

**NATIONAL FUTURES ASSOCIATION  
BEFORE THE  
APPEALS COMMITTEE**

**FILED**

OCT - 3 2018

NATIONAL FUTURES ASSOCIATION  
LEGAL DOCKETING

In the Matter of:

CARLO SCEVOLA  
(NFA ID #338478),

Appellant.

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NFA Case No. 09-BCC-043

**DECISION**

On March 7, 2018, Carlo Scevola (Scevola) filed with NFA a Petition for modification (Petition) requesting that NFA's Hearing Panel modify the May 17, 2010 Decision issued *In the Matter of Carlo Scevola*. In that Decision, the Hearing Panel accepted Scevola's offer to settle the NFA Business Conduct Committee (BCC) Complaint issued against him on November 17, 2009 and imposed sanctions on Scevola. On May 24, 2018, an NFA Hearing Panel issued an Order denying Scevola's petition for modification.

Scevola filed a Notice of Appeal challenging the Hearing Panel's Order. Scevola argued that the Hearing Panel's denial was improper in light of the evidence and that the Hearing Panel failed to provide a statement of findings and conclusions required under NFA Compliance Rule 3-10. Having considered the briefs filed by Scevola and NFA, as well as the Record on Review<sup>1</sup>, the Committee affirms the Hearing Panel's Order for the reasons set forth below.

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<sup>1</sup> Citation to the Record will be in the form (R., Tab \_\_\_\_, p. \_\_\_\_).

## **PROCEDURAL BACKGROUND**

On November 17, 2009, NFA's BCC issued a Complaint against Scevola alleging that he violated NFA Compliance Rules 2-5, 2-36(b)(1) and (5) and 2-36(c) by failing to produce records that NFA requested, providing false and misleading information to NFA and providing false and misleading information to a pool participant. In an Answer filed on December 14, 2009, Scevola denied the relevant allegations of the Complaint and denied that he had violated any NFA Rule.

Scevola subsequently submitted an Offer of Settlement where he proposed to settle the BCC Complaint by withdrawing from NFA membership and associate membership and ceasing to be a principal of an NFA Member and agreeing that he would be permanently barred from NFA Membership and associate membership and from acting as a principal of an NFA Member. An NFA Hearing Panel accepted the Offer of Settlement and issued a Decision on May 17, 2010, incorporating the terms of the Offer of Settlement (Settlement Decision). The Settlement Decision ordered that Scevola withdraw from NFA membership and associate membership and cease being a principal of an NFA Member and, thereafter, be permanently barred from NFA membership and associate membership and from acting as a principal of an NFA Member.

On March 7, 2018, Scevola filed a Petition requesting that the Hearing Panel modify the Settlement Decision permanently barring him from NFA membership and associate membership and from acting as a principal of an NFA Member. Scevola alleged that circumstances had changed since the time he agreed to the permanent bar. In particular, Scevola argued that he would now be legally allowed to provide the documents requested by NFA, that he never was a threat to the public and currently

poses no risk to the public and, consequently, there is no persuasive rationale for continuing the permanent bar.

NFA and Scevola filed briefs in support of their positions. On May 24, 2018, the Hearing Panel issued an Order (Order) in which it stated that it had carefully considered the briefs and denied the Petition. On June 7, 2018, Scevola filed a Notice of Appeal of the Order. The Notice of Appeal cited two grounds for the appeal: that the Hearing Panel's denial was improper in light of Scevola's well-pled evidence supporting the Petition and that the Hearing Panel's Order failed to provide a statement of its findings and conclusions, in violation of NFA Compliance Rule 3-10.

Scevola requested the opportunity to present written and/or oral argument to the Appeals Committee (Committee). The Committee issued an Order on June 25, 2018, stating that the briefs filed by NFA and Scevola in the proceeding before the Hearing Panel were sufficient for the Appeals Committee's consideration of the issues and denying Scevola's request to present additional written and/or oral argument.

## II

### **DISCUSSION**

Section 17(b)(9) of the Commodity Exchange Act (7 U.S.C. § 21(b)(9) (2018)) requires NFA to have rules that provide for a fair and orderly procedure with respect to disciplining Members. To meet this requirement, NFA adopted Part 3 of its Compliance Rules to set forth the procedures used by NFA in disciplining Members. NFA is obligated to conduct its disciplinary proceedings in a manner consistent with these rules. Grandview Holdings Corp., et al. v. National Futures Association, 1997 WL 119994, Comm. Fut. L. Rep. (CCH) ¶ 26,996 (CFTC March 18, 1997); Commodity Futures Trading Commission (CFTC or Commission) Regulation 171.34(a)(2), 17



C.F.R. § 171.34 (2018). In this case, NFA Compliance Rule 3-11 governs settlements of disciplinary actions and provides, in pertinent part:

Rule 3-11. Settlement.

(a) Offer.

(i) A subject of an investigation in which the investigation report has been completed, or a Respondent in a disciplinary proceeding, shall submit any proposed settlement of the matter to . . . the Hearing Panel. The . . . Hearing Panel . . . may accept or reject the settlement offer as it deems appropriate.

