

Commodity Futures Trading Commission
CEA CASES

NAME: WARD MERCANTILE, INC., AND PHILIP J. FULLERTON

CITATION: 30 Agric. Dec. 1426

DOCKET NUMBER: 179

DATE: OCTOBER 20, 1971

DOCUMENT TYPE: DECISION AND ORDER

(No. 14,213)

In re WARD MERCANTILE, INC., and PHILIP J. FULLERTON. CEA Docket No. 179.
Decided October 20, 1971.

Consent order -- Violation of financial requirements -- Cease and desist

Respondents consented to the issuance of a cease and desist order against them for failing to meet the minimum financial requirements prescribed for futures commission merchants.

Earl L. Saunders for Commodity Exchange Authority.

Respondents *pro se*.

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 issued on August 20, 1971. The respondents are charged with violating section 4f of the Act (7 U.S.C. 6f) and section 1.17 of the regulations thereunder (17 CFR 1.17).

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 admit the facts hereinafter set forth in paragraphs one and two of the Findings of Fact, (2) admit, for the purposes of this proceeding and for such purposes only, the facts hereinafter set forth in paragraphs three and four of the Findings of Fact, (3) waive the report of the Hearing Examiner, and (4) consent to the entry of the order contained herein.

FINDINGS OF FACT

1. Respondent Ward Mercantile, Inc., is now, and was at all times material herein, a corporation organized and existing under the laws of the State of New York, with offices at 6 Harrison Street, New York, New York 10013. The said corporation is now, and was at all such times, a registered futures commission merchant under the Commodity Exchange Act, engaged in trading in commodities for future delivery for the accounts of customers and holding for such customers sums of money, representing deposits of margin by and trading profits accruing to such customers. At all such times, the said corporation was subject to the minimum financial requirements specified in section 1.17 of the regulations under the Commodity Exchange Act (17 CFR 1.17).

2. Respondent Philip J. Fullerton, an individual, is now, and was at all times material herein, secretary-treasurer of the respondent corporation, and responsible for the management, direction and control of its activities.

3. During the period from August 31, 1970 through October 19, 1970, respondent Ward Mercantile, Inc., engaged as a registered futures commission merchant under the Commodity Exchange Act while failing to meet the minimum

financial requirements prescribed by section 1.17 of the regulations issued by the Secretary of Agriculture under the Act. As of August 31, 1970, the respondent corporation lacked approximately \$ 33,560 of having enough working capital to meet such minimum financial requirements. This insufficiency was not corrected until October 20, 1970.

4. Having reason to believe that the respondent corporation was not meeting the minimum financial requirements prescribed in section 1.17 of the regulations under the Commodity Exchange Act, T. Reed McMinn, Director of the Commodity Exchange Authority's Eastern Region, on January 20, 1970, warned the corporation in writing as follows: "It is your firm's responsibility at all times to meet the financial requirements . . ." prescribed in section 1.17. To correct the working capital insufficiency at the time, respondent Fullerton on or about February 13, 1970, loaned the corporate respondent \$ 100,000 and subordinated the loan to the claims of the other general creditors.

CONCLUSIONS

By reason of the facts set forth in the Findings of Fact, it is concluded that, as charged in the complaint, the respondents violated section 4f of the Commodity Exchange Act, and section 1.17 of the regulations thereunder (17 CFR 1.17). The complainant states that the administrative officials of the Commodity Exchange Authority have carefully considered the stipulation submitted by the respondents. The administrative officials believe that the prompt entry of the proposed order would constitute a satisfactory disposition of this case, serve the public interest and effectuate the purposes of the Act. The complainant recommends, therefore, that the stipulation be accepted and the proposed order be issued. It is concluded that the complainant's recommendation should be adopted.

ORDER

Effective on the date of service of this order upon respondent Ward Mercantile, Inc., it shall cease and desist from engaging as futures commission merchant without meeting the minimum financial requirements prescribed by section 1.17 of the regulations (17 CFR 1.17) issued under the Commodity Exchange Act.

Effective on the date of service of this order upon respondent Philip J. Fullerton, he shall cease and desist from wilfully causing, aiding, abetting, counseling, commanding or inducing Ward Mercantile, Inc., or any other futures commission merchant, to engage as futures commission merchant without meeting the minimum financial requirements prescribed by section 1.17 of the regulations (17 CFR 1.17) issued under the Commodity Exchange Act.

A copy of this Decision and Order shall be served on each of the parties.

LOAD-DATE: June 10, 2008

