

BEFORE THE BUSINESS CONDUCT COMMITTEE
OF THE
CHICAGO BOARD OPTIONS EXCHANGE, INC.

In the Matter of)	
)	
DARRYL BEHM)	File No. 96-0016
440 S. LaSalle St., 19th Floor)	
Chicago, IL 60605)	
)	
Respondent)	
)	

HEARING PANEL: Michael Coghlan, Chairman
Arnie Lau
Rob Schmidt

COUNSEL:
For the Exchange: Margaret G. Abrams
Chicago Board Options Exchange, Inc.
400 South LaSalle Street
Chicago, Illinois 60605

For the Respondent: Louis Panos
440 South LaSalle Street
19th Floor
Chicago, Illinois 60605

DECISION

PROCEDURAL BACKGROUND

This disciplinary proceeding was instituted by the Business Conduct Committee (hereinafter the "BCC" or the "Committee") of the Chicago Board Options Exchange (the "CBOE" or the "Exchange") under Chapter 17 of the Exchange's rules. On or about May 3, 1996, pursuant to the authorization of the BCC, a Statement of Charges (the "Charges") was issued against the Respondent, Darryl A. Behm, for certain alleged violations of Exchange Rules 4.1, 4.6, 6.51(a) and (b) and Interpretation and Policy .01 thereunder, 17.2(b) and 17.50(g)(4). (See Exch. Ex. 1). In his Answer to the Charges, Respondent denied the rule violations alleged in the Charges. (See Exch. Ex. 2).

In accordance with CBOE Rule 17.6, a hearing in this matter was held before a panel of the BCC (the "Hearing Panel") on January 30, 1997. During the course of the hearing, both the Exchange and the Respondent were given a full opportunity to present evidence pertaining to the Charges. In accordance with CBOE Rule 17.9, the Hearing Panel subsequently presented its findings, conclusions, and recommended sanction to a majority of the BCC.

This Decision represents the decision of a majority of the members of the BCC and is based solely on the record established in connection with the Hearing which was held in this case. All findings and conclusions contained herein are based upon a preponderance of the evidence.

THE CHARGES

The Charges against the Respondent allege that he added or altered the execution times recorded on his market-maker hardcards (identified by the use of his acronym "DYL") for approximately 22 transactions effected on various dates during November and December 1995 and then submitted those altered hardcards to the Exchange during the summary fine verification procedure in an attempt to avoid the imposition of summary fines for the failure to report accurate transaction times on his hardcards. The Charges also allege that Respondent added or altered the execution times recorded on hardcards for approximately 113 transactions effected by Louis S. Panos (identified by the use of his acronym "LUP") on various dates during November and December 1995 and then also submitted those altered hardcards to the Exchange during the summary fine verification procedure in an attempt to avoid the imposition of summary fines for the failure to report accurate transaction times on those hardcards.

The Charges allege that during all relevant time periods Respondent was registered with the Exchange to transact business on the Exchange in accordance with Exchange Rules as a market-maker nominee for Panos Trading Limited Partnership ("Panos Trading"). The Charges also allege that the Respondent was authorized by Louis Panos to request and conduct on Mr. Panos' behalf the summary fine verification procedure, for reversing certain minor rule violation fines imposed by the Exchange pursuant to CBOE Rule 17.50.

The Exchange charges that the Respondent's conduct constitutes a violation of Exchange Rule 4.1 (which prohibits generally "acts and practices inconsistent with just and equitable principles of trade"), Rule 4.6 (which generally prohibits members making false statements in reports or communications to the Exchange), Rule 6.51(a) and (b) and Interpretation and Policy .01 thereunder (which generally require that a member immediately report all transactions to the Exchange in the form and manner prescribed by the Exchange, including the time of the transaction), Rule 17.2(b) (which prohibits a member or a person associated with a member from impeding an Exchange investigation respecting possible violations within the disciplinary jurisdiction of the Exchange) and Rule 17.50(g)(4) (which generally sets forth the summary fines to be imposed for the failure to submit accurate trade information).

