IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

Commodity Futures Trading Commission,	)	CASE NO. 1: 04 CV 1403
	)	
Plaintiff,	)	
	)	
v.	)	JUDGE DONALD C. NUGENT
	)	
Carnegie Trading Group, Ltd., Inc., *et al.*,	)	
	)	ORDER
Defendants.	)	

This matter is before the Court on Plaintiff's Motion for Reconsideration. (ECF #82). Specifically, Plaintiff requests that the Court reconsider its Judgment in the captioned case pursuant to Fed. R. Civ. P. 59)e) and alter or amend it to impose injunctive relief against Defendants Carnegie Trading Group ("Carnegie") and John Glase or in the alternative to impose injunctive relief against Carnegie.

STANDARD OF REVIEW

A Motion to Alter or Amend Judgment pursuant to Rule 59(e) of the Federal Rules of Civil Procedure serves a limited purpose and should be granted for one of three reasons: (1) an intervening change in controlling law; (2) evidence not previously available has become available; or (3) it is necessary to correct a clear error of law or prevent manifest injustice. *General Truck Drivers, Chauffeurs, Warehousemen & Helpers, Local Union No. 957 v. Dayton Newspapers, Inc.,* 190

F.3d 434, 445 (6th Cir.1999), *citing Javetz v. Board of Control, Grand Valley State University,* 903 F.Supp. 1181, 1190 (W.D.Mich.1995).

Motions under Rule 59(e) may not by used to re-litigate old matters, or to raise arguments or present evidence that could have been raised prior to the entry of judgment. *Vanguard Transportation Systems, Inc. v. Volvo Trucks North America, Inc.*, slip copy, 2006 WL 3097189 (S.D. Ohio Oct. 30, 2006)(citations omitted). Moreover, since a Rule 59(e) motion seeks an extraordinary remedy, such motions should be "granted sparingly because of the interest in finality and conservation of scarce judicial resources." *Id*. citing *United States v. Limited, Inc.*, 179 F.R.D. 541, 547 (S.D. Ohio 1988) (citations omitted.) Where a movant simply repeats arguments previously presented or presents arguments or law which originally could have been argued, then the movant's proper recourse is an appeal to the circuit court. *Id*. at 547 n.9. (Citation omitted).

DISCUSSION

Following a bench trial, this Court issued a lengthy memorandum opinion and judgment in which the Court determined that former employees of Carnegie, John Hollenbaugh and Reid Henshaw, violated sections 4b(a)(2)(i) and (iii), and 4c(b) of the Commodity Exchange Act and Regulation 33.10 as a result of their activities in the Canal Fulton branch office during a 12-18 month time period. The Court further held that Carnegie was liable for Hollenbaugh and Henshaw's violations under Section 2(a)(1)(B) of the Act and that John Glase, the president and majority owner of Carnegie, was liable for the violations as a controlling person. In addition, the Court found that Mr. Glase violated Regulation 166.3 by failing to supervise Mr. Hollenbaugh and Mr. Henshaw with the required diligence. As a result of these findings, the Court ordered Carnegie and Mr. Glase to pay restitution in the amount of

$229,971.31; disgorge earnings in the amount of $32,850 and pay a civil monetary penalty of $98,550. The Court declined to permanently enjoin Carnegie and Mr. Glase from committing future violations of the Act finding that the violations which occurred at the Canal Fulton office were an isolated blight on Mr. Glase's 30 plus year career in commodity trading, rather than a long lasting systematic course of conduct and that since Carnegie and Mr. Glase's liability was vicarious in nature and the actual wrong doers have been enjoined and the Canal Fulton office closed, there was no reasonable likelihood of future violations if Carnegie and Mr. Glase are not enjoined.

