

NATIONAL FUTURES ASSOCIATION
BEFORE THE
BUSINESS CONDUCT COMMITTEE

FILED

NOV 29 2007

NATIONAL FUTURES ASSOCIATION
LEGAL DOCKETING

In the Matter of:)
)
MAJESTIC COMMODITY CORPORATION)
(NFA ID #347183),)
)
IAN F. BETTY)
(NFA ID #333605),)
)
RYAN EHRHART)
(NFA ID #371313),)
)
THOMAS E. KLINE)
(NFA ID #352929),)
)
MICHAEL H. SIMS)
(NFA ID #367281),)
)
CHRISTOPHER B. SPINLER)
(NFA ID #346307),)
)
and)
)
MICHAEL J. VALLEE)
(NFA ID #328639),)
)
Respondents.)

NFA Case No. 07-BCC-044

COMPLAINT

Having reviewed the investigative report submitted by the Compliance Department of National Futures Association ("NFA"), and having found reason to believe that NFA Requirements are being, have been or are about to be violated and that the matter should be adjudicated, NFA's Business Conduct Committee ("Committee" or "BCC") issues this Complaint against Majestic Commodity Corporation ("Majestic"), Ryan Ehrhart ("Ehrhart"), Michael J. Vallee ("Vallee"), Ian F. Betty ("Betty"),

Thomas E. Kline ("Kline"), Christopher B. Spinnler ("Spinnler"), and Michael H. Sims ("Sims")

ALLEGATIONS

JURISDICTION

1. At all times relevant to this Complaint, Majestic was an introducing broker ("IB") NFA Member.
2. At all times relevant to this Complaint, Sims was the president, sole principal, and an associated person ("AP") of Majestic and an NFA Associate.
3. At all times relevant to this Complaint, Ehrhart, Vallee, Betty, Kline, and Spinnler were APs of Majestic and NFA Associates.

BACKGROUND

4. Majestic was an IB NFA Member located in Delray Beach, Florida, which operated from September 2004 until it withdrew in March 2007. International Commodity Clearing guaranteed Majestic from September 2004 until May 25, 2005 and Comtrust, Inc. ("Comtrust") guaranteed Majestic from May 26, 2005 until October 14, 2005. In October 2005, Majestic became an independent IB, but continued to introduce its accounts to its former guarantor, Comtrust.
5. During the seven-month period, from May 26, 2005 to December 31, 2005, Majestic made approximately \$210,000 in gross commissions, while its customers lost roughly \$400,000 during the same period.
6. In September 2006, NFA commenced a sales practice investigation of Majestic, which included customer interviews of a number of Majestic's customers, viz., Hilary Gardner, Tom DeHuff, Drew Hudson, Susan Smith, Timothy Hearst and Louis Chin. NFA's interviews of these customers focused on the sales

solicitations they received from Majestic APs Stephen Shore, Ehrhart, Vallee, Betty, Kline, and Spinnler.

7. All of the above named APs previously worked at firms that were disciplined for sales practice fraud, including Executive Commodity Corp., Corporate Commodities, Inc., Protrade Futures & Options, and Futuretech Trading Group, Inc. ("Futuretech"), a firm that is currently serving a two-year suspension from NFA membership in connection with the settlement of a 2005 NFA sales practice case.
8. NFA's investigation revealed that Majestic primarily solicited its customers to purchase out-of-the-money options or option spreads and charged over \$150 in commissions and fees per contract. Majestic also promoted bull-call spreads, which usually consisted of purchasing an out-of-the-money call option and selling an even farther out-of-the-money call option in the same underlying futures contract. Engaging in these spread transactions enabled Majestic to purchase additional positions, thereby collecting almost twice as much in commissions (i.e., charging commissions on both the buy and sell side of the transaction).
9. The combination of high commissions and deep out-of-the-money options resulted in a significant hurdle for Majestic's customers to overcome just to break even. For example, on June 29, 2006, Majestic customer Hilary Gardner ("Gardner") purchased 5 September 06 unleaded gas call options with a strike price of 260.000 and sold 5 September 06 unleaded gas call options with a strike price of 270.000, when the underlying futures contract traded between 214.55 and 220.50. The premium for the spread was \$2,520, while commissions and fees were \$1,265, which resulted in a total purchase price of \$3,785. Just to

overcome the commissions and fees, Gardner would have had to experience over a 50% return (without factoring in that an option is a wasting asset).

