

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

In the matter of	:	CFTC Docket No. 96-1
	:	
Gary K. Bielfeldt	:	
4516 Miller Avenue	:	
Peoria, Illinois,	:	
	:	
Carlotta Bielfeldt	:	
4516 Miller Avenue	:	
Peoria, Illinois,	:	
	:	
and	:	
	:	
Bielfeldt & Co.	:	
4700 N. Prospect Rd.	:	
Peoria, Illinois,	:	
	:	
Respondents.	:	

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Appearances:

Rosemary Hollinger, Marianne Richardson, and David Terrell for the Commodity Futures Trading Commission, Division of Enforcement;

Scott E. Early, Carolyn E. Knecht, and Jill Sprague, of Foley & Lardner, for the Respondents.

Before: PAINTER, ALJ

INITIAL DECISION

I. PROCEDURAL HISTORY

On October 31, 1995, the Division of Enforcement ("DOE") filed a complaint and notice of hearing pursuant to §§ 6(c), 6(d), 8a(3), and 8a(4) of the Commodity Exchange Act against the named respondents. The six-count complaint alleges, generally, that Gary Bielfeldt exceeded the Commission's speculative limits in corn futures trading, and, along with his wife, Carlotta Bielfeldt, and his commodity trading company, Bielfeldt & Co., made false reports to the CFTC with respect to the futures positions allegedly held and/or controlled by Bielfeldt, personally.

Count One states that Gary Bielfeldt, by way of express or implied agreement with family members and personal friends, held net long positions in December corn futures and options contracts, from October 13, 1993 through November 19, 1993, in excess of the Commission's 6 million bushel limit. Thus, it is alleged, Gary Bielfeldt violated § 4a(a), (b) of the Commodity Exchange Act, 7 U.S.C. § 6a(a), (b) and Regulation 150.2, 17 C.F.R. § 150.2 (1993). Furthermore, it is alleged that Gary Bielfeldt held net long positions in Chicago Board of Trade corn futures and options contracts in excess of the Commission's 15,000,000 bushel limit, thereby violating the already-mentioned Act and Regulation.

Count Two alleges that Gary Bielfeldt exceeded speculative limits on December 1993 corn from October 8, 1993, to November 17, 1993, and exceeded speculative limits for all corn futures months from October 8, 1993, to November 19, 1993. This was achieved by way of his control over his commodity futures trading accounts, and the accounts of his wife, Carlotta Bielfeldt. Thus, it is alleged, Gary Bielfeldt violated § 4a(a), (b) of the Commodity Exchange Act, 7 U.S.C. § 6a(a), (b); and Regulation 150.2, 17 C.F.R. § 150.2 (1993).

Count Three alleges that Bielfeldt & Co. violated §§ 4(g) and 6(c) of the Commodity Exchange Act, 7 U.S.C. §§ 6g(a) and 9 (Supp. IV 1992), and Regulation 17.01 (b)(7), 17 C.F.R. §§ 17.01 (b)(7) (1995) by not disclosing in its November 8, 1993 Form 102 the fact that Gary Bielfeldt controlled the trading accounts of Carlotta Bielfeldt. Moreover, the complaint alleges that Gary Bielfeldt controlled Bielfeldt & Co. and thereby violated the same provisions of law, personally.

Count Four charges that Bielfeldt & Co. filed false 01 Reports in that the reports filed did not aggregate the trading accounts of Gary and Carlotta Bielfeldt for the period October 7, 1993 through December 1993. Thus, it is alleged, Bielfeldt & Co. violated §§ 4g(a) and 6(c) of the Commodity Exchange Act, and Regulation 17.00(b), 17 C.F.R. § 17.00(b) (1995). Moreover, the complaint alleges that Gary Bielfeldt controlled Bielfeldt & Co. and thereby violated the same provisions of law, personally.

Count Five alleges that Carlotta Bielfeldt violated §§ 4i and 6(c) of the Commodity Exchange Act as Amended, 7 U.S.C. §§ 6i and 9 (Supp. IV 1992) and Regulation 18.04(a)(6) in that she failed to disclose in her November 12, 1993 Form 40 report that Gary Bielfeldt controlled her commodity futures trading account.

Count Six alleges that Gary Bielfeldt violated §§ 4g(a), 4i, and 6(c) of the Commodity Exchange Act as Amended, and Regulations 18.04(a)(5) and 18.04(d), 17 C.F.R. §§ 18.04(a)(5) and 18.04(d) (1995), in that he failed to update his Form 40

to reflect the fact that he controlled the commodity futures trading accounts of his wife, Carlotta Bielfeldt.

After several motions and extensions, an answer denying the allegations of wrongdoing was filed, and a hearing was held from November 17, 1997 to November 21, 1997 in Chicago, Illinois. The matter is ready for disposition.

