

JUL 27 2010

NATIONAL FUTURES ASSOCIATION
BEFORE THE
HEARING PANEL

NATIONAL FUTURES ASSOCIATION
LEGAL DOCKETING

In the Matter of:)	
)	
COMMODITY FUTURES & OPTIONS)	
SERVICE, INC.)	
(HAL L. SWANSON)	NFA Case No. 09-BCC-039
NFA ID #52467),)	
)	
Respondent.)	

DECISION

On May 25, 2010, a designated Panel of the Hearing Committee held a hearing to consider the charges against Hal L. Swanson (Swanson). The Panel issues the following Decision under National Futures Association (NFA) Compliance Rule 3-10.

I

PROCEDURAL BACKGROUND

On September 30, 2009, NFA's Business Conduct Committee issued a three-count Complaint against Commodity Futures & Options Service, Inc. (CFOS), Swanson and Bryan L. Wright (Wright).¹ The Complaint charged that Swanson violated NFA Compliance Rule 2-9(a) and 2-36(e) because he failed to adequately supervise CFOS's operations. On October 23, 2009, Swanson filed an Answer, where he denied the material allegations in the Complaint.

¹ On April 22, 2010, NFA's Hearing Panel issued a Decision accepting offers of settlement submitted by CFOS and Wright.

EVIDENCE PRESENTED AT THE HEARING

NFA presented two witnesses at the hearing and introduced a number of documents into evidence. Swanson testified on his own behalf and also submitted documentary evidence.² A summary of the evidence follows.

Jennifer Sunu

Jennifer Sunu (Sunu) testified substantially as follows:

Sunu is a Director in NFA's Compliance Department. CFOS is permanently barred from NFA membership. The firm agreed to this sanction in order to settle the charges against it in the disciplinary matter that is before the Panel. Prior to being permanently barred, CFOS was an NFA Member introducing broker.

NFA began an audit of CFOS in mid-July 2009. Sunu was the NFA Director who was assigned to the audit. The audit team that conducted the field work reported directly to Sunu.

NFA decided to conduct an audit of CFOS because Sunu received a telephone call from a trial attorney in the Commodity Futures Trading Commission's (CFTC) Division of Enforcement who told her that the CFTC believed that CFOS had received a capital contribution from an individual named Robert Copeland (Copeland). Copeland had been charged by the SEC and the federal government with operating a Ponzi scheme. The attorney also asked Sunu if NFA had any information on a relationship between CFOS and a firm called Financial Robotics.

Sunu reviewed the SEC's Complaint charging Copeland, as well as the U.S. Attorney's Criminal Information. The SEC Complaint and the Criminal Information

² The Panel carefully reviewed all of the documents submitted by Swanson but does not feel that the documents need to be fully summarized in this Decision.

indicated that Copeland was operating a massive fraud and Ponzi scheme from 2004 through early 2009. The SEC Complaint indicated that from at least 2004 through January 2009, Copeland raised over \$35 million from at least 140 investors. The Criminal Information charged Copeland with wire fraud and alleged that he defrauded about 125 individuals out of more than \$28 million. The judgment in the criminal case indicates that Copeland was sentenced to 10 years in prison and ordered to pay approximately \$32 million in restitution.

As part of the audit, CFOS, through Wright, provided NFA with a spreadsheet, which listed all of the capital contributions made to the firm between December 31, 2001 and April 14, 2009. This spreadsheet indicated that Copeland made the following capital contributions and withdrawals:

- On March 19, 2007, Copeland made a stock purchase of \$207,000. However there is a notation that no shares were issued. One week later, Copeland withdrew the exact same amount.
- On April 30, 2007, two entries indicate that Copeland contributed \$500,000 for a subscription stock purchase of non-voting shares.
- In December 2007, Copeland made an ownership equity withdrawal of \$310,000 and certain shares in CFOS were cancelled.

Based on these transactions, Copeland's equity interest in CFOS was \$190,000 in December 2007. His interest in the firm remained the same until the firm closed. All of the transactions involving Copeland occurred during the time that Swanson was the president of CFOS.

CFOS never listed Copeland as a principal of the firm. NFA determined, however, that Copeland contributed at least 10% of the firm's capital, therefore, he should have been listed as a principal.

The spreadsheet also indicated that Financial Robotics had made three contributions to CFOS that totaled over \$200,000. The notation for each of these contributions indicated that CFOS was “researching” the transaction.

NFA was also concerned that the spreadsheet indicated that there were a number of capital contributions, totaling approximately \$750,000, that had unknown sources. The notations for these contributions also indicated that the firm was “researching” the transaction. All of these transactions, except for one on December 31, 2001, also occurred at the time that Swanson was president of CFOS.

