

NATIONAL FUTURES ASSOCIATION
BEFORE THE
BUSINESS CONDUCT COMMITTEE

FILED

JUN 30 2010

NATIONAL FUTURES ASSOCIATION
LEGAL DOCKETING

In the Matter of:)
)
OPPORTUNITIES IN OPTIONS)
(NFA ID #2223),)
)
THOMAS H. FRANKEL)
(NFA ID #61318),)
)
JUAN CORONEL MARTINEZ MILLER) NFA Case No. 10-BCC-019
(NFA ID #270211),)
)
DEWITT DUDLEY)
(NFA ID #346868))
)
and)
)
JESSE D. SEIDEL)
(NFA ID #332687),)
)
Respondents.)

COMPLAINT

Having reviewed the investigative report submitted by the Compliance Department of National Futures Association ("NFA"), and having reason to believe that NFA Requirements are being, have been, or are about to be violated and that the matter should be adjudicated, NFA's Business Conduct Committee ("Committee") issues this Complaint against Opportunities in Options ("OIO"), Thomas H. Frankel ("Frankel"), Juan Coronel Martinez Miller ("Miller"), Dewitt Dudley ("Dudley") and Jesse D. Seidel ("Seidel").

ALLEGATIONS

JURISDICTION

1. At all times relevant to this Complaint, OIO was registered as an introducing broker (“IB”) and a Member of NFA. As such, OIO was and is required to comply with NFA Requirements and is subject to disciplinary proceedings for violations thereof.
2. At all times relevant to this Complaint, Frankel and Miller were principals and associated persons (“APs”) of OIO and NFA Associates. As such, Frankel and Miller were and are required to comply with NFA Requirements and are subject to disciplinary proceedings for violations thereof. OIO is liable for violations of NFA Requirements committed by Frankel and Miller in the course of their activities on behalf of OIO.
3. At all times relevant to this Complaint, Dudley and Seidel were APs of OIO and NFA Associates. As such, Dudley and Seidel were and are required to comply with NFA Requirements and are subject to disciplinary proceedings for violations thereof. OIO is liable for violations of NFA Requirements committed by Dudley and Seidel in the course of their activities on behalf of OIO.

BACKGROUND

4. OIO is located in Oxnard, California and has been an independent IB Member of NFA since December of 1987. At the time of NFA’s April 2009 audit, OIO’s principals included Frankel and Miller, among others. Frankel, who is based in Chicago, is OIO’s president and has final authority over all of OIO’s employees and operations. Miller, who is located in Oxnard, had direct supervisory

responsibility over OIO's APs. OIO APs Dudley and Seidel worked in the Oxnard office.

5. OIO's customers incurred an overall net loss of nearly \$6.6 million in 2008. In contrast, OIO earned almost \$4.1 million in commissions that year. Dudley was one of OIO's highest earning APs. In 2008, 51 of Dudley's 52 customers incurred overall losses totaling more than \$500,000. The one Dudley customer who made a net profit in 2008 gained only \$433. During that same year, Dudley earned approximately \$150,000 in commissions working at OIO. In addition, he earned more than \$33,000 in commissions during March 2009.
6. During audit fieldwork, NFA staff discovered that OIO had voluntarily decided to tape record all of its APs' conversations with customers and prospective customers. NFA's review of recordings of solicitations made by Dudley, Miller and Seidel revealed a number of misleading and deceptive solicitations.
7. In addition, NFA learned that OIO obtained leads and referrals from two non-NFA Member companies, TradeWins Publishing ("TradeWins") and Diversified Trading Strategies ("DTS"), both of which used deceptive and misleading websites to generate the leads which they provided to OIO. NFA also learned that TradeWins has been subject to actions by the Commodity Futures Trading Commission ("CFTC" or "Commission") charging TradeWins with fraudulent marketing practices; and that a company with which DTS was affiliated as a branch office – Profit Partners, Inc. ("PPI") – was also charged by the Commission and charged with making fraudulent claims about a trading system it was marketing.

8. Evidence gathered by NFA during the course of its audit further demonstrated that OIO, Frankel and Miller failed in their obligation to diligently supervise various aspects of OIO's operations.