II. FINDINGS OF FACT

1. Respondent Gary Bielfeldt has been registered with the Commodity Futures Trading Commission ("Commission") as a floor broker since 1982, and has been a full member of the Chicago Board of Trade since 1967. (Tr. 185, G. Bielfeldt.)
2. Gary Bielfeldt is well known for his integrity and tremendous success in futures trading. (Tr. 48, Kass; Tr. 77, Rooney.) The Bielfeldt family is also well known for their contributions to their community. (Tr. 525-527, Harrington.) The Bielfeldts have donated millions of dollars to support local community interests. (Tr. 310, G. Bielfeldt.)
3. Respondent Bielfeldt & Co. has been registered with the Commission as a Futures Commission Merchant ("FCM") since December 1977. (Ans. P 3.) Gary Bielfeldt maintains 95% ownership of Bielfeldt & Co. and acts as the managing partner. (Ans. P 1.) Gary Bielfeldt's son, David Bielfeldt, owns the remaining 5% of Bielfeldt & Co. (Ans. P 3.)
4. In 1983 Gary Bielfeldt's daughters, Linda and Karen Bielfeldt, were also partners of Bielfeldt & Co. (Tr. 305, G. Bielfeldt.) Linda and Karen have since left Bielfeldt & Co. (Tr. 79, Rooney.)
5. Bielfeldt & Co. historically handled managed accounts. (Tr. 63, Kass; Tr. 80-1, 87, 169, Rooney; DOE Ex. 70, Rooney Testimony at 5.)
6. As of September 30, 1993, Bielfeldt & Co. handled approximately 35 active accounts: 28 managed and seven non-managed. Gary Bielfeldt controlled 27 of the managed accounts, while David Bielfeldt controlled the remaining managed account. (Tr. 80, Rooney; DOE Ex. 70, Rooney Testimony at 5.)
7. Due to unusual circumstances in the corn market in the summer of 1993, Gary Bielfeldt believed that profit could be made by owning corn futures. (Tr. 324-325, G. Bielfeldt.) Gary Bielfeldt gathered information about the opportunity he saw and shared that information with his customers. (Tr. 333-340, G. Bielfeldt.) Ultimately, Gary Bielfeldt liquidated the corn positions in some of the accounts he managed and purchased more corn futures for the other accounts he

controlled. (DOE Ex. 70, Rooney Testimony, Table A; Resp. Ex. 18, Mackay Testimony, Table 1-3.)

8. Steven Beier is the office manager of Bielfeldt & Co.'s Chicago office. (Tr. 551, Beier.) Mr. Beier has been employed by Bielfeldt & Co. since 1973 and has been Chicago office manager since 1983. (Tr. 109-110, Rooney.) Mr. Beier is an associated person of Bielfeldt & Co. and a member of the CBOT. (Tr. 557, Beier.) Mr. Beier monitors speculative limits for Bielfeldt & Co.'s accounts and signs reports filed with the Commission. (Tr. 453-4, D. Bielfeldt; Tr. 579, Beier; DOE Ex. 2.) Mr. Beier is subject to the authority of Gary Bielfeldt. (Tr. 558, DOE Ex. 70, Rooney at 14-15.)

9. Respondent Carlotta Bielfeldt is married to Gary Bielfeldt. (Tr. 254, C. Bielfeldt.)

10. Mrs. Bielfeldt has had a managed account at Bielfeldt & Co. and its predecessor since the late 1970s. (Tr. 837, C. Bielfeldt.) By January 1985, Mr. Bielfeldt had assumed control over Mrs. Bielfeldt's managed account. (Tr. 317, G. Bielfeldt; Tr. 838, C. Bielfeldt.)

11. On October 7, 1993, Carlotta Bielfeldt opened a non-managed account with Bielfeldt & Co. She also opened a non-managed account with Cargill Investment Services. (Tr. 362-3, G. Bielfeldt; DOE Ex. 70, Rooney Testimony at 41.)

12. Carlotta Bielfeldt signed the Form 40, dated November 12, 1993, which was filed with the Commission. The report stated that Carlotta Bielfeldt controlled her non-managed accounts with Bielfeldt & Co. and Cargill Investment Services. (Tr. 277, C. Bielfeldt; DOE Ex. 12.)

13. Carlotta Bielfeldt entered the corn market on October 7, 1993, using an options strategy because she wanted "to limit her downside risk". (Tr. 257, 269, 281, 866, C. Bielfeldt.) This strategy lasted for less than two days as she bought corn futures on October 8, 1993. (Tr. 161, Rooney; Tr. 866, C. Bielfeldt.) The corn futures position taken by Carlotta Bielfeldt was similar to that taken by Gary Bielfeldt. (Kass Testimony Ex. 12-13.)

14. Prior to October 1993, Carlotta Bielfeldt traded commodity futures in a non-managed account with Bielfeldt & Co. only once. In 1985, Carlotta Bielfeldt traded government debt obligations in an overnight strategy. (Tr. 839, 882, C. Bielfeldt, Resp. Ex. 1.)

15. Carlotta Bielfeldt could not interpret her account statements, could not fully explain her trading strategy, and does not possess a working knowledge of futures trading concepts. (DOE Ex. 70, Rooney at 46; Tr. 161, Rooney; Tr. 285-6, 290, C. Bielfeldt.) On one occasion, Mrs. Bielfeldt

had to write down the words of Gary Bielfeldt in order to place an order in her Cargill account. (DOE Ex. 70, Rooney at 46.)

16. Carlotta Bielfeldt places a great deal of trust in Gary Bielfeldt and considers him to be one of the best traders in the industry. (Tr. 255-257, C. Bielfeldt.)

