

**FILED**

**NOV 16 2006**

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

**NATIONAL FUTURES ASSOCIATION  
LEGAL DOCKETING**

In the Matter of: )  
 )  
 ANTHONY JOHN COLUMBO, INC. )  
 d/b/a ACE FINANCIAL GROUP )  
 (NFA ID #265451), )  
 )  
 ANTHONY JOHN COLUMBO )  
 (NFA ID #36733), )  
 )  
 ROBERT F. ALLEN )  
 (NFA ID #314459), )  
 )  
 JON R. KRAMER )  
 (NFA ID #297276), )  
 )  
 and )  
 )  
 MICHAEL BERKOWITZ )  
 (NFA ID #339884), )  
 )  
 Respondents. )

NFA Case No. 06-BCC-035

**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 Ace Financial Group ("ACE"), Anthony John Columbo ("Columbo"), Robert F. Allen ("Allen"), Jon R. Kramer ("Kramer") and Michael Berkowitz ("Berkowitz").

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RESEARCH ON THE HISTORY OF THE  
UNITED STATES

## **ALLEGATIONS**

### **JURISDICTION**

1. At all times relevant to this Complaint, ACE was an introducing broker ("IB") NFA Member located in Boca Raton, Florida.
2. At all times relevant to this Complaint, Columbo was the sole owner and principal, and an associated person ("AP"), of ACE and an NFA Associate in accordance with NFA Bylaw 301(b). As such, Columbo was and is required to comply with NFA Requirements and is subject to disciplinary proceedings for violations thereof. ACE is liable for violations of NFA Requirements committed by Columbo in the course of his employment with ACE.
3. At all times relevant to this Complaint, Allen, Kramer and Berkowitz were APs of ACE and NFA Associates in accordance with NFA Bylaw 301(b). As such, Allen, Kramer, and Berkowitz were and are required to comply with NFA Requirements and are subject to disciplinary proceedings for violations thereof. ACE is liable for violations of NFA Requirements committed by Allen, Kramer, and Berkowitz in the course of their employment with ACE.

### **BACKGROUND**

4. ACE has been an IB NFA Member since August 1995. ACE is also registered as a Broker-Dealer and has been since September 2002.
5. ACE introduces accounts to Nations Investment LLC ("Nations"), a futures commission merchant NFA Member located in Ft. Lauderdale, Florida.
6. In 2004 and 2005, ACE had approximately 260 customer accounts, nearly 95% of which lost money, with customer losses totaling over \$2.7 million in those two

years. Most of these losses (nearly \$2.2 million) were sustained by the customers of Allen, Kramer and Berkowitz, approximately 94% of whom lost money in 2004 and 2005.

7. NFA commenced a sales practice investigation of ACE in 2005. As part of the investigation, NFA compliance staff assigned to NFA's Enhanced Surveillance Program posed as potential investors and received sales solicitations from ACE's APs Allen, Kramer and Berkowitz. In addition, NFA sent out customer surveys and conducted follow-up customer interviews with ACE customers regarding the sales solicitations they received from ACE AP Allen and ACE's president Columbo.
8. NFA's investigation revealed that ACE's APs, Allen, Kramer and Berkowitz – as well as Columbo – made misleading sales solicitations that exaggerated profit potential and minimized the risk of loss – especially considering that nearly 95% of ACE's and these APs' customers lost money in 2004 and 2005. In addition, Allen used high-pressure sales tactics to try to persuade a prospective customer to invest immediately so as not to miss out on tremendous profit opportunities.

#### **APPLICABLE RULES**

9. 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.
10. 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.