APPLICABLE RULES

9. NFA Compliance Rule 2-2(a) provides that no Member or Associate shall cheat, defraud or deceive, or attempt to cheat, defraud or deceive, any commodity futures customer.
10. NFA Compliance Rule 2-4 provides that Members and Associates shall observe high standards of commercial honor and just and equitable principles of trade in the conduct of their commodity futures business.
11. NFA Compliance Rule 2-29(a)(1) provides that no Member or Associate shall make any communication with the public which operates as a fraud or deceit.
12. NFA Compliance Rule 2-9(a) provides that each Member shall diligently supervise its employees and agents in the conduct of their commodity futures activities for or on behalf of the Member. Each Associate who has supervisory duties shall diligently exercise such duties in the conduct of that Associate's commodity futures activities on behalf of the Member.

COUNT I

VIOLATION OF NFA COMPLIANCE RULES 2-2(a) AND 2-29(a)(1): MAKING DECEPTIVE AND MISLEADING SALES SOLICITATIONS.

13. The allegations contained in paragraphs 1, 3, 5, 6, 9 and 11 are realleged as paragraph 13.
14. At various times between January 2009 and May 2009, Dudley made solicitations to prospective customers in which he promoted a managed account

program of commodity trading advisor ("CTA") Rosetta Capital Management LLC ("Rosetta"), which required a deposit of at least \$50,000 for a customer to open an account.

15. Dudley made solicitations for participation in Rosetta between January and May 2009 that were misleading and deceptive in that he represented that he had a number of clients who had substantial investments in the Rosetta program and that they were turning profits when, in truth, Dudley had never had a single customer who had an account in the Rosetta program at the time. Examples of statements by Dudley falsely suggesting to prospective customers that he had existing customers in the Rosetta trading program and that those customers were enjoying profits include the following:

- "Well the 40% a year, that is a net return." "It has a ten year audited track record, it's been audited by federal regulators." "Honestly Richard, it is a little bit higher than that. But this year my clients only made 20 in it. So new business that I introduce into this program I like to tell them that it should do about 40%, even though their nine year average is closer to 60%. Since the last year they have done twenty, I kind of like to take it down a notch." In referring to intra market spreads Dudley stated, "They have extremely low margin requirements and very very low risk levels. On a yearly basis they do very well for my clients." (To a Rick on January 20th.)
- "I have been in this program for just shy of four years. Through good times in the markets and bad it has never had a losing year." (To a Dennis on March 4th.)
- "Well I wouldn't say it is once in a lifetime because I have been pitching Rosetta for three years and started out with a small amount with them and now have a very sizeable amount with them. Dewitt, in all honesty, if your name came across my desk two years from now I would probably recommend the same thing. Because it is one of the few products in this industry that has not only kept me happy, but

kept every single one of my clients in the program happy.”
(To Dewitt on March 4th.)

- “It’s a program, I have been in it for a couple of years now,” and later, “Have you had anything that has performed like that over ten years?” When the prospect answered “No, who has?” Dudley responded “I do, my clients do.” (To Dave McCall on March 4th.)
- “If Rosetta has a horrible year this year, I am not going to recommend it to anyone. I am going pull all my money out of it and put it somewhere else where it is making money.” (To a David on March 4th.)
- “That’s usually what I will initially pitch people on because it is one of the programs that I have been in for a while that has a ten year track record. It is rare as you probably know to find any kind of fund, mutual fund, any investment that has a ten year winning track record. So it is a pretty easy intro for me with most people.” (To a different David on March 4th.)
- “Returned to my clients 55% net profit. This year looks like it’s going to be another above average year; during times of extreme volatility he makes more money. He has been averaging at about 3-4% net return a month, last month was a homerun he did a net 12%.” (To a Randall on May 7th.)

16. Dudley’s solicitations for participation in Rosetta were further misleading and deceptive in that he represented that customers would not incur any expenses at all unless their Rosetta traded account was profitable, but failed to disclose the material fact that they would still incur expenses for commissions and fees whether their trading was profitable or not. For example, Dudley told a prospective customer named Denny, “and it operates on a profit sharing agreement, so you do not pay the company a penny unless you make a profit. Period.” He also told a prospective customer named Dewitt that, “You do not pay the company a penny unless you make a profit.” Dudley made similar claims to

other prospective customers without disclosing that they would still incur expenses for commissions and fees whether their trading was profitable or not.

