

Commodity Futures Trading Commission
CEA CASES

NAME: STERLING SECURITIES, INC., PAUL J. MILLER, AND R. PETER DENKER

CITATION: 28 Agric. Dec. 115

DOCKET NUMBER: 158

DATE: FEBRUARY 27, 1969

DOCUMENT TYPE: DECISION AND ORDER

(No. 12,285)

In re STERLING SECURITIES, INC., PAUL J. MILLER, and R. PETER DENKER. CEA Docket No. 158. Decided February 27, 1969.

Customer's funds -- Undersegregation -- False reports -- Cease and desist -- Revocation of registration -- Denial of trading privileges -- Stipulation

Respondents are ordered to cease and desist from failing to treat and deal with all customers' funds in conformity with provisions of the act, failing to prepare and maintain an accurate record as of the close of the market on each business day of the amount of money, securities and property which must be in segregated account, filing reports containing false or misleading statements of material fact and willfully omitting to state in such reports any material fact required to be stated therein. The registration of the corporate respondent as a futures commission merchant is revoked, and all contract markets are directed to refuse all trading privileges to all of the respondents for a period of 6 months.

Earl L. Saunders for Commodity Exchange Authority.

Arthur A. Reiser, Jr., of Hamper & Reiser, Chicago, Ill., for respondents.

Decision by Thomas J. Flavin, Judicial Officer

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 by the Acting Secretary of Agriculture. The complaint charges the respondents with wilfully violating sections 4d, 4g and 6(b) of the act (7 U.S.C. 6d, 6g, and 9, as amended by Public Law 90-258), and sections 1.20, 1.21, 1.22, 1.32 and 1.35 of the regulations issued under the act (17 CFR 1.20, 1.21, 1.22, 1.32, 1.35).

No hearing has been held with respect to this proceeding. The respondents have filed separate stipulations under section 0.4(b) of the rules of practice (17 CFR 0.4(b)), in which they admit, for the purposes of this proceeding, the facts contained herein under "Findings of Fact," waive hearing on the charges, and consent to the entry of the order hereinafter set forth.

FINDINGS OF FACT

1. Respondent Sterling Securities, Inc., an Illinois corporation with its principal office and place of business at 308 First Avenue, Sterling, Illinois, is now, and was at all times material herein, a registered futures commission merchant under the Commodity Exchange Act.

2. Respondents Paul J. Miller and R. Peter Denker, individuals whose business address is 308 First Avenue, Sterling, Illinois, are now, and were at all times material herein, the president and treasurer, and the vice-president and secretary, respectively, of the respondent corporation. Respondent Paul J.

Miller is now, and was at all times material herein, the principal shareholder of the respondent corporation. At all such times, respondents Paul J. Miller and R. Peter Denker managed and controlled the business of the respondent corporation and were responsible for the corporate acts and transactions hereinafter described.

3. At the times hereinafter stated, respondent Sterling Securities, Inc., in the regular course of its business as futures commission merchant, handled accounts of customers who traded in commodity futures. 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, prior to September 11, 1967, the respondent corporation had to its credit with a bank or other depositories, sums of 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. On eight business days during the period from February 28, 1967 through April 27, 1967, respondent Sterling Securities, Inc. was under-segregated in amounts within the range of \$ 873.09 and \$ 6,087.34 -- that is, on the eight days mentioned the total amount of customers' funds held in segregation, as described in Finding of Fact 3 hereof, was from \$ 873.09 to \$ 6,087.34 less than the amount necessary to pay all credits and equities due to such customers.

5. In June 1966, and prior to the acts and omissions described above, examination of the books and records of respondent Sterling Securities, Inc. by the Commodity Exchange Authority disclosed that on 11 business days during the period from May 25, 1966 through June 9, 1966, respondent Sterling Securities, Inc. was under-segregated in amounts within the range of \$ 185.25 and \$ 3,111.50, and that on 47 business days during the period from April 4, 1966 through June 8, 1966, respondent Sterling Securities, Inc. had not prepared a daily record of customers' funds required to be held in segregation. These matters were discussed with respondent Paul J. Miller, and on June 23, 1966, the Director of the Accounting and Licensing Division of the Commodity Exchange Authority wrote a letter to respondent Paul J. Miller in his capacity as an officer of the respondent corporation, which letter read as follows:

A basic purpose of the Commodity Exchange Act is, as you know, to insure that regulated commodity customer's funds are separately accounted for and not used by the commission merchant to finance his own operations, nor may he use one customer's funds to finance the trading of another.

In order for the commission merchant and our auditors to determine compliance with these requirements, section 1.32 of the regulations under the law provides that, as of the close of the market each business day, a computation shall be made of the amount of money, securities, and property which must be placed in segregated accounts to meet the requirements of the act.

On May 10, 1966, your officers discussed the segregation and recordkeeping provisions of the regulations with Mr. G. Edward Piala of our Chicago office. Also, we sent you a leaflet on segregation and accounting procedures when you were registered as a futures commission merchant. For these reasons your responsibilities under the act were known by your management.