11. NFA Compliance Rule 2-29(a)(2) provides that no Member or Associate shall make any communication with the public which employs or is part of a high-pressure approach.
12. NFA's Interpretive Notice for NFA Compliance Rule 2-29(a)(2) states that a solicitation that urges a customer to make an immediate investment – i.e., act now think later – constitutes a high-pressure solicitation.
13. 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), 2-29(a)(1) AND 2-29(a)(2):  
MAKING DECEPTIVE, MISLEADING AND HIGH-PRESSURED SALES  
SOLICITATIONS.**

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14. The allegations contained in paragraphs 1 through 12 are realleged as paragraph 14.
15. On March 28, 2006, NFA Compliance staff member, Vic Fabris ("Fabris"), posing as potential investor "Hank White," contacted ACE AP Allen and expressed an interest in investing in silver.
16. Allen told Fabris that experts expected silver to go up to what it was in the 1970's. Allen said that there was a rumor that the exchange traded fund ("ETF") for silver would soon be approved by regulators and this would cause a big jump in the price of silver and cause the options price to jump from \$1.50 to \$2.00.

Allen told Fabris that it was key for Fabris to invest before the ETF was approved, as the initial jump would be a 30% to 50% profit.

17. On March 29, 2006, Fabris again spoke to Allen. Allen told Fabris that silver was up 12 cents and that regulators were ready to approve the ETF for silver. Allen said that the silver market was flying. Allen asked Fabris if he could invest \$20,000 to \$50,000. Allen told Fabris that, "you need to come aboard the winning family. You have to be in it to win it." Later that same day, Allen left Fabris a message on Fabris' voice mail that Silver was up 22 cents and that Fabris needed to get in the market because silver was about to go through the roof. Allen urged Fabris to "get on board this train."
18. On the morning of March 30, 2006, Allen left another message on Fabris' voice mail that silver was up another 32 cents. Fabris called Allen back a few hours later. During this conversation, Allen told Fabris that silver was up 55 cents. Allen claimed that Fabris would have made a 70% profit if he had invested on March 28, 2006.
19. Allen called Fabris again in the afternoon of March 30, 2006. Allen said that the largest speculative open interest in silver was right then and that a lot of his customers were moving into silver.
20. On April 4, 2006, Allen left another message on Fabris' voice mail indicating that silver was up again. Fabris called Allen back and, during this conversation, Allen assured Fabris that it was definitely not too late to get in silver.
21. On April 6, 2006, Allen left several messages on Fabris' voice mail in which Allen advised Fabris that "silver is up 28.5 cents." Allen asked Fabris, "what are you

waiting for?" On another occasion, Allen left a message for Fabris that he was going to make Fabris money in this market. In another message, Allen told Fabris, "I wish you were on board, partner," because "this thing...it hit like a true champion."

22. Over the next several weeks, Allen left daily messages on Fabris' voice mail giving updates as to how much silver was up that day. Fabris did not return these calls.
23. Allen's solicitations to Fabris were high-pressure in nature in that they urged Fabris to make an immediate investment in silver so as not to lose out and to take advantage of a supposedly unique profit opportunity in silver.
24. Allen's solicitations to Fabris included dramatic profit projections – e.g., "the ETF will cause the options price to jump 1.50 to 2.00," "when the ETF is approved, the initial jump will be a 30 - 50% profit," and "this is about to go through the roof." These claims were misleading as they greatly exaggerated the profit potential of trading options without any mention by Allen of the risk of loss.
25. In addition, Allen's solicitations to Fabris repeatedly emphasized well-known current events, suggesting that these events would move the silver market in one direction or another, when this information had already been factored into the market. It was, therefore, misleading for Allen to make exorbitant market predictions on information which had already been factored into the market, especially where, as here, over 90% of ACE's and Allen's customers lost money, which Allen failed to disclose to Fabris.

26. On June 29, 2006, NFA staff member Nancy Lukasik ("Lukasik"), using the assumed name "Nancy Blackman", called ACE and requested a copy of the firm's Gold Report that she said she saw on the firm's web site. The receptionist transferred Lukasik to ACE AP Kramer.
27. Kramer introduced himself to Lukasik as ACE's office manager. Kramer said that he was presently looking at five markets, including gold, the 30 year bond, unleaded gas, and cattle.
28. Kramer told Lukasik that ACE traded options, which had limited risk, and if Lukasik invested \$1,000 on an option and it expired worthless, Lukasik would only lose \$1,000. Kramer told Lukasik that he wanted her to understand that with options she could not lose more than she put in.
29. Kramer claimed that he recently had a client who bought a June gold option with a \$600 strike price, that the price of gold went from \$580 to \$730, and that the client's investment was worth over \$100,000. Kramer said that a profit of that magnitude does not happen a lot, but that a lot of the time a customer could get a return of 20%, 30%, 50%.
30. Kramer recommended that Lukasik purchase 30 year bond puts with a 105 strike price. Kramer claimed that if bonds went down to 102 and Lukasik sold she would make \$25,000 for a return of 130%. Kramer said that Lukasik could then sell half and diversify once she started making money.
31. According to Kramer, even though options on futures are high risk, Lukasik could double her money if the market did what he wanted, and she could make a 400%



