

MAR - 2 2010

NATIONAL FUTURES ASSOCIATION  
BEFORE THE  
MEMBERSHIP COMMITTEE

NATIONAL FUTURES ASSOCIATION  
LEGAL DOCKETING

In the Matter of: )

LUSAY A. WOOTEN )  
(NFA ID #405106), )

NFA Case No. 09-REG-021

Registrant. )

**FINAL ORDER**

A designated Subcommittee of the Membership Committee held a hearing to determine whether to revoke Lusay A. Wooten's (Wooten) registration as an associated person (AP) under the Commodity Exchange Act (the Act).<sup>1</sup> After considering all the evidence submitted by the parties in light of the appropriate standards, the Subcommittee determines not to revoke Wooten's registration as an AP.

I

**PROCEDURAL BACKGROUND**

Wooten was a registered AP of Pioneer Commodities LLC (Pioneer) from November 20, 2008 through February 25, 2009, and an AP of Windsor Wealth Management LLC (Windsor) from February 13, 2009 through December 3, 2009. On July 23, 2009, National Futures Association (NFA) issued a Notice of Intent to Revoke Registration (the Notice) to Wooten. The Notice alleged that, on November 7, 2008, Wooten requested that she be granted extra time to complete the Series 3 examination

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<sup>1</sup> This matter was heard as part of a consolidated hearing in the matters of Teresia A. Bactawar, NFA docket number 09-REG-017; Nicholas P. Payne, NFA docket number 09-REG-018; Jeremy J. Grena, NFA docket number 09-REG-019; Alexander M. Silverman, NFA docket number 09-REG-020; Lusay A. Wooten, NFA docket number 09-REG-021; Nabil P. Niman, NFA docket number 09-REG-032; and William M. Rill, NFA docket number 09-REG-033.

based upon her representation that English is not her primary language. NFA alleged in the Notice that Wooten is fluent in English and therefore the fact that she requested extra time to complete the Series 3 examination based on the representation that English is not her primary language constitutes other good cause to disqualify her from registration under Section 8a(3)(M) of the Act. On August 10, 2009, Wooten filed a response to the Notice where she admitted requesting an extra hour to complete the Series 3 examination based on her representation that English is not her primary language. Wooten also admitted that English is the primary language she speaks during business hours. Wooten denied that she is disqualified from registration based on this conduct and noted that she requested the additional hour because her native language is Spanish, and it takes her longer to translate between English and Spanish. Wooten further represented that although English is the primary language she speaks during business hours, her native language is Spanish.

On December 3, 2009, subsequent to the hearing in this matter, Wooten's AP registration was withdrawn. As the Notice was filed while Wooten was registered, the Subcommittee may reach a decision on whether to revoke her registration. See *In re First Regal Commodities, Inc.*, [1984-1986 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 22,600 at 30,370 (CFTC May 22, 1985); *In re Vesely*, [1977-1980 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 20,737 (CFTC Jan. 11, 1979) at 23,056 n.2; *In re Stovall*, [1977-1980 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 20,941 (CFTC Dec. 6, 1979) at 23,784 n.36; *In re Mishrick*, CFTC Docket No. 83-55 (CFTC May 29, 1984).

**EVIDENCE PRESENTED AT THE HEARING**

NFA introduced, without objection, a certified copy of the publicly available portions of Wooten's registration record, a copy of the letter from Windsor requesting an extra hour for Wooten to complete the Series 3 examination, a May 12, 2009 letter from NFA to Windsor requesting that Wooten provide certain information on her background, and Wooten's written response to that letter.

NFA's May 12, 2009 letter directed Wooten to identify certain information on her background, including her place of birth, her primary language and any other languages she speaks, and how long she has been fluent in those languages. In her response, Wooten represented that she was born in Venezuela and that her first language is Spanish. Wooten also represented that she learned to speak English in 1995 and is able to read and write English.

During the hearing, Wooten testified that she was born in Venezuela and lived there until she came to the United States when she was nine years old. When she came to the United States, she did not speak any English. Wooten also testified that although she attended English speaking schools after moving to the United States, she was involved in English as a second language classes through junior high school. Wooten stated that she received extra time to complete exams in high school. Wooten also testified that she only speaks Spanish at home because she lives with her parents who only speak Spanish.