17. Carlotta Bielfeldt is not involved in the reporting and monitoring of her accounts. (Tr. 278, 280, 285, C. Bielfeldt.)

18. Gary Bielfeldt is a more sophisticated trader than Carlotta Bielfeldt is. (Tr. 626, Mackay.) Mr. Bielfeldt controlled the trading in the futures trading accounts of Mrs. Bielfeldt beginning on or about October 8, 1993.

19. On November 8, 1993, Bielfeldt & Co. filed a Form 102 with the Commission with respect to the trading account of Carlotta Bielfeldt. The Form 102 did not list Gary Bielfeldt as the person controlling the account of Carlotta Bielfeldt. (DOE Ex. 2.)

20. From October 8, 1993, through November 23, 1993, Bielfeldt & Co. filed 01 Reports with the Commission. These Reports did not reflect the fact that Gary Bielfeldt controlled the account of Carlotta Bielfeldt. (DOE Ex. 60.)

21. On October 8, 1993, Gary Bielfeldt did not file an updated Form 40 with the Commission to disclose the fact that he exercised control over the accounts of Carlotta Bielfeldt. Mr. Bielfeldt's Form 40 was filed on November 16, 1993 and it did not reflect the fact that Mr. Bielfeldt controlled the accounts of Mrs. Bielfeldt. (DOE Ex. 37.)

22. From October 08, 1993 to November 17, 1993, Gary Bielfeldt controlled in excess of 6,000,000 bushels of December 1993 corn. The excess was not less than 2,000,000 bushels on any one trading day. (Kass Testimony Ex. 12.) Moreover, Gary Bielfeldt controlled an all-months-combined position in excess of 15,000,000 bushels of corn from October 08, 1993 to November 19, 1993. The amount in excess ranged from approximately 2,000,000 bushels to 15,000,000 bushels. (Kass Testimony Ex. 13.)

23. Carlotta Bielfeldt continued to trade in commodity futures after October 8, 1993. (Resp. Ex. 18, Mackay Testimony, Table 3(d).) Gary Bielfeldt continued to trade in commodity futures after October 8, 1993. (Resp. Ex. 18, Mackay Testimony, Table 1.)

24. Linda Bielfeldt and Karen Bielfeldt Gray are experienced and sophisticated commodity futures traders. Each has academic and practical experience with respect to futures

trading. (Tr. 791-794, L. Bielfeldt; Tr. 480-485, K. Bielfeldt Gray.)

25. Steve Beier is an experienced trader. Mr. Beier has held a non-managed account with Bielfeldt & Co. since 1978 and has traded in various commodity futures. (Tr. 556-561, Beier.)

26. Steve Beier has traded commodity futures in the past. His trading experience begins in 1989 and has included a non-managed account with Bielfeldt & Co. (Tr. 663-665, Beilenberg.)

27. Robert Klaus has futures trading experience. Prior to 1993 Mr. Klaus traded in gold, silver, and copper futures through a self-directed account. (Tr. 705, Klaus.)

28. Eugene Black has significant futures trading experience. He has traded for his own accounts and managed the futures trading of others. He has membership on the Kansas City Board of Trade. (Tr. 736-739, Black.)

29. Edward Sutkowski was Gary Bielfeldt's attorney. Mr. Sutkowski has traded commodity futures in the past, through managed, and non-managed accounts, and on a full-time basis in 1989. (Tr. 135-136, Rooney.)

30. Linda Bielfeldt, Karen Bielfeldt Gray, Steve Beier, Robert Klaus, Eugene Black, Edward Sutkowski, and Gary Bielfeldt did not trade corn futures according to an understanding or agreement. (Resp. Ex. 18, Mackay Testimony at 6-8, Table 1-3.)

III. DISCUSSION

Carlotta Bielfeldt

Mrs. Carlotta Bielfeldt is charged with violating § 4i and § 6(c) of the Commodity Exchange Act ("CEA") and Regulation 18.04(a)(6). It is alleged that Carlotta Bielfeldt willfully made false statements on her CFTC Form 40¹ (§ 6(c)) and failed to file necessary forms with the Commission (§ 4i). According to the DOE, Mrs. Bielfeldt did file a Form 40. However, the DOE argues that the Form 40 bearing her signature identified Mrs. Bielfeldt as the person controlling her

¹ CFTC Form 40 is a report required of any and all traders holding or controlling a reportable position. CFTC Reg. § 18.04; 17 C.F.R. § 18.04 (1995). A reportable position is defined as any open contract position that equals or exceeds the amounts listed by the Commission. CFTC Reg. § 15.00(b)(1)(i); 17 C.F.R. § 15.00(b)(1)(i) (1995). In this case, the regulations from the relevant time period set the amounts on corn at 750,000 bushels. CFTC Reg. § 15.03; 17 C.F.R. § 15.03 (1995). Mrs. Bielfeldt's account exceeded the listed amount.

commodity futures trading accounts, and did not report Mr. Gary Bielfeldt as the person who, in fact, controlled the accounts.

As The Honorable Arthur L. Shipe has explained, a violation of § 4i occurs when:

(1) a person makes a contract for the purchase or sale of any commodity on or subject to the rules of any contract market; (2) such person directly or indirectly has or obtains a long or short position in any commodity or future of such commodity equal to in excess of such amount as shall be fixed from time to time by the Commission; and (3) such person fails to file or causes to be filed with the properly designated officer of the Commission such reports concerning such position in the manner described in Regulation 18.00.

