

UNITED STATES OF AMERICA  
Before the  
COMMODITY FUTURES TRADING COMMISSION

In the Matter of:

JERRY W. SLUSSER, FIRST REPUBLIC  
FINANCIAL CORPORATION, and FIRST  
REPUBLIC TRADING CORPORATION

CFTC Docket No. 94-14

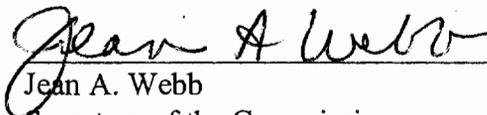
ORDER OF SUMMARY AFFIRMANCE

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Because our review of the record and the parties' appellate submissions establishes that the presiding officer committed no error material to the outcome of this proceeding, and the parties have not raised important questions of law or policy that merit extended discussion,<sup>1</sup> we affirm the result of the Supplemental Initial Decision without opinion. Because the presiding officer's findings and conclusions are supported by the weight of the evidence, we adopt them for the purposes of review in an appropriate court. Nevertheless, neither the Supplemental Initial Decision nor this Order of Summary Affirmance shall serve as Commission precedent in other proceedings.

IT IS SO ORDERED.

By the Commission (Chairman NEWSOME and Commissioners LUKKEN and BROWN-HRUSKA).

  
Jean A. Webb  
Secretary of the Commission  
Commodity Futures Trading Commission

Dated: March 4, 2004

<sup>1</sup> Respondent Slusser insists that, as to the civil money penalty, the outcome of this case must be the same as the outcome reached in *Gimbel v. CFTC*, 872 F.2d 196 (7<sup>th</sup> Cir. 1989). In *Gimbel*, however, the court unambiguously "reverse[d]" the Commission's imposition of a civil money penalty, *id.* at 201, while in this case the *Slusser* court merely "remanded for proceedings consistent with" its opinion. *Slusser v. CFTC*, 210 F.3d 783, 788 (7<sup>th</sup> Cir. 2000). The opinion specifically noted that "[i]f [the Commission] wants to impose any financial penalty on these parties, [it] must bear both the burden of production and the burden of persuasion on collectibility and net worth." *Id.* Focusing our inquiry on net worth at the time of the hearing on remand is consistent both with this instruction and Commission practice in similar circumstances. See, e.g., *In re Premex*, [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,165 (CFTC Feb. 17, 1988).