

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

FILED
SEP 15 2022
NATIONAL FUTURES ASSOCIATION
LEGAL DOCKETING

In the Matter of:)
)
GAIN CAPITAL GROUP LLC)
(NFA ID #339826),)
)
and)
)
ALEXANDER ROBERT BOBINSKI, JR.)
(NFA ID #371364),)
)
Respondents.)

NFA Case No. 22-BCC-012

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 Gain Capital Group LLC (Gain) and Alexander Robert Bobinski, Jr. (Bobinski).

ALLEGATIONS

JURISDICTION

1. At all times relevant to this Complaint, Gain was a futures commission merchant (FCM) Member of NFA, and a forex dealer member (FDM) since 2010. As such, Gain 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, Bobinski was an NFA Associate Member and an associated person (AP) of Gain. As such, Bobinski was and is required to comply with NFA Requirements and is subject to disciplinary proceedings for violations thereof. Gain is liable for violations of NFA Requirements committed by Bobinski during the course of his activities on behalf of Gain.

BACKGROUND

3. Gain has been a registered FCM Member since 2004. The firm is headquartered in Warren, New Jersey.
4. In 2010, the firm became approved as an FDM and a forex firm.
5. Bobinski has been an AP of Gain and a forex AP of Gain since 2012 and a principal of Gain since 2006.
6. Gain offers forex trading to its customers on the firm's FOREX.com platform through a website, mobile app, and third-party applications.
7. Gain does not exclusively use straight-through processing, as defined in NFA Compliance Rule 2-36(s)(5).
8. This Committee has issued three prior Complaints against Gain, all of which were resolved by settlements accepted by this Committee or an NFA Hearing Panel, in 2007, 2010, and 2019. In settling the 2019 Complaint, Gain neither admitted nor denied the allegations against it, but agreed in relevant part to develop and adopt procedures to monitor customer inquiries and complaints to determine if they relate to, or suggest problems with, the firm's electronic trading platform.

APPLICABLE RULES

9. NFA Compliance Rule 2-5 requires, in pertinent part, each Member and Associate to cooperate promptly and fully with NFA in any NFA investigation, inquiry, or examination regarding compliance with NFA requirements.
10. NFA Compliance Rule 2-9(a), in pertinent part, requires each FCM to diligently supervise its employees and agents in the conduct of their commodity interest activities for or on behalf of the Member.
11. NFA Compliance Rule 2-36(c), in pertinent part, requires FDMs and their Associates to observe high standards of commercial honor and just and equitable principles of trade in the conduct of their forex business.
12. NFA Compliance Rule 2-36(e) requires FDMs to diligently supervise their employees and agents in the conduct of their forex activities for or on behalf of the FDM; and requires each Associate of an FDM who has supervisory duties to diligently exercise such duties in the conduct of that Associate's forex activities for or on behalf of the FDM.
13. NFA Compliance Rule 2-43(a)(1), in pertinent part, prohibits FDMs from canceling an executed customer order or adjusting a customer account in a manner that would have a direct or indirect effect of changing the price of an executed order except when (i) the cancellation or adjustment is favorable to the customer and done as part of a settlement of a customer complaint, provided, however, that individual customer complaints are not required in order for an FDM to favorably adjust all customer orders that were adversely affected by circumstances beyond the customer's control and that are unrelated to market

price movements; or (ii) an FDM exclusively uses straight-through processing, as defined in NFA Compliance Rule 2-36(s)(5), and that counterparty cancels or adjusts the price at which the position was executed.

COUNT I

VIOLATIONS OF NFA COMPLIANCE RULE 2-43(a)(1): IMPROPERLY ADJUSTING CUSTOMER ACCOUNTS.

14. The foregoing paragraphs are realleged as if fully stated herein.
15. Under NFA Compliance Rule 2-43(a)(1), Gain is prohibited from adjusting a customer account in a manner that would have a direct or indirect effect of changing the price of an executed order, unless one of the two exceptions set out in the Rule applies.
16. From about 2:55 P.M. on March 31, 2021 to about 1:00 A.M. on April 1, 2021, Gain experienced a system malfunction (hereafter the System Malfunction) on its FOREX.com trading platform, in which customers were able to execute stop and limit orders in 14 currency pairs at prices that did not reflect the current prices being published by the firm on its platform (hereafter the off-market prices).
17. Once Gain discovered the System Malfunction, it put an end to it by restarting a third-party pricing feed application.
18. By the time Gain stopped the System Malfunction, the firm had incurred close to \$3 million in losses on executed customer orders.
19. On the morning of April 1, Gain staff reviewed trade records and identified seven customers who executed the largest volume of orders at the off-market prices.
20. These seven customers' profit totals for the orders they executed during the System Malfunction were, from lowest to highest, approximately \$1,119

(Customer 1); \$16,411 (Customer 2); \$20,207 (Customer 3); \$100,584 (Customer 4); \$624,412 (Customer 5); \$712,135 (Customer 6); and \$1,366,707 (Customer 7) (collectively, the seven most-affected customers).

