

NATIONAL FUTURES ASSOCIATION  
BEFORE THE  
HEARING PANEL

FILED

JAN 31 2008

NATIONAL FUTURES ASSOCIATION  
LEGAL DOCKETING

In the Matter of: )  
)  
WORLD TRADE FINANCIAL, INC. )  
(NFA ID #371308), )  
)  
and ) NFA Case NO. 07-BCC-016  
)  
DAVID A. MOORE )  
(NFA ID #249226), )  
)  
Respondents. )

**DECISION**

On November 14, 2007, a designated Panel of the Hearing Committee held a hearing to consider the charges against World Trade Financial, Inc. (WTF) and David A. Moore (Moore). The Panel issues the following Decision under National Futures Association (NFA) Compliance Rule 3-10.

I

**PROCEDURAL HISTORY**

On May 18, 2007, NFA's Business Conduct Committee issued a three count Complaint against WTF and Moore. Count I alleged that WTF failed to list Scott Kuehne (Kuehne) as a principal of WTF, in violation of NFA Registration Rule 208. Count I also alleged that WTF and Moore failed to observe high standards of commercial honor in conducting WTF's forex business, in violation of NFA Compliance Rule 2-36(c). Count II of the Complaint charged WTF with violating NFA Compliance Rule 2-36(b)(1) for using misleading promotional material. Count II also charged WTF

and Moore with violating NFA Compliance Rule 2-36(e) for failing to establish, maintain and enforce written supervisory procedures, and failing to diligently supervise WTF's forex activities. Finally, Count III alleged that WTF and Moore failed to cooperate with NFA during an examination, in violation of NFA Compliance Rule 2-5

Moore filed an Answer where he denied the material allegations in Count I but admitted the allegations in Count II and Count III.<sup>1</sup>

## II

### **EVIDENCE PRESENTED AT THE HEARING**

NFA presented the testimony of one witness and introduced several documents into evidence. Moore appeared very briefly at the hearing. During that limited appearance, Moore was sworn in and he admitted all the allegations in the Complaint.<sup>2</sup> Moore did not provide any other evidence or cross-examine NFA's witness. A brief summary of the evidence provided by NFA follows.

#### **Christine Roche**

Christine Roche (Roche) testified that she is a Manager in NFA's Compliance Department. Roche explained that NFA Member firms register with NFA and update registration information using NFA's web-based on-line registration system known as ORS. Roche stated that all firms must notify NFA of the firm's security

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<sup>1</sup> On its face, Moore's *pro se* Answer does not appear to include WTF. It is also not clear that Moore's limited appearance at the hearing was on WTF's behalf as well as his own. Nonetheless, since the sole listed principal responded without an attorney, and since there is no clear evidence to the contrary, we have treated the Answer and the appearance as encompassing the firm as well as Moore. Therefore, we have decided the case against WTF based on the evidence rather than as a default under NFA Compliance Rule 3-6.

<sup>2</sup> Although Moore's admission alone was sufficient to find liability, the Panel also considered the evidence presented by NFA.

manager – a person at the firm who has the authority to provide this information through ORS. The security manager is given a password that allows him to input information into ORS. Roche stated that Moore was the only security manager for WTF.

Roche further testified that as security manager for WTF, Moore provided the information included in WTF's registration application. This information indicated that Moore was WTF's only principal and only AP during its existence. (See NFA Exhibit 4). The application also identified Moore as the firm's president and the contact person for all areas including registration, membership, accounting, arbitration and compliance.

Roche also testified that WTF's application for registration as a commodity trading advisor and NFA membership was approved on June 5, 2006. Roche stated that WTF is currently pending withdrawal as a CTA and NFA Member. Roche explained that the withdrawal is pending because NFA's Compliance Department put a hold on the withdrawal until the pending BCC action is resolved. Roche stated, however, that the firm is not currently doing business and that Moore informed NFA that WTF ceased operations in December 2006. Roche testified that while WTF was in business, the firm traded off-exchange foreign currency products for retail customers.

Roche testified that on November 14, 2006, she and a team of NFA auditors visited WTF's offices in Deerfield Beach, Florida. When the audit team arrived at the address listed on ORS, they learned that the offices were located in a single family home in a residential area. Kuehne was the only person present at the location when they arrived. Roche stated that she explained to Kuehne that they were there to

do an audit of WTF. At NFA's request, Kuehne contacted Moore and explained that NFA was there to do an audit.

Roche stated that Kuehne provided NFA with a copy of his business card, which indicated that he was a currency trader for WTF. While the audit team waited for Moore to arrive, Kuehne watched the markets on a computer screen.

Roche testified that Moore arrived at the home about 15 minutes after Kuehne called him. Moore told NFA that he was not at WTF's offices because he operated an unregistered forex solicitor from another location during normal business hours. Moore also told NFA that he did not conduct any business for WTF from the other office.

Roche further testified that Moore told NFA that he prepared WTF's promotional material, but Kuehne solicited customers for WTF, traded customer accounts and wrote checks from WTF's bank accounts.

