

Commodity Futures Trading Commission  
CEA CASES

**NAME:** SECRETARY OF AGRICULTURE V. CLARENCE J. BURNS COMPANY, INC., CLARENCE J. BURNS PHILLIP T. BURNS, DOROTHEA BURNS, AND ROY L. MORGAN

**DOCKET NUMBER:** 27

**DATE:** SEPTEMBER 30, 1941

**DOCUMENT TYPE:** DECISION AND ORDER

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DEPARTMENT OF AGRICULTURE  
WASHINGTON  
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 Phillip T. Burns, Dorothea Burns, and Roy L. Morgan,  
Respondents

Proceedings, Findings of Fact, Conclusions, and Order

PROCEEDINGS

On June 5, 1941, complaint was issued by the Assistant Secretary of Agriculture, pursuant to the Commodity Exchange Act (7 U.S.C. and Supp. V, §§ 1-17a), against Clarence J. Burns Company, Inc., and its officers, Clarence J. burns, Phillip T. Burns, Dorothea Burns, and Roy L. Morgan, of Aberdeen, South Dakota, the respondents. It was alleged that the corporate respondent, a registered futures commission merchant, and the individual respondents, as agents and controlling managers of the corporation, had made false reports to customers in connection with commodity futures trades, had cheated, defrauded, and deceived customers, had kept false records of commodity futures trades, had bucketed futures orders, had failed to keep records

of the amounts required to be segregated for customers, and had failed to keep records showing the positions of customers on the last day of the month, in violation of the act and the rules and regulations thereunder. A hearing before a referee was set for June 24, in Washington, D. C.

On June 12, a copy of the complaint was served by registered mail on each respondent, with a letter from the referee stating that the hearing was postponed, and that respondents might request that it be held at some place more convenient to them than Washington.

In a letter, dated June 17, 1941, to the Chief of the Commodity Exchange Administration, respondents stated that the acts alleged were done through ignorance of the mechanics of handling futures, and not to cheat customers; that respondents had conducted an insurance, real estate, and stock and bond business for some years; that Harris, Upham & Company furnished them quotations, and, when their stock and bond business declined, they had to enter the grain futures business, against their desires, to help reduce Harris, Upham's service costs; that immediately after the mistakes were disclosed by the audit made by the Commodity Exchange Administration, the customers had been notified and paid the proper amounts; that they had obtained correct executions of orders since the audit; and that they could now do without the grain business, as their stock

business would support their quotation service. They asked that the charges against them be dismissed.

On June 21, the referee wrote respondents that the complaint would not be dismissed at that time, but that their letter of June 17 could be considered as an answer if they wished, and that they might answer further and request a hearing at a convenient place. They filed a reply, on June 26, waiving a hearing, in accordance with a provision of the complaint authorizing them to admit the facts alleged and contest the proceeding on the ground that those facts are not violations of the act and do not warrant disciplinary action by the Secretary, in which case a tentative order would be served upon them, after which they might file exceptions and briefs and request oral argument. They stated that they had retired from the futures business and liquidated customers' accounts, and rested their answer upon their letter of June 17.

This order, based upon the record, as outlined above, will be served upon the respondents as the tentative order mentioned in the complaint. If exceptions to it are duly filed, it will be resubmitted, with the entire record, for further consideration, but if no exceptions are filed, it will be served as the final order in this proceeding.

#### FINDINGS OF FACT

1. The respondent Clarence J. Burns Company, Inc., of Aberdeen, South Dakota, a South Dakota corporation, registered with the Secretary

of Agriculture as a futures commission merchant for the years 1939, 1940, and 1941, and its registration has not heretofore been suspended or revoked.

2. From December 1939 through September 1940, the respondents Clarence J. Burns, Phillip T. Burns, Dorothea Burns, and Roy L. Morgan were, respectively, president, vice-president, secretary and treasurer, and assistant secretary and treasurer of Clarence J. Burns Company, Inc., and acted as agents of and exercised management and control of that corporation as to all matters set forth in these findings.

3. From December 1939 through September 1940, the corporate respondent and, by and through it, the individual respondents were correspondents of members of a contract market.

