

II. STATEMENT OF THE FACTS, 14.3. COMPLAINT C.

The companies had undertaken many thousand contractual obligations during the years, at the time of the event circa 900 were "open" and outstanding, consisting of various type of engagement falling into 3 categories:

- 1) Order sales: The customer purchase goods for delivery after 30-60 business days (6-13 weeks) and pay the full amount in advance.
- 2) Deferred delivery sales: The customer purchase goods "on margin" for delivery/sale within a period of 12-60 months, during which the customer with 30 days' notice can ask for delivery or cash settlement (7 days). The customer pays 1/10 – 1/3 of the total purchase price on account and during the period an interest charge for the outstanding amount.
- 3) Loan arrangement with goods collateral: The customer receives either a cash or contract loan by the company providing the goods as physical collateral (silver, platinum bars or gold coins).

Until the raid, SCE fulfilled its entire obligation as to the above contracts, despite that the world precious metal market was in a disarray. Never before had the precious metal price fluctuated so much.

During the month before the event, the companies paid customers in excess of D.kr. 20 million in cash settlement and during the ten weeks the new company was in operation nearly D.kr. 7 million was lent to customers in cash. According to the Special Prosecution's auditors, would the contracts entered into by the new SCE A/S provide the company with a gross profit of D.Kr 22 million plus, if the contract had to run the contractual period originally agreed to by the customers': All documentation clearly show that the companies would have been in a position to fulfil all their contractual obligation.

The companies fulfilled more than 1000 orders contracts during the so-called indictment period (9th May 1979 until the raid).

After the event, the Special Prosecution asked some customers to complain, in view that the companies did not fulfil their obligations, a few customers made such complaints, however first after

extensive media coverage with incriminating views, telephone calls from the Prosecution and indeed in many cases, pressure from the Revenue and other, authorities.

The fact remains that prior to the event on the 31st January 1980, no customer had made any complaints as to the non-fulfilment of the contract from the companies.

It is also a fact that the authorities had comprehensive knowledge, as to the companies' services and business procedure, including details as to the deferred delivery contracts (see Finans/Invest Magazine from 1978 and printed notes - internal statements by the National Bank and the Revenue).

Despite the above mentioned know-how and knowledge, the authorities and the Special Prosecution later made out, that various violations had been committed in connection with the companies' contracts, which the authorities did not know about before the event.

Furthermore after the event and for nearly 3 years thereafter, the Special Prosecution contested orally to the defence that the accusation of fraud related to operating an insolvent company, which is criminal in Denmark. However MH was sentenced in the lower court for not fulfilling the companies' contractual obligations.

Until the final stage of the proceedings, the defence and the accused was totally unaware of what exactly the fraud entailed, after a 14 month trial, the defence asked the Court to specify the indictment (see letter dated June 3rd 1982 from Folmer Reindel to the Lower Court). The Court or Special Prosecution never answered this letter.

At the time of the event the prospect for the companies was very good and considerable profits were being made. In view that MH and the companies expected the price of the precious metal to fall during the first quarter of 1980, the companies had not hedged its forward requirement at the time, thereby generating substantial profit potential when the price was falling.

In addition to the above mentioned profits, MH had, through his Swiss unlimited partnership MH&C, Zurich, made a transfer of US \$1.85 million to London, in order to sell a further amount of silver "short" on the London Metal Exchange, if this sale had not been prevented, due to the event in Denmark with the arrest of MH, MH&C would have made a profit of between US \$50 -75 million during the following 6 weeks.

All contracted deferred deliveries in the new company were provisional to a notice 30 days and during the first 30 days after the start of the contract; the customer could not demand settlement.

The Special Prosecution's auditor's report clearly shows that the new company was solvent at the time of the raid and that during the following 6-8 weeks the company would have a constant increase in net worth amounting to D.kr. 55 million plus.

According to the statement during the trial, by experts, the companies did not act differently from other dealers in the United Kingdom and U.S.A. As to the companies' contractual agreements, these could be hedged from time to time depending on the market situation. However the companies had no contractual obligation to hedge their forward requirement.

SCE had provided all its customers with details as to deferred delivery, both in its regular marked reports to the customers and in its agreement of business. All contracts were subject to conditions which were given in printed form to the customer, clearly to read. Furthermore all customers were specifically told by letter to go through these business conditions.

The business condition was originally made by the companies' legal advisors and later subjected to extensive consideration by many respected lawyers in Denmark.

