

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

In the Matter of:

EUGENE LYON JEWETT, II
Respondent.

CFTC Docket No. 97-7

FILED

OFFICE OF PROCEEDINGS
PROCEEDINGS CLERK
MAY 8 9 07 AM '97

INITIAL DECISION ON DEFAULT

Procedural History

On March 19, 1997, the Commission issued a Complaint in an administrative proceeding against Eugene Lyon Jewett, II ("Jewett"), alleging that he violated Sections 4d(1) and 4d(2) of the Commodity Exchange Act, as amended ("Act"), 7 U.S.C. §§ 6d(1) and 6d(2) (1994), and Sections 1.33(a), 1.33(b), 1.55 and 33.7, 17 C.F.R. §§ 1.33(a), 1.33(b) (1996), 17 C.F.R. 1.55, 33.7 (1994) of the Commission's Regulations ("Regulations").

On or about March 19, 1997, the Office of Proceedings served the Complaint on Jewett at his last known address via certified mail, return receipt requested. On April 22, 1997, the Complaint was returned unopened to the Office of Proceedings. Notations on the envelope indicate that at least three attempts had been made to deliver the Complaint to Jewett at his last known address, and that

it had been returned to the U.S. Post Office as "Refused" on at least one of those occasions.¹

On April 16, 1997, the Division of Enforcement ("Division") filed a motion requesting that the Court enter its Findings of Fact, Conclusions of Law and a Default Order against Jewett, pursuant to Sections 10.23(c) and 10.93 of the Regulations, 17 C.F.R. § 10.23(c) and 10.93. The Division supplemented its proposed findings on April 25, 1997.

On May 1, 1997, the Court called Jewett to determine if he knew the consequences of his failure to file a response to the Complaint. On May 5, 1997, the Division again supplemented its proposed findings, and included a tape of a puerile message that Jewett left on a Division attorney's voice mail. The message was riddled with expletives and indicated that he would not respond to the Complaint. On May 7, 1997, Jewett faxed a note to the Court indicating that he would not respond to the Complaint unless it was hand-delivered.²

To date, Jewett has not made an appearance, filed an answer to the Complaint, or otherwise defended this action. Accordingly, the Court enters a default against Jewett based upon the matters set

¹ Refusal of certified mail is not an acceptable excuse for Jewett's failure to answer the Complaint. See In re Eagan & Co., et al., [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,378 (CFTC Sept. 16, 1992).

² Sending the Complaint via certified mail, return receipt requested is proper service under Commission Regulation 10.22(b), 17 C.F.R. § 10.22(b) (1996).

forth in the Complaint, the Division's Motion for Entry of Findings of Fact and Conclusions of Law and the Exhibits appended thereto (hereinafter "Division's Motion"), and the supplements to the Division's Motion.

Findings of Fact

1. Eugene Lyon Jewett, II ("Jewett") has never been registered with the Commission in any capacity. In April of 1996 he became a registered securities broker. From July 12, 1996 to August 5, 1996, Jewett was employed by the Boston Group in Los Angeles, California. From August 22, 1996 to October 14, 1996, he was employed at Joseph Charles and Associates, Inc. Jewett's last known address, stated in sworn testimony to the Division on January 30, 1997, is 11825 Goshen Avenue, Apartment 7, Los Angeles, California, 90049.

2. From March 7, 1994 to November 11, 1994, Jewett was employed as a clerk for William O'Donnell, a floor broker on the Eurodollars options pit at the Chicago Mercantile Exchange ("CME").

3. In or around January 1995 Jewett's brother, Fletcher Jewett, introduced Jewett to Don R. Britton and Judith D. Britton ("the Brittons"). Jewett told the Brittons that he had learned a unique method of trading Eurodollar options while working on the floor of the CME.

4. Jewett represented to the Brittons that he could make substantial profits for the Brittons' retirement by trading commodity futures and options on their behalf. The Brittons agreed to send Jewett a total of \$25,000 to trade commodity futures and options on their behalf. The Brittons also agreed to compensate Jewett with half of any profits he made for them.

5. Jewett never furnished the Brittons with a written risk disclosure statement.

6. On January 26 and 27, 1995, the Brittons issued three checks payable to Jewett, totaling \$25,000, to open and trade a commodity futures and options account on their behalf. Jewett accepted these checks and deposited them into his personal checking account, account number 1090001798964 at First Union National Bank of Florida.

7. On February 8, 1995, Jewett opened commodity trading account number 88242, in his own name, at First American Discount Corporation ("First American"), a registered futures commission merchant ("FCM"). He opened the account with a personal check for \$15,000, drawn on the same account into which he had deposited the Brittons' checks.

