NATIONAL FUTURES ASSOCIATION
BEFORE THE
HEARING PANEL

FILED

JUL 30 2007

NATIONAL FUTURES ASSOCIATION
LEGAL DOCKETING

In the Matter of:

BENJAMIN KERPE
(NFA ID #325466),

CHARLES M. MONTGOMERY
(NFA ID #336444),

and

ARTHUR VIERA
(NFA ID #334309),

Respondents.

NFA Case No. 06-BCC-023

DECISION

On April 24, 2007, a designated Panel of the Hearing Committee held a hearing to consider the charges against Benjamin Kerpe (Kerpe), Charles M. Montgomery (Montgomery) and Arthur Viera (Viera). The Panel issues the following Decision under National Futures Association (NFA) Compliance Rule 3-10.

I

PROCEDURAL BACKGROUND

On August 30, 2006, NFA's Business Conduct Committee issued a four count Complaint against Mercer Capital Management (MCM), Mercer Capital, Inc. (Mercer), Robert L. Flickinger, II (Flickinger), Benjamin Kerpe, Charles M. Montgomery and Arthur Viera. MCM, Mercer and Flickinger settled the charges against them prior to the hearing.

Count I of the Complaint charged that Kerpe, Montgomery and Viera violated NFA Compliance Rules 2-2(a) and 2-29(a) by engaging in deceptive and misleading sales solicitations. In addition, Count I of the Complaint charged Viera with violating NFA Compliance Rule 2-29(a)(2) by engaging in high pressure sales solicitations.

Kerpe, Viera and Montgomery each filed an Answer denying all material allegations in the Complaint.

At the start of the hearing, NFA requested that the allegations against Viera related to a solicitation of David Trey (Trey) in paragraphs 26-28 of the Complaint be dismissed because Trey was not available to testify. The Panel granted that request and dismissed those allegations with prejudice.

II

EVIDENCE PRESENTED AT THE HEARING

NFA presented the testimony of four witnesses and introduced several documents into evidence. Kerpe and Viera each testified on their own behalf and entered several documents into evidence. A brief summary of the evidence follows.

Lisa Marlow

Lisa Marlow (Marlow) testified that she is a manager in NFA's Compliance Department. Marlow stated that part of her responsibility is to supervise NFA staff that conduct audits of NFA Members.

Marlow stated that NFA audited Mercer and MCM in late 2004. Marlow explained that Mercer closed in August 2004 and Mercer's president, Robert Flickinger started MCM at that time.

Marlow testified that Kerpe was an AP of Mercer from November 2002 through September 2004 and an AP of MCM from August 2004 through October 2004. Kerpe is currently an AP and principal of QCM, an NFA Member introducing broker.

Marlow also testified that Viera was an AP of Mercer from February 2004 through August 2004 and an AP of MCM from August 2004 through May 2005. Viera has not been registered since that time.

In addition, Marlow testified that Montgomery was an AP of Mercer from February 2004 through August 2004 and an AP of MCM from August 2004 through January 2006.

According to Marlow, NFA analyzed the overall performance of Mercer's customers in 2003 using the 1099 forms issued to them. Marlow stated that this analysis revealed that Mercer had 169 customers in 2003 and overall these customers lost $268,700. Marlow stated that 122, or 72 percent, of Mercer's customer lost money in 2003. Marlow also stated that during 2003 Mercer collected $371,500 in gross commissions.

Marlow also testified that NFA analyzed the performance in certain Mercer customer accounts, including accounts belonging to Saurabh Shah (Shah), Dorothy Russell (Russell) and John Rice (Rice). Shah's account traded from June 2003 through July 2004. During that time, he deposited $7,900 and he lost $4,700. Russell's account was open from May 2004 through July 2004. During that time she deposited $10,000 and she lost $9,700. Rice's account traded from May 2004 through July 2004. Rice deposited $5,000 and he lost $4,900.

John Rice

Rice testified that he is a locomotive electrician from Corbin, Kentucky. Rice stated that his investment experience includes stock trading and a one-time investment in silver options in the late 1980s or early 1990s.

