

NATIONAL FUTURES ASSOCIATION
BEFORE THE
BUSINESS CONDUCT COMMITTEE

FILED

AUG 19 2010

NATIONAL FUTURES ASSOCIATION
LEGAL DOCKETING

In the Matter of:)
)
MAXTAK CAPITAL ADVISORS LLC)
(NFA ID #357840),)
)
and) NFA Case No. 10-BCC-024
)
JONATHAN PETAK)
(NFA ID #358117),)
)
Respondents.)

COMPLAINT

Having reviewed the investigative report submitted by the Compliance Department of National Futures Association ("NFA"), and having found 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 issues this *Complaint against Maxtak Capital Advisors LLC ("MCA") and Jonathan Petak ("Petak")*.

ALLEGATIONS

JURISDICTION

1. At all times relevant to this Complaint, MCA was a commodity trading advisor ("CTA") and commodity pool operator ("CPO") NFA Member. MCA is located in Short Hills, New Jersey. The firm was previously located in Fort Lee, New Jersey.
2. At all times relevant to this Complaint, Petak was a principal and associated person ("AP") of MCA and an NFA Associate.

BACKGROUND

3. MCA has been an NFA Member CPO/CTA since March 2006. Petak has been an NFA Associate since March 2006. At the time of NFA's most recent examination of MCA, in May 2009, Petak was MCA's sole principal.
4. Maxtak operates a 4.7 exempt commodity pool, Maxtak Partners LP ("Partners"). This is the only commodity pool that MCA operates. According to Partners' December 31, 2008 unaudited statement, MCA had approximately \$20 million under management. Currently, MCA is not accepting any new participants in Partners and the pool has a net asset value of \$2.5 million.
5. NFA initially targeted MCA for an examination after being contacted by another NFA Member who told NFA that it had received a phone call from a customer who indicated that he had received what appeared to be a fraudulent account statement from a firm with which MCA did business.
6. NFA's examination revealed that MCA and Petak showed an utter disregard for the safety of Partners' assets and invested them recklessly without performing any due diligence and, also, failed to disclose material information to participants of Partners.

APPLICABLE RULES

7. 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.
8. 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.

9. NFA Bylaw 1101 provides, in pertinent part, that no Member may carry an account, accept an order or handle a transaction in commodity futures contracts for or on behalf of any non-Member of NFA that is required to be registered with the Commodity Futures Trading Commission ("CFTC") and that is acting in respect to the account, order or transaction.
10. NFA Registration Rule 208 provides, in pertinent part, that an applicant for registration as a CPO or CTA must comply with the provisions of Rule 204(a)(2) for each individual who is a principal of the applicant at the time the applicant files its application for registration.

COUNT I

VIOLATION OF NFA BYLAW 1101: DOING BUSINESS WITH AN ENTITY AND INDIVIDUAL WHO SHOULD HAVE BEEN REGISTERED WITH THE CFTC BUT WERE NOT.

11. The allegations contained in paragraphs 1, 3 through 6 and 9 are realleged as paragraph 11.
12. Sometime in 2007, MCA established an investment relationship with Benjamin Atkins ("Atkins") and King Solomon Holdings ("KSH") whereby KSH and Atkins were to trade commodity futures contracts on behalf of Partners. However, neither Atkins nor KSH were NFA Members or CFTC registrants.
13. Since KSH and Atkins traded futures on behalf of Partners, MCA knew, or certainly should have known, that KSH and Atkins were required to be registered

with the CFTC as a futures commission merchant ("FCM"), introducing broker, CPO or CTA and, in the case of Atkins, as an AP. However, neither Atkins nor KSH were NFA Members or CFTC registrants.

14. By reason of the foregoing acts and omissions, MCA is charged with violations of NFA Bylaw 1101 for doing business with non-NFA Members that should have been registered with the CFTC.

COUNT II

VIOLATION OF NFA COMPLIANCE RULE 2-4: FAILING TO UPHOLD HIGH STANDARDS OF COMMERCIAL HONOR AND JUST AND EQUITABLE PRINCIPLES OF TRADE.

15. The allegations contained in paragraphs 1 through 7 are realleged as paragraph 15.
16. In addition to investing with parties that should have been registered with the CFTC but were not, it also appears that Petak and Michael Senior ("Senior"), MCA's chief financial officer ("CFO"), performed no meaningful due diligence prior to investing Partners' money with KSH. In fact, the decision to invest with KSH was apparently based mainly on the fact that Atkins was a friend of Petak's wife's family.
17. Despite knowing little about KSH and Atkins, MCA, nevertheless, entrusted approximately \$370,000 of Partners assets with Atkins and KSH. Not only was this investment ill-conceived, but MCA and Petak proceeded to make this bad investment decision worse by not opening a trading account for Partners at an FCM and then giving Atkins authority to trade Partners' account at the FCM.