The authorities directly created a delay with the formal registration of the new company, in order to make MH and the founders personally responsible and all the contracts entered into - non void (cancelled).

As to the old company (SCE Aps), it is a fact that if the new company had not been closed, also this company would have been able to fulfil its obligations, as they became due. That MH had intention to do this, can be seen from the fact that during the ten weeks of the new company's operation more than D.Kr.11 million was paid to the old company, in loans and royalty payment. Furthermore this company would receive royalties from other companies in Sweden, Norway, Holland and England in addition to planned operations in West Germany and Belgium. The royalty contract entered into was for a period of 10 years in total.

The new company had a planned budget in Denmark of 360 million Danish Kroner, which would in 1980 provide the old company with an income of D.kr. 15-20 million.

The extensive expansion plans which the new company had, with a new head office, a totally computerised administration and increased marketing activity would have resulted in considerable profits. This together with the monthly gross income of interest on outstanding finance and loans, which amounted to nearly D.kr. 1.5 million a month, would have provided a substantial profitability in the company.

It is important to point out that SCE was a bullion and commodity dealer. In commodities, even more than in other investments, such as stocks, the hypnotic skill of the seller, as well as the greed or ignorance of the buyer, can cause its own grief. Dexterity — or duplicity - can reign here. An understanding of the forces in the market place and of the very special situation the precious metal market was in during January 1980, is required in order to comprehend the enormous profitability for SCE at that time - entirely due to the fact that the companies had not purchased the goods contracted on deferred delivery, thereby making money when the prices tumbled down. The opposite situation was evident in the autumn of 1979 when the prices were rising, also in the first part of January; however, the companies had still survived and fulfilled their obligation during these difficult periods.

Most customers were investing for long-term profits on their precious metals, whereas the companies took advantage of the short term price movements, there was nothing illegal in this, in fact it is done every day by banks, brokers, dealers and speculators all over the world.

A Summary of the facts as to this complaint:

- 1) If the raid, seizure and arrest had not taken place it is evident that the companies and MH, as their manager, would have been able to continue to fulfil the companies' contractual obligations with their customers. This can be seen in the auditor's reports and the movement of the precious metals price after January 1980.
- 2) Considerable profit potential was lost and prevented in the various companies, especially in the Swiss unlimited partnership, MH&C, which was prevented from dealings on the London Metal Exchange.
- 3) SCE had no obligation to hedge or buy as to the agreement with the customer on a deferred delivery basis. What the companies did internally according to its management judgement had absolutely nothing to do with the customers,

so long as the companies were able to fulfil its contracted obligations. The companies had fulfilled all such agreements and orders prior to the event.

- 4) All contract entered into during November, December 1979 and January 1980 prior to the event, would have given the companies considerable profit.
- 5) The authorities were fully aware of the basis on which the companies operated and the special situation of the precious metal market at the time of the raid.
- 6) The companies had provided all customers with details as to its standard business procedure, furthermore pointed out in its monthly market report that considerable risk was involved with speculating in precious metals through the deferred delivery contract, since the customer only advanced 1/3 of the purchase price to the company. Such speculation could be compared to margin speculation on the security market.
- 7) The authorities deliberately created a delay in the formal registration of the new company S.C.E. A/S, in order to provide certain customers with considerable capital saving and giving the prosecution the possibility to exploit this situation after the raid and make the founders liable with all their assets.
- 8) The authorities have conspired with the liquidators of the Danish estate (The SCE companies and MH personally). This has resulted in that the liquidators have ignored the normal methods used in the settlement of debts and claims in liquidation, thereby deceiving the creditors as a whole. That this is the truth can be seen from the fact that all the customers in the new company were given freely the opportunity to transfer their contracts to Nordisk Råvare Invest, after the event. Furthermore Jørgen Jacobsen's letter to the liquidator of 29th of May 1980. This decision by the liquidators was only to the benefit of certain customers and to enhance the case of the prosecution.
- 9) The authorities were responsible for the fact that the company's customers did not get their contractual relationship with the companies fulfilled. The authorities prevented this by the raid and seizure alone. When the raid took place in front of a television camera were there no way back — and if there were still a chance for the companies, it

were taken away with the incarceration of MH in solitary confinement.

A summary of the relevant documentation which should be reviewed in connection with this complaint C.:

See List of Documents - The Danish Companies, 21.c, d, e, f, g, and h.

