

Commodity Futures Trading Commission
CEA CASES

NAME: SECRETARY OF AGRICULTURE V. CLARENCE J. BURNS COMPANY, INC., CLARENCE J. BURNS, PHILIP T. BURNS, DORTHEA BURNS AND ROY L. MORGAN

DOCKET NUMBER: 27

DATE: JUNE 5, 1941

DOCUMENT TYPE: COMPLAINT

UNITED STATES OF AMERICA

BEFORE THE SECRETARY OF AGRICULTURE

CE-A Docket No. 27

Secretary of Agriculture, Complainant, v. Clarence J. Burns Company, Inc., Clarence J. Burns, Philip T. Burns, Dorthea Burns and Roy L. Morgan, Respondents.

Complaint and Notice of Hearing under Section 6(b) of the Commodity Exchange Act.

There being reason to believe that the respondents have violated the Commodity Exchange Act (7 U. S. C. and Supp. V, §§ 1-17a), and the rules and regulations promulgated pursuant thereto, this complaint is issued alleging the following:

1.

Clarence J. Burns Company, Inc., is a corporation organized under the laws of the State of South Dakota, having its principal place of business at Aberdeen, South Dakota.

2.

Clarence J. Burns, Philip T. Burns, Dorthea Burns, and Roy L. Morgan were, during the time covered by this complaint,

and are at this time, officers of Clarence J. Burns Company, Inc., being the president, vice-president, secretary and treasurer, and assistant secretary and treasurer, respectively, of this corporation.

3.

Clarence J. Burns Company, Inc., was registered as a futures commission merchant under the provisions of the Commodity Exchange Act in February 1939, and has been continuously registered to the present time.

4.

The individuals named herein as respondents, during the time covered by this complaint, exercised management and control of Clarence J. Burns Company, Inc., as to all affairs relating to the matters and things hereinafter set forth and in relation thereto acted as agents for Clarence J. Burns Company, Inc.

5.

During the period from December 7, 1939, to September 30, 1940, inclusive, Clarence J. Burns Company, Inc., and Clarence J. Burns, Philip T. Burns, Dorthea Burns and Roy L. Morgan, as officers and agents of Clarence J. Burns Company, Inc., by, and through said corporation were correspondents of Harris, Upham & Company and Merrill Lynch, E. A. Pierce & Cassatt, which firms were members of

the Board of Trade of the City of Chicago, a contract market designated as such by the Secretary of Agriculture.

6.

During the period set forth in paragraph 5, the respondents, in connection with orders to make and the making of contracts of sale of grain for future delivery made and to be made on and subject to the rules of the Board of Trade of the City of Chicago for and on behalf of customers, which contracts for future delivery could be used for hedging transactions, in interstate commerce, in grain, handled customers' orders and accounts as follows:

(1) On August 16, 1940, the corporation purchased for the account of R. A. Nichols, Aberdeen, South Dakota, through Merrill Lynch, E. A. Pierce & Cassatt, a futures contract for one thousand bushels of Chicago December wheat at 70 cents, and on August 26, 1940, there was purchased for the same customer, through the same broker, one thousand bushels of Chicago December wheat at 71 5/8 cents. On or about August 27, 1940, a sale, purported to have been made closing out the two thousand bushels of wheat, was confirmed to the customer at 73 1/2 cents. A purchase and sale statement rendered to R. A. Nichols covering these trades showed, after deducting \$ 8.00 commission charges, a net gain of \$ 45.75, which was credited to his account in the segregated ledger.

The above sale was not actually executed on a contract market, but instead was taken over by the firm and allocated on August 26, 1940, to a "house" account, designated "Doro Burns." Not until August 28, 1940, was the long position actually closed out at the price of 74 1/8 cents. A purchase and sale statement dated August 28, 1940, was issued to "Doro Burns" covering the two thousand bushels of Chicago December wheat, showing a gain of \$ 12.50, which was credited to the "Doro Burns" account in the segregated ledger.

(2) On August 8, 1940, the corporation purchased for the account of George Guhin, Aberdeen, South Dakota, through Merrill Lynch, E. A. Pierce

& Cassatt, a futures contract for five thousand bushels of Chicago September wheat at 74 cents. On August 26, 1940, a sale, purported to have been made closing out the five thousand bushels of wheat, was confirmed to the customer at 70 cents. A purchase and sale statement was issued to the customer showing a loss of \$ 215.00 after the addition of a \$ 15.00 commission charge.

