

Commodity Futures Trading Commission
CEA CASES

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

DOCKET NUMBER: 155

DATE: JULY 3, 1968

DOCUMENT TYPE: COMPLAINT

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re: Myers and Company, and A. H. Myers, Respondents

CEA Docket No. 155

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

There is reason to believe that the respondents, Myers and Company and A. H. Myers, have violated the Commodity Exchange Act (7 U.S.C. 1 et seq.), and the regulations made pursuant thereto (17 CFR, Part I), and in accordance with the provisions of section 6(b) of the said act (7 U.S.C. 9), this complaint and notice of hearing is issued stating the charges in that respect as follows:

I

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

II

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 to this complaint, 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.

III

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.

IV

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 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 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 paragraph III 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.

V

By reason of the facts described in this complaint, the respondents willfully violated sections 4d(2) and 4g of the Commodity Exchange Act (7 U.S.C. 6d(2), 6g), and sections 1.20, 1.1, 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, 1.35).

WHEREFORE, it is hereby ordered that this complaint and notice of hearing be served upon the respondents. The respondents will have twenty (20) days after the receipt of this complaint in which to file with the Hearing Clerk, United States Department of Agriculture,

Washington, D. C. 20250, an answer with an original and four copies, fully and completely stating the nature of the defense and admitting or denying, specifically and in detail, each allegation of this complaint. Allegations not answered will be deemed admitted for the purposes of this proceeding. Failure to file an answer will constitute an admission of all the allegations of this complaint and a waiver of hearing. The filing of an answer in which all of the material allegations of fact contained in the complaint are admitted likewise shall constitute a waiver of hearing unless a hearing is requested. The respondents are hereby notified that unless hearing is waived, a hearing will be held at 10:00 a.m., local time, on July 30, 1968, in Kansas City, Missouri, at a place therein to be specified later, before a referee designated to conduct such hearing. At such hearing, the respondents will have the right to appear and show cause, if any there be, why an order should not be made suspending or revoking the registration of respondent Myers and Company as futures commission merchant, suspending or revoking the registration of respondent A. H. Myers as floor broker, and directing that all contract markets refuse all trading privileges to the respondents for such period of time as may be determined.

It is ordered that this complaint and notice of hearing be served on the respondents at least twenty (20) days prior to the date set for hearing.

Done at Washington, D. C.

July [ILLEGIBLE TEXT], 1968

[SEE SIGNATURE IN ORIGINAL]

John A. Schnittker

Acting Secretary

LOAD-DATE: June 16, 2008