Rice stated that in April 2004, Viera called him and spoke to him about buying futures on soy crush and oil. Viera told him that he had already made a lot of money in soy crush, with some people making $3,000, $5,000, $10,000 and $15,000. Viera also told him that now was the time to get in because there were a lot of factors that were going to push the price up, including some disease in Africa and the fact that it was going to be a dry year. According to Rice, Viera told him he could make anywhere from $3,000 to $15,000.

Rice testified that Viera also spoke to him about investing in oil. Viera told him that as the driving season ended and the school season started, oil would go down because the demand for it lessens.

Rice stated that he agreed to open an account after speaking to Viera three to five times. Rice testified that he told Viera that he had lost money trading silver and he was not receptive to opening another account. According to Rice, Viera told him that he would trade to limit Rice's losses by buying puts and calls. Rice stated that Viera told him that if they lost one way, they would gain the other way. Rice opened an account with $5,000 and lost almost the entire amount. Rice also stated that nobody from Mercer ever told him that the majority of customers at Mercer lost money.

On cross examination, Rice agreed he was aware that he could lose everything trading options.

Under examination by the Panel, Rice stated that he had never heard of "soy crush" prior to speaking with Viera. He also didn't know anything about spread trades.

Arthur Viera

Viera testified that he only worked in the futures industry for a short period of time. Viera stated that he has extensive securities training and was Series 7 registered prior to working at Mercer.

Viera testified that he spoke to Rice several times and then he didn't hear from him for a few weeks. Rice then contacted him and asked what he needed to do to get started trading options. Viera also testified that Rice signed all the account opening documents involving risk and that he told Rice to read through the documents.

Viera stated that he followed a trading strategy with Rice to protect, to a small extent, Rice's investment if the market moved the wrong way. The strategy was not to completely reduce or eliminate risk.

Viera testified that he never discloses information about other accounts to a customer. Viera stated that he would never have said that clients were making a lot of money on a trade.

Saurabh Shah

Shah testified that he owns a convenience store in Florida. Shah stated he has owned the store for about six months, and prior to that he lived in New Jersey. Shah stated that before investing with Mercer his investment experience consisted of stock trading based on advice from friends.

Shah stated that Kerpe called him one afternoon. Kerpe told him that he

worked for Mercer and had 15 years' experience. He assured Shah that he was good at making money with not too much risk. Shah testified that he told Kerpe that he knew nothing about futures and options trading and that Kerpe told him not to worry about it. Kerpe told him if Shah made money, Kerpe would generally make money.

According to Shah, Kerpe told him he needed to invest immediately because there was a big interest-rate change coming up, and as a result there was a possibility of making good money by investing in Canadian dollars. Kerpe told him there were only two days before the meeting so he would send the account papers to Shah by overnight mail. Shah stated that he received the papers in the morning and about four hours later Kerpe sent someone to pick them up.

Shah also testified that he opened an account with Kerpe after their first telephone conversation. During that call, Kerpe talked about a 200 to 300 percent profit. Shah also stated that Kerpe did not say much about risk until after Shah started losing money. At that point, Kerpe told him there was a possibility of losing all the money.

Shah also stated that after two or three days he received a call from Flickinger, who told him that Kerpe was out of town. Flickinger also told Shah that he had been looking at Shah's position and he thought it was risky. Flickinger told him that he might lose all his money unless he invested more money to buy insurance positions. Shah asked Flickinger to have Kerpe call Shah and let him know whether it was okay to trade with Flickinger. When Kerpe called him, Kerpe told Shah that Flickinger was his supervisor.

Shah testified that the next time Kerpe contacted him, Kerpe told him that

he had made a mistake but he would take care of the positions and make sure that the money grew.

According to Shah, sometime around September, he and Kerpe also discussed the unleaded gas market. Kerpe told him that the price of gas would be going down because summer was almost over and there was excess inventory internationally. Kerpe convinced him to purchase gas positions.

Shah also testified that in December, he and Kerpe had a disagreement, and Flickinger took over his account. On cross examination, Shah stated that Flickinger took over his account in January 2004 and he closed the account in June 2004.

Shah also stated that Kerpe never told him that the majority of Mercer customer's lost money overall. Rather, whenever Kerpe suggested a new position, he told Shah that all his customers were making money.

