

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

STEPHEN PICCOLO	:	
	:	
v.	:	CFTC Docket No. 03-E-1
	:	
COFFEE, SUGAR, COCOA EXCHANGE,	:	ORDER PURSUANT TO
INC.	:	DELEGATED AUTHORITY
	:	

Stephen Piccolo (“Piccolo”) requests the Commission to consider his late-filed appeal from an October 1, 2002 decision by the Coffee, Sugar & Cocoa Exchange, Inc. (“CSCE”).¹ After a hearing, CSCE’s Executive Floor Committee suspended Piccolo’s registration as a CSCE clerk for six months in light of it’s finding that his continued registration was contrary to the best interests of the exchange.² Piccolo concedes that he did not file his notice of appeal within the 30-day period specified in Commission Rule 9.20(a), but contends that dismissal is not warranted because his delayed submission was a product of poor advice from his former attorney. CSCE’s response to the notice of appeal does not take a position on whether the Commission should exercise its discretion and accept the untimely appeal.

Commission Rule 9.9(a) authorizes waiver of any Part 9 rule “[t]o prevent undue hardship on any party or for other good cause shown.” The Commission, however, follows the general rule that a party “bears ultimate responsibility for the questionable acts of his legal representative.” *In re Ferragamo*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,982 at 37,597 (CFTC Jan. 14, 1991). While the Commission has acknowledged that there

¹ He has also submitted an untimely motion for a stay pending review.

² The Executive Floor Committee drew this inference of unfitness from evidence that Piccolo escalated a trading dispute into a physical brawl in which members were injured and others were placed in physical danger.

may be extraordinary circumstances that justify a departure from the general rule, it has noted that a “client who seeks to evade [his] attorney’s acts or omissions . . . has the burden to show more than the mere arrival of a second lawyer whose approach differs from the first.”

Marraccini v. ContiCommodity Service, Inc., [1984-1986 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 22,747 at 31,115 (CFTC Sept. 20, 1985). Indeed, as the Commission has noted in a similar context, to generally accept counsel error as a justification for late-filed appeals “would render meaningless the deadline requirement.” *Billings v. International Precious Metals*, 1986 WL 68361 (Feb. 4 1986).

Piccolo’s generalized allegations are insufficient to warrant an exception to the normal rule that he is bound by the conduct of his legal representative. Accordingly, his appeal is dismissed as untimely and his motion for a stay is dismissed as moot.

IT IS SO ORDERED.³

Edson G. Case
Deputy General Counsel
Commodity Futures Trading Commission

Dated: December 20, 2002

³ By the Commission pursuant to delegated authority. *See* Commission Rule 9.9(b)(5).