On August 28, 1940, a sale at 71 5/8 cents was actually made closing out the position, a purchase and sale statement was issued to the C. J. Burns Co., Inc., and the resulting gain of \$ 81.25 was credited to the "Doro Burns" account.

(3) On July 15, 1940, the corporation purchased for the account of George Guhin, Aberdeen, South Dakota, through Harris, Upham & Company, a futures contract for ten thousand bushels of Chicago September wheat at 73 3/8 cents. The purchase price, however, was confirmed to the customer at 73 3/4 cents. On or about July 31, 1940, a sale, purported to have been made closing out said contract, was confirmed to the customer at 75 3/8 cents, but the execution of the sale was not actually made until August 1, 1940, at 75 7/8 cents. A purchase and sale statement was rendered the customer based on the prices at which the transactions were confirmed to him showing, after a commission charge of \$ 30.00, a gain of \$ 132.50, which was credited to the customer's account.

(4) On or about July 20, 1940, the corporation received from L. B. Cronholm, Ipswich, South Dakota, an order to buy a futures contract for two thousand bushels of Chicago September wheat at the market. Through an error, the order was transmitted to sell instead of to buy and was executed by Harris, to sell instead of to buy Upham & Company at 74 3/4 cents. To correct the error another order was sent to the carrying broker to buy four thousand bushels of Chicago September wheat, which order was executed at 74 1/4 cents. However, the purchase of two thousand bushels was confirmed to the customer at 74 3/4 cents. On July 30, 1940, the two thousand bushels was closed out at 74 1/4 cents, but

in confirming the sale to the company, the teletype operator of the carrying broker erroneously reported the price at 75 1/2 cents. A purchase and sale statement

was issued to the customer by the corporation on the basis of a purchase price of 74 3/4 cents and a sale price of 75 1/2 cents, resulting, after a commission charge of \$ 8.00, in a profit of \$ 7.00, which was credited to the customer's account.

(5) On April 25, 1940, the corporation purchased for the account of Dr. J. D. Alway, Aberdeen, South Dakota, through Harris, Upham & Company, a futures contract for ten thousand bushels of Chicago July wheat at \$ 1.08. The purchase price was confirmed to the customer at \$ 1.08 1/4. This contract was closed out on June 5, 1940, at 79 1/4 and the resulting loss of \$ 2,930.00, after adding \$ 30.00 commission charges, was charged to the customer's account.

(6) On April 19, 1940, the corporation purchased for the account of W. C. Smith, Sisseton, South Dakota, through Harris, Upham & Company, a contract for five thousand bushels of Chicago July wheat at \$ 1.10. This contract was closed out on May 15, 1940, at 89 cents. The sale price was erroneously reported by the executing broker at 88 cents, but this was corrected to read 89 cents in a subsequent message. However, the sale price was confirmed to the customer at 88 cents, resulting in a difference of \$ 50.00. A purchase and sale statement was rendered the customer on May 15, 1940, based on the price at which the sale was confirmed to him. The resulting loss of \$ 1,115.00, after the addition of \$ 15.00 commission charge, was charged to his account.

(7) On April 13, 1940, the corporation purchased for the account of W. C. Smith, Sisseton, South Dakota, through Harris, Upham & Company, a contract for fifteen thousand bushels of Chicago July wheat at \$ 1.06 1/8. This contract was closed out on April 16, 1940, at \$ 1.08 5/8. The sale price, however, was confirmed to the customer at \$ 1.08 1/2, resulting in a difference of \$ 18.75. A purchase and sale statement was rendered the customer on May 15, 1940, based on the price at which the sale was confirmed to him. The resulting gain of \$ 311.25, after deducting \$ 45.00 commission charges, was credited to the customer's account.

