

Commodity Futures Trading Commission
CEA CASES

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

CITATION: 25 Agric. Dec. 158

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(No. 10,370)

In re HARNEY, BURNS INC., JOHN T. FONTANA, ROBERT O. INGAL, AND A. JAMES COMENZO. CEA Docket No. 127. Decided February 10, 1966.

Stipulation with respect to John T. Fontana -- Undersegregation -- Denial of trading privileges

Respondent John T. Fontana consented to the issuance of an order denying trading privileges to him on the contract markets for a period of 2 1/2 years 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 on each business day of the amount of money, securities and property required to be in segregated accounts.

Mr. Earl L. Saunders for Commodity Exchange Authority.

Respondent *John T. Fontana 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 under section 6(b) of the act (7 U.S.C. 9) by the Acting Secretary of Agriculture.

Respondent John T. Fontana is one of four respondents in this proceeding. The complaint charges the said respondent with willfully 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 respondents. On February 7, 1966, respondent John T. Fontana submitted for filing in the record, under section 0.4(b) of the rules of practice (17 CFR 0.4(b)), a stipulation in which he admits the facts hereinafter set forth insofar as they concern him, waives hearing on the charges in the complaint, and consents to the entry of the order contained herein. The facts admitted by respondent Fontana are the same as those alleged against him in the complaint.

FINDINGS OF FACT

1. Respondent Harney, Burns Inc., is a New York corporation with its principal office and place of business at 50 Broadway, New York, New York. The said corporation was at all times material herein a registered futures commission merchant under the Commodity Exchange Act.

2. Respondent John T. Fontana, an individual, whose business address is 50 Broadway, New York, New York, is now and was at all times material herein president of the aforesaid Harney, Burns Inc. and one of its principal stockholders. Respondent John T. Fontana was at all times material herein a member of a duly designated contract market under the Commodity Exchange Act.

3. The acts and transactions hereinafter described were ordered and directed by or carried out by means of the acts of respondent John T. Fontana and other officers of the respondent corporation in their capacities as 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 paragraph 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 under-segregated 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 paragraph 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 under-segregated in amounts ranging from approximately \$ 6,000 on April 8, 1965, to approximately \$ 13,000 on April 1, 1965, that is, the total amounts of funds held in segregation, as described in paragraph 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. n1

n1 As indicated in the Preliminary Statement, this Decision and Order is with respect only to respondent John T. Fontana, and the facts stated in the Findings of Fact are the admissions of fact contained in the stipulation filed by respondent Fontana. Such findings, however, have no binding effect on the remaining respondents, Harney, Burns Inc., Robert O. Ingal and A. James Comenzo.

CONCLUSIONS

By reason of the facts set forth in the Findings of Fact, it is concluded that, as charged in the complaint, respondent John T. Fontana 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 (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 Fontana proposes to consent, and that they believe that the proposed sanction would be adequate and that the prompt entry of such an order would constitute a satisfactory disposition of the case as against respondent Fontana, 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 March 1, 1966, all contract markets shall refuse all trading privileges to respondent John T. Fontana for a period of two years and six months, such refusal to apply to all trading done and all positions held by him, directly or indirectly.

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

LOAD-DATE: June 8, 2008