17. On or about March 4, 2009, Dudley made solicitations to at least three prospective customers to open accounts to be managed by CTA Harbor Financial LLC ("Harbor"). Dudley's solicitations were deceptive and misleading in that Dudley represented to the three prospects that Harbor had not had a single losing trade in the previous eighteen months when, in truth, Harbor had indeed had losing trades during the period. Dudley made the following specific statements to the three prospective customers on or about March 4, 2009:

- "Over the last eighteen months he has not lost a single trade." (To a Dennis.)
- "We both know the past year has probably been one of the most volatile years in history, over the past eighteen months, this CTA has not lost a single trade, in eighteen months. Most volatile eighteen months period. Trades the S&P primarily, hasn't lost a single trade." (To Dave.)
- "Throughout the past eighteen months, which most people would agree are the most volatile and dangerous eighteen months in investing history, he has not had a single losing trade. I think that is pretty impressive." (to a different David.)

18. Dudley's solicitations to prospective customers, as alleged above, were misleading and deceptive in that he routinely touted profits that were not representative of the performance of his customer's accounts or those of OIO's customers in general and blunted whatever risk disclosure he made with suggestions of likely and substantial profits.

19. On or about January 20, 2009, Miller made a solicitation to a prospective customer named Lea Oester ("Oester") in which Miller represented that, "That's what a lot of my clients have done, they basically started off with the forex portion of it and then as soon as they made anywhere from twenty to fifty thousand dollars they went ahead and used those funds to secure their position over with the commodities and start trading the commodities as well."
20. Miller's solicitation to Oester was deceptive and misleading in that, as of January 20, 2009, Miller had not opened or traded any forex accounts as an AP of OIO.
21. On or about January 20, 2009, Seidel made a solicitation to a prospective customer named Archie Floyd ("Floyd") during which he pitched the Russell Sands ("Sands") forex program. Seidel told Floyd that, "We've seen a tremendous increase, forex right now, ever since the beginning of this year, is just a... today alone, I think he's up, he's up about 13 grand today alone." Seidel added, "... he's averaged; say over time, between 200 to 300% a year. That's phenomenal."
22. Seidel also promoted Sands' futures program to Floyd and told him, "The commodities, yeah he finished that one up even further, that was up probably... his account, trading a million dollar portfolio, he was up 600% on that one."
23. Seidel's solicitation to Floyd was deceptive and misleading in that Seidel did not disclose to Floyd the material information that his dramatic claims of past profitable performance by Sands were based on hypothetical trading.
24. By reason of the foregoing acts and omissions, OIO, Dudley, Miller and Seidel are charged with violations of NFA Compliance Rules 2-2(a) and 2-29(a)(1).

COUNT II

VIOLATION OF NFA COMPLIANCE RULES 2-9(a) AND 2-4: FAILURE TO DILIGENTLY SUPERVISE EMPLOYEES AND AGENTS IN THE CONDUCT OF THEIR COMMODITY FUTURES ACTIVITIES AND FAILURE TO UPHOLD HIGH STANDARDS OF COMMERCIAL HONOR AND JUST AND EQUITABLE PRINCIPLES OF TRADE.

25. The allegations contained in paragraphs 1, 2, 3, 4, 7, 10 and 12 are realleged as paragraph 25.
26. At all times relevant to this Complaint, OIO was responsible for the diligent supervision of its employees and agents.
27. Frankel was the president of OIO at all times relevant to this Complaint. In addition, he was an AP and an NFA Associate with supervisory duties at OIO, which he was required to diligently exercise on behalf of OIO. Among his supervisory duties, Frankel was responsible for the review and approval of promotional material.
28. Miller has been registered as an AP of OIO and an NFA Associate since November 2004 and was listed as a principal of OIO from November 2004 through April 2010. As an NFA Associate who had supervisory duties, Miller was required to diligently exercise those duties on behalf of OIO. Among his supervisory duties, Miller had primary responsibility for supervising solicitations made by APs located in OIO's Oxnard office at all times relevant to this Complaint.
29. The duty to diligently supervise, in part, requires Members and Associates who have supervisory duties to initiate effective procedures to ensure, to the extent possible, that third-party leads that are used by the Member have not been generated through the use of fraudulent advertising practices. For example, the

