

Commodity Futures Trading Commission
CEA CASES

NAME: MYERS AND COMPANY, AND A. H. MYERS

CITATION: 27 Agric. Dec. 1070

DOCKET NUMBER: 155

DATE: SEPTEMBER 20, 1968

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(No. 11,995)

In re MYERS AND COMPANY, and A. H. MYERS. CEA Docket No. 155. Decided September 20, 1968.

Undersegregation of funds -- Suspension of registrations -- Stipulation

Respondents consented to the issuance of an order suspending the registration of the corporate respondent as a futures commission merchant and the registration of the individual respondent as a floor broker for a period of 15 days and directing all contract markets to refuse all trading privileges to them for a like period for violations of the act and the regulations involving the undersegregation of customers' funds and the making of daily records purporting to show that the total amount held in segregated accounts was in excess of that necessary to pay all credits and equities due customers, when in fact the corporation was undersegregated.

John J. Casey for Commodity Exchange Authority.

Elton L. Marshall, of Watson, Ess, Marshall & Enggas, Kansas City, Mo., for respondents.

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 § 6(b) of said Act (7 U.S.C. 9) by the Acting Secretary of Agriculture. The respondents are a Missouri corporation registered as a futures commission merchant, and an individual who is the president and a principal shareholder of the corporation and a registered floor broker. The respondents are charged with wilfully violating §§ 4d(2) and 4g of the Commodity Exchange Act (7 U.S.C. 6d(2) and 6g), and

§§ 1.20, 1.21, 1.22, 1.23, 1.32 and 1.35 of the regulations thereunder (17 CFR 1.20, 1.21, 1.22, 1.23, 1.32 and 1.35).

No hearing has been held. The respondents have submitted a stipulation under § 0.4(b) of the rules of practice (17 CFR 0.4(b)), in which they admit the factual allegations of the complaint, waive hearing on the charges, and consent to the entry of the order contained herein.

FINDINGS OF FACT

1. Respondent Myers and Company, a Missouri corporation with offices at 4800 Main Street, Kansas City, Missouri, is now, and was at all times material herein, a registered futures commission merchant under the Commodity Exchange Act and so engaged in business.

2. Respondent A. H. Myers, an individual whose business address is the same as that of the respondent corporation, is now, and was at all times material herein, the president and a principal shareholder of the respondent corporation and a registered floor broker under the Commodity Exchange Act. At all such times, respondent A. H. Myers managed and controlled the business of the respondent corporation and was responsible for the corporate acts and transactions hereinafter described.

3 a. At the times hereinafter stated, respondent Myers and Company, in the regular course of its business as futures commission merchant, carried accounts of customers who traded in commodity futures on contract markets subject to the provisions of the Commodity Exchange Act and regulations. Such accounts, the trading therein, and the handling and disposition of funds in connection therewith, were subject to the provisions of the said Act and regulations. At all such times, the respondent corporation had to its credit with banks or other depositories sums of money in varying amounts, held in segregated accounts and identified as customers' funds, representing deposits of margin by and trading profits accruing to such customers.

b. On 88 business days during the period between September 1, 1966, and January 31, 1967, both inclusive, the respondent corporation was under-segregated in amounts ranging from \$ 246.61 on September 13, 1966, to \$ 27,935.01 on October 24, 1966, that is, on the 88 days mentioned the total amount of customers' funds held in segregation as above described, was from \$ 246.61 to

\$ 27,935.01 less than the amount necessary to pay all credits and equities due to such customers.

c. Under the regulations issued pursuant to the Commodity Exchange Act the respondent corporation was obligated during the period specified above to prepare and maintain a daily computation and record setting forth the amount of money, securities and property of its customers required to be held, and held, in segregated accounts in accordance with the requirements of section 4d(2) of the Commodity Exchange Act (7 U.S.C. 6d(2)). On the daily computation and record that was prepared and kept by the respondent corporation to meet the requirements of the regulations, during the period specified above, the respondent corporation showed that it had excess funds in segregation in amounts ranging from \$ 222.89 to \$ 144,129.88, whereas, in truth and in fact, the said corporation was under-segregated as specified above.

4 a. On September 3, 1954, a complaint was filed pursuant to section 6(b) of the Commodity Exchange Act, naming as respondents the respondents in the instant proceeding and two other individuals, who were officers of the respondent corporation. The said complaint filed on September 3, 1954, alleged, *inter alia*, that respondent Myers and Company was under-segregated on various occasions within a period of approximately thirteen consecutive months in 1953 and 1954 -- that is, that the total amount of customers' funds held in segregated accounts of the corporation with depositories was less than the sum necessary to pay all credits owing to such customers; that the corporation wrongfully withdrew funds from such accounts resulting in undersegregation; that it failed to compute and its books failed to show the amount of money, securities and property required to be held in segregation under the Commodity Exchange Act and the regulations thereunder; that such acts and omissions took place under the supervision and direction of the individual respondents; and that by reason thereof the respondents violated section 4d(2) of the Commodity Exchange Act and sections 1.20 and 1.27, inclusive, of the regulations thereunder (17 CFR 1.20-1.27). Such proceeding was terminated by the entry of a consent order on February 1, 1955, imposing sanctions against respondents Myers and Company and A. H. Myers.

b. Subsequent to the entry of the order in the above-mentioned proceeding and prior to the acts and omissions described

in Finding of Fact 3 above, the Commodity Exchange Authority examined the records of the respondent corporation as of June 28, 1957, December 30, 1960, and April 30, 1962, and on each such occasion notified respondent A. H. Myers that the examination had disclosed that the respondent corporation was in an under-segregated condition and discussed the matter with him.

CONCLUSIONS

By reason of the facts set forth in the Findings of Fact, it is concluded that, as charged in the complaint, respondents Myers and Company, and A. H. Myers, wilfully violated §§ 4d(2) and 4g of the Commodity Exchange Act (7 U.S.C. 6d(2) and 6g) and §§ 1.20, 1.21, 1.22, 1.23, 1.32 and 1.35 of the regulations thereunder (17 CFR 1.20, 1.21, 1.22, 1.23, 1.32 and 1.35).

The complainant states that the administrative officials of the Commodity Exchange Authority have carefully considered the stipulation and waiver submitted by respondents Myers and Company and A. H. Myers. The administrative officials believe that the prompt entry of an order providing for the proposed suspension of the respective registrations of the two respondents and providing for the proposed refusal 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.

ORDER

Effective on the thirtieth day after the date of issuance of this order, (1) the registration of respondent Myers and Company as a futures commission merchant and the registration of respondent A. H. Myers as a floor broker are suspended for a period of fifteen (15) days, and (2) all contract markets shall refuse all trading privileges to the said respondents for a period of fifteen (15) days, such refusal to apply to all trading done and positions held by them, directly or indirectly.

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

LOAD-DATE: June 8, 2008

