



U.S. COMMODITY FUTURES TRADING COMMISSION

Three Lafayette Centre
1155 21st Street, NW, Washington, DC 20581
www.cftc.gov

Office of Proceedings

2013 MAR 28 11:07:26
CFTC
OFFICE OF PROCEEDINGS

In the Matter of: *

Robert A. Christy, and * CFTC Docket No. SD 13-01
Crabapple Capital Group LLC, *
Registrants. *
*

INITIAL DECISION ON DEFAULT

Before: Philip V. McGuire,
Commodity Futures Trading Commission

Appearances: Jo Mettenburg, Esq., Senior Trial Attorney
Division of Enforcement, Commodity Futures Trading Commission
4900 Main Street, Suite 500, Kansas City, Missouri 64112

Background

By motion dated March 27, 2013, the Commission’s Division of Enforcement (“Division”) has moved for entry of a default judgment against registrants Robert A. Christy (“Christy”) and Crabapple Capital Group LLC (“Crabapple”), pursuant to Commission rules 3.60(g) and 10.93, 17 C.F.R. §§ 3.60(g) and 10.93 (2012), based on the failure of Christy and Crabapple to answer, or otherwise to appear or respond to, the Notice of Intent to Revoke the Registrations of Crabapple Capital Group LLC and Robert A. Christy, issued by the Commission on January 28, 2013 (“Notice”). Christy, a Georgia resident, is registered with the Commission as an associated person with, and listed as the sole principal of, Crabapple, a Georgia limited liability company registered with the Commission as a commodity pool operator and commodity trading advisor.

The Commission's Notice alleges that Christy and Crabapple are subject to statutory disqualification from Commission registration based on the Consent Order for Permanent Injunction, Civil Monetary Penalty, and Other Equitable Relief entered by the U.S. District Court for the Northern District of Georgia, Atlanta Division, on October 16, 2012 ("Consent Order"). In the Consent Order, the Court found that Christy and Crabapple, October 2008 through April 2012, had violated various provisions of the Commodity Exchange Act ("Act") and Commission regulations by fraudulently soliciting pool participants, making materially false and misleading statements to pool participants, and fraudulently misappropriating over \$1 million of retail foreign currency ("forex") pool participant funds for business and personal expenses. The Court imposed permanent trading and registration bans on Christy and Crabapple, and ordered Christy and Crabapple to pay over \$1.8 million in restitution and a \$1.5 million civil monetary penalty. *CFTC v. Crabapple Capital Group LLC and Robert A. Christy* Case No. 1:12-cv-01346-RWS (N.D. Ga.) ("*CFTC v. Crabapple*").

On January 30, 2013, the Commission's Office of Proceedings served the Commission's Notice on Christy at his last registered address¹ and on Crabapple at its last registered address.²

¹ Christy's last listed address with the Commission is: 217 Roseville Place, Milton, Georgia, 30004. See NFA records, attachment to Jung Affidavit and Certification, Exhibit 2, Division's motion. According to the U.S. Post Office website, although Milton, Georgia is an "acceptable city" in zip code 30004 for mail delivery purposes, the "preferred city" in zip code 30004 is Alpharetta, Georgia. See link:

<https://tools.usps.com/go/ZipLookupResultsAction!input.action?resultMode=2&companyName=&address1=&address2=&city=&state=Select&urbanCode=&postalCode=30004&zip=>

Accordingly, the Commission's Notice was served on Christy at the presumably most reliable version of his last listed address: 217 Rossville Place, Alpharetta, Georgia, 30004. In this connection, the Post Office reported both the Commission's Notice and the Default Notice as successfully "Delivered" to Christy. In light of these successful deliveries, Christy will continue to be served at the Alpharetta address.

