

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

SAMMY LEWIS BUNYARD	:	
	:	
v.	:	CFTC Docket No. CRAA 03-01
	:	
NATIONAL FUTURES ASSOCIATION	:	OPINION AND ORDER
	:	

Sammy Lewis Bunyard (“Bunyard”) appeals from an order of the National Futures Association (“NFA”) summarily suspending him from associate membership.¹ Bunyard does not challenge the factual predicate for the suspension—his failure to pay an outstanding arbitration award. Nor does he claim that NFA acted arbitrarily, or is practicing a form of invidious discrimination by treating him differently from other associate members who have failed to pay arbitration awards. In essence, Bunyard simply asks us to second-guess the arbitrator’s decision because the ongoing suspension effectively takes away his livelihood. NFA has not had an opportunity to respond to Bunyard’s arguments.²

Although NFA arbitration decisions can have significant consequences, Commission Rule 171.1(b)(2) expressly excludes those decisions from Commission review. In limited circumstances, the Commission will review NFA’s suspension of a member for failure to pay an arbitration award. The appealing party, however, must show that the suspension involves something more than the ministerial application of a pre-determined sanction. *Machin v.*

¹ Bunyard attached a copy of NFA’s October 18, 2002 order of suspension as an exhibit to his October 30, 2002 notice of appeal. The order provides that Bunyard’s associate membership will remain suspended until he satisfies a \$10,998.02 award rendered against him in *American National Trading Corporation v. Bunyard*, NFA Case No. 02-ARB-13, a proceeding conducted under the NFA Member Arbitration Rules.

² Bunyard did not serve NFA with a copy of either his notice of appeal or his appeal brief. Ordinarily, we would provide NFA with an opportunity to address Bunyard’s submissions prior to issuing a decision on the merits. Given our conclusion that Bunyard’s challenge does not fall within our appellate jurisdiction under Part 171, a timely dismissal will serve both the Commission’s interests and those of the parties.

National Futures Ass'n, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,041 at 37,893 (CFTC Apr. 25, 1991). Thus, an appeal raising a colorable claim that the NFA acted arbitrarily—or a similar claim that goes to the core of the Commission’s role in ensuring the reliability of NFA’s membership process—would fall within our jurisdiction. *Id.*³

Bunyard’s appeal challenges the consequences of his suspension, but primarily focuses on alleged errors in the arbitrator’s underlying decision.⁴ In these circumstances, we cannot conclude that Bunyard has raised issues going to the core of the Commission’s role in ensuring the reliability of NFA’s membership process. Accordingly, we dismiss Bunyard’s appeal as an appeal of an arbitration decision excluded from our jurisdiction pursuant to Commission Rule 171.1(b)(2).

IT IS SO ORDERED.

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

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

Dated: March 5, 2003

³ When the Commission decided to retain some appellate jurisdiction over suspensions of members who fail to pay an arbitration award, it noted that although NFA arbitration decisions can be reviewed and reversed by a court, suspensions sometimes raise issues that “go to the core of the Commission’s role in reviewing NFA actions affecting membership status.” *Final Rule, Commission Review of National Futures Association Decisions in Disciplinary, Membership Denial, Registration, and Membership Responsibility Actions*, 55 Fed. Reg. 41,061, 41,064 (Oct. 9, 1990).

⁴ In his notice of appeal, Bunyard contends that his suspension is “excessive” because the underlying arbitration was only a dispute between members and did not involve wrongdoing against customers and because the suspension will deprive Bunyard and his employees of their livelihoods. In his appeal brief, Bunyard changes focus and criticizes the arbitrator for rendering an award against him without considering (a) unpaid commissions and bonuses, (b) the complainant’s unwillingness to negotiate a payment plan or compromise, and (c) the impact of the award on Bunyard’s ability to stay in business.