

**UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION**

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10:13 am, Oct 23, 2014

_____)		
In the Matter of:)		
Dominick Anthony Cognata,)		ALJ Docket No. 13-CFTC-0002
Respondent.)		CFTC Docket No. SD 13-06
_____)		

INITIAL DECISION AND ORDER

SUMMARY

The U.S. Commodity Futures Trading Commission Division of Enforcement (“Agency”) initiated this action to revoke Dominick Anthony Cognata’s (“Respondent”) floor broker registration. The undersigned is adjudicating this case pursuant to an Interagency Agreement between the Agency and the U.S. Coast Guard.

After granting several extensions for Respondent to file a responsive pleading, which he ultimately failed to do, I found him in default and deemed the allegations against him admitted. The Agency now seeks an order of default for the requested sanction of revocation. Based on the allegations deemed admitted and evidence in the record, good cause exists to grant the Agency’s requested sanction. Therefore, the undersigned enters an **ORDER OF DEFAULT** against Respondent and his floor broker registration is **REVOKED**.

PROCEDURAL HISTORY

On September 30, 2013, the Commission filed a *Notice of Intent to Revoke the Registration of Dominick Anthony Cognata* (“Notice of Intent”) alleging good cause for the statutory disqualification of Respondent’s registration. The Agency served the Notice

by sending it certified mail, return receipt requested, to the address of record contained