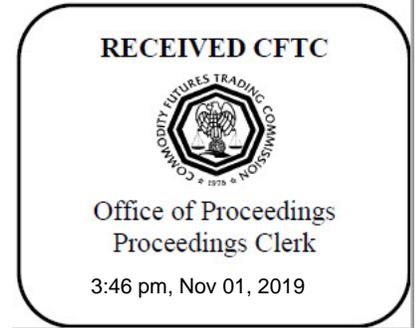




U.S. COMMODITY FUTURES TRADING COMMISSION

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

Office of Proceedings



Wesley M. Jarrell, II,
Complainant,
v.
Robert Lee Spears, Jr.,
Lakefront Futures & Options LLC,
and Optimized Trading LLC,
Respondents.
CFTC Dkt. No. 18-R027
Served electronically

ORDER DENYING JURISDICTION
OVER OPTIMIZED TRADING LLC AND
DISMISSING OPTIMIZED TRADING LLC
FROM THE COMPLAINT

On June 12, 2018, Complainant Wesley M. Jarrell, II filed a complaint against Respondents alleging they deceived him when they fraudulently induced his investment and then engaged in unauthorized trading in his account. One of those Respondents, Optimized Trading LLC, is not registered with the CFTC. In a status conference and discovery hearing held September 6, 2019, I ordered the parties to submit briefs on whether or not this reparations Office has jurisdiction to hear claims against Optimized given its unregistered status. Both parties filed those briefs. After careful consideration, and although the claims against Optimize raise concerns that Optimized should have registered as a Commodity Trading Advisor

(CTA), I find this Office does not have jurisdiction over Respondent Optimized in this reparations proceeding.

### **I. Background Regarding Allegations**

On June 5, 2017, Jarrell invested in a futures trading program called OPT\_ES\_MULTI\_MODEL-V3 (V3), offered by Respondent Optimized. Jarrell invested in V3 through Respondent Lakefront Futures & Options LLC, an Introducing Broker (IB), which in turn introduced him to R.J. O'Brien, the Futures Commission Merchant (FCM) that held his account.<sup>1</sup>

Jarrell was introduced to V3 by its developer, Brian Miller, with whom he went to high school. Miller is a software developer who has created various options trading programs over the years. Several years before Jarrell invested with V3, Miller purportedly reached out to his old high school classmate about investing in his programs. These programs were hosted by Optimized, which Miller and Respondent Robert Spears co-founded in 2014.

Eventually, Jarrell became interested in V3, which trades S&P 500 E-mini futures. Jarrell was enticed by Optimized's representations that the V3 program itself would automatically be making all decisions about whether to execute trades without human discretion or interference. Given Jarrell's interest, Miller then steered Jarrell toward Lakefront to use as his IB, promising Lakefront would provide reduced fees to trade with Optimized.

Miller also around this time must have introduced Jarrell to Respondent Spears, though the exact circumstances of their introduction is not specified in

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<sup>1</sup> R.J. O'Brien is not a Respondent in this action.

Jarrell's Complaint or Complaint Addendum. Spears, in addition to co-founding Optimized with Miller, is also a registered Associated Person of Lakefront.

From June 5, 2017 through 2018, Miller ultimately invested over \$78,000 with Optimized (through Lakefront and Spears). The trading was mostly profitable, but on February 5, 2018, the S&P 500 index fell 4.1%, impacting the value of the V3 program and its participants' holdings. That afternoon, on a phone call with Spears and Miller, Jarrell learned that despite Optimized's advertising and assurances that V3 was fully automated to avoid human interference, Miller and Spears could manually override the V3 trading program to prevent it from placing further trades. Jarrell informed Miller and Spears expressly that such an override could not occur in his account without his consent. Despite this conversation, Jarrell alleges that Spears and Miller—without his consent—stopped V3 from opening scheduled positions and placed a stop-loss trade that would cause open positions to sell to prevent further decline. Jarrell alleges that this stop loss trade caused his account value to decline from \$98,354.99 to \$32,467.23 and therefore caused him \$65,887.76 in damages.

