

**NATIONAL FUTURES ASSOCIATION  
BEFORE THE  
APPEALS COMMITTEE**

**FILED**

**AUG 15 2012**

In the Matter of:

NATIONAL FUTURES ASSOCIATION  
LEGAL DOCKETING

ANGUS JACKSON, INC. OF FLORIDA  
(NFA ID #190396),

MARTIN H. BEDICK  
(NFA ID #29028),

NFA Case No. 10-BCC-039

Appellants/Appellees

and

MICHAEL E. ROSE  
(NFA ID #194486),

Appellant

**DECISION**

A designated panel ("Hearing Panel" or "Panel") of National Futures Association's ("NFA") Hearing Committee issued a Decision against introducing broker NFA Member Angus Jackson, Inc. of Florida ("Angus Jackson"), Martin H. Bedick ("Bedick") and Michael E. Rose ("Rose") following a hearing in the above-captioned matter.

The Hearing Panel found that all three Respondents violated NFA Compliance Rule 2-4 by failing to observe high standards of commercial honor and just and equitable principles of trade and that Angus Jackson and Bedick willfully submitted false or misleading information to NFA, in violation of NFA Compliance Rule 2-2(f). In addition, Angus Jackson was found to have violated NFA Bylaws 1101 and 301(b) by conducting futures business with a non-NFA Member and permitting an unregistered

individual to act as an associated person ("AP") of the firm. The firm was also found to have violated NFA Compliance Rule 2-9(c) by failing to develop and implement an adequate anti-money laundering ("AML") program and NFA Compliance Rules 2-26 and 2-10 by including orders for proprietary or non-customer accounts with orders for customer accounts and by improperly providing post-execution allocation instructions for bunched customer orders.

As sanctions for the violations that the Hearing Panel found, it suspended Bedick and Rose from NFA membership and associate membership for seven years and two years, respectively, and permanently barred both of them from acting as principals of any NFA Member. Angus Jackson was suspended from NFA membership and from acting as a principal of any NFA Member for seven years. The Panel added that if, after the conclusion of its seven-year suspension, Angus Jackson applies for NFA membership or to be a principal of an NFA Member, it must pay a \$25,000 fine to NFA within 30 days of the date on which it is granted NFA membership or principal status.

Angus Jackson, Bedick and Rose all filed notices of appeal seeking the Appeals Committee's ("Committee") review of certain aspects of the Hearing Panel's findings of violations and the sanctions that it imposed. In addition, NFA petitioned the Committee seeking review of the sanctions imposed on Angus Jackson and Bedick by the Hearing Panel for the purpose of considering whether the temporary bars from NFA that were imposed on them should be made permanent.<sup>1</sup>

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<sup>1</sup> NFA Compliance Rule 3-13 creates an automatic right for any Respondent to appeal a Decision rendered by a Hearing Panel to the Appeals Committee. NFA is

## **PROCEDURAL BACKGROUND**

On December 22, 2010, NFA's Business Conduct Committee ("BCC") issued a three-count Complaint against Angus Jackson, Bedick and Rose. The Complaint charged that each of them submitted false and misleading information to NFA and failed to observe high standards of commercial honor and just and equitable principles of trade. It also charged that Angus Jackson, Bedick and Rose conducted futures related business with a non-NFA Member named Martin Rosenthal ("Rosenthal") and a company owned by Rosenthal, Jarma Trading, Inc. ("Jarma"), that were required to be registered with the Commodity Futures Trading Commission ("CFTC" or "Commission") and that they permitted Rosenthal to act in a capacity that required him to be registered as an AP without him being so registered.<sup>2</sup>

In addition, the Complaint charged that Angus Jackson failed to develop and implement an adequate AML program. Finally, the Complaint charged that Angus Jackson included orders for proprietary or non-customer accounts with orders for customer accounts and provided post-execution allocation instructions for bunched customer orders that not comply with NFA and CFTC requirements.

On February 3, 2011, Angus Jackson, Bedick and Rose filed a joint Answer admitting some of the material allegations of the Complaint and denying others.

