

**NATIONAL FUTURES ASSOCIATION
BEFORE THE
MEMBERSHIP COMMITTEE**

MAR - 2 2010

NATIONAL FUTURES ASSOCIATION
LEGAL DOCKETING

In the Matter of:)

NABIL P. NIMAN)
(NFA ID #375924),)

NFA Case No. 09-REG-032

) Registrant.
)

FINAL ORDER REVOKING REGISTRATION

A designated Subcommittee of the Membership Committee held a hearing to determine whether to revoke Nabil P. Niman's (Niman) registration as an associated person (AP) under the Commodity Exchange Act (the Act).¹ After considering all the evidence submitted by the parties in light of the appropriate standards, the Subcommittee determines to revoke Niman's registration as an AP.

I

PROCEDURAL BACKGROUND

Niman was registered as an AP of Pioneer Commodities LLC (Pioneer) from October 9, 2006, through March 9, 2009. Niman has been an AP of Windsor Wealth Management LLC (Windsor) since February 13, 2009. On September 16, 2009, National Futures Association (NFA) issued a Notice of Intent to Revoke Registration (the Notice) to Niman. The Notice alleged that on September 19, 2006, Niman requested that he be granted extra time to complete the Series 3 examination based

¹ 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.

upon his representation that English is not his primary language. NFA alleged in the Notice that Niman is fluent in English and therefore his representation that English is not his primary language disqualifies him from registration under Section 8a(3)(M) of the Act. On October 5, 2009, Niman filed a response to the Notice in which he admitted to requesting extra time to complete the Series 3 examination and that English is his primary language. Niman indicated that he requested the extra time as "an accommodation and not with the intent to mislead NFA." Niman denied that this conduct disqualifies him from registration and also indicated that he intended to show that notwithstanding the allegations contained in the Notice, his registration does not pose a substantial risk to the public.

II

EVIDENCE PRESENTED AT THE HEARING

NFA introduced, without objection, a certified copy of the publicly available portions of Niman's registration record, a copy of the letter from Pioneer requesting an extra hour for Niman to complete the Series 3 examination, and Niman's written response to interrogatories from NFA. Niman testified on his own behalf and introduced letters from two individuals commenting on his character.

NFA's interrogatories required Niman to provide certain information on his background. In response to the interrogatories, Niman represented that he was born in the United States and that he speaks only English. Niman also admitted that he requested an extra hour to complete the Series 3 examination based upon his representation that English is not his primary language.

During the hearing, Niman testified that he grew up in New Jersey and

moved to Florida in 2006. At that time, he began working for Pioneer and attending a review class for the Series 3 examination. Niman indicated that Hank, one of the instructors of the class, told him that although the Series 3 was a two hour examination, there was a "loophole" to get an extra hour to take the exam if you say English is not your primary language. Niman indicated that he asked the other instructor of the class, Rocky Disillo (Disillo), and Pioneer's chief executive officer (CEO), Anthony Bobba (Bobba), about this and they both assured him it was permissible.

III

FINDINGS AND CONCLUSIONS

For the reasons discussed below, the Subcommittee finds that when Niman requested an extra hour to complete the Series 3 examination, he misrepresented that English is not his primary language. The Subcommittee also finds that this conduct is other good cause to disqualify Niman 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, and therefore the Subcommittee may revoke his registration under Section 8a(4) of the Act. Finally, the Subcommittee finds that Niman has not met his burden of showing, by a preponderance of the evidence, that his registration does not pose a substantial risk to the public.

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 Niman misrepresented that English is not his primary language when he requested an extra hour to complete the

Series 3 examination. Niman admitted in his response to NFA's interrogatories that English is his primary language. NFA alleges that this conduct reflects a lack of honesty and an inability by Niman to comply with regulatory requirements and thus disqualifies him from registration under Section 8a(3)(M) of the Act.

Although Section 8a(3)(M) does not specify the conduct that constitutes "other good cause," the Commodity Futures Trading Commission (the Commission) has said that other good cause under Section 8a(3)(M) exists "if, as a result of any act or pattern of conduct attributable to such person, although never the subject of formal action . . . such person's moral turpitude, **or lack of honesty** or financial responsibility is demonstrated to the Commission." (emphasis added). *Interpretive Statement with Respect to Section 8a(2)(C) and (E) and Section 8a(3)(J) and (M) of the Commodity Exchange Act*, Appendix A to Part 3 of the CFTC Regulations, 1 Comm. Fut. L. Rep. (CCH) ¶ 2220L.

The Subcommittee finds that Niman clearly demonstrated a lack of honesty when he falsely claimed that English is not his primary language in order to receive additional time to complete the Series 3 examination. Accordingly, the Subcommittee finds that Niman is disqualified from registration under Section 8a(3)(M).

