

**NATIONAL FUTURES ASSOCIATION
BEFORE THE
BUSINESS CONDUCT COMMITTEE**

FILED

JUL - 9 2018

**NATIONAL FUTURES ASSOCIATION
LEGAL DOCKETING**

In the Matter of:

FORTRESS CAPITAL INC.
(NFA ID #416496),

and

GEORGE ASHKAR
(NFA ID #416646),

Respondents.

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) NFA Case No. 18-BCC-007
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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 (Committee) issues this Complaint against Fortress Capital, Inc. (Fortress) and George Ashkar (Ashkar).

ALLEGATIONS

JURISDICTION

1. At all times relevant to this Complaint, Fortress was registered as an introducing broker (IB), commodity trading advisor (CTA), and approved forex firm, NFA Member, located in Fort Lauderdale, Florida. As such, Fortress 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, Ashkar was the owner, president, sole principal and an associated person (AP) of Fortress, and an NFA Associate. As such, Ashkar was and is required to comply with NFA Requirements and is subject to disciplinary proceedings for violations thereof.

BACKGROUND

3. Fortress has been an NFA Member since 2010 and currently employs two APs. At present, Fortress has no branch offices but previously maintained a branch office in Miami, Florida.
4. From January 2013 to May 2017, Fortress employed Joseph Gelet (Gelet) as an AP of the firm. Gelet created most of the firm's promotional material and, while no longer an AP of Fortress, Gelet remains responsible for maintaining Fortress's website.
5. Besides Fortress's futures and forex business, Fortress and Ashkar have a number of other businesses which they operate through Fortress or affiliated entities. For example, Fortress is a Registered Investment Advisor in Florida and Ashkar operates a company called CapForte LLC, which owns a motel where Fortress maintains its main office. Ashkar, CapForte LLC, and Fortress have been sued for fraud in connection with their acquisition of the motel. That lawsuit is pending.
6. Since Fortress became an NFA Member in 2010, NFA has conducted several investigations and examinations of the firm and its former Miami branch office. In 2014, NFA conducted an examination of Fortress which found that the firm had

fallen below its minimum net capital requirement after transferring \$45,000 to an affiliate, iClickNTrade LLC.

7. This transfer of \$45,000 to iClickNTrade left Fortress undercapitalized by nearly \$40,000 for almost two weeks in December 2013. After NFA informed Fortress of this capital shortfall, Fortress obtained a capital infusion of \$44,500 which brought it above its net capital requirement. Fortress did not file notice of this capital deficiency with NFA until the end of February 2014.
8. In 2015, NFA conducted concurrent examinations of Fortress's main office and its Miami branch office which found a number of deficiencies relating to the firm's financial records, promotional material, and recordkeeping. Among other findings, NFA's 2015 exam found that Fortress failed to maintain customer information and failed to accrue for certain liabilities.
9. In January 2017, Fortress submitted a piece of promotional material to NFA for pre-review. NFA reviewed this promotional piece and noted several deficiencies. Fortress corrected these deficiencies, whereupon NFA sent Fortress a letter dated February 22, 2017 approving the promotional piece as amended.
10. In April 2017, the Florida Office of Financial Regulation (FOFR) contacted NFA regarding the above promotional piece which FOFR obtained as part of its examination of Fortress. Ashkar had provided FOFR with the original promotional piece that Fortress had submitted to NFA for pre-review together with NFA's February 22, 2017 letter informing the firm that the promotional piece was "approved." This gave FOFR the mistaken impression that NFA had

approved the deficient promotional piece when, in fact, NFA required the firm to make a number of changes to the piece before approving it.

11. In August 2017, NFA commenced another examination of Fortress's main office which found numerous financial, promotional material, and supervision-related deficiencies.

