

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

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2003 APR 22 A 10: 31

In the Matter of

Brian W. Ray,

Respondent.

CFTC Docket No: 03-11

COMPLAINT AND NOTICE OF HEARING
PURSUANT TO SECTIONS 6(c), 6(d) and
8a(4) OF THE COMMODITY EXCHANGE
ACT, AS AMENDED

The Commodity Futures Trading Commission (“Commission”) has received evidence from its staff which tends to show, and the Commission’s Division of Enforcement (“Division”) alleges, that:

I.

SUMMARY

1. Between July 18, 1998 and February 14, 2000 (“the relevant time period”) Brian Ray, a floor broker with a disciplinary history involving fraud, cheated his customers and engaged in prohibited personal trading, in violation of the restrictions placed on his registration.

II.

RESPONDENT

2. Brian W. Ray currently resides in Bannockburn, Illinois, and has been continuously registered as a floor broker pursuant to Sections 4e and 4f of the Act, 7 U.S.C. §§ 6e and 6f (2001), since at least 1988. He has also been a member of the Chicago Mercantile Exchange (“CME”) since 1988.

III.

FACTS

3. On June 13, 1997, the CME Probable Cause Committee charged that, in connection with eleven transactions in 1996, Ray had taken trades into his error account that he had executed for customer orders which he left unfilled, and that he had failed to properly record the errors onto his trading cards.

4. On December 18, 1997, a CME Hearing Committee found that “on eight occasions during 1996, Ray took into his error account a trade in Standard & Poor’s 500 Stock Price Index futures contracts which he actually made for a customer order, which he left unfilled, ... [and that he had] failed to adequately explain on his error account trading cards the nature of the purported order filling errors relating to the trades he took into his error account in those transactions.” Accordingly, the Hearing Committee found Ray guilty of violating CME Rules 432b (fraud) and 541 (trading restrictions), both major violations under the CME rules.

5. The Hearing Committee fined Ray \$500,000, suspended his exchange membership privileges for six months and ordered him to pay \$61,175 in restitution to the affected customers.

6. On July 18, 1998, Ray resumed filling orders on the floor of the CME.

7. On April 13, 1999, the NFA Membership Committee issued its Final Order Restricting [Ray’s] Registration (“Final Order”) as a floor broker for two years commencing May 13, 1999. During these two years, Ray’s registration was subject to several restrictions, including, among other things, a prohibition against trading for his personal account, a requirement not to violate any provision of the Act or Commission Regulations thereunder, the Final Order or any exchange by-laws, rules or regulations and that Ray’s trading be supervised by a sponsor.

8. Throughout the relevant time period, Ray maintained an error account for trades made in error while executing customer orders. Between July 1998 and January 2000, Ray made \$751,324 in his error account.

Trade Practice Violations Committed by Brian Ray

9. On August 31 and September 9, 1999, Ray traded for his own account while on the top step of the S&P futures pit, in violation of CME Rule 541, which bars a member from trading for his own account while on the top step of the S&P pit.¹ This conduct also violates the Final Order issued by the NFA restricting Ray's registration.

10. Between May 1, 1999 and February 14, 2000, Ray executed trades for his own account while serving as a top step broker in the S&P pit. These trades include, but are not limited to, the trades alleged in paragraph 9. Ray accomplished this result by placing trades in his error account that he described as errors, but which in many instances were not undertaken as the result of errors. Specifically between May 1, 1999 and February 14, 2000, Ray described approximately 106 trades in his error account as being trades his customer declined to accept. Many of these trades were executed by Ray for his personal account and not offered to his customers. Ray offset approximately 85 percent of these so-called "customer declined trades" profitably.

11. All of the trades Ray executed for his personal account while his registration was restricted that were not bona fide errors violated the NFA Final Order.

12. Between July 1998 and February 14, 2000, Ray engaged in a variety of trading practices and activities while filling customer orders that cheated and defrauded his customers in

¹ On August 31, 2001, the CME charged Ray with trading for his own account while on the top step of the S&P futures pit. Ray settled this matter with the exchange on December 6, 2001.

violation of Section 4b of the Act, including, but not limited to, the trades set out in paragraphs 13 through 15.

13. On May 12, 1999, a customer placed an order to buy 10 S&P contracts at 1332. Ray filled the order, took the trade into his error account and returned the customer order as unable to be filled.

14. Later that same day, in respect to another order placed by the same customer to sell 10 contracts at 1343, Ray traded opposite the customer order without complying with the requirements of CME Rule 527 (“Out-Trades Involving Customer Orders”).

15. On August 31, 1999, a customer placed an order to buy 5 S&P contracts at 1331. Ray cheated and defrauded his customer by non-competitively executing the customer’s order and by indirectly trading opposite the customer’s order after the customer had attempted to cancel the order.

IV.

VIOLATIONS OF THE ACT AND REGULATIONS

COUNT ONE

VIOLATIONS OF SECTION 4b(a)(1)(i) AND (iii) OF THE ACT: CHEATING OR DEFRAUDING OTHERS

16. The allegations contained in paragraphs 1 through 15 are realleged and incorporated herein by reference.

17. From at least July 18, 1998 through February 14, 2000, Brian Ray violated Section 4b(a)(1)(i) and (iii) of the Act, 7 U.S.C. § 6b(a)(1)(i) and (iii), in that he cheated or defrauded or attempted to cheat or defraud and willfully deceived or attempted to deceive other persons by, among other things, the acts alleged in paragraphs 13 through 15.

