

DEC 21 2007

**NATIONAL FUTURES ASSOCIATION
BEFORE THE
BUSINESS CONDUCT COMMITTEE**

**NATIONAL FUTURES ASSOCIATION
LEGAL DOCKETING**

In the Matter of:

RYAN S. CUBIOTTI
(NFA ID #320990),

Respondent.

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NFA Case No. 07-BCC-051

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") issues this Complaint against Ryan S. Cubiotti ("Cubiotti").

ALLEGATIONS

JURISDICTION

1. At all times relevant to this Complaint, Cubiotti was registered as an associated person ("AP") of Liberty Real Assets Investment Corporation ("Liberty Real"), a former introducing broker ("IB") NFA Member that was located in Pompano Beach, Florida. Cubiotti was also an NFA Associate. As such, he was and is required to comply with NFA Requirements.

BACKGROUND

2. Before working for Liberty Real, Cubiotti worked as an AP at a number of other firms, three of which have been disciplined by NFA or the CFTC for sales practice

fraud, viz., Executive Commodity Corp., Liberty Financial Trading Corp., Inc. ("Liberty Financial") and Liberty Real.

3. In September 2005, this Committee issued a disciplinary Complaint against Cubiotti, which charged him with making deceptive and misleading sales solicitations and failing to uphold high standards of commercial honor and just and equitable principles of trade, while an AP of Liberty Financial.
4. A hearing was held in the aforementioned disciplinary case which resulted in a Decision being issued by the Hearing Panel finding that Cubiotti had committed the violations alleged in the Complaint. The Hearing Panel ordered Cubiotti to pay restitution to the customer who was victimized by his misleading sales solicitations, and also prohibited Cubiotti from being associated with an NFA Member unless the Member agreed, in writing, to tape record all of Cubiotti's conversations with existing and potential customers, for one year, retain the tapes for two years from the date they were made, and make the tapes available to NFA upon request.
5. As alleged herein, Cubiotti failed to abide by the taping requirements imposed by the Hearing Panel's Decision. In particular, Cubiotti failed to ensure that Liberty Real, as his sponsoring firm, recorded all of his conversations with existing and potential customers. In addition, Cubiotti made misleading sales solicitations to several Liberty Real customers, similar to those cited in his prior disciplinary case.
6. In addition to making the misleading sales solicitations to customers, Cubiotti also failed to act in the best interest of his customers in recommending trading strategies to them. For example, Cubiotti recommended out-of-the-money

vertical spreads to customers, which limited their profit potential but enabled Cubiotti to double his commissions since commissions were charged on both the buy side and the sell side. In addition, Cubiotti urged customers to acquire additional positions with the premiums they received on the sell side of the transaction, which generated even more commissions for Cubiotti.

APPLICABLE RULES

7. 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.
8. 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.
9. NFA Compliance Rule 2-5 provides, in pertinent part, that each Member and Associate shall comply with any order issued by the Executive Committee, the Membership Committee, the Business Conduct Committee, the Appeals Committee or any NFA hearing or arbitration panel.

COUNT I

VIOLATION OF NFA COMPLIANCE RULES 2-5, 2-2(a), AND 2-29(a)(1): FAILING TO COMPLY WITH THE TERMS OF A HEARING PANEL'S DECISION AND MAKING DECEPTIVE AND MISLEADING SALES SOLICITATIONS TO CUSTOMERS.

10. The allegations contained in paragraphs 1 through 9 are realleged as paragraph 10.
11. On November 16, 2006, and again on January 31, 2007, NFA requested Liberty Real to produce tapes of Cubiotti's conversations with potential and existing customers, which took place after October 11, 2006 (the date on which Cubiotti's

taping requirement commenced). NFA also requested Liberty Real to produce a list of accounts opened by Cubiotti in the previous six months, and a record of commissions paid to Cubiotti.

12. In addition, NFA interviewed Cubiotti about the methods used to tape his conversations with customers. Cubiotti told NFA that he was responsible for taping his own calls. Cubiotti said that he gave completed tapes to Liberty Real, which would then maintain them. Cubiotti also told NFA that his telephone automatically tape-recorded his calls but that he could push a button on the phone and stop the recording.
13. In response to NFA's requests for tapes of Cubiotti's conversations with customers, Liberty Real produced six tapes, each of which contained between fifteen and thirty conversations.
14. NFA reviewed these tapes and noted a number of deficiencies -- the dates and times of the taped conversations were not identified, and on many of the tapes the customer was not identified or was only identified by his or her first name. However, the most serious deficiency noted by NFA was the complete absence of tapes for many of the conversations that Cubiotti had with customers.
15. Liberty Real informed NFA that Cubiotti had twelve customer accounts, during the period he was required to tape. However, the tapes produced by Liberty Real did not include many of the conversations that these customers reported they had with Cubiotti.
16. For example, none of the tapes produced by Liberty Real included any of the numerous conversations between Cubiotti and two of his customers -- Bruce

Natanzi ("Natanzi") and Charles Cheton ("Cheton"). Nor did the tapes contain any conversations of Cubiotti soliciting customer, Cory Horton ("Horton"), to open an account, or discussing any of Horton's trades, even though Cubiotti and Horton spoke numerous times in late October 2006 prior to Horton opening an account through Liberty Real.

