

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

WORLD CAPITAL BROKERAGE
SERVICES, INC., JOHN B. BURKS, and
EDUARDO A. PELAEZ

v.

NATIONAL FUTURES ASSOCIATION

CFTC Docket No. CRAA 04-04

ORDER PURSUANT TO
DELEGATED AUTHORITY

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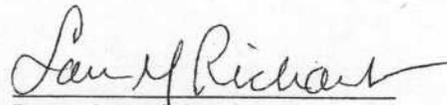
World Capital Brokerage Services, Inc., John B. Burks, and Eduardo A. Pelaez (collectively, "petitioners") seek a stay of an order of the National Futures Association ("NFA") summarily suspending them from membership or associate membership due to their failure to pay an arbitration award. In support of the requested relief, petitioners argue that a stay should be granted because they are "in the midst of settlement negotiations" with the prevailing party and, if those negotiations fail, they "may be forced to seek bankruptcy protection." Petitioners have not appealed, however, from the suspension order itself.

Commission Rule 171.1(b)(2) expressly excludes NFA arbitration decisions from Commission review. In limited circumstances, however, we will review NFA's suspension of a member for failure to pay an arbitration award. To prevail, the appealing party must show that the suspension involves something more than the ministerial application of a pre-determined sanction. *Machin v. National Futures Ass'n*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,041 at 37,893 (CFTC Apr. 25, 1991). Upon filing a timely notice of appeal with the Office of Proceedings, the appealing party may ask the Commission to stay the NFA suspension order pending consideration of the appeal. 17 C.F.R. § 171.22(b).

In seeking to stay NFA's suspension order, petitioners have not filed a notice of appeal challenging the NFA suspension order. Their petition for a stay does not contest the factual predicate of the suspensions—their failure to pay an outstanding arbitration award. Nor does it claim that NFA acted arbitrarily, or was practicing some form of invidious discrimination, by treating them differently from other members or associate members who have failed to pay arbitration awards. Instead, petitioners seek to stay the effect of the suspension order so that they can continue settlement negotiations. Nothing in our precedent or rules suggests that this objective provides an appropriate basis for intervening in a matter excluded from our jurisdiction by Rule 171.1(b)(2). *Cf. Bunyard v. National Futures Ass'n*, CRAA 03-01 (Mar. 5, 2003).

For the foregoing reasons, the petition for a stay is dismissed.

IT IS SO ORDERED.¹



Laura M. Richards
Sr. Assistant General Counsel
Commodity Futures Trading Commission

Dated: April 16, 2004

¹ By the Commission pursuant to delegated authority, 17 C.F.R. § 171.50(a)(2), (5).