18. Ray engaged in this conduct in or in connection with orders to make, or the making of, contracts of sale of commodities for future delivery, made, or to be made, for or on behalf of other persons where such contracts for future delivery were or may have been used for (a) hedging any transaction in interstate commerce in such commodity, or the products or byproducts thereof, or (b) determining the price basis of any transaction in interstate commerce in such commodity, or (c) delivering any such commodity sold, shipped, or received in interstate commerce for the fulfillment thereof.

19. Each act of Ray, cheating or defrauding the customers whose orders he was filling during the relevant time period, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4b(a)(1)(i) and (iii) of the Act, 7 U.S.C. § 6b(a)(1)(i) and (iii).

COUNT TWO

VIOLATIONS OF SECTION 6(c) OF THE ACT: VIOLATION OF A COMMISSION ORDER

20. The allegations contained in paragraphs 1 through 15 are realleged and incorporated herein by reference.

21. The Commission never reviewed the NFA Final Order issued on April 13, 1999. Therefore, pursuant to Section 17(o)(2) of the Act, 7 U.S.C. § 21(o)(2) (2001), the NFA Final Order is considered to be an order issued by the Commission.

22. Pursuant to Section 6(c) of the Act, 7 U.S.C. § 9 (2001), the Commission may bring an action for violations of a Commission order.

23. The Commission Order prohibited Brian Ray from violating the Act, the Regulations thereunder, exchange rules and the terms of the Final Order. By cheating

and defrauding his customers and engaging in personal trading, Ray violated a Commission Order in violation of Section 6(c) of the Act.

24. Each act of Ray in violation of the Commission order, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 6(c) of the Act, 7 U.S.C. § 9.

V.

By reason of the foregoing allegations, the Commission deems it necessary and appropriate, pursuant to its responsibilities under the Act, to institute public administrative proceedings to determine whether the allegations set forth above are true and, if so, whether an appropriate order should be entered in accordance with Sections 6(c), 6(d) and 8a(4) of the Act, 7 U.S.C. §§ 9, 13b and 12a(4) (2001).

Sections 6(c) and 8a(4) of the Act allow the Commission to: (1) prohibit a respondent from trading on or subject to the rules of any registered entities and require all registered entities to refuse such persons all privileges thereon for such period as may be specified in the Commission's Order; (2) if a respondent is registered with the Commission in any capacity, to suspend, for a period not to exceed six months, or revoke, the registration of that respondent; (3) assess against a respondent a civil monetary penalty in an amount of not more than the higher of \$110,000 or triple the monetary gain to the Respondent for each violation of the Act or Regulations occurring between November 27, 1996 and October 23, 2000 or triple the monetary gain to the Respondent for each violation of the Act or Regulations; and (4) require restitution to customers of damages proximately caused by the violations of the respondent.

Section 6(d) of the Act allows the Commission to enter an Order directing that the respondent cease and desist from violating the provisions of the Act and Regulations found to have been violated.

VI.

WHEREFORE, IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the allegations set forth in Parts I through IV above be held before an Administrative Law Judge, in accordance with the Commission's Rules of Practice under the Act (the "Commission's Rules"), 17 C.F.R. §§ 10.1 *et seq.*, at a time and place to be set as provided by Section 10.61 of the Commission's Rules, 17 C.F.R. § 10.61, and that all post-hearing procedures shall be conducted pursuant to Sections 10.81 through 10.107 of the Commission's Rules, 17 C.F.R. §§ 10.81-10.107.

IT IS FURTHER ORDERED that Respondent Brian Ray shall file an Answer to the allegations contained in this Complaint within twenty (20) days after service, pursuant to Section 10.23 of the Commission's Rules, 17 C.F.R. § 10.23, such answer must be filed with the Hearing Clerk, Office of Hearings and Appeals, Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st St., N.W., Washington, D.C. 20581 and two copies of such Answer and of any documents filed in these proceedings shall be served upon Scott R. Williamson, Deputy Regional Counsel, and Rosemary Hollinger, Associate Director, Division of Enforcement, Commodity Futures Trading Commission, 525 West Monroe Street, Suite 1100, Chicago, Illinois 60661, or upon such other counsel as may be designated by the Division. If Ray fails to file the required Answer, or fails to appear at a hearing after being duly served, such Respondent shall be deemed in default and the proceedings may be determined against

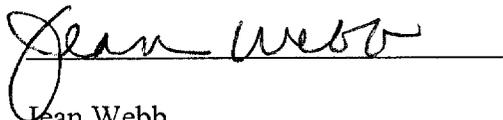
Respondent upon consideration of the Complaint, the allegations of which shall be deemed to be true.

VII.

IT IS FURTHER ORDERED that this Complaint and Notice of Hearing shall be served upon Respondent personally or by registered or certified mail, pursuant to Section 10.22 of the Commission's Rules, 17 C.F.R. § 10.22.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecutorial functions in this or any factually related proceedings will be permitted to participate or advise the decision in this matter except as a witness or counsel in a proceeding held pursuant to notice.

By the Commission.

A handwritten signature in cursive script, reading "Jean Webb", is written over a horizontal line.

Jean Webb
Secretary to the Commission
Commodity Futures Trading Commission

Date: April 22, 2003