

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

GARETH HOWELL

v.

NATIONAL FUTURES ASSOCIATION

CFTC Docket No. CRAA 04-03

ORDER PURSUANT TO
DELEGATED AUTHORITY

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Gareth Howell (“Howell”) seeks a stay of an order of the National Futures Association (“NFA”) summarily suspending him from associate membership due to his failure to pay an arbitration award. He has also appealed from the suspension order. In support of both, he argues that the underlying arbitration award was flawed and should be set aside. The National Futures Association (“NFA”) contends that Howell’s stay request is untimely and raises issues outside the jurisdictional limits described in Commission precedent.

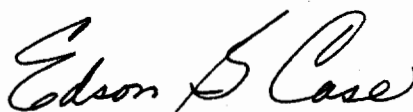
Howell does not challenge NFA’s claim that it served him with its suspension order on December 16, 2003. Under Commission Rule 171.22, an aggrieved party may seek a stay pending Commission consideration of his appeal by filing and serving an appropriate petition “[w]ithin ten days of service” of such a notice. The Office of Proceedings, however, did not receive Howell’s stay petition until January 13, 2004. In these circumstances, it was clearly untimely.

In any case, the Commission has held that it will hear an appeal from this type of suspension only if it involves something more than the ministerial application of a pre-determined sanction. *Machin v. National Futures Ass’n*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,041 at 37,893 (CFTC Apr. 25, 1991). Because the Commission has excluded appeals from arbitration proceedings from its review jurisdiction under Part 171, *see*

Commission Rule 171.1(b)(2), it cannot consider the issues expressly raised by Howell. Moreover, there is no basis to infer that the dispute involves a colorable claim that goes to the core of the Commission's role in ensuring the reliability of NFA's membership process (e.g., that NFA acted arbitrarily in imposing the suspension). *Compare Bunyard v. National Futures Association*, CRAA 03-01 (CFTC March 5, 2003).

For the foregoing reasons, both Howell's petition for stay and appeal are dismissed.

IT IS SO ORDERED.¹



Edson G. Case
Deputy General Counsel
Commodity Futures Trading Commission

Dated: February 27, 2004

¹ By the Commission pursuant to delegated authority. 17 C.F.R. § 171.50(a)(5),(8).