

**FILED**

**NATIONAL FUTURES ASSOCIATION  
BEFORE THE  
HEARING PANEL**

**MAR 12 2008**

**NATIONAL FUTURES ASSOCIATION  
LEGAL DOCKETING**

In the Matter of: )  
)  
JORDAN ASSETS LTD. )  
(NFA ID #252388) )  
)  
and ) NFA Case No. 06-BCC-038  
)  
WALLACE NEAL JORDAN )  
(NFA ID #95007), )  
)  
Respondents. )

**DECISION**

On November 26, 2007, a designated Panel of the Hearing Committee held a hearing to consider the charges against Jordan Assets Ltd. (JAL) and Wallace Neal Jordan (Jordan). The Panel issues the following Decision under National Futures Association (NFA) Compliance Rule 3-10.

I

**PROCEDURAL BACKGROUND**

On December 8, 2006, NFA's Business Conduct Committee issued a five count Complaint against JAL and Jordan. Count I of the Complaint alleged that JAL and Jordan failed to cooperate fully and promptly with NFA in an examination of JAL in that JAL and Jordan failed to produce within a reasonable time certain records that NFA requested, in violation of NFA Compliance Rule 2-5. Count II of the Complaint charged that JAL violated NFA Compliance Rule 2-13(a) because JAL failed to properly maintain required books and records related to its operation of the Jordan Index Fund (Fund), a

commodity pool it operates, and failed to keep what records it did maintain at JAL's main office. In addition, the Complaint charged in Count III that JAL violated NFA Compliance Rule 2-13(a) because it failed to provide a current and accurate disclosure document to pool participants that reflected, among other things, material information related to regulatory actions against Jordan, related party transactions between Jordan and the Fund and changes in the Fund's trading policy. Count IV of the Complaint charged that JAL failed to observe high standards of commercial honor and just and equitable principles of trade, in violation of NFA Compliance Rule 2-4, because it invested the Fund in an instrument that was not allowed under the Fund's trading policy and failed to obtain approval from the Fund's participants to do so, as required by the Fund's disclosure document. Finally, Count V of the Complaint charged that JAL and Jordan violated NFA Compliance Rule 2-9(a) by failing to adequately supervise JAL's CPO operations to ensure compliance with Commodity Futures Trading Commission (CFTC) and NFA requirements regarding recordkeeping and disclosure requirements to pool participants.

On July 24, 2007, Jordan and JAL filed an Answer where they denied all material allegations in the Complaint.

## II

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

NFA presented the testimony of two witnesses, including Jordan, and introduced several documents into evidence. Jordan testified on behalf of JAL and himself and also introduced several documents into evidence. Below is a brief summary of the evidence presented.

**Joseph Patrick**

Joseph Patrick (Patrick) testified that he is a Manager in NFA's Compliance Department. Patrick testified that in September 2005 and December 2005, NFA attempted to schedule a routine examination of JAL, but was unable to do so because Jordan informed NFA that he would not be available at those times. Patrick also testified that NFA again attempted to schedule an exam of JAL in April 2006. Although Jordan attempted to postpone the examination by claiming that it was not a convenient time for him, NFA insisted on beginning the examination.

Patrick also stated that around the time NFA was attempting to schedule the April 2006 examination, NFA received the Fund's December 31, 2005 certified financial statement. The statement indicated that the Fund had invested \$200,000 in a convertible subordinated debenture issued by Boston Restaurant Associates, Inc. (BRA). According to the notes to the financial statement, the debenture was purchased from Gundaker Jordan American Holdings (GUN). Patrick stated that Jordan told NFA that GUN is an affiliate of JAL and that he has an ownership interest in GUN.

According to Patrick, Jordan informed NFA that the Index Fund invested in the debenture because the Fund was holding cash, and he felt that it would be more advantageous to the Fund to purchase the debenture than to hold cash.