4. About August 27, 1940, the corporation reported to R. A. Nichols, Aberdeen, South Dakota, its customer, that it had sold for him 2,000 bushels of wheat for future delivery in December, on the Chicago Board of Trade, a contract market, at 73 1/2 cents per bushel, to close out a purchase of 1,000 bushels it had made for him at 70 cents, and 1,000 bushels at 71 5/8 cents, showing a net gain to him, after deducting \$ 8 commission charges, of \$ 45.75, which was credited to his account. The sale was not made as reported, but was taken over by the corporation and allocated to a house account, designated Doro Burns, on August 26, 1940. The long position was closed

out by a sale on August 28, 1940, at 74 1/8 cents per bushel, and on that day the Doro Burns account was credited with a gain of \$ 12.50 on the transaction.

5. The corporation, in some instances crediting the difference between the reported and the actual gain or loss to the Doro Burns account, as in Finding 4, made false reports to the customers, and false entries on the corporation's records, of executions of Chicago wheat futures trades, for George Guhin, Aberdeen, South Dakota, on July 15 and August 26, 1940; for L. B. Cronholm, Ipswich, South Dakota, on July 20 and 30, 1940; for Dr. J. D. Alway, Aberdeen, South Dakota, on April 25, 1940; for W. C. Smith, Sisseton, South Dakota, on December 13, 1939, April 16, 1940, and May 15, 1940; for Joe E. Marx, Bristol, South Dakota, on April 25 and May 1, 1940; for Dr. Peter Steiner, Hosmer, South

Dakota, on May 15, 1940; for Ed. Grupe, Aberdeen, South Dakota, on April 22 and May 15, 1940; and for Dr. Hugo Neukamp, Hosmer, South Dakota, on April 22, 1940.

6. The futures trades mentioned in Findings 4 and 5 could be used for hedging transactions in grain in interstate commerce.

7. The false records and false reports mentioned in Findings 4 and 5 were willfully made, and the corporation thereby willfully deceived, cheated, and defrauded the customers concerned.

8. The corporation, from December 1939 to September 1940, failed to make and keep a daily computation of the money and property of customers required by section 4d(2) of the act to be kept in segregation.

9. The corporation, from December 1939 to September 1940, failed to prepare and keep a record showing each customer's position in commodity futures on contract markets as of the close of the last business day of each calendar month.

10. The individual respondents, and each of them, acting individually and by and through the corporation, did each of the acts mentioned in Findings 4, 5, 7, 8, and 9.

#### CONCLUSIONS

The record and the foregoing findings show that respondents repeatedly bucketed their customers' commodity futures orders, falsely reported to, deceived, cheated, and defrauded the customers, and entered false records of customers' trades, in violation of the act, and failed to keep records required by the act. Respondents' claim that they paid the customers the full amounts due them, after the Government audit disclosed the situation, does not excuse their numerous violations. Their trading privileges on contract markets should be denied for five years, and the registration of the corporation should be revoked.

#### ORDER

IT IS ORDERED that the registration of the respondent Clarence J. Burns Company, Inc., Aberdeen, South Dakota, as a futures commission merchant for the year 1941 be, and it is hereby, revoked.

IT IS FURTHER ORDERED that all contract markets refuse the respondents Clarence J. Burns Company, Inc., Clarence J. Burns, Phillip T. Burns, Dorothea Burns, and Roy L. Morgan, all trading privileges thereon for a period of five years, beginning on the effective date of this order.

IT IS FURTHER ORDERED that a copy hereof be sent, by registered mail, to each of the respondents, at 209 1/2 South Main Street, Aberdeen, South Dakota. If any exceptions to this order are filed with the Hearing Clerk, Office of the Solicitor, Department of Agriculture, Washington, D. C., within 20 days from the earliest day on which a copy thereof is delivered to any respondent, as evidenced by the return receipt card, then the entire record, including this order and all exceptions thereto, is to be resubmitted for further consideration. If no exception is filed within that time, a copy of this order shall be served by registered mail upon each contract market.

IT IS FURTHER ORDERED that, when a copy hereof is sent by registered mail from the Hearing Clerk to a contract market, this shall be effective as a final order 40 days after its date.

Done at Washington, D. C., this  
30th day of September 1941.

Witness my hand and the seal of  
the Department of Agriculture.

(SEAL)

s/ Robert H. Shields

Assistant to the Secretary of Agriculture

**LOAD-DATE:** June 11, 2008