8. Between February 8 and March 20, 1995, Jewett traded Eurodollar options for account number 88242 at First American. He lost \$5,970.28, leaving a balance of \$9,029.72.

9. On February 10, 1995, Jewett opened commodity trading account number 64424, in his own name, at Alaron Trading Corporation ("Alaron"), a registered FCM. Jewett opened account number 64424 with personal checks in the amount of \$7,000 and \$2,000, and with a cash transfer of \$9,029.72 from his account at First American. Jewett's personal checks to Alaron were drawn on the same account into which he had deposited the Brittons' checks.

10. Between February 1995 and April 1996 Jewett traded options on Japanese Yen, T-Bonds, S&P 500s, Deutsche Marks, Eurodollars, Swiss Francs, and wheat futures, and lost \$18,002.20 in account number 64424.

11. Jewett solicited Michelle Milstein ("Milstein") to send him money so that he could trade commodity options and futures on her behalf. On or about March 13, 1995, Milstein sent Jewett \$5,000 to open an account to trade commodity options and futures on her behalf. Jewett deposited the \$5,000 check into his personal checking account, account number 1090001798964 at First Union National Bank of Florida, the same account into which he deposited the Brittons' money. Milstein agreed to compensate Jewett in a manner to be determined once she received profits from the trades he was to place on her behalf.

12. Jewett never furnished Milstein with a written risk disclosure statement.

13. On March 30, 1995, Jewett opened another trading account in his own name at Alaron, account number 64662. On March 31, 1996, Jewett funded this new account with a \$5,000 personal check drawn on account number 1090001798964 at First Union National Bank of Florida, the same account into which he had deposited Milstein's money. On April 17, 1995, Jewett deposited additional money into the account with a personal check for \$700, drawn on another personal checking account at American Security Bank. From April 1995 to August 1995 Jewett traded account number 64662, placing trades in various commodity options including Eurodollars, Light Crude, and T-Bonds. Jewett stopped trading account number 64662 in August 1995 after losing \$5,756.86.

14. In May of 1995 Jewett solicited and accepted money from a third customer, Bill Vogelpool ("Vogelpool"), an employee of Raucher Pierce Refsnes, Inc. Vogelpool issued Jewett a company check in the amount of \$2,000 which Jewett deposited into his personal checking account, account number 1090001798964 at First Union National Bank of Florida. Within days of that deposit, Jewett wrote a personal check on the same account to Alaron for \$2,000. In July of 1995 Jewett sent Vogelpool two personal checks totaling \$1,500 as a partial restitution to him.

15. Jewett never furnished Vogelpool with a written risk disclosure statement.

16. Between January 1995 and May 1995 the Brittons, Milstein and Vogelpool sent Jewett a total of \$32,000 to trade commodity options on their behalf. Between February 1995 and April 1996 Jewett lost \$29,729.34 trading in a variety of commodity futures and options for account number 88242 at First American and accounts numbered 64424 and 64662 at Alaron.

17. From at least April 1995 to November 1995 the Brittons and Milstein repeatedly requested information about the status of their accounts. Jewett never furnished the Brittons or Milstein with any monthly statements or confirmation statements relating to the accounts he opened or the trades he purported to place on their behalf. It was not until the fall of 1995, after the Brittons and Milstein had made several attempts to obtain information directly from Jewett, that his brother, Fletcher Jewett, finally told them that Jewett had traded and lost all of their money.

Conclusions of Law

1. Jewett acted as a FCM without being registered with the Commission as such, in violation of Section 4d(1) of the Act, by soliciting and accepting at least \$32,000 from at least four customers to open accounts to trade commodity futures and options on behalf of customers.

2. While acting as a FCM, Jewett violated Section 4d(2) of the Act by depositing the money he received from at least four customers into his personal checking account, thereby failing to segregate customer money and commingling customer money with his own money.

3. While acting as a FCM, Jewett violated Sections 1.55 and 33.7 of the Regulations by failing to provide customers with a separate written risk disclosure statement.

4. While acting as a FCM, Jewett violated Section 1.33(a) and 1.33(b) of the Regulations by failing to provide customers any written monthly account statements or written confirmation statements.

Sanctions

Under Sections 6(c) and 6(d) of the Act, sanctions for violations of the Act and Regulations are (1) a cease and desist order, (2) a trading prohibition, (3) restitution to customers of damages proximately caused by such person's violations, and (4) a civil monetary penalty.

