

Commodity Futures Trading Commission
CEA CASES

NAME: PROFESSIONAL COMMODITY SERVICE, INC. AND THEODORE W LORD, SR.

CITATION: 33 Agric. Dec. 14

DOCKET NUMBER: 193

DATE: JANUARY 25, 1974

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(No. 15,614)

In re PROFESSIONAL COMMODITY SERVICE, INC. and THEODORE W LORD, SR. CEA Docket No. 193. Decided January 25, 1974.

Minimum financial requirements -- failure to meet -- Stipulation of respondent corporation -- Application for registration by corporation -- denial of -- Cease and desist order against respondent corporation -- Termination of proceeding against respondent Theodore W. Lord, Sr., now deceased, without action

Where respondent corporation Professional Commodity Service, Inc., wilfully omitted to state in its financial report the material facts required to be stated therein and, further, does not meet the financial requirements of the Act, this respondent's application for registration as a futures commission merchant under the Act is denied.

Darrold A. Dandy, for complainant.

David R. Johnson, Denver, Colorado, for respondent.

Decision by John G. Liebert, Administrative Law Judge.

DECISION AND ORDER

PRELIMINARY STATEMENT

This is an administrative proceeding under the Commodity

Exchange Act (7 U.S.C. Chapter 1), instituted by a Complaint and Notice of Hearing which alleges that the respondent corporation, by its President, respondent Theodore W. Lord, Sr., filed a request for registration as a futures commission merchant under the Commodity Exchange Act and that (1) the applicant failed to meet the minimum financial requirements for registration pursuant to section 4f of the Act (7 U.S.C. 6f) and section 1.17(a) of the regulations issued pursuant thereto (17 CFR 1.17(a)), and (2) the applicant wilfully omitted to state a material fact required to be stated in such application in violation of section 6(b) of the Act (7 U.S.C. 9).

Hearing on this matter was held in Denver, Colorado, on September 7, 1972, before Administrative Law Judge John G. Liebert, acting as Referee. No final Decision and Order has been issued and this matter has been remanded for further proceedings. No further hearings have been held pursuant to the order of the Judicial Officer issued on March 30, 1973. Respondent Theodore W. Lord, Sr., suffered a fatal heart attack on November 7, 1973. Respondent Professional Commodity Service, Inc., has filed a stipulation in which it (1) admits the facts hereinafter set forth in paragraphs 1 and 2 of the Findings of Fact insofar as they relate to it, (2) admits, for the purposes of this proceeding and for such purposes only, the remaining facts set forth in the Findings of

Fact, (3) waives further oral hearing on the charges in the complaint, and (4) consents to the entry, without further proceeding, of a Decision and Order containing the facts admitted in such stipulation as the Findings of Fact, conclusions of law based on such Findings and the order contained herein.

FINDINGS OF FACT

1. Respondent Professional Commodity Service, Inc., a Colorado corporation with offices at 1776 South Jackson, Denver, Colorado 80210, has applied for registration as futures commission merchant under the Commodity Exchange Act but registration has not been granted.

2. Respondent Theodore W. Lord, Sr. was at all times material herein, president of the respondent corporation and had responsibility for the management of the corporate respondent.

3. The respondent corporation has not established that it meets the minimum financial requirements under section 4f of the Commodity Exchange Act (7 U.S.C. 12a) and section 1.17 of the regulations issued pursuant to the Act (17 CFR 1.17). The

respondent corporation's current liabilities exceeded its current assets by approximately \$ 9,000.00 on November 17, 1971, and it lacked approximately \$ 5,000.00 on July 23, 1971, \$ 19,000.00 on November 17, 1971, \$ 2,800.00 on March 31, 1972, and \$ 5,000.00 on April 10, 1972, of having enough working capital to meet such minimum financial requirements.

4. The respondents, in connection with the respondent corporation's application for registration as futures commission merchant, filed with the Commodity Exchange Authority a financial report on Form 1-FR, which purported to show the firm's financial condition as of July 23, 1971. The respondent wilfully omitted to state in such report material facts required to be stated therein. Such omitted material facts were as follows:

a. On July 23, 1971, the respondent drew a check to the order of respondent Theodore W. Lord, Sr., for \$ 15,000.00 on the respondent firm's general funds bank account, which check was subsequently negotiated by respondent Lord.

b. On July 23, 1971, the respondent corporation obtained a loan from the Security National Bank, Denver, Colorado, in the amount of \$ 5,000.00 which, by the terms of the promissory note signed by the respondent corporation, was due and payable on October 21, 1971, with interest at the rate of 7 percent per annum.

CONCLUSIONS

By reason of the facts set forth in the Findings of Fact, it is concluded that the respondent Professional Commodity Service, Inc., as charged in the complaint, (1) has not established that it meets the minimum financial requirements under section 4f of the Commodity Exchange Act (7 U.S.C. 6f) and section 1.17 of the regulations (17 CFR 1.17); (2) does not now meet such minimum financial requirements; (3) wilfully omitted to state in a report filed with the Commodity Exchange Authority a material fact required to be stated therein, in violation of section 6(b) of the Commodity Exchange Act (7 U.S.C. 9); (4) is unfit to engage in the business of futures commission merchant, and that (5) the respondent corporation's application for registration as a futures commission merchant should be denied under the provisions of section 8a of the Commodity Exchange Act (7 U.S.C. 12a).

The complainant states that due to the death of respondent Theodore W. Lord, Sr., the administrative officials of the Commodity Exchange Authority believe that this proceeding

should be terminated without action as to him and that the prompt entry of the proposed order as to respondent Professional Commodity Service, Inc., would constitute a satisfactory disposition of this case, serve the public interest and effectuate the purposes of the Act. The complainant recommends, therefore, that the stipulation be accepted and the proposed order be issued as to respondent Professional Commodity Service, Inc. It is concluded that the complainant's recommendation should be adopted.

ORDER

1. Effective upon the thirtieth day after the date of this order, respondent Professional Commodity Service, Inc., is prohibited from trading on or subject to the rules of any contract market for a period of 1 year, and all contract markets shall refuse all trading privileges to the said respondent during this period. Such prohibition and refusal shall apply to all trading done and positions held directly or indirectly by said respondent, either for its own account or as the agent or representative of any other person or firm, and also to all trading done and positions held indirectly through persons or firms owned by the respondent.

2. Effective upon the date of service of this order, respondent Professional Commodity Service, Inc., shall cease and desist from:

(a) Willfully making any material false or misleading statement in any report or application filed under the Commodity Exchange Act.

(b) Willfully omitting to state any material fact in connection with any such application or report.

(c) Willfully causing, aiding, counseling, commanding or inducing any person, to engage in any act or practice from which the said respondent is directed to cease and desist by this order.

3. The application of respondent Professional Commodity Service, Inc., for registration as futures commission merchant is denied.

A copy of this Decision and Order shall be served on each of the parties and on each contract market.

LOAD-DATE: June 9, 2008