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required to petition the Committee to order a review of a Hearing Panel Decision. We granted NFA's petition in the present matter.

<sup>2</sup> In its Decision, the Panel noted that Bylaws 1101 and 301(b), which respectively prohibit conducting futures business with non-NFA Members and permitting an unregistered individual to act in the capacity of an AP, apply only to NFA Members. As Bedick and Rose were NFA Associates but not NFA Members, the Panel dismissed the charges that those individuals violated NFA Bylaws 1101 and 301(b).

A hearing was conducted by the Panel on June 13 and 14, 2011. Angus Jackson, Bedick and Rose all participated and were all represented by the same attorneys. The Panel heard testimony from seven witnesses and received a number of exhibits into evidence.

The Panel issued its Decision on October 18, 2011. It held that Angus Jackson had committed all of the violations as alleged against it by the BCC and that Bedick had submitted false information to NFA and failed to observe high standards of commercial honor and just and equitable principles of trade. While the Panel found that Rose violated NFA Compliance Rule 2-4 by failing to observe high standards of commercial honor and just and equitable principles of trade, it was not persuaded that the evidence supported the charge that he had violated NFA Compliance Rule 2-2(f) by willfully providing false information to NFA. The Hearing Panel imposed the aforementioned sanctions for the violations that it found.

In addition to the matters raised by Angus Jackson, Bedick and Rose in their appellate filings, this Committee granted NFA's petition to take review of the sanctions imposed by the Hearing Panel on Angus Jackson and Bedick. All parties have fully briefed their initial positions and responded to issues raised by the other parties.

## II

### **DISCUSSION**

The only substantive findings made by the Hearing Panel with which Angus Jackson takes issue are its findings that Angus Jackson violated NFA Bylaws 1101 and 301(b) by, respectively, paying per trade commissions to non-NFA Member

Jarma and the unregistered Rosenthal.<sup>3</sup> Bedick does not dispute any of the Panel's findings of violations against him and Rose urges us to reverse the Panel's finding that he failed to observe high standards of commercial honor and just and equitable principles of trade, in violation of NFA Compliance Rule 2-4.

While all three of the Respondents below contend that the sanctions imposed on them by the Panel were too severe, NFA argues that the sanctions imposed on Angus Jackson and Bedick were not substantial enough and urges this Committee to modify the temporary bars imposed on them by the Panel to make them permanent.

**A. The Panel's findings that Angus Jackson violated NFA Bylaws 301(b) and 1101**

The Hearing Panel described the allegations that ultimately led to its findings that Angus Jackson violated NFA Bylaws 1101 and 301(b) as follows:

NFA alleges that Angus Jackson, through Bedick and Rose, paid Rosenthal and Jarma commissions related to accounts trading through Angus Jackson even though Rosenthal was neither registered with NFA as an Associate or an NFA Member nor registered with the CFTC in another capacity and a Member of NFA, and Jarma was not registered with the CFTC in any capacity and an NFA Member.<sup>4</sup>

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<sup>3</sup> Angus Jackson concedes that it committed the majority of the violations alleged against it in the BCC's Complaint and does not take issue with any of the Panel's findings regarding those violations. Specifically, it acknowledges that its Answer admitted the conduct underlying the Hearing Panel's findings that it misled NFA (NFA Compliance Rule 2-2(f)) and that it failed to implement an adequate AML program (NFA Compliance Rule 2-9(c)) and included proprietary or non-customer accounts with orders for customer accounts (NFA Compliance Rule 2-26). Although the joint brief filed by Angus Jackson and Bedick does not formally make the same concession with regard to the Hearing Panel's finding that the firm improperly provided post-execution allocation instructions for bunched customer orders (NFA Compliance Rule 2-10), Angus Jackson did not cite that issue in its notice of appeal and makes no argument relating to it in the brief filed with this Committee. The Committee did not review the Panel's findings with respect to any of these uncontested issues.

<sup>4</sup> Decision of the Hearing Panel, pp. 17-18.

