

UNITED STATES OF AMERICA
before the
COMMODITY FUTURES TRADING COMMISSION

Edna D. Anderson

Complainant,

v.

David M. Beach,
Peregrine Financial Group, Inc.,

Respondent.

*
*
*
*
*
*
*
*
*
*
*

CFTC Docket No. 05-R058

Office of
Proceedings
Proceedings Clerk

2008 NOV 25 AM 10:27

Received
C.F.T.C.

INITIAL DECISION

Procedural History:

On June 27, 2005 Complainant Edna D. Anderson (“Anderson”) filed a complaint against Respondent David M. Beach (“Beach”), at relevant times a registered introducing broker, and Peregrine Financial Group, Inc. (“Peregrine”), a registered futures commission merchant (“FCM”). Peregrine was the guarantor of Mr. Beach at the time he managed the complainant’s account at issue. Mrs. Anderson alleges that Mr. Beach materially misrepresented his registration status when he solicited and opened her account; he materially misrepresented return expectations of \$1,000 a month; and that he failed to disclose the type of investment, its risks, and his experience in the field. Mrs. Anderson claims that these actions violated Section 4b(a) of the Commodity Exchange Act, resulting in damages of \$35,690.07.

On September 15, 2005 this proceeding was assigned to Judge Levine. A settlement was reached between Mrs. Anderson and Peregrine, and on April 20, 2006 Judge Levine dismissed

Peregrine from the matter. The dismissal did not modify Peregrine's obligations as guarantor of Mr. Beach.

On May 16, 2006 Judge Levine dismissed the entire proceeding. The dismissal resulted from an earlier order precluding the introduction of testimonial or documentary evidence at the oral hearing because the parties failed to submit documents in a timely manner. Mrs. Anderson appealed, and on December 21, 2006 the Commission remanded the case to Judge Levine with instructions to schedule a hearing. A hearing was convened on February 27, 2007 in New Orleans, Louisiana. At the hearing both Mrs. Anderson and Mr. Beach were denied the right to testify or offer exhibits for the evidentiary record. On April 24, 2007, Judge Levine again dismissed the case, this time on the grounds that Mrs. Anderson failed to meet her burden of proof.

Mrs. Anderson again appealed, and on February 14, 2008 the Commission vacated Judge Levine's April 24, 2007 dismissal, reassigned the case to the other judge, (i.e., Judge Painter), with instructions to hold a further hearing. On May, 19, 2008, a hearing took place in New Orleans, Louisiana, where both parties provided additional testimony and documents for the record. Parties thereafter filed post-hearing briefs, including recommended findings of fact and conclusions of law. The matter is now ready for decision.

Issue to be Resolved:

Whether Mr. Beach, guaranteed by Peregrine, violated section 4b(a) of the Commodity Exchange Act by making fraudulent misrepresentations and omissions of material fact regarding his registration status, guarantees of profitability, and the risks involved in futures trading.
7 U.S.C. § 6b(A)(2006).

Findings of Fact:

The findings of fact set forth below are based upon reliable testimony and documentary evidence. In particular, the testimony of Mrs. Anderson was found to be credible, reliable, and honest. In contrast, for the reasons discussed below, this court found the testimony of Mr. Beach to be contrary to the evidence, self serving, and unreliable. Therefore, the testimony of Mr. Beach is accorded little weight in this decision.

A. Respondent David Beach and Affiliated Parties

1. Respondent DAVID M. BEACH (“Beach”) is currently employed at Emerson Equity and resides at 415 E. 54th Street, Apt. 12F, New York, NY 10022. Transcript of Proceedings on May 19, 2008, (“Tr.”) at 97.

2. When Mr. Beach began his involvement with Mrs. Anderson he had been a National Association of Securities Dealers (“NASD”) registered representative since 1995, and was working with National Planning Corporation (“National Planning”) at its office in New Orleans, Louisiana. Tr. at 67. Mr. Beach left National Planning in early 2004, and began working from home with LaSalle Securities. Tr. at 66.