return if the market behaved. However, Kramer also said that Lukasik could lose as well as profit from her investment.

32. On July 28, 2006, Kramer called Lukasik again. Kramer claimed that if Lukasik had invested earlier she would have already doubled her money. Kramer recommended that Lukasik invest in natural gas options. He said that every \$1 move equaled \$10 dollars and that with "\$1,250 to \$1,500 out the door," Lukasik could double or triple her investment on a \$3.00 move. Kramer also recommended unleaded gas options to Lukasik which he said would be a good investment based on seasonality, demand factors and the approaching hurricane season.
33. Kramer said that he wanted to fax Lukasik some articles and charts about unleaded gas and asked for her fax number, which she gave him. Later that day, Kramer called Lukasik again. Kramer asked Lukasik what she did for a living. Lukasik said that she was a project manager for a company called File Dynamics. Kramer said that when he sent the earlier fax to Lukasik, the confirmation said "NFA". Lukasik asked Kramer what NFA was and he said he did not know. Kramer then cautioned Lukasik that 80% to 90% of people lose money and that this was a high risk investment. Kramer said that he tells all of his clients this. Kramer told Lukasik that he would get back to her the following week. However, Kramer did not call Lukasik again.
34. Kramer's sales solicitations to Lukasik were misleading in that they exaggerated the profit potential of trading options and downplayed the substantial risk of loss. Although Kramer discussed risk with Lukasik, his discussion of risk was

overshadowed by his discussion of profits, e.g., he could double Lukasik's money if the market did what he wanted, he could make her a return of 400% if the market behaved and, if Lukasik had invested earlier, he could have doubled her investment. Kramer only disclosed to Lukasik that 80% to 90% of people lose money, when he suspected that Lukasik worked for NFA.

35. On June 30, 2005, ACE AP Berkowitz called NFA staff member David Croom ("Croom"), who was posing as a potential investor named David Johnson. Berkowitz told Croom that he got Croom's name from a request Croom had submitted via the internet requesting a report on unleaded gas.
36. Berkowitz told Croom that unleaded gas would be going up due to the summer driving season. Berkowitz said that, "the opportunity is huge." Berkowitz explained to Croom that with options every 10 cent move above the strike price is worth \$4,200 and that a \$15,000 investment buys ten options. Berkowitz said that a "10 cent move would turn a \$15,000 investment into \$42,000 by the end of summer." Berkowitz claimed that he made a 15% profit in unleaded gas options in just four days.
37. According to Berkowitz, "any disruption in refinery will cause prices to skyrocket," "we are in the hurricane season and the market can go through the roof," and "we plan on getting in and out of the market 3 to 5 times this summer and make between 30% and 300% each time." Berkowitz claimed that "we're at an historic point."
38. A day or two later, Croom received a voice mail message from Berkowitz that the "market was going through the roof." On July 7, 2005, Berkowitz called Croom

again. Berkowitz told Croom that he was being extra aggressive as the markets were literally flying. According to Berkowitz, "crude oil is up over \$60 a barrel," and the "consensus is that crude is on its way to \$65." Berkowitz told Croom that, "a smart investor would take advantage of this," and with "two hurricanes in the gulf coast off Florida, we are looking for a big spike!" Berkowitz said that "we look to make an in and out move making 30%, 50%, 100% over a 3 or 4 month period."

