

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

<hr/>	:	CFTC DOCKET NO. 01-15
	:	
MICHAEL THOMAS LEE	:	ORDER INSTITUTING PROCEEDINGS
2515 Hawthorn Road	:	PURSUANT TO SECTIONS 6(c) and 6(d)
Marengo, Illinois,	:	OF THE COMMODITY EXCHANGE ACT
	:	AND FINDINGS AND ORDER IMPOSING
Respondent.	:	REMEDIAL SANCTIONS
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I.

The Commodity Futures Trading Commission (“Commission”) has reason to believe that Michael Thomas Lee (“Respondent” or “Lee”) has violated Section 6(c) of the Commodity Exchange Act, as amended (“Act”), 7 U.S.C. § 9 (1994), and Commission Regulation 3.60(l), 17 C.F.R. § 3.60(l) (2000). Therefore, the Commission deems it appropriate and in the public interest that a public administrative proceeding be, and hereby is, instituted to determine whether Lee engaged in the violation as set forth herein and to determine whether any order should be issued imposing remedial sanctions.

II.

In anticipation of the institution of this administrative proceeding, Lee has submitted an Offer of Settlement (“Offer”) that the Commission has determined to accept. Without admitting or denying the findings herein, Lee acknowledges service of this Order Instituting Proceedings Pursuant to Sections 6(c) and 6(d) of the Commodity Exchange Act and Findings and Order Imposing Remedial Sanctions (“Order”). Lee consents to the use of the findings herein in this

proceeding and in any other proceeding brought by the Commission or to which the Commission is a party.¹

III.

The Commission finds that:

A. SUMMARY

Michael Thomas Lee (“Lee”) failed to supervise Brian Ray (“Ray”), a restricted registrant, as required by the National Futures Association (“NFA”) Final Order Restricting Ray’s Registration (“NFA Order”) and the Supplemental Sponsor Certification Statement (“SSCS”) Lee executed. Specifically, the NFA Order and the SSCS required Lee, as Ray’s sponsor, to conduct a weekly review of the statements of all of the accounts in which Ray had an interest and to maintain a log of his weekly reviews of Ray’s trading records. From the inception of Ray’s two-year restricted registration in May 1999 through February 2000 (the “relevant period”), Lee neither maintained the requisite logs nor conducted weekly reviews of the statements of all of the accounts in which Ray had an interest, thereby failing to fulfill the obligations he was ordered to fulfill by the NFA Order and the SSCS, to which he consented. Under the Act, the NFA Order is considered an order of the Commission. Therefore, Lee violated Section 6(c) of the Act by violating a Commission order. By failing to fulfill his obligations under the SSCS, Lee also violated Commission Regulation 3.60(1).

¹ Respondent does not consent to the use of the Offer or this Order as the sole basis for any other proceeding brought by the Commission other than a proceeding to enforce the terms of this Order, nor does Respondent consent to the use of the Offer, or the findings in the Order consented to in the Offer, by any other person or entity in this or any other proceeding. The findings made in the Order are not binding on any other person or entity named as a defendant or respondent in any other proceeding.

B. RESPONDENT

Respondent Michael Thomas Lee is 43 years old and resides at 2515 Hawthorn Road, Marengo, Illinois 60152. Lee is a phone clerk at Carr Futures, Inc. (“Carr”) and has been registered with the Commission as a floor broker since 1994.

C. FACTS

In December 1997, after a full hearing, a Special Hearing Committee of the Chicago Mercantile Exchange (“CME”) found that Ray had violated CME Rules 432 b. and 541 by returning orders that he had filled for Dean Witter Reynolds (“DWR”) customers as unable to fill when, in fact, he had filled the orders but had taken the trades into his error account and as a result made substantial personal profits in that account.² The CME suspended Ray’s membership privileges for 6 months beginning January 16, 1998, fined him \$500,000 and ordered him to pay \$61,175 in restitution to the defrauded DWR customers.

On February 12, 1998, the NFA issued a Notice of Intent to Deny Registration to Ray based on the CME disciplinary proceeding. Ray entered into a settlement agreement with the NFA to restrict his registration for two years. Lee, who was then the manager of Carr’s S&P desk, signed a SSCS on January 29, 1999, requiring him to supervise Ray’s trading during the two-year period of restricted registration. Specifically, the NFA Order and the SSCS Lee signed ordered him to comply with certain undertakings, including, among other things:

- (1) diligently supervising Ray, which was to include a weekly review of all statements of accounts in which Ray had a direct or indirect interest, and
- (2) maintaining a log of his weekly reviews of Ray’s trading.

² CME Rule 432 b. makes it a major offense for a member to be guilty of fraud or any act of bad faith. CME 541 generally prohibits a member from trading an S&P 500 futures contract for his own account while on the top step of the S&P 500 futures pit.

During the relevant period, Lee did not prepare any logs or conduct a weekly review of all statements of account in which Ray had a direct or indirect interest. Specifically, Lee did not request access to Ray's error account in order to ascertain the number of errors made by Ray on a weekly basis. Lee also failed to review the cancelled and unfilled orders Ray handled and compare the cancelled and unfilled orders to the trades in Ray's error account. Moreover, to the extent Lee did any supervision of Ray, it was only of Ray's trading for Carr. Lee did not supervise the approximately 15 per cent of Ray's trading that was not on behalf of Carr.

D. VIOLATIONS OF THE ACT AND COMMISSION REGULATIONS

1. The NFA Order Is Considered a Commission Order.

Section 17(o)(2) of the Act, 7 U.S.C. § 21(o)(2) (1994), relating to registration functions the Commission may require of a futures association, states, in pertinent part:

Unless the Commission grants review under this section of an order concerning registration issued by a futures association, the order of the futures association shall be considered to be an order issued by the Commission.