21. After identifying the seven most-affected customers, Gain immediately canceled any pending withdrawals from their accounts and froze their accounts to prevent any future withdrawals or trading.
22. Later on April 1, 2021, Gain negatively adjusted the accounts of the seven most-affected customers, clawing back the amounts set out above in paragraph 20.
23. On or about April 2, 2021, Gain also began making positive and negative adjustments to the accounts of other customers who had executed smaller numbers of trades at the off-market prices during the System Malfunction, crediting or debiting accounts down to a threshold of \$10.
24. Neither of the two exceptions to NFA Compliance Rule 2-43(a) applied to any of the above-alleged clawbacks.
25. In total, from about April 1 to April 2, 2021, Gain negatively adjusted the accounts of 17 customers by approximately \$2.84 million, and positively adjusted the accounts of 33 customers by approximately \$35,000.
26. Gain's CEO Bobinski personally approved these negative and positive adjustments, as well as the threshold of \$10.
27. By reason of the foregoing acts and omissions, Gain is charged with violating NFA Compliance Rule 2-43(a)(1).

COUNT II

VIOLATION OF NFA COMPLIANCE RULE 2-36(c): FAILURE TO OBSERVE HIGH STANDARDS OF COMMERCIAL HONOR AND JUST AND EQUITABLE PRINCIPLES OF TRADE BY UNFAIR TREATMENT OF CUSTOMERS AFFECTED BY THE SYSTEM MALFUNCTION AND GAIN'S ACCOUNT ADJUSTMENTS.

28. The foregoing paragraphs are realleged as if fully stated herein.
29. Under NFA Compliance Rule 2-36(c), Gain and Bobinski are required to observe high standards of commercial honor and just and equitable principles of trade in the conduct of their forex business.
30. Gain through CEO Bobinski reported to NFA on April 1, 2021 that the firm had a "market event" and had "processed some cancel corrects on limit orders." The following day, Gain submitted required filings through NFA's FORTRESS system that detailed the clawbacks alleged above in Count I.
31. On April 8, 2021, NFA emailed Bobinski and Gain's CCO and specifically reminded them of the applicability of NFA Compliance Rule 2-43(a) and its prohibition on negative account adjustments.
32. However, over the coming months, the firm delayed remedying its violations of Rule 2-43(a)(1), even as NFA continued investigating and requesting information from the firm.
33. The firm did not reverse improper debits and provide still-pending credits to customers other than the seven most-affected customers until January 19-20, 2022, more than nine months after the System Malfunction and Gain's prohibited account adjustments.

34. For the seven most-affected customers, on about December 17, 2021, Gain restored the funds it had improperly clawed back from their accounts, but simultaneously imposed a freeze that prevented these customers from withdrawing or trading with the funds.
35. At the same time, on about December 17, 2021, Gain sent each of the seven most-affected customers a notice which claimed that Gain had conducted a detailed investigation that re-confirmed the customer had intended to improperly exploit Gain's system issue and was not legally entitled to the proceeds of his trading. As for the clawed-back funds, Gain's notice claimed they were being reinstated as part of the firm's internal processing of the matter. The notice also claimed that, if the customer believed his trading activity did *not* violate Gain's customer agreement, he had until January 3, 2022 to submit a written explanation, or the firm would consider the matter closed.
36. These notices sent on December 17, 2021 were unfairly one-sided and failed to accord with high standards of commercial honor and just and equitable principles of trade. The notices presented it as an established fact that the customers lacked any legal entitlement to the funds in their accounts, when in fact that is an open question that has not been resolved. At the same time, the notices attributed the restoration of customer funds to "internal processing," thus denying customers sufficiently complete information to understand what was happening to their account balances and why.