3. During the time in question, Mr. Beach was also affiliated with Dynamic Trading Group Limited (“Dynamic Trading Group”), an unregistered brokerage. Tr. at 76. Dynamic Trading Group was a partnership between Mr. Beach and three others: Glenn Neely, based in California; Derek Adler based in London, England; and Goran Drapac based in Sidney, Australia. Tr. at 63-65, Tr. at 76-78. National Futures Association (“NFA”) records indicate that none of the partners named, nor the entity “Dynamic Trading Group Limited” has ever been registered with

the NFA, in any capacity. *See* NFA Online Registration System, *available at* <http://www.nfa.futures.org/eReg/search>.

4. Peregrine Financial Group, Inc. (“Peregrine”) was the Futures Commission Merchant (“FCM”) carrying the account for Dynamic Trading Group and Mr. Beach, guaranteeing the two. *See* Hearing Exhibit (“Ex.”) Ex. C4; Tr. at 11. Mr. Beach understood that as the FCM, Peregrine could be liable for his violations if the court found in favor of Mrs. Anderson. Tr. at 11.

B. Complainant Edna Anderson

5. Complainant, EDNA ANDERSON, (“Anderson”), is a 75 year old retiree who currently resides at 4212 Avron Blvd., Metairie, LA 70006. She was born in the Philippines and came to the United States in 1961 as an exchange student studying dentistry at New York University. Tr. at 17.

6. Mrs. Anderson’s work experience consists of two years of teaching and thirteen years as a sheriff’s deputy. She left the sheriff’s office in 1993 and is now retired. Tr. at 17-18.

C. The Solicitation, and Opening of Mrs. Anderson’s Account

7. Mr. Beach and Mrs. Anderson had been acquainted since early 2000, by virtue of Mrs. Anderson’s status as the paternal grandmother of Mr. Beach’s step-daughter. Mrs. Anderson’s son had previously dated Mr. Beach’s wife, and fathered Mr. Beach’s step-daughter during this relationship. Frequently Mr. Beach would bring the child over for Mrs. Anderson to baby-sit, fostering the initial relationship between Mrs. Anderson and Mr. Beach.

Tr. at 19-21.

8. In the late 1990s and early 2000s, Mrs. Anderson had close to \$600,000 in savings invested in various mutual funds. Tr. at 107. However, by 2003 Mrs. Anderson had lost 42 percent of her life savings, including a loss of over \$200,000 in the stock market and another

\$25,000 in a dubious investment scheme in the Philippines involving a former friend of hers. Tr. at 23, 43, 107.

9. In 2003 Mrs. Anderson asked Mr. Beach if he would handle her investment accounts in an effort to mitigate her losses. Tr. at 8. Mr. Beach agreed, and following his direction, Mrs. Anderson transferred her remaining savings of approximately \$350,000, previously held in various mutual funds, into a Pacific Life annuity run by National Planning. Tr. at 107.

10. During the summer of 2003 Mr. Beach became involved in commodity futures on a “conceptual and learning basis.” Tr. at 63. He took his Series 3 and Series 30 examination to become a commodity futures introducing broker in May of 2004. Tr. at 76-78.

11. On June 3, 2004, Mr. Beach filed an application with the NFA to become a registered introducing broker. *See* NFA Online Registration System, NFA ID 340039, Beach, David M., (Feb. 2, 2008), *available at* <http://www.nfa.futures.org/eReg/search>.

12. In June 2004, while still unregistered with the NFA, Mr. Beach solicited and opened commodity futures trading accounts for three other clients of his. Tr. at 62; *See* NFA Online Registration System, NFA ID 340039, Beach, David M., (Feb. 2, 2008), *available at* <http://www.nfa.futures.org/eReg/search>.

13. On or about July 24, 2004, Mr. Beach called Mrs. Anderson and expressed his desire to come to her house and discuss an “investment opportunity.” It was during this call that Mr. Beach first stated, “I am going to make you \$1,000 a month for a \$50,000 investment.” Tr. at 25. At this point, Mr. Beach was no longer affiliated with National Planning, and was acting on behalf of his unregistered partnership at Dynamic Trading Group. Tr. at 76.