The Commission never reviewed the NFA Order issued on April 13, 1999. Therefore, pursuant to Section 17(o)(2) of the Act, the NFA Order, which concerns registration functions performed by the NFA, is "considered to be an order issued by the Commission."

2. Lee Failed to Comply with the Terms, Conditions and Obligations of a Commission Order.

Pursuant to Section 6(c) of the Act, 7 U.S.C. § 9 (1994), the Commission may bring an action for violations of a Commission order:

If the Commission has reason to believe that any person . . . is violating or has violated any of the provisions of this Act or of the rules, regulations, or orders of the Commission thereunder, it may serve upon such person a complaint stating its charges in that respect . . .

By failing to conduct weekly reviews of Ray's error account and failing to maintain the requisite logs, Lee violated specific terms of a Commission order, and therefore, violated Section 6(c) of the Act. Cf. Lawrence v. CFTC, 759 F.2d 767, 771 (9th Cir. 1985) (Ninth Circuit affirmed the Commission's finding that Respondent's failure to pay a civil monetary penalty assessed by the Commission constituted a violation of a Commission order).

3. Lee Also Violated Commission Regulation 3.60(l).

Commission Regulation 3.60(l), 17 C.F.R. 3.60(l) (2000) states, in pertinent part:

The failure of any sponsor ... to fulfill its obligations with respect to supervision or monitoring of a conditioned or restricted registrant as agreed to in the Supplemental Sponsor Certification Statement shall be deemed a violation of this rule under the Act.

By virtue of the same conduct which constitutes a violation of Section 6(c) of the Act, Lee failed to fulfill his obligations under the SSCS, and therefore, he also violated Commission Regulation 3.60(l).

IV.

OFFER OF SETTLEMENT

Lee has submitted an Offer of Settlement in which, without admitting or denying the findings herein, he: (1) acknowledges service of this Order; (2) admits the jurisdiction of the Commission with respect to the matters set forth herein; (3) waives a hearing, all post-hearing procedures, judicial review by any court, any objection to the staff's participation in the Commission's consideration of the Offer, all claims which he may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (1994) and 28 U.S.C. § 2412 (1994), as amended by Pub. L. No. 104-121, §§ 231-232, 110 Stat. 862-63, and part 148 of the Commission's Regulations, 17 C.F.R. §§ 148.1, et seq (2001), relating to, or arising from, this action and any claim of double jeopardy based upon the institution of this proceeding or the entry in this proceeding of any order

imposing a civil monetary penalty or any other relief; (4) stipulates that the record basis on which this Order may be entered shall consist solely of the findings in this Order to which he has consented in the Offer; and (5) consents to the Commission's issuance of this Order, which makes findings and orders that: (a) Lee cease and desist from violating Section 6(c) of the Act and Commission Regulation 3.60(l); (b) Lee pay a civil monetary penalty of \$12,500; (c) Lee's registration as a floor broker be suspended for thirty days; and (d) Lee comply with his undertaking set forth in the Offer: (a) not to sponsor any conditioned or restricted registrant for a period of three years from the date of the Order and (b) not to take any action or make any statement denying, directly or indirectly, any statement in this Order or creating or tending to create the impression that the Order is without a factual basis.

V.

FINDING OF VIOLATIONS

Solely on the basis of Lee's consent, as evidenced by the Offer, and prior to any adjudication on the merits, the Commission finds that Lee violated Section 6(c) of the Act, 7 U.S.C § 9 (1994), and Commission Regulation 3.60(l), 17 C.F.R. 3.60(l) (2000).

VI.

ORDER

Accordingly, **IT IS HEREBY ORDERED THAT:**

1. Lee shall cease and desist from violating Section 6(c) of the Act and Commission Regulation 3.60(l);
2. Lee pay a civil monetary penalty ("CMP") in an amount of Twelve Thousand Five Hundred Dollars (\$12,500) within ten (10) business days of the date of this Order and to make such payment by U.S. postal money order, certified check, or bank money order, made

payable to the Commodity Futures Trading Commission, and addressed to Dennese Posey, or her successor, Division of Trading and Markets, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington D.C. 20581, under cover of a letter that identifies Michael Lee and the name and docket number of the proceeding. A copy of the cover letter and the form of payment shall be simultaneously transmitted to Director, Division of Enforcement, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington, D.C. 20581. In accordance with Section 6(e)(2) of the Act, 7 U.S.C. § 9a(2), if Respondent fails to make payment of his penalty within fifteen (15) days of the respective due date, he shall be automatically prohibited from trading on or subject to the rules of any registered entity, as defined in Section 1a(29) of the Act, 7 U.S.C. § 1a(29), until he shows to the satisfaction of the Commission that payment of the full amount of the penalty with interest thereon to the date payment has been made;

3. For a period of thirty (30) days commencing on the third Monday after entry of the Order, Lee's registration is suspended; and

4. Lee is directed to comply with his undertakings: (a) not to sponsor any conditioned or restricted registrant for a period of three years from the date of the Order and (b) not to take any action or make any public statement denying, directly or indirectly, any finding in the Order or finding or allegation in any related Commission proceeding or creating, or tending to create, the impression that the Order is without a factual basis; provided, however, that nothing in this provision affects: (i) Lee's testimonial obligations; or (ii) his right to take contrary legal positions in any proceedings to which the Commission is not a party. Lee understands and agrees that the Commission's acceptance of this Offer is conditioned upon his compliance with this agreement in statements made by him and by agents acting under his authority or control.

Unless otherwise specified, the provisions of this Order shall be effective on this date. A copy of this Order shall be served on Lee at the address set forth in the caption of this Order, on all contract markets, and on the National Futures Association.

By the Commission:

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

Dated: July 12, 2001