

Commodity Futures Trading Commission
CEA CASES

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

CITATION: 32 Agric. Dec. 592

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(No. 15,075)

In re PROFESSIONAL COMMODITY SERVICE, INC., and THEODORE W. LORD, SR. CEA
Docket No. 193. Decided March 30, 1973.

**Second Order Vacating Recommended Decision and Order and Remanding Case for
further Proceedings**

This order is issued in accordance with the facts and circumstances as set
forth herein.

Darrold A. Dandy, for complainant.

Garth C. Grissom, Denver, Colorado, for respondents.

John G. Liebert, Administrative Law Judge.

Decision by Donald A. Campbell, Judicial Officer.

PRELIMINARY STATEMENT

This is an administrative proceeding under the Commodity Exchange Act (7
U.S.C. 1 *et seq.*), in which the Administrative Law Judge, John G. Liebert, filed
his first recommended decision and order on March 8, 1973. That proposed order
denied the corporate respondent's application for registration as a futures
commission merchant (1) because respondents did not establish that the
corporation met the minimum financial requirements for registration, and (2)
because the individual respondent wilfully omitted material facts from the
application for registration with the intention of misleading the Commodity
Exchange Authority. A cease and desist order was also proposed by the
Administrative Law Judge, but he rejected the complainant's recommendation that
the respondent should, in addition, be prohibited from trading on contract
markets for one year.

On March 16, 1973, the Judicial Officer vacated the Recommended Decision and
Order and remanded the case to the Administrative Law Judge "with instructions
to reopen the hearing to receive additional evidence, as set forth herein, and
to file a new recommended or initial Decision and Order in this proceeding."

These instructions were not complied with. Instead, the Administrative Law
Judge filed a second Recommended Decision and Order on March 29, 1973, stating:

On March 26, 1973, Respondents filed with the Hearing Clerk a copy of a
letter dated March 23, 1973, addressed to the Administrator, Commodity Exchange
Authority, requesting immediate withdrawal of the application of Professional
Commodity Service, Inc., for registration as a futures commission merchant under
the Act. This was the application filed with the CEA on October 20, 1971,
amended on November 2, 1971, which is the subject of this proceeding. In
consideration of this withdrawal of the application, it is hereby found and
determined that this proceeding has been rendered moot.

In accordance with the foregoing finding and determination it is recommended that this proceeding be dismissed.

The respondents' request to withdraw the application for registration as a futures commission merchant does not make the proceeding moot. *Peoples Securities Co. v. Securities and Exchange Co.*, 289 F.2d 268, 274-275 (C.A. 5); *Blaise D'Antoni & Associates, Inc. v. Securities & Exch. Com'n.*, 289 F.2d 276, 277 (C.A. 5), certiorari denied, 368 U.S. 899; *Blaise D'Antoni & Associates, Inc. v. Securities & Exch. Com'n.*, 290 F.2d 688, 689 (C.A. 5). As stated in the last case just cited (290 F.2d at 689):

When Mr. D'Antoni filed his application for registration, he placed himself under the Commission's "scrutiny". The withdrawal of an ungranted application for registration as a broker-dealer may affect the public interest as well as the grant of an application. Cf. *Columbia General Investment Corp. v. S. E. C.*, 5 Cir., 1959, 265 F.2d 559. By attaching important consequences, vitally affecting the applicant and his future status, to the revelation of improper activities on the *applicant's* part, Congress indicated that an applicant subjects himself to the Commission's scrutiny from the moment he files his application for registration. He cannot escape those consequences by withdrawing in the face of an S.E.C. investigation.

Similarly, under the Commodity Exchange Act, important consequences may result from the wilful filing of a false or misleading application for registration, notwithstanding the respondents' desire to withdraw the application. See, e.g., 7 U.S.C. 9, 12a.

Accordingly, the Administrative Law Judge erred in failing to comply with the Order filed March 16, 1973, and the case should again be remanded to the Judge with the same instructions. However, the need for giving the case priority over other matters no longer exists since the respondents have indicated that they no longer desire to pursue the application for registration.

ORDER

The Recommended Decision and Order of the Administrative Law Judge filed on March 29, 1973, in this proceeding is vacated and the proceeding is again remanded to the Administrative Law Judge with instructions to reopen the hearing to receive additional evidence, as set forth in the Order filed March 16, 1973, and to file a new recommended or initial Decision and Order in this proceeding without undue delay.

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