



U.S. COMMODITY FUTURES TRADING COMMISSION

Three Lafayette Centre
1155 21st Street, NW, Washington, DC 20581

OFFICE OF
PROCEEDINGS

RECEIVED
C.F.T.C.
1998 AUG 31 P 1:59
OFFICE OF PROCEEDINGS

LEON J. PATE,
Complainant,

v.

ALARON TRADING CORPORATION,
Respondent.

*
*
*
*
*
*
*
*
*
*

CFTC Docket No. 98-R048

SUMMARY DISPOSITION

After a careful review of the record,¹ it has been concluded that no genuine issue of material fact exists, that there is no necessity that further facts be developed on the record, and that respondent is entitled to dismissal of the complaint as a matter of law.

Factual Findings

1. On or about May 5, 1997, Alaron submitted to the National Futures Association ("NFA") a Form 7-R for the registration of O'Keefe & Harrington ("O&H") as an-introducing broker and accompanying Forms 8-R for the registration of Shaunna O'Keefe and Brian Striar as principals of O&H. Neither O&H nor any of its principals had ever before-been registered with the NFA. Upon becoming

¹ See Order dated August 4, 1998.

registered, O&H was to be sponsored by Alaron, and Alaron was to be the clearing firm used by O&H.

Additionally, O&H was to be guaranteed by Alaron and as such, Alaron submitted to the NFA a fully executed CFTC Form 1-FR-IB (Part B) guarantee agreement, which was intended to guarantee performance by Alaron for all obligations of O&H under the Commodity Exchange Act. The terms of the guarantee agreement provided in pertinent part:

"If this guarantee agreement is filed in connection with an application for initial registration as an introducing broker, this agreement shall be effective as of the date registration is granted to the introducing broker."

[Emphasis added; exhibit to Answer.] However, the pending registration application for O&H, with the pending registration applications for O'Keefe and Striar, would be withdrawn on September 24, 1997, and thus never became effective.

2. On or about July 23, 1997, Shaunna O'Keefe cold-called Pate and convinced him to open an account with O&H. Pate filled out an account-application form on O&H letterhead, and made out a \$4,000 check to O&H. On August 5, 1997, Pate wired another \$4,085 to O&H.

Pate never filled out an Alaron account application, and never received any confirmation statements or any other written or oral communications from Alaron, during the time that O'Keefe held herself out as Pate's account executive.

O'Keefe orally reported false trades and false profits to Pate and then disregarded Pate's instructions to return his funds. Pate never received back any of the \$8,085 that he had paid to O&H.

3. In September of 1997, Pate telephoned Alaron for the first time. Pate complained that he could not retrieve the funds from O'Keefe or O&H, and stated that he believed that he had been defrauded. Jeffrey Spencer, Alaron's director of introducing broker services, and Cheryl Fitzpatrick, the general counsel with Alaron, replied that they would try to help Pate retrieve his funds and would try to contact O'Keefe. However, they were unsuccessful.

4. Subsequently, O'Keefe's attorney, Kenneth J. Dunn, contacted Alaron and informed Alaron that O'Keefe was going to settle her dispute with the Complainant.

In Dunn's draft of the agreement releasing O'Keefe and O&H, he included Alaron as a party to be released. [Attached as exhibit to the Complainant.]

However, Alaron had neither approved the release nor retained Dunn.

Conclusion

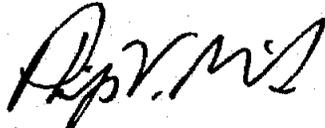
The obligation of Alaron to guarantee the performance of O'Keefe & Harrington's obligations under the Commodity Exchange Act never existed because O'Keefe & Harrington failed to become registered and the guarantee agreement thus never became effective. Moreover, Pate has produced no evidence that he was a customer of Alaron or that he ever opened or maintained an account with Alaron,

and has produced no evidence showing that Alaron should otherwise be liable for the frauds of Shaunna O'Keefe and O'Keefe & Harrington.

ORDER

Complainant has failed to show that Alaron is liable for the frauds of Shaunna O'Keefe and O'Keefe & Harrington. Accordingly, the complaint is DISMISSED.

Dated August 31, 1998.



Philip V. McGuire,
Judgment Officer