Angus Jackson concedes that it paid commissions to Rosenthal and Jarma and the evidence received by the Panel fully supports that concession. For example, evidence received by the Panel included an August 19, 2010 letter to NFA in which Bedick, who was writing on behalf of Angus Jackson, specifically acknowledged that:

During your audit we disclosed to NFA that we paid Martin Rosenthal commissions for services requiring registration as an Associated Person despite his lack of registration and barring from membership with NFA. Further, we represented to NFA that during past NFA audits we represented to auditors that payments to Jarma Trading, Inc. were made for software consulting and systems when in fact these were commission payments to Rosenthal.<sup>5</sup>

Further evidence that Bedick considered Angus Jackson's payments to Rosenthal to be illicit was contained in a December 15, 2004 e-mail from Bedick to Rosenthal (before the payment arrangement with Jarma was created) in which Bedick wrote: "There is no way I [Bedick] will be able to get away with paying someone who is not registered [Rosenthal] the amount I am sending you."<sup>6</sup>

Bedick's August 19th letter was provided to NFA approximately four months before the BCC issued its Complaint. When Angus Jackson filed its subsequent Answer, and despite the fact that Bedick made his earlier admissions without any reservations or further explanation, the Answer alleged for the first time that Rosenthal and Jarma were purportedly commodity trading advisors ("CTAs") who were exempt from registration under CFTC Regulation 4.14(a)(10) and, further, that they were not required to be NFA Members.

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<sup>5</sup> NFA Exhibit No. 6.

<sup>6</sup> NFA Exhibit No. 11.

CFTC Regulation 4.14(a)(10) provides that a person is exempt from CTA registration if they provided advice to fewer than fifteen people over the preceding twelve-month period and did not hold themselves out to the public as a CTA. Evidence was presented to the Panel by both Angus Jackson and NFA regarding Angus Jackson's claim that Rosenthal and Jarma were exempt from registration under that Regulation. During the course of addressing that evidence the Panel commented that:

. . . it appears that Bedick raised this issue as a *post hoc* defense to the charge that Angus Jackson violated NFA Bylaw 301(b) and Bylaw 1101 when Angus Jackson paid commissions to an unregistered individual (Rosenthal) and an unregistered entity (Jarma).<sup>7</sup>

Nevertheless, even though the exemption defense was apparently adopted by Angus Jackson after the BCC issued its Complaint and in contemplation of a hearing, if the evidence established that Rosenthal and Jarma were actually exempt from CTA registration, Angus Jackson did not violate NFA Bylaws 1101 and 301(b).

On appeal, Angus Jackson contends that it was NFA's burden to prove that Rosenthal and Jarma were not entitled to the CFTC Regulation 4.14(a)(10) exemption from registration and, further, that the weight of the evidence received by the Panel at the hearing was insufficient to support the Panel's finding that Rosenthal and Jarma were not exempt. This Committee disagrees with both of these contentions.

First, Angus Jackson's attempt to place the burden of proof regarding the exemption issue on NFA is not well taken. We find its contention that Rosenthal and Jarma were exempt from registration, which was raised for the first time in its Answer to the BCC's Complaint, to be in the nature of an affirmative defense, which is defined as a, "New matter constituting a defense; new matter which, assuming the complaint to be

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<sup>7</sup> Decision of the Hearing Panel, p. 20.

true, constitutes a defense to it."<sup>8</sup> As such, it was incumbent on Angus Jackson to persuade the Panel that Rosenthal and Jarma were, in fact, exempt.

The CFTC has dealt with similar issues of shifting burdens of proof. For example, in the case of In the Matter of Ashman, [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,366 (CFTC April 22, 1998), the Commission dealt with the appellant's claim that an Administrative Law Judge had committed error by placing the burden of showing that he was fit to be registered on the applicant once the Division of Enforcement had made a *prima facie* case that he was not fit for registration. The Commission rejected Ashman's argument and held that, "the burden shifted to Ashman to prove what is tantamount to an affirmative defense – that he no longer poses a threat to the markets."<sup>9</sup> The Commission noted further that Ashman's burden was more than simply producing evidence that tended to support his defense and that, "The burden that a respondent must carry to establish an affirmative defense is one of persuasion."<sup>10</sup>

In the present matter, the record contains overwhelming evidence supporting NFA's *prima facie* case that Angus Jackson violated NFA Bylaws 301(b) and 1101. That evidence clearly established that Angus Jackson made commission payments to both Rosenthal and Jarma and that neither of them was registered with the CFTC in any capacity and that they did not have any status with NFA. In fact, Angus Jackson does not contest this evidence.