10. Majestic customer, Tom DeHuff ("DeHuff"), faced a similar obstacle when he entered into a bull-call spread on July 14, 2006, purchasing 13 October 2006 unleaded gas calls with a strike price of 260.000 and selling 13 October 2006 unleaded gas calls with a strike price of 270.000 when the price range for the underlying futures price was 216.25 to 219.00. DeHuff paid \$6,552 in premiums and \$3,289 in commissions and fees, for a total purchase price of \$9,841. DeHuff also needed about a 50% return to cover the commission and fee charges.
11. In fact, Majestic charged high commissions to its customers even when they purchased options outright, as illustrated by Majestic customer Drew Hudson ("Hudson"). On February 6, 2006, Hudson bought 50 April Comex gold calls with a strike price of 630.000 where the underlying futures price ranged from \$577 to \$578. Because Hudson paid \$19,025 in premiums and \$7,700 in commissions and fees, or \$26,725 in total, he had to experience approximately a 40% return to break even (with no time delay).
12. In addition to putting customers into questionable positions, apparently for no other reason than to generate the most commissions for Majestic, NFA's investigation revealed that Majestic APs Shore, Spinnler, Ehrhart, Vallee, Betty and Kline made misleading sales solicitations to customers. Many of their solicitations exaggerated profit potential and minimized risk of loss, which is highly misleading considering that approximately 85% of Majestic's customers lost money in 2005, which fact was not disclosed to Majestic's customers.

Majestic's APs also suggested seasonal weather trends and well-known current events would move the market, even though the market had already factored this information into the price.

APPLICABLE RULES

13. NFA Compliance Rule 2-2(a) provides that no Member or Associate shall cheat, defraud or deceive, or attempt to cheat, defraud or deceive, any commodity futures customer.
14. NFA Compliance Rule 2-29(a)(1) provides that no Member or Associate shall make any communication with the public which operates as a fraud or deceit.
15. NFA Compliance Rule 2-6 provides, in pertinent part, that no person who has been expelled or suspended or is subject to a similar sanction by NFA in a proceeding brought pursuant to Part 3 of NFA's Compliance Rules that temporarily or permanently prohibits the person from NFA membership or affiliation in any capacity with an NFA Member shall hold himself out as a Member in good standing of NFA, or as affiliated with a Member, as the case may be, during the period during which the sanction is in effect.
16. NFA Compliance Rule 2-9(a) provides that each Member shall diligently supervise its employees and agents in the conduct of their commodity futures activities for or on behalf of the Member. Each Associate who has supervisory duties shall diligently exercise such duties in the conduct of that Associate's commodity futures activities on behalf of the Member.

COUNT I

VIOLATION OF NFA COMPLIANCE RULES 2-2(a) AND 2-29(a)(1): MAKING DECEPTIVE, MISLEADING AND HIGH-PRESSURE SALES SOLICITATIONS.

17. The allegations contained in paragraphs 1 and 3 through 14 are realleged as paragraph 17.
18. Majestic customer Gardner is 82 years old and has been retired for approximately 20 years. Gardner had an account through Majestic from May 5, 2006 to August 30, 2006. Gardner had no experience trading futures or options on futures prior to opening an account with Majestic. Gardner invested \$10,000 and lost \$9,378, of which \$3,036 was for commissions and fees.
19. Gardner was originally solicited via "cold call" by Majestic AP Adam Bassage, and only talked to him once or twice before AP Stephen Shore ("Shore") took over the account. Shore recommended that Gardner invest in unleaded gas options. According to Shore, Gardner could make \$420 for every one-cent increase in unleaded gas.
20. Shore told Gardner that he was interested in placing Gardner in option spreads called "straddles." Shore never explained how trading a straddle worked, nor did he explain why Gardner should trade a straddle. Furthermore, when Gardner asked Shore to explain the strategy, Shore refused and told Gardner not to worry about it. Shore told Gardner that Gardner would significantly increase his profit potential trading straddles, which were a common trading practice, according to Shore, so it was not worth explaining them to Gardner. As it turned out, Gardner's account never traded straddles. Instead, Shore placed Gardner in bull-call spreads, which he never discussed with Gardner and which limited Gardner's profit potential.