Patrick testified that NFA reviewed BRA's variable rate convertible subordinated debenture agreement. (See NFA Exhibit 2.) The document indicated that in December 2004, GUN sold the debenture to Jordan, who subsequently sold the debenture to the Fund. Patrick noted that this information was inconsistent with the Fund's financial statement, which indicated that GUN, not Jordan, sold the debenture to

the Fund. Patrick also noted that this was a related party transaction, however, the Fund's disclosure document did not include any information on related party transactions, nor had JAL informed the participants by any other method of the related party nature of this transaction.

Patrick stated that NFA did some research on BRA and learned that it is a public company and that its stock is traded in the over-the-counter (OTC) market. NFA also learned that the company's stock was very lightly traded.

Patrick also testified that NFA was concerned that the purchase of the debenture was not permitted under the terms of the Fund's 1994 disclosure document. (See NFA Exhibit 4.) The disclosure document indicated that the Fund would follow certain trading policies, one of which limited the types of securities the Fund could invest in to those allowed for the investment of customer funds under the Commodity Exchange Act (CEA).<sup>1</sup> Patrick stated that this debenture would not qualify as a type of security that customer funds could be invested in under the CEA. Patrick also testified that the disclosure document provided that any material changes to the trading policies had to be approved by majority vote of the Fund's outstanding units. Patrick testified that the participants had not approved a change to the trading policies that would have permitted the purchase of the debenture.

On cross-examination, Patrick agreed that the debenture could be considered a security and that the Fund's disclosure document stated that securities could be purchased on occasion.

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<sup>1</sup> CFTC Regulation 1.25 governs the investment of customer funds.

According to Patrick, on April 6, 2006, NFA sent a letter to Jordan confirming that NFA would begin an examination on April 17, 2006 and identifying a number of documents that JAL was required to provide NFA at the start of the examination. The letter also identified five items that JAL was required to provide NFA by no later than 3:00 p.m. CST on April 7, 2006. These documents were a list of the Fund's current participants and contact information, the most current account statements issued to Fund participants, the Fund's most current disclosure document, contact information for the Fund's recordkeeper/accountant and a list of the Fund's assets. Patrick acknowledged that this request was out of the ordinary but explained that NFA made the request because of NFA's concerns related to the investment in the debenture and the fact that the firm had postponed two prior exams.

Patrick testified that JAL did not provide all the documents by April 7. On either April 7 or April 8, NFA contacted Jordan who informed NFA that he needed more time to gather all the requested documents. Patrick stated that NFA's next contact with Jordan was on April 7<sup>th</sup> when NFA's audit team arrived at JAL's offices to begin the examination. NFA's audit team asked Jordan to provide the records that they had previously requested and those that he was supposed have available on April 17. Jordan informed NFA that the majority of the firm's current financial records were at the firm's accountant's office, which was located in Colorado. Patrick noted that JAL is required to maintain its current books and records at its main office, which was located in Missouri.

Patrick stated that JAL did have certain records at the Missouri office, including client files, older financial records and general business records. NFA

reviewed these documents and determined that there was a significant gap in the firm's records that extended from approximately January 2001 through March 2003. Patrick noted that there were no financial records for that time period even though the firm is required to maintain these records for a minimum of five years, with the records being readily accessible for the first two years. Patrick stated that Jordan told him he did not have those records, because when JAL terminated its relationship with its former accountant, the accountant did not return the business records.

Patrick testified that NFA spent two days at JAL's offices. Before leaving the offices, Patrick met with Jordan and explained that JAL still had not provided NFA with all the records it needed to complete the examination. Patrick told Jordan that he needed to send the remaining records to NFA's offices so NFA could complete the examination. NFA received a package from JAL's accountant, but it did not include all the documents that NFA had requested. NFA then sent another e-mail to Jordan outlining the documents that were still outstanding. Although Jordan sent two more packages of records to NFA, he still did not provide all the records that NFA requested. Patrick stated that he and another NFA auditor made several unsuccessful attempts to contact Jordan by telephone. Finally, in the beginning of May, NFA sent a letter to Jordan (NFA Exhibit 7) identifying all the records that were still missing. Jordan left Patrick a voice mail indicating that he had been travelling extensively and he had not had an opportunity to review the letter and gather the records. NFA waited another week or so for the records and then contacted Jordan by voice mail and informed him that NFA was going to assume that any records JAL had not as yet provided were not available. Patrick stated that although Jordan subsequently provided some additional