Instead, MCA wired \$370,000 directly from Partners' account to KSH's bank account.

18. From the limited records NFA was able to obtain concerning Partners' investment with KSH, it appears that Atkins and KSH traded a portion of these funds for a few months but then ceased trading and ultimately converted approximately \$350,000 of Partners' funds for their own use and benefit.
19. In addition to showing an utter disregard for the safety of Partners' funds, MCA repeatedly failed to disclose significant and material information to the participants of Partners concerning the details of a loan MCA took from Partners. Although the Offering Memorandum ("OM") for Partners permitted MCA to take loans from Partners, MCA never disclosed the details of these loans.
20. For example, MCA never disclosed to participants of Partners that it had, in fact, taken a \$6.5 million loan from Partners, which it then used to fund an investment in its own name. MCA also failed to disclose that, at times, the loan amount represented approximately 25% of the overall value of Partners. Nor did MCA disclose the impact the loan had on the return that participants made on their investment which was limited to the interest that MCA paid on the loan – which averaged 2.2% and never exceeded 3.14% on an annual basis. Moreover, MCA did not disclose to the participants of Partners that it had no formal written loan agreement with Partners for this loan, that it did not accrue for interest on the loan, and that it only paid Partners interest on the loan after its accountant suggested it do so, after preparing MCA's year-end certified financial statement.

21. In addition, although Partners' OM gave MCA permission to withhold participant redemptions, MCA never told participants who requested a redemption that they were not receiving a full redemption. Instead, MCA arbitrarily reduced redemptions by 5% to 10%, and participants, who were later contacted by NFA, indicated that they never knew they had not received their full redemptions.
22. MCA also failed to disclose to participants that the accountant – who had completed Partners' annual report for the prior two years – had abruptly resigned when it was unable to formulate an opinion as to the value of Partners' loan to MCA.
23. MCA also made no disclosure to participants regarding the investment it made with KSH/Atkins, or the subsequent material losses the pool incurred as a direct result of this investment.
24. As evidenced by the foregoing acts and omissions, MCA and Petak failed to observe high standards of commercial honor and just and equitable principles of trade in that they failed to make prudent investment decisions for the Partners' pool and failed to disclose material information to Partners' participants.
25. By reason of the foregoing acts and omissions, MCA and Petak are charged with violations of NFA Compliance Rule 2-4.

COUNT III

VIOLATION OF NFA COMPLIANCE RULE 2-9(a) AND REGISTRATION RULE 208: FAILING TO DILIGENTLY SUPERVISE MCA'S OPERATIONS AND FAILING TO LIST A PRINCIPAL.

26. The allegations contained in paragraphs 1 through 6, 8 and 10 are realleged as paragraph 26.

27. As the sole AP/principal of MCA, Petak had an obligation to diligently supervise the activities of MCA.
28. However, Petak failed to carry out his supervisory obligations as evidenced by the serious deficiencies alleged above, and MCA's failure to develop written procedures to review promotional material, update its website with recent performance information, have adequate procedures for ethics training, adopt a business continuity and disaster recovery plan, and/or provide customers with an annual privacy notice.
29. Furthermore, Senior was MCA's CFO and owned 10% of MCA. However, at the time of NFA's examination, Senior was not listed as a principal of MCA.
30. Since Senior owned 10% of MCA and was also its CFO, Petak should have listed Senior as a principal of MCA, but he failed to do so.
31. By reason of the foregoing acts and omissions, Petak and MCA are charged with violations of NFA Compliance Rule 2-9(a) and NFA Registration Rule 208.

PROCEDURAL REQUIREMENTS

ANSWER

You must file a written Answer to the Complaint with NFA within thirty 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.

The place for filing an Answer shall be:

National Futures Association
300 South Riverside Plaza
Suite 1800
Chicago, Illinois 60606
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, NFA 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.

**NATIONAL FUTURES ASSOCIATION
BUSINESS CONDUCT COMMITTEE**

Dated: 08/19/2010

By: 
Chairperson

m/ecs/Complaints/2010:MCA and Petak (8.10)

AFFIDAVIT OF SERVICE

I, Nancy Miskovich-Paschen, on oath state that on August 19, 2010, I served copies of the attached Complaint, by sending such copies by regular mail, first-class delivery, and by overnight mail, in envelopes addressed as follows to:

Maxtak Capital Advisors LLC
2 Gap View Road
Short Hills, NJ 07078
Attn: Michael Senior, CFO

Jonathan Petak
124 Churchill Road
Tenafly, NJ 07670

Nancy Miskovich-Paschen
Nancy Miskovich-Paschen

Subscribed and sworn to before me
on this 19th day of August 2010.

Mary A. Patton
Notary Public