21. In addition, Shore discussed seasonal trends and current events with Gardner. Shore claimed that unleaded gas prices would go up in the summer when more people were driving and also during the hurricane season. Shore also told Gardner that orange juice was a good buy due to the damage that hurricanes had caused to orange trees. Shore never informed Gardner that these well known current events and historical trends were already factored into the option prices.
22. Shore's sales solicitations to Gardner were misleading in that they downplayed the risk of loss and suggested seasonal weather trends and well-known current events would move the market, when such information had already been factored into the market. Furthermore, Shore misrepresented the type of trading that was occurring in Gardner's account – indicating that Gardner was trading straddles when his account was actually trading bull spreads – and downplayed the effects of commissions and the substantial risk of loss. In addition, Shore failed to disclose to Gardner that approximately 85% of Majestic's customers lost money.
23. Majestic customer DeHuff is 60 years old and is retired. DeHuff had an account through Majestic from July 14, 2006 until September 7, 2006. DeHuff had no prior investment experience with futures or options on futures prior to opening an account with Majestic. DeHuff invested \$10,000 and lost \$9,127, of which approximately \$3,400 was for commissions and fees.
24. In or about July 2006, Majestic AP Ehrhart solicited DeHuff to open an account through Majestic. Ehrhart recommended that DeHuff invest in unleaded gas options because, according to Ehrhart, unleaded gas prices would go up during

the hurricane season and during the summer when more people are driving.

Ehrhart never advised DeHuff that these well-known current events and historical trends were already factored into the option prices. Instead, Ehrhart urged DeHuff to immediately send in money before unleaded gas prices went up.

25. Ehrhart told DeHuff that there were not many places that could give DeHuff the profits that options could. Ehrhart claimed he could substantially limit DeHuff's risk, while potentially quadrupling DeHuff's investment in only a few months. On several other occasions, Ehrhart also told DeHuff that he could make huge profits.
26. Ehrhart's solicitations to DeHuff were misleading in that they exaggerated the profit potential of trading options, downplayed the risk of loss and the effects of commissions, and emphasized seasonal events by suggesting they would move the price of unleaded gas, when such information had already been factored into the market. In addition, Ehrhart failed to disclose to DeHuff that approximately 85% of Majestic's customers lost money.
27. Majestic customer Hudson has been retired for approximately ten years. Hudson had an account through Majestic from January 25, 2006 to March 15, 2006. Hudson had no experience trading futures or options on futures prior to opening an account with Majestic. Hudson invested \$31,162 with Majestic and lost all of it as a result of trading losses and commissions of approximately \$9,000.
28. In or about January 2006, Majestic AP Vallee solicited Hudson to open an account through Majestic. Vallee recommended that Hudson trade sugar because there were problems with the crops in South America. Vallee also told Hudson that gold was really moving up and going to take off. Vallee said that the

market was hot and that Hudson could double his money in 30 days, and make a lot of money in a short time. Vallee claimed that, "the last guy that traded this made a lot of money."

29. Vallee's solicitations to Hudson were misleading in that they exaggerated the profit potential of trading options, downplayed the risk of loss and the effects of commissions, and suggested that well-known current events (problems with the crops in South America) would move the price of sugar options, when such information had already been factored into the market. In addition, Vallee failed to disclose to Hudson that approximately 85% of Majestic's customers lost money.
30. Majestic customer Susan Smith ("Smith") had an account through Majestic from August 5, 2005 to March 8, 2006. Smith invested a total of \$28,260 with Majestic and lost \$28,199, of which \$7,629 was for commissions.
31. In or about June 2005, Majestic AP Betty solicited Smith to open an account through Majestic. Betty told Smith that Majestic was a good company and very reputable, and that he would not work there if it was not a good company. Betty said that the majority of Majestic's clients were cautious and had good returns.
32. Betty recommended that Smith trade crude oil and claimed the time was good to trade oil because of the hurricane season. Betty gave Smith mathematical examples of profitable crude oil trades, but never discussed the risk of loss with her.
33. Shortly after Smith opened her account, Betty referred Smith to Majestic AP Vallee, whom Betty said was a senior broker at the firm. Vallee told Smith that his clients were heavy hitters and made tens of thousands of dollars with him.

Vallee recommended that Smith trade treasuries. Vallee said that Fed Chairman Greenspan was making an announcement about interest rates going up, which meant treasuries would go down. Vallee claimed that it was a sure thing and Smith would make lots of money. Based on what Vallee told Smith, she believed that Vallee wanted her to invest \$2,500 in treasuries, but she did not authorize such an investment. However, shortly after Smith talked to Vallee, Majestic notified Smith that she needed to wire \$25,000 to the firm to cover the cost of treasury bond options that had been purchased for her account.

