

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

In the Matter of:

Alfred R. Piasio

and

Donald W. Wilson,

97-9

Respondents.

Appearances:

On Behalf of the Division of Enforcement

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On Behalf of Alfred R. Piasio

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On Behalf of Donald W. Wilson

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Before: Painter, ALJ

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**INITIAL DECISION ON REMAND AS TO
ALFRED R. PIASIO**

The Division of Enforcement and counsel for respondent Piasio have filed post-trial briefs, including recommendations as to any sanctions to be imposed. This matter is ready for decision.

The Initial Decision (issued July 21, 1999) held that, based on the Commission's Opinion in *In re Three Eight Corporation* (issued June 16, 1993), the conduct of Piasio and Wilson as described in the complaint was not unlawful. On review the Commission vacated the Initial Decision and ruled that Piasio and Wilson were guilty of violating the Act as charged in the complaint. In its Opinion the Commission remarked that the discussion of *Three Eight* in the Initial Decision was "curious." That "curious" portion of the Initial Decision explained that risk was present with each and every transaction charged in the Piasio-Wilson complaint, whereas the transactions in *Three Eight*, patently pre-arranged scratch trades, at no time exposed any entity to risk.

The Commission held in its *Three Eight* opinion that the "...focus should be on the intent of the ultimate customer rather than the intent of any omnibus account...." An "ultimate customer" would not intend to pay costs and commissions for a scratch trade in one account. However, if *Three Eight* unlawfully allocated trades it could have done the following: Direct the execution of a pre-arranged scratch trade, with a buy at 10 and a sale at 10. Subsequently, direct the execution of a second pre-arranged scratch trade in the same contract with a buy at 12 and a sale at 12. By unlawful allocation, *Three Eight* could assign customer A a buy at 10 and a sale at 12, and customer B a buy at 12 and a sale at 10. Ex-pit allocation of pre-arranged scratch trades would enable a registrant to do wondrous things for or against its customers. It would be a simple matter for a registrant to assign two accounts to the same customer, with winning combinations posted to one account and losing combinations to the other account. By such means ill-gotten gains may

be laundered. To evade taxes, the customer may be provided with an overseas account and a domestic account. Winning combinations would be posted to the overseas account, and losing trades would be posted to the domestic account. The mechanics of fraudulent allocation schemes are described in the following decisions: *In re Richardson Securities*, Com. Fut. L. Rep. (CCH) at 20,842, June 15, 1979; *In the Matter of Quigley v. Dean Witter Reynolds, Inc.*, Com. Fut. L. Rep. (CCH) at 21,330, January 22, 1982; *In the Matter of Angelo et al*, Com. Fut. L. Rep. (CCH) at 24,943, October 19, 1990; and *In the Matter of GNP et al.*, Com. Fut. L. Rep. (CCH) August 11, 1992.

The trades in the instant matter involved risk at all times. The trades in *Three Eight* had to be pre-arranged, and at no time exposed any person to risk. That being said, the Commission perceived no problem with the *Three Eight* scenario. It rejected the credibility assessments, findings of fact, and conclusions of law set forth in the Initial Decision and held that respondents violated the Act and regulations as charged in the complaint. The Commission further determined the level of sanctions to be imposed against the respondents, but remanded the matter solely to determine whether former 6 (d) provisions would require modification of the tentative civil monetary penalties assessed. In addition, the Commission requested that respondent Piasio be afforded an opportunity to show that his health and intentions contraindicated a cease and desist order.

The record developed on remand shows that respondent Piasio is no longer registered and that he is not engaging in activity requiring registration. Clearly the former 6 (d) provisions do not require modification of the civil monetary penalty tentatively assessed by the Commission. The Commission has determined that Piasio was not a credible witness, and that he knowingly entered into wash sales as alleged. Nothing in the record prevents the Commission from imposing the tentative sanctions noted in its Opinion and Order of Remand except that it is not possible to suspend a lapsed registration. It would be inappropriate for this court to recommend modification of the Commission's cease and desist order on the basis of respondent's failing health and his intentions. As to his intentions, the Commission has questioned his credibility. On the premise that Piasio will recover

and continue to lead a productive a life, there will be no recommendation to alter the cease and desist order.

The Commission has exercised its own judgment in making credibility determinations, findings of fact, and conclusions of law. The record developed post remand does not require the Commission to modify its civil monetary penalty or the cease and desist order. The sanctions set forth below are entered pursuant to the Commission's Opinion and Order of Remand.

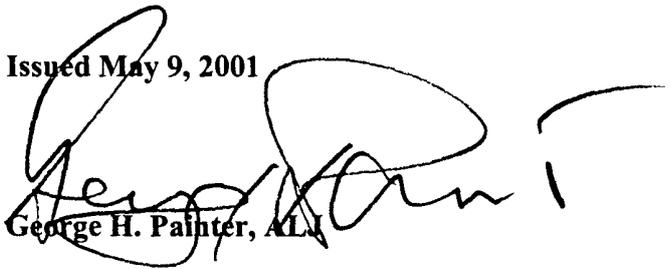
ORDER

Respondent Piasio is ordered to cease and desist from violating the Commodity Exchange Act in the manner described in the Commission's complaint and in its Order of Remand issued September 29, 2000.

Respondent Piasio is no longer registered with this Commission and therefore suspension of registration may not be ordered.

Respondent Piasio is ordered to pay a civil monetary penalty of \$40,000 within 30 days from the date this Initial Decision on Remand becomes final.

Issued May 9, 2001


George H. Painter, ALA