14. On July 27, 2008, Mr. Beach, who was still not registered, came to Mrs. Anderson’s house to discuss his investment venture. Tr. at 26. During this meeting Mr. Beach again

promised a return of a \$1,000 a month if Mrs. Anderson invested \$50,000 in his venture. Tr. at 27.

15. During that meeting Mr. Beach failed to inform Mrs. Anderson of the risks associated with the proposed investment in commodities trading, and “didn’t even explain to [her] where the money [was] going to be invested.” Tr. at 28. Mrs. Anderson had never spoken with Mr. Beach about futures trading before, and this was her first and only experience in the commodity futures market. Tr. at 27-28. Nonetheless, Mrs. Anderson, not knowing that she was investing in commodity futures, agreed to invest in Mr. Beach’s venture because she “trusted him”. *Id.*

16. During that meeting, Mrs. Anderson signed the documents permitting a \$50,000 withdrawal from her annuity, as well as the risks disclosure documents. Tr. at 26-27, 68; *see also* Ex. C1. Mr. Beach filled out the necessary documents for Mrs. Anderson, requiring only her signature. *Id.* Mrs. Anderson admitted to not reading the documents, again because she “trusted him.” Tr. at 28. Copies of the documents were not provided to Mrs. Anderson until a week later, and only after she made complaints to Mr. Beach about wanting them. Tr. at 28-32, 83.

17. Following their meeting, Mr. Beach opened a \$50,000 “Individual Speculative” trading account in Mrs. Anderson’s name. Mr. Beach listed the unregistered Dynamic Trading Group as the broker on the account, and Peregrine, the FCM, as guarantor. *See* Ex. C4.

18. Mrs. Anderson’s \$50,000 was pooled with the three others already invested in Mr. Beach’s venture. Tr. at 67, 82. Mr. Beach managed the funds through the partnership at Dynamic Trading Group¹. *Id.*

19. On July 28, 2004, the day after opening Mrs. Anderson’s trading account, Mr. Beach filed an application with the NFA to become a registered associated person (“AP”). *See* NFA

¹ In pooling these accounts Mr. Beach was acting as a Commodity Pool Operator, (“CPO”) despite never being registered as such. This presents another possible violation of the CEA, but because the Complainant did not raise the issue this court will refrain from pursuing it any further.

Online Registration System, NFA ID 340039, Beach, David M., (Feb. 2, 2008), *available at* <http://www.nfa.futures.org/eReg/search>

20. On August 4, 2004 Mr. Beach's NFA introducing broker registration application and associate person application were approved, making him a registered introducing broker and associated person. *Id.*

21. Four months after investing in Mr. Beach's venture, Mrs. Anderson had lost \$35,690.07 in the market, and another \$6,250.00 in commissions. Tr. at 80-82. In November 2004 Mrs. Anderson demanded that her account be closed. Her account was closed on December 7, 2004. Tr. at 38-40. Peregrine eventually paid back the \$6,250.00 in commissions to Mrs. Anderson in a later settlement between the two. Tr. 80-82.

22. Mr. Beach admitted that during the time in question he represented himself to Mrs. Anderson as "being skilled and knowledgeable" in futures and options, qualified to manage her account, and capable of caring for her money. Tr. at 74.

Discussion:

Section 4b(a) of the Commodity Exchange Act ("CEA") prohibits fraudulent transactions. The relevant section states that it shall be unlawful for any person connected to the sale of a commodity contract to "willfully deceive or attempt to deceive such other person by any means whatsoever in regard to any such order or contract or the disposition or execution of any, or in regard to any act of agency performed with respect to such order or contract for such person." Commodity Exchange Act, 7 U.S.C. § 6b(a) (2006).

To establish a Section 4b fraud violation of the Commodity Exchange Act, a party must prove by a preponderance of evidence, the following four elements: (1) a material misrepresentation or omission; (2) scienter; (3) reliance by the other party on the

misrepresentation or omission; (4) and damages that are proximately caused by the party's reliance on defendant's misrepresentation. *Horn v. Ray E. Friedman and Company*, 776 F.2d 777 (CA8 Ark. 1985); *In re Slusser* [1998-1999 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,701 at 27,417 (CFTC July 19, 1999); see also *Omega Cotton Company v. Brown* [2005-2007 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 30,217 (CFTC April 7, 2006). Whether these four elements have been satisfied will be discussed in turn below.