34. Vallee also called Smith demanding the additional funds. Smith told Vallee that she did not have any available funds to cover the options and that she could only cover them by drawing funds from her credit cards. Vallee told Smith to take credit card advances and wire the money to Majestic. Vallee said Smith was responsible for covering the options and if she did not Majestic would take legal action against her. Therefore, over the course of the next few days, Smith sent Majestic four wires totaling about \$19,000, which when combined with the funds in her account covered the cost of the bond options.
35. After that, Smith had difficulty contacting Vallee as her options approached expiration. When Smith was able to speak to Vallee, she expressed concern that her options were not profitable and requested that Vallee sell them. Vallee talked Smith out of selling the options by assuring her that the options would be returning an incredible profit. Eventually, however, the bonds expired worthless.
36. Betty's and Vallee's solicitations to Smith were misleading in that they exaggerated the profit potential of trading options, downplayed the risk of loss and the effects of commissions, and suggested that well-known current events

(hurricanes and announcements from Fed Chairman Greenspan) would move the price of crude oil and treasury bond options, when such information had already been factored into the market. In addition, Betty and Vallee failed to disclose to Smith that approximately 85% of Majestic's customers lost money.

37. Majestic customer Timothy Hearst ("Hearst") is a 47-year-old mechanic at Delta Airlines. Hearst had an account through Majestic from March 31, 2005 to June 3, 2005. Hearst invested \$7,500 with Majestic and lost \$6,615, of which \$1,575 was for commissions and fees.
38. In late 2004 and early 2005, Majestic AP Kline solicited Hearst to open an account through Majestic. During one of their initial conversations, Hearst told Kline he was reluctant about investing as he was worried about his financial situation, which was shaky due to expected layoffs at Delta. Even so, Kline continued to call Hearst every week for four or five months soliciting Hearst to invest and assuring him he would not lose any money.
39. During one conversation, Kline told Hearst that he could easily quadruple his money. During other conversations, Kline claimed that a \$10,000 investment could make Hearst a \$30,000 profit in three months. When the topic of risk came up, Kline downplayed it by assuring Hearst that options were not risky and not to worry about the risk claims in the account documents because they were just a formality.
40. On one occasion, Kline told Hearst that he was certain fuel prices would go up because of the summer vacation season when more people would be driving and referred to China and India's demand for more fuel. Kline never told Hearst that these well-known seasonal trends and current events were already factored into

the option prices. Kline also never discussed commissions with Hearst or the effect of commissions on profitability.

41. Kline's solicitations to Hearst were misleading in that they exaggerated the profit potential of trading options and downplayed the risk of loss. In addition, Kline suggested seasonal weather trends and well-known current events would move the market, even though the market already had factored this information into the price of the options Kline was recommending. In addition, Kline failed to disclose to Hearst that approximately 85% of Majestic's customers lost money.
42. Majestic customer Louis Chin ("Chin") is a 45-year-old accountant who lives in Canada. Chin had an account through Majestic from November 21, 2006 to December 11, 2006. (Chin's account was transferred to Majestic from Futuretech, another IB.) Chin invested approximately \$12,000 with Majestic and lost almost \$8,200, of which \$4,368 was for commissions and fees.
43. Chin was originally solicited to open an account at Futuretech by Spinnler. Spinnler subsequently left the employ of Futuretech and started working as an AP at Majestic. When Chin's account was transferred to Majestic, Spinnler was Chin's broker.
44. Very soon after Chin's account was transferred to Majestic (which occurred on November 21, 2006), Spinnler recommended to Chin that he have Shore handle his account. Spinnler bragged that Shore was rich and very good at what he did. Spinnler also told Chin that Shore was highly respected in the industry and that Chin should trust Shore's recommendations since Shore had a lot of seniority. However, at the time that Spinnler was touting Shore and recommending him to Chin, Shore was not registered as an AP, as his NFA associate membership was

suspended, and had been since November 1, 2006, as a result of the settlement of an NFA disciplinary case against Shore.

45. *Despite Shore's suspension, Chin's account was transferred to Shore, who encouraged Chin to invest additional funds. Shore claimed he could make Chin \$60,000 to \$80,000 if Chin invested more money. After speaking to Shore, Chin invested approximately \$12,000 on November 27, 2006 to cover crude oil options that Shore had purchased for Chin's account.*
46. *Spinnler's statements to Chin recommending Shore and touting Shore's expertise were highly misleading, considering that Shore had recently been suspended from NFA for sales practice violations.*
47. *In addition, Shore's solicitations to Chin on behalf of Majestic were misleading in that they exaggerated profit potential, downplayed risk, and failed to disclose to Chin that 85% of Majestic's customers lost money.*
48. *By reason of the foregoing acts and omissions, Majestic, Ehrhart, Vallee, Betty, Kline and Spinnler are charged with violations of NFA Compliance Rules 2-2(a) and 2-29(a)(1).*

COUNT II

VIOLATION OF NFA COMPLIANCE RULE 2-6: CONDUCTING FUTURES BUSINESS WITH A SUSPENDED ASSOCIATE.