² Crabapple's last listed address with the Commission is 12600 Deerfield Pkwy., Suite 100, Milton Georgia, 30004. See NFA records, attachment to Jung Affidavit and Certification, Exhibit 2, Division's motion. The Commission's Notice sent to this address was returned by the Post Office as "Undeliverable as Addressed." In light of the Post Office guidance described above in footnote 1, the Default Notice was mailed to Crabapple at the same street address and same zip code, but to the preferred city for that zip code: Alpharetta, Georgia. An additional copy of

Thus, Christy and Crabapple were properly served pursuant to CFTC rule 3.50.³

Christy and Crabapple did not respond to the Commission's Notice. Therefore, on March 7, 2013, I issued a Default Notice finding that Christy and Crabapple were in default, and setting deadlines for the Division to file a motion for entry of a default judgment and for Christy and Crabapple to file any opposition to the Division's motion. Christy and Crabapple have not responded to the Default Notice or to the Division's motion. Accordingly, this matter is ripe for entry of a default judgment.

As a result of their defaults, Christy and Crabapple have waived a hearing on all of the issues and are precluded from introducing evidence of mitigation and rehabilitation which is necessary to rebut the strong presumption of unfitness for registration created by the findings of fact, conclusions of law, and sanctions in the Consent Order. As a result, the well-plead allegations in the Notice, as augmented by the evidence produced by the Division, and as supplemented by the proposed findings and conclusions in the Division's motion, are deemed true and conclusive for purposes of finding: one, that Christy is statutorily disqualified from registration under Sections 8a(2)(C) and (E) of the Act, 7 U.S.C. §§ 12a(2)(C) and (E) (Supp. IV 2011); and two, that Crabapple is statutorily disqualified under Sections 8a(2)(C), (E) and (H) of

the Default Notice was served on Crabapple in care of Christy, who is Crabapple's designated contact for registration, and enforcement and compliance, communications, at his Alpharetta address. In this connection, the Post Office reported the Default Notice as successfully "Delivered" to Crabapple at Christy's Alpharetta address. In light of this successful delivery in care of Christy, Crabapple's designated agent for service of communications from the Commission, Crabapple will continue to be served in care of Christy at his Alpharetta address.

³ Pursuant to CFTC rule 3.30(a), 17 C.F.R. § 3.30(a) (2012), the address of each registrant as submitted on its application for registration or as submitted on the biographical supplement shall be deemed to be the address for delivery to the registrant for any communications from the Commission, including any summons, complaint, notice and other written documents or correspondence, unless the registrant specifies another address for this purpose. CFTC rule 3.30(b), 17 C.F.R. § 3.30(b) (2012), provides that each registrant, while registered and for two years after the termination of registration, must notify the National Futures Association ("NFA") of any change of address, and that failure to do so may result in an order of default in any Commission or NFA proceedings. Moreover, pursuant to CFTC rule 3.50, 17 C.F.R. § 3.50 (2012), for purposes of an action for the denial, suspension or revocation of registration, service upon a registrant will be sufficient if mailed by registered mail or certified mail return receipt requested properly addressed to the registrant at the address shown on his application or any amendment thereto, and will be complete upon mailing.

the Act, 7 U.S.C. §§ 12a(2)(C), (E) and (H) (Supp. IV 2011). Thus, as set out below, the Division's motion has been granted, Christy and Crabapple have been found to be unfit for registration and statutorily disqualified from registration, and the registrations of Christy and Crabapple have been revoked.

Findings of Fact

1. Crabapple Capital Group LLC, a Georgia limited liability company, has been registered with the Commission as a commodity pool operator and commodity trading advisor, since January 3, 2011, pursuant to Section 4m(l) of the Act, 7 U.S.C. § 6m(l) (Supp. IV 2011). Crabapple also has been listed with the National Futures Association as an off-exchange retail foreign currency ("forex") firm, since August 2012.⁴ Crabapple is not a financial institution, registered broker dealer (or their associated person), insurance company, bank holding company, or investment bank holding company under Section 2(c)(2)(B)(i)(II) of the Act, 7 U.S.C. § 2(c)(2)(B)(i)(II) (Supp. IV 2011).

