



U.S. COMMODITY FUTURES TRADING COMMISSION

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OFFICE OF PROCEEDINGS

In the Matter of _____)
)
)
SYSTEM CAPITAL, LLC, and _____)
JOSHUA W. WALLACE, _____)
Registrants. _____)
_____)

CFTC Docket Number: SD 13-02

INITIAL DECISION ON DEFAULT

Before: Philip V. McGuire,
Commodity Futures Trading Commission

Appearances: Mark A Picard, Esq., Trial Attorney
Division of Enforcement, Commodity Futures Trading Commission
140 Broadway, 19th Floor, New York, NY 10005

Introduction

This is a proceeding to revoke the registrations of System Capital, LLC ("System Capital") and Joshua W. Wallace ("Wallace"), pursuant to Section 8a(2) of the Commodity Exchange Act ("Act"), 7 U.S.C. §8a(2)(2012), and Commission rules 3.60(g) and 10.93, 17 C.F.R. §§ 3.60(g) and 10.93 (2013). Wallace, an Oregon resident, is registered with the Commission as an associated person with, and listed as the founder, sole owner, principal and president of, System Capital, an Oregon limited liability company registered with the Commission as a commodity trading advisor. Wallace also

is System Capital's designated contact for registration, and enforcement and compliance communications from the Commission.¹

By motion dated September 19, 2013, the Commission's Division of Enforcement ("Division") has moved for entry of a default judgment against registrants System Capital and Wallace, based on the failure of Wallace and System Capital to answer, or otherwise to appear or respond to, the Notice of Intent to Revoke Registration Pursuant to Sections 8a(2)(C), (D), (E) and (H) of the Commodity Exchange Act, As Amended, issued by the Commission on July 11, 2013 ("Notice"). The Notice alleges that Wallace and System Capital are subject to statutory disqualification from Commission registration based on:

One, the Order for Entry of Default Judgment, Permanent Injunction and Ancillary Equitable Relief Against System Capital, LLC and Joshua Wallace, entered on March 14, 2013, by the Honorable Katherine B. Forrest of the U.S. District Court for the Southern District of New York, in *CFTC v. System Capital, LLC and Joshua Wallace*, Case No. 10 Civ. 8850 (KBF) ("Default Judgment"). The Default Judgment found that System Capital and Wallace had violated Sections 4b(a)(1)(A) and (C), 4o(1)(A)-(B), and 9(a)(4) of the Commodity Exchange Act, 7 U.S.C. §§ 6b(a)(1)(A) and (C), 6o(1)(A)-(B), and 13(a)(4); and permanently enjoined System Capital and Wallace, in relevant part, from directly or indirectly committing any further fraud in violation of Sections 4b(a)(1)(A) and (C), 4o(1)(A)-(B), and 9(a)(4) of the Act, 7 U.S.C. §§ 6b(a)(1)(A) and (C), 6o(1)(A)-(B), and 13(a)(4).

Two, the Judgment entered on May 21, 2013, by the Honorable Laura Taylor Swain of the U.S. District Court for the Southern District of New York, in *United States v. Joshua Wallace*, Case No. 11 CR 124-01 (LTS). The Judgment, based on Wallace's guilty plea, convicted Wallace of, *inter alia*, commodities fraud in violation of Sections 4o(1) and 9(a)(5) of the Act, 7 U.S.C. §§ 6o(1) and 13(a)(5). The commodities fraud count was based on the same underlying facts as charged in *CFTC v. System Capital, LLC and Joshua Wallace*.

¹ National Futures Association ("NFA") records.

Also on July 11, 2013, the Commission's Proceedings Clerk served the Notice on Wallace at his last registered address and his last known address, and served on System Capital at its last registered address and in care of Wallace at his last known address.² Thus, Wallace and System Capital were properly served pursuant to CFTC rule 3.50.³

Wallace and System Capital did not respond to the Commission's Notice.

Therefore, on August 20, 2013, I issued a Default Notice finding that Wallace and System Capital were in default, and setting deadlines for the Division to file a motion for entry of a default judgment and for Wallace and System Capital to file any opposition to the Division's motion.⁴ Subsequently, the Division timely filed a motion for entry of a default judgment, and Wallace and System Capital failed to file a response to the Default

² Wallace's last listed address with the Commission is: 12250 SW Lansdowne Lane, Tigard, Oregon 97223. The Post Office reported the Commission's Notice mailed to this address as "Undeliverable as Addressed." System Capital's last listed address with the Commission is: 5200 SW Meadows Road, Suite 150, Lake Oswego, Oregon 97035. The Post Office reported the Commission's Notice mailed to this address as "Business Closed/Undeliverable as Addressed." A copy of the Notice was also served on Wallace and System Capital at their then last known address: 19420 Marlin Avenue, Lake Oswego, Oregon 97035. The Post Office reported the Commission's Notice mailed to this address as successfully "Delivered."