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<sup>8</sup> Black's Law Dictionary, p. 75 (Third Edition 1933).

<sup>9</sup> Ashman, p. 7.

<sup>10</sup> Ashman, n.50.



Our further review of the record leads us to conclude that the evidence was properly weighed by the Hearing Panel and that Angus Jackson did not meet its burden of persuasively establishing that either Rosenthal or Jarma were exempt from registration as CTAs. The evidence includes Bedick's admission that Angus Jackson knew that neither Rosenthal nor Jarma were registered as CTAs but never fulfilled the duty imposed under NFA Bylaw 1101 to inquire as to the basis of any exemption claim that they might have.<sup>11</sup> This lack of inquiry is easily understandable as Angus Jackson concedes that neither Rosenthal nor Jarma ever claimed such an exemption at the time that the payments were being made. Rather, Angus Jackson believed that they were, in fact, required to be registered and it was therefore paying them commissions based on bogus invoices because it believed that Rosenthal was ineligible for registration in any capacity.

Further, Angus Jackson failed to meet its burden of proving that Rosenthal and Jarma met the two requirements for them to qualify for the CFTC Regulation 4.14(a)(10) exemption from CTA registration. That is, it failed to show that they provided advice to fewer than fifteen people over the preceding twelve-month period and that they did not hold themselves out to the public as a CTA.

Bedick's testimony was less than compelling in establishing the number of customer accounts that Rosenthal managed. At one point he testified that it was a "handful." Under cross-examination he acknowledged remembering at least seven such customers. He admitted further that he had made no specific inquiry as to whether or not Rosenthal was managing additional accounts at other firms and conceded that

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<sup>11</sup> See, Interpretive Notice Compliance with NFA Bylaw 1101, NFA Manual ¶ 9007 (1987).

he, "didn't know with certainty" if Rosenthal managed additional accounts. Tellingly, although Rosenthal testified at the hearing, the defense made no inquiry of him regarding the number of persons that he advised. As such, the evidence presented to the Panel falls far short of persuasively establishing that Rosenthal and Jarma met the requirement of advising fewer than fifteen people over the relevant twelve-month period.

The record also contains testimony that suggests that Rosenthal was indeed holding himself out as a CTA in that, for compensation or profit, he engaged in the business of advising others as to the value or advisability of trading in futures related products. Specifically, Rosenthal testified that, at Angus Jackson's request, he solicited "twenty plus" of his students in a mentoring class to open accounts at Angus Jackson and that those accounts were contemplated to be managed by him. He testified further that at least six of those students actually opened accounts through Angus Jackson that he managed. He also testified that he managed additional accounts at Angus Jackson and that some of the account owners were friends and relatives and some of them were unknown to him before he solicited them. He told the Panel that he received approximately \$600,000 in commission payments from Angus Jackson over the period that the accounts that he managed were open at the firm.

As NFA clearly made a *prima facie* showing that Angus Jackson paid commissions to the unregistered Jarma and Rosenthal and Angus Jackson failed to make a persuasive showing that Jarma and Rosenthal were entitled to the exemption from registration created by CFTC Regulation 4.14(a)(10), we affirm the Panel's findings that Angus Jackson violated NFA Bylaws 301(b) and 1101.

