

Commodity Futures Trading Commission
CEA CASES

NAME: HARNEY, BURNS INC., JOHN T. FONTANA, ROBERT O. INGAL, AND A. JAMES COMENZO

CITATION: 28 Agric. Dec. 103

DOCKET NUMBER: 127

DATE: FEBRUARY 25, 1969

DOCUMENT TYPE: DECISION AND ORDER

(No. 12,283)

In re HARNEY, BURNS INC., JOHN T. FONTANA, ROBERT O. INGAL, and A. JAMES COMENZO. CEA Docket No. 127. Decided February 25, 1969.

**Stipulation as to Robert O. Ingal -- Undersegregation -- Records requirements
-- Denial of trading privileges**

Respondent Robert O. Ingal consented to the issuance of an order denying trading privileges to him on all the contract markets for a period of 90 days for his actions as an officer of the corporate respondent resulting in undersegregation of customers' funds, the making of false records which purported to show that sufficient funds were held in segregated accounts to pay all credits and equities due customers and the failure to prepare records as of the close of the market of each business day of the amounts required to be in segregated accounts.

Earl L. Saunders for Commodity Exchange Authority.

Robert L. Cohen and *Louis J. Martine*, New York, N.Y., for respondent Robert O. Ingal.

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 under section 6(b) of the act (7 U.S.C. 9) by the Acting Secretary of Agriculture.

Respondent Robert O. Ingal is one of four respondents in this proceeding. The complaint charges the said respondent with wilfully violating sections 4d and 4g of the Commodity Exchange Act (7 U.S.C. 6d, 6g) and sections 1.20, 1.21, 1.22, 1.23 and 1.32 of the regulations issued under the act (17 CFR 1.20, 1.21, 1.22, 1.23, 1.32).

No hearing has been held with respect to any of the four respondents. Consent orders against all respondents except Robert O. Ingal have heretofore been entered, concluding the proceeding as against such respondents.

On February 20, 1969, respondent Robert O. Ingal withdrew his answer previously filed and submitted a stipulation under section 0.4(b) of the rules of practice, in which he admits, for the purposes of this proceeding, the facts hereinafter set forth, waives hearing on the charges and consents to the entry of the order contained herein.

FINDINGS OF FACT

1. Respondent Harney, Burns Inc., a New York corporation, was at all times material herein, a registered futures commission merchant under the Commodity Exchange Act.

2. Respondent Robert O. Ingal, an individual, was at all times material herein the vice-president of respondent Harney, Burns Inc. and one of its principal stockholders.

3. The acts and transactions hereinafter described were ordered and directed by or carried out by means of the acts of respondent Robert O. Ingal and other officers of the respondent corporation.

4. Respondent Harney, Burns Inc., in the normal course of its business as a futures commission merchant, carried accounts for customers who traded in commodity futures subject to the provisions of the Commodity Exchange Act. In connection therewith, the said respondent had to its credit with a bank or other depository sums of money in varying amounts, held in segregated account and identified as customers' funds, representing deposits of margins by and trading profits accruing to such customers.

5. On December 29, 1964, and again on December 30, 1964, respondent Harney, Burns Inc. was undersegregated in an amount of approximately \$ 4,000, that is, the total amount of customers' funds held in segregation, as described in Finding of Fact 4 hereof, was insufficient, by the aforesaid sum, to pay all credits and equities due to such customers. In connection therewith, respondent Harney, Burns Inc. prepared and maintained false records which purported to show that sufficient funds were held in segregated accounts to pay all credits and equities due its customers.

6. On each business day during the period from March 5, 1965, through March 31, 1965, respondent Harney, Burns Inc. was undersegregated in amounts ranging from approximately \$ 15,000 on March 26, 1965, to approximately \$ 27,000 on March 15, 1965, that is, the total amount of funds held in segregation, as described in Finding of Fact 4 hereof, was insufficient by such amounts to pay all credits and equities due to such customers. In connection therewith, respondent Harney, Burns Inc. prepared and maintained false records which purported to show that sufficient funds were held in segregated accounts to pay all credits and equities due its customers.

7. On each business day during the period from April 1, 1965, through April 8, 1965, respondent Harney, Burns Inc. was undersegregated in amounts ranging from approximately \$ 6,000 on April 8, 1965, to approximately \$ 13,000 on April 1, 1965, that is, the total amount of funds held in segregation, as described in Finding of Fact 4 hereof, was insufficient by such amounts to pay all credits and equities due to such customers. During such period, respondent Harney, Burns Inc. failed to prepare and maintain a record as of the close of the market on each business day of the amount of money, securities and property required to be in segregated account in order to pay all credits and equities due to its customers.

CONCLUSIONS

By reason of the facts set forth in the Findings of Fact, it is concluded that, as charged in the complaint, respondent Robert O. Ingal wilfully violated sections 4d and 4g of the Commodity Exchange Act (7 U.S.C. 6d, 6g) and sections 1.20, 1.21, 1.22, 1.23 and 1.32 of the regulations thereunder (17 CFR 1.20, 1.21, 1.22, 1.23, 1.32).

The complainant states that the administrative officials of the Commodity Exchange Authority have carefully considered the stipulation and the terms of the order to which respondent Robert O. Ingal proposes to consent, and that they believe the proposed sanction would be adequate and would constitute a satisfactory disposition of the case as against him, serve the public interest, and effectuate the purposes of the Commodity Exchange Act. The complainant recommends, therefore, that the stipulation and waiver be accepted and the proposed order be issued. It is so concluded.

ORDER

Effective on the thirtieth day after the date of entry of this order, respondent Robert O. Ingal is prohibited from trading on or subject to the rules of any contract market for a period of ninety (90) days, and all contract markets shall refuse all trading privileges to him during this period, such prohibition and refusal to apply to all trading done and positions held by him, directly or indirectly.

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

LOAD-DATE: June 10, 2008