publication entitled A Guide to NFA Compliance Rule 2-29, which is available to all Members on NFA's website, cautions Members who use lead lists that they must be able to demonstrate that the advertisements used to generate the leads were not fraudulent or misleading. The Guide cautions further that, "Members cannot avoid responsibility for promotional material by claiming to be unaware of its content or appearance."

30. During all times relevant to this Complaint, OIO purchased leads from non-NFA Member TradeWins. TradeWins promoted trading systems including some of the very systems that OIO used to trade customer accounts. As such, OIO had a duty to ensure that the leads that it purchased from TradeWins were not generated through the use of fraudulent advertising practices.
31. TradeWins has been the focus of CFTC attention on at least two occasions in the past. It was cited for fraudulent advertising in a 2002 CFTC administrative action and was fined \$100,000 and ordered to cease and desist from further violations. In 2004, TradeWins was fined \$175,000 in an injunctive action brought by the Commission alleging that TradeWins engaged in fraudulent solicitations and violated an order in a prior Commission action. A trading prohibition and the disgorgement of \$75,000 were also imposed in that case.
32. TradeWins' website employed fraudulent advertising practices in that it promoted trading systems used by OIO by touting highly profitable hypothetical rates of return and positive testimonials from customers trading the systems without adequately disclosing the hypothetical nature of the performance claims or the basis for the testimonials. Further, TradeWins made dramatic unsubstantiated

claims about the profitability of the trading systems that OIO promoted.

Examples of these claims include the following:

- TradeWins' website touted Sands' "Complete Turtle Trading System" with the statement: "The amazing true story of the commodity trader who turned \$400 into \$200 million in profits and...how a 19-year-old kid used the same trading system to retire after raking in \$31.5 million in sweet profits. Now it's your turn!!!"
- TradeWins' website also promoted a system for Joe Duffy with: "Video workshop by Joe Duffy reveals a 100% mechanical method to 'buy the low, sell the high' on every 2-3 day price swing-in any market-and make a profit over 88% of the time in simulated trading." and "Joe's annualized returns in the Championship were 432%...121%...and 243%, respectively. (note that his LOWEST return was 121%!)."

33. During all times relevant to this Complaint, OIO also received referrals from non-NFA Member DTS. These referrals from DTS were purportedly for the purpose of connecting customers, who had purchased third-party trading systems from DTS, with OIO's APs, who had experience with those systems, so that the APs could give technical advice to the customers.
34. Frankel informed NFA, on behalf of OIO, that DTS was formerly a branch office of PPI against which the Commission took an injunctive action in 2003 alleging that PPI made fraudulent solicitations regarding the purchase of commodity futures and options trading systems. PPI was fined \$30,000 and enjoined from future fraudulent conduct pursuant to that action.
35. Several of the recordings of calls made by OIO APs that NFA reviewed involved discussions with DTS employee Michael McGinnis ("McGinnis"). NFA's review revealed that McGinnis provided Miller and Seidel with contact information for prospective customers who had either expressed an interest in trading systems

offered by DTS or had purchased such a system. In a typical conversation, McGinnis would provide the name of a customer or prospective customer along with their phone number, tips on how to talk to the particular customer and the identity of the trading system purchased by the customer. Other recordings revealed OIO APs contacting the customers identified to them by DTS to solicit them to open an account with OIO that would use the signals generated by the system they had purchased or in which they had expressed an interest. The APs routinely informed the customers that OIO brokers were knowledgeable on how to follow the system signals and could trade their accounts for them.

