

**NATIONAL FUTURES ASSOCIATION
BEFORE THE
HEARING PANEL**

FILED

MAR 27 2009

**NATIONAL FUTURES ASSOCIATION
LEGAL DOCKETING**

In the Matter of:

LAST ATLANTIS CAPITAL
MANAGEMENT LLC
(NFA ID #360774),

and

IRWIN M. BERGER
(NFA ID #91379),

Respondents.

NFA Case No. 08-BCC-028

DECISION

Having reviewed all matters relevant to the Complaint issued by the Business Conduct Committee ("BCC") of National Futures Association ("NFA") and the Offer of Settlement ("Offer") submitted by Last Atlantis Capital Management LLC ("LACM") and Irwin M. Berger ("Berger") (collectively the "Respondents"), and having accepted the Offer, the Hearing Panel hereby issues the following Decision as to LACM and Berger in the above-captioned proceeding.

I

ALLEGED VIOLATIONS OF NFA REQUIREMENTS

On November 14, 2008, NFA's BCC issued a Complaint against LACM and Berger. The Complaint alleged that LACM provided deceptive reports to pool participants, in violation of NFA Compliance Rule 2-2(a); provided false and misleading information to NFA, in violation of NFA Compliance Rule 2-2(f); and failed to properly compute and present financial statements and reports and failed to provide complete

and accurate disclosures, in violation of NFA Compliance Rule 2-13(a). The Complaint also alleged that both LACM and Berger violated NFA Compliance Rule 2-9(a) by failing to adequately supervise the activities of LACM and its employees.

II

OFFER OF SETTLEMENT

The Respondents submitted an Offer in settlement of the allegations made against them. Pursuant to the Offer, without admitting or denying the violations alleged in the Complaint, the Respondents agreed that the Decision accepting the Offer shall include the Hearing Panel's belief that they committed the violations. Respondents proposed to settle the case as follows. LACM agreed that it would withdraw from NFA membership and shall not reapply for NFA membership or act as a principal of an NFA Member. Berger agreed he would withdraw from NFA associate membership and as a principal of any NFA Member and shall not apply for NFA membership or NFA associate membership or act as a principal of an NFA Member for a period of three years. During the three-year period, Berger shall not act in any capacity requiring registration, nor act as a principal of an NFA Member. If after expiration of the three-year period, Berger applies for and is granted NFA membership or associate membership, or becomes a principal of an NFA Member, then in such event, he agrees to pay a fine of \$60,000, due and payable thirty days after Berger is granted NFA membership or associate membership or becomes a principal of an NFA Member.

The Respondents stipulated that the Offer and any Decision accepting the Offer was expressly contingent upon the following terms and conditions: (1) the Hearing Panel's acceptance of the Offer shall operate to bar any future Member Responsibility

Action ("MRA") or BCC Complaints against LACM and Berger for any conduct occurring prior to the date of the Offer, of which NFA had corporate knowledge; (2) the Hearing Panel's acceptance of the Offer shall resolve and terminate all complaints, investigations and audits relating to LACM and Berger, which were pending as of the date of the Offer; and (3) the Offer and any Decision accepting the Offer shall not be used as a sole basis for any other action or proceeding by NFA against LACM and Berger, including any registration matter, except the Offer and any Decision accepting the Offer may be used in an action to enforce their terms or in a subsequent disciplinary action or regulatory action, where they may be considered as disciplinary history and evidence in aggravation on the issue of sanctions.

III

FINDINGS

Having considered the matter and having accepted the Offer submitted by the Respondents, the Hearing Panel has reason to believe that LACM provided deceptive reports to pool participants, in violation of NFA Compliance Rule 2-2(a); provided false and misleading information to NFA, in violation of NFA Compliance Rule 2-2(f); and failed to properly compute and present financial statements and reports and failed to provide complete and accurate disclosures, in violation of NFA Compliance Rule 2-13(a). The Hearing Panel further has reason to believe that LACM and Berger violated NFA Compliance Rule 2-9(a) by failing to adequately supervise the activities of LACM and its employees.

IV

PENALTY

Having considered the matter and having accepted the Offer submitted by the Respondents, the Hearing Panel orders that:

1. LACM shall withdraw from NFA membership as of the date of this Decision, and shall not reapply for NFA membership or act as a principal of an NFA Member.
2. Berger shall withdraw from NFA associate membership and shall withdraw as a principal of any NFA Member as of the date of this Decision.
3. For a period of three years from the date of this Decision, Berger shall not apply for NFA membership or NFA associate membership or act as a principal of an NFA Member. During the three-year period, Berger shall not act in any capacity requiring registration nor act as a principal of an NFA Member.
4. If after expiration of the three-year period, Berger again becomes an NFA Member or Associate or a principal of an NFA Member, he shall pay a fine of \$60,000, due and payable thirty days after Berger is granted NFA membership or associate membership or becomes a principal of an NFA Member.

The Hearing Panel's acceptance of the Respondent's Offer shall a) operate to bar any future Member Responsibility Action or BCC Complaints against LACM and Berger for any conduct occurring prior to the date of the Offer, of which NFA had corporate knowledge; and b) resolve and terminate all complaints, investigations and audits relating to LACM and Berger, which were pending as of the date of the Offer. Additionally, the Offer and this Decision accepting the Offer shall not be used as a sole basis for any other action or proceeding by NFA against LACM and Berger, including any registration matter, except the Offer and this Decision accepting the Offer may be used in an action to enforce their terms or in a subsequent disciplinary action or

regulatory action, where they may be considered as disciplinary history and evidence in aggravation on the issue of sanctions.

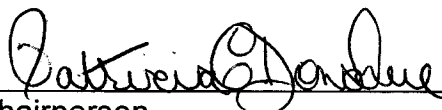
V

INELIGIBILITY

Pursuant to the provisions of the Commodity Futures Trading Commission ("CFTC") Regulation 1.63, this Decision and the sanctions imposed herein render Berger ineligible, for a period of three years from the date of this Decision, to serve on a disciplinary committee, arbitration panel, oversight panel, or governing board of any self-regulatory organization, as that term is defined in CFTC Regulation 1.63.

**NATIONAL FUTURES ASSOCIATION
HEARING PANEL**

Dated: 3/27/09

By: 
Chairperson

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AFFIDAVIT OF SERVICE

I, Myra Lewis, on oath state that on March 27, 2009, 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, in envelopes addressed as follows:

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Myra Lewis
Myra Lewis

Subscribed and sworn to before me
on this 27th day of March 2009.

Margaret A. Vandermyde
Notary Public
OFFICIAL SEAL
Margaret A. Vandermyde
Notary Public, State of Illinois
MY COMMISSION EXPIRES 03-15-10