**B. The Panel's finding that Michael Rose violated NFA Compliance Rule 2-4**

The Hearing Panel's one finding against Rose, who was identified in Registration filings as Angus Jackson's president, was that he failed to observe high standards of commercial honor and just and equitable principles of trade in handling the situation with Jarma and Rosenthal described in the previous section. In making that finding, the Panel observed that:

Although Rose may not have directly lied to NFA, the Panel still finds his conduct to be a violation of Compliance Rule 2-4. In particular, Rose admitted that he was aware that Angus Jackson was paying Rosenthal commissions related to trading in certain customer accounts. He also admitted that he knew that most individuals who receive commission payments are required to be registered and that Rosenthal was not registered. Rose maintained, however, that he assumed that the situation was okay because Bedick was handling it and he trusted Bedick. The Panel, however, does not find this to be a valid reason for excusing Rose's lack of inquiry and diligence. Rose was the named president of Angus Jackson. Although Rose denies that he ever acted in that capacity, when he accepted the prestige that goes along with that title, he also accepted the responsibilities. Rose was well aware that Rosenthal was not registered, but was receiving commissions, and he was well aware that this generally requires registration. Rose, as president of Angus Jackson, had a duty to inquire about the situation and cannot absolve himself from responsibility by hiding his head in the sand.<sup>12</sup>

Rose argues that, although he was listed as Angus Jackson's president, the evidence suggested that he did not actually have the "power, the authority or the control of a president." He states further that, although he knew about the payments to Rosenthal and that Rosenthal was not registered he did not have actual knowledge of wrongful acts and was under no obligation to make himself knowledgeable about such acts.

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<sup>12</sup> Decision of the Hearing Panel, p. 19.

This Committee defers to factual determinations made by NFA Hearing Panels and the conclusions drawn by the Panels from those determinations unless those determinations and conclusions are deemed to be clearly erroneous. As we stated In the Matter of Barkley Financial Corp.:

In situations where the Hearing Panel has a better opportunity to evaluate the weight of the evidence, such as in the case where witness credibility is a material issue, this Committee's practice is to defer to the Hearing Panel and review those factual findings using a "clearly erroneous" standard.<sup>13</sup>

We find that the findings made by the Panel regarding Rose's knowledge, responsibilities and activities that led to its conclusion that he violated NFA Compliance 2-4 were not clearly erroneous and that they are, in fact, well supported by the record.

Rose testified at the hearing in this matter and the Panel had the benefit of observing his demeanor as well as that of Bedick and Rosenthal in making its determinations regarding him. That the Panel weighed the evidence that was presented to it carefully and without prejudice is amply demonstrated by the fact that it found that NFA had not met its burden of proving that Rose had violated NFA Compliance Rule 2-2(f) by willfully providing false information to NFA and its resultant dismissal of that charge with prejudice.

The uncontroverted evidence received by the Panel established that Rose had been the president of Angus Jackson since 1993 and that he had been the majority owner of the firm at one time. Although his in-house responsibilities and authority apparently diminished over the years, NFA's Registration records reflected that he

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<sup>13</sup> NFA Case No. 05-BCC-20 (App. Comm. July 6, 2007) at p. 7. See also, In the Matter of The Siegel Trading Company, Inc., NFA Case No. 01-BCC-11 (App. Comm. Oct. 6, 2003); In the Matter of Gary V. Valletta, NFA Case No. 99-APP-3 and 99-APP-4 (Nov. 2, 2000); In the Matter of International Futures Brokerage Corp., NFA Case No. 00-APP-1 (July 19, 2000). Cf. Anderson v. City of Bessmer, 470 U.S. 564, 573 (1985).

remained a listed principal of the firm and retained the title of president. Sometime in 2001, Rose became aware that Rosenthal held power of attorney over two accounts introduced by Angus Jackson and Rosenthal subsequently told him that he was receiving commissions from Angus Jackson for trading in those accounts. Rose conceded that he was aware that people who are paid commissions by NFA Members are generally required to be registered. He also knew that there were some exceptions to this requirement but, although Rose knew that Rosenthal was not registered, he never made inquiry as to whether Rosenthal qualified for such an exception or whether the commission payments to him were somehow permissible.