On cross-examination, Shah acknowledged that he signed a risk disclosure statement and an options risk disclosure statement. Shah also stated on cross-examination that Flickinger had also made him promises about profits. Shah maintained, however, that he was not confusing the two because Kerpe always spoke in terms of percentages and Flickinger always made promises in terms of two, three or four times the investment.

Benjamin Kerpe

Kerpe testified that he is 28 years old and a Series 3 licensed commodities broker. Kerpe also stated that he has an economics degree from the University of Wisconsin at Milwaukee.

Kerpe stated that Mercer was his first job after graduating from college.

According to Kerpe, he was employed at Mercer from November 2002 through August 2004. Kerpe testified that he started his own company after he left Mercer.

Kerpe testified that he first spoke to Shah in mid-spring 2003. He and Shah had ten to fifteen conversations before Shah agreed to invest. Most of their conversations were 30 to 45 minutes, and they discussed social, political and economic events that could have caused market fluctuations. Kerpe also testified that Shah opened his account in June 2003. Before he was allowed to trade, he went through Mercer's initial compliance process, which included information on the inherent risks of futures and options. The initial compliance process also included information about seasonal factors being already calculated into the market and about commissions.

Kerpe denied that he ever told Shah that he had 15 years experience, because that would have made him nine years old when he started in the industry. Kerpe stated that he told him that he had a BA in economics and that he was a junior broker. Under examination from the Panel, Kerpe stated that he didn't know what a junior broker was.

Kerpe testified that the first trade he recommended to Shah was a bull call spread on Canadian dollars. Kerpe stated that he discussed the fact that this trade had limited profit potential and that the total risk was the cost of purchasing the spread, plus commissions. Kerpe stated that there was a three point wide spread on maximum profitability.

Kerpe also denied that he ever told Shah that it was possible to make profits of 100 to 200 percent in just two to three weeks from the Canadian dollar trade. Kerpe stated he never discussed percentage rates when discussing the profitability of

options because Mercer's clearing firm told him never to discuss percentages

Kerpe testified that when he recommended a trade at Mercer he would discuss the research with the client over the telephone. If the customer liked the idea, he would then discuss different strategies. Once the customer agreed to a trade, he would transfer the customer over to the confirmation desk where the office manager would tape record the customer's authorization. The customer would than be transferred to Flickinger, who called in the trade. Under examination by the Panel, Kerpe stated that when he referred to research he was talking about information he gathered from different sources, such as the media, web or newsletters and compiled to make his own educated guesses.

Kerpe also testified that he never discussed unleaded gas options with Shah, and he denied telling Shah that it was a good time to invest in unleaded gas options because summer was coming and people would be traveling more. Kerpe stated that the unleaded gas trades were done by Flickinger.

According to Kerpe, Flickinger also serviced Shah's account. Kerpe stated that he didn't get any commissions for trades made by Flickinger.

Kerpe testified that he does not know how many of Mercer's customers lost money because he did not have access to the equity runs. Kerpe stated, however, that of the 20 to 30 accounts he had at Mercer, approximately 70% of those lost money.

Dorothy J. Russell

Russell testified that she is a retired circuit court judge form Orange County, Florida. Russell stated that Montgomery began calling her in the fall of 2003. According to Russell, she does not know how Montgomery got her name.

Russell stated that she had between 15 and 25 calls with Montgomery before she agreed to open an account. During those calls, Montgomery talked to her about investing in options. Montgomery told her that if the commodity went up a few cents, she could make thousands of dollars. Russell acknowledged that Montgomery probably mentioned that the commodity price could go down, but the focus of his conversation was how easy it would be to make money. For example, Montgomery told her that within a few months she could double her money and then he would return her principal and she could trade with the profits. Montgomery gave her many reasons why the markets would go up, including that the trade deficit and service index were up, terrorist threats and an Iraqi refinery had been hit.

Russell also acknowledged that she signed paperwork that included information on risk. As a result, she was aware that there was a risk, but Montgomery's focus was on how much she could make.

Russell also testified that nobody at Mercer, including Montgomery, ever told her that a substantial majority of Mercer's customers lost money overall. According to Russell, if she had heard that, she would not have invested with Montgomery.