(8) On or about April 25, 1940, the corporation confirmed to Joe E. Marx, Bristol, South Dakota, the purchase of a futures contract for two thousand bushels of Chicago July wheat at \$ 1.08. The confirmations issued to the corporation and teletype messages exchanged with Harris, Upham & Company on April 27, 1940, indicate that the trade was not executed on the Exchange. However, on April 27, 1940, the corporation did purchase, through Harris, Upham & Company, four thousand bushels of Chicago July wheat: two thousand bushels at \$ 1.06 7/8 for the "Doro Burns" account and two thousand bushels at \$ 1.07 which were not allotted to any customer. On May 1, 1940, these four thousand bushels were closed out at \$ 1.05 1/8. A purchase and sale statement, dated May 1, 1940, was issued to Marx showing the purchase price of the two thousand bushels at \$ 1.08 and the sale price at \$ 1.05 1/8, and a resulting loss of \$ 65.50, which was charged to the customer's account.

(9) On May 14, 1940, the corporation purchased for the account of Dr. Peter Steiner, Hosmer, South Dakota, through Harris, Upham & Company, a futures contract for one thousand bushels of Chicago September wheat at \$ 1.04. On or about May 15, 1940, a sale, purported to have been made closing out the position, was confirmed to the customer at 88 cents. A purchase and sale statement was rendered the customer on the same date and the resulting loss of \$ 164.00, after addition of \$ 4.00 commission charges, was charged to his account. The above sale was not actually executed on a contract market but the contract was taken over by the firm because they failed to execute a stop-loss order given by the customer. The contract was finally closed out on August 28, 1940, at 71 1/2 cents and a loss of \$ 165.00 was charged to the "Doro Burns" account.

(10) On April 22, 1940, the corporation purchased for the account of Ed. Grupe, Aberdeen, South Dakota, through Harris, Upham & Company, a futures contract for one thousand bushels of Chicago July wheat at \$ 1.09 7/8. The purchase price, however, was confirmed to the customer at \$ 1.09 1/8. On May 15, 1940, the contract was closed out at 89 1/4 cents. A purchase and sale statement was rendered the customer on the same date on the basis of the purchase price confirmed to the customer and the actual sale price, resulting in a loss of \$ 202.75, after adding a \$ 4.00 commission charge, which was charged to the customer's account.

(11) On April 17, 1940, the corporation purchased for the account of Dr. Hugo Neukamp, Hosmer, South Dakota, through Harris, Upham & Company, a contract for three thousand bushels of Chicago July wheat at \$ 1.08 5/8. On or about April 22, 1940, a sale, purported to have been made closing out this position, was confirmed to the customer at \$ 1.10 1/4. A purchase and sale statement was tendered the customer on April 22, 1940, showing the purchase price of this contract at \$ 1.08 5/8 and the sale price as \$ 1.10 1/4. The profit of \$ 36.75 was credited to the account of the customer. The above sale confirmed to the customer was not actually executed on the exchange but was taken over by the firm and two thousand bushels were allocated to the "Doro Burns" account. Confirmation from the carrying broker to the corporation shows one thousand bushels of Chicago July wheat actually sold at \$ 1.10 5/8 on that date, but this wheat was not allotted to the customer's account. The two thousand bushels allocated to the "Doro Burns" account were actually sold out on May 15, 1940, at 87 1/2 cents and a purchase and sale statement issued, showing a loss of \$ 463.00 on the transaction, which loss was charged to the "Doro Burns" account.

(12) On December 7, 1939, the corporation purchased for the account of W. C. Smith, Sisseton, South Dakota, through Harris, Upham & Company, a futures contract for five thousand bushels of Chicago July wheat at 92 3/4 cents. On December 13, 1939, this contract was closed out at 94 3/4 cents. The sale price, however, was confirmed to the customer as 94 1/2 cents and a purchase and sale statement issued him based on the sale price at which it was confirmed, resulting in a difference against the customer of \$ 12.50. The profit of \$ 72.00, as set forth in the P & S statement, after deducting \$ 15.00 commission charges, was credited to the customer's account.

7.

The respondents, by reason of the facts set forth in paragraph 6 and subparagraphs (1) to (12) thereof, while correspondents of members of a contract market, were guilty of cheating and defrauding customers; willfully making and causing to be made false

reports and statements to customers; willfully entering and causing to be entered false records; willfully attempting to deceive and deceiving customers in regard to the execution of orders and contracts and acts of agency performed with respect to orders and contracts for customers; and bucketing customers' orders, all in connection with orders to make and the making of contracts of sale of grain for future delivery made, or to be made, on or subject to the rules of a contract market for and on behalf of such customers, which contracts for the future delivery of grain could be used for hedging transactions in grain in interstate commerce, and in violation of Section 4b, subsections (A), (B), (C), and (D), of the Commodity Exchange Act.