³ Pursuant to CFTC rule 3.30(a), 17 C.F.R. § 3.30(a) (2013), 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) (2013), 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 (2013), 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.

⁴ In connection with the Criminal Judgment, on May 15, 2013, Wallace was sentenced to 27 months incarceration. He was to surrender on or before July 18, 2013 to the Federal Correctional Institution at 27072 Ballston Road, Sheridan, Oregon ("FCI Sheridan"). According to the Bureau of Prison's website, Wallace's new address for the foreseeable future will be: Registration #73074-065, c/o FCI Sheridan, PO Box 5000, Sheridan, Oregon 97378. Thus, the Default Notice was served on System Capital and on Wallace (in his capacity as an individual registrant and as System Capital's sole principal and designated contact for registration, and enforcement and compliance, communications from the Commission) at Wallace's last known residential address at 19420 Marlin Avenue, Lake Oswego, Oregon, and at Wallace's current address at FCI Sheridan. The Post Office confirmed that the Default Notice was delivered to both addresses on August 22, 2013. Accordingly, this Initial Decision also will be served on System Capital and Wallace at these two viable addresses.

Notice or to the Division's motion. Accordingly, this matter is ripe for entry of a default judgment.

As a result of their defaults, Wallace and System Capital 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 civil Default Judgment and the criminal Judgment. 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 that Wallace is statutorily disqualified from registration under Sections 8a(2)(C), (D) and (E) of the Commodity Exchange Act ("Act"), and that System Capital is statutorily disqualified under Sections 8a(2)(C), (E) and (H) of the Act, 7 U.S.C. §§ 8a(2)(C), (D), (E), and (H) (2012). Thus, as set out below, the Division's motion has been granted, Wallace and System Capital have been found to be unfit for registration and statutorily disqualified from registration, and the registrations of Wallace and System Capital have been revoked.

Findings of Fact

1. System Capital, LLC, an Oregon limited liability company, has been registered with the Commission as a commodity trading advisor, pursuant to Section 4m of the Act, 7 U.S.C. § 6m (2012).⁵

2. Wallace has been registered with the Commission since March 12, 2009 as an associated person of System Capital, pursuant to Section 4k of the Act, 7 U.S.C. § 6k

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

(2012). Wallace is the founder, sole owner, principal and president of System Capital, and holds a 10% or more financial interest in System Capital.⁶

3. On November 23, 2010, the Commission filed a federal civil injunctive complaint against System Capital and Wallace. *CFTC v. System Capital, LLC and Joshua Wallace*, Case No. 10 Civ. 8850 (KBF) (S.D.N.Y. filed November 23, 2010) ("*CFTC v. System Capital*"). The complaint alleged, *inter alia*, that from about November 2009 through May 2010, System Capital and Wallace fraudulently solicited, or caused to be fraudulently solicited, prospective and actual clients for the purpose of trading commodity futures contracts, and, as a result of these fraudulent solicitations, System Capital and Wallace retained at least 17 clients, managed approximately \$3.5 million of client funds, and directed the trading of clients' commodity futures accounts; and that Wallace, on behalf of himself and System Capital, knowingly provided false information and documents to the NFA.

On March 14, 2013, the District Court in *CFTC v. System Capital*, entered an Order for Entry of Default Judgment, Permanent Injunction and Ancillary Equitable Relief against System Capital and Wallace, and found, in relevant part, that System Capital and Wallace engaged in fraud by misrepresenting to prospective and actual clients, through the use of fraudulent documents and statements, that Defendants had a successful history of trading futures contracts and that System Capital had assets under management of at least \$29 million; and that as a result of these fraudulent solicitations, Defendants successfully solicited at least seventeen clients, directed the trading of these clients' commodity futures accounts, and managed approximately \$3.5 million of client funds. The Default Judgment also found that Wallace, on behalf of

⁶ NFA records, attachment to Jung Affidavit and Certification, Exhibit 4, Division's motion.

System Capital and himself, knowingly provided false information and documents to the NFA, a futures association registered under the Act acting in furtherance of its official duties under the Act. The Default Judgment found that by engaging in this conduct, System Capital and Wallace violated Sections 4b(a)(1)(A) and (C), 4o(1)(A)-(B), and 9(a)(4) of the Act, 7 U.S.C. §§ 6b(a)(1)(A) and (C); 6o(1)(A)-(B), and 13(a)(4).

