

United States of America
Before the
Commodity Futures Trading Commission

In the Matter of:

STEVEN G. SOULE, et al.,

Respondents.

CFTC Docket No. 99-4

Honorable George H. Painter

RECEIVED
C.F.T.C.
2002 JUN 17 P 12:59
OFFICE OF THE
SECRETARY
COMMODITY FUTURES TRADING COMMISSION

SUMMARY DISPOSITION AS TO RESPONDENT ROBERT C. ROSSI

I. Procedural History

On December 22, 1998, the Commission filed a Complaint against Steven G. Soule ("Soule"), Kyler F. Lunman II ("Lunman"), and Hold Trade, Inc. ("Hold Trade"). The Complaint was amended on February 4, 1999 to include Robert C. Rossi ("Rossi"). Based on the findings of the Division of Enforcement (the "Division"), the Commission charges that, pursuant to Section 13(a) and Section 2(a)(i)(A)(iii) of the Act, Rossi violated Section 4b(a)(i)-(iii) by knowingly and willfully aiding and abetting Soule's violations of Section 4b(a)(i)-(iii). On April 4, 1999, Rossi filed a *Response to the Amended Complaint* denying the allegations put forth by the Division.

On April 11, 2000, Rossi plead guilty to one count of wire fraud, 18 U.S.C. §§ 1343 and 1346, in the criminal case United States v. Robert C. Rossi, et al., Criminal No. H-99-040, Plea Agreement (S. Dist. Tex. filed Apr. 11, 2000). Rossi was sentenced to 27 months imprisonment and 2 years supervised release. The District Court imposed monetary penalties in the amount of a \$50.00 assessment, a \$6,000.00 fine, and \$276,557.00 in restitution, with Respondents Rossi, Soule, and Lunman jointly and severally liable for the amount.

The Division then filed a *Motion for Partial Summary Disposition* on November 3, 2000, and on January 9, 2001, the Court found that, pursuant to Section 13(a) of the Act, 7 U.S.C. § 13c(a) (2001), Respondent Rossi violated Sections 4b(a)(i)-(iii) of the Act, as amended, 7 U.S.C. § 6b(a)(i)-(iii) (2001), by knowingly and willfully aiding and abetting Respondent Soule's fraudulent violations of the Act. On August 16, 2001, in the *Ruling on Motion to Reconsider*, the Court ordered that oral hearings on sanctions be conducted for each of the Respondents.¹

On November 21, 2001, the Division filed a *Motion to Reconsider Respondent Rossi's Oral Hearing*. In that motion, the Division conveyed that Rossi, through signed Declaration, had waived his right to appear at an oral hearing. The Division consequently petitioned the Court to summarily issue the appropriate sanctions against Rossi. The Court granted the Division's *Motion to Reconsider Respondent Rossi's Oral Hearing* on November 28, 2001, and ordered the parties to file proposed findings and/or conclusions of law by January 22, 2002.

On January 22, 2002, the Division filed *Proposed Findings of Fact and Conclusions of Law as to Respondent Robert C. Rossi* and requested that the following sanctions be imposed: i) a cease and desist order; ii) a permanent trading prohibition; iii) a civil monetary penalty in the amount of \$900,000; and iv) restitution in the amount of \$276, 557.

II. Findings of Fact

The Findings of Fact set out below incorporate in large measure the facts set forth in the Division's *Proposed Findings of Fact and Conclusions of Law as to Respondent Robert C. Rossi*. The Division's findings are supported entirely by the record.

1. On February 4, 1999, Rossi, Lunman, and Soule were indicted and charged with several counts of commodities fraud, under Section 4b(a) of the Act, as amended

¹ Rossi informed the Court on September 26, 2001 in his *Request for Enlargement of Time Pursuant to Judge's Ruling on Motion to Reconsider* that he is currently incarcerated until September 26, 2002.

7 U.S.C. §6b(a)(1996), wire fraud, and conspiracy to commit money laundering in a trade allocation scheme involving trades belonging to Coastal Corp. (“Coastal”) during the period of September 1993 through January 1995. United States v. Robert C. Rossi, et al., Criminal No. H-99-040, Indictment (S.Dist. Tex. filed Feb. 4, 1999) (the “Indictment”).

2. On April 11, 2000, Rossi plead guilty to one count of wire fraud. United States v. Robert C. Rossi, et al., Criminal No. H-99-040, Plea Agreement (S.Dist. Tex. filed Apr. 11, 2000) (the “Plea Agreement”).
3. The District Court entered final judgments against Rossi, Lunman, and Soule on August 30, 2000. In particular, Rossi was sentenced to 27 months imprisonment and 2 years supervised release. Monetary penalties were also imposed in the amount of a \$50.00 assessment, a \$6,000.00 fine, and \$276,557.00 in restitution, with Respondents Rossi, Soule, and Lunman jointly and severally liable for the restitution amount. United States v. Robert C. Rossi, et al., Criminal No. H-99-040, Final Judgment (S.Dist. Tex. entered Aug. 30, 2000) (“Final Judgment”).
4. In his written Plea Agreement, filed April 11, 2000, Rossi admitted the material facts set forth in Paragraphs 5-15 below.
5. Rossi was a resident of New Jersey who owned Refined Energy, Inc., a/k/a Refined Energy Executions, Inc. (collectively, “Refined”), a floor brokerage business operation at the New York Mercantile Exchange (“NYMEX”). Plea Agreement at 11.