49. *The allegations contained in paragraphs 1, 15 and 44 through 47 are realleged as paragraph 49.*
50. *In July 2005, NFA adopted an Interpretive Notice to NFA Compliance Rule 2-6, which prohibits a Member firm from allowing a person who has been expelled, suspended, or is subject to a similar sanction by NFA from acting in a capacity that requires the person to be a registered AP and NFA Associate, as well as*

from performing activities on behalf of and in connection with an NFA Member's futures business, regardless of whether those activities require Commodity Futures Trading Commission ("CFTC") registration or NFA membership. In addition, Member firms are prohibited from allowing such a person to act as a consultant, an unpaid volunteer or, absent extraordinary circumstances, the Members should not even have such persons physically present in their offices.

51. In November 2006, while Shore was suspended from NFA, Majestic permitted Shore to perform activities on behalf of and in connection with Majestic's futures business, including the solicitation of customers.
52. By reason of the foregoing acts and omissions, Majestic is charged with violations of NFA Compliance Rule 2-6.

COUNT II

VIOLATION OF NFA COMPLIANCE RULE 2-9(a): FAILURE TO SUPERVISE.

53. The allegations contained in paragraphs 1, 2, 4 through 12, 16, 18 through 47, and 50 through 51 are realleged as paragraph 53.
54. NFA Compliance Rule 2-9 obligates each Member and Associate with supervisory responsibilities to diligently supervise the Member's operations and its employees in all aspects of their futures-related activities.
55. As demonstrated by the misleading sales solicitations alleged in Count I, Majestic failed to employ adequate personnel or procedures, or take other appropriate measures, to supervise the sales practices of its APs. In addition, Majestic made no effort to avoid hiring APs who worked at firms previously disciplined for sales practice violations.

56. Sims was Majestic's president, sole principal and an NFA Associate and, as such, he was responsible for supervising the overall operations of the firm. However, in November 2006, Majestic and Sims allowed Shore to solicit customers while he was suspended from NFA membership, which led to Shore's misleading and fraudulent solicitation to Louis Chin.
57. By reason of the foregoing acts and omissions, Majestic and Sims are charged with violations of NFA Compliance Rule 2-9(a).

PROCEDURAL REQUIREMENTS

ANSWER

You must file a written Answer to the Complaint with NFA within thirty days of the date of the Complaint. The Answer shall respond to each allegation in the Complaint by admitting, denying or averring that you lack sufficient knowledge or information to admit or deny the allegation. An averment of insufficient knowledge or information may only be made after a diligent effort has been made to ascertain the relevant facts and shall be deemed to be a denial of the pertinent allegation.

The place for filing an Answer shall be:

National Futures Association
200 West Madison Street
Suite 1600
Chicago, Illinois 60606-3447
Attn: Legal Department-Docketing

Failure to file an Answer as provided above shall be deemed an admission of the facts and legal conclusions contained in the Complaint. Failure to respond to any allegation shall be deemed an admission of that allegation. Failure to file an Answer as provided above shall be deemed a waiver of hearing.

POTENTIAL PENALTIES, DISQUALIFICATION AND INELIGIBILITY

At the conclusion of the proceedings conducted as a result of or in connection with the issuance of this Complaint, NFA may impose one or more of the following penalties:

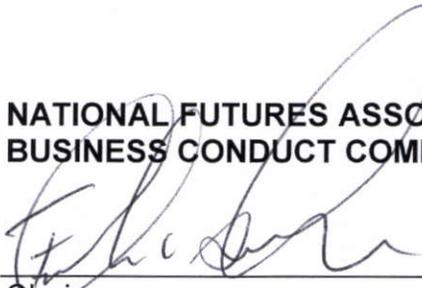
- (a) expulsion or suspension for a specified period from NFA membership;
- (b) bar or suspension for a specified period from association with an NFA Member;
- (c) censure or reprimand;
- (d) a monetary fine not to exceed \$250,000 for each violation found; and
- (e) order to cease and desist or any other fitting penalty or remedial action not inconsistent with these penalties.

The allegations in this Complaint may constitute a statutory disqualification from registration under Section 8a(3)(M) of the Commodity Exchange Act. Respondents in this matter who apply for registration in any new capacity, including as an associated person with a new sponsor, may be denied registration based on the pendency of this proceeding.

Pursuant to the provisions of CFTC Regulation 1.63 penalties imposed in connection with this Complaint may temporarily or permanently render Respondents who are individuals ineligible to serve on disciplinary committees, arbitration panels and governing boards of a self-regulatory organization, as that term is defined in CFTC Regulation 1.63.

**NATIONAL FUTURES ASSOCIATION
BUSINESS CONDUCT COMMITTEE**

Dated: 11/29/07

By: 

Chairperson