NFA also analyzed CFOS's *net income/net loss for each year from 2002 through 2008*. CFOS had a net loss in each of those years, for a total aggregate loss of \$1.1 million. NFA determined that the only reason the firm was able to remain in business and meet its capital requirements was from the ongoing capital contributions that were made, including those made by Copeland.

As part of the audit, NFA also reviewed CFOS's monthly capital computations for the months of January through May 2009. Although the firm's computations indicated that the firm had excess net capital, when NFA staff reviewed some of the asset balances, staff determined that some of the assets were over-valued or improperly treated as a current asset. After staff made the appropriate adjustments, it was apparent that CFOS had *actually been under its capital requirement for those months*. Swanson was CFOS's president during each of the months.

For example, CFOS listed a \$60,000 balance for securities. This balance represented an investment in a related company known as InventBay.com. The owner of InventBay.com was also the owner of Financial Robotics. CFOS staff told NFA staff that *CFOS gave InventBay.com \$30,000 in cash for one million shares in the company*

that CFOS valued at \$60,000. NFA, however, determined that the entire balance should have been listed as non-current. NFA staff concluded that there was not an open market for CFOS's one million shares because InventBay.com was very thinly traded, averaging about 18,000 shares traded each day. In addition, NFA staff determined that the open market value of each share was about \$.005, therefore, the total value of the shares was approximately \$5,000, rather than the \$60,000 listed by CFOS.

NFA then required CFOS to complete a pro forma capital computation for July 22, 2009. This computation revealed that CFOS was approximately \$53,000 below its *minimum capital requirement*. After learning this, CFOS ceased doing business.

Brandon Tasco

Brandon Tasco (Tasco) testified substantially as follows:

Tasco is a field supervisor in NFA's Compliance Department. He worked on the audit and investigation of CFOS that resulted in the Complaint that is before the Hearing Panel.

Tasco and his audit team visited CFOS's offices in Houston, Texas in July 2009. When they arrived at the offices, Swanson and Vincent Nolan (Nolan), CFOS's senior vice president, were present at the firm. Shortly after arriving at the firm, Tasco questioned Swanson about a number of issues. Tasco directed the questions at Swanson because he was the president and listed principal of the firm. Tasco asked Swanson if he knew who the underlying owners were of two entities (Brazos Partners and United Benefit) that were listed as principals of CFOS. Swanson told Tasco that he did not know the ownership of those two entities.

Tasco also asked Swanson for certain CFOS books and records, including financial records, net capital computations and registrations records. Swanson told Tasco that he didn't have access to any of those records. In addition, Tasco asked Swanson if he had any knowledge of Financial Robotics. Swanson told Tasco that he had heard of the firm but was not aware of who it was or what it did.

Tasco ended the interview after determining that Swanson did not have any information regarding CFOS's operations.

On cross-examination, Tasco acknowledged that when he asked Swanson for the firm's books and records, Swanson told him that those records were locked in Wright's (the firm's chief operating officer) office.

Hal Swanson

Swanson testified substantially as follows:

Swanson was appointed president of CFOS in January 2002 and he served as president until the firm ceased doing business in July 2009. During that entire time, Swanson was also an associated person (AP) and listed principal of the firm. Mark Rice (Rice), who was a part owner of CFOS, asked Swanson to take over as president of CFOS. At that time, Rice made it clear that Swanson's responsibilities would be limited to research and marketing, and overseeing the brokers and branch offices. The firm's promotional material and website indicated that he was president of CFOS with research and marketing responsibilities.

Swanson had never heard of Copeland until after NFA's July 2009 audit. Swanson also did not know that Copeland had contributed \$700,000 to the firm because he never saw any financial statements for CFOS. Swanson saw summary information and knew that the firm was audited by a certified public accountant, NASD

and NFA. Swanson was not aware that there were “unknown” capital contributions to CFOS. Swanson had very little information or knowledge on who had contributed capital to the firm. Swanson did ask Wright questions about the owners of Brazos Partners. Wright told him that Rice was a principal of the firm and that it was a family-type partnership. When United Benefit became a principal of CFOS, Wright told Swanson that United Benefit was an investment partnership that was introduced to Wright by Rice. Swanson did not ask to see any financial information on United Benefit because he did not have that type of relationship with CFOS’s ownership. Swanson was also not aware that from at least January through April 2009 CFOS’s capital amount included one million shares of InventBay.com, which it valued at \$60,000. Swanson did not do anything to ensure that CFOS was in compliance with NFA’s capital requirements because he did not consider this to be his area of responsibility.

Swanson never asked to see CFOS’s books. However, Rice told him that the financial aspect of the company would be handled by the owners of the company. Swanson did not find it unusual that he did not have access to this information because he believed that many small businesses did not show their books to their employees.