III

DISCUSSION

The Complaint charges Kerpe, Viera and Montgomery with engaging in deceptive and misleading sales solicitations in violation of NFA Compliance Rules 2-2(a) and 2-29(a)(1). As discussed more fully below, the Panel finds that all three individuals committed the violations alleged. The Complaint also charged Viera with engaging a high pressure sales solicitation in violation of NFA Compliance Rule 2-

29(a)(2). The Panel, however, did not find evidence that Viera's solicitation to Rice constituted a high pressure sales solicitation. Therefore, the portion of Count I alleging high pressure sales is dismissed with prejudice.

1. **Charles Montgomery**

NFA's case against Montgomery was based entirely on Russell's testimony. In particular, Russell testified that Montgomery began calling her in the fall of 2003. During those conversations, Montgomery told her the following:

- If the commodity option went up a few cents, Russell could make thousands of dollars.
- Russell could double her money within a few months and then Montgomery would return her principal and she could trade with profits.
- The option markets would go up because of the trade deficit, terrorist threats and an Iraqi refinery that had been hit.

Russell also testified that she was aware that there was risk but that Montgomery focused on how easy it was to make money and on how much money she could make.

Although Montgomery was properly served with notice of the hearing, he did not appear at the hearing and did not provide any rebuttal to Russell's testimony. He did file an answer denying that he mislead Russell.

The Panel found Russell to be a very credible witness. She was straightforward and factual with her testimony and did not attempt to conceal the fact that she was aware that there was risk. Russell was adamant, however, that Montgomery's focus was on profits.

The Panel understands why Russell felt that Montgomery's solicitation was focused on making money and did not give her an adequate understanding of the

risks involved. The statements made by Montgomery emphasized the likelihood of profits and the ease with which they could be made. Moreover, Montgomery's solicitation also implied that known market events, which were already factored into the market, would somehow have an impact on the price of the options he was recommending. These were clearly deceptive and misleading statements regarding the likelihood that Russell would make profits trading options with Mercer.

The Panel also finds that Montgomery acted with intent or recklessness when he made these statements. The recklessness standard can be met "when Defendant's conduct involves highly unreasonable omissions or misrepresentation ... that present a danger of misleading [customers] which is either known to Defendant or so obvious that Defendant must have been aware of it." R.J. Fitzgerald, 310 F.3d at 1328 (quoting Ziemba v. Cascade Int'l Inc., 256 F. 3d 1194, 1202 (11th Cir. 2001)). Montgomery, as a professionally licensed broker, surely knew that discussing profits based on known information and inflating profit expectations would mislead a customer regarding the amount and likelihood of generating profits trading commodity options. Montgomery also knew or should have known that discussing such rosy profit scenarios without fully discussing the likelihood of loss would mislead customers.

2. Benjamin Kerpe

NFA's evidence that Kerpe violated NFA's rules was Shah's testimony regarding his conversations with Kerpe. Shah testified that Kerpe told him that he had 15 years of experience in the industry and that he was good at making money without too much risk. Shah also stated that Kerpe told him he should invest in Canadian dollars because there was going to be an interest rate change and he could make 200

to 300 percent. According to Shah's testimony, Kerpe also talked to Shah about investing in unleaded gas options and told Shah that the price of gas would be going down because summer was almost over and there was excess international inventory. Shah also stated that Kerpe did not talk to him about losses and that whenever Kerpe suggested a new position, Kerpe told him that all his customers were making money.

Kerpe denied making any misleading statements to Shah. Kerpe also suggested in his testimony that if any misleading statements were made to Shah, Flickinger made them.

The Panel found Shah to be a very credible witness. He was very forthright in his testimony and recalled specific details of his conversations with Kerpe. When Kerpe's counsel questioned him on whether he could have been confusing Kerpe with Flickinger, Shah was adamant that he was not because Kerpe always talked in terms of percentages (200 to 300 percent), whereas Flickinger talked in terms of making two, three or four times his investment. Shah also had a clear recollection of the events surrounding Flickinger contacting him immediately after placing his first trade with Kerpe. Although Kerpe denied that he knew that Flickinger would be contacting Shah, Shah stated that he was not willing to do business with Flickinger unless Kerpe told him it was okay. As a result, Shah told Flickinger to have Kerpe call him and confirm it was okay for Shah to do business with Flickinger. Shah stated that Kerpe did contact him and told him that Flickinger was his supervisor.