records, he still has not provided all the records requested by NFA. Patrick stated, however, that NFA was able to complete its examination with the records provided. Patrick also noted that all the records JAL failed to provide to NFA were records that it was required to maintain as a CPO.

On cross-examination, Patrick acknowledged that the terms of the debenture stated that it would pay a fourteen percent annual return. Patrick noted, however, that he did not see any interest payment made to the Fund. Rather, he saw shares of GUN being deposited into the Fund in lieu of an interest payment.

### **Wallace Neal Jordan**

Jordan testified that he owns and operates JAL and that JAL is a registered CPO that operates the Fund. Jordan also stated that he was the person who selected the Fund's investments.

Jordan stated that in April 2005, he directed the Fund to purchase from him the BRA debenture for \$200,000. GUN had owned the debenture, but sold it to Jordan shortly before he sold it to the Fund. Jordan indicated that he is the majority shareholder of GUN. Jordan stated that every transaction involving the debenture was done at par value and he sold the debenture to the Fund at par value. The debenture was not traded on an exchange, so the price was based on the price at which the person holding the debenture (Jordan) was willing to sell it.

Jordan also testified that BRA mistakenly sent him a check for \$14,000, which represented a regular interest payment that was due the Fund. Jordan stated that he did not realize that the interest payment was not his and he invested the

\$14,000 into GUN.<sup>2</sup> Jordan stated that, when he realized that the interest payment should have gone to the Fund, he transferred the stock he purchased with the payment to the Fund. According to Jordan, he did not notify participants that he was purchasing the debenture or that he transferred GUN stock to the Fund in lieu of the \$14,000 interest payment. Jordan stated, however, that the debenture benefited the Fund. Jordan also stated that, after NFA's audit, GUN repurchased the debenture from the Fund for \$200,000.

Jordan also testified that the Fund's disclosure document did not prohibit the Fund from investing in the debenture. The disclosure document allowed the Fund to invest in securities and stock options and other interest bearing instruments. According to Jordan, the debenture qualified as both a security and an interest bearing instrument.

Jordan testified that in 1995, NASD brought an action against him that resulted in him being censured and fined \$2,500. Jordan stated that the action related to an investment he made in a new issue of stock. Jordan stated he held the stock for a period of months and when he sold it he made a profit of \$1,200 to \$1,500. According to Jordan, several years later NASD called him and informed him that he had violated the NASD's rule related to free-riding and withholding because the stock he purchased appreciated on the day he purchased it. Jordan challenged the charge at a hearing. At the conclusion of the hearing, NASD imposed the censure and fine.

Jordan also testified that he was involved in a regulatory action in the state of Colorado. According to Jordan, when he tried to register GUN in Colorado,

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<sup>2</sup> According to Jordan, he used all his excess cash to purchase stock in GUN. For every share of stock Jordan purchased at ten cents, he received an option on a share of stock for one cent. This was a term in GUN's private placement memorandum, and its purpose was to ensure that he maintained a controlling interest in GUN.

representatives from Colorado sent him an onerous list of requirements. Since the firm had moved to Missouri, Jordan concluded that the registration was not necessary. When he tried to withdraw the application, a representative told him that he would not be allowed to withdraw until he provided the information requested. Jordan stated that he attempted to comply, but at some point a representative from the state of Colorado informed him that "we're kicking you out of the state of Colorado" because they did not like his past disciplinary history. Jordan also stated that a representative from the state of Colorado told him that he had been "blowing" them off. Jordan stated that he told the representatives that if they took the action to kick him out of Colorado, he would institute a shareholder lawsuit against everyone in the room and the state. According to Jordan, this made the representatives change their mind and they contacted him the next day and asked him if he would agree to be inactive in the state for seven years. Jordan stated that he did not need to be registered in the state, so he agreed.