8.

The corporate respondent, by and through its officers and agents, the individual respondents, during the period from February 1939 to September 1940, engaged in the business of a futures commission merchant at Aberdeen, South Dakota, and while so engaged during this period failed, in violation of Section 1.32 of the Rules and Regulations promulgated pursuant to the provisions of the Commodity Exchange Act, to make and keep in any form the daily computation of

the money and other property of commodity customers required by Section 4 d (2) of the Commodity Exchange Act to be kept in segregation.

9.

The corporate respondent, by and through its officers and agents, the individual respondents, during the period and while engaged as alleged in paragraph eight hereof, failed to prepare and keep as a permanent record a statement showing the position of each customer in each future of each commodity on each contract market as of the close of the last business day of each month, accruing and bringing to the official closing price or settlement price fixed by the clearing organization all open trades or contracts of customers as of the last business day of each calendar month, in violation of Sections 1.33 and 1.44 of the Rules and Regulations promulgated by the Secretary of Agriculture, pursuant to the provisions of the Commodity Exchange Act.

THEREFORE, the respondents are hereby notified, unless a hearing is waived, to be and appear before a referee appointed by the Secretary of Agriculture at a hearing to be held at 10 o'clock a.m., on June 24, 1941, in Room 1831, South Building, Department of Agriculture, Washington, D. C., or at such other times and places as may be determined by the referee, and then and there show cause, if any there be, why an order should not be made suspending or revoking the registration of the corporate respondent as a future commission merchant and directing that all contract markets, until further notice of the Secretary of Agriculture, refuse all trading privileges to the respondents.

IT IS ORDERED that each of the respondents shall, within fifteen days after receipt of this complaint, file a joint or individual answer with the hearing clerk, Office of the Solicitor, Department of Agriculture, Washington, D. C., as follows:

(a) If the respondent desires to contest the proceeding, the answer shall contain a statement of the facts which constitute the ground of defense and shall admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge as to any alleged fact, in which case the answer shall so state.

(b) If the respondent desires to waive hearing on the charges set forth in the complaint and not to contest the proceeding, the answer may consist of a statement that the respondent admits all the material allegations of the complaint to be true, and such answer shall be deemed to waive a hearing thereon and to authorize the Secretary of Agriculture, without hearing and without further evidence or other intervening procedure, to issue an order directing that all contract markets refuse all trading privileges to the respondent for such time as may be fixed by the order, and, in the case of the corporate respondent, revoking its registration as a futures commission merchant.

(c) If the respondent desires to waive hearing on the charges set forth in the complaint, but desires to contest the

proceeding on the ground that the facts alleged do not constitute a violation of the Commodity Exchange Act, or do not warrant disciplinary action by the Secretary of Agriculture, the answer may consist of a statement that the respondent admits all the material allegations of the complaint to be true and that he waives hearing, but desires to be given an opportunity to submit argument in support of his contention. In such case, the respondent shall be served with a tentative order containing findings of fact, conclusion, and order, to which he shall be given an opportunity to file exceptions and briefs in support thereof, and, upon request, to make oral argument.

Failure of a respondent to file an answer within the time above provided, and failure to appear at the time and place fixed for hearing, shall be deemed to authorize, without further hearing, notice to the respondent or other formal

procedure, the admission and consideration, as part of the record, of reports of employees of the Department of Agriculture and other documents upon which the complaint is based, and the issuance of an order based on such record.

IT IS FURTHER ORDERED that this complaint and notice of hearing be served on the named respondents by delivery of a true and correct copy hereof to the respondents, by an employee of the Department of Agriculture, or by registered mail.

(SEAL)

Done at Washington, D. C., this 5th day of June, 1941. Witness my hand and the seal of the Department of Agriculture.

/s/ Grover B. Hill

Assistant Secretary of Agriculture.

LOAD-DATE: June 11, 2008