APPLICABLE RULES

12. NFA Financial Requirements Section 5(a) requires, in pertinent part, that an IB must maintain adjusted net capital (ANC) of at least \$45,000.
13. NFA Compliance Rule 2-10(a) provides, in pertinent part, that each Member shall maintain adequate books and records necessary and appropriate to conduct its business including, without limitation, the records required to be kept under CFTC Regulations 1.18, and 1.32 through 1.37, 1.68, and 1.71.
14. NFA Compliance Rule 2-29(b)(1) provides that no Member or Associate shall use any promotional material which is likely to deceive the public.
15. NFA Compliance Rule 2-29(b)(2) provides that no Member or Associate shall use any promotional material which contains any material misstatement of fact or which the Member or Associate knows omits a fact if the omission makes the promotional material misleading.
16. NFA Compliance Rule 2-29(b)(3) provides that no Member or Associate shall use any promotional material which mentions the possibility of profit unless accompanied by an equally prominent statement of the risk of loss.
17. NFA Compliance Rule 2-29(d) provides that statements of opinion included in promotional material must be clearly identifiable as such and must have a

reasonable basis in fact.

18. NFA Compliance Rule 2-39(a) provides that Members or Associates who solicit customers, introduce customers to a counterparty, or manage accounts on behalf of customers in connection with forex transactions shall comply with Sections (a), (b), (c), (d), (e), (h), and (l) of Compliance Rule 2-36.
19. 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

VIOLATIONS OF NFA FINANCIAL REQUIREMENTS SECTION 5 AND NFA COMPLIANCE RULE 2-10(a): FAILING TO MAINTAIN REQUIRED MINIMUM ADJUSTED NET CAPITAL AND FAILING TO KEEP ACCURATE BOOKS AND RECORDS.

20. The allegations contained in paragraphs 1, 12 and 13 are realleged as paragraph 18.
21. As of June 30, 2017, Fortress reported \$111,375 in current assets, \$2,070 in liabilities, and \$64,305 in excess net capital (ENC). However, these figures were erroneous. For example, the cash balance included a \$58,549 balance for a bank account solely in the name of Ashkar and not in the name of Fortress. Making this error more egregious was the fact that Ashkar's bank account balance was less than \$1,000, nowhere near the stated balance of \$58,549.
22. Additionally, Fortress failed to accrue for a \$12,500 credit card balance, a \$900 Maserati car payment, and \$300 in other operating expenses. After adjustments

were made, Fortress's ENC went from \$64,305 to negative \$5,104 which resulted in Fortress being under its minimum capital requirement from February 2017 through July 2017.

23. On August 14, 2017, Ashkar filed notice with NFA that it was under its minimum net capital requirement which the firm blamed on its bookkeeper.
24. Over the course of NFA's 2017 exam, Fortress repeatedly submitted and resubmitted deficient financial statements and capital computations. NFA would inform the firm of the deficiencies with respect to these items, and the firm would resubmit these items sometimes without correcting the errors or, in some instances, making new errors.
25. For example, on December 21, 2017, Fortress submitted updated financial statements to NFA which were deficient in several respects – the cash balances were overstated by \$10,000; a portion of what was reported as "current" commissions receivable was older than 30 days and, therefore, should have been reported as a "non-current" asset; and June 2017 liabilities did not include an outstanding credit card balance.
26. On December 22, 2017, NFA sent Ashkar and the firm's bookkeeper an email identifying these deficiencies. On January 8, 2018, Fortress resubmitted the financial statements but failed to correct all of the deficiencies. On January 17, 2018, Fortress again resubmitted the financial statements, but these resubmitted statements included new errors related to an unrecorded liability for trailing commissions and the misclassification of commissions older than 30 days as

current. On January 23, 2018, Fortress filed its December 31, 2017 unaudited 1-FR which contained the same errors as the above financial statements.

27. The firm's bookkeeper was the person responsible for correcting the forgoing deficient financial statements and capital computations. However, Ashkar failed to review the bookkeeper's "corrections" before submitting them to NFA.
28. By reason of the foregoing acts and omissions, Fortress is charged with violating NFA Financial Requirements Section 5 and NFA Compliance Rule 2-10(a).

COUNT II

VIOLATION OF NFA COMPLIANCE RULES 2-29(b)(1)-(3) AND (d) and 2-39(a): PREPARING AND DISTRIBUTING MISLEADING PROMOTIONAL MATERIAL.

