

NATIONAL FUTURES ASSOCIATION
BEFORE THE
HEARING PANEL

FILED

JUN - 7 2007

NATIONAL FUTURES ASSOCIATION
LEGAL DOCKETING

In the Matter of:)

GLOBAL ELITE GROUP)
(NFA ID #322918))

and)

HENREK M. LALAIAN)
(NFA ID #300918),)

Respondents.)

NFA Case No. 06-BCC-018

DECISION

On April 10, 2007, a designated Panel of the Hearing Committee held a hearing to consider the charges against Global Elite Group (Global) and Henrek M. Lalaian (Lalaian). The Panel issues the following Decision under National Futures Association (NFA) Compliance Rule 3-10.

I

PROCEDURAL BACKGROUND

On August 30, 2006, NFA's Business Conduct Committee issued a two-count Complaint against Global and Lalaian. Count I and Count II alleged that Global and Lalaian violated NFA Compliance Rules 2-9(a) and 2-4 because they failed to supervise compliance with the terms of NFA's Telemarketing Procedures Waiver Committee's (Waiver Committee) November 3, 2005 Decision issued to Global.

Global and Lalaian filed an Answer on September 21, 2006. In the Answer, they denied all material allegations in the Complaint.

EVIDENCE PRESENTED AT THE HEARING

NFA presented the testimony of two witnesses and introduced several documents and a tape-recorded conversation into evidence. Respondents presented Lalaian's testimony and introduced several documents and a tape-recording with several conversations into evidence. A summary of the evidence follows.

Mary Alice Patton

Patton testified that she is the Legal Support Manager in NFA's General Counsel's Office. As Legal Support Manger she is responsible for managing the case load related to telemarketing waiver requests.

Patton explained that in 1993, NFA's Board of Directors issued an interpretive notice under NFA Compliance Rule 2-9 to address deceptive sales practices. According to Patton, the Board determined that there was a correlation between firms that used deceptive sales practices and the background of the associated persons (APs) that made up the firm's sales force. In particular, the Board concluded that those firms with a certain percentage of APs who had worked at firms that had been closed down by NFA or the CFTC for sales practice fraud were more likely to also engage in sales practice fraud. The Board also determined that those firms should be required to adopt certain enhanced supervisory procedures to guard against this fraud.

According to Patton, the enhanced supervisory requirements include maintaining a minimum adjusted net capital of \$250,000 or operating pursuant to a guarantee agreement and tape recording AP conversations with existing or prospective customers. The firm is also required to maintain a log of these conversations by date,

customer name and AP and to submit all promotional material to NFA prior to using the material for the first time. Finally, a firm subject to these enhanced requirements is also required to maintain written supervisory procedures for complying with them.

Patton also stated that a Member may seek a waiver from these supervisory requirements. The Member has 30 days from the date it is notified by NFA's Compliance Department that it meets the criteria requiring it to adopt the enhanced procedures to either comply with the requirements or request a waiver. The Waiver Committee is responsible for reviewing and deciding these requests. Patton testified that the Waiver Committee is a three-member committee currently made up of two NFA Business Conduct Committee members and one member of NFA's Hearing Panel. Patton stated that the Waiver Committee is given the waiver request, a response from NFA that includes a recommendation and any additional filings made by the firm in reply to NFA's response.

According to Patton, she became familiar with Global and Lalaian in August 2005 when the firm was notified that it had met the criteria that required it to comply with the enhanced supervisory requirements under Rule 2-9. Patton stated that Global was notified of this fact in a letter dated August 31, 2005. Patton also stated that Global and Lalaian responded by letter dated September 12, 2005. In that letter, Patton stated that Lalaian represented that its current guarantor FCM had indicated that it would not be able to guarantee Global if Global was required to comply with the enhanced supervisory requirements.¹ Lalaian also represented that he had spoken to

¹ A 1996 NFA Decision prohibited this FCM from guaranteeing any IB subject to the enhanced supervisory procedures.

other FCMs but that not one of those firms would guarantee an IB that was required to comply with the enhanced requirements.