A. Material Misrepresentations or Omission of Fact

In deciding whether fraud was present in a transaction, it must first be determined whether the misrepresentations or omissions were material. A fact is material if "there is a substantial likelihood that a reasonable investor would consider the information important in making a decision to invest." *R & W Technical Services Ltd., v CFTC*, 205 F3d 165, at 169 (5th Cir. 2005); citing *TSC Indus. v. Northway, Inc.*, 426 U.S. at 438, at 449 (1976); *CFTC v. Weinberg*, 287 F. Supp. 2d 1100, at 1105 (C.D. Cal. 2003).

Information that has been deemed "material" to commodity investors includes: guarantees of profitability, profit potential, associated risks, claims of a firm or broker's past performance, and one's registration status. See *Commodity Futures Trading Commission v. Carnegie Trading Group, Ltd.*, 450 F. Supp. 2d 788, at 799 (N.D. Ohio, 2006) (court finding that the defendant's affirmative misrepresentation of profit potential and omissions of risks constituted false and misleading statements under 7 U.S.C. § 6(b)); *Munnell v. Paine Webber Jackson & Curtis*, [1986-1987 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 23, 313 at 32, 863 (CFTC Oct. 8, 1986) (finding that a respondent broker's unregistered status during solicitation was a material fact); *In re Slusser* [1998-1999 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,701 at 27,417 (CFTC July 19, 1999) (finding that false claims of success and false assertions

that entity was regulated by the SEC and NFA were material misrepresentations); *Schofield v. First Commodity Corp. of Boston*, 793 F.2d 28, at 34 (1st Cir. 1986) (finding that broker's failure to disclose risks in trading commodity futures and claims of future money making potential were material and in violation of 7 U.S.C. § 6b(A) (2006).

In the case at hand, Mr. Beach made both material misrepresentations and omissions of fact. Mr. Beach's first material misrepresentation was holding him self out as being a registered broker, able to legally solicit and open commodity futures accounts. While not raised in the initial complaint, Mrs. Anderson properly made this claim in her post-hearing brief. *See Morris v. CFTC*, 980 F.2d 1289, at 1294 (9th Cir. 1992).

Nondisclosure will trigger liability under Section 4b of the CEA when "disclosure is necessary to make other representations not materially mislead, or where it is affirmatively required by regulation." *Precision Ratios v. Man Financial* [2003-2004 Transfer Binder] Comm. Fut. L. Rep. (CCH) Par. 29,813 (CFTC July 23, 2004). The failure to disclose one's unregistered status has been found a material misrepresentation because it is substantially likely that a reasonable investor would consider the matter important in making an investment decision. *See Hall v. Paine Webber Jackson & Curtis, Inc.* [1986-1987 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 23,317 at 32,889 (CFTC Oct. 8, 1986); *see generally Morris v. CFTC* 980 F.2d 1289, 1293-1295 (9th Cir. 1992). Further evidence as to the materiality of this information is found in the Commodity Exchange Act and the NFA requirements, both of which require registration, and prohibit unregistered traders from soliciting or trading. *See Commodity Exchange Act*, 7 U.S.C. § 6d, 6k(1)(2006) (prohibiting unregistered brokers from soliciting or opening customer accounts); NFA Rule 2.2. Fraud and Related Matters, ¶ 50.23 (2006).

Mr. Beach claimed that he was registered when he solicited and opened Mrs. Anderson's account, and admitted to presenting himself as being "qualified to manage her account." Tr. at 61-62, 74. He testified under oath that he registered with the NFA in "late May or early June 2004." Tr. at 61. However, the NFA registration records clearly show that this was not the case, an important fact never disclosed to Mrs. Anderson. NFA registration records indicate that he was not a registered introducing broker until August 4, 2004, one week after opening Mrs. Anderson's account. See Complainant's Original Post-Trial Brief, Ex. A; NFA Online Registration System, NFA ID 340039, Beach, David M., (Feb. 2, 2008), available at <http://www.nfa.futures.org/eReg/search>. This court finds that Mr. Beach's solicitation and opening of the commodity trading account for Mrs. Anderson amounted to an affirmative material misrepresentation on his part, as being licensed and legally able to do so.