Jordan acknowledged that he did not update the Fund's disclosure document to disclose the NASD or Colorado actions. Jordan stated, however, that he did not know that he was required to update this document and that the attorney he hired to prepare the document did not tell him that he had to update the document. In addition, Jordan stated that none of these actions were "of any consequence."

Jordan testified that he and JAL cooperated with NFA to their fullest capability in providing NFA with the records that were requested. Jordan stated that he was travelling on business and it was impossible for him to get the records to NFA in the time requested by Patrick. Jordan testified that he provided everything to NFA as quickly as he could. Jordan admitted, however, that JAL did not have all its records at

its main business location in Missouri. Rather, many of the records were located at JAL's accountant's office in Colorado. Jordan also acknowledged that he still did not have all of JAL's business records at the firm's main office.

Jordan also acknowledged that there was a gap in JAL's records. Jordan stated, however, that the missing records were records that were from a period of time he was not in control of GUN (and therefore not in control of JAL). When he regained control of GUN, "the other people" did not send the records back to him.<sup>3</sup>

### III

#### DISCUSSION

As discussed more fully below, the evidence NFA presented in this matter overwhelmingly demonstrates that Jordan and JAL committed each of the violations alleged in the Complaint. In fact, Jordan readily admitted that JAL did not have all the records it was required to maintain, did not maintain the required books and records at its main office and failed to update and distribute a disclosure document that included disclosures regarding his regulatory history and related party transactions. Jordan attempted to excuse these actions by stating that he was not aware of the requirements. Although Jordan disputed NFA's allegations that he and JAL failed to promptly and fully cooperate with NFA in its review of JAL and that the Fund's purchase of the debenture

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<sup>3</sup> Throughout Jordan's testimony, he discussed an attempted takeover of GUN. Jordan suggested that NFA worked with the people and entities behind this takeover to bring NFA's disciplinary action and Jordan questioned NFA's motives in bringing the action. Jordan also suggested that the people and entities behind the takeover were somehow responsible for the regulatory actions by NASD and the state of Colorado. Jordan also claimed that the missing records were records that were created when these people had control of GUN and that these people did not give those records to him. The Panel did not find any of this testimony relevant to the issues before them.

violated the Fund's investment restrictions, the Panel does not agree with his assessment.

**Count I – Failing to Cooperate Fully and Promptly with NFA**

Patrick's testimony clearly detailed Jordan and JAL's failure to provide NFA the information it needed to conduct its examination, and this testimony was corroborated by documentary evidence of NFA's repeated attempts to obtain the information. Jordan maintained that he provided the information he had available as quickly as he could and that any information he did not provide was not available to him. Jordan seems to suggest that since he eventually gave NFA the information that was available to him, he cooperated with NFA. This, however, is simply not the case. Compliance Rule 2-5 provides that Members and Associates are required to cooperate fully and promptly. Although promptly is not defined, Jordan clearly did not meet that standard. The documents NFA requested in April 2006 were documents NFA needed to perform an examination of JAL and Jordan and JAL were required to have them readily available. Jordan and JAL, therefore, should have provided the documents immediately upon NFA's request. Providing the documents a week to several months later clearly is not cooperating promptly. Moreover, Jordan and JAL did not cooperate fully because they never provided some of the documents to NFA even though the firm was required to maintain them. As discussed in Count II below, not having the documents available is no excuse for not complying.

**Count II – Failing to Properly Maintain Required Books and Records**

Jordan also admitted that JAL did not maintain the required books and records at its main business office and that it was missing required records for a period

of time between 2001 and 2004. Jordan argued, however, that he did not know that JAL was required to maintain the books and records at its main office and claimed that it was not his or JAL's fault that the records were missing. Rather, he told Patrick that JAL's former accountant refused to return the records to JAL. At the hearing, he stated that "other people" had the records and did not return them to him.