In the Matter of Johnson d/b/a Johnson Trading Company, [1984-1986 Transfer Binder] Comm. Fut. L. Rep. (CCH) P 22,805 (November 6, 1985). From the facts in the record Carlotta Bielfeldt acquired a reportable position in corn futures. She filed a Form 40, but that was an inaccurate report, as explained, *infra*. Since Mrs. Bielfeldt reached a reportable level in corn futures, did not properly file with the Commission, and continued to trade corn futures, she violated § 4i of the CEA.

Additionally, Mrs. Bielfeldt does not prevail with respect to the § 6(c) allegations. Section 6(c) of the CEA makes it unlawful for any person to willfully make a false or misleading statement of material fact in, or willfully omit any material fact from, any report filed with the Commission. Commodity Exchange Act § 6(c), 7 U.S.C. § 9 (1994). Whether Mrs. Bielfeldt violated § 6(c) depends on the circumstances surrounding her futures trading account. Based on the facts enumerated, *supra*, it is clear Carlotta Bielfeldt's reporting contravened § 6(c).

The issue of an associated person's control over another person's account is not a case of first impression. Commodity Futures Trading Commission v. Hunt, et al., 591 F.2d 1211 (7th Cir. 1979); United States v. Samuel Cohen, 448 F.2d 1224 (2nd Cir. 1971); In the Matter of Volume Investors Corp., [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) P 25,234 (CFTC February 10, 1992). This authority does not, however, lend itself very well to the case at bar. In the cited cases, the persons charged with controlling others' accounts or trading in concert had either exercised direct personal control over other people's accounts or had traded in virtually identical ways, sharing brokers, funding, and trades. Hunt, 591 F.2d at 1218-1219; Cohen, 448 F.2d at 1226-1227; Volume Investors, Comm. Fut. L. Rep. P 25,234. In order to dispose of the case

sub judice it is helpful to make an analogy to the account-churning context.

The present case is unlike the above-cited authority in that the control exerted by Mr. Bielfeldt over Mrs. Bielfeldt's commodity futures trading accounts was neither direct nor necessarily overt. The current situation is more of a case of indirect *de facto* control, similar to that found in the churning context. See, generally, Edwin and Harold Lehman v. Madda Trading Company and Ted Wynn, [1984-1986 Transfer Binder] Comm. Fut. L. Rep. (CCH) P 22,417 (CFTC November 13, 1984). An individual has a trading account in name, but the associated person rendering advice actually runs the account. As the Commission noted in Lehman:

Factors tending to demonstrate the existence of *de facto* control include: 1) a lack of customer sophistication, 2) lack of prior commodity trading experience on the part of the customer and a minimum of time devoted by him to his account, 3) a high degree of trust and confidence reposed in the associated person by the customer, 4) a large percentage of transactions entered into by the customer based on the recommendations of the associated person, 5) the absence of prior customer approval for transactions entered into on his behalf, 6) customer approval of recommended transactions where approval is not based on full, truthful and accurate information by the associated person.

Id. This standard appears to be more relevant and helpful than other control analyses in the current situation.

First, based on the testimony and the exhibits in the record, it is clear that Mrs. Bielfeldt is not a sophisticated commodity futures trader. When questioned, Mrs. Bielfeldt was unable to demonstrate a working knowledge of derivatives trading concepts. Moreover, Mrs. Bielfeldt testified that she was not "in the business" (Tr. 256, C. Bielfeldt), she is not a trader (Tr. 259, C. Bielfeldt), and does not get involved in the reporting and monitoring aspects of her futures accounts. (Tr. 278, 280, 285, C. Bielfeldt.) Second, when Mrs. Bielfeldt was asked about her futures trading account she was unable to interpret her account records and could not completely explain the trading position she had taken with that account. (Tr. 285-286, C. Bielfeldt.) Also, prior to the trading in question, Mrs. Bielfeldt had traded in the derivatives market only once, and that trade was a one-day overnight government debt contract. These facts demonstrate that Mrs. Bielfeldt had very little in terms of futures trading experience and devoted very little time to her accounts. Third, Mrs. Bielfeldt placed a great deal of trust and confidence in Mr. Bielfeldt and considered him to be one of the best traders in the industry. (Tr. 255-257, C. Bielfeldt.) On one occasion,

Mrs. Bielfeldt had to use the exact language and words of her husband in order to be able to place the order with her broker. (DOE Ex. 70, Rooney at 46.) Fourth, the futures transactions entered into were based on the recommendations of Mr. Bielfeldt. As the record shows, Mrs. Bielfeldt put on a call position for December '93 corn contrary to Mr. Bielfeldt's plans, but shortly thereafter, had that position liquidated and adopted a very aggressive position very similar to that of Mr. Bielfeldt. (Tr. 161, C. Bielfeldt; Resp. Ex. 18, Mackay, Table 1; Kass Testimony Ex. 12, 13.)

