

IN THE UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

In the Matter of	:	CFTC Docket No. 95-1
	:	
WAYNE I. ELLIOTT, FRANCIS	:	ORDER
MARITOTE, J. BRIAN SCHAER, and	:	
JONATHAN A. SION	:	

Respondent Jonathan A. Sion (“Sion”) seeks a stay of the effective date of the cease and desist order, six-month trading prohibition, and \$50,000 civil money penalty that we imposed on him in our February 3, 1998 opinion and order in this matter. *In re Elliott*, [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,243 (CFTC Feb. 3, 1998), *aff’d*, 202 F.3d 926 (7th Cir. 2000), *cert. denied*, No. 00-259, 2000 WL 1201653 (Nov. 27, 2000).¹ Sion argues that a stay is appropriate while we consider his recently submitted motion to reduce sanctions. He contends that it is likely he will succeed in his effort to obtain a reduction in sanctions and that he will suffer irreparable harm if the sanctions imposed in 1998 become effective. The Division of Enforcement (“Division”) opposes Sion’s motion.

A respondent requesting a stay of the effective date of sanctions must show that he is likely to succeed on the merits, that he will suffer irreparable harm if a stay is denied, and that neither the public interest nor the interests of any other party will be adversely affected if a stay is granted. *In re Mayer*, [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,260 (CFTC Mar. 23, 1998). Sion’s motion fails to make a persuasive showing on any of these factors.

Sion's motion to reduce sanctions generally highlights circumstances that either were or could have been raised at the time we made our initial sanctions determination. Our precedent indicates that such circumstances merit little or no weight in determining whether forward-looking sanctions such as a cease and desist order or trading prohibition should be reduced or eliminated. *In re Rousso*, [1999-2000 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 28,242 at 50,491-92 (CFTC Sept. 13, 2000).² The circumstances Sion raises that do not fall into this category are not persuasive evidence that imposition of a cease and desist order and trading prohibition is no longer equitable. *Compare Rousso* at 50,492.

Sion also has failed to demonstrate that the sanctions will cause him irreparable harm. Sion claims that the six-month trading ban will cause him to “los[e] all of his trading opportunities during the six month suspension” and that “these opportunities cannot be recovered if a reduction [in his sanctions] is ultimately made by the Commission.” Emergency Motion to Stay at 2. In effect, this amounts to a claim that Sion will lose potential income if he is prohibited from trading. A loss of income as a result of a challenged agency action, however, “falls far short” of the type of irreparable injury necessary for injunctive relief. *In re Reddy*, [1996-1998 Transfer Binder], Comm. Fut. L. Rep. (CCH) ¶ 27,272 at 46,216 (CFTC Mar. 9, 1998).

Finally, Sion also has failed to demonstrate that the public interest will not be adversely affected if a stay is granted. The Commission has been entrusted to enforce fair practice and honest dealing in the futures markets. *Mayer*, ¶ 27,260 at 46,142. As

¹ The effective date of these sanctions has been stayed for almost three years pending judicial review of our opinion and order.

² We focus on the cease and desist order and trading prohibition because these are the sanctions that might conceivably result in irreparable harm to Sion.

we stated in imposing sanctions on respondents, although the trading at issue did not involve customer accounts, respondents' violations "impacted the integrity of the market." *Elliott*, ¶ 27,243 at 46,008. "Further delay in the imposition of sanctions would only erode public confidence in the markets." *Mayer*, ¶ 27,260 at 46,142.³

CONCLUSION

Sion's motion does not demonstrate that a stay of the effective date of his sanctions is warranted. Accordingly, we deny Sion's motion to stay.

IT IS SO ORDERED.

By the Commission (Chairman RAINER, Commissioners HOLUM, SPEARS, NEWSOME and ERICKSON).

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

Dated: December 22, 2000

³ We also reject Sion's contention that the stipulation that respondents had "high integrity and excellent reputations" as traders demonstrates that a stay would not harm the public interest. That stipulation reflects Sion's reputation as a trader prior to our finding that he violated the Commodity Exchange Act and, therefore, carries little significance at this point concerning the effect of a stay on the public confidence in the markets.