FINDINGS AND CONCLUSIONS

During the hearing, the Hearing Panel accepted into evidence Exchange Exhibits 1 through 94. From these exhibits, the testimony of the witnesses presented by the Exchange and the Respondent's testimony, the Committee finds that the Respondent altered both the execution times on his hardcards and the execution times on the hardcards of Louis Panos after those hardcards had been submitted to the Exchange.¹

Mr. William Inglese, a Senior Vice-President in charge of equity operations for First Options, was called as a witness on behalf of the Exchange. Mr. Inglese's testimony established that First Options, in its capacity as the clearing firm for Panos Trading, would have had no motive to add or alter the times which are now present on the hardcards in question. (Hearing Tr. at 26). Furthermore, Mr. Inglese's testimony established that First Options would not keypunch a card as having "no time" if a readable time was present on the card at the time of keypunching and that if the information on a hardcard is unclear, the keypuncher enters the time he sees on the card. (*Id.* at 20-22). Mr. Inglese also stated that First Options would not send a card to a trade-checker for a missing time entry. (*Id.* at 23). Finally, Mr. Inglese testified that in the event that a trade-checker does alter a hardcard, those alterations are made in red ink and initialed. (*Id.*) The Committee finds Mr. Inglese's testimony as a whole to be credible.

Joanne Heenan, a Manager in the Exchange's Department of Market Regulation, also testified on behalf of the Exchange. Ms. Heenan testified that Panos Trading received notice of the imposition of \$2,800.00 in summary fines for the relevant time period and that Respondent requested verification on behalf of Panos Trading. (Hearing Tr. at 31-32). Ms. Heenan also testified that Respondent took possession of the hardcards in question during the summary fine verification process and also received from the Exchange copies of the inaccurate billing detail reports indicating the execution times submitted by the contra parties to the relevant trades. (*Id.* at 33-42). Ms. Heenan further testified that, after Respondent submitted to the Exchange the hardcards that the Exchange now charges were altered during the verification process, the summary fines assessed to Panos Trading were reversed and the matter was referred to the Exchange's Department of Market Regulation due to the Exchange staff's suspicions regarding the times which now appear on the hardcards. (*Id.* at 42-44). The Committee finds Ms. Heenan's testimony as a whole to be credible.

Melissa Becker, a Senior Investigator in the Exchange's Department of Market Regulation, testified on behalf of the Exchange regarding the results of her investigation as to whether Respondent altered or added times found on 20 of his hardcards and on 106 of the hardcards

¹A trade time submitted by a party is deemed to be inaccurate if it varies by more than five minutes from the time indicated on the contra party's trade card or the time indicated on the Exchange's price reporting record. (See Hearing Tr. at 30).

for trades effected by Louis Panos.² For example, Ms. Becker testified regarding a hardcard for a sale of 20 Nov. 440 puts effected by Respondent on November 15, 1994. (Hearing Tr. at 57-61). Ms. Becker testified that the transaction listing report for that transaction and the price reporting sheet submitted by Respondent both indicate an execution time of 8:57 a.m. while the buyer's execution time was keypunched as 8:47 a.m. (*Id.* at 58). Ms. Becker then noted that the actual hardcard for the transaction now contains a time of 8:47 a.m. -- leading her to conclude that the time on the hardcard was altered after the trade was keypunched in order to match the contra party's reported time and avoid the summary fine. (*Id.* at 59).