The respondents may argue that the fifth and sixth factors listed above are not met. It is not clear whether Carlotta Bielfeldt gave prior consent to the actions taken by Gary Bielfeldt with respect to the activity of her accounts, and the record demonstrates that Mr. Bielfeldt did not act in a dishonest or deceptive fashion when advising the people around him. However, as the Commission has stated, "A finding of control does not require the presence of all the above factors[.]" Edwin and Harold Lehman v. Madda Trading Company and Ted Wynn, [1984-1986 Transfer Binder] Comm. Fut. L. Rep. (CCH) P 22,417 (CFTC November 13, 1984). Suffice it to say the Court is persuaded by a preponderance of the evidence that Gary Bielfeldt controlled, at least indirectly, the commodity futures trading accounts of Carlotta Bielfeldt.

Based on that conclusion, it was incumbent upon Carlotta Bielfeldt to report on her CFTC Form 40 that Gary Bielfeldt controlled her futures trading accounts. CFTC Reg. § 18.04(6); 17 C.F.R. § 18.04(6) (1995). Because she did not make such a statement on her report, she ran afoul of § 6(c) of the CEA and Regulation 18.04(a) (6).

Section 6(c) of the CEA makes it unlawful for any person to willfully make a false statement of material fact and/or willfully omit a material fact. Commodity Exchange Act § 6(c), 7 U.S.C. § 9 (1994). Carlotta Bielfeldt knew or should have known that Form 40 required the disclosure of the fact that Gary Bielfeldt controlled her accounts. Her failure to report that fact constitutes a willful omission of a material fact and a willful misstatement of a material fact.² In the Matter of Anthony Spinale, et al., Comm. Fut. L. Rep. (CCH) P 21,273 (October 28, 1981).

² The 7th Circuit Court has attempted to flesh out the "willful" language in the CEA. See Goodman v. Benson, 286 F.2d 896 (7th Cir. 1961) (explaining that the willful requirement does not require an "evil motive", the DOE need only show that respondent intentionally committed prohibited act or acted with careless disregard for statutory requirement); see also, Flaxman v. CFTC, 697 F.2d 782 (7th Cir. 1983) (reading Goodman willfulness standard to include in § 6(c) respondent who did not report prior trading suspension on application because he thought it was not a material fact).

Bielfeldt & Co.

The partnership of Bielfeldt & Co. ("the company") is charged with two reporting violations. The Commission asserts that Bielfeldt & Co. was required to file reports with the CFTC regarding the futures trading activity of Carlotta and Gary Bielfeldt. It is further alleged that Bielfeldt & Co. made material misstatements and omissions on those reports in violation of §§ 4i and 6(c) of the CEA, and CFTC Regulation 17 by not reporting Gary Bielfeldt as the person controlling Carlotta Bielfeldt's account.

Bielfeldt & Co. is a Futures Commission Merchant registered with the CFTC. As an FCM, the company must file a Form 102³ with the Commission, providing specific details about the account held by Mrs. Bielfeldt and controlled by Mr. Bielfeldt. CFTC Reg. § 17.01(a); 17 C.F.R. § 17.01(a). More specifically, on the Form 102 the company must report the name of the person controlling Carlotta Bielfeldt's account. CFTC Reg. § 17.01(b)(7); 17 C.F.R. § 17.01(b)(7). The record shows that the company did not report Gary Bielfeldt as the person controlling the account. (DOE Ex. 2.) This is a clear violation of the applicable regulations.

The CEA requires that FCMs file all reports that are required by the Commission. Commodity Exchange Act § 4g(a); 7 U.S.C. § 9 (1994). The current case presents a somewhat-interesting scenario. The Form 102 was submitted but it was inaccurate. Section 4g(a) requires not only filing of the actual paper reports that the Commission requires, but also to provide accurate information within those reports. The Regulation setting forth the reporting requirement implements § 4g(a) of the CEA. Thus, if the regulation is violated, the statute is violated. Cf. In the Matter of Roy D. Spiegel, [1986-1987 Transfer Binder] Comm. Fut. L. Rep. (CCH) P 23,232 (CFTC August 21, 1986).

As previously discussed, the CEA prohibits any person from willfully making a false or misleading statement of material fact, or willfully omitting to state a material fact in any report filed with the CFTC. Commodity Exchange Act § 6(c), 7 U.S.C. § 9 (1994). Bielfeldt & Co. willfully made a false and misleading statement in the Form 102 filed with the Commission.

The factual issue of who controlled Mrs. Bielfeldt's account has been settled, *supra*. Mr. Bielfeldt controlled the account. That fact should have been disclosed on the Form

³ When a futures trading account becomes reportable, the FCM handling the account must file a descriptive report with the Commission (Form 102). CFTC Reg. §§ 17.01(b) and 15.00(c). As noted in footnote 1, Mrs. Bielfeldt's account was a reportable account.

102. CFTC Reg. § 17.01(b)(7); 17 C.F.R. § 17.01(b)(7). Such disclosure was not made. This was an omission of material fact. And, as mentioned earlier, a prohibited act need only be intentional before it will be classified as willful. Flaxman v. CFTC, 697 F.2d 782 (7th Cir. 1983). The company's managing partner and 95% owner was actually controlling the account of Carlotta Bielfeldt. Finding that the company's report declaring otherwise was not intentional is more than the Court can do.