Proof of the existence of a statutory disqualification raises a rebuttable presumption that the applicant or registrant is unfit for registration. The burden then shifts to the registrant to show that, notwithstanding his statutory disqualification, his registration will not pose a substantial risk to the public. *In re Antonacci*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,835 at 36,930 (CFTC Apr. 18, 1990); *In re Horn*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,836 at 36,939

(CFTC Apr. 18, 1990) (Horn II); *In re Walter*, [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,215 at 35,010 (CFTC Apr. 14, 1988); *In re Akar*, [1986-1987 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 22,927 at 31,708 (CFTC Feb. 24, 1986). As Niman is subject to disqualification under Section 8a(3) of the Act, he must make this showing by a preponderance of the evidence. Commission Regulation 3.60(e)(2)((17) C.F.R. §3.60(e)(2)); *In re Riley*, [1992-1994 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶26,239 at 42,048 (CFTC Sep. 29, 1994); *In re Bryant*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,847 at 36,997 (CFTC Apr. 18, 1990).

There are two types of evidence that Niman can present to prove that his registration would not pose a substantial risk to the public: evidence of mitigating circumstances relating to the wrongful conduct underlying the statutory disqualification and evidence of rehabilitation since the time of the wrongful conduct. *Walter*, [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) at 35,013; *In re Horn*, [1986-1987 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 23,731 at 33,889 (CFTC July 21, 1987) (Horn I). Having considered Niman's evidence, the Subcommittee concludes that Niman has not met his burden.

Mitigation evidence focuses on the facts and circumstances surrounding the underlying conduct and tends to show that the weight that would ordinarily be accorded the presumption of unfitness should be lessened. *Walter*, [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) at 35,013; *Horn I*, [1986-1987 Transfer Binder] Comm. Fut. L. Rep. (CCH) at 33,889. The only mitigation evidence submitted by Niman was his testimony that he requested the extra hour because Hank told him about a loophole and Bobba and Disillo both told him it was permissible to request an

extra hour by claiming that English is not your primary language. The Subcommittee does not believe that the fact that someone else told Niman to lie in any way mitigates Niman's conduct. In fact, the Subcommittee has grave concerns regarding a registrant who will knowingly lie because a person in a more senior position tells him it is okay to do so. Rather than mitigate Niman's conduct, these factors indicate to the Subcommittee that Niman is willing to skirt requirements when it is in his benefit to do so.

Niman's rehabilitation evidence is also lacking. The purpose of rehabilitation evidence is to prove a change in direction in an applicant's or registrant's activities. *Antonacci*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) at 36,933. Niman's rehabilitation evidence consisted of two letters from individuals commenting on his character. Neither of these letters, however, provides any evidence of rehabilitation. In considering rehabilitation evidence from character witnesses, the Subcommittee looks for witnesses who are not motivated by bias. *In re Krumpfes*, CFTC No. CRAA 08-06, 2009 WL 2878533 (Sep. 9, 2009). The letter from the CEO of Windsor, Niman's current employer, fails this test because the writer has an incentive to ensure that Niman continues to work so that he can continue to solicit business on behalf of Windsor. Moreover, both letters are unsworn statements, and neither of the writers indicates that he is aware of Niman's disqualifying conduct or discusses how Niman has changed since the disqualifying conduct. In order to provide evidence of rehabilitation, character witnesses "must offer insight into changes in character or business practices since the wrongdoing, rather than just proffer a list of compliments," *In re Lowrance*, [1992-1994 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,054 at

41,376, 41,382 (CFTC Apr. 15, 1994) (citing *Antonacci*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) at 36,933) and be "fully aware of the applicant's disqualifying conduct." *In re Marzano* [2005-2007 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 30,163 at 57,638, 57,641 (CFTC Jan. 4, 2006) (citing *Bryant*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) at 36,998-36,999. Clearly the letters submitted by Niman do not contain any of the detail needed to be considered evidence of rehabilitation.

Based upon the entire record before it, the Subcommittee finds that Niman has not shown by the preponderance of the evidence that his registration does not pose a substantial risk to the public. Therefore, the Subcommittee revokes Niman's registration.

IV

APPEAL

This Final Order shall be effective thirty days after it is served on Niman as prescribed by Commission Regulation 171.9. Niman 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, Niman 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
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 Revoking Registration, 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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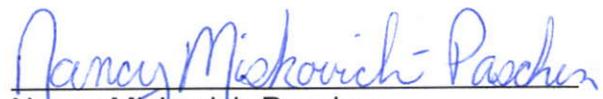
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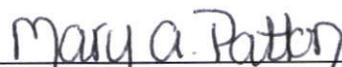
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Nancy Miskovich-Paschen

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



Notary Public