Patton testified that NFA recommended that the Waiver Committee deny Global's request for a waiver from the enhanced supervisory requirements. Patton stated that Global filed a supplemental response to NFA's response. All these materials (the waiver request, NFA's response and Global's supplemental response) were provided to the Waiver Committee.

According to Patton, the Waiver Committee considered Global's request at a meeting held on October 26, 2005. At this meeting, the Waiver Committee considered the written submissions and decided that if Global agreed to voluntarily comply with the supervisory requirements, then the Committee would grant the firm a waiver so that Global would not lose its guarantee agreement. Patton stated that this information was conveyed to Lalaian. Patton also stated that in an agreement dated November 2, 2005, Global agreed "to be bound by all of the obligations and conditions established in the interpretive notice issued by NFA's Board of Directors entitled enhanced supervisory requirements." Patton also stated that the agreement provided that "beginning 30 days after the date of the issuance of a waiver by the committee, Global Elite shall tape-record all telephone conversations that occur between any AP and both existing and potential customers for a period of two years." Patton stated that Lalaian signed the agreement.

Patton testified that this agreement was forwarded to the Waiver Committee and the Committee issued a decision on November 3, 2005. That decision incorporated the terms of the agreement signed by Lalaian on behalf of Global, including the requirement that Global begin tape recording conversations with

customers and potential customers 30 days after the date of the issuance of the decision granting the waiver. Patton stated that this decision was served on Global Elite and Lalaian.

Joseph Patrick

Joseph Patrick (Patrick) testified that he has been employed by NFA for approximately 11 years. Patrick stated that he is currently a Manager in NFA's Compliance Department and that he has held that position for approximately 7 years. According to Patrick, his main responsibilities are managing and reviewing the audit work conducted by NFA auditors.

Patrick testified that he became familiar with Global in mid-March 2006. Patrick stated that Global was a guaranteed introducing broker. Patrick also stated that he was familiar with Lalaian. Lalaian was the sole owner and an AP and principal of Global. The firm and Lalaian withdrew from membership in October 2006.

Patrick testified that as part of his responsibilities, he and an audit team visited Global to see if the firm was complying with the Waiver Committee's decision. Patrick stated that the audit team tested four areas to determine whether Global was in compliance with the decision. These areas included whether Global was maintaining all the tape recordings of AP sales solicitations, whether Global was maintaining the required log of telephone conversations, whether Global had written procedures regarding the enhanced supervisory requirements and whether Global was submitting all promotional material to NFA prior to its first use.

Patrick stated that he and the audit team arrived at Global's offices on March 14, 2006 – several months after December 5, 2005, when the firm was required to have adopted the enhanced procedures. At the start of the audit, Patrick informed

Lalaian that NFA was there to test the firm's compliance with the Waiver Committee's decision.

According to Patrick, Lalaian told him that he was responsible for the firm's compliance with the Waiver Committee's decision. Lalaian told Patrick that he had purchased some desktop tape recording machines that were hooked up to each individual AP's telephone. The AP was responsible for starting the tape recorder when the AP was on the phone with a potential or current customer. Patrick stated that Lalaian also told him that he was responsible for collecting the tapes on a daily basis and for maintaining those tapes on file.

Patrick testified that when NFA asked Lalaian for the tape recordings that were made, he directed NFA to a desk drawer that contained a box of tapes. Each tape was marked with a date and two letters that represented the initials of a particular broker of the firm. Lalaian told NFA that the box contained all the tapes that Global had created since being required to make them. Patrick stated that there were 36 tapes in the drawer and Lalaian represented that each tape represented a day's taping for that AP.

Patrick also testified that he asked Lalaian if Global had created the logs required under the Waiver Committee's decision. Patrick stated that Lalaian told him that Global had not created any logs. According to Patrick, NFA issued a written audit report to the firm based upon NFA's March 2006 exam. The report cited Global for not maintaining these logs. Patrick stated that Lalaian's response to the audit report did not deny this and stated that "effective immediately" the firm would begin logging telephone conversations. Patrick also stated that Lalaian told him that Global did not have any written procedures for ensuring compliance with the Waiver Committee's decision.