Plaintiff asserts that the Court must alter or amend its judgment because it was a clear error of law not to impose injunctive relief against Carnegie and Mr. Glase. Plaintiff contends that the Court failed to apply correctly the factors set forth in *CFTC v. Hunt*, 591 F.2d 1211 (7th Cir. 1979) and *Securities and Exchange Com. v. Youmans*, 729 F.2d 413 (6th Cir. 1982). As this Court noted in its Memorandum Opinion and as both *Hunt* and *Youmans* held, the ultimate question before a court in an action for a statutory injunction after a violation has been demonstrated is whether the moving party has shown "some reasonable likelihood of future violations." *Hunt*, 591 F.2d at 1220. (Citation omitted). The Sixth Circuit standard in *Youmans* is marginally tougher: the moving party must show a "reasonable and substantial likelihood" that the defendant, if not enjoined, would violate the securities laws in the future. *Youmans*, 729 F.2d at 415. (Citations omitted). In both cases the courts enumerated factors that are relevant in determining the likelihood of future violations:

1. the egregiousness of the violations,
2. the isolated or repeated nature of the violations,
3. the degree of scienter involved,
4. the sincerity of the defendant's assurances, if any, against future violations,
5. the defendant's recognition of the wrongful nature of his conduct,

6. the likelihood that the defendant's occupation will present opportunities (or lack thereof) for future violations, and
7. the defendant's age and health.

Youmans, 729 F.2d at 415. No one factor is determinative. *Id.* In this case Plaintiff seeks injunctions against both Carnegie and Mr. Glase.

As to Mr. Glase, his violation of the Act was indirect. While the violations of Mr. Hollenbaugh and Mr. Henshaw were egregious in that they lied to customers, misrepresenting profit potential and risk of loss in order to obtain business, Mr. Glase's violation was vicarious as a controlling person and for violation of a regulation for his failure to adequately supervise. The Court found that given the circumstances Mr. Glase should have known what his employees in the Canal Fulton office were doing. When he discovered wrongdoing, he took competent measures to correct it. Mr. Glase's violation of a regulation, while regrettable was not egregious. The violations of the Act committed by Mr. Hollenbaugh and Mr. Henshaw were numerous and occurred during a 12-16 month period. Mr. Glase's failure to adequately supervise occurred for the same period. Mr. Glase operated Carnegie for seven years and had been involved in commodities for more than 30 years without any violations or problems. This 12-16 month period of inadequate supervision appears to be an anomaly for Mr. Glase–an isolated violation. Similarly, the Court determined that Mr. Glase, at most, had constructive knowledge of the activities of Mr. Hollenbaugh and Mr. Henshaw, thus his degree of scienter is less than a primary wrongdoer.

In relation to the factors of recognition of the wrongful nature of his conduct and the sincerity of the defendant's assurances, if any, against future violations, Mr. Glase argued at trial that his supervision was not inadequate and highlighted his efforts to make right any mistakes made by his employees. He

noted that the primary violators were no longer employed by Carnegie and that the Canal Fulton branch office in which they had operated was closed. Mr. Glase clearly believed that he had not violated the act or the regulations and no assurances against future violations were requested or given. In light of the outcome of this case and the serious penalties already imposed on Mr. Glase and Carnegie, it is very likely that Mr. Glase will be careful to avoid any future violations. Finally, Mr. Glase, an apparently healthy man in his later middle years, continues to operate Carnegie which could present opportunities for future violations of the Act. The balancing of all of these factors leads the Court back to its original conclusion–there is no reasonable or substantial likelihood that Mr. Glase will commit future violations of the Act.

Moreover, these factors applied to Carnegie lead to the same conclusion. Carnegie was vicariously liable for the actions of its employees and is responsible for the penalties and fines that occurred as a result of those actions. Carnegie committed no independent violation and can only act through its employees and owners. All of the primary wrongdoers have been fired and the offending office closed. The operation is thus smaller and tighter than before. Moreover, the Court has determined that there is no substantial likelihood that the majority owner of Carnegie, Mr. Glase, will commit, or permit any other employ to commit, any future violation of the Act. In *Youmans* the defendants who were enjoined were the individuals who were the primary wrongdoers whose egregious violations of the securities acts occurred over four years, not the corporation that employed them. Thus, the Court declines to permanently enjoin Carnegie in this instance.

CONCLUSION

For the reasons set forth above, the Plaintiff's Motion for Reconsideration pursuant to Fed. R.

Civ. P. 59 (ECF #82) is denied.

IT IS SO ORDERED.

/s/Donald C. Nugent
JUDGE DONALD C. NUGENT

DATED: February 22, 2007