Wooten testified that when she was studying for the Series 3 examination she had difficulty with the practice exams because it took her too long to finish the

exam. The instructor of the review class told her that since she was born in Venezuela she was qualified to receive extra time on the Series 3 examination. In order to obtain the extra hour, Windsor wrote a letter stating that English is not Wooten's primary language. Wooten testified that she did not believe that the letter was misleading because English is not her primary language.

### III

#### **FINDINGS AND CONCLUSIONS**

For the reasons discussed below, the Subcommittee finds that NFA has not met its burden of showing that Wooten is disqualified from registration under Section 8a(3)(M) of the Act, and therefore her registration may not be revoked under Section 8a(4).

Section 8a(4) of the Act authorizes NFA to revoke the registration of a person if cause exists under Section 8a(3) of the Act that would warrant a refusal of registration of such person. Section 8a(3)(M) of the Act provides that a person may be refused registration for other good cause. NFA alleges that when Wooten requested an extra hour to complete the Series 3 examination based on her representation that English is not her primary language, she was fluent in English. NFA further alleges that this is other good cause to disqualify her from registration under Section 8a(3)(M) of the Act because the conduct reflects a lack of honesty and an inability to comply with regulatory requirements. Although Wooten admits that English is the primary language she speaks during business hours, she also states that she did not begin speaking English until she was nine years old, she only speaks Spanish at home and she does not believe that English is her primary language. Wooten denies that she is disqualified

from registration under Section 8a(3)(M) of the Act because she requested an extra hour to complete the Series 3 examination based on her representation that English is not her primary language.

NFA's position that Wooten is disqualified from registration is based on its allegation that at the time she requested an extra hour to complete the Series 3 examination based on the representation that English is not her primary language, she was fluent in English, and therefore it was dishonest of her to request additional time. The Subcommittee does not believe that the evidence presented at the hearing supports this allegation. Wooten was born, and for the first nine years of her life, lived in a foreign country where she spoke only Spanish. Although Wooten acknowledged that she speaks English in a business environment, she speaks only Spanish at home. She also stated that for most of her school years, she attended classes for students for which English is their second language and/or was given additional time to complete exams. The Subcommittee found Wooten to be very honest in answering all questions and has no reason to doubt her representations. Based on this evidence, the Subcommittee does not believe that NFA has established that Wooten was dishonest when she represented that English is not her primary language when she requested an additional hour to complete the Series 3 examination.

Moreover, even if Wooten was fluent in English at the time she requested the additional time, the Subcommittee does not believe that Wooten did anything improper when she requested an additional hour to complete the Series 3 examination. The Financial Industry Regulatory Authority, Inc. (FINRA), which administers the Series 3 examination, provides on its web site that a person may request additional time if

English is their "second" language. The Subcommittee believes that since Wooten did not begin speaking English until she was nine years old and continues to speak Spanish outside of the business environment, it would be reasonable for her to conclude that English is her second language.

The Subcommittee finds that based upon the evidence presented, NFA has not met its burden of showing that there is other good cause to disqualify Wooten from registration. Accordingly, Wooten's AP registration is not revoked.

#### IV

#### APPEAL

This Final Order shall be effective thirty days after it is served on Wooten as prescribed by Commission Regulation 171.9. Wooten may appeal this Final Order to the Commission under Commission Regulation 171.23 by filing a Notice of Appeal with the Commission within thirty-five days after this Final Order is mailed. Under Commission Regulation 171.22, Wooten may petition the Commission to stay the effective date of this Final Order by filing a petition with the Commission within fifteen days after this Final Order is mailed.

Date: 03/02/10

By:   
Scott A. Cordes  
Chairman of the Subcommittee

**AFFIDAVIT OF SERVICE**

I, Nancy Miskovich-Paschen, on oath state that on March 2, 2010, I served copies of the attached Final Order, 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:

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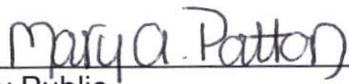
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Nancy Miskovich-Paschen

Subscribed and sworn to before me  
on this 2nd day of March 2010.

  
Notary Public