2. Robert A. Christy, a Georgia resident, has been registered as an associated person of Crabapple, since January 3, 2011, pursuant to Section 4k(3) of the Act, 7 U.S.C. § 6k(3) (Supp. IV 2011). Christy, the president and chief executive officer of Crabapple, has been listed as the sole principal, sole managing member of Crabapple and sole owner of a 10% or more financial interest in Crabapple. Christy also is Crabapple's designated contact for registration, and enforcement and compliance, communications.⁵

3. On April 19, 2012, the Commission filed a civil injunctive complaint in the U.S. District Court for the Northern District of Georgia, Atlanta Division against Christy and Crabapple. The Commission contended that Crabapple -- acting by and through Christy and

⁴NFA records, attachment to Jung Affidavit and Certification, Exhibit 2, Division's motion.
⁵*Id.*

others -- had employed a device, scheme, or artifice to defraud forex pool participants or prospective participants in violation of various provisions of the Act, as amended by the Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, Title XIII (the CFTC Reauthorization Act of 2008 (“CRA”)), §§ 13102 – 13204, 122 Stat. 1651 (enacted June 18, 2008), and the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“Dodd-Frank Act”), Pub. L. No. 111-203, Title VII (the Wall Street Transparency and Accountability Act of 2010), §§ 701-774, 124 Stat. 1376 (enacted July 21, 2010), and now codified at 7 U.S.C. § 1 *et seq.*, and in violation of various Commission’s regulations, 17 C.F.R. §§ 1 *et seq.* (2012).

Also on April 19, 2012, the Court entered an *ex parte* restraining order against Christy and Crabapple. On May 4, 2012, the Court entered a Consent Order for Preliminary Injunction and Other Equitable Relief against Christy and Crabapple.

On October 16, 2012, the Honorable Judge Richard W. Story entered a Consent Order for Permanent Injunction, Civil Monetary Penalty, and Other Equitable Relief (“Consent Order”) which found, in relevant part, that, from October 2008 to April 2012, Christy and Crabapple: fraudulently solicited over \$1.4 million from 22 participants in a managed forex pool; misrepresented Christy’s currency trading expertise; falsely reported the firm had “in excess of \$50,000,000” under management; failed to disclose that Christy traded only a small portion of the total pool funds; provided pool participants with false monthly account statements showing profits when, in fact, Christy had lost \$172,600 of the invested funds; and commingled and misappropriated at least \$1,054,971 of the funds for personal and business expenses. The Court concluded:

- That Christy’s and Crabapple’s fraudulent conduct and misappropriation for the entire period October 2008 to April 2012 violated Section 40(1)(A)-(B) of the Act, as amended by the CRA and the Dodd-Frank Act, 7 U.S.C. § 60(1)(A)-(B) (2006), and fraudulent conduct and misappropriation since at least October 18,

2010 violated CFTC rules 4.20(a), 4.20(c), 4.41(a), and 5.2(b)(1)-(3), 17 C.F.R. §§ 4.20(a), 4.20(c), 4.41(a), and 5.2(b)(1)-(3) (2012).

- That Christy's and Crabapple's fraudulent conduct and misappropriation beginning at least in October of 2008 to July 16, 2011 also violated Section 4b(a)(2)(A)-(C) of the Act, as amended by the CRA, 7 U.S.C § 6b(a)(2)(A)-(C) (Supp. III 2009).
- That Christy's and Crabapple's fraudulent conduct and misappropriation on or after July 16, 2011 also violated Section 4b(a)(2)(A)-(C) of the Act, as amended by the CRA and the Dodd-Frank Act, and now codified at 7 U.S.C § 6b(a)(2)(A)-(C) (Supp IV 2011).⁶

The Court further concluded: that Christy was liable as a controlling person for Crabapple's violations of the Act and Commission rules, pursuant to Section 13(b) of the Act, 7 U.S.C. §13c(b) (2006); and that Crabapple was liable for the violations of its agent Christy, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C § 2(a)(1)(B) (2006), and Commission rule 1.2, 17 C.F.R. § 1.2 (2012). *CFTC v. Crabapple*.