Roche stated that she reviewed WTF's articles of incorporation. The document identified Kuehne as WTF's president and a director, even though he was not listed in ORS as being associated with WTF in any manner.

Roche also testified that Kuehne stated that he had not applied to become a principal or AP of WTF because he did not believe that he would have been able to get registered due to some things he had done when he was younger.

Roche stated that NFA also requested copies of the firm's procedures, including ethics procedures, general compliance procedures and privacy policy. The firm, however, did not have any of these procedures.

Roche stated that NFA also obtained copies of WTF's promotional material, which included a prospective investor package and the firm's website. After NFA reviewed these materials, staff contacted Moore by regular mail and e-mail and requested support for statements made in the material. Moore never produced any supporting documentation. Instead, he informed NFA that WTF had been dissolved in December 2006 and that he would be traveling outside the United States for the next 60 to 90 days. (See NFA Exhibit 8.)

Roche also testified that NFA found other deficiencies with the firm's promotional material. Neither piece included an adequate discussion of the risk of loss related to trading the forex markets. In addition, although both pieces of promotional material implied past profits, neither piece included the required past performance disclaimer.

Roche stated that in March 2007, NFA issued an audit report to WTF that summarized the findings of the audit. (See NFA Exhibit 11.) These findings included the fact that Kuehne was not listed as a principal of WTF and that he was acting as an AP without being registered. The audit report also cited WTF for not having required procedures in several areas and outlined promotional material deficiencies. Finally, the report noted that the firm failed to cooperate during the course of the audit. Roche stated that NFA sent the report to Moore both by regular mail and e-mail. Although NFA requested a response from Moore, he never responded to the report in any manner.

### III

#### DISCUSSION

Moore's admissions established all the violations alleged against the Respondents. Although the admissions were sufficient, Roche's testimony and the supporting documentation corroborated them and filled in the details.

Count I of the Complaint alleged that WTF violated NFA Registration Rule 208 for failing to list Kuehne as a principal of WTF and that Moore and WTF violated Compliance Rule 2-36(c) – which applies to them through Compliance Rule 2-39 – by trying to conceal the fact that Kuehne was acting as a principal of WTF when it listed Moore as the firm's sole principal and AP, even though he had very limited duties at WTF. WTF, through Moore, identified Moore as the firm's only principal and AP, but WTF was actually operated by Kuehne. When NFA arrived at WTF's office, Kuehne was the only person present, and his business card identified him as a currency trader for WTF. In addition, WTF's articles of incorporation and board of directors' minutes identified Kuehne as the president and director of WTF. Moore told Roche that Kuehne solicited customers, traded customers' accounts and wrote the checks from the firm's bank account. Moore also told Roche that he operated another firm at a different location during normal business hours. Kuehne told NFA that he did not attempt to become listed as the firm's principal because he did not think he would be able to. The totality of these circumstances show that Kuehne should have been listed as a principal of WTF and that WTF did not list him as a principal because WTF and Moore believed he would have been disqualified. Failing to list Kuehne as a principal is a violation of

NFA Registration Rule 208, and WTF's and Moore's attempt to conceal Kuehne's relationship with WTF is a violation of NFA Compliance Rule 2-36(c).

Count II of the Complaint charged WTF with using promotional material that discussed profits without adequately discussing the risk of loss. The firm's prospective investor package (NFA Exhibit 9) and a copy of the firm's website as of November 14, 2006 (NFA Exhibit 10) clearly contain discussions of profit, but do not include adequate disclosure of the risk of loss. Count II also charges WTG with failing to have written supervisory procedures such as ethics training procedures, a privacy policy, promotional material review procedures or general supervisory procedures. Roche testified that NFA asked Moore to provide these procedures to NFA, but he never did.

Finally, Count III of the Complaint alleged that WTF and Moore violated NFA Compliance Rule 2-5 because they repeatedly failed to provide NFA with information it needed to complete its review. NFA made several requests of Moore and WTF to provide documents that included copies of ownership records, WTF fee calculations and account opening documents. NFA also sent an audit report to WTF requesting a response, but the only response NFA received was an e-mail from Moore indicating that WTF had been dissolved and he would be traveling outside of the U.S. for an extended period of time. (See NFA Group Exhibit 8.)

#### IV

#### **FINDINGS AND CONCLUSIONS**

1. At all relevant times, WTF was an NFA Member CTA. As such, WTF is required to comply with NFA Requirements and is subject to disciplinary proceedings for

all violations of NFA Requirements that occurred while it was a Member. See NFA Compliance Rule 2-14.