36. Recordings of three conversations between Miller and McGinnis on or about February 23, 2009 illustrate the cozy relationship between OIO and DTS. McGinnis called Miller that morning and provided him with the name and phone number of an individual who had purchased Sands' forex trading system from DTS. McGinnis asked Miller to "indiscreetly" suggest to the customer that it would be a good idea to buy Sands' commodities trading system too. McGinnis suggested pointing out that it would make things easier since the customer was doing the paperwork to open a forex account anyway. Miller called McGinnis's customer that same afternoon. After introducing himself as being with OIO and saying that he was calling about Sands' Turtle program, he continued with, "Understood that you had a few questions for me. I'm the broker who trades the commodities and the forex." The customer's response was, "What do you need from me?" Miller responded that the customer had to have purchased a trading

system and then Miller had to send out an application in order to get an account open.

37. Miller treated the opening of an account with OIO as part and parcel of the customers' purchase of Sands' system from DTS. In fact, he never even asked the customer if he wanted to open an account through OIO, but rather treated it as a *fait accompli*. In addition, as McGinnis had suggested, Miller raised the notion that the customer should consider also purchasing Sands' commodities trading system.
38. McGinnis's initial call to Miller constituted a sales lead to OIO in that Miller used the information provided in that call to solicit the customer to open an account to be introduced by OIO. In fact, shortly after hanging up on the customer, Miller called McGinnis to report on the results of his contact with the customer.
39. DTS's website exhibited numerous promotions for the trading systems that OIO was trading for its customers. DTS's website employed fraudulent advertising practices in that it promoted those trading systems with highly profitable hypothetical rates of return and positive testimonials from customers trading the systems without adequately disclosing the hypothetical nature of performance claims or the basis for claims made. Examples of these claims include the following:
 - DTS's website touted that: "We offer forex signals, futures signals, option and ETF trading strategies from veteran traders who average 100% profits or more per year from live trading."
 - The site included a testimonial from "C.B. from Colorado" regarding Sands that states: "Almost every month shows new profits. Since I began trading it 5 months ago, I am up well over 100%."

40. OIO and its supervisory personnel failed in their duty to diligently supervise OIO's commodity futures activities in that they failed to initiate effective procedures to ensure that the leads that OIO obtained from TradeWins and DTS were not generated through the use of fraudulent advertising practices. In fact, they did not initiate any efforts to identify and/or review the material used by TradeWins or DTS that resulted in generating leads and referrals used by OIO to solicit prospective customers.
41. The observance of high standards of commercial honor and just and equitable principles of trade required of all NFA Members, in part, prohibits Members and their Associates from engaging in activities or relationships that are designed to mislead or deceive the public.
42. OIO and Frankel failed to observe high standards of commercial honor and just and equitable principles of trade in that their activities and relationships with TradeWins and DTS resulted in deception of the public; and OIO and Frankel either kept themselves purposely ignorant of the deceptive and misleading nature of advertising done by TradeWins and DTS or, worse, were aware of the deceptive nature of that advertising.
43. At all times relevant to this Complaint, Miller reported directly to Frankel, who was OIO's president. Miller and OIO's entire sales staff were located in Oxnard, California. OIO president Frankel is also an AP of MF Global. Frankel's attorney represented on his behalf that Frankel spends approximately two days at the Oxnard office every two weeks and that, when he is not in Oxnard, he exercises

his oversight of OIO's operations from either his MF Global office in Chicago or his home in Galesburg, Illinois.

44. Frankel, Miller and OIO all represented to NFA that Miller walks around the Oxnard office and listens to conversations throughout the day and immediately brings any regulatory issues that he detects in solicitations to the attention of the relevant AP. They represented further that Miller generally briefs Frankel on issues which come up and on whatever remedial action was taken. With regard to Miller's review of recorded solicitations, Frankel and OIO described it as, "several recordings by APs, chosen at random by him, approximately once every two weeks."
45. The duty to diligently supervise, in part, requires Members and their Associates who have supervisory duties to initiate effective procedures to detect and/or prevent the use of deceptive and misleading sales by the Member's APs.
46. The allegations contained in paragraphs 14 through 23 realleged as paragraph 46.
47. The numerous deceptive and misleading solicitations incorporated by reference into paragraph 46 above were all taken from audio recordings made by OIO of solicitations made by Dudley, Miller and Seidel that were readily available for review by OIO supervisory personnel.
48. OIO, Frankel and Miller failed in their obligation to diligently supervise sales solicitations made by OIO's APs in that they failed to initiate effective procedures to detect and/or prevent the use of deceptive and misleading sales by OIO's APs.