## **II. Jurisdictional Discussion**

Complainant Jarrell makes a compelling argument that Optimized should have registered as a CTA. First, there is evidence that Miller was holding Optimized out to be a CTA. In various LinkedIn messages, Miller informed Jarrell that he and Spears would be launching a CTA and refers to a CTA several times in these messages. Jarrell Br. at 3-4 & Ex. A. And Miller refers to Optimized, but

never clarifies that it is only a “leased” trading system, giving every impression that Optimized or its programs are CTAs. Further, Miller directed Jarrell to a Striker Securities website that published a “Developer/CTA Interview” with Miller and Jarrell regarding Optimized. Jarrell Br. at 4 & Ex. B. Second, Optimized admitted that it had more than 15 customers for its trading systems in the twelve months prior to February 5, 2018. Optimized Responses at 5 (April 3, 2019). Finally, it could be argued that a trading program designed by a developer (Miller) who routinely develops such trading programs, working in concert with an Associated Person (Spears) of an IB was in fact offering trading advice. If litigated and proven, these facts might be sufficient to show that Optimized: (1) was acting as a CTA under the definition provided in 7 U.S.C. § 1a(12), and (2) would not qualify for an exemption from registration as set forth in 17 C.F.R. § 4.14(a)(10).

But these claims have not been fully litigated, nor will they be in this forum. Even if I were to find that Optimized should have registered as a CTA and failed to do so expressly to avoid the oversight that comes with such registration, it would not cure the jurisdictional defect here. The statute governing reparations proceedings, 7 U.S.C. § 18, is titled “Complaints against Registered Persons,” and 7 U.S.C. § 18(a)(1) allows a petition for damages against “any person who is registered under this chapter.” That statutory language is plain, and its language and legislative history make clear that this Office does not have jurisdiction over Respondent Optimized.

Between 1978 and 1983, the Commodity Exchange Act (CEA or the Act) allowed reparations claims against “any person who is registered or required to be registered.” *Emergency Interim Rules, Rules Relating to Reparations Proceedings*, 48 Fed. Reg. 21923-01, at 21923 (May 16, 1983) (quoting prior CEA § 14(a), 7 U.S.C. § 18(a)). However, Congress, through enactment of the Futures Trading Act of 1982, “omitted the phrase ‘or required to be registered’ in order to limit reparations complaints to those concerning violations committed by persons registered under the Act.” 48 Fed. Reg. at 21923. Congress reasoned that narrowing jurisdiction only to persons registered under the Act eliminated claims against parties likely to be destitute, which would streamline the reparations process. *Id.* (quoting H.R. Rep. No. 565, 97th Cong., 2d Sess. 56 (1982)). The Commission then interpreted the amended statute to mean jurisdiction was appropriate when a respondent was registered at the time of the alleged violation, even though its registration may have lapsed during the two-year statute of limitations period. *Id.* & n.3. The Commission later went further and held that it would “normally exercise [its] jurisdiction and adjudicate claims against individuals who were registered at the time of the violation as well as those who become registered during the two year limitations period.” *Gary Nelson, D.M.D., Inc., Retirement Trust v. Diversified Investment Group, Inc.*, CFTC Dkt. No. 83-R668, 1985 WL 56290, at \*1 (CFTC June 5, 1985). However, because Optimized is not a “person who is registered” with the CFTC either at the time the violation occurred or subsequent to that violation, this Office does not have jurisdiction over it.

On the other hand, this Office does have jurisdiction over Spears, who appears to have been acting as both an agent of Optimized and as an Associated Person of Respondent Lakefront, the IB that offered reduced commissions for trading through Optimized's program V3. So although this case will have to proceed without Optimized, unlike other cases in which the lack of jurisdiction over a purported wrongdoer forecloses a complainant's claims, this case can still proceed.

### CONCLUSION

This Office lacks jurisdiction over Respondent Optimized since it is not registered with the CFTC. Optimized is therefore dismissed from the complaint. Optimized is however cautioned to continue to preserve its documents and other evidence, electronically-stored or otherwise, because it and its co-founder Miller may be the subject of discovery or testimonial orders at some later time.

Dated: November 1, 2019

/s/ Kavita Kumar Puri  
Kavita Kumar Puri  
Judgment Officer