6. Thomas F. DeMarco ("DeMarco") worked as a telephone clerk for Refined on the floor of the NYMEX and handled orders for executions on the exchange floor. Plea Agreement at 11.
7. Soule was employed by Coastal during the relevant period and placed futures trading orders on Coastal's behalf to the floor of the NYMEX. Plea Agreement at 11.
8. Soule had also worked for Refined prior to joining Coastal, and was a friend of Rossi's. Plea Agreement at 12.
9. Lunman was President of Hold Trade and controlled Hold Trade's futures trading accounts. Lunman and Rossi were also business partners in other ventures. Plea Agreement at 12.
10. In late 1993, Rossi, Soule, and Lunman agreed to an allocation scheme, whereby Soule would enter trades belonging to Coastal into futures accounts controlled by Lunman. Plea Agreement at 12.
11. This allocation of Coastal's trades was accomplished through DeMarco, acting on instructions from Rossi. Rossi used DeMarco's position as a floor clerk to have DeMarco allocate profitable trades belonging to Coastal to Lunman's and Hold Trade's futures accounts. These allocations were done with the knowledge, participation, and consent of Rossi. Plea Agreement at 11, 13.
12. In order to cover up the misappropriation, Soule substituted less profitable trades for Coastal to replace those that had been allocated. Plea Agreement at 12.
13. Lunman then worked with Soule and Rossi to identify the stolen Coastal trades, and distribute the profits among the participants. Plea Agreement at 12-13.

14. Rossi and the other Respondents were responsible for fraudulently allocating trades belonging to Coastal on the following dates: 12/27/93, 1/19/94, 2/9/94, 2/10/94, 2/14/94, 2/15/94, 2/16/94, 2/17/94, and 11/4/94. Plea Agreement at 12-13.
15. Rossi and the other Respondents misappropriated at least \$276,557 in profits from Coastal through their allocation scheme. Plea Agreement at 12.
16. In addition, Rossi was implicated in a 1996 conspiracy to commit commodities fraud involving a fraudulent allocation scheme conducted by another Coastal employee, Clay Khrovjak ("Khrovjak"). Khrovjak plead guilty to one count of conspiracy to commit commodities fraud (Criminal No. H-10-638, Sentencing (S.Dist. Tex. entered Dec. 5, 2001)). Khrovjak's plea agreement leading to his conviction identified Refined and Rossi² as having participated in the fraudulent scheme.

III. Discussion

Commission Regulation 10.91(e), 17 C.F.R. 10.91(e)(1998), states that the Administrative Law Judge shall grant a motion for summary disposition if the undisputed pleaded facts show that (1) there is no genuine issue as to any material fact, (2) there is no necessity that further facts be developed in the record, and (3) such party is entitled to a decision as a matter of law.

Such a circumstance exists here. The Court has found Rossi, pursuant to Section 13(a) of the Act, in violation of Section 4b(a)(i)-(iii) of the Act by knowingly and willfully aiding and abetting Respondent Soule's violations. The Division filed its *Statement of Material Facts* on November 3, 2000, and its *Proposed Findings of Fact and Conclusions of Law as to Respondent*

² Rossi is not named specifically in Khrovjak's Plea Agreement, but is referred to as "the owner of Refined."

Robert C. Rossi on January 22, 2002. In contrast, Rossi waived his right to a hearing, and has not proposed any findings of fact. Accordingly, there is no genuine issue as to any material fact and no necessity that further facts be developed.

The Division has requested a cease and desist order and a permanent trading ban against Respondent Rossi. Rossi has demonstrated a pattern of violations in his past behavior, and has clearly injured the integrity of the markets. Rossi permitted and encouraged the personnel and facilities of a NYMEX floor operation to be involved in a fraudulent allocation scheme. During the relevant period, Rossi was the mechanism by which profitable energy futures trades belonging to Coastal were misappropriated from Coastal to futures accounts controlled by Lunman and Hold Trade, and he was a knowing participant in the fraudulent scheme. Rossi provided both his floor operation, Refined, and its telephone clerk to facilitate the scheme. Furthermore, he has been implicated in a separate commodities fraud criminal case involving a fraudulent allocation scheme devised by Khrovjak, a Coastal employee. Rossi's actions repeatedly damaged Coastal and the integrity of the futures market as a whole.

The Division's has also requested a civil monetary penalty in the amount of \$900,000. The Court takes judicial notice that there is already a District Court order for monetary penalties in the amount of a \$50.00 assessment, a \$6,000.00 fine, and \$276,557.00 in restitution against Rossi. Although Respondent Rossi received gains from the misappropriation scheme and helped distribute profits to himself and the other scheme participants, a penalty of such magnitude would serve no valid purpose. Monetary penalties imposed by this Commission are not always paid voluntarily, and are often written off the books of the Commission if the Department of Justice advises that they are not collectible. Imposing such a massive penalty, when it is unlikely

that it will be collected, serves no good purpose. Thus, the \$900,000 civil monetary penalty requested by the Division is denied.

The Division has also proposed that restitution in the amount of \$276,557 be imposed. The Court notes that an identical amount has already been ordered by the District Court. Therefore, the Division's request for \$276,557 in restitution is granted, but such amount shall be offset by any payments made pursuant to the District Court's restitution award.

ORDER

Respondent Rossi is hereby *ordered* to cease and desist violating the Act. Additionally, Respondent Rossi is *permanently barred* from trading, for himself or others. It is further *ordered* that all registered entities refuse Rossi privileges on the date that this Order becomes final. The Division's request for a civil monetary penalty in the amount of \$900,000 is *denied*. Rossi is *ordered* to pay \$276,557 in restitution, to be offset by any amount paid to satisfy the restitution order of United States v. Robert C. Rossi, et al., Criminal No. H-99-040, Final Judgment (S.Dist. Tex. entered Aug. 30, 2000).

So ordered

Issued June 17 2002


George H. Painter
Administrative Law Judge

Brian M. Oubre
Law Student Extern