On the other hand, the Panel did not find Kerpe to be a very credible witness. Kerpe was very evasive when answering questions about his current employment. Kerpe also spent a great deal of his testimony trying to blame Flickinger

and Mercer for any problems in Shah's account.

The Panel also found Shah's version of events regarding Flickinger contacting him to be more believable. Before Kerpe even testified that he did not know that Flickinger was contacting Shah, Shah testified that he was not willing to do business with Flickinger until Kerpe gave his okay. Although Kerpe disputed this, Shah's testimony makes perfect sense to the Panel. Shah had been dealing with Kerpe and he would have had every reason to question why another broker at the firm was contacting him.

In considering the conflicting testimony of these two witnesses, the Panel concludes that Shah is telling the truth. Nothing in Shah's testimony indicated that he was confused about events or not telling the truth. Moreover, there does not appear to be any reason why Shah would lie. He has nothing to gain from providing his testimony. Kerpe on the other hand, was very evasive in some portions of his testimony, and his version of events is less believable than Shah's.

The statements Shah testified that Kerpe made to him were clearly deceptive and misleading because they used dramatic profit examples and relied on known market conditions to convince Shah that it was relatively easy to profit trading commodity options. The Panel also finds that Kerpe acted with intent or recklessness because as a professionally licensed broker he should have known that the statements he made to Shah would paint a misleading picture regarding the likelihood of making profits trading commodity options.

3. Arthur Viera

NFA's case against Viera was based on Rice's testimony. Rice, who had a very clear recall of his conversations with Viera, testified that Viera contacted him about investing in "soy crush" and told him that he had some customers who had already made $3,000 to $15,000 trading soy crush. Viera also told Rice that he could make that type of money because there were a lot of factors that were going to push the price up, including disease in Africa and the fact that it was going to be a dry year. Rice also testified that Viera told him that he should invest in oil because the price would be going down as demand lessened with the end of the driving season and the start of school. Rice emphasized that one of the main reasons he agreed to invest with Viera was that Viera told him that he could limit Rice's losses by buying puts and calls and that if they lost one way, they would gain the other.

Viera denied making misleading statements to Rice. Viera acknowledged that he discussed limiting Rice's risk but claimed he did not promise to completely reduce or eliminate risk.

Again, the Panel was struck by the sincerity of the customer witness. Rice testified in a matter-of-fact manner regarding his dealings with Viera. It was clear to the Panel that Rice had absolutely no idea what he was investing in and was merely following Viera's lead. It was also clear to the Panel that the primary reason Rice agreed to invest with Viera was that Viera told him that he could limit his losses.

Viera's presentation focused primarily on the fact that he had provided Rice with standard customer risk disclosure statements and therefore Rice should have known the full risks of investing. The case law is clear, however, that subsequent risk

disclosure cannot "cure" a fraudulent sales solicitation.[1]

The Panel finds that Viera's solicitation of Rice was deceptive and misleading in violation of NFA's rules because it focused on significant profit scenarios ($3,000 to $15,000) and suggested that known factors (the end of the summer driving season) that were already factored into the market would somehow have an impact on the commodity options Viera was recommending. In addition, Viera's promises regarding limiting losses through spread trades overstated his ability to limit losses. The Panel also finds that Viera acted with intent or recklessness because he knew or should have known that these statements painted a misleading picture of the likelihood of Rice achieving profits and the risks associated with trading commodity options.

NFA also charged Viera with engaging in high pressure sales tactics. Based on Rice's testimony, however, the Panel did not find evidence that Viera's solicitation to Rice constituted a high pressure solicitation. Therefore, the portion of Count I alleging high pressure sales is dismissed with prejudice.

