

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

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ARTHUR L. VIERA

v.

NATIONAL FUTURES ASSOCIATION

CFTC Docket No. CRAA-08-03
ORDER OF SUMMARY AFFIRMANCE

Our review of the record and the parties' briefs establishes that the findings and conclusions of the National Futures Association ("NFA") Appeals Committee are supported by the weight of the evidence; we therefore adopt them. We also find that none of the arguments on appeal made by respondent raise important questions of law or policy. Accordingly, we summarily affirm the decision of the NFA Appeals Committee.

In this case, Viera was found to have violated NFA Compliance Rules 2-2(a) and 2-29(a)(1) (making fraudulent and misleading sales solicitations). NFA imposed the following sanctions against Viera: a \$5,000 fine; a three-month membership;¹ and a requirement to tape record all sales solicitations for one year if he returned to the industry. Viera's appeal, while contesting both liability and sanctions, has not established the clear error required for a reversal of a final decision of the NFA in a disciplinary action as set forth in Commission Regulation 171.34(a), 17 C.F.R. §171.34(a).²

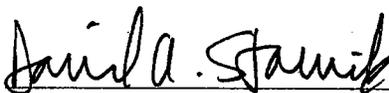
¹ Respondent Viera was not registered with the NFA at the time the complaint was brought against him.

² Respondent Viera raises two main issues on appeal. First, he argues that the Hearing Panel erred in finding the testimony of John Rice, one of Viera's former customers, more credible than his own where there was no other evidence that he violated NFA rules. Second, respondent argues that the penalty levied by the NFA is excessive in light of "the aftermath that it created," namely the loss of his career, \$15,000 in possible bonuses, and his inability to register with the NFA. We find neither argument persuasive. In *Anderson v. City of Bessemer City*, 470 U.S. 564, 575 (1985), the Supreme Court held that "when a trial judge's finding is based on his decision to credit the testimony of one of two or more witnesses, each of whom has told a coherent and facially plausible story that is not contradicted by extrinsic evidence, that finding, if not internally inconsistent, can virtually never be clear error." As

Section 17(i) of the Commodity Exchange Act provides that “if, during a review of a final disciplinary action taken by a registered futures association against a member, the Commission finds that the person has engaged in acts prohibited, the Commission shall affirm the sanction imposed by the association.” 7 U.S.C. § 17(i)(1)(A). Additionally, 17 C.F.R. §171.33(b) provides that where the Commission finds that the result reached by the NFA is “substantially correct and that none of the arguments on appeal made by the appellant raise important questions of law or policy, the Commission may...summarily affirm the decision without opinion.” The decision of the Appeals Committee is supported by the weight of the evidence, is not clearly erroneous, and the sanctions levied are neither excessive nor oppressive in light of the violations found.³

IT IS SO ORDERED.

By the Commission (Acting Chairman LUKKEN and Commissioners DUNN, SOMMERS, and CHILTON.)



David A. Stawick
Secretary of the Commission
Commodity Futures Trading Commission

Dated: September 4, 2008

to the second issue, the sanctions imposed upon respondent are consistent with those the NFA has imposed in similar circumstances, and Viera has not met his burden of showing that the sanctions here are oppressive or excessive in light of the violation found.

³ Pursuant to Commission Regulation 171.33(b), 17 C.F.R. § 171.33(b), neither the Commission’s order of summary affirmance nor the NFA’s underlying order shall serve as Commission precedent in other proceedings.