

Commodity Futures Trading Commission
CEA CASES

NAME: MYERS AND COMPANY, A. H. MYERS, HARRY N. HARRISON, AND GLENN G. YANCEY

CITATION: 14 Agric. Dec. 93

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(No. 4173)

In re MYERS AND COMPANY, A. H. MYERS, HARRY N. HARRISON, AND GLENN G. YANCEY.
CEA Docket No. 63. Decided February 1, 1955.

Suspension of Registration -- Denial of Trading Privileges -- Stipulation by Respondents -- Jurisdiction of Secretary -- Dismissal -- Consent Order

Upon respondents Myers and Company and A. H. Myer's admission of jurisdictional facts, waiver of oral hearing, consent to entry of the order herein, and stipulation, trading privileges of all contract markets are denied to each of the said respondents for a period of ten days, and the registration of respondent company as a futures commission merchant is suspended for a similar period, and the proceeding is dismissed against respondents Harrison and Yancey.

Mr. Benjamin M. Holstein for Commodity Exchange Authority. *Messrs. Elton L. Marshall and Fielding H. Lane* of *Watson, Ess, Marshall & Enggas*, of Kansas City, Missouri, for respondents.

Decision by Thomas J. Flavin, Judicial Officer

PRELIMINARY STATEMENT

This is a quasi-judicial proceeding under the Commodity Exchange Act (7 U.S.C., Chapter 1), instituted by a complaint and notice of hearing issued under section 6(b) of the Commodity Exchange Act (7 U.S.C. 9) by the Acting Secretary of Agriculture on September 3, 1954. The complaint alleged that the respondent corporation was undersegregated 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 under-segregation; 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 rules and regulations; and that it failed promptly to close out transactions and furnish the customer concerned with a statement showing the financial results thereof. The complaint charged that these acts and omissions took place under the supervision and direction of the individual respondents, who were officers of the corporation, and that by reason thereof all the respondents violated section 4d(2) of the Commodity Exchange Act (7 U.S.C. 6d(2)) and sections 1.20 to 1.27, inclusive, and section 1.46 of the regulations (17 CFR 1.20-1.27, 1.46).

An answer was filed on November 4, 1954, in which the respondents admitted some of the jurisdictional allegations, admitted certain material allegations and denied others, set forth affirmative defenses, denied that there was any wilful design to violate the act or the regulations, and denied that Harry N.

Harrison or Glenn G. Yancey exercised supervision or direction or had any direct control over any of the acts or transactions in question.

No hearing was held. On January 24, 1955, respondents Myers and Company and A. H. Myers filed a stipulation under Section 0.4(b) of the rules of practice (17 CFR 0.4), in which they withdrew the answer previously filed on their behalf, admitted the facts contained herein under "Findings of Fact," and consented to the entry of the order hereinafter set forth.

FINDINGS OF FACT

1. Respondent Myers and Company is a corporation organized under the laws of the State of Missouri, with offices at 1307 Waldheim Building, Kansas City, Missouri. The said corporation is now and was at all times material to this decision and order a registered futures commission merchant under the Commodity Exchange Act.

2. Respondent A. H. Myers, an individual residing at 6335 Ward Parkway, Kansas City, Missouri, was president of the said corporation at all such times, and managed and controlled its business.

3. During the period from April 17, 1953 to May 27, 1954, respondent Myers and Company carried accounts for customers trading in commodity futures subject to the Commodity Exchange Act and regulations, and during such period respondent Myers and Company, in its capacity as a registered futures commission merchant acting for and on behalf of such customers, executed or caused the execution of transactions in commodities for future delivery on or subject to the rules of the Board of Trade of the City of Chicago and the Kansas City Board of Trade.

4. The Board of Trade of the City of Chicago and the Kansas City Board of Trade were at all times material to this decision and order duly designated contract markets under the Commodity Exchange Act.

CONCLUSIONS

Section 0.4(b) of the rules of practice under the Commodity Exchange Act (17 CFR 0.4(b)) provides as follows:

(b) Consent order. At any time after the issuance of the complaint and prior to the hearing in any proceeding, the Secretary, in his discretion, may allow the respondent to consent to an order. In so consenting, the respondent must submit, for filing in the record, a stipulation or statement in which he admits at least those facts necessary to the Secretary's jurisdiction and agrees that an order may be entered against him. Upon a record composed of the complaint and the stipulation or agreement consenting to the order, the Secretary may enter the order consented to by the respondent, which shall have the same force and effect as an order made after oral hearings.

The facts admitted by respondents Myers and Company and A. H. Myers and set forth in the Findings of Fact are sufficient to subject them and each of them to the jurisdiction of the Secretary of Agriculture. Based upon assurance by these respondents that they will observe the restraints hereinafter set forth, the complainant recommends that the waiver of hearing submitted by them be accepted, that the order to which they have consented be issued, and that the complaint be dismissed as against respondents Harry N. Harrison and Glenn G. Yancey. It is so concluded.

ORDER

Effective on the thirtieth (30th) day after the date of this order, all contract markets shall refuse all trading privileges to A. H. Myers for a period of ten (10) days, such refusal to apply to all trading done and positions held directly by the said A. H. Myers and also to all trading done and positions held indirectly through persons owned or controlled by him or otherwise, *Provided*,

that such refusal shall not be construed to apply to trading in cash commodities.

Effective on the thirtieth (30th) day after the date of this order, all contract markets shall refuse all trading privileges for its own or house account to Myers and Company for a period of ten (10) days, such refusal to apply to all trading done and positions held directly by the said Myers and Company, and also to all trading done and positions held indirectly through persons owned or controlled by the said firm, or otherwise, *Provided*, that such refusal shall not be construed to apply to trading in cash commodities.

Effective on the thirtieth (30th) day after the date of this order, the registration of Myers and Company as a futures commission merchant is suspended for a period of ten (10) days, *Provided*, that such suspension shall not be construed to require the said Myers and Company to close out open contract positions in accounts of *bona fide* customers which positions are in existence on the effective date of such suspension, nor to prohibit the execution of futures transactions which liquidate such positions in whole or in part, except that these exemptions shall not extend to the house accounts of the said Myers and Company or to the personal accounts of the said A. H. Myers, or to any accounts in which Myers and Company or A. H. Myers has any interest other than the usual broker-customer relationship.

The proceeding is dismissed as against Harry N. Harrison and Glenn G. Yancey.

A copy of this decision and order shall be served upon each of the parties by registered mail or in person and upon each contract market.

LOAD-DATE: June 8, 2008

