

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

In the Matter of:
JOHN H. RYAN,
Petitioner.

CFTC Dockets 91-10 and SD 93-17

Appearances:

On behalf of the Division of Enforcement:

Clifford C. Histid, Esq.
Rosemary Hollinger, Esq.
Suite 1600 N
300 South Riverside Plaza
Chicago, Illinois

On Behalf of Petitioner John H. Ryan:

Gordon B. Nash, Jr.
Gardner, Carton & Douglas
Quaker Tower, Suite 3400
321 North Clark St.
Chicago, Illinois

OFFICE OF THE SECRETARY
COMMODITY FUTURES TRADING COMMISSION

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Before: Painter, ALJ

INITIAL DECISION

By Order issued October 19, 2000 the Commission, through delegated authority, directed that an Administrative Law Judge take evidence and determine whether termination of a trading ban against petitioner Ryan would pose a threat to market integrity or to the public interest. The hearing on this matter took place on January 29, 2001 in Chicago, Illinois. The parties have filed post trial briefs, along with proposed findings of fact and conclusions of law. This matter is now ready for decision.

During 1987 and 1988 the Federal Bureau of Investigation conducted a sting operation on the Chicago Board of Trade. Two agents, wired for sound, posed as floor traders. Nineteen Chicago Board of Trade brokers and traders, including the petitioner, who stood within recording range of the two agents were indicted in the

United States District Court for the Northern District of Illinois. The petitioner was ultimately convicted for violations involving four transactions that took place in June, September, and November of 1987, and May 1988. Judge Marovich, who sentenced Ryan, noted that "The difference in degree between Ryan's conduct and that of his co-schemers,reflects his position as a "minor" participant in the charged wire fraud scheme." (United States v. Dempsey, 768 F. Supp. 1277, 1284-1285 (N. D. Ill. 1991) Judge Marovich sentenced Ryan to three years probation, including two months home confinement, ordered Ryan to pay \$325.00 in restitution, and assessed a \$1000 fine.

Following the federal court sentencing, the Chicago Board of Trade suspended Ryan's trading privileges for ten days and imposed a \$500.00 fine. Based on the same events described in the federal court proceeding, this agency issued a complaint against Ryan on June 6, 1991. After a hearing on sanctions, the ALJ ordered petitioner Ryan to cease and desist from violating the Act as described in the decision, and prohibited him from trading on or subject to the rules of any designated futures exchange for a period of 90 days. On July 19, 1993 the Commission issued a Statutory Disqualification complaint against Ryan, based solely on the events that led up to Ryan's felony conviction. Thus, the offenses committed by Ryan more than a dozen years ago have been the bases for criminal prosecution in the federal court, an action by the exchange resulting in a 10 day suspension and a \$500 fine, and two Division of Enforcement actions by this Commission resulting in suspension of floor trading privileges, loss of registration, denial of registration, and a six year trading prohibition. The trading ban became effective May 27, 1997, and is scheduled to expire on May 27, 2003.

At the January 29, 2001 hearing on this matter Dr. Paul Pasulka, a clinical psychologist, testified that he met the petitioner for the first time on January 10, 2001, at which time he administered two tests to the petitioner, i.e., the Minnesota Multiphasic Personality Inventory-2, and the Millon Clinical Multiaxial Inventory-3. It was Dr. Pasulka's expert opinion that the test results and his interview with the petitioner demonstrated that Ryan was a rehabilitated person. Dr. Pasulka found that Ryan was cognizant of past errors, mature, stable, and non-pathological. Dr.

Pasulka emphasized that the tests administered to Ryan were the same tests used to determine the fitness of law enforcement personnel. In sum, Dr. Pasulka gave persuasive testimony that Ryan was rehabilitated.

Father Thomas Ventura, a priest for some 40 years, testified that he knew Ryan well, and that he had counseled with Ryan for some twelve years concerning his convictions. He testified that he believed Ryan was rehabilitated and an honorable man. Father Ventura is an honest and reliable witness and his testimony concerning Ryan was credible and persuasive.

Richard Phelan, a former assistant U. S. Attorney and a practicing lawyer, testified that he has known Ryan for many years, and that he was convinced that Ryan was totally rehabilitated and would never again commit offenses such as those which resulted in his conviction. Phelan gave credible and reliable testimony concerning the fitness of the petitioner.

Charles Roger Brown, a 50 year acquaintance of Ryan, testified that in his opinion Ryan is an honest, trustworthy individual and totally rehabilitated. Brown expressed the view that Ryan was an honest and honorable man in 1987 and 1988, and that he was absolutely convinced that Ryan would never repeat the mistakes that led to his conviction. Brown's testimony was candid and reliable.

Petitioner Ryan testified that after losing his registration with this Commission he obtained a real estate license. He has remained active in his church and his community, and in the years since his conviction he has been in no legal difficulties. Ryan testified that he considered himself to be fully rehabilitated and that his return to commodity trading would not pose a threat to market integrity.

DISCUSSION:

This petitioner was caught up in a highly successful sting operation conducted by the Federal Bureau of Investigation. Petitioner was convicted of engaging in unlawful activity. He was ordered to pay restitution of only \$325.00. Had the conduct which resulted in his criminal conviction been prosecuted as an administrative action, or as an action by the exchange, the sanctions would have been far less devastating to Ryan. Even after the conviction, the exchange sanctions against Ryan involved only a \$500 dollar fine and a ten-day suspension. There is in

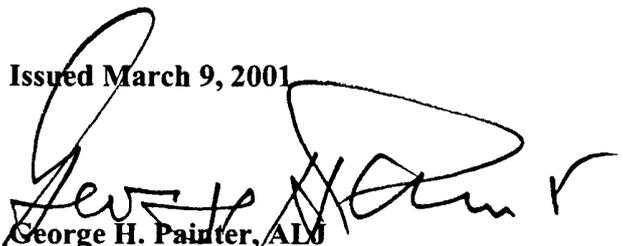
this case not a scintilla of evidence that any customer suffered as a direct result of Ryan's misconduct. More than a dozen years have passed since Ryan's infractions took place.

The only issue to resolve is whether termination of the trading ban against Ryan would pose a threat to the integrity of the market or to the public interest. This Commission imposed only a two year trading ban against an individual who committed far more egregious violations of the Act, including conversion of more than \$500,000 in customer funds. (*In re Incomco*, [1990-1992 Transfer Binder] Com. Fut. L. Rep. (CCH) paragraph 25,198) In that action, the chairperson and one commissioner expressed the view that the violations did not support a sufficient nexus to market integrity to warrant any trading ban. As of this writing, Ryan has been banned from any trading for more than four years. Considering the minor role that Ryan played in comparison to other co-schemers, the absence of evidence that his misconduct directly harmed any customer, and the credible and reliable evidence of his complete rehabilitation since the criminal conviction establishes that termination of the trading ban will not pose a threat to the integrity of the market, or to the public interest.

ORDER

Petitioner has demonstrated that termination of the trading ban will not pose a threat to the integrity of the market, or to the public interest. Accordingly, the trading ban against petitioner is terminated, effective the day this Initial Decision becomes final.

Issued March 9, 2001


George H. Painter, ALJ