The evidence summarized in the previous paragraph clearly supports the Panel's determination that Rose had knowledge that Angus Jackson was paying commissions to the unregistered Rosenthal and Jarma. As he held himself out to NFA as Angus Jackson's president during the time in question, the Panel's finding that he had at least some duty to make further inquiry as to the propriety of this arrangement can hardly be characterized as clearly erroneous. Further, it is beyond dispute that he made no effort to find out whether the NFA Member which held him out as president was adhering to regulatory requirements in making the payments. Surely the Panel was reasonable in holding that merely being aware that exceptions existed was not enough to absolve Rose of his duty to inquire as to whether Rosenthal met the requirements for claiming any exemptions.

Therefore, we find that the findings made by the Panel regarding Rose's knowledge, responsibilities and activities that led to its ultimate conclusion that he

violated NFA Compliance Rule 2-4 were not clearly erroneous and that they are, in fact, well supported by the record.

**C. The sanctions imposed by the Hearing Panel on Angus Jackson, Bedick and Rose**

Angus Jackson and Bedick ask the Committee to reduce the seven-year suspensions imposed on them by the Panel to "no more than one year."<sup>14</sup> Rose asks that, in the event that the Committee affirms the Panel's finding that he violated NFA Compliance Rule 2-4 (as we have), his two-year bar from NFA in any capacity and permanent bar from being a principal of any Member be replaced by merely permitting him to, "voluntarily sign an agreement that he never will act as a principal of an NFA Member."

NFA has asked the Committee to increase the temporary bars imposed by the Panel on Angus Jackson and Bedick to permanent bars and urges us to affirm the penalty imposed on Rose.

Neither Angus Jackson nor Bedick have appealed the Hearing Panel's findings that they provided misleading information to NFA and failed to observe high

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<sup>14</sup> Angus Jackson and Bedick also urged the Committee to "vacate the suspensions" imposed on them by the Panel in the event that we reversed the findings that Angus Jackson violated NFA Bylaws 301(b) and 1101. This, of course, is not the case as we have affirmed those findings and shall dispense with any discussion of what impact, if any, a reversal of those charges would have had on the setting of an appropriate penalty. However, the Committee notes that even if we had vacated those two findings against Angus Jackson, all of the remaining violations found by the Panel against Angus Jackson and all of the violations found against Bedick would remain intact. This includes the most serious violation found against both of them by the Panel – misleading NFA. As noted earlier, none of those findings were contested by either Angus Jackson or Bedick. Under these circumstances, it is unclear to the Committee as to what grounds Angus Jackson and Bedick had for requesting a full dismissal of their respective suspensions if we had reversed the Panel's findings regarding NFA Bylaws 301(b) and 1101.

standards of commercial honor and just and equitable principles of trade. Further, we have affirmed the Panel's findings that Angus Jackson conducted futures business with non-NFA Member Jarma and permitted the unregistered Rosenthal to act as an AP. Angus Jackson has also been found to have failed to develop and implement an adequate AML program and to have improperly included orders for proprietary or non-customer accounts with orders for customer accounts and provided post-execution allocation instructions for bunched customer orders.<sup>15</sup>

NFA Compliance Rule 3-14(b) provides that the Appeals Committee may increase, decrease or set aside the penalties that are imposed by a Hearing Panel, or may impose other and different penalties as it sees fit. Acting pursuant to this authority, this Committee has exercised its authority to modify or increase penalties imposed by Hearing Panels on a number of occasions when it has determined that the penalty imposed by a Hearing Panel was not an appropriate response to the violations that were found to have been committed.<sup>16</sup>

NFA has consistently followed the factors enumerated by the CFTC in a 1994 Policy Statement, which provides guidance to self-regulatory organizations

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<sup>15</sup> Violations of NFA Compliance Rule 2-4, NFA Compliance Rule 2-2(f), NFA Bylaws 1101 and 301(b), NFA Compliance Rule 2-9(c) and NFA Compliance Rules 2-26 and 2-10, respectively.

<sup>16</sup> See, e.g., In the Matter of Commonwealth Financial Group, Inc., et al., NFA Case Nos. 96-APP-003 and 004, on appeal from 94-BCC-013 (1997); In the Matter of Diversified Trading Systems, Inc., NFA Case No. 92-APP-009, on appeal from 92-BCC-014 (1993); In the Matter of Johnny L. Johnson, Jr., NFA Case No. 97-APP-003, on appeal from 96-BCC-014 (1998); and In the Matter of Universal Commodity Corporation, NFA Case Nos. 98-APP-001, 002 and 003, on appeal from 95-BCC-020 (2000).

