

Commodity Futures Trading Commission
CEA CASES

NAME: HARNEY, BURNS INC., JOHN T. FONTANA, ROBERT O. INGAL, AND A. JAMES COMENZO

DOCKET NUMBER: 127

DATE: APRIL 19, 1965

DOCUMENT TYPE: COMPLAINT

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re: Harney, Burns Inc., John T. Fontana, Robert O. Ingal, and A. James Comenzo, Respondents

CEA Docket No. 127

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

There is reason to believe that the respondents, Harney, Burns Inc., John T. Fontana, Robert O. Ingal, and A. James Comenzo have violated the Commodity Exchange Act (7 U.S.C. 1 et seq.) and the regulations made pursuant thereto (17 CFR, Part 1), 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 Harney, Burns Inc., is a New York corporation with its principal office and place of business at 50 Broadway, New York 4, New York. The said corporation is now, and was at all times material to this complaint, a registered futures commission merchant under the Commodity Exchange Act.

II

Respondents John T. Fontana, Robert O. Ingal, and A. James Comenzo, individuals, whose business address is 50 Broadway, New York 4, New York, are now and were at all times material to this complaint the

President, Vice President and Secretary-Treasurer, respectively, of the aforesaid Harney, Burns Inc. and its principal stockholders. Respondents John T. Fontana and A. James Comenzo are now and were at all times material to this complaint members of the New York Produce Exchange, a duly designated contract market under the Commodity Exchange Act.

III

On or about December 28, 1964, respondent Harney, Burns Inc., in connection with its application for registration as a futures commission merchant under the Commodity Exchange Act for the year 1965, knowingly submitted to the Commodity Exchange Authority a false financial statement, as of December 22, 1964, attested to by respondent A. James Comenzo, which misrepresented and concealed the true financial condition of the respondent corporation.

IV

The acts and transactions hereinafter described were ordered and directed by or carried out by means of the acts of respondents John T. Fontana, Robert O. Ingal, and A. James Comenzo in their capacities as officers of the respondent corporation.

V

Respondent Harney, Burns Inc., in the normal course of its business as a futures commission merchant, carried accounts for customers who traded in commodity futures subject to the provisions of the Commodity Exchange Act. In connection therewith, the said respondent had to its credit with a bank or other depository sums of money in varying amounts,

held in segregated account and identified as customers' funds, representing deposits of margins by and trading profits accruing to such customers.

VI

On December 29, 1964, and again on December 30, 1964, respondent Harney, Burns Inc. was undersegregated in an amount of approximately \$ 4,000, that is, the total amount of customers' funds held in segregation, as described in paragraph V hereof, was insufficient, by the aforesaid sum, to pay all credits and equities due to such customers. In connection therewith, respondent Harney, Burns Inc. prepared and maintained false records which purported to show that sufficient funds were held in segregated accounts to pay all credits and equities due its customers.

VII

On each business day during the period from March 5, 1965, through March 31, 1965, respondent Harney, Burns Inc. was undersegregated in amounts ranging from approximately \$ 15,000 on March 26, 1965, to approximately \$ 27,000 on March 15, 1965, that is, the total amount of funds held in segregation, as described in paragraph V hereof, was insufficient by such amounts to pay all credits and equities due to such customers. In connection therewith, respondent Harney, Burns Inc. prepared and maintained false records which purported to show that sufficient funds were held in segregated accounts to pay all credits and equities due its customers.

VIII

On each business day during the period from April 1, 1965, through April 8, 1965, respondent Harney, Burns Inc. was undersegregated in amounts ranging from approximately \$ 6,000 on April 8, 1965, to approximately \$ 13,000 on April 1, 1965, that is, the total amount of funds held in segregation, as described in paragraph V hereof, was insufficient by such amounts to pay all credits and equities due to such customers. During such period, respondent Harney, Burns Inc. failed to prepare and maintain a record as of the close of the market on each business day of the amount of money, securities and property required to be in segregated account in order to pay all credits and equities due to its customers.

IX

By reason of the act described in paragraph III, respondents Harney, Burns Inc. and A. James Comenzo furnished false information in connection with the respondent corporation's application for registration as futures commission merchant, in wilful violation of Section 4f of the Commodity Exchange Act and Section 1.10 of the regulations thereunder. By reason of the acts and omissions described in paragraphs VI, VII, and VIII, respondents Harney, Burns Inc., John T. Fontana, Robert O. Ingal, and A. James Comenzo failed to treat and deal with customers' funds as belonging to such customers, prepared and maintained false records, and failed to prepare and maintain records required under

the Commodity Exchange Act and regulations relating to the treatment of customers' funds, in knowing and wilful violation of Sections 4d(2) and 4g of

the Commodity Exchange Act and Sections 1.20, 1.21, 1.22, 1.23 and 1.32 of the regulations.

WHEREFORE, it is hereby ordered that this complaint and notice of hearing be served upon the said respondents. The respondents will have twenty (20) days after the receipt of this notice of hearing in which to file with the Hearing Clerk, United States Department of Agriculture, Washington, D. C. 20250, an answer with an original and six 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 purpose 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 respondents are hereby notified that unless hearing is waived, either expressly or by failure to file an answer, or by filing an answer in which all of the material allegations of fact contained in the complaint are admitted and a hearing is not requested, a hearing will be held at 10:00 a.m., local time, on the 27th day of May, 1965, in New York, New York, 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 directing that all contract markets refuse all trading privileges to the respondents for such period of time as may be

determined, and suspending or revoking the registration of respondent Harney Burns Inc., as a futures commission merchant.

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.

April 19 1965

[SEE SIGNATURE IN ORIGINAL]

John A. Baker

Acting Secretary

LOAD-DATE: June 12, 2008