5. The Court permanently enjoined Christy and Crabapple from further violations of the Act and Commission regulations, including: Section 4b(a)(2)(A)-(C) of the Act, as amended by the CRA and the Dodd-Frank Act, and now codified at 7 U.S.C. § 6b(a)(2)(A)-(C) (Supp. IV 2011); Section 4o(l), of the Act, as amended by the CRA and the Dodd-Frank Act, and now codified at 7 U.S.C. § 6o(1) (Supp. IV 2011); Section 9(a)(4) of the Act, as amended by the Dodd-Frank Act, and now codified at 7 U.S.C. § 13(a)(4) (Supp. IV 2011); and CFTC rules 4.20(a) and (c), 4.41(a), and 5.2(b)(1)-(3), 17 C.F.R. §§ 4.20(a) and (c), 4.41(a), and 5.2(b)(1)-(3) (2012).

The Court also imposed permanent trading and registration bans on Christy and Crabapple by permanently enjoining Christy and Crabapple: (1) from trading on or subject to

⁶ The Court also found that Christy and Crabapple had willfully made misrepresentations to the NFA in violation of Section 9(a)(4) of the Act, as amended by the Dodd-Frank Act, and now codified at 7 U.S.C. § 13(a)(4) (Supp. IV 2011), and had violated a Membership Responsibility Action/Associate Membership Responsibility Action issued by the NFA on January 23, 2012.

the rules of any registered entity; (2) from entering into any transaction, controlling or directing the trading of, soliciting or receiving funds for the purpose of trading any commodity futures, options on commodity futures, commodity options, security futures products, and/or forex contracts (“listed instruments”), for their own accounts or any accounts in which they have a direct or indirect interest; (3) from having any listed instruments traded on their behalf; (4) from controlling or directing the trading for or on behalf of any other person in any account involving listed instruments; (5) from soliciting, receiving or accepting funds from any person for the purpose of purchasing or selling any listed instruments; and (6) from applying for registration or claiming exemption from registrations with the Commission and from acting as a principal, agent or any other officer or employee of any person registered, exempted from registration or required to be registered with the Commission, except as provided for in CFTC rule 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2012).

Finally, the Court also ordered Christy and Crabapple to pay over \$1.8 million in restitution and to pay a \$1.5 million civil monetary penalty. *CFTC v. Crabapple*.

Discussion and Conclusions of Law

Section 8a(2) presumption of unfitness

Section 8a(2) of the Act, 7 U.S.C. § 12a(2) (Supp. IV 2011), sets out eight grounds for denial, suspension or revocation of registration, known customarily as “statutory disqualifications.” According to the relevant House Agriculture Committee Report, each Section 8a(2) disqualification involves a previous formal determination by a court, or the Commission or other government agency, that a person or firm has engaged in conduct involving “especially grave offenses that are clearly related to a person’s [or firm’s] fitness for registration with the Commission.” H.R. report No. 97-565, Part I at 50 (May 17, 1982). The report further

explained that, since each Section 8a(2) disqualification is based upon a previous finding or order by a court, or the Commission or other governmental body, “whether or not a person is subject to such a disqualification generally is readily ascertainable by checking officially maintained records.” *Id.*