37. After reviewing the notices sent on December 17, 2021, NFA informed the firm that it would still violate Compliance Rule 2-43(a)(1) to claw back funds again from customers who failed to respond by the firm's unilaterally imposed deadline. Thereafter Gain again changed course and informed NFA it would begin lifting the freezes on the seven accounts, while also sending additional legal notices.
38. The firm finally lifted the withdrawal restrictions on the accounts of Customers 1, 2, 3, and 4 (from whom Gain had clawed back and then restored \$1,119; \$16,411; \$20,207; and \$100,584, respectively) from April to May 2022, more than a year after the firm had improperly clawed back the funds from their accounts. The notices Gain sent to these customers repeated the claim that they had generated these funds through improper trading that exploited an error in the firm's systems. The notices also stated that Gain was not waiving any claims it may have and that it may consider its legal options.
39. For Customers 5, 6, and 7 (from whom Gain had clawed back and then restored \$624,412; \$712,135; and \$1,366,707, respectively), Gain sent them notices stating it would lift the restrictions on their accounts on May 9, 2022, again over a year after the firm had improperly clawed back the funds from their accounts. These notices further informed Customers 5, 6, and 7 that Gain intended to initiate legal proceedings against them to establish Gain's entitlement to the funds it had clawed back and then restored. Gain also invited these customers to contact Gain to resolve the matter.
40. In response to this notice, Customer 5 emailed Gain and stated he did not want the money, did not understand what happened, and did not want any trouble.

41. Gain responded by sending Customer 5 a settlement offer in which Customer 5 would admit to wrongdoing and give up all right to the roughly \$624,412 in his account, and the firm and Customer 5 would mutually release one another from all claims related to the System Malfunction and Gain's account adjustments. Gain's offer of settlement included a recommendation that Customer 5 consult with counsel. Customer 5 signed the settlement and returned it.
42. On about May 26, 2022, Gain filed arbitration proceedings against Customers 6 and 7 with the American Arbitration Association (AAA) under the AAA's Commercial Arbitration Rules rather than its Consumer Arbitration Rules.
43. Gain's initiation of arbitration proceedings against Customers 6 and 7; Gain's notice to Customers 5, 6, and 7 of its intent to initiate such proceedings; and Gain's arbitration agreements with these customers, all failed to comply with the customer protection requirements of CFTC Regulation 166.5.
44. NFA contacted the firm to inquire about its apparent noncompliance with CFTC Regulation 166.5. In response, Gain withdrew the pending arbitration proceedings against Customers 6 and 7 and provided them the pre-dispute notices required by that Regulation. In contrast, Gain took no remedial action as to Customer 5.
45. By reason of the foregoing acts and omissions, Gain is charged with violating NFA Compliance Rule 2-36(c).

COUNT III

VIOLATIONS OF NFA COMPLIANCE RULES 2-5 AND 2-36(c): FAILURE TO COOPERATE AND FAILURE TO OBSERVE HIGH STANDARDS OF COMMERCIAL HONOR AND JUST AND EQUITABLE PRINCIPLES OF TRADE BY REPEATEDLY SUBMITTING INACCURATE AND INCOMPLETE INFORMATION TO NFA.

46. The foregoing paragraphs are realleged as if fully stated herein.
47. Under NFA Compliance Rule 2-5, Gain and Bobinski are required to cooperate promptly and fully with NFA in any NFA investigation or inquiry.
48. Gain and Bobinski repeatedly submitted inaccurate and incomplete information to NFA during NFA's investigation of the System Malfunction and Gain's improper adjustment of customer accounts.
49. On four separate occasions—a phone call on April 5, 2021; and written submissions on about April 15, October 1, and November 22, 2021—Gain made inaccurate statements to NFA, claiming incorrectly that only one or zero customers had complained about, questioned, or even communicated with the firm about the System Malfunction or the firm's adjustment of customer accounts. At least two of these inaccurate statements were made directly to NFA by Bobinski.
50. Contrary to Gain's inaccurate statements, at least six of the seven most-affected customers complained or inquired about the System Malfunction, Gain's adjustment of their accounts, or both.
51. Despite being asked by NFA, Gain and Bobinski never put forward a colorable explanation for their repeated submission to NFA of inaccurate information about customer complaints and inquiries.