According to Patrick, Lalaian represented that it was likely that some of the conversations between a Global AP and a current or prospective Global customer had not been recorded.

Patrick testified that NFA also identified customer trades and reviewed the tape recordings for that date to see if the tape contained a conversation between the AP and the customer. Patrick stated that NFA believed that it was reasonable to expect a conversation on that date because the AP should have been contacting the customer to report the trade information. According to Patrick, NFA selected three dates – December 14, 2005, December 19, 2005 and December 28, 2005 – and obtained Global's equity runs for those dates. NFA identified three Global customers who placed trades on December 14. Two of the customers were customers of AP Mike Williams and one of the customers was a customer of AP John Cohn. When NFA reviewed the tapes that Lalaian had represented were all of the tapes made by Global, NFA was unable to find any tapes for those two APs for that day. Patrick further testified that for December 19, 2005, NFA identified six customers who placed trades that day. Four of those customers were customers of AP Dan Cape (Cape) and two of those customers were customers of AP Gary Kosacz (Kosacz). However, there was no tape for that day in Global's file for Cape. Although there was a tape that day for Kosacz, the tape did not contain any conversation between Kosacz and the two customers who made the trades. Finally, Patrick stated that for December 28, 2005, NFA identified seventeen customers who had placed trades that day. Three of those customers were customers of Susan Courtright (Courtright), six were customers of Cape and the remaining eight were customers of Kosacz. Patrick stated that when NFA reviewed Courtright's December 28, 2005 tape, NFA could not find a taped conversation for two of the

customers identified as trading that day. Patrick also stated that when NFA reviewed Kosacz's December 28, 2005 tape, NFA only found one of the eight trade confirmation conversations that should have occurred that day. Finally, Patrick stated that although six of Cape's customers traded on December 28, 2007, Global did not have a tape for Cape for that day.

Patrick also testified that Courtright's December 28, 2005 tape contained a conversation between Courtright and a customer that was not taped in its entirety. Specifically, Patrick noted that the conversation on the tape started, abruptly stopped and then started up again shortly before the conclusion of the sales solicitation. Patrick acknowledged that he did not know why the tape was interrupted and that it was possible that it could have been a malfunction with the machine.

According to Patrick, NFA's report notified Global that NFA had found that the firm had failed to maintain complete tape recordings of all conversations occurring between its APs and existing and potential customers. Patrick noted that Lalaian did not deny this in a response to the report.

Patrick acknowledged on cross-examination that Global requested a one-month extension of the date to begin tape recording customer conversations. Global represented in that request that it was experiencing technical delays in purchasing and successfully installing compatible recording hardware. Patrick stated that Global's request was denied.

On cross-examination, Patrick stated that when NFA requested Global's tape recordings, Lalaian provided NFA with all of Global's tapes and those tapes were readily available. Patrick also agreed that Lalaian provided him with a machine to use to listen to the tapes and that he took all the tapes and the machine back to his hotel to

review them. Patrick acknowledged that he did not sit down with Lalaian to review any one tape or any one conversation.

Patrick also agreed on cross-examination that subsequent to the audit, Lalaian sent NFA a set of procedures regarding the telemarketing requirements and that NFA did not have any issues with those procedures. Patrick stated that the procedures provided by Lalaian were the types of procedures that NFA recommended that the firm put in place in order to comply with the Waiver Committee's decision.

On cross-examination, Patrick acknowledged that NFA had scheduled other audits of Global but had canceled the audits without notifying Lalaian. Patrick also acknowledged that Lalaian had sent an e-mail to NFA inquiring about the audits that had been canceled. In that e-mail, Lalaian stated that he felt it was important that Global, as a new IB, start out on a solid foundation and that the firm's practices be done according to NFA rules and regulations. Lalaian requested the date the audit would occur. (See Respondent's Exhibit 1.)

