

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

FILED

MAR 22 2023

NATIONAL FUTURES ASSOCIATION
LEGAL DOCKETING

In the Matter of)
)
BOSWORTH BROKERS LLC)
(NFA ID #443790),)
)
DENNIS MICHAEL BOSWORTH)
(NFA ID #447654),)
)
and)
)
ANDREW MICHAEL GIZIENSKI)
(NFA ID #447195),)
)
Respondents.)

NFA Case No. 23-BCC-002

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 Bosworth Brokers LLC (BBL), Dennis Michael Bosworth (Bosworth), and Andrew Michael Gizienski (Gizienski).

ALLEGATIONS

JURISDICTION

1. At all times relevant to this Complaint, BBL has been an introducing broker (IB), approved swap firm, and Member of NFA. As such, BBL 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, Bosworth was an associated person (AP) of BBL and an NFA Associate. As such, Bosworth was and is required to comply with NFA Requirements and is subject to disciplinary proceedings for violations thereof. BBL is liable for violations of NFA Requirements committed by Bosworth during the course of his activities on behalf of BBL.
3. From May 13, 2021 to August 15, 2022, Gizienski was an AP of BBL and an NFA Associate. Gizienski again became an AP of BBL and NFA Associate on December 13, 2022. As such, Gizienski was and is required to comply with NFA Requirements and is subject to disciplinary proceedings for violations thereof during the relevant times as stated. BBL is liable for violations of NFA Requirements committed by Gizienski in the course of his activities on behalf of the firm.

BACKGROUND

4. BBL is an IB approved swap firm, and NFA Member located in Houston, Texas. BBL originally became a registered IB and NFA Member on August 13, 2013, before it withdrew its registration and membership on June 2, 2018. BBL reregistered as an IB and became reapproved as an NFA Member on May 13, 2021.
5. BBL operates as an execution only broker that facilitates block futures and EFP transactions for institutional customers trading electricity and natural gas futures on the Intercontinental Exchange, (*i.e.*, ICE Futures U.S. (ICE)), and Nodal Exchange.

6. In addition to being an AP of BBL, Bosworth is the chief executive officer (CEO) and a principal of the firm. Bosworth originally became an AP and principal of BBL and an NFA Associate in 2013, before he withdrew his registration, membership, and principal status on June 2, 2018.
7. On October 15, 2020, NFA reapproved Bosworth as principal of BBL.
8. On May 13, 2021, Bosworth reregistered as an AP and NFA Associate.
9. In addition to Bosworth, the firm has three other APs. One of those APs is Gizienski.
10. In August 2022, a jury found in favor of the CFTC in an action brought against Gizienski and the IB Member firm that previously employed him for taking the other side of customer orders without consent and disclosing customers' material, nonpublic order information without permission.
11. The jury's verdict levied a \$7 million civil monetary penalty and imposed certain undertakings on Gizienski and his previous employer, in addition to enjoining and restraining Gizienski from certain activities for 120 days (*e.g.*, trading, acting as a principal).
12. The jury also levied an additional \$490,000 civil monetary penalty against his prior employer for its supervisory and recordkeeping shortcomings. Specifically, the recordkeeping shortcomings involved a failure to maintain brokers' pre-trade communications, including Gizienski's, with their clients.
13. Based on the jury's verdict, Gizienski's AP registration with BBL and his NFA associate membership were suspended on August 15, 2022.

14. In October 2022, Gizienski acquired an ownership interest in BBL. Gizienski again became an AP of BBL and NFA Associate on December 13, 2022, after the 120-day suspension ended.
15. NFA commenced an examination of BBL in February 2022, during which NFA found recordkeeping, supervisory, and other deficiencies.

APPLICABLE RULES

16. NFA Compliance Rule 2-4 requires NFA Associates to observe high standards of commercial honor and just and equitable principles of trade in the conduct of their commodity futures business.
17. NFA Compliance Rule 2-10(a) requires NFA Members to maintain adequate books and records necessary and appropriate to conduct its business including, without limitation, the records required to be kept under CFTC Regulation 1.35 for the period required under CFTC Regulation 1.31.
18. NFA Compliance Rule 2-9(a) requires NFA Members to diligently supervise its employees and agents in the conduct of their commodity interest activities for or on behalf of the Member. The Rule also requires each Associate who has supervisory duties to diligently exercise such duties in the conduct of that Associate's commodity interest activities on behalf of the Member.
19. NFA Registration Rule 208 provides, in pertinent part, that any IB registrant must list with NFA any person that becomes principal of the registrant within 20 days after the individual becomes principal.