Additionally, Bielfeldt & Co. is also required to file daily reports with the Commission. These are the so-called "01 Reports"⁴. CFTC Reg. § 17.00(a), (b), (g); 17 C.F.R. § 17.00(a), (b), (g) (1995). These reports must include all accounts held or controlled by Gary Bielfeldt. CFTC Reg. § 17.00(b); 17 C.F.R. § 17.00(b) (1995). Thus, the report should have disclosed Gary Bielfeldt's control over his wife's account. The record shows that this was not done. The regulation was violated, and, according to the discussion above, § 4g(a) of the CEA was violated as well. Bielfeldt & Co. also violated § 6(c) of the CEA because this was a willful omission of a material fact. The managing partner of Bielfeldt & Co. was controlling the account of Carlotta Bielfeldt. The company, therefore, knew of this control, and did not report it. Thus, the violation was willful.

Gary Bielfeldt

The Commission brings reporting violation charges against Gary Bielfeldt in the mirror image of those brought against Bielfeldt & Co. The Commission argues that Gary Bielfeldt, as the person responsible for the actions of the company, is himself accountable for the violations of the company.

The Commodity Exchange Act imposes liability on persons within an organization for the improper acts of the organization.

Any person who, directly or indirectly, controls any person who has violated any provision of this chapter may be held liable for such a violation in any action brought by the Commission to the same extent as such controlled person. In such action, the Commission has the burden of proving that the controlling person did not act in good

⁴ Regulation 17 requires daily reports for all "special accounts". CFTC Reg. § 17.00(a). A special account is defined as any account with an open contract position that equals or exceeds the amounts listed by the Commission. That is, any account with a reportable position. CFTC Reg. § 15.00(c); 17 C.F.R. § 15.00(c) (1995). The aggregate of the positions held/controlled by Mr. Bielfeldt at the relevant times was a reportable position. CFTC Reg. § 15.03; 17 C.F.R. § 15.03 (1995).

faith or knowingly induced, directly or indirectly, the act or acts that constituting the violation.

Commodity Exchange Act § 13(b), 7 U.S.C. § 13c(b) (1994). This language has been interpreted to require a showing that: 1) the alleged controlling person actually exercised general control over the liable entity, and 2) the alleged controlling person had the authority or ability to control the activity which gave rise to the entity's liability, in order for a person to be classified as "controlling". Monieson v. Commodity Futures Trading Com'n, 996 F.2d 852 (7th Cir. 1993) (citation omitted); see also, In re Spiegel, [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) PP 24,103, 34,765, n.4 (CFTC January 12, 1988) (defining control as the power to direct the management and policies of a person).

The Court concludes that Gary Bielfeldt is a controlling person with respect to Bielfeldt & Co. He is the managing partner and 95% owner of the company. He has general control over the company. Mr. Beier answers to Mr. Bielfeldt. (Tr. 552, Beier; DOE Ex. 70, Rooney at 14-15.) Steven Beier signed the Form 102 report filed for Carlotta Bielfeldt. Steven Beier is the office manager of Bielfeldt & Co. in Chicago. As such, Beier answers to Gary Bielfeldt, the managing partner. (Tr. 558, Beier.) This structure gives Gary Bielfeldt the authority or ability to control the reporting activities of the company.

Additionally, the DOE must show that the controlling person acted in bad faith or knowingly induced (directly or indirectly) the company's violations. Commodity Exchange Act § 13(b), 7 U.S.C. § 13c(b) (1994). Mr. Bielfeldt knowingly induced the violation. The record shows that Gary Bielfeldt knew of the reporting violation. Mr. Bielfeldt on his own Form 40 did not include the fact that he was controlling his wife's futures accounts. It is a stretch to believe that Mr. Bielfeldt would not disclose his control over Mrs. Bielfeldt's account on his own trading forms, and at the same time be unaware of the fact that the company he owns and manages was also not reporting his control over Mrs. Bielfeldt's accounts. Since Mr. Bielfeldt knew of the improper reporting and did nothing in his plenary power to stop it, he indirectly induced the violation. CFTC v. Standard Forex, Inc., [1994-1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) P 26,786 at 44,230 n.16 (E.D.N.Y. July 25, 1996). Therefore, he is liable for the reporting violations of Bielfeldt & Co.

Alternatively, Mr. Bielfeldt may be held accountable on a bad faith line of reasoning. "A controlling person acts in bad faith if he fails to maintain a reasonably adequate system of internal supervision and control over the [employee] or did not enforce with any reasonable diligence such system." Monieson v. Commodity Futures Trading Com'n, 996 F.2d at 860 (internal quotation marks and citation omitted). Furthermore,

the controlling person must have acted recklessly. Id. Mr. Bielfeldt acted in such a way.

Mr. Bielfeldt is the 95% owner of Bielfeldt & Co., acts as the managing partner, and is the account executive who, according to Form 102 (DOE Ex. 2), "handles" Mrs. Bielfeldt's account. Mr. Bielfeldt should have installed a supervision system to oversee the reporting done by Mr. Beier. The record is not clear in this respect, but it is clear that such a system, if it was in existence, was not enforced with reasonable diligence. All Mr. Bielfeldt had to do was ask Mr. Beier about the content of the reports filed and it would have become perfectly clear who was reported as controlling Carlotta Bielfeldt's account. The reporting violations, themselves, show that a reasonable monitoring system was not being employed and enforced. And further, Mr. Bielfeldt, himself, was making improper reports with respect to Mrs. Bielfeldt's account. To argue that he did not know of the reporting violation in question is to acknowledge the fact that Mr. Bielfeldt did not reasonably monitor the reporting activities and acted with a reckless disregard for what was happening under his authority.

