

Commodity Futures Trading Commission
CEA CASES

NAME: BACHE & CO. INCORPORATED, HAROLD L. BACHE, AND ROBERT C. HALL

CITATION: 27 Agric. Dec. 429

DOCKET NUMBER: 147

DATE: APRIL 30, 1968

DOCUMENT TYPE: DECISION AND ORDER

(No. 11,730)

In re BACHE & Co. INCORPORATED, HAROLD L. BACHE, and ROBERT C. HALL. CEA Docket No. 147. Decided April 30, 1968.

Records requirements -- Stipulation

While respondent corporation had in its general accounts funds more than adequate to cover any undersegregation and to meet all obligations to its customers, its daily computations and records during periods in 1966 indicated that its customers' accounts were undersegregated and respondent failed to comply with the requirements of the act and the regulations with respect to the handling of customers' funds and the preparation and maintenance of records in connection therewith. The suspension of the registration and denial of trading privileges on all the contract markets are ordered against the corporation. However, these sanctions are not to become effective unless the corporation is found in violation within three years.

Earl L. Saunders for Commodity Exchange Authority.

Baer, Marks, Friedman & Berliner, New York, N.Y., for respondents Bache & Co. Inc. and Robert C. Hall.

Decision by Thomas J. Flavin, Judicial Officer

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 on October 16, 1967, under section 6 (b) of the Act (7 U.S.C. 9). The complaint charged the respondents with wilful violation of sections 4d(2) and 4g of the Commodity Exchange Act (7 U.S.C. 6d(2), 6g) and sections 1.20, 1.23, 1.32 and 1.35 of the regulations issued thereunder (17 CFR 1.20, 1.23, 1.32, 1.35). No hearing has been held. Respondents Bache & Co. Incorporated and Robert C. Hall have filed a document under section 0.4(b) of the rules of practice (17 CFR 0.4(b)), in which they withdrew the answer previously filed in their behalf, admit,

"for the purposes of this proceeding and for such purposes only", the facts contained herein under "Findings of Fact", waive hearing, and consent to the entry of the order hereinafter set forth.

FINDINGS OF FACT

1. Respondent Bache & Co. Incorporated is now, and was at all times when it is mentioned herein, a Delaware corporation with its principal office and place of business at 36 Wall Street, New York, New York, and a registered futures commission merchant under the Commodity Exchange Act. The corporation is the successor of Bache & Co., a limited partnership presently in liquidation. Substantially all of the assets of the limited partnership were transferred to and its liabilities assumed by respondent Bache & Co. Incorporated on January

31, 1965. At all times material herein through January 31, 1965, the limited partnership was a registered futures commission merchant under the Commodity Exchange Act with its principal office and place of business at 36 Wall Street, New York, New York.

2. Respondent Harold L. Bache was an individual whose business address was 36 Wall Street, New York, New York. He was at all times material herein through January 31, 1965, the directing partner of Bache & Co., the limited partnership, and was at all times material herein subsequent to January 31, 1965, and to the date of his death on March 15, 1968, Chairman of the Board of Directors and Chief Executive Officer of respondent Bache & Co. Incorporated.

3. Respondent Robert C. Hall is an individual whose business address is 36 Wall Street, New York, New York. He was at all times material herein through January 31, 1965, a general partner in Bache & Co., the limited partnership, and is now, and was at all times material herein subsequent to January 31, 1965, Treasurer and Vice President, or Executive Vice President, of respondent Bache & Co. Incorporated, and in charge of its fiscal policies. The operations and transactions of the respondent corporation, hereinafter described, were carried out under the general supervision and control of respondent Robert C. Hall, acting in his capacity as an officer of the respondent corporation.

4. At all times between May 2 and September 3, 1966, the respondent corporation, acting in its capacity as futures commission merchant, carried accounts for customers who traded in futures subject to the provisions of the Commodity

Exchange Act and regulations, and had to its credit with banks, or other depositories, money and securities in varying amounts, held in segregated accounts and identified as customers' funds, representing deposits of margin by and trading profits belonging to such customers.

5. Under the regulations issued pursuant to the Act, the respondent corporation was obligated during the period specified in Finding of Fact 4 hereof 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)).

6. According to the daily computation and record that was prepared and kept by the respondent corporation to meet the requirements of the regulations under the Commodity Exchange Act, which may or may not have been accurate, on sixteen business days between May 2 and September 3, 1966, to wit, May 3, 4, 6, 9, 10, 11, July 13, 15, 18, 19, 25, 29, August 1, 31, 31 and September 2, the respondent corporation was undersegregated in amounts ranging from \$ 10,710.03 on July 25 to \$ 832,412.94 on July 13 -- that is, the total amount of customers' money, securities and property held in segregated accounts as set forth in Finding of Fact 4 hereof was, according to the respondent corporation's daily computation and record, insufficient, by such amounts, to pay all credits and equities due to such customers.