In conjunction with the Commission’s Part 3 rules, a Section 8a(2) disqualification generally operates as a strong presumption that a person or firm is conclusively unfit to do business in a relevant registered capacity. The Commission has noted that the strong presumption of unfitness for registration under Section 8a(2) of the Act rests on the common-sense inference that once an individual or firm has undertaken serious wrongdoing – as it has been amply demonstrated here that Christy and Crabapple have done – a substantial risk exists that the individual or firm will undertake similar wrongdoing in the future. *See In re Akar*, Comm. Fut. L. Rep. ¶ 22, 297 (CFTC February 24, 1986). The strong presumption of unfitness can be rebutted by a convincing showing that allowing a person or firm to become or remain registered will not pose a risk to the public, including, for example, mitigating circumstances, rehabilitation, or close supervision by another registrant. *See* Commission rules 3.60(b)(2)(i) and 3.60(b)(2)(ii)(A)-(C), 17 C.F.R. §§ 3.60(b)(2)(i) and 3.60(b)(2)(ii)(A)-(C) (2012). By defaulting, Christy and Crabapple have precluded themselves from presenting such rebuttal evidence.

Section 8a(2)(C) of the Act

Section 8a(2)(C) of the Act, 7 U.S.C. § 12a(2)(C) (Supp. IV 2011), in relevant part, authorizes the Commission to revoke the registration of any person "if such person is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction . . . including an order entered pursuant to an agreement of settlement to which the

Commission ... is a party, from . . . (i) acting as a futures commission merchant, introducing broker, floor broker, floor trader, commodity trading advisor, commodity pool operator, [or] associated person of any registrant under this Act . . . or (ii) engaging in or continuing any activity when such activity involves ... fraud" Here, cause exists for statutory disqualification of Christy and Crabapple pursuant to Section 8a(2)(C) because the Consent Order in *CFTC v. Christy*, which was entered by the United States District Court for the Northern District of Georgia, Atlanta Division, a court of competent jurisdiction: one, permanently enjoins Christy and Crabapple from trading and from seeking re-registration; and two, permanently enjoins Christy and Crabapple from committing fraud in violation of the Act and Commission rules.

Section 8a(2)(E) of the Act

Section 8a(2)(E) of the Act, 7 U.S.C. § 12a(2)(E) (Supp. IV 2011), in relevant part, authorizes the Commission to revoke the registration of any person "if such person, within ten years preceding the filing of the application [for registration] or any time thereafter, has been found in a proceeding brought by the Commission... (i) to have violated any provision of [the] Act... where such violation involves ... fraud [or] misappropriation of funds..." Here, cause exists pursuant to Section 8a(2)(E), because the Consent Order in *CFTC v. Christy* found Christy and Crabapple each to have violated various provisions of the Act and various Commission rules for conduct involving fraud and misappropriation.

Section 8a(2)(H) of the Act


Section 8a(2)(H) of the Act, 7 U.S.C. § 12a(2)(H) (Supp. IV 2011), in relevant part, authorizes the Commission to revoke the registration of any person if "revocation of the registration of any principal of such person would be warranted because of a statutory

disqualification listed in this paragraph." Section 8a(2)(H) further provides that the term "principal," as used in Section 8a(2), includes a general partner of a partnership or a person who owns more than 10% of the voting shares of a corporation. Because Christy is listed with the Commission as Crabapple's sole principal, owns more than a 10% financial interest in Crabapple, and is subject to the revocation of his registration pursuant to Sections 8a(2)(C) and (E), Crabapple's registration is also subject to revocation pursuant to Section 8a(2)(H).

ORDER

Robert A. Christy is statutorily disqualified from registration under Sections 8a(2)(C) and (E) of the Commodity Exchange Act, and Crabapple Capital Group LLC is statutorily disqualified under Sections 8a(2)(C), (E) and (H) of the Commodity Exchange Act. Accordingly: one, the Division's motion for entry of a default judgment is hereby granted; two, Robert A. Christy and Crabapple Capital Group LLC are found conclusively unfit for registration; and three, the registrations of Robert A. Christy and Crabapple Capital Group LLC are hereby revoked.

Dated April 16, 2013.


Philip V. McGuire,
Judgment Officer