

Commodity Futures Trading Commission
CEA CASES

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

CITATION: 26 Agric. Dec. 15

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(No. 10,981)

In re HARNEY, BURNS INC., JOHN T. FONTANA, ROBERT O. INGAL, AND A. JAMES COMENZO. CEA Docket No. 127. Decided January 26, 1967.

Stipulation as to Harney, Burns Inc. and A. James Comenzo -- Undersegregation -- False statement in application-Denial of trading privileges

The corporate respondent and respondent A. James Comenzo consented to the issuance of an order directing all contract markets to refuse all trading privileges to them on the contract markets for five years for

violations of the act in submitting a false financial statement in the corporation's application for registration, in undersegregation of customers' funds, the making of false records which purported to show that sufficient funds were held in segregated accounts and the failure to prepare records as of the close of the market each day of the amounts required to be in segregated accounts. As the corporation is not now registered under the act revocation of its registration as a futures commission merchant is not ordered herein.

Mr. Earl L. Saunders for Commodity Exchange Authority.

Mr. Henry W. Klemkowski, of Baltimore, Md., for respondents Harney, Burns Inc. and A. James Comenzo.

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.

Respondents Harney, Burns Inc. and A. James Comenzo are two of four respondents in this proceeding. The complaint charges the said respondents with wilfully violating sections 4d, 4f and 4g of the Commodity Exchange Act (7 U.S.C. 6d, 6f and 6g) and sections 1.10, 1.20, 1.21, 1.22, 1.23, and 1.32 of the regulations issued under the act (17 CFR 1.10, 1.20, 1.21, 1.22, 1.23, 1.32). At the time of the violations charged in the complaint, the respondent corporation was registered as a futures commission merchant under the Commodity Exchange Act. At the present time, it is not registered under the act.

No hearing has been held with respect to any of the respondents. A consent order has been issued against respondent John T. Fontana, concluding the proceeding as against that respondent. On January 23, 1967, respondents Harney, Burns Inc. and A. James Comenzo submitted 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 insofar as such facts concern the said respondents, waive hearing on the charges, and consent to the entry of an order (1) directing the denial of

all trading privileges to each of them on all contract markets for a period of five years and (2) revoking the registration of respondent Harney, Burns Inc. as futures commission merchant.

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 A. James Comenzo, an individual, is now and was at all times material herein the Secretary-Treasurer of Harney, Burns Inc.

3. On or about December 28, 1964, respondent Harney, Burns Inc., in connection with its application for registration as a futures commission merchant under the Commodity Exchange Act for the year 1965, knowingly submitted to the Commodity Exchange Authority a false financial statement, as of December 22, 1964, attested to by respondent A. James Comenzo, which misrepresented and concealed the true financial condition of the respondent corporation.

4. The acts and transactions hereinafter described were ordered and directed by or carried out by means of the acts of respondent A. James Comenzo and other officers of the respondent corporation in their capacities as officers of the respondent corporation.

5. 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.

6. 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 5, 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.

7. 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 5, 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.

8. 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 5, 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 respondents Harney, Burns Inc. and A. James Comenzo, and the facts stated in the Findings of Fact are the admissions of fact contained in the stipulation filed by the said respondents. Such findings, however, have no binding effect on the remaining respondent, Robert O. Ingal.

CONCLUSIONS

By reason of the facts set forth in the Findings of Fact, it is concluded that, as charged in the complaint, respondents Harney, Burns Inc. and A. James Comenzo wilfully violated sections 4d, 4f and 4g of the Commodity Exchange Act (7 U.S.C. 6d, 6f, and 6g), and sections 1.10, 1.20, 1.21, 1.22, 1.23 and 1.32 of the regulations (17 CFR 1.10, 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 waiver submitted by respondents Harney, Burns Inc. and A. James Comenzo. The administrative officials believe that if the decision makes it clear that the registration of the respondent corporation as futures commission merchant would be revoked if it were now so registered, the prompt entry of an order providing for the proposed denial of trading privileges would effectuate the purposes of the Commodity Exchange Act. The complainant recommends, therefore, that the stipulation and waiver be accepted and such a decision and order be issued.

It is concluded that the complainant's recommendation should be adopted. If the respondent corporation were registered as a futures commission merchant under the Commodity Exchange Act at the present time, the order contained herein would include the revocation of such registration.

ORDER

Effective on the thirtieth day after the date of entry of this order, all contract markets shall refuse all trading privileges to respondents Harney, Burns Inc. and A. James Comenzo for a period of five years, such refusal to apply to all trading done and positions held by said Harney, Burns Inc. and A. James Comenzo, or either of them, and also to all trading done and positions held indirectly through persons or firms owned or controlled by them, or either of them, or otherwise.

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

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