The Default Judgment permanently enjoined System Capital and Wallace, in relevant part, from directly or indirectly committing any further fraud in violation of Sections 4b(a)(1)(A) and (C), 4o(1)(A)-(B), and 9(a)(4) of the Act, 7 U.S.C. §§ 6b(a)(1)(A) and (C), 6o(1)(A)-(B), and 13(a)(4).

4. In a federal criminal action in the Southern District of New York, Wallace pleaded guilty to and was convicted of, *inter alia*, commodities fraud in violation of Sections 4o(1) and 9(a)(5) of the Act, 7 U.S.C. §§ 6o(1) and 13(a)(5). *U. S. v. Wallace*, No. 11 CR 124 (LTS) (S.D.N.Y. May 21, 2013). The commodities fraud count was based on the same underlying facts as charged in *CFTC v. System Capital*.

Discussion and Conclusions of Law

Section 8a(2) presumption of unfitness

Section 8a(2) of the Act, 7 U.S.C. § 12a(2) (2012), 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 Wallace and System Capital 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 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) (2013). By defaulting, Wallace and System Capital 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) (2012), 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 Wallace and System Capital pursuant to Section 8a(2)(C) because the Default Judgment, which was entered by the court for the Southern District of New York, a court of competent jurisdiction, permanently enjoined both System Capital and Wallace from committing fraud in violation of the Act.

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

Section 8a(2)(D) of the Act, 7 U.S.C. § 12a(2)(D) (2012), in relevant part, authorizes the Commission to revoke the registration of any person "if such person has been convicted within ten years preceding the filing of the application for registration or any time thereafter of any felony that (i) involves any transactions or advice concerning any contract of sale of a commodity for future delivery . . . (ii) arises out of the conduct of the business of a... commodity trading advisor. . . [or an] associated person of any registrant under this Act... [or] (iii) involves embezzlement, theft, extortion, fraud, fraudulent conversion, misappropriation of funds, securities or property, forgery, counterfeiting, false pretenses, bribery, or gambling." Here, cause exists for the statutory disqualification of Wallace pursuant to Section 8a(2)(D), based on the entry of his guilty plea and his conviction for felony involving fraud in connection with the

operation of System Capital, a commodity trading advisor, and his conduct as an associated person of System Capital.

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

Section 8a(2)(E) of the Act, 7 U.S.C. § 12a(2)(E) (2012), 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 this Act . . . where such violation involves . . . fraud" Here, cause exists for the statutory disqualification of System Capital and Wallace pursuant to Section 8a(2)(E) of the Act, because System Capital and Wallace were each found to have violated the Act for conduct involving fraud in *CFTC v. System Capital*.

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

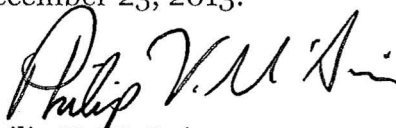
Section 8a(2)(H) of the Act, 7 U.S.C. § 12a(2)(H) (2012), in relevant part, authorizes the Commission to revoke the registration of any person if "revocation of the registration of any principal of such person would be warranted because of a statutory disqualification listed in this paragraph." Pursuant to Regulation 3.1(a)(1), 17 C.F.R. § 3.1(a)(1) (2013), if an entity is organized as a limited liability company, "principal" includes any director, the president, chief executive officer, the manager, managing member or those members vested with the management authority for the entity, any person in charge of a principal business unit, division or function subject to regulation by the Commission, and any person occupying a similar status or performing similar functions, having the power, directly or indirectly, through agreement or otherwise, to exercise a controlling influence over the entity's activities that are subject to regulation

by the Commission. Because Wallace is listed with the Commission as System Capital's president and sole principal with a 10% or more financial interest in System Capital, and is subject to the revocation of his registration pursuant to Sections 8a(2)(C), (D), and (E) of the Act, System Capital's registration is also subject to revocation pursuant to Section 8a(2)(H) of the Act.

ORDER

Joshua W. Wallace is statutorily disqualified from registration under Sections 8a(2)(C), (D) and (E) of the Commodity Exchange Act, and System Capital, 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, Joshua W. Wallace and System Capital, LLC are found conclusively unfit for registration; and three, the registrations of Joshua W. Wallace and System Capital, LLC are hereby revoked.

Dated December 23, 2013.


Philip V. McGuire,
Judgment Officer