IV

FINDINGS AND CONCLUSIONS

1. At all relevant times, Kerpe, Montgomery and Viera were registered as APs of MCI and as NFA Associates in accordance with NFA Bylaw 301(b). As Associates, they were and are required to comply with NFA Requirements

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[1] See, CFTC v. R.J. Fitzgerald, 310 F.3d at 1329-1330; Commodity Futures Trading Commission v. Sidoti, 178 F.3d 1132, 1136 (11th Cir. 1999); In re Siegel Trading Company, Inc., NFA Case No. 01-BCC-011 (App. Comm. Oct. 6, 2003), aff'd., (CFTC April 1, 2005); In re Market Watch, Inc., NFA Case No. 92 –APP-008 (July 7, 1993) aff'd (CFTC March 3, 1997); In re JCC, Inc., NFA Case No. 99-APP-008 (July 7, 1993) aff'd, [1992-1994 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,126 (CFTC June 29, 1994)

and are subject to disciplinary proceedings for violations of NFA requirements that occurred while they were Associates. See NFA Compliance Rule 2-14.

2. In the fall of 2003, Montgomery made the following statements while soliciting Russell:

- If the commodity went up a few cents Russell could make thousands of dollars.
- Within a few months Russell could double her money and then Montgomery would return her principal and she could trade with the profits.
- There were many reasons the markets would go up including the trade deficit, terrorist threats, and that an Iraqi refinery had been hit.

3. The above statements were deceptive and misleading because they painted a distorted and misleading picture of the profit potential and risk of loss associated with options trading, made it appear that large profits were easily attainable trading through MCI and suggested that known events that were already factored into the market would impact the risk of the options. Therefore, Montgomery violated NFA Compliance Rules 2-2(a) and 2-29(a)(1). This conduct is inconsistent with just and equitable principles of trade.

4. In late spring 2003, Kerpe made the following statements while soliciting Shah:

- Kerpe had 15 years of experience in the industry.
- There was a big interest change coming up and there was a possibility of making 200 to 300 percent on Canadian dollars.
- Shah should invest in gas options because the price of gas would be coming down because summer was almost over and there was an excess inventory in some international places.

5. The first statement was deceptive and misleading because Kerpe had been an AP for less than a year at the time of the solicitation. The remaining statements were deceptive and misleading because they painted a distorted and misleading picture of the profit potential and risk of loss associated with trading with MCI, made it appear that profits were easily attainable trading with MCI, and suggested that known seasonal events that were already factored in to the market would impact the price of the options. Therefore, Kerpe violated NFA Compliance Rules 2-2(a) and 2-29(a). This conduct is inconsistent with just and equitable principles of trade.

6. Beginning in April 2004, Viera made the following statements while soliciting Rice to open an account with MCI:

- Viera had made a lot of money trading soy crush, with some people making $3,000 to $15,000.
- It was time to get in the soy crush market because there were a lot of factors that were going to push the price up, including some diseases in Africa and the fact that it was a dry year.
- Rice should invest in oil because as the school season started the price for oil would go down since the demand for it was less.
- Viera could limit Rice's losses by buying puts and calls so if they lost one way they would gain the other way.

7. The above statements were deceptive and misleading because they suggested that known events that were already factored into the market would impact the price of options, they painted a distorted and misleading picture of the profit potential and risk of loss associated with options and made it appear that large profits were easily attained through MCI. Therefore, Viera violated NFA Compliance Rules 2-2(a) and 2-29(a)(1). The conduct is

inconsistent with just and equitable principles of trade.

8. NFA did not establish that Viera employed a high pressure approach in his solicitation of Rice. Therefore, the Panel dismisses with prejudice the charge that Viera violated NFA Compliance Rule 2-29(a)(2).

V

PENALTIES

A number of factors must be considered when determining the appropriate sanctions for these violations. One of the more important factors is the nature of the offense. The evidence at the hearing clearly showed that each of these APs engaged in deceptive and misleading sales solicitations. Abuse of the investing public is a very serious violation and deserves a serious sanction. Moreover, with respect to Montgomery, his failure to participate in this process – especially after filing his answer – demonstrates his disdain for the regulatory process.

After considering the evidence against each of the Respondents, the Panel imposes the following sanctions.

Kerpe

1. Kerpe is suspended from NFA Membership and Associate Membership and may not act as a principal of an NFA Member for a period of three months from the date of this decision.