49. By reason of the foregoing acts and omissions, OIO and Frankel are charged with violations of NFA Compliance Rule 2-4 and OIO, Frankel and Miller are charged with violations of NFA Compliance Rule 2-9(a).

PROCEDURAL REQUIREMENTS

ANSWER

You must file a written Answer to the Complaint with NFA within thirty (30) days of the date of the Complaint. The Answer shall respond to each allegation in the Complaint by admitting, denying or averring that you lack sufficient knowledge or information to admit or deny the allegation. An averment of insufficient knowledge or information may only be made after a diligent effort has been made to ascertain the relevant facts and shall be deemed to be a denial of the pertinent allegation.

NFA staff is authorized to grant such reasonable extensions of time in which an Answer may be filed as it deems appropriate. The Answer must be filed by delivery or mail to:

National Futures Association
300 South Riverside Plaza
Suite 1800
Chicago, Illinois 60606-6613
Attn: Legal Department-Docketing

E-mail: Docketing@nfa.futures.org
Facsimile: 312-781-1672.

Failure to file an Answer as provided above shall be deemed an admission of the facts and legal conclusions contained in the Complaint. Failure to respond to any allegation shall be deemed an admission of that allegation. Failure to file an Answer as provided above shall be deemed a waiver of hearing.

POTENTIAL PENALTIES, DISQUALIFICATION AND INELIGIBILITY

At the conclusion of the proceedings conducted as a result of or in connection with the issuance of this Complaint, the Committee may impose one or more of the following penalties:

- (a) expulsion or suspension for a specified period from NFA membership;
- (b) bar or suspension for a specified period from association with an NFA Member;
- (c) censure or reprimand;
- (d) a monetary fine not to exceed \$250,000 for each violation found; and
- (e) order to cease and desist or any other fitting penalty or remedial action not inconsistent with these penalties.

The allegations in this Complaint may constitute a statutory disqualification from registration under Section 8a(3)(M) of the Commodity Exchange Act. Respondents in this matter who apply for registration in any new capacity, including as an associated person with a new sponsor, may be denied registration based on the pendency of this proceeding.

Pursuant to the provisions of CFTC Regulation 1.63, penalties imposed in connection with this Complaint may temporarily or permanently render Respondents who are individuals ineligible to serve on disciplinary committees, arbitration panels and governing boards of a self-regulatory organization, as that term is defined in CFTC Regulation 1.63.

Dated: 06/30/2010

By: 
Chairperson

**NATIONAL FUTURES ASSOCIATION
BUSINESS CONDUCT COMMITTEE**

AFFIDAVIT OF SERVICE

I, Nancy Miskovich-Paschen, on oath state that on June 30, 2010, I served copies of the attached Complaint, by sending such copies in the United States mail, first-class delivery, and by overnight mail, in envelopes addressed as follows:

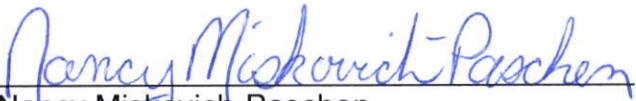
Opportunities in Options
c/o MF Global
141 West Jackson Boulevard
Suite 1800-A
Chicago, IL 60604
Attn: Thomas H. Frankel

Thomas H. Frankel
3207 Wild Meadow Lane
Aurora, IL 60504

Juan Coronel Martinez Miller
1133 Mooring Walk
Oxnard, CA 93030

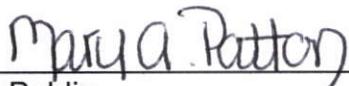
Dewitt Dudley
2094 Cliff Drive
Santa Barbara, CA 93109

Jesse D. Seidel
320 Amador Avenue
Ventura, CA 93004



Nancy Miskovich-Paschen

Subscribed and sworn to before
me on this 30th day of June 2010.



Notary Public