2. At all relevant times, Moore was the only listed principal of WTF and was an AP of WTF and an NFA Associate in accordance with NFA Bylaw 301(b). As such, Moore is required to comply with NFA Requirements and is subject to disciplinary proceedings for all violations of NFA Requirements that occurred while he was an Associate. See NFA Compliance Rule 2-14.
3. At all relevant times, WTF and Moore met the criteria and were subject to NFA Compliance Rule 2-39, which required them to comply with subsections (b), (c) and (e) of NFA Compliance Rule 2-36.
4. Kuehne was a director and officer of WTG, was authorized to sign checks drawn from WTF's bank account and exerted controlling influence over the firm's operations. Although Kuehne was acting as a principal of WTF, WTF did not list Kuehne as a principal of WTF in its registration records.
5. WTF and Moore tried to conceal Kuehne's true role at WTF by listing Moore as the firm's sole principal and AP.
6. Based on the foregoing, WTF violated NFA Registration Rule 208 for failing to list Kuehne as a principal of WTF and WTF, and Moore violated NFA Compliance Rule 2-36(c) by concealing Kuehne's role at WTF thereby breaching their obligation to observe high standards of commercial honor in conducting WTF's forex business. This conduct is inconsistent with just and equitable principles of trade.

7. WTF's website as of November 14, 2006 and WTF's "prospective investor package" discussed profits without adequately discussing the risk of loss involved in trading forex markets.
8. Based on the foregoing, WTF violated NFA Compliance Rule 2-36(b)(1) by using misleading promotional material. This conduct is inconsistent with just and equitable principles of trade.
9. WTF failed to develop ethics training procedures, a privacy policy, promotional material review procedures or general supervisory procedures. WTF and Moore failed to take any meaningful steps to supervise WTF's forex business.
10. Based on the foregoing, WTF and Moore violated NFA Compliance Rule 2-36(e). This conduct is inconsistent with just and equitable principles of trade.
11. WTF and Moore failed to cooperate with NFA during NFA's examination. NFA made repeated requests of WTF and Moore to provide additional documentation to complete the examination and requested a response to the audit report. WTF and Moore failed to produce any additional documentation and never responded to NFA's audit report.
12. Based on the foregoing, WTF and Moore violated NFA Compliance Rule 2-5. This 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 offense. The evidence at this hearing established that WTF and Moore set up WTF

without making any efforts to ensure that it was operated properly. WTF and Moore permitted the firm to be run by Kuehne, who was not listed as a principal, and attempted to conceal Kuehne's role by listing Moore as the firm's principal. Moreover, Moore and WTF failed to set up any supervisory procedures to oversee the firm. In addition, when NFA attempted to review the firm's operations, WTF and Moore failed to respond to NFA's inquiries or provide any of the documentation NFA requested. The record shows that WTF and Moore intentionally planned and executed a scheme to mislead NFA and conceal the identity of its controlling person. These are very serious violations and deserve a serious sanction.

After considering the evidence against WTF and Moore, the Panel orders that WTF and Moore be permanently barred from NFA membership and associate membership and from acting as a principal of an NFA Member.

## VI

### APPEAL

WTF and Moore 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 Commodity Futures Trading Commission Regulation 1.63, this Decision and the sanctions imposed by it render Moore permanently ineligible to serve on a governing board, disciplinary committee, oversight panel, or arbitration panel of any self-regulatory organization, as that term is defined under CFTC Regulation 1.63.

**NATIONAL FUTURES ASSOCIATION**

Dated: January 28, 2008

By: Paul O'Kelly  
Paul O'Kelly  
Chairperson

/nam(Decision:World Trade Financial.caw)

**AFFIDAVIT OF SERVICE**

I, Nancy Miskovich-Paschen, on oath state that on January 31, 2008, 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, first-class delivery, in envelopes addressed as follows:

David Stawick  
Office of the Secretariat  
Commodity Futures Trading  
Commission  
Three Lafayette Centre  
1155 21st Street, NW  
Washington, DC 20581

Barbara Gold  
Acting Deputy Director  
Commodity Futures Trading  
Commission  
Three Lafayette Centre  
1155 21st Street, NW  
Washington, DC 20581

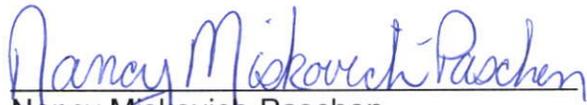
World Trade Financial, Inc.  
913 SE 7th Court  
Deerfield Beach, FL 33441  
Attn: David Moore, President

Richard Foelber  
Deputy Chief, Office of  
Cooperative Enforcement  
Division of Enforcement  
Commodity Futures Trading  
Commission  
Three Lafayette Centre  
1155 21st Street, NW  
Washington, DC 20581

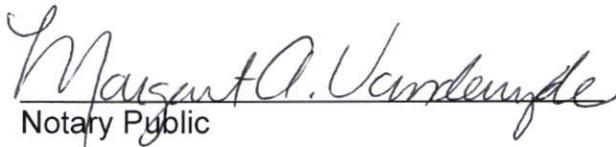
Tempest Thomas  
Proceedings Clerk  
Office of Proceedings  
Commodity Futures Trading  
Commission  
Three Lafayette Centre  
1155 21st Street, NW  
Washington, DC 20581

And by hand delivery to:

Ronald V. Hirst, Esq.  
National Futures Association  
300 South Riverside Plaza  
Suite 1800  
Chicago, IL 60606

  
Nancy Miskovich-Paschen

Subscribed and sworn to before me  
on this 31st day of January 2008.

  
Notary Public

