

UNITED STATES OF AMERICA  
Before the  
COMMODITY FUTURES TRADING COMMISSION

INTERNATIONAL FUTURES BROKERAGE COMPANY	:	
v.	:	CFTC Docket No.CRAA-00-01
NATIONAL FUTURES ASSOCIATION	:	ORDER OF SUMMARY AFFIRMANCE
	:	

Our review of the record and the parties' appellate submissions establishes that the findings and conclusions of the National Futures Association ("NFA") are supported by the weight of the evidence; we therefore adopt them. We further conclude that NFA committed no error material to the outcome of this proceeding and that the parties generally have not raised important questions of law or policy that merit extended discussion. Pursuant to Section 17(i)(1)(A) of the Commodity Exchange Act ("CEA"), 7 U.S.C. § 21(i)(1)(A), we find that respondent International Futures Brokerage Company ("IFBC") in fact engaged in the acts and practices that NFA found it to have engaged in; that such acts and practices violate NFA Compliance Rule 2-4; and that Compliance Rule 2-4 facially is consistent with the purposes of the CEA, and was applied consistently with the CEA in this case. We have reviewed the sanction imposed by NFA—expelling IFBC from membership—and having found it neither oppressive nor excessive, we affirm it. 7 U.S.C. § 21(i)(2).

We note that respondent's appeal attempts to make much of the contention that the version of the infomercial, "Success and You," which was aired before NFA's Hearing Panel, was different from the version of the infomercial being broadcast during

the period that IFBC was active as a registered introducing broker. Respondent, however, is estopped from raising this issue by virtue of the numerous stipulations of its counsel during the hearing that it had derived financial benefit from “the infomercial” without attempting to draw any distinction among various versions thereof.<sup>1</sup> *MCA Television Ltd. v. Feltner*, 89 F.3d 766, 770-71 (11<sup>th</sup> Cir. 1996) (a party is bound by his stipulations and is estopped from raising on appeal an issue that he failed to raise and litigate at an evidentiary hearing).

IFBC argues that NFA has articulated, without notice, a new *per se* rule that bars certain forms of corporate relationships. Respondent stakes its argument on NFA’s statement that “[m]embers and [a]ssociates violate CR 2-4 when they use shell companies or complex corporate relationships in order to circumvent NFA rules and escape liability for their actions.” NFA Decision at 14, quoted in Brief of Appellant at 28. The statement is dictum that describes the effect of NFA’s decision, *i.e.*, that IFBC’s intentional resort to a web of complex corporate relationships had proved an insufficient shield against findings of NFA rule violations. IFBC was found liable for its own conduct—accepting and distributing leads known to be obtained through fraudulent advertising. It is not liable as a surrogate for any other person.

Respondent’s arguments respecting the standard of review have been comprehensively addressed by the U.S. Court of Appeals for the Seventh Circuit in *MBH Commodity Advisors, Inc. v. CFTC*, 250 F.3d 1052, 1059-64 (7<sup>th</sup> Cir. 2001). We adopt its

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<sup>1</sup> *E.g.*, respondent’s counsel stated at the hearing: “We’ve already stipulated that we received leads from the infomercial. . . . Again, we are stipulating that we received leads from the infomercial.” Hearing Tr. at 41, Vol. I Record on Review at Tab. 21A. Thus, at the hearing, during which the infomercial was actually played for the panel, IFBC acknowledged that the infomercial was aired and that it received leads based upon those airings. In these circumstances, IFBC is bound by its conduct at the hearing.

reasoning here. Accordingly, the result of NFA's decision, and the sanction imposed on respondent, are affirmed.<sup>2</sup>

IT IS SO ORDERED.

By the Commission (Chairman NEWSOME and Commissioners HOLUM, ERICKSON, LUKKEN and BROWN-HRUSKA).

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Jean A. Webb  
Secretary of the Commission  
Commodity Futures Trading Commission

Dated: August 21, 2002

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<sup>2</sup> The Motion to Withdraw of Thomas M. Muth, formerly one of respondent's attorneys, is granted *nunc pro tunc*.