

Commodity Futures Trading Commission
CEA CASES

NAME: GREENE & COLLINS INC., A. LAWRENCE CARROLL, AND J. ROBERT COLLINS

DOCKET NUMBER: 75-15; 235

DATE: DECEMBER 29, 1975

DOCUMENT TYPE: ORDER OF DISMISSAL

NOTE: FORMERLY CEA DOCKET # 235. SUMMARY OF DOCUMENT IS AVAILABLE IN THE CCH COMMODITY FUTURES LAW REPORTER, P20, 125 [1975-1977 TRANSFER BINDER].

UNITED STATES OF AMERICA

Before the

COMMODITY FUTURES TRADING COMMISSION

DIVISION OF ENFORCEMENT, Petitioner, v. GREENE AND COLLINS, INC. A. LAWRENCE CARROLL and J. ROBERT COLLINS, Respondents.

CFTC Docket No. 75-15

ORDER OF DISMISSAL

On December 17, 1975, the Division of Enforcement moved the Administrative Law Judge to reconsider the Order issued December 12, 1975 or, in the alternative to certify prior motions for continuances to the Commission for disposition. The Division erroneously interpreted the December 12, 1975 Order as a denial of prior motions for continuance. However, neither the November 28 Notice nor the December 12 Order granted or denied any pending motions.

It is essential at this point to review in some detail the history of this case. The Complaint was issued on January 17, 1975. On April 1, 1975, the attorney for the Complainant moved that the matter be set down for hearing on a date certain. One must assume that the government was prepared at that time to present its case against Respondent. The Commodity Futures Trading Commission came into being shortly thereafter, necessitating some delay in this proceeding.

On August 25, 1975, a Notice of Prehearing Conference was issued, and the prehearing conference was scheduled for September 23, 1975. On

September 19, 1975, less than two working days before the scheduled prehearing conference, the Division of Enforcement, with the concurrence of the Respondent, moved for a continuance. The Motion for Continuance was granted, and the prehearing conference was rescheduled for November 18, 1975. Counsel for the parties were ordered to complete certain specified tasks on or before November 7, 1975.

On November 6, 1975, counsel for Respondent moved for a continuance. The Division of Enforcement did not oppose the motion. Neither the Division nor the Respondent filed the required documents by the November 7 date. It is apparent that the parties were aware long before November 7, 1975 that the prehearing Order of September 23, 1975 would not be satisfied. On November 7, 1975, an Order was issued extending the deadline for completing specified tasks until December 1, 1975 and rescheduling the prehearing conference for December 17, 1975.

On November 26, 1975, at 4:40 p.m., the Division of Enforcement moved for reconsideration of the November 7, 1975 Order on the grounds that counsel for the parties had arranged to meet on December 8, 1975 for the purpose of reaching

a settlement. This motion was filed two working days prior to the deadline for completing the tasks specified in the November 7 Order. It is again apparent that counsel for the parties had made little or no effort to comply with the prior orders inasmuch as they had not even scheduled a meeting until December 8, 1975.

By Notice issued November 28, 1975, counsel for the parties were advised that the untimely filing of motions would not be countenanced

in the future. No ruling was made on the motions for additional time. On December 10, 1975, the Division of Enforcement moved to have this matter continued without date, pending the preparation of settlement documents for presentation to the Commission.

On December 12, 1975, counsel for the Division of Enforcement was ordered to file with the Hearing Clerk a statement or equivalent document showing that the Commission had allowed the Respondent to consent to an order. On December 16, 1975, counsel for the Division, with the consent, knowledge and approval of counsel for Respondents, discussed the December 12, 1975 Order with the Administrative Law Judge. Counsel for the Division (Messrs. Schief, Dandy, and Sippel) were advised that a statement or document should be filed with the Hearing Clerk on or before December 17, 1975, which statement or document should clearly show that the Commission had allowed Respondents to consent to an order. The document filed by the Division fails to show this to be the case.

It is clear from the record in this case that the parties have made no real effort to comply with prehearing orders. Even now, the Division has not submitted copies of proposed exhibits or copies of proposed witness lists. Prehearing memoranda have not been submitted. There has been a disregard of valid unvacated orders by both parties. The apparent confluent interests of Respondents and the Division of Enforcement more than suggests that orderly and impartial litigation of this matter has been negated.

Based upon the foregoing recitation, it is deemed that the Division has effectively abandoned prosecution of the Complaint and instead has

limited its activities to settling the issues. For that reason, this case is hereby DISMISSED from the docket of the presiding Administrative Law Judge. Should the parties be successful in obtaining approval of a settlement by the Commission, all issues are, of course, moot. In the event that it is not possible, either party may petition the Administrative Law Judge to reopen and reconsider this case. However, any such petition is to be accompanied by:

- a. copies of exhibits to be offered in evidence;
- b. a witness list, with summaries of expected testimony;
- c. an offer to stipulate to matters not in substantial controversy;
- d. a proposed trial agenda; and
- e. a recommended time and place for the prehearing conference and the hearing on the merits.

This proceeding is accordingly DISMISSED without prejudice to either party.

Dated this 29th day of December, 1975

[SEE SIGNATURE IN ORIGINAL]

George H. Painter

Administrative Law Judge

LOAD-DATE: August 6, 2008