52. In addition, Gain and Bobinski made other incomplete submissions in response to NFA inquiries.
53. For example, in response to an October 28, 2021 NFA inquiry for "complete documentation of customer complaints" and "[a]ll communications GAIN has sent to, and received from, customers regarding the . . . cancellations and adjustments," Gain did not produce all documents responsive to this request. Instead NFA had to go back to the firm a second time to retrieve the complaints and other communications that Gain had failed to produce in the first instance.
54. Additionally, on about April 7, 2022, NFA requested all documents relating to the firm's internal investigations of the seven most-affected customers' trading activity, "including without limitation all analyses, memos, and communications (internal and external)." Again Gain failed to produce all responsive documents, requiring NFA to go back to the firm to obtain the documents that Gain had failed to produce in the first instance (in this case multiple internal chats, spreadsheets, and emails).
55. However, even after NFA went back a second time, Gain still failed to produce all documents requested, instead leaving requested spreadsheets on a password-protected Gain server where NFA could not access them. NFA therefore had to go back and repeat its request to Gain a third time.
56. At about the same time, Gain also initially failed to produce the original customer agreements for the seven most-affected customers, despite NFA specifically requiring these documents to be provided.

57. Bobinski personally sent the inadequate and incomplete responses to NFA inquiries alleged above in paragraphs 53 to 56.
58. Gain's and Bobinski's repeated submission of inaccurate and incomplete information concerning customer complaints; customer communications; investigations of customer trading activity; and customer agreements; is conduct that could potentially harm customers, since it slowed NFA's investigation and could have hindered NFA's ability to protect customers.
59. Based on the foregoing acts and omissions, Gain and Bobinski are charged with violating NFA Compliance Rules 2-5 and 2-36(c).

COUNT IV

VIOLATIONS OF NFA COMPLIANCE RULES 2-9(a) AND 2-36(e): FAILURE TO SUPERVISE

60. Under NFA Compliance Rule 2-9(a), Gain is required to diligently supervise its employees and agents in the conduct of their commodity interest activities for or on behalf of Gain.
61. Under NFA Compliance Rule 2-36(e), Gain is required to diligently supervise its employees and agents in the conduct of their forex activities for or on behalf of Gain.
62. Under NFA Compliance Rule 2-36(e), Bobinski is required to diligently exercise his supervisory duties in the conduct of his forex activities for or on behalf of Gain.
63. Under NFA Interpretive Notice 9060 – *Compliance Rule 2-36(e): Supervision of the Use of Electronic Trading Systems*, Gain must ensure that any electronic trading system used by it is designed to identify trading anomalies or patterns

that indicate a system malfunction, especially a malfunction that could result in undue risk to Gain.

Failure to Supervise by Gain and Bobinski Based on the System Malfunction and Subsequent Acts and Omissions

64. At the time of the System Malfunction, Gain did not have appropriate surveillance systems in place to identify and prevent system malfunctions.
65. For example, at the time of the System Malfunction, Gain's electronic trading system did not provide for real-time monitoring of stop or limit order executions. Gain deployed such real-time monitoring just two weeks after the System Malfunction, on April 14, 2021.
66. Also, at the time of the System Malfunction, Gain did not have automatic profit and loss (PnL) alerts in place to inform staff of relatively slowly accumulating losses of the kind experienced during the malfunction. However, there was no impediment preventing Gain from having such PnL alerts in place, and the firm has subsequently set up such alerts for its electronic trading system.
67. Based on the above failure to use a trading system designed to identify trading anomalies or patterns that indicate a system malfunction, especially a malfunction that could result in undue risk to the firm, Gain failed to diligently supervise its forex business under NFA Compliance Rule 2-36(e).
68. In addition to this failure to supervise, the firm's and Bobinski's decision to claw back customer funds after the System Malfunction, in clear violation of NFA Compliance Rule 2-43(a)(1), and then to delay remedying this violation for nine

months to over a year, also reflects a failure to supervise both by Gain and by Bobinski.

69. This failure to supervise is especially egregious because both Gain and Bobinski knew or should have known that NFA Compliance Rule 2-43(a)(1) prohibited the clawbacks they authorized.
70. Specifically, a 2016 NFA exam of the firm found Gain had violated that Rule by, in part, improperly debiting customer accounts due to an error in the system Gain used to calculate rollovers. This exam finding was reflected in the exam report that NFA sent to Gain at the time. Additionally, NFA sent a December 10, 2020 letter to the firm via Bobinski admonishing the firm for again violating NFA Compliance Rule 2-43(a)(1) by negatively adjusting a customer's account by a nominal amount.
71. This Committee also previously issued a Complaint against Gain for other alleged violations of NFA Compliance Rule 2-43(a)(1), in 2019. While that Complaint was settled without any finding of fact as to the allegations or any admission of guilt by Gain, Bobinski personally signed the settlement, showing that he and Gain were on further notice of the requirements of NFA Compliance Rule 2-43(a)(1).
72. Furthermore, Gain's unfair treatment of customers alleged above in Count II, and Gain's and Bobinski's inability to provide NFA with accurate and complete information relating to the System Malfunction and the firm's response to it as alleged above in Count III, also reflect a failure to supervise.