In addition, Ms. Becker also testified regarding a November 23, 1994 sale by Respondent of 10 Dec. 420 puts at 8 1/8 where the contra party reported an execution time of 11:57 a.m. (Hearing Tr. at 61). The keypuncher for the Respondent's side of the transaction input a "no time" code for the transaction and the price reporting ticket contains no time for the trade. (*Id.* at 61; Exch. Ex. 23A). Upon examination of the hardcard for the trade -- which should have contained a carbon impression of the time, if any, found on the price reporting ticket -- Ms. Becker discovered that it contained a clearly written time of 11:57 a.m. (Hearing Tr. at 61). Moreover, the time now found on the hardcard was written in pencil, rather than carbon as one would expect if that time were written on the price reporting portion of the ticket when the trade was executed. (*Id.*) From this information, Ms. Becker concluded that the time was also added after keypunching. (Hearing Tr. at 62).

Ms. Becker also testified regarding a number of other highly questionable time entries for trades executed by both Respondent and by his employer, Louis Panos. In each of these instances, it appeared that transactions which were originally keypunched as having "no time" now had times that fell within the Exchange's guidelines for accurate time reporting. (Hearing Tr. at 63-70). Furthermore, in a number of instances the times which were apparently added after keypunching were written on the hardcards in pencil or in ink, rather than the carbon impressions that would normally be found on the hardcards if the times were placed on the hardcards prior to their submission to the Exchange. (See e.g., Exch. Exs. 24, 25, 27A, 27B, 28A, 28B, 32A, 32B). Moreover, it is apparent to the Committee that the times which are clearly written on the price reporting tickets, and which were keypunched by the clearing firm as occurring at the time on the price reporting tickets, now have been altered on the hardcards to bring them within Exchange time reporting guidelines. (See e.g., Exch. Ex. 26).

Ms. Becker also testified regarding the remaining Exhibits admitted into evidence by the Hearing Panel relating to trades effected by Respondent. With regard to those transactions, Ms.

²Market-maker "hardcards" of trade information contain multiple copies -- each of which leaves a carbon impression of the information recorded on the top copy on the copies below it and on the underlying "hardcard" itself. (Hearing Tr. at 51-52; Exch. Exs. 20, 21). Thus, the information on the top "price reporting" copy should match exactly with the information contained on the underlying hardcard. (*Id.* at 53-54).

Becker testified that the hardcards and price reporting tickets either (1) had a "no time" recorded during keypunching, while the hardcard now contains a legible time or (2) when the keypunchers entered the time actually recorded on the price reporting slip, a different time now appears on the hardcard for those trades. (Hearing Tr. at 89). Ms. Becker also testified that almost all of the Exchange's additional Exhibits admitted into evidence by the Hearing Panel regarding trades effected by Mr. Panos were keypunched as having "no time" when the hardcards now clearly contain execution times. (*Id.*). The Hearing Panel, and now the Committee, carefully examined the Exhibits admitted into evidence and the testimony of Ms. Becker and found her testimony to be credible and persuasive.

Respondent testified in his own behalf and admitted that he was responsible for reviewing his and Mr. Panos' hardcards for the purpose of contesting the imposition of summary fines for time reporting violations. (Hearing Tr. at 102, 120). Respondent, however, denied that he added or altered the times found on the hardcards for the purpose of allowing Panos Trading to avoid the summary fines. (See e.g., Hearing Tr. at 139-40). Instead, through his testimony, Respondent also offered two defenses to the charges. First, Respondent contended that if he altered or added the times reflected on the hardcards, those times were added or altered on the evenings after the market close -- when he worked with the trade-checkers in order to minimize the number of out-trades for the day and he noticed that the transaction time was missing from the hardcards. (See e.g., Hearing Tr. at 110-11). Second, with respect to Mr. Panos' hardcards, Respondent asserted that the handwriting of the person who added the times to the hardcards was that of another clerk at Panos Trading -- Dan Marchese. (Hearing Tr. 105-06).