Henrek Lalaian

Lalaian testified that from the time he founded Global, he believed that NFA would be a partner in assisting him with compliance. Lalaian also stated that he believed that Patrick came to Global to teach the firm how to comply with NFA requirements. Lalaian stated that he felt he was being punished for his cooperation.

Lalaian also stated that when he learned that Global needed to comply with the enhanced supervisory requirements he contacted the firm's FCM, and asked them what Global needed to do to comply. Lalaian stated that he followed the procedures the FCM provided and that he believed in good faith that the FCM's guidance was the proper guidance.

Lalaian also testified that he had several conversations with his attorney and NFA regarding compliance. Lalaian stated that he explained to NFA that he was willing to engage in taping but that he was very concerned about the process. Lalaian did not believe that the taping equipment he purchased was going to be adequate so he requested an additional 30 days to comply. NFA refused to give him the extra time.

Lalaian further testified that he made several attempts to get additional guidance and clarification from NFA on how to comply with the enhanced supervisory requirements. (See Respondent's exhibits 9 and 11).

Lalaian also disputed NFA's conclusion that NFA's audit work showed that certain conversations with customers were not taped. Lalaian stated that many of the trades were submitted several days before they were executed because they were "good until cancelled" (GTC) orders. Lalaian stated that in all the transactions, the orders were actually placed prior to the date when Global was required to begin taping. Lalaian also stated that he explained to Patrick that NFA could not only rely on the equity run, but that NFA also needed to look at the trade tickets. Lalaian stated that he provided these trade tickets to NFA subsequent to the audit.

Lalaian also disagreed with NFA's conclusion regarding the number of tapes that Global should have made during the time period at issue. Lalaian stated that the brokers did not make a new tape for each day. Rather, the brokers were required to turn in the tape when the tape was full. In addition, Lalaian noted that during December, nearly every broker was on vacation for some portion of the month. Under examination by the Panel, Lalaian stated that in December it was difficult to keep track of when the APs were in and out of the office.

III

DISCUSSION

Lalaian claimed at the start of his presentation that NFA lacked jurisdiction to proceed against Global and him because neither Global nor he were currently NFA Members. Although Lalaian did not ask for dismissal of the charges based on this position, the Panel believes it is important to address it.

Lalaian's position is completely contrary to NFA Bylaw 301(h), which specifically states that termination or withdrawal of membership or associate membership shall not relieve the Member or Associate of any responsibility under, among other things, NFA Bylaws, Compliance Rules, Interpretive Notices or Orders issued by the Hearing Committee or any designated Panel of the committee for activities prior to termination (see NFA Bylaw 301(h)). Global and Lalaian agreed to be bound by this Bylaw and all NFA Rules at the time they became Members of NFA. Clearly, the Hearing Panel has jurisdiction to proceed with this matter against Global and Lalaian.

Lalaian also spent a significant portion of the hearing attempting to address the issue of whether the Waiver Committee's decision ordering him to comply with the enhanced supervisory requirements was improper. This, however, is not the issue before this Panel. Global and Lalaian agreed to comply with these requirements, and the Waiver Committee issued a decision ordering them to do so. The issue before this Panel was whether they actually did comply. The Panel has no jurisdiction over the appropriateness of the Waiver Committee's decision.

The evidence at the hearing clearly establishes that Global completely failed in complying with the Waiver Committee's November 3, 2005 decision. The

Waiver Committee's decision required Global to be subject to all the obligations and conditions established in the Interpretive Notice issued by NFA's Board of Directors entitled "Enhanced Supervisory Requirements." Although Lalaian argued that he didn't have a clear understanding of those obligations and that NFA did not assist him in gaining this understanding, the Panel finds that the Interpretive Notice could not be more clear. All the requirements are spelled out in three paragraphs on pages 9054 and 9055 of the NFA Manual. Among other things, the Interpretive Notice requires a firm subject to the enhanced supervisory requirements to:

- tape record all telephone conversations that occur between its APs and both existing and potential customers;
- catalog the tapes by AP and date;
- require its APs to maintain a daily log for sales solicitations that reflects, at a minimum, the identity of each customer or prospective customer the AP spoke with on each day; and
- have written supervisory procedures related to compliance with the enhanced supervisory requirements.