73. Based on the above, Gain and Bobinski failed to diligently supervise under NFA Compliance Rule 2-36(e).

Failure to Supervise Based on Deficiencies Uncovered by NFA's 2020 and 2021 Exams of the Firm

74. NFA examined Gain from July to December 2020 (the 2020 exam) and again from September 2021 to February 2022 (the 2021 exam). The exams uncovered numerous deficiencies across a number of areas.
75. As discovered by both exams, Gain failed to adequately handle and resolve customer complaints through 2020 and 2021. These exam findings were in addition to the above-alleged failure by Gain to provide accurate information to NFA concerning customer complaints that related to the System Malfunction.
76. For example, the exams revealed that numerous clear and unresolved customer complaints were not recorded in Gain's complaint logs, such as a customer who complained that Gain was not letting her withdraw funds and stating she would be retaining an attorney, and a customer who complained about an improper liquidation in her account.
77. Gain's complaint-handling procedures were also deficient, failing to require adequate documentation of complaints and adequate review of customer communications for complaints that may have been missed, and failing to adequately describe how complaints were to be documented and escalated.
78. Beyond Gain's failures to adequately handle and resolve customer complaints, the firm also failed to diligently supervise its commodity interest and forex

business in other respects. For example, the 2021 exam uncovered that six former Gain employees were still authorized signors on Gain's bank accounts (including three employees who had not worked at the firm for roughly a decade) and would have had access to customer funds. Luckily no unauthorized transactions occurred, despite Gain's failure to supervise who had control over these accounts.

79. Additionally, the 2020 exam uncovered that incorrect account mapping in Gain's systems would cause Gain to share sensitive personally identifiable information (PII) between customers in specific circumstances. Rather than fix the bug, Gain relied on manual processes to prevent PII from being shared. These manual processes failed in at least one instance, causing a customer's name, address, income, and net worth to be shared with an unrelated customer. Gain did not notify the customer whose PII was breached.
80. Numerous other regulatory deficiencies were revealed by the 2020 and 2021 exams, which further show that Gain has failed to supervise its commodity interest and forex business.
81. For example, Gain failed to file a 10-day notice before carrying out a bulk transfer of futures accounts, as required by NFA Compliance Rule 2-26 and CFTC Regulation 1.65. NFA and the CFTC had both specifically reminded Gain to file this 10-day notice, and yet the firm failed to do so.
82. As an additional example, Gain misclassified a non-withdrawable cash deposit as current, rather than noncurrent as is required by NFA Financial Requirements Sections 4 and 11 and CFTC Regulations 1.17 and 5.7. This resulted in Gain's

excess net capital being reduced by about \$10 million and required the firm to amend and refile ten of its prior 1-FR filings (although Gain did not go below its minimum capital requirements during this period).

83. As a further example, Gain failed to provide over 59,000 customers with the annual privacy policy required by CFTC Regulation 160.5, until reminded by NFA.
84. Both the 2020 and 2021 exams found that Gain maintained deficient FCM and FDM public disclosures required under NFA Compliance Rules 2-26 and 2-36(n) and CFTC Regulation 1.55. For example, the disclosures did not accurately list the firm's principals and failed to disclose material events such as a change in Gain's carrying broker and a bulk transfer of futures accounts.
85. By reason of the foregoing acts and omissions, Gain is charged with violating NFA Compliance Rule 2-9(a) and 2-36(e), and Bobinski is charged with violating NFA Compliance Rule 2-36(e).

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

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, NFA may impose one or more of the following penalties:

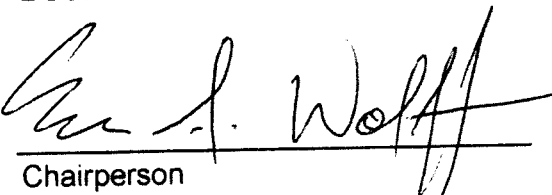
- (a) expulsion or suspension for a specified period from NFA membership;
- (b) bar or suspension for a specified period from association with an NFA Member;
- (c) censure or reprimand;
- (d) a monetary fine not to exceed \$500,000 for each violation found; and
- (e) order to cease and desist or any 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. A respondent in this matter who applies for registration in any new capacity, including as an AP with a new sponsor, may, after opportunity for hearing, be denied registration or conditionally registered 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 a Respondent who is an individual 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: 9/15/22

By: 
Chairperson

MAS\Enforcement\GAIN\Complaint (09.13.2022) (Final)