Swanson was a designated officer of CFOS. He did not have a written contract and he believed his compensation was commensurate with his responsibility. Swanson was paid \$3,000 a month guarantee against his commissions. Although Swanson was identified as the firm’s president, in reality he reported to Wright, who was the firm’s chief financial officer.

Swanson’s role at CFOS was to supervise and train the APs, as well as marketing and research. Swanson was also responsible for making sure that the business was functioning properly. He explained this role to NFA auditors during their

audits in 2002, 2005 and 2006 and they did not seem concerned. NFA's 2005 and 2006 audit planning modules indicate that Wright is responsible for all compliance issues, as well as preparing the firm's financial books and records. The audit modules indicate that Swanson was responsible for monitoring trading activity and assisting branch offices with non-administrative issues.

III

FINDINGS, CONCLUSIONS AND PENALTY

Swanson was an NFA Associate and a registered AP of CFOS during the period covered by the Complaint. Therefore, he was required to comply with NFA Requirements, and NFA has jurisdiction over him for purposes of this action.³

Swanson readily admitted that he was a corporate officer and president of CFOS. He also readily admitted that he had little or no knowledge or information on who contributed capital to CFOS, the firm's net capital position or what assets made up the firm's capital. Swanson argued, however, that although he was the named president of the firm, he was not responsible for those areas and had no access to that information.

The Panel, however, does not agree with Swanson's argument. When Swanson accepted the position of president and the prestige that goes along with that title, he also accepted the responsibilities of overseeing the operations of the small-sized firm.⁴ It is clear to the Panel that Swanson affiliated himself with CFOS because

³ See NFA Bylaw 301(b) and NFA Compliance Rule 2-14.

⁴ The Panel also did not find Swanson's argument that it was clear that his duties were limited based on the fact that the firm's website and other materials indicated that he was "CFOS president, with research and marketing responsibilities." The Panel believes the most likely reading of that is that he has those responsibilities in addition to acting as president.

he thought it was a good opportunity to grow his client business and that the title of president could help him along the way. Although it may very well be true that he had no access to any of the information that would have alerted him to the questionable capital contributions and the state of the firm's actual capital position, as president of the firm, Swanson should have insisted that he be kept fully informed or refused to be called "president." For these reasons, the Panel finds that Swanson violated NFA Compliance Rule 2-9(a). The Panel is not convinced that Swanson had any responsibility with respect to CFOS's forex operations, and therefore, the Panel is dismissing with prejudice the charge that Swanson violated NFA Compliance Rule 2-36(e).

A number of factors must be considered when determining the appropriate sanction for this violation. The Panel did not find any evidence that Swanson's conduct was in any way intended to deceive or harm customers, or that he had any knowledge of Copeland or his fraudulent business operations. Nevertheless, Swanson took on the role of president of a highly regulated entity and he had an obligation to the customers doing business with that firm to oversee the operations of the firm. The Panel does not believe that prohibiting Swanson from acting as an AP or as a supervisor of APs for any length of time is an appropriate sanction. Rather, the Panel believes that Swanson has demonstrated that he does not fully understand the role and responsibilities of president or principal of a firm and therefore the appropriate sanction is to prohibit him from acting in that capacity for a period of time. In addition, the Panel believes his violation also deserves a monetary penalty. Therefore, the Panel imposes the following sanctions:

1. Swanson may not be a principal of an NFA Member or act in a capacity that requires him to be listed as a principal for a period of five years from the date of this Decision.
2. Swanson shall pay a fine of \$3,000 within 60 days of the date of this Decision.

IV

APPEAL

Swanson may appeal the Panel's Decision to the Appeals Committee of NFA by filing a written Notice of Appeal with NFA 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.

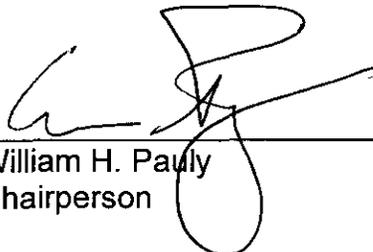
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INELIGIBILITY

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

**NATIONAL FUTURES ASSOCIATION
HEARING PANEL**

Dated: 07/27/2010

By: 

William H. Pauly
Chairperson

(caw:BCC Cases/Swanson decision)

AFFIDAVIT OF SERVICE

I, Nancy Miskovich-Paschen, on oath state that on July 27, 2010, 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:

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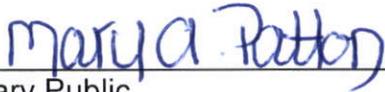
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Nancy Miskovich-Paschen

Subscribed and sworn to before me
on this 27th day of July 2010.


Notary Public