A cease and desist order is appropriate where there is "a reasonable possibility that a respondent will again engage in illegal conduct. One indicator to gauge such a possibility is whether the respondent's past conduct constituted a pattern." In

re Mosky, [1992-1994 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,637 a 40,042 (ALJ December 22, 1992), In re GNP Commodities, Inc., [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,360 at 39,223 (CFTC August 11, 1992). The illegal conduct in which Jewett engaged, acting as a FCM by soliciting and accepting customer money, not apprising customers of their accounts' status, and commingling customer money with his own money, occurred on at least four different occasions. Jewett's conduct establishes a distinct pattern of violations that warrants the imposition of a cease and desist order. In addition, Jewett's more recent employment history, as described in the Complaint, indicates that he is likely to continue to be placed in the position of soliciting financial investments from the public, and as such, there is a reasonable likelihood that Jewett will repeat the pattern of violative conduct described in this case. Accordingly, upon consideration of the Complaint and the Division's Motion, the entry of a cease and desist order is warranted.

A trading prohibition serves the goal of deterring others from pursuing similar violative conduct. In re Incomco, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,798 (CFTC Jan. 8, 1991). Trading prohibitions are also appropriate when a respondent's conduct adversely affects the integrity of the futures markets. In re Citadel Trading Company, Ltd., [1984-1986 Transfer Binder] Comm. Fut. L. Rep. ¶ 23,082 at 32,191 (CFTC May 23, 1986).

A personal trading prohibition is necessary to prevent Jewett from using his personal commodity trading account to perpetrate similar violations in the future. Jewett's persistent use of his personal commodity trading account as a vehicle for, among other things, evading the registration and customer risk disclosure requirements of the Act and Regulations, represents a sufficient attack on the integrity of the markets to warrant a personal trading prohibition.

Jewett's violative conduct caused customer losses of \$32,000. Jewett shall make restitution of \$25,000 to the Brittons, \$5,000 to Milstein, and \$500 to Vogelpool.

When determining an appropriate civil money penalty under Section 6(e)(1) of the Act, the Court must consider the gravity of the offense. Factors in determining the gravity of a respondent's violations include: (1) whether the violation involves core provisions of the Act, such as fraud, manipulation, or other provisions which have an effect on market integrity and customer protection; (2) whether the violations resulted in harm to the victims; and (3) whether the violator benefited from the wrongdoing. See CFTC Policy Statement Relating to the Commission's Authority to Impose Civil Money Penalties and Futures Self Regulatory Organizations' Authority to Impose Sanctions; Penalty Guidelines, [1994-1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,265 (CFTC Nov. 1994). The Court may also consider other factors, such as (1) prior misconduct by the respondent; (2)

collectibility of the civil money penalty; (3) sanctions imposed in analogous cases; and (4) the total mix of sanctions available under the Act. Id.

In this case, although Jewett violated provisions of the Act and Regulations which are in place to protect customers from fraud, the offenses are not sufficiently grave to justify the imposition of a civil money penalty. The Court is already imposing a severe trading ban, ordering restitution to the customers, and ordering a cease and desist order. In addition, it appears that Jewett did not benefit from his wrongdoing. Jewett also does not have a history of violating the Act. Accordingly, the Court will not impose a civil money penalty on Jewett.

ORDER

Having been deemed in default pursuant to Commission Regulations 10.23 and 10.93, it is hereby **ORDERED** that:

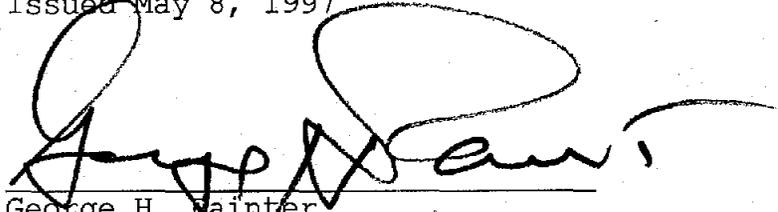
1. Eugene Lyon Jewett II immediately cease and desist from violating Sections 4d(1) and 4d(2) of the Act, 7 U.S.C. §§ 6d(1) and 6d(2) (1994), and Sections 1.33(a), 1.33(b), 1.55 and 33.7 of the Regulations, 17 C.F.R. §§ 1.33(a), 1.33(b) (1996), and 17 C.F.R. §§ 1.55 and 33.7 (1994);

2. Eugene Lyon Jewett II pay full restitution, totaling \$30,500, to each customer described in the Complaint, in the following manner: \$25,000 to the Brittons, \$5,000 to Milstein, and \$500 to Vogelpool; and

3. Eugene Lyon Jewett II be prohibited from trading on or subject to the rules of any contract market and all contract markets shall refuse him all trading privileges thereon for a period of ten (10) years, or until he has made full restitution to each of the customers described in the Complaint, as ordered by this Court, whichever period is longer.

SO ORDERED.

Issued May 8, 1997



George H. Nainter
Administrative Law Judge