Our recent audit disclosed that you were undersegregated in the amount of \$ 2,900.00 on the audit date, May 31, 1966. Also, you were undersegregated on ten other business days from May 25, 1966 through June 9, 1966. Further, you failed to prepare the daily computation of segregation requirements on 47 business days during the period of April 4, 1966 through June 8, 1966.

The purpose of this letter is to inform you that these failures to observe the provisions of the law and regulations are serious and to afford you an opportunity to bring your firm into compliance.

6. On or about May 6, 1968, respondent Sterling Securities, Inc. deposited in its bank account 199-687-5, and for a period of time used for its own benefit,

funds in the sum of \$ 2,000.00 which it had received from one Alex Hogg, to margin, guarantee and secure transactions in commodity futures for the account of the said Alex Hogg.

7. On or about June 13, 1968, respondent Sterling Securities, Inc. deposited in its bank account 199-687-5, and for a period of time used for its own benefit, funds in the sum of \$ 5,000.00 which it had received from one Archie Diehl, to margin, guarantee and secure transactions in commodity futures for the account of the said Archie Diehl.

8. On or about April 4, 1968, respondent Sterling Securities, Inc. deposited in its bank account 199-687-5, and for a period of time used for its own benefit, funds in the sum of \$ 4,000.00 which it had received from one John C. Pignatelli to margin, guarantee and secure transactions in commodity futures for the account of the said John C. Pignatelli.

9. On or about April 8, 1968, respondent Sterling Securities, Inc. deposited in its bank account 199-687-5, and for a period of time used for its own benefit, funds in the sum of \$ 3,500.00 which it had received from the said John C. Pignatelli to margin, guarantee and secure transactions in commodity futures for his account.

10. On June 26, 1968, the respondents filed a report on Form CEA-84 with the Commodity Exchange Authority, falsely reporting that since September 13, 1967, the accounts of the firm's customers "have been carried on a disclosed basis" with another futures commission merchant, and that all commodity futures orders, "together with all money, securities and property received to margin, guarantee or clear the trades or contracts" of such customers "are transmitted for execution or clearance direct to" such futures commission merchant.

CONCLUSIONS

By reason of the facts set forth in the Findings of Fact, it is concluded that, as charged in the complaint, the respondents wilfully

violated sections 4d, 4g and 6(b) of the Commodity Exchange Act and sections 1.20, 1.21, 1.22, 1.32 and 1.35 of the regulations thereunder.

The complainant states that the administrative officials of the Commodity Exchange Authority have carefully considered the stipulations and waivers, and the terms of the suggested order, and that they believe that the proposed sanctions are adequate, and that the prompt entry, without further proceedings, of the order to which the respondents have consented will constitute a satisfactory disposition of this case, serve the public interest, and effectuate the purposes of the Commodity Exchange Act. The complainant recommends, therefore, that the stipulations and waivers submitted by the respondents be accepted, and that the proposed order be issued. It is so concluded.

ORDER

Respondent Sterling Securities, Inc., shall cease and desist from: (1) engaging as futures commission merchant without treating and dealing with all customers' funds in conformity with the provisions of section 4d of the Commodity Exchange Act (7 U.S.C. 6d); (2) failing to prepare and maintain an accurate record as of the close of the market on each business day of the amount of money, securities, and property which must be in segregated account in order to comply with the requirements of section 4d of the Commodity Exchange Act (7 U.S.C. 6d); (3) willfully making any false or misleading statement of any material fact in any report filed with the Secretary of Agriculture under the Commodity Exchange Act; and (4) willfully omitting to state in any such report any material fact which is required to be stated therein.

Respondents Paul J. Miller and R. Peter Denker shall cease and desist from: (1) willfully causing, aiding, abetting, counseling, commanding, inducing, or procuring the failure of respondent Sterling Securities, Inc., or of any other futures commission merchant, (a) to comply with the requirements of section 4d

of the Commodity Exchange Act (7 U.S.C. 6d) in the treatment and handling of customers' funds, and (b) to prepare and maintain an accurate record, as of the close of the market on each business day, of the amount of money, securities, and property which must be in segregated account in order to comply with the requirements of section 4d of the Commodity Exchange Act (7 U.S.C. 6d); and (2) wilfully making or causing to be made

any false or misleading statement of any material fact in any report filed with the Secretary of Agriculture under the Commodity Exchange Act, and willfully omitting or causing to be omitted from any such report any material fact which is required to be stated therein, and willfully aiding, abetting, counseling, commanding, inducing, or procuring such an act or omission.

The registration of respondent Sterling Securities, Inc., as futures commission merchant is revoked. The respondents, Sterling Securities, Inc., Paul J. Miller, and R. Peter Denker, are prohibited from trading on or subject to the rules of any contract market for a period of six (6) months, and all contract markets shall refuse all trading privileges to them during this period, such prohibition and refusal to apply to all trading done and positions held by them, directly or indirectly.

This order shall become effective on the thirtieth day after the date of its issuance, and copies shall be served upon each of the parties and upon each contract market.

LOAD-DATE: June 10, 2008