("SROs") regarding the fashioning of appropriate sanctions.<sup>17</sup> The Policy Statement lists several factors that may be considered in determining appropriate sanctions on a case-by-case basis and comments that although the list is an "effective tool", it does not require uniformity among all SROs in the factors considered. Factors set out in the Policy Statement that we find to be particularly relevant to determining appropriate sanctions for Angus Jackson and Bedick include:

- The gravity of the offense;
- Whether the sanction will be sufficiently remedial to deter future violations by the respondent and others; and
- The number and kinds of other violations engaged in by the respondent, if any.

In framing their argument to reduce their penalties to no more than a year, Angus Jackson and Bedick focus on their contention that the Panel's finding that they violated NFA Compliance Rule 2-2(f) by providing deceptive information to NFA regarding the payments to Rosenthal and Jarma did not involve a "core provision" of the Commodity Exchange Act or NFA Compliance Rules in that it was not directed to defrauding customers. Their argument virtually ignores the fact that in addition to finding that Angus Jackson and Bedick misled NFA, the Panel also found that Angus Jackson committed further violations of two NFA Bylaws and four other Compliance Rules and that Bedick was found to have failed to uphold high ethical standards.

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<sup>17</sup> See, CFTC Policy Statement Relating to the Commission's Authority to Impose Civil Monetary Penalties and Futures Self-Regulatory Organizations' Authority to Impose Sanction: Penalty Guidelines, [1994-1996 Transfer Binder] Comm. Fut. L. Rep (CCH) ¶ 26,265 at 42,248 (CFTC Nov. 1994).



We find Angus Jackson and Bedick's argument for mitigation of their penalties to be unpersuasive. Lying to NFA regarding a material matter has always been deemed to be a very serious violation by Hearing Panels and this Committee. Angus Jackson and Bedick's characterization of such misconduct as not violating what they call a "core provision" utterly ignores the point that the need for total candor from the membership is indispensable to NFA in fulfilling all of its regulatory mandates. If NFA auditors cannot depend on the accuracy and completeness of the information provided by its Members, the execution of its mandated regulatory obligations, including customer protection, would be greatly compromised. As we stated in our recent Decision in In the Matter of Forex Liquidity (Robert Gray):

As an SRO, NFA must rely on its Members' adherence to their obligations under NFA Compliance Rules to cooperate promptly and fully with NFA investigations and to refrain from submitting false or misleading information to their regulator. Any Member's failure to fully and candidly abide by these important obligations is always a matter of great concern. For this Committee to treat such violations otherwise would undermine NFA's ability to provide the level of oversight that its mission of protecting the public, the membership and the markets requires.<sup>18</sup>

Given the significant number of violations committed by both Angus Jackson and Bedick and the particularly serious nature of their willful deception of NFA and their failure to observe high standards of commercial honor and just and equitable principles of trade regarding their conduct of futures business with non-NFA Members, we see no justification for reducing the penalties assessed on them by the Panel in any way.

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<sup>18</sup> NFA Case No. 08-BCC-023, Appeals Committee Decision (Sept. 12, 2011) at p. 9.

Similarly, we find no compelling reason for diminishing the Panel's suspension of Rose from any status with NFA for two years and his permanent bar from being a principal of an NFA member. The record below and the Panel's well-reasoned analysis of the evidence amply demonstrate that the Panel was very cognizant of Rose's limited involvement in Jarma/Rosenthal situation. This is particularly reflected in the Panel's exoneration of Rose from the charge of willfully deceiving NFA.

Nevertheless, Rose held himself out to NFA and the world as Angus Jackson's president throughout the situation and he was aware that commission payments were being made to non-NFA Members. As such, he had a duty to make further inquiry into the propriety of the payments and failed to do so. Having chosen to retain the title of president, he cannot rid himself of the responsibilities that go along with that title by simply announcing after the fact that his apparently controlling position was merely titular.