The second material misrepresentation made by Mr. Beach was his promise of a "\$1,000 a month return" on Mrs. Anderson's investment. Both Federal Courts and the CFTC have held that guarantees of profitability are not only material, but also "inherently fraudulent." *CFTC v. Carnegie Trading Group, Ltd., et al.*, 450 F. Supp. 2d 788, 799 (N.D. Ohio 2005); *Munnell v. Paine Webber Jackson & Curtis*, [1986-1987 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 23, 313 at 32,863 (CFTC Oct. 8.1986); see also Commission Regulation 1.56, 17 C.F.R. § 1.56 (FCMs and IBs are prohibited from making guarantees against loss). The defendants in the *Carnegie Trading Group* were found to have violated CEA Section 4b when they told their customers that they could earn up to a 300 percent return on their investment with no risks. *Id.* at 79. Mr. Beach made a similar claim when he promised Mrs. Anderson a \$1,000 a month return on her investment. Tr. at 25, 27. He made this claim to her both on the phone and in person. *Id.*

Mr. Beach denies promising Mrs. Anderson a \$1,000 a month return on her investment. Tr. at 84. However, Mr. Beach's credibility on the matter has been eroded by his false testimony regarding his registration status and the registration status of his partners, his unlicensed trading status at the time of solicitation, and his failure to disclose to Mrs. Anderson his lack of experience in commodity's trading. *See* Complainant's Original Post-Trial Brief, Ex. A; NFA Online Registration System, NFA ID 340039, Beach, David M., (Feb. 2, 2008), *available at* <http://www.nfa.futures.org/eReg/search>, Tr. at 61. This court will rely on Mrs. Anderson's testimony and the fact that she invested approximately 20 percent of her entire life savings, and only source of income, as evidence that Mr. Beach did make such a promise. Tr. at 25-28. Obviously the return on one's investment is information a reasonable investor would consider important in making an investment decision. As such Mr. Beach's inevitably false promise of a \$1,000 a month return for Mrs. Anderson constituted a material misrepresentation.

The third material item is Mr. Beach's omission of the risks involved in futures trading. Failing to disclose the risks, or misleading a customer as to the risks involved in the commodity futures market can constitute a material misrepresentation or omission actionable under Section 4b(a) of the CEA. *See Shofield v. First Commodity Corporation of Boston*, 793 F.2d 28, 34 (1st Cir. 1986); *Crook v. Shearson v. Loeb Rhoades, Inc.*, 591 F. Supp. 40, 48-49 (N.D. Ind. 1983); *Vaneck v. Bache Halsey Stuart Shields, Inc.*, [1982-1984 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 21,697 (CFTC March 30, 1983); *see also* Commission Regulation 1.55, 17 C.F.R. § 1.55 (requires that customers are provided with a risks disclosure statement). Brokers are required to present customers a "balanced presentation," and have an affirmative duty under law to disclose the associated risks. *See CFTC v. Carnegie Trading Group, Ltd. et al*, 450 F.Supp.

2d 788, 800 (N.D. Ohio 2004); Commission Regulation 1.55, 17 U.S.C. § 1.55 (2006) (requires brokers provide a risks disclosure statement to customers).

Several facts make it clear that Mrs. Anderson was not informed of the risks involved in Mr. Beach's venture. Mrs. Anderson testified that when she opened this account with Mr. Beach she did not know that her money was to be invested in commodities, and that she was not informed of the risks involved. Tr. at 27-32. There is also the fact that it was Mr. Beach who filled out the withdrawal and risks disclosure documents for Mrs. Anderson. Tr. at 28-32. Documents she admittedly did not read, relying on Mr. Beach's statements instead. *Id.* Moreover, she only received copies of these documents one week later, following her "complaints" to Mr. Beach to provide them. Tr. at 32. It should also be noted that Mrs. Anderson approached Mr. Beach seeking a safer investment, because of the huge losses she suffered earlier. Tr. at 20-21. It is counterintuitive to believe that a reasonable investor seeking a safer investment would have agreed to invest in commodity futures if they were informed of the risks.