Also, the DOE charges that Gary Bielfeldt failed to update his Form 40 to reflect the fact that he had gained control over Carlotta Bielfeldt's accounts, thereby violating §§ 4i, 4g(a), and 6(c) of the CEA, and Regulations 18.04(a)(5) and 18.04(d).

Mr. Bielfeldt did file a Form 40 with the Commission. However, after that filing he gained control over the trading accounts of his wife. The regulations require that such control be reported. CFTC Reg. §§ 18.04(a)(5), 18.04(d). Such a report was not filed. The regulations were violated. Moreover, as noted, supra, § 4g(a) of the CEA requires the filing of all forms required by the CFTC. Because Mr. Bielfeldt did not file according to the regulations, the Act was violated as well. Section 4i of the Act was also violated because Mr. Bielfeldt traded without making the proper report to the CFTC.

Finally, we reach the most significant of the alleged violations, viz., exceeding the allowable speculative limits. The alleged violations are twofold. First, Mr. Bielfeldt is alleged to have traded in concert with some of his friends and family and thereby exceeded the limit. Second, Mr. Bielfeldt is alleged to have controlled the trading in his own and his wife's accounts such that the number of contracts under his control exceeded the limit posted by the CFTC.

Turning to the allegations of trading in concert to exceed the limits, while it is a close call, the Court concludes that Mr. Bielfeldt did not act in concert with the other traders⁵ as alleged by the Commission.

In order to dispose of a speculative limit violation charge, it must be determined whether the accused traders' accounts should be aggregated before being compared to the limits imposed. Commodity Exchange Act § 4a(a). Aggregation is proper when two or more persons act according to an express or implied agreement or understanding the same as if the trading were done by a single person (viz., trade "in concert"). In the Matter of Volume Investors, [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) P 24,399 (CFTC February 13, 1989). Aggregation is not appropriate here.

Mr. Bielfeldt saw a great opportunity to profit from the flooding that had taken place in corn country. However, the accounts under his control brought him to the trading limit. In order to avoid trading limit problems, Mr. Bielfeldt liquidated the corn positions in the accounts he held for the other traders in order to purchase more corn for the accounts he controlled. He then advised the other traders with respect to the conditions of the expected corn harvest and the USDA crop report. The other traders followed Mr. Bielfeldt's advice and used a similar corn strategy. Although this may raise an eyebrow, it cannot be said by a preponderance of the evidence that some understanding was in place. From the record as it stands, the Court can only say that Mr. Bielfeldt, acting as a broker, gave trading advice to the other traders, and the other traders, on the whole, had enough knowledge of the futures market to execute their own plans based on that advice. Therefore, the positions of those involved here need not be aggregated and the speculative limit in place at the time was not surpassed.

The allegation with respect to the accounts of Mr. and Mrs. Bielfeldt, however, is entirely different. As previously discussed, Gary Bielfeldt controlled the trading accounts of Carlotta Bielfeldt. The CEA requires that all trading done or controlled by, and all positions controlled by, a person shall be aggregated in order to determine speculative limit status. Commodity Exchange Act § 4a(a). Therefore, the accounts of Gary Bielfeldt and Carlotta Bielfeldt must be aggregated in order to determine the number of contracts or bushels controlled by Gary Bielfeldt.

According to the Regulations, the relevant speculative limit capped single-month positions at 6,000,000 bushels, and all-months-combined positions at 15,000,000 bushels. CFTC Reg. § 150.2. Based on the account information in the record,

⁵ The "other traders" are: Linda Bielfeldt, Karen Gray, Steve Beier, James Bielenberg, Eugene Black, Robert Klaus, and Edward Sutkowski.

it is clear that when the positions of Carlotta and Gary Bielfeldt are combined both speculative limits were exceeded. (Kass Testimony Ex. 12, 13.) From October 08, 1993 to November 17, 1993, Gary Bielfeldt controlled in excess of 6,000,000 bushels of December 1993 corn. The excess was not less than 2,000,000 bushels on any one trading day. (Kass Testimony Ex. 12.) Moreover, Gary Bielfeldt controlled an all-months-combined position in excess of 15,000,000 bushels of corn from October 08, 1993 to November 19, 1993. The amount in excess ranged from approximately 2,000,000 bushels to 15,000,000 bushels. (Kass Testimony Ex. 13.) Thus, Gary Bielfeldt violated Regulation 150.2 and § 4a(a), (b) of the CEA.