Under the terms of the Waiver Committee's decision, Global was required to begin complying with these requirements on December 3, 2005. The evidence presented at the hearing, however, showed that as late as December 28, 2005, Global was not taping all customer conversations, was not preparing and maintaining the required logs, and did not have the required supervisory procedures.

NFA demonstrated at the hearing that trades were made for specific customers on specific dates, yet when NFA reviewed the tapes made by Global, NFA was not able to find a conversation with the customer for the majority of the trades NFA identified. Lalaian argued that one of the reasons for this is that the trade identified was the offset of a trade that was initiated earlier or the initiation of a trade that was placed

earlier on a GTC basis. The Panel does not find this explanation convincing. Even if these trades were offsets of earlier trades or the initiation of a trade that the customer placed on an earlier day, a trade did occur that day and Global should have had a tape recording of someone at the firm contacting the customer with fill information. Neither Lalaian nor Global was able to provide those tape recordings. Moreover, NFA further demonstrated that Global was not taping all customer conversations with the tape-recorded conversation NFA played at the hearing between Courtright and a customer. It was obvious listening to the tape recording that the tape was stopped just after Courtright finished typical introductions. The tape recording begins again at what is clearly the end of the conversation. The Panel is particularly troubled by the fact that the conversation at the end of the recording shows that the customer agreed to a trade at some point in the conversation, but none of the solicitation of the trade is captured on tape.

The evidence at the hearing also established that Global failed to ensure its APs maintained a daily log of telephone conversations containing the required information and failed to have written supervisory procedures with respect to the enhanced requirements. Patrick testified that Lalaian admitted during the audit that the firm did not require the log and did not have the procedures. Lalaian did not dispute this at the hearing.

IV

FINDINGS AND CONCLUSIONS

1. At all relevant times, Global was an introducing broker Member of NFA. As such, Global was and is required to comply with NFA Requirements and is subject to disciplinary proceedings for violations of NFA Requirements that

occurred while Global was an NFA Member. (See NFA Bylaw 301(h) and NFA Compliance Rule 2-14.)

2. At all relevant times, Lalaian was a listed principal of Global and was registered as an Associate of Global pursuant to NFA Bylaw 301(b). As an Associate, Lalaian was required to comply with NFA Requirements and is subject to disciplinary proceedings for violations of NFA Requirements that occurred while he was an Associate. (See NFA Bylaw 301(h).)
3. In August 2005, NFA notified Global that it met the criteria that required it to comply with the enhanced supervisory procedures established by NFA's Board of Directors in an Interpretive Notice to NFA Compliance Rule 2-9 entitled "Compliance Rule 2-9: Enhanced Supervisory Requirements."
4. In September 2005, Global petitioned NFA's Telemarketing Procedures Waiver Committee to waive the firm's obligation to adopt the enhanced supervisory procedures.
5. On November 2, 2005, Lalaian submitted a written and signed offer on behalf of Global in which Global and Lalaian agreed, within 30 days of the date of a decision by the Waiver Committee, to tape record all telephone conversations between APs and both existing and potential customers for two years and to be subject to all the obligations and conditions required by the Interpretive Notice regarding Enhanced Supervisory Requirements.
6. On November 3, 2005, the Waiver Committee issued a Decision granting a waiver to Global subject to the condition that Global was required to abide by all of the enhanced supervisory requirements established by the Board in its Notice.