Jordan's argument that he was unfamiliar with the requirements related to being a CPO is clearly no defense for JAL's failure to follow the rules. If ignorance of the requirements was an acceptable excuse, then any Member could avoid complying with NFA Rules by claiming it did not know the rules or by purposefully not learning the rules.

Jordan also argues that he did not violate Rule 2-13 with respect to the documents he failed to provide because those documents were not in his control. This argument, however, is also completely without merit. JAL is required to maintain its records for five years and it has the responsibility to ensure that it has sufficient control over them to produce them upon NFA's request.

### **Count III – Failing to Provide a Current and Accurate Disclosure Document**

This count contains three different types of information that NFA alleges should have been included in the disclosure document but were not. NFA established at the hearing that Jordan had been subject to regulatory actions by NASD and the state of Colorado.<sup>4</sup> During his testimony, Jordan admitted that he was subject to both these actions and acknowledged that he did not update JAL's disclosure document to

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<sup>4</sup> NFA also established that Jordan had been subject to a regulatory action by the SEC. However, the Complaint does not charge JAL with failing to update the disclosure document to include this information. Therefore, the Panel will not address it.

include this information, nor did he notify the Fund's participants of these actions by any other method.

Similarly, NFA established and Jordan acknowledged that he sold a debenture that he owned to the Fund for \$200,000 and that he personally received an interest payment of \$14,000 related to the debenture that was due the Fund. Jordan also admitted that he purchased stock in GUN with the proceeds from the interest payment and, when he realized the interest payment was actually due to the Fund, he transferred the shares of stock to the Fund instead of paying it the \$14,000. NFA also established and Jordan admitted that JAL did not update its disclosure document or notify participants by any other method of these two transactions.

Once again, Jordan defended his failure to update the disclosure document and notify participants of this material information by claiming that he was not aware he was required to do so. And once again, this excuse is no defense. As we noted above, failure to know a requirement is no excuse for not following it. Jordan also suggested that none of this information was material, so there was no harm in him not disclosing it. The Panel disagrees. The regulatory actions both resulted in sanctions against Jordan. The NASD action required Jordan to pay a \$2,500 fine and the state of Colorado action banned Jordan from having an investment adviser representative license for a period of seven years. Clearly these regulatory sanctions are the type of information a person investing in a pool would want to know about a principal of the pool. Jordan's failure to disclose the related party transaction is even more troubling. Jordan personally sold the Fund an investment vehicle that did not have a publicly disseminated market value. Jordan then received an interest payment due the Fund

and at a later point "returned" the interest payment in the form of stock in a company in which Jordan has a controlling interest. It is untenable for Jordan to suggest that these were not material related party transactions.

NFA also charged in this count that JAL failed to update its disclosure document to notify participants that the Fund was modifying the types of investments it could make. NFA alleged that JAL was required to do this because the BRA debenture was not an allowable investment under the disclosure document. Jordan argued that the BRA debenture was allowed under the disclosure document and therefore there was no requirement that he update the disclosure document to disclose this investment. As discussed more fully below, the Panel agrees with NFA. The BRA debenture was not the type of investment allowed by the disclosure document and therefore JAL should have amended its disclosure document (in addition to obtaining participant approval of the change to its trading policy) to inform participants that this type of investment could be purchased by the Fund.

JAL's failures to update its disclosure document and provide participants with notice of the above material information are clear violations of NFA Compliance Rule 2-13.

**Count IV – Failing to Observe High Standards of Commercial Honor and Just and Equitable Principles of Trade**

NFA alleges that the BRA debenture was not an allowable investment under the terms of the disclosure document and that JAL's purchase of the debenture, along with its failure to obtain approval to do so by a majority of outstanding units of the Fund, is a violation of NFA Compliance Rule 2-4. Jordan admits that JAL purchased the debenture without seeking approval of the outstanding units. Jordan argues,