39. Berkowitz told Croom that if he purchased an option for \$1,000 when crude was at \$55, and crude went to \$55.50, the option would be worth \$1,100; and, if the price of crude went to \$56.50, the option would be worth \$1,250. Berkowitz said "that's a 30 to 40% profit."
40. Berkowitz urged Croom to "take advantage and invest today as the market is a little soft today." Berkowitz asked Croom, "How would you like to make between 30-300% return in the next 30 to 60 days. I'm talking just off the first trade. What typically happens is we make 30-40%. Occasionally we get that big one! It's unlikely you will lose if you dive in right now. Right now the markets are roaring."
41. On July 24, 2005, Croom received another voice mail message from Berkowitz stating that there were "a lot of big moves here in the market. We've got some fantastic opportunities in the commodities markets right now! Give me a call."
42. Berkowitz's sales solicitations to Croom were misleading in that they overstated the profit potential of trading options, minimized the substantial risk of loss associated with these investments, and failed to disclose that nearly 95% of ACE's and Berkowitz's customers lost money. Berkowitz also used a high-

pressure approach in soliciting Croom by urging him to make an immediate investment. Moreover, Berkowitz cited current events (e.g., hurricanes) and suggested that these current events would move the market and lead to inevitable profits, without disclosing that information about these current events was well-known and already factored into the market.

43. In early 2004, ACE AP Allen contacted Gerald Louiso (“Louiso”) of Milford, Ohio and solicited Louiso to open an account through ACE, which Louiso agreed to do in late April 2004. During the first several months that Louiso’s account was open, Allen recommended that Louiso invest in corn, soybeans, and unleaded gas options. With respect to soybeans, Allen told Louiso that because of the lack of precipitation in the plains, the price of soybeans would rise.
44. In late August or early September 2004, Allen recommended that Louiso invest in orange juice options. Allen told Louiso that they could make money in orange juice because of the hurricanes in Florida which would decimate the orange crop. Allen claimed that in previous years, when hurricanes came through, he had made money trading orange juice contracts.
45. Allen suggested to Louiso that he should not worry about risk as the investment was a “home run and sure thing.” Allen told Louiso that he did not want Louiso to be the only one to miss out on profits. Allen said that for every two point jump, Louiso could make money.
46. After the hurricanes hit, Allen told Louiso that oranges were rotting on the trees and that growers could not get into the groves to harvest the orange crop.

47. Louiso agreed to invest over \$20,000 in orange juice options and after he invested, Allen told him he was “sitting pretty” and that he was “really in a good position.” Notwithstanding these assurances, Louiso’s orange juice options lost money.
48. Allen then tried to persuade Louiso to invest in euro dollar options. Allen told Louiso that with the war going on, the euro would go up. Allen claimed that Warren Buffet was also investing in the euro. Louiso agreed to invest in euro dollar options and these, along with his other options, eventually expired worthless.
49. Louiso had an account through ACE from April 2004 to February 2006. Louiso had no prior investment experience in options prior to investing with ACE. Louiso invested a total of approximately \$50,000 and lost almost all of his investment.
50. Allen’s sales solicitations to Louiso were misleading in that they exaggerated the profit potential of trading options, downplayed the substantial risk of loss, failed to disclose that nearly 95% of ACE’s and Allen’s customers lost money, and emphasized well-known current events (e.g., lack of precipitation in the plains, hurricanes in the gulf, the Iraq war), suggesting that these events would move the soybean, orange juice, euro dollar markets in one direction or another, when this information had already been factored into the markets.
51. In mid-2006, ACE AP Allen solicited Bob Morreson (“Morreson”), an 89-year-old retiree, to open an account through ACE. Allen recommended that Morreson invest in sugar, corn, and crude oil options. Allen pushed corn as a good investment due to the increase in ethanol plants in the United States. Allen told