COUNT I

VIOLATIONS OF NFA COMPLIANCE RULES 2-4 AND 2-10(a): FAILING TO OBSERVE HIGH STANDARDS OF COMMERCIAL HONOR AND JUST AND EQUITABLE PRINCIPLES OF TRADE BY USING AN UNAPPROVED, UNMONITORED COMMUNICATION PLATFORM; FAILURE TO COMPLY WITH CFTC REGULATIONS 1.31 AND 1.35 BY FAILING TO MAINTAIN WRITTEN COMMUNICATION RECORDS.

20. The foregoing paragraphs are realleged as if fully stated herein.
21. At the onset of its exam, NFA obtained and reviewed BBL's trading activity for the period November 1, 2021 through February 3, 2022.
22. NFA noted that Gizienski brokered approximately 60% of all trades executed by BBL during this time. In addition, BBL's largest client (Client A) accounted for approximately 36% of BBL's total trading volume, and Gizienski brokered 100% of Client A's trades.
23. Gizienski was a party to the CFTC action described above, which was pending at the time of the BBL exam and alleged improper trade activity and a failure to maintain pre-trade communications. Therefore, NFA determined to review and reconstruct a sample of his trades as part of the exam.
24. While attempting to reconstruct trades, NFA found that BBL failed to maintain Gizienski's written communications in accordance with regulatory requirements due to Gizienski's use of an encrypted messaging system, called Signal, on his cellphone to communicate trade details with Client A.
25. Specifically, NFA attempted to obtain Gizienski's chat messages for three trades he did with Client A in December 2021 and January 2022 but found missing communications.

26. NFA raised the issue with the firm and Bosworth and learned that Gizienski started using Signal in November 2021, without BBL and Bosworth's knowledge or consent and, in January 2022, began using Signal on his desktop. Further, Gizienski's Signal communications were automatically deleted off the Signal platform after seven days.
27. BBL's recordkeeping deficiency involving Signal continued until the very earliest February 2022, when NFA's exam revealed Gizienski was using Signal.
28. Bosworth admitted that prior to NFA's exam, he was unaware that Gizienski used the Signal platform. Bosworth further acknowledged that Gizienski only used this platform to communicate with one client, Client A, but said no other APs used this system for client communications.
29. Based on NFA's inquiry, Bosworth also asked Gizienski about his use of Signal. In emails Bosworth provided to NFA, Gizienski stated that the Signal chats were only available for one week and then no longer accessible.
30. Gizienski claimed in an email to Bosworth that he did not know he could adjust the retention setting to turn off the automatic deletion of messages.
31. Gizienski further claimed in an email to Bosworth that the automatic delete setting had been that way from the start but was unsure how.
32. NFA reminded BBL and Bosworth of the requirement to maintain all written Signal communications for five years and cited the deficiency in the June 29, 2022 examination report.
33. As alleged above, Gizienski used the Signal system without his employer's prior knowledge or approval for at least two months and knew or should have known

from the pending CFTC lawsuit against him and his former employer that his communications needed to be retained for longer than one week.

34. Gizienski's emails, discussed above, confirm that he was aware messages were automatically deleted from Signal after seven days and that the automatic delete setting had been that way since he began using the system in November 2021.
35. Gizienski's behavior could potentially harm customers since he prevented BBL from having required records that could assist the firm in identifying possible problematic activity by Gizienski.
36. Further, similar to the CFTC's action involving Gizienski and his former employer, Gizienski caused his current employer, BBL, to fail to comply with CFTC and NFA recordkeeping requirements.
37. By reason of the foregoing acts and omissions, Gizienski is charged with violations of NFA Compliance Rule 2-4, and BBL is charged with violations of NFA Compliance Rule 2-10(a).

COUNT II

VIOLATION OF NFA REGISTRATION RULE 208: REPORTING OF PRINCIPALS.

38. The foregoing paragraphs are realleged as if fully stated herein.
39. NFA learned in late January 2023 that Gizienski acquired a 15% minority ownership in BBL on October 21, 2022.
40. Since Gizienski had acquired more than a 10% ownership interest in BBL, the firm was required to list Gizienski as a principal in NFA's records within 20 days after he became one. However, BBL did not list Gizienski as a principal until

January 31, 2023, over three months after he acquired his ownership interest, and which apparently was prompted by NFA's inquiry regarding Gizienski's role at the firm.