The National Bank internal memorandum dated the 1st May 1979, see VII, 21.d. (A-1/34-50)

The Revenue's internal note, dated the 31st of October, 1979
See VII, 21 d. (A-3/13)

The Finans/Invest article from nr. 4. 1978. See VII.21.d. and 21.i.
"Nye muligheder i ædelmetaller"

SCE Standard Business Condition in connection with credit sale and the deferred delivery of goods. See VII, 21.g.

The royalty agreement between the old company (SCE APS) and S.C.E. A/S (the new company) from December 1979. See VII.21.g

An example of correspondence with SCE's customer, dated the 2nd August 1979. See VII.21.e. (A-1/54)

SCE's market report to customers, page 4. Dated June 1, 1979 and November 1, 1978. See VII.21.f.

SCE's financial budget for 1980, see VII.21.h. (K-2/4-6)

A11 papers related to the formal registration of the new company, See letters to "Aktieselskabs-Registeret" dated 19th November 1979 (E-1/2-16,E-2/3-1,) VII.21.d. and letters dated 24th January 1980 (E-1/1-11).

See List of Documents - 21.b. General correspondence
KJ relevant to this cg plaint marked C.

See List of Documents - 21. g. and 21.t. Auditors reports

Letter dated June 16, 1981 from Lars Nielsen (A-1/1)

Statement dated August 11, 1982 from P.J. Aarup (A-1/38-2)

Report dated June 15, 1982 (A-1/39) SCE ApS as of 31/12-1981

Report dated June 15, 1982 (A-1/40) S.C.E.A/S

See List of Documents - 21.0.p.r — the Defence

Headings of the summing up at Lower Court page 1-68, VII.21.g

Press release dated the 5th February 1980 by advocate Jørgen Jacobsen Court decision (case 103/1981) L.D. 7. June 1982, see VII. 21. r.

See STATEMENT RELATIVE TO ARTICLE 26, IV. 16.3 and 4. The Supreme Court Decisions and Commercial Court transcripts.

6) See List of Documents - VII.21.j. The Judiciary

The lower Court transcripts/statements made by witnesses:

Mogens Hauschildt, pages 55 - 59 - 71 - 119 - 424

Carl Erik Rasmussen, pages 178 - 210 - 213

Bente Brahemi, page 132

Lars Odgaard, pages 143 - 315

Advocate Robert Kock Nielsen, Page 114

Legal counsel H.J.Utzon-Sørensen, page 366

Advocate Kristian Madsen, page 356 - 375

Jørgen Anker Nielsen, page 345

Commodity dealer John Barrington Carver, page 410

F. Faarup-Madsen (National Bank) page 385

Christen Amby (Revenue) page 378

Various customers:

Henrik Svendsen, page 62

Mogens Kaae, pages 51 - 197

Axel Juhl-Jørgensen, page 52

Pagh Morup, page 64

H. Winther Larsen, page 194

Edward Muus, page 209

Henrik Sejer Jørgensen, page 204

Brandt Andersen, page 286

Jørgen Munk, page 304 U

(7) See List of Documents - VII.21.w. Press articles

Specific related articles to fiscal issues or prosecution:

Politiken, January 12, 1980

Børsen, February 1, 1980

Jyllands-Posten, February 2, 1980

Berlingske Tidende, February 15 and 17, 1980

Aktuelt, March 8, 1980

Berlingske Tidende, September 1981

Børsen, April 1980 "Edelmetaller i skattevæsenets..."

Berlingske Tidende, October 1981 "Der går nogle..."

Aktuelt, January 1, 1983

Separate selected VII.21.w. Marked Complaint C.

(8) See List of Documentation - VII.21.u. The Prosecution

Counsel Opinion from the Swedish Prosecution by Professor of Law
Per Edwin Wallen, dated June 1, 1982

(9) See List of Documents - VII.21.s. The Prosecution

Contract of Credit purchase from Nordisk Råvare Invest (M-235/7)

An example of a complaint from a customer after the event (M-
52/4) and as a result of the media coverage.

(10) See APPENDIX TWO

Report to the United States House of Representatives by the
Commodity Future Trading Commission, October 1, 1981

Various Marketing material from SCE

Newspaper articles providing background for the event and related
to the international market's financial and political event during late
1979 and the first quarter of 1980.

Magazine articles providing background:

Fortune, July 28, 1980 "Who Guards Whom at the
Commodity Exchange?"

Article by Harry Hurt III, 1980 "Silverfinger"