7. The daily computation and record prepared and maintained by the respondent corporation for each business day between August 3 and August 27, 1966, shows that the respondent corporation had excess funds in segregation on each such day. However, such computations and records contain errors which as of August 26, 1966, resulted in an overstatement thereon of the amount of customers' money, securities and property held in segregation in relation to the amount required to be so held, in an amount in excess of \$ 800,000. The principal errors causing such overstatement and the date each such error was first made are as set forth in the tabulation, marked Exhibit A, attached to the complaint in this proceeding. The aforementioned daily computations and records of the respondent corporation, when adjusted to compensate for such errors, show that on twelve business days between August 3 and August 27, 1966, to wit, August

4, 11, 12, 15, 16, 17, 18, 19, 22, 23, 24 and 25, the respondent corporation was undersegregated in amounts ranging from \$ 16,631.83 on August 4 to \$ 711,958.14 on August 23.

8. Examination of the records of Bache & Co., the limited partnership, by the Commodity Exchange Authority as of October 27, 1961, August 31, 1962 and August 23, 1963, disclosed that the firm had not satisfactorily complied with the requirements of the Commodity Exchange Act and the regulations thereunder relating to the handling of customers' funds and to the preparation and maintenance of records in connection therewith. These matters were called to the attention of Bache & Co. both orally and in writing.

Examination of the records of Bache & Co. by the Commodity Exchange Authority as of June 26, 1964, again disclosed that the firm had not satisfactorily complied with the requirements of the Commodity Exchange Act and the regulations relating to the handling of customers' funds and to the preparation and maintenance of records in connection therewith. On November 18, 1964, representatives of the Commodity Exchange Authority called these matters to the attention of Bache & Co. and the firm assured the representatives of the Commodity Exchange Authority that necessary corrective measures would be taken.

9. Subsequent to the issuance of the complaint in this proceeding, respondent Bache & Co., Incorporated immediately retained an independent accounting firm to review its procedures for handling and accounting for customers' segregated funds. The independent accounting firm advised the respondent corporation that its problems in maintaining adequate segregation of funds resulted from delays in the reporting of commodity cash transactions by branches, and in the preparation of bank account reconciliations, and need for improved procedures for coordination of branch and home office accounting. The independent public accounting firm recommended procedures, which are in the process of implementation by the respondent corporation in association with the accounting firm, and which were designed to enable the respondent corporation to meet its responsibilities in handling and accounting for customers' funds.

10. The respondent corporation, at all times material herein, had available in its general accounts funds more than adequate to cover any undersegregation in regulated accounts and to meet all obligations to customers. Upon discovery of the errors and the

undersegregation resulting therefrom, which are described in Finding of Fact 7 hereof, the respondent corporation promptly transferred funds into segregated accounts to comply with the requirements of the Commodity Exchange Act and the regulations thereunder.

CONCLUSIONS

By reason of the findings set forth in the Findings of Fact, it is concluded that respondents Bache & Co. Incorporated and Robert C. Hall wilfully violated sections 4d(2) and 4g of the Commodity Exchange Act (7 U.S.C. 6d(2), 6g) and sections 1.20, 1.23, 1.32 and 1.35 of the regulations thereunder (17 CFR 1.20, 1.23, 1.32, 1.35). The complainant states that it has carefully considered the proposed stipulation and order, and it believes, in view of all the facts and circumstances involved in this case, that the proposed sanctions against the corporate respondent would be adequate, that the prompt entry of such an order without further proceedings would constitute a satisfactory disposition of this case, and that effective administration of the act does not require the imposition of any sanction against respondent Robert C. Hall. The complainant therefore recommends that the stipulation and waiver be accepted and that the proposed order be issued. It is so concluded.

ORDER

The registration of respondent Bache & Co. Incorporated as a futures commission merchant is suspended for a period of fifteen (15) days, and all contract markets shall refuse all trading privileges to the said respondent for a period of fifteen (15) days, *Provided, However*, that the aforesaid suspension of registration and refusal of trading privileges shall not become effective unless, after complaint and hearing in accordance with established procedure, the said respondent should be found to have violated the Commodity Exchange Act within three years from the date of entry of this order, in which event the Secretary of Agriculture may, without further notice to the said respondent, issue a supplemental order making effective forthwith the aforesaid suspension of registration and refusal of trading privileges, which shall be in addition to any sanction which may be imposed as a result of such subsequent violation.

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

LOAD-DATE: June 8, 2008