The Hearing Panel found, and the Committee also finds, that Behm's testimony on these purported defenses lacks credibility in light of his demeanor, manner and motive while testifying. With respect to the first defense, the Committee initially notes that Respondent's testimony that he altered or added the times found on the hardcards after the close of trading (even if those alterations occurred during the evening trade-checking process) alone constitutes an admission that he committed the reporting rules violations alleged by the Exchange. (See e.g., Hearing Tr. at 104-07, 138). Furthermore, Respondent's claims that he did not alter the times found on the hardcards, but merely wrote over the times already found on the hardcards in pen during the trade-checking process (Hearing Tr. at 108), simply cannot be reconciled with the fact that a large number of the price reporting tickets -- which would have left a carbon impression of the time on the hardcards -- contain no time entry. The Committee also finds that it is unreasonable to believe that the large volume of suspicious time entries were all added by the Respondent during the out-trade process. Moreover, Respondent's testimony on this point is not credible since he previously told Exchange investigators both that he could not explain how the times appeared on the hardcards and that he did not alter or add times to the hardcards in the evening after the close. (See Hearing Tr. at 96, 124-25, 134-35). The Committee also finds that, notwithstanding his testimony to the contrary, Respondent had a motive to alter the hardcards to avoid the summary fines in light of his testimony that time reporting was his responsibility as a clerk of Panos Trading. (See e.g., Hearing Tr. at 120). Finally, the Committee finds that Respondent's inconsistent statements to the Exchange

staff during the investigatory process were part of a deliberate attempt to impede the Exchange's investigation of this matter.

With respect to Respondent's second purported defense, the Committee also finds Respondent's testimony that the handwriting adding or altering the times contained on Mr. Panos' hardcards is that of Dan Marchese -- who is apparently no longer employed at Panos Trading -- to be incredible. Initially, the Committee notes that Respondent never claimed that Mr. Marchese was, in fact, the party responsible for the time alterations during any of his prior interviews with the Exchange staff nor does the record reflect that Respondent attempted to call Mr. Marchese as a witness in this proceeding. (Compare Hearing Tr. at 101-03; 105-06 with Tr. 138). Moreover, the Committee finds that it is highly unlikely that Mr. Marchese, who was admittedly under Respondent's supervision, would have altered the times on the hardcards without Respondent's knowledge. Finally, even if the Committee found Respondent's testimony on this issue to be credible, which it does not, this purported defense applies only to Mr. Panos' hardcards and would have no effect on the Committee's finding that Respondent altered his own hardcards for the purpose of avoiding the imposition of summary fines against Panos Trading. (See e.g., Hearing Tr. at 106).

In addition to the points discussed above, the Committee has carefully considered all of the evidence and argument presented by the parties. Based upon the record, the Committee finds, by a preponderance of the evidence, that the Respondent did in fact alter the execution times on his hardcards and altered the execution times on the hardcards of Louis Panos after those hardcards had been submitted to the Exchange. Furthermore, the Committee finds that Respondent's conduct in altering the execution times on the hardcards, and his conduct during the course of this investigation, constitutes a violation of Exchange Rules 4.1, 4.6, 6.51(a) and (b) and Interpretation and Policy .01 thereunder, 17.2(b) and 17.50(g)(4).

SANCTIONS

The Committees concludes as follows:

Taking into account all of the foregoing circumstances, including the seriousness of Respondent's conduct in altering the execution times on the above-referenced hardcards and making false statements to the Exchange during both the summary fine verification process and during the course of the investigation and the Respondent's mitigating evidence, a reasonable and appropriate sanction for the Respondent shall be as follows:

1. a fine of \$7,800;
2. a censure; and
3. an undertaking to attend an educational meeting with Exchange Staff concerning market-maker reporting duties and the integrity and importance of the Exchange's audit trail regarding transaction times.

ORDER

ACCORDINGLY IT IS ORDERED THAT, Respondent Darryl A. Behm pay a fine of \$7,800, be censured, and comply with the undertaking set forth above.

**SO ORDERED FOR THE
BUSINESS CONDUCT COMMITTEE**

Dated: March 27, 1997



Michael Coghlan