41. By reason of the foregoing acts and omissions, BBL is charged with violation of NFA Registration Rule 208.

COUNT III

VIOLATION OF NFA COMPLIANCE RULE 2-9(a): FAILURE TO SUPERVISE.

42. The foregoing paragraphs are realleged as if fully stated herein.
43. NFA expects firms to establish, implement and execute an adequate supervisory program. An adequate supervisory program includes, among other components, adopting and implementing written policies and procedures to address the manner, frequency, and results of monitoring written communications, as well as how the communications are maintained.
44. However, BBL did not create or maintain written procedures to ensure that all AP written communications were kept for the required period or to describe what measures the firm used to review APs' communications and trading activity.
45. When NFA inquired how BBL and Bosworth supervised brokers and reviewed their communications, Bosworth explained the process he used daily to review their activities and, if needed, their communications (e.g., in case of a misquote or out trade). However, the inadequacy of Bosworth's review process is evidenced by Gizienski's use of the Signal system for approximately two months without Bosworth's knowledge.

46. Additionally, the serious nature of the pending CFTC matter against Gizienski should have caused Bosworth to provide heightened supervision of Gizienski's activities and communications. Instead, Bosworth and BBL failed to closely monitor and review Gizienski's activity to ensure nothing improper was occurring when it was, as demonstrated by his use of an unapproved, unmonitored, and inadequate communication platform.
47. By his own admission, Bosworth was unaware Gizienski was using this encrypted chat platform to communicate trade details with the firm's largest client and only retaining communications for one week, far short of the required five-year period. In addition, Bosworth failed to document that he had performed these reviews and what findings, if any, he noted.
48. The above failures show that BBL and Bosworth failed to adequately supervise the firm and its employees.
49. NFA also found that the firm's "Compliance Procedures Handbook" merely contained the content of certain NFA rules and lacked any written procedures detailing how BBL would ensure compliance with the rules referenced.
50. Further, NFA's exam found that BBL failed to keep its accounting records in accordance with GAAP, which caused the firm to not accurately reflect its actual financial activities. For example, the books and records which the firm produced during the exam did not support the November 30, 2021 Net Capital Computation.
51. BBL used cash basis accounting despite the fact CFTC Regulations required the firm to use accrual basis accounting.

52. Despite NFA citing this deficiency in the exam report and requiring the firm to file its financials with NFA monthly, NFA recently confirmed that the firm continues to use cash basis accounting, which resulted in the overstatement of BBL's net capital position.
53. NFA previously cited BBL in a 2017 exam for similar issues surrounding the firm's financials.
54. The continued failure of BBL and Bosworth to use accrual basis accounting also shows they have failed to adequately supervise the firm.
55. BBL and Bosworth's supervisory shortcomings continued after the conclusion of NFA's exam. To illustrate, NFA cited BBL in the exam report for Bosworth not documenting his supervisory reviews. However, when NFA inquired in late January 2023, BBL still could not provide documentation that substantiated Bosworth had conducted any reviews of BBL APs' communications or trades to date.
56. Additionally, BBL's supervisory shortcomings included the firm's failure to adhere to NFA Registration Rules. Specifically, BBL failed to list Gizienski as a principal of BBL within the requisite time period.
57. By reason of the foregoing acts and omissions, BBL and Bosworth 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.

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, one or more of the following penalties may be imposed:

- (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.

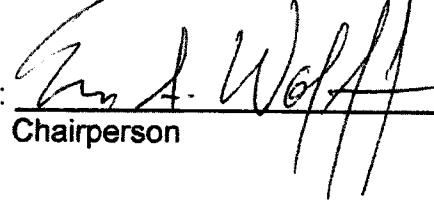
Pursuant to CFTC Regulation 1.63, penalties imposed in connection with this Complaint may temporarily or permanently render a Respondent who is an individual ineligible to serve on disciplinary committees, arbitration panels and governing boards of a self-regulatory organization, as that term is defined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

Dated:

3/22/2023

**NATIONAL FUTURES ASSOCIATION
BUSINESS CONDUCT COMMITTEE**

By:


Chairperson