29. The allegations contained in paragraphs 1 and 14 through 18 are realleged as paragraph 29.
30. Vector Informatics, which is owned by Gelet, maintains Fortress's website: [www.fortresscapitalinc.com]. Gelet regularly posted articles and advertisements on Fortress's website that solicited potential customers to open forex accounts. Ashkar, however, did not review or approve in writing any of the promotional material which Gelet posted on Fortress's website.
31. Some of the articles and advertisements which Gelet posted on Fortress's website identified Gelet as part of the "forex team" at Fortress and claimed that he was the VP of the firm's Forex Division and "Series 3 certified," implying that he was an AP of the firm – when, in fact, he had ceased being an AP of the firm several months prior to posting these articles and advertisements on Fortress's website.

32. Fortress's website also contained a link to the website of "Fortress Capital Trading Academy," which was a forex educational program created by Gelet and Ashkar and touted as "the best introductory course in the world" that "has helped many Wall St. professionals and international investors understand the nuances of Forex." To gain access to the Fortress Capital Trading Academy website, a user had to have a log-in ID and password.
33. Although Ashkar represented that nobody had ever purchased the educational program offered by Fortress Capital Trading Academy, he acknowledged that he gave log-in IDs and passwords to friends, business associates, and those interested in selling the program. Therefore, the promotional materials on the Fortress Capital Trading Academy's website – which included numerous videos and articles created by Gelet – were accessible to potential customers even though they had not been purchased by them.
34. Much of the promotional material on the website of the Fortress Capital Trading Academy was deficient. The website included misstatements of fact (e.g., NFA is like a trade association – like the American Dental Association); material statements of opinion that were not identified as such and for which Fortress had no support (e.g., the claim that the training course has helped many Wall Street professionals and international investors understand the nuances of Forex); and discussions of profit potential (e.g., the average Commodity Trading Advisor makes about 10% per year, since 1980) without a balanced discussion of the risk of loss.

35. The Fortress Capital Trading Academy's website also included information about how a U.S. citizen could avoid U.S. regulations by having a foreign friend open an account in their name: "Have your foreign friend open an account. Everything will be in their name, so you must trust this person. Offer to pay them a percentage of your investment profits. Maybe they will even invest too! This would be ideal, as they have an interest to see your strategy work."
36. Gelet also prepared other promotional material for Fortress, including a blog in Fortress's name which appeared on the website: [www.seekingalpha.com]. However, Ashkar claimed to have no knowledge of the [www.seekingalpha.com] website, let alone its content.
37. By reason of the foregoing acts and omissions, Fortress is charged with violating NFA Compliance Rules 2-29(b)(1)-(3) and (d), and 2-39(a).

COUNT III

VIOLATION OF NFA COMPLIANCE RULES 2-9(a) AND 2-39(a): FAILING TO SUPERVISE.

38. The allegations contained in paragraphs 1, 2, 18 and 19 are realleged as paragraph 38.
39. Fortress and Ashkar failed to take adequate supervisory measures – including retaining competent third parties – to ensure that the firm kept accurate books and records and prepared and submitted financial statements to NFA that complied with NFA financial requirements.
40. Nowhere was this more apparent than in Fortress's certified financial statement for 2017 in which the firm's CPA included a non-existent asset that represented a significant portion of the firm's listed assets.

41. Fortress and Ashkar also failed to adequately supervise the firm's use of promotional material and, in particular, Gelet's postings on the firm's website, to ensure that they met the criteria of NFA's promotional material rules. This resulted in Fortress disseminating misleading promotional material on its website.
42. In addition, Fortress failed to adopt procedures addressing ethics training, supervision of the firm's forex operations, recordkeeping, risk disclosures relating to customers, and the maintenance of customer information gathered by the FDMs during the account opening phase.
43. Fortress also failed to have an Information Systems Security Program (ISSP) and instead copied an ISSP of another unrelated firm and simply changed references to the other firm to Fortress. However, the ISSP that Fortress copied included procedures that were inapplicable to Fortress's operations.
44. By reason of the foregoing acts and omissions, Fortress and Ashkar are charged with violations of NFA Compliance Rules 2-9(a) and 2-39(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.

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 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 AP with a new sponsor, may be denied registration based on the pendency of this proceeding.

Pursuant to 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: 7/9/18

By: Wim K. M.
Chairperson

m:/ham/bcc complaint/fortress