The two-year suspension from NFA in all respects imposed on Rose by the Panel coupled with his permanent bar from ever being a principal of an NFA Member constitute a measured and thoughtful response to his situation. They reflect the gravity of his offense while recognizing that it was not as aggravated as was the case with Angus Jackson and Bedick. Further, given Rose's track record as Angus Jackson's president of record, his permanent bar from principal status will (obviously) deter him from further similar violations. In addition, it will act as a deterrent to others who feel that they can enjoy the public title of being the president of an NFA Member without conducting themselves in a manner that reflects the level of knowledge and oversight that the title implies.

NFA argues that precedent, particularly our recent Decision in In the Matter of Forex Liquidity (Robert Gray), suggests that we should increase Angus Jackson and Bedick's seven-year suspensions to permanent bars.

We wholeheartedly reaffirm this Committee's position as stated in the Forex Liquidity matter that providing false and misleading information to NFA staff is to always be treated as a very serious matter. Further, we recognize that the seven-year bars from NFA imposed on Angus Jackson and Bedick fall somewhat short of the permanent bar imposed on Robert Gray in the Forex Liquidity case.

However, under the unique facts of the matter at hand and, in view of the careful and well-reasoned Decision issued by the Hearing Panel in making its findings of violations and fashioning penalties, we have determined that the seven-year bars that it imposed on Angus Jackson and Bedick are not so far from the mark that they should be increased to permanent bars. They are still very substantial and are crafted to create a high level of deterrence to Angus Jackson and Bedick, as well as to other Members who are tempted to mislead their regulator, from engaging in similar misconduct in the future. That we take this position in the case at hand should not be understood to reflect any diminution of our position that lying to NFA is always considered a very serious violation.

### III

#### CONCLUSION

As discussed above, after considering the record below and the arguments raised by the parties on appeal, the Appeals Committee affirms the Panel's

findings of violations and the sanctions that it imposed on Angus Jackson, Bedick and Rose in all respects.

This Decision shall be effective 30 days after it is served on Angus Jackson, Bedick and Rose as prescribed by CFTC Regulation 171.9. They may appeal this Decision to the Commission under CFTC Regulation 171.23 by filing a Notice of Appeal and the required filing fees with the Commission within 35 days after the Decision is mailed. Under CFTC Regulation 171.22, they may petition the Commission to stay the effective date of this Decision by filing a petition, a Notice of Appeal, and the required filing fees with the Commission within fifteen days after this Decision is mailed.

Under the provisions of CFTC Regulation 1.63, the sanctions imposed in this Decision render Bedick and Rose ineligible to serve on a disciplinary committee, arbitration panel, oversight panel or governing board of any self-regulatory organization, as that term is defined in CFTC Regulation 1.63, until the later of three years after the effective date of this Decision, or until they have satisfied all the sanctions and conditions imposed by this Decision.

**NATIONAL FUTURES ASSOCIATION  
APPEALS COMMITTEE**

Date: 08/15/2012

By: George Crapple  
George Crapple  
Chairman

Committee member Susan M. Phillips concurs with the Committee's decision to affirm the Hearing Panel's findings of violations by Angus Jackson and Rose, but dissents from the Committee's decision to forego enhancing the penalties assessed on Angus Jackson and Bedick for their violations.

## AFFIDAVIT OF SERVICE

I, Nancy Miskovich-Paschen, on oath state that on August 15, 2012, I served copies of the attached Decision, by sending such copies by e-mail and regular mail, first-class delivery, in envelopes addressed as follows to:

David Stawick  
Office of the Secretariat  
Commodity Futures Trading  
Commission  
Three Lafayette Centre  
1155 21st Street, NW  
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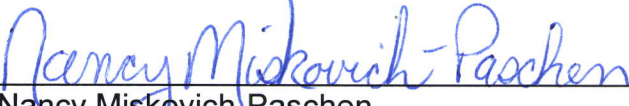
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Subscribed and sworn to before me  
on this 15th day of August 2012.

  
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Notary Public