Mr. Beach claims to have met with Mrs. Anderson "many times," beginning in June "to explain how these contracts worked." Tr. at 68-69. However, no reliable concrete evidence was produced to prove that such meetings took place, and Mrs. Anderson denies that such meetings happened. Tr. at 25. Mr. Beach's false testimony regarding both his and his partners' registration status makes this claim further suspect. Tr. at 78-79.

Nor do the facts indicate that Mrs. Anderson was a sophisticated investor that would know the risks, as Mr. Beach claims. Tr. at 69-72. It is true that Mrs. Anderson had a college education and had invested in mutual funds. Tr. at 17, 59. However, a complainant's college education and experience in the stock market are insufficient substitutes for adequate risk

disclosure. *See generally Schreider v. Rouse Woodstock, Inc.*, [Transfer Binder 1986-1987] Comm. L. Rept. (CCH) 23,196 (CFTC July 31 1986). Furthermore, her prior substantial losses in the stock market as well the failure with the Philippine business venture demonstrate her lack of expertise in investing. By the time Mrs. Anderson approached Mr. Beach she had already lost nearly half of her life savings. Tr. at 71. For these reasons, Mrs. Anderson was clearly not a “sophisticated investor” who understood the risks, especially the particular risks associated with commodities trading. In failing to inform Mrs. Anderson of these risks, Mr. Beach omitted material information that a reasonable investor would rely on.

B. Scienter

Mr. Beach’s reckless actions in falsely portraying the risks involved, and the misrepresentation of his registration status satisfy the next necessary element, scienter. “Scienter is established by showing that the respondent’s acts were committed intentionally or with reckless disregard for their duties under the Act.” *In the Matter of Slusser* [1998 1999 Transfer Binder] Comm. Fut. L. Rep. CCH ¶27,701 (CFTC July 19, 1999); *see also Hammond v. Smith Barney, Harris Upham & Co. Inc.* [1990 1992 Transfer Binder] Comm. Fut. L. Rep. CCH ¶24,617 (CFTC Mar. 1, 1990); *CFTC v. Weiberg*, 287 F. Supp. 2d 1100, at 1105 (C.D. Cal. 2003). A reckless action is one that departs so far from the standards of ordinary care that it is hard to believe that the Respondent was not aware of what he was doing. *Drexel Burnham Lambert Inc v. CFTC*, 850 F.2d 742, at 748 (DC Court of Appeals 1988); *citing First Commodity Corp. v. CFTC*, 676 F.2d 1, at 7 (1st Cir. 1982).

The facts at hand indicate that Mr. Beach acted both recklessly, and with intentional disregard for his duties under the Commodity Exchange Act. Mr. Beach was reckless in his promise of a \$1,000 a month return on Mrs. Anderson’s investment. Guarantees of success are

inherently fraudulent, and therefore inherently reckless. *DGM Invs., Inc. v. N.Y. Futures Exchange Inc.*, 265 F. Supp. 2d 254 (2003, SD NY). Such a promise of profit contradicts the Commission's regulation prohibiting brokers from making guarantees against loss. *See* Commission Regulation 1.56, 17 C.F.R. § 1.56 (2006).

Mr. Beach's recklessness in making such a promise of profit was further exasperated by his failure to inform Mrs. Anderson of the risks involved. Mr. Beach failed to explain to Mrs. Anderson that her money would be used for commodity futures trading, or the associated risks. Tr. at 27-28. Mr. Beach did not provide any written materials on futures trading to Mrs. Anderson prior to her joining his venture. The only written materials Mrs. Anderson viewed for certain were a few pages of the account authorization and risks disclosure documents that Mr. Beach brought over the day he opened her account. *Id.* The utility of these documents in disclosing the risks to Mrs. Anderson is put in further doubt since she never read the documents, and that it was Mr. Beach who filled out the documents. In addition, Mr. Beach's failure to provide copies of the documents when requested is consistent with his other reckless behavior that kept Mrs. Anderson as least informed as possible. Tr. at 28-32, 83.

