Commodity Futures Trading Commission
CEA CASES

NAME: BEAR, STEARNS AND CO. AND NORMAN G. FINE

CITATION: 33 Agric. Dec. 1761

DOCKET NUMBER: 232

DATE: DECEMBER 3, 1974

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(No. 16,154)

In re BEAR, STEARNS AND CO. and NORMAN G. FINE. CEA Docket No. 232. Decided December 3, 1974.

Customers' funds -- undersegregation of -- Sanction

The stipulation of respondents has been accepted and the order herein is issued against them for violations of the Act and regulation in connection with their operation as a futures commission merchant in failing to segregate customers' funds as found herein. The corporate respondent and the individual respondent are denied trading privileges for a period of 30 days, and the registration of the corporate respondent as a futures commission merchant under the Act is suspended for a period of 30 days, as stated in paragraph 4 of the order herein.

Richard W. Davis, for complainant.

M. David Hyman, New York, N.Y., for respondents.

Decision by Dorothea A. Baker, 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 an-notice of hearing issued by the Assistant Secretary of Agriculture under the provisions of sections 6 (b) and 6 (c) of the said Act (7 U.S.C. 9, 13b). The respondents are charged with willfully violating sections 4d (2) and 4g of the Commodity Exchange Act

(7 U.S.C. 6d (2), 6g) and sections 1.20 (a), 1.23 and 1.32 of the regulations of the Secretary of Agriculture thereunder (17 CFR 1.20 (a), 1.23, 1.32).

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 one through three of the Findings of Fact, (2) admit, for the purposes of this proceeding and for such purposes only, the remaining facts set forth in the Findings of Fact, (3) describe the steps they have taken to correct the alleged violations and to prevent recurrence of such violations and (4) waive hearing on the charges in the complaint and consent to the entry, without further proceedings, of the order contained herein.

FINDINGS OF FACT

1. Bear, Stearns and Co., a partnership organized in the state of New York with its principal place of business at 55 Water Street, New York, New York, is

now and was at all times material herein a registered futures commission merchant under the Commodity Exchange Act.

2. Norman G. Fine, an individual whose business address is the same as that of Bear, Stearns and Co., is now and was at all times material herein a general partner of respondent Bear, Sterns and Co., and was responsible for the management, direction and control of its activities relating to the trading of customers in regulated commodities.

3. Respondents are now and were at all times material herein engaged in the business of futures commission merchant and, in the regular course of such business, carried accounts of customers who traded in commodity futures on contract markets subject to the provisions of the Commodity Exchange Act and the regulations thereunder. Such accounts, the trading therein, and the handling and disposition of funds in connection therewith, were subject to the provisions of the Act and regulations. At all such times, the respondent firm had to its credit with banks or other depositories, money in varying amounts, held in segregated accounts and identified as customers' funds representing deposits of margin by and trading profits accruing to such customers.

4. During the period from December 17, 1973 to February 27,

1974, respondents failed on 24 business days to make any computation or permanent record, as of the close of the market on each such business day, of the amount of money, securities, and property required to be held in segregated account in order to pay all credits and equities due to its customers, as provided in section 1.32 of the regulations under the Commodity Exchange Act (17 CFR 1.32).

5. On February 11, 1974, February 12, 1974, March 8, 1974, March 11, 1974, and April 3, 1974, the respondent firm was under segregated: that is, on the days mentioned the total amount of customers' funds held in segregation as described in paragraph 3 above was less than the amount necessary to pay all credits and equities due to such customers. As of the dates mentioned, such deficits amounted to approximately $ 133,730, $ 1,207, $ 45,133, $ 100,040, $ 48,667 respectively,

6. On December 13, 1973, Mr. T. Reed McMinn, Director, Eastern Region, Commodity Exchange Authority sent to respondents a letter calling attention to the fact that as of November 26, 1973, the firm had not prepared a daily segregation record for any day in November, 1973 up to that date. The letter stated that its purpose was to notify the futures commission merchant and its general partner, Norman G. Fine, of these findings and "to afford your firm the opportunity to take necessary corrective action in order to achieve complaince with [section 1.32 of the regulations under the Commodity Exchange Act]. "Such letter was received by the respondents on December 17, 1973.

CONCLUSIONS

By reason of the facts set forth in the Findings of Fact, it is concluded that the respondents have willfully violated section 4d (2) and 4g of the Commodity Exchange Act (7 U.S.C. 6d (2), 6g) and sections 1.20 (a), 1.23 and 1.32 of the regulations of the Secretary of Agriculture thereunder (17 CFR 1.20(a), 1.23, 1.32). The complainant states that the administrative officials of the Commodity Exchange Authority have carefully considered the stipulation and the terms of the proposed order and they believe that the entry of such order without further proceedings would constitute a satisfactory disposition of this case, serve the public interest and effectuate the purposes of the Commodity Exchange Act. The complainant, therefore, recommends that the stipulation be accepted and the proposed order be issued, terminating this proceeding. It is concluded that the complainant's recommendation should be adopted.

ORDER

1. Respondents Bear, Stearns and Co., and Norman G. Fine shall cease and desist from (a) failing to make a computation and permanent record, as of the close of the market on each business day, of the amount of money, securities and property required to be held in segregated account in order to pay all credits and equities due to their customers, and (b) failing to hold in segregated accounts and identified as customers' funds sufficient money, securities, and property to pay all credits and equities due to its customers.

2. Respondents Bear, Stearns and Co., and Norman G. Fine are prohibited from trading on or subject to the rules of any contract market for a period of 30 days and all contract markets shall deny trading privileges to the respondents for that period. Such prohibition and denial shall apply to all trading done and positions held directly by the said respondents, either for their 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 or controlled by the said respondents.

3. The registration of respondent Bear, Stearns and Co., as a futures commission merchant under the Commodity Exchange Act is suspended for a period of 30 days.

4. The prohibition from trading and suspension of registration announced in paragraphs two and three above shall not become effective unless the respondents should, after complaint and hearing in accordance with established procedure, be found to have violated, within three years from the date of issuance of this order, the Commodity Exchange Act or regulations thereunder by reason of acts other than those constituting the basis for the charges brought in this proceeding, in which event a supplemental order in this proceeding may be issued, without further notice, making effective forthwith the aforesaid prohibition and suspension, which shall be in addition to any sanction which may be imposed as a result of such subsequent violation.

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

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