- Morreson that with all the corn being used to produce ethanol the supply left for exporting would be low, which would cause the price of corn to increase.
52. Allen also recommended crude oil options to Morreson. Allen said that he was expecting oil to increase in price due to the broken pipeline in Alaska which would affect the supply of oil. Allen said that the current situation in the Middle East would also increase the price of oil. Allen told Morreson that he would make a certain amount of money for every point that oil increased.
  53. Morreson expressed concerns to Allen about the risks involved with trading options, at which point, Allen transferred Morreson to ACE's president, Columbo. Columbo told Morreson, "These aren't risky investments because the prices are going to go up and you are going to make money."
  54. Morreson agreed to open an account in July 2006. In total, he invested approximately \$6,500 with ACE. Morreson invested in corn, unleaded gas, and sugar options – all of which expired worthless.
  55. Allen's and Columbo's sales solicitations to Morreson were misleading in that they exaggerated the profit potential of trading options, downplayed the substantial risk of loss, and failed to disclose that nearly 95% of ACE's and Allen's customers lost money. Allen's solicitations were further misleading in that they emphasized well-known current events (e.g., increasing number of ethanol plants, broken oil pipeline in Alaska, situation in the Middle East), suggesting that these events would move the market in one direction or another, when this information had already been factored into the market.

56. By reason of the foregoing acts and omissions, ACE, Allen, Kramer, Berkowitz and Columbo are charged with violations of NFA Compliance Rules 2-2(a) and 2-29(a)(1); and ACE, Allen and Berkowitz are also charged with violations of NFA Compliance Rule 2-29(a)(2).

## COUNT II

### **VIOLATION OF NFA COMPLIANCE RULE 2-9(a): FAILING TO DILIGENTLY SUPERVISE EMPLOYEES AND AGENTS IN THE CONDUCT OF THEIR COMMODITY FUTURES ACTIVITIES.**

57. The allegations contained in paragraphs 1, 2, 4 through 8, and 13 are realleged as paragraph 57.
58. ACE's president, Anthony Columbo, was the individual at ACE who was responsible for supervising the sales activities of ACE's sales force.
59. ACE and Columbo failed to adequately supervise ACE's sales force as evidenced by the sales practice abuses described in Count I, which implicated a large part of ACE's small sales force (including Columbo himself). Among other things, ACE and Columbo failed to: (a) adopt and implement adequate hiring standards, (b) conduct meaningful sales practice training for the firm's APs, (c) effectively monitor APs' sales solicitations, or (d) impose appropriate discipline on APs who engaged in improper sales practices.
60. By reason of the foregoing acts and omissions, ACE and Columbo 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;



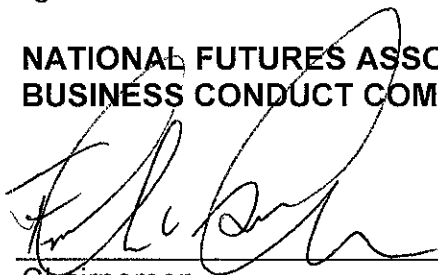
- (c) censure or reprimand;
- (d) a monetary fine not to exceed \$250,000 for each violation found; and
- (e) order to cease and desist or any other fitting penalty or remedial action not inconsistent with these penalties.

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 Commodity Futures Trading Commission ("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: 11/16/06

By:   
Chairperson

**AFFIDAVIT OF SERVICE**

I, Nancy Miskovich-Paschen, on oath state that on November 16, 2006, I served copies of the attached Complaint, by sending such copies in the United States mail, first-class delivery, and by overnight mail, in envelopes addressed as follows:

Anthony John Columbo, Inc.  
7100 W. Camino Real  
Suite 202  
Boca Raton, FL 33433  
Attn: Anthony J. Columbo  
President

Jon R. Kramer  
3580 NW 86 Way  
Sunrise, FL 33351

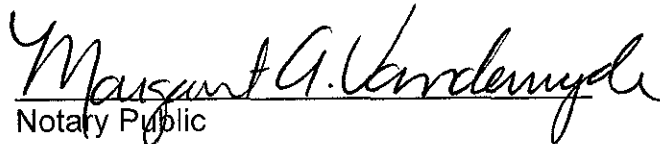
Michael Berkowitz  
8562 Kimble Way  
Boca Raton, FL 33433

Anthony J. Columbo  
2200 N. Conference Drive  
Boca Raton, FL 33486

Robert F. Allen  
1025 NE 3 Avenue  
Ft. Lauderdale, FL 33304

  
Nancy Miskovich-Paschen

Subscribed and sworn to before me  
on this 16th day of November 2006.

  
Notary Public