Evidence also indicates that Mr. Beach acted not only recklessly, but intentionally when he solicited and opened Mrs. Anderson's account while unregistered. By 2003, Mr. Beach had half a decade of experience in the securities field. He had also just taken his Series 3 and Series 30 commodity broker examines in May of 2004 and knew of the registration requirements. Tr. at 76-78. However, prior to being officially registered and in violation of both the Commodity Exchange Act and NFA rules Mr. Beach solicited and opened a commodities trading account for Mrs. Anderson. Tr. at 60-63; *See* 7 U.S.C. § 6k(1)(2006) (prohibits unregistered persons from soliciting and opening accounts on behalf of customers); *Hall v. Paine Webber Jackson &*

Curtis, Inc., [1984-1986 Transfer Binder] Comm. Fut. L. Rept. (CCH) ¶ 23,317, at 32,889 (Oct. 8, 1986), (holding that solicitation without disclosing one's unregistered status constitutes a Section 4b violation). Moreover, they very day after opening Mrs. Anderson's trading account, Mr. Beach filed for the NFA associate member license. *Id.*

Clearly Mr. Beach was cognizant of the registration requirements as well as the prohibition against the solicitation and opening of trade accounts by unregistered brokers. However, despite this knowledge Mr. Beach solicited and opened a commodity futures trading account while unregistered for not only Mrs. Anderson, but three of his other clients as well.

Based on the above facts, this court concludes that Mr. Beach acted intentionally and with reckless disregard for his duties under the Commodity Exchange Act satisfying the requisite scienter requirement.

D. Reliance and Damages

Mrs. Anderson's reliance on Mr. Beach's misrepresentations and omissions was both reasonable and self evident. Both Mrs. Anderson and Mr. Beach testified that she relied on and trusted Mr. Beach. Tr. at 27-28, 74-75. Mr. Beach admitted, "I represented myself as being skilled and knowledgeable and I would care for her money." Tr. 74. He also held himself out as being "fully qualified" to manage her account. Tr. at 75.

Relying on Mr. Beach's misrepresentations and omissions, Mrs. Anderson invested in Mr. Beach's managed futures scheme. When Mrs. Anderson closed her account, there remained only \$8,059.93 of her initial \$50,000 investment. Ex. C12, C13. She lost \$35,690.07 in the market, and another \$6,250.00 in commissions paid to Peregrine and Mr. Beach. Tr. at 80.

Conclusions of Law:

Based on the findings set forth above, this court finds that Complainant Anderson has established by a preponderance of the evidence that Respondent Beach recklessly misrepresented and omitted material facts in violation of Section 4b(a) of the Commodity Exchange Act. As a result of Respondent Beach's wrongdoing, Complainant Anderson suffered out-of-pocket losses of \$35,690.07, plus costs and attorney fees totaling \$11,937.52.²

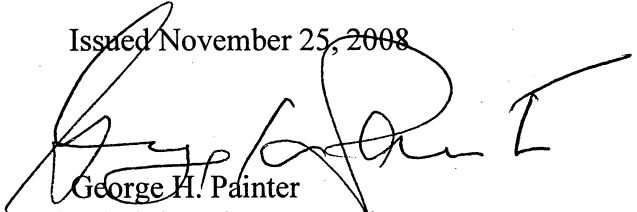
ORDER

Respondent Beach is hereby **ORDERED** to pay to the complainant her out-of-pocket losses plus costs totaling \$47,627.59, plus interest from the date of this judgment at a rate of 1.09% per annum. Respondent has 30 days to satisfy this award upon the judgment becoming final.

Peregrine, as guarantor, shall be liable for the remaining amount owed to Mrs. Anderson in the event that Mr. Beach fails to fully satisfy this judgment within the 30 days required.

So Ordered.

Issued November 25, 2008



George H. Painter
Administrative Law Judge

² See Complainant's Supplemental Post-Trial Brief, at 4 (requesting \$10,312.50 in attorney's fees and \$1,625.02 in costs, which includes filing fees).