the said Act (7 U.S.C. 9 and 13b), this complaint and notice of hearing is issued stating the charges in that respect as follows:

I

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.

II

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.

III

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 exceeded 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.

IV

By reason of the facts alleged in this complaint, the respondents, A. E. Mooers Co., Inc., and Frank H. Totman, Sr., wilfully violated 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).

WHEREFORE, it is hereby ordered that this complaint and notice of hearing be served upon the respondents and this proceeding shall be governed by sections 0.1, 0.2, 0.4(b), 0.5 through 0.22 and 0.28 of the rules of practice under the Commodity Exchange Act (17 CFR 0.1, 0.2, 0.4(b), 0.5 through 0.22, 0.28). The respondents will have twenty (20) days after the receipt of this complaint in which to file with the Hearing Clerk, United States Department of Agriculture, Washington, D. C. 20250, an answer with an original and

four copies, fully and completely stating the nature of the defense and admitting or denying, specifically and in detail, each allegation of this complaint. Allegations not answered will be deemed admitted for the purposes of this proceeding. Failure to file an answer will constitute an admission of all the allegations of this complaint and a waiver of hearing. The filing of an answer in which all of the material allegations of fact contained in the complaint are admitted likewise shall constitute a waiver of hearing unless a hearing is requested. The respondents are hereby notified that unless hearing is waived, a hearing will be held at 10:00 a.m., local time, on July 11, 1972, in Houlton, Maine, at a place therein to be specified later, before a referee designated to conduct such hearing. At such hearing, the respondents will have the right to appear and show cause, if any there be, why an appropriate order should not be issued in accordance with the Commodity Exchange Act, (1) prohibiting the respondents from trading on or subject to the rules of any contract market, and directing that all contract markets refuse all trading privileges to the respondents for such period of time as may be determined and (2) directing that the respondents shall cease and desist from violating the Act and regulations in the manner alleged herein.

It is ordered that this complaint and notice of hearing be served on the respondents at least twenty (20) days prior to the date set for hearing.

Done at Washington, D. C.

May 19, 1972

[SEE SIGNATURE IN ORIGINAL]

Richard E. Lyng

Assistant Secretary