\* \* \*

(b) Decision.

If the . . . Hearing Panel . . . accepts the offer, it shall issue a written decision specifying each NFA requirement it has reason to believe is being, has been or is about to be violated, any penalty imposed and whether the settling party has admitted or denied any violation.

\* \* \*

A decision on settlement by the . . . Hearing Panel shall become final and binding 15 days after the date of the decision . . . .

\* \* \*

(c) Withdrawal of Settlement Offer Is Prohibited.

A settlement offer may not be withdrawn by a Respondent after it is submitted to the . . . Hearing Panel. . . .

In accordance with Compliance Rule 3-11, Scevola submitted an offer of settlement to the Hearing Panel, the Hearing Panel accepted the offer and issued its Decision on May 17, 2010, and that Decision became **final** 15 days thereafter. Scevola now seeks to go beyond the provisions NFA Compliance Rule 3-11 by filing a Petition requesting that an NFA Hearing Panel modify the Decision in this matter. There is no provision in NFA Compliance Rule 3-11 that provides or even contemplates a mechanism to revisit or modify a final settlement Decision. To the extent that Scevola's request could be construed as a request to withdraw his settlement offer and submit a new one, Compliance Rule 3-11(c) specifically prohibits this.

Since NFA has no rule permitting a respondent to file a petition to modify a final decision issued in accordance with NFA Compliance Rule 3-11, the Hearing Panel

had no choice but to deny the Petition. To have done otherwise would have been contrary to the requirement that NFA conduct its disciplinary proceedings in accordance with NFA rules. Indeed, the Hearing Panel had no authority under NFA rules to even consider Scevola's petition on its merits.

The fact that a respondent in a CFTC proceeding may petition the Commission for this type of relief does not change this conclusion. Unlike NFA, the CFTC has rules that permit the CFTC to entertain petitions to modify final decisions based on settlement offers. In the Matter of Dickstein, Comm. Fut. L. Rep. (CCH) ¶ 26,412 (CFTC May 30, 1995) ("The Commission's Rules of Practice do not contemplate requests for relief from final decisions, except in the case of default. See, Commission Rule 10.94. In the unusual circumstances presented, however, we find that it is appropriate to waive the rules pursuant to Commission Rule 10.3 for the narrow purpose of assessing Dickstein's showing under the standard described by Fed. R. Civ. P. 60(b)(5).").

Scevola's appeal may also be construed as an invitation to this Committee to adopt a similar procedure. We decline to do so. The Committee's authority, which is set forth in NFA Compliance Rule 3-13, does not extend to creating what amounts to a new procedural rule.<sup>2</sup>

Scevola also argues that NFA acknowledged the standard for reviewing his Petition when an NFA attorney said in an email that, "*In the Matter of Frank H. McGhee*, CFTC Docket No. 83-4, ... discusses the standard for modifying a consent order in a CFTC case, **which standard we would maintain should also apply in instances**

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<sup>2</sup> The process for adoption of pertinent NFA rules is governed by Section 17(j) of the Commodity Exchange Act, 7 U.S.C. §21(j) (2018); Article III, Section 1(e) of NFA's Certificate of Incorporation; and NFA Bylaw 901.



**where a party seeks to modify a Decision accepting a settlement offer in an NFA disciplinary case."** (bold in original). (R. Tab 8, pp.1-2). To the extent that Scevola is claiming that the NFA attorney's representation empowered the Hearing Panel to consider his Petition, the claim is factually and legally without merit. First, the representation does not state that the Hearing Panel could consider the Petition but rather states the attorney's view on the standard that NFA staff would urge the Hearing Panel to apply in considering Scevola's Petition on the merits. Second, to the extent that the representation implied that Scevola's Petition could be filed and considered by the Hearing Panel, the representation is not binding on either the Hearing Panel or this Committee. More importantly, it does not and cannot operate to create a procedure that does not exist under NFA rules.

Additionally, Scevola appeals the Hearing Panel's May 24, 2018 Order on the grounds that it violated NFA Compliance Rule 3-10 because it did not include a statement of its findings and conclusions. Since the Committee has concluded that NFA rules do not permit Scevola to file a petition or the Hearing Panel to entertain his petition to modify the Settlement Decision, the Appeals Committee notes that even if the Hearing Panel erred, that failure is harmless in this case. Finally, the Committee does not address the merits of Scevola's Petition in light of its disposition of this case.

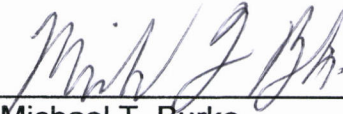
For the reasons set forth above, the May 24, 2018 Order is affirmed.

This Decision shall be effective 30 days after it is served on Scevola as prescribed by CFTC Regulation 171.9. He 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, he 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 15 days after this Decision is mailed.

**NATIONAL FUTURES ASSOCIATION  
APPEALS COMMITTEE**

Date: 10/03/2018

By:   
Michael T. Burke  
Chairman

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