17. Under the terms of the Hearing Panel's Decision in Cubiotti's prior disciplinary case, Cubiotti was responsible for ensuring all conversations he had with potential and exiting customers were tape-recorded, but as the foregoing allegations demonstrate, Cubiotti failed to carry out this responsibility.
18. Although their conversations were not tape-recorded, Natanzi, Cheton, and Horton recounted for NFA their conversations with Cubiotti. According to Natanzi, he spoke with Cubiotti almost every other day during the first few weeks in January 2007. These conversations were all approximately fifteen minutes long. Cubiotti told Natanzi that it was a good time to invest in gasoline because prices would be increasing during the busy summer driving season. However, Cubiotti never disclosed to Natanzi, that this seasonal trend was already factored into the option price.
19. According to Cheton (who is an 83-year-old retiree), he was contacted by Cubiotti shortly after he opened his account with Liberty Real in late October 2006. Cubiotti told Cheton that he was the "head trader" at Liberty Real. Cubiotti urged Cheton to invest additional money and claimed that Cheton could double or triple his money trading S&P contracts. Cubiotti claimed that Cheton could make good returns in just one month as this was a "sure deal" and not risky at all.

Cubiotti also stressed that Cheton had to act quickly if he wanted to make money.

20. According to Horton, Cubiotti claimed that he had been in the industry for about ten years, even though NFA's records indicate that Cubiotti had been in the industry for only four years at the time of his solicitation of Horton. Cubiotti also told Horton that oil was going to go up since OPEC had made a major announcement about cutting supplies and that oil options would be gone if Horton did not act quickly. Cubiotti said that, best case scenario, Horton could make \$11,000 on his \$3,000 investment. However, Cubiotti never explained to Horton the worst case scenario.
21. Cubiotti's sales solicitations to Natanzi, Cheton, and Horton were misleading in that they exaggerated the profit potential of trading options, downplayed the risk of loss, and suggested that well-known seasonal trends and current events (e.g., the summer driving season and a public announcement from OPEC) would move the market in one direction or another, when this information had already been factored into the market. Cubiotti's sales solicitations to Natanzi, Cheton, and Horton were further misleading in that Cubiotti failed to disclose to them that the majority of his and Liberty Real's other customers lost money.
22. In addition to the misleading sales solicitations that Cubiotti made to Natanzi, Cheton, and Horton, Cubiotti also made misleading sales solicitations to customer Kenneth Latham ("Latham"), which occurred shortly after the Complaint was issued in Cubiotti's prior disciplinary case, but prior to the time that Cubiotti was required to tape-record his conversations with customers.

23. Cubiotti told Latham that he could make 30 to 40% in 60 days and that Latham needed to invest quickly. In Cubiotti's words, Latham needed to "do it now." Further, while Cubiotti said he could not guarantee anything, he also boasted that a gold trade was going to make Latham rich. After Latham made a \$7,000 profit on his first trade, Cubiotti convinced Latham to invest \$45,000 more in gold. Cubiotti told Latham his initial returns were just the beginning and that Latham could expect to hit a homerun with his next trades. Cubiotti – who was aware that Latham was using his children's college funds to invest – assured Latham he would almost double his investment in only a few months.
24. Cubiotti also discussed current world events with Latham and suggested to Latham that these well known events would affect the market, without disclosing that this information had already been factored into the market. In addition, Cubiotti told Latham that the information he was sharing with Latham was "insider information."
25. Cubiotti's sales solicitations to Latham were misleading in that they exaggerated the profit potential of trading options, downplayed the risk of loss, and suggested that well-known current events would move the market in one direction or another, when this information had already been factored into the market. Cubiotti's sales solicitations to Latham were further misleading in that Cubiotti failed to disclose to him that the majority of his and Liberty Real's other customers lost money.
26. By reason of the foregoing acts and omissions, Cubiotti is charged with violations of NFA Compliance Rules 2-2(a), 2-29(a)(1), and 2-5.