2. For a period of one year (exclusive of any period during which Kerpe is suspended or is not an NFA Member or an Associate Member), Kerpe may not be an Associate of an NFA Member unless Kerpe's sponsor agrees in writing to tape record all conversations that occur between Kerpe and both existing and potential customers; to retain each tape for a period of two years from the date the tape is created; and to make the tapes available to NFA upon request. During this one year period, Kerpe may not be an NFA Member or principal of an NFA Member unless that Member agrees in writing to tape record all conversations between the firm's APs and both existing and potential customers; to retain each tape

for a period of two years from the date the tape is created; and to make the tapes available to NFA upon request.

3. Kerpe shall pay a fine of $5,000 within thirty days of the date of this Decision.

Viera

1. Viera is barred from NFA Membership and Associate Membership and may not act as a principal of an NFA Member for a period of three months from the date of this decision.

2. For a period of one year (exclusive of any period during which Viera is suspended or is not an NFA Member or an Associate Member), Viera may not be associated with an NFA Member unless Viera's sponsor agrees in writing to tape record all conversations that occur between Viera and both existing and potential customers; to retain each tape for a period of two years from the date the tape is created; and to make the tapes available to NFA upon request. During this one year period, Viera may not be an NFA Member or principal of an NFA Member unless that Member agrees in writing to tape record all conversations between the firm's APs and both existing and potential customers; to retain each tape for a period of two years from the date the tape is created; and to make the tapes available to NFA upon request.

3. Viera shall pay a fine of $5,000 within 30 days of the day of this Decision.

Montgomery

1. Montgomery is barred from NFA Membership and Associate Membership and may not act as a principal of an NFA Member for a period of one year from the date of this decision.

2. For a period of one year (exclusive of any period during which Montgomery is suspended or is not an NFA Member or an Associate Member), Montgomery may not be associated with an NFA Member unless Montgomery's sponsor agrees in writing to tape record all conversations that occur between Montgomery and both existing and potential customers; to retain each tape for a period of two years from the date the tape is created; and to make the tapes available to NFA upon request. During this one year period, Montgomery may not be an NFA Member or principal of an NFA Member unless that Member agrees in writing to tape record all conversations between the firm's APs and both existing and potential customers; to retain each tape for a period of two years from the date the tape is created; and to make the tapes available to NFA upon request.

3. Montgomery shall pay a fine of $10,000 within 30 days of the day of this Decision.

VI

APPEAL

Kerpe, Montgomery and Viera may appeal the Panel's Decision to the Appeals Committee of NFA by filing a written Notice of Appeal with NFA's Secretary within fifteen days of the date of this Decision. Pursuant to NFA Compliance Rule 3-13(a), the Notice must describe those aspects of the disciplinary action to which exception is taken and must include any request to present written or oral arguments. The Decision shall be final after the expiration of the time for appeal or review unless it is appealed or reviewed.

VII

INELGIBILITY

Pursuant to the provisions of CFTC Regulation 1.63, this Decision and the sanctions imposed by it render Kerpe, Montgomery and Viera ineligible to serve on a governing board, disciplinary committee, oversight panel, or arbitration panel of any self-regulatory organization, as that term is defined in CFTC Regulation 1.63, until three years after the effective date of this Decision or until all of the sanctions imposed and conditions imposed on them have been fulfilled, whichever is later.

NATIONAL FUTURES ASSOCIATON

Dated: July 30, 2007

By: 

William T. Maitland
Chairperson

/nam(Decision:Mercer Capital Management.caw)

AFFIDAVIT OF SERVICE

I, Myra Lewis, on oath state that on July 30, 2007, I served copies of the attached Decision, by placing such copies in the United States mail, postage prepaid, certified mail, return receipt requested, and by regular mail, first-class delivery, in envelopes addressed as follows:

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Subscribed and sworn to before me
on this 30th day of July 2007.

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m:\myl\affd\kerpe, Montgomery & viera dec 7 07.caw

OFFICIAL SEAL
Mary A. Patton
Notary Public, State of Illinois
MY COMMISSION EXPIRES 7-17-09