IV. CONCLUSIONS

1. Since Carlotta Bielfeldt reached a reportable level in corn futures, did not properly file with the Commission, and continued to trade corn futures, she violated § 4i of the CEA and CFTC Regulation 18.04(a)(6).
2. Carlotta Bielfeldt's reporting contravened § 6(c) of the CEA.
3. Bielfeldt & Co. violated CFTC Regulation § 17.01(b)(7).
4. Bielfeldt & Co. also violated § 4g(a) of the CEA.
5. Bielfeldt & Co. willfully made a false and misleading statement in the Form 102 filed with the Commission in violation of the Commodity Exchange Act § 6(c).
6. Bielfeldt & Co. violated CFTC Regulation 17.00(b) and § 4g(a) of the CEA. Section 6(c) of the CEA was also violated because the company's actions were willful.
7. Gary Bielfeldt is liable for the previously mentioned reporting violations of Bielfeldt & Co.
8. Gary Bielfeldt violated CFTC Regulations 18.04(a)(5) and 18.04(d). Sections 4g(a) and 4i of the CEA were violated as well.
9. Gary Bielfeldt violated CFTC Regulation 150.2 and § 4a(a), (b) of the CEA.

V. SANCTIONS and ORDER

Based on the discussion and conclusions above, the Court must enter appropriate sanctions for the Respondents. The Division of Enforcement asks for a trading suspension and monetary sanctions upwards of \$5,000,000. This is not appropriate for the present case.

Sanctions are to be entered according to the character of the specific conduct in question, and should be proportional to the wrongdoing proved. In the Matter of Eddy Van Den Broeke, [1982-1984 Transfer Binder] Comm. Fut. L. Rep. (CCH) P 21,712 (CFTC April 4, 1983). A \$5,000,000 fine and trading suspension is not warranted in this case.

The Commission has set some guide posts for determining appropriate sanctions: the relationship of the misconduct to the purposes of the Act, the respondent's state of mind, the consequences of the violations, the conduct of the respondent after the violation, and any factors in mitigation. In the Matter of Elliot, 1998 WL 39409, CFTC Docket No. 95-1 (CFTC 1998).

As noted in Van Den Broeke, the purpose of the speculation limits and reporting requirements is to prevent trading speculators from gaining control over the markets and effecting price manipulations or squeezes. In the Matter of Eddy Van Den Broeke, [1982-1984 Transfer Binder] Comm. Fut. L. Rep. (CCH) P 21,712 at 26,795-6 (CFTC April 4, 1983). Such a threat did not exist here. Mr. Bielfeldt was attempting to make a large amount of money, and help his friends and family make a large amount of money, based on the unique crop circumstances in 1993. Unfortunately for the Respondents, Mr. Bielfeldt lent too much help to Mrs. Bielfeldt. Mr. and Mrs. Bielfeldt, and Bielfeldt & Co. were not attempting any sort of price control. Nonetheless, they broke the rules.

Also, the DOE has not shown that the Respondents entertained a state of mind that contemplated fraud or specific harm. Perhaps they were overly optimistic and/or recklessly indifferent, such that their acts can be deemed willful. They were not, however, set on harming the market or other investors.

As counsel for the Respondents argues, no real harm flowed from the violations found. The DOE has not demonstrated that any investor or the futures market was damaged by the conduct in question. There is no reason to believe that prices were artificially reported or altered due to the Respondents' conduct. Additionally, the DOE has not demonstrated, or even attempted to demonstrate, that the Respondents have engaged in any prohibited or dangerous conduct since the inception of this case.

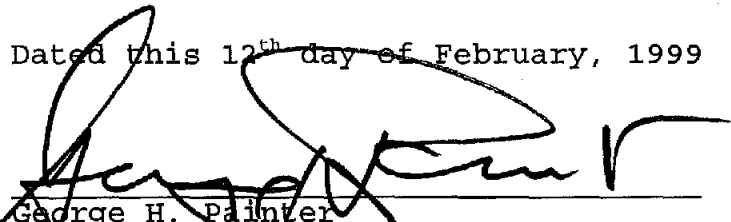
Finally, there are factors in mitigation. The Bielfeldts have a commendable record as philanthropists, and Gary Bielfeldt has a clean record and positive reputation. This leads to the conclusion that the conduct under scrutiny here is not a good example of the Respondents' usual practice. Furthermore, as Respondents' counsel has pointed out, it is clear that the Bielfeldts' conduct, although disallowed at the time, is no longer against the law. CFTC Reg. § 150.2; (Resp.

post-hearing memorandum at 68.) This leads to the conclusion, or at least suggests, that the Respondents' conduct, in and of itself, was not particularly egregious or culpable to an exceptional degree.

Therefore, it is ordered that:

1. Respondent Gary Bielfeldt cease and desist from violating §§ 4a(a), (b), 4g(a), and 6(c) of the Commodity Exchange Act, and Regulations 17.00(b), 17.01(b) (7), 18.04(a) (5), 18.04(d), and 150.2,
2. Respondent Bielfeldt & Co. cease and desist from violating §§ 4g(a) and 6(c) of the Commodity Exchange Act, and Regulations 17.00(b) and 17.01(b) (7),
3. Respondent Carlotta Bielfeldt cease and desist from violating §§ 4i and 6(c) of the Commodity Exchange Act, and Regulation 18.04(a) (6),
4. Respondent Gary Bielfeldt shall pay a civil penalty in the amount of \$100,000, and
5. Respondent Bielfeldt & Co. shall pay a civil penalty in the amount of \$100,000.

Dated this 12th day of February, 1999


George H. Painter
Administrative Law Judge