7. Among other requirements, the Decision required Global to: (a) tape record all telephone conversations that occur between its APs and both existing and potential customers; (b) require its APs to maintain a daily log for sales solicitations that reflects at a minimum the identity of each customer or prospective customer the AP spoke with on each day; (c) ensure that it could promptly produce, upon request from NFA, all conversations relating to a specific AP for a specific date; and (d) have written supervisory procedures with respect to the enhanced requirements. Global was required to abide by these obligations and conditions no later than December 3, 2005.
8. Global and Lalaian were responsible for the supervision of all employees and agents of Global, including ensuring that Global and all employees and agents were adhering to the decision issued by the Waiver Committee.
9. Global and Lalaian failed to supervise compliance with the terms of the Waiver Committee's Decision dated November 3, 2005. Global and Lalaian failed to adopt any procedures that Global APs would be required to follow in order to comply with the Waiver Committee's decision; failed to ensure that a tape recording of all conversations between Global APs and current and potential customers were created and retained; failed to ensure that at least one conversation (between Courtright and a customer) was recorded in its entirety; failed to ensure that all Global APs created daily logs of their customer sales solicitations; and failed to ensure that, upon request from NFA, Global could promptly produce all conversations relating to a specific AP for a given date.

10. Therefore, based on the findings in Paragraphs 1-8, Global and Lalaian violated NFA Compliance Rules 2-9(a) and 2-4. Global and Lalaian's conduct is inconsistent with just and equitable principles of trade.

V

PENALTIES

A number of factors must be considered when determining the appropriate sanctions for these violations. One of the more important factors is the nature of the violations. The evidence at the hearing overwhelmingly showed that Global and Lalaian failed to comply with the Waiver Committee's November 3, 2005 Decision. This evidence also showed that Lalaian either purposefully ignored the Waiver Committee's decision or was totally inept at setting up a supervisory regime to carry out the requirements of the decision. In either event, the Panel believes that this evidence demonstrates that Lalaian has a rather cavalier attitude towards regulatory requirements and should not be in a position of supervising the operations of an NFA Member firm or its employees.

After considering the evidence against each of the Respondents, the Panel imposes the following sanctions:

1. Lalaian may not act as a principal of an NFA Member for a period of 5 years from the date of this Decision.
2. Lalaian is permanently barred from acting in a supervisory capacity for an NFA Member.
3. Global and Lalaian are suspended from NFA Membership and Associate Membership for a period of two years from the date of this Decision.
4. If Lalaian applies to be an NFA Member or Associate Member or to act as a principal of an NFA Member, Lalaian must pay a fine of \$50,000 before being approved as an NFA Member or Associate Member or principal of an NFA Member.

VI

APPEAL

Global and Lalaian may appeal the Panel's Decision to the Appeals Committee of NFA by filing a written Notice of Appeal with NFA's Secretary within fifteen days of the date of this Decision. Pursuant to NFA Compliance Rule 3-13(a), the Notice must describe those aspects of the disciplinary action to which exception is taken and must include any request to present written or oral arguments. The Decision shall be final after the expiration of the time for appeal or review unless it is appealed or reviewed.

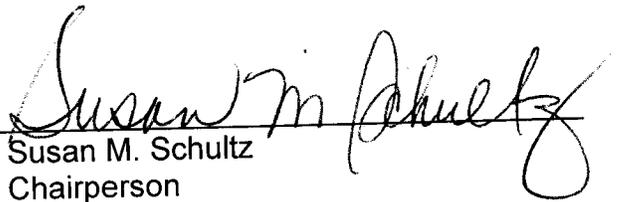
VII

INELIGIBILITY

Pursuant to the provisions of CFTC Regulation 1.63, this Decision and the sanctions imposed by it render Lalaian ineligible to serve on a governing board, disciplinary committee, oversight panel, or arbitration panel of any self-regulatory organization, as the term is defined in CFTC regulation 1.63, until three years after the effective date of this Decision or until all of the sanctions imposed and conditions imposed on him have been fulfilled, whichever is later.

**NATIONAL FUTURES ASSOCIATION
HEARING PANEL**

Dated: 06/07/06

By: 
Susan M. Schultz
Chairperson

AFFIDAVIT OF SERVICE

I, Nancy Miskovich-Paschen, on oath state that on June 7, 2007, I served copies of the attached Decision by sending such copies in the United States Mail, postage prepaid, certified mail, return receipt requested, and by regular mail, in envelopes addressed as follows:

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Nancy Miskovich-Paschen

Subscribed and sworn to before me
on this 7th day of June 2007.


Notary Public

