

Commodity Futures Trading Commission
CEA CASES

NAME: PACIFIC WEST COMMODITIES, INC., KENNETH M. MUELLER, BETHEL G. BUCKALEW, NORMAN C. LONG, AND LESTER J. SUTER

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(No. 10,310)

In re PACIFIC WEST COMMODITIES, INC., KENNETH M. MUELLER, BETHEL G. BUCKALEW, NORMAN C. LONG, AND LESTER J. SUTER. CEA Docket No. 128. Decided January 17, 1966.

Customers' funds -- Denial of trading privileges -- Revocation of registration -- Default

Respondents' failures to segregate customers' funds and to keep records thereof and the misuse of such funds to extend credit of other customers are violations of the act and the regulations for which the registration of the corporate respondent is revoked and the trading privileges of all respondents are denied for three years.

Mr. Earl L. Saunders for Commodity Exchange Authority. *Mr. Will Rogers*, Hearing Examiner.

Decision by Thomas J. Flavin, Judicial Officer.

PRELIMINARY STATEMENT

This is a proceeding under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*), instituted by a complaint filed July 21, 1965, by

an Assistant Secretary of Agriculture. The respondents are Pacific West Commodities, Inc., a California corporation which is registered as a futures commission merchant under the act, and 4 individuals who are officers of respondent corporation. Respondents are charged with improper use and handling of customers' funds, including failure to segregate and keep records with respect to such funds, in willful violation of the act and the regulations issued thereunder. A copy of the complaint and a copy of the rules of practice were served upon each respondent.

At the time of service of the complaint each respondent was notified in writing that an answer to the complaint should be filed within 20 days of its receipt and that, in accordance with the rules of practice, failure to answer would constitute an admission of the facts alleged in the complaint and failure to request a hearing would constitute a waiver of hearing. Notwithstanding such notice, respondents have not filed answers and have not requested a hearing. The matter was referred to Will Rogers, Hearing Examiner, Office of Hearing Examiners, United States Department of Agriculture, for the preparation of a report without further investigation or hearing pursuant to section 0.9(c) of the rules of practice (17 CFR 0.9 (c)). On December 13, 1965, the hearing examiner filed a report recommending that the respondents be found to have violated the act as charged, that respondent corporation's registration as a futures commission merchant be revoked and that an order be issued directing all

contract markets to refuse all trading privileges to each respondent for a period of 3 years. No exceptions to the hearing examiner's report were filed.

FINDINGS OF FACT

1. Respondent Pacific West Commodities, Inc., is a corporation organized and existing under the law of the State of California with its principal office and place of business at all times material herein at 1250 Prospect Street, LaJolla, California. This respondent is now and was at all times material herein a registered futures commission merchant under the act.

2. Respondents Kenneth M. Mueller, Bethel G. Buckalew, Norman C. Long, and Lester J. Suter are individuals whose business address at all times material herein was 1250 Prospect Street, LaJolla, California, and who are now and were at all times material herein the president, executive vice president, vice president-treasurer, and secretary, respectively, of respondent corporation.

Respondent Kenneth M. Mueller was at all times material herein a member of the Board of Trade of the City of Chicago, a duly designated contract market under the act.

3. The acts and transactions hereinafter described in the Findings of Fact were ordered by, or carried out by means of the acts of, or subject to the supervision and control of, Kenneth M. Mueller, Bethel G. Buckalew, Norman C. Long and Lester J. Suter, acting in their capacities as officers of respondent corporation.

4. At the time hereinafter stated in the Findings of Fact, respondent Pacific West Commodities, Inc., in the regular course of its business as a futures commission merchant, carried accounts of customers who traded in commodity futures subject to the provisions of the act and the regulations issued thereunder. At all such times, respondent corporation had to its credit with a bank or other depository, sums of money in varying amounts, held in segregated accounts and identified as customers' funds, representing deposits of margins by and trading profits accruing to such customers.

5. On 46 business days during the period January 29 through June 15, 1965, respondent Pacific West Commodities, Inc., was undersegregated in amounts ranging up to approximately \$ 31,600 on June 15, 1965, that is, the total amount of customers' funds held in segregation, as described in Finding of Fact 4, was insufficient, by such amounts, to pay all credits and equities due to such customers.

6. On 24 business days during the period January 29 through June 15, 1965, respondent Pacific West Commodities, Inc., failed to make any computations or permanent record 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.

7. Beginning on or about December 1, 1964, and continuing until on or about June 10, 1965, respondent Pacific West Commodities, Inc., made purchases and sales of commodity futures for its own use and benefit, and placed such trades in its customers' account carried by a correspondent firm, by reason of which the open contract positions and financial results of such trades were commingled with the open contract positions and financial results of the transactions of the customers of respondent corporation.

8. During the period January 29 through June 15, 1965 respondent Pacific West Commodities, Inc., purchased and sold commodity futures for the use and benefit of certain customers and margined, guaranteed, or secured such purchases and sales with funds belonging to other customers of respondent corporation.

CONCLUSIONS

The corporate respondent, under the supervision or direction, or by means of the acts of the individual respondents, knowingly failed to treat and deal with customers' funds as belonging to such customers, failed to segregate and account separately for such funds, used funds held for customers to margin and guarantee the trades and secure and extend the credit of customers other than those for whom such funds were held, commingled customers' funds with funds belonging to the corporate respondent, and failed to prepare and maintain the records required under the act and the regulations issued thereunder as a basis for such segregation and accounting. By reason thereof, respondents willfully violated sections 4d(2) and 4g of the act (7 U.S.C. 6d(2) and 6g) and sections 1.20, 1.21, 1.22, 1.23 and 1.32 of the regulations issued thereunder (17 CFR 1.20, 1.21, 1.22, 1.23, 1.32). See *In re Harry Kay et al.*, 23 Agric. Dec. 743 (23 A.D. 743) (1964).

The nature and scope of the violations by respondents indicate a willful and flagrant disregard of the act and the regulations and justify a substantial sanction. The registration of respondent corporation as a futures commission merchant should be revoked and all respondents should be denied trading privileges for a period of three years, as recommended by complainant.

ORDER

Effective February 14, 1966, the registration of Pacific West Commodities, Inc., as a futures merchant is revoked.

Effective February 14, 1966, all contract markets shall refuse all trading privileges to Pacific West Commodities, Inc., Kenneth M. Mueller, Bethel G. Buckalew, Norman C. Long and Lester J. Suter for a period of three years, such refusal to apply to all trading done and positions held by them, or any of them, directly or indirectly.

A copy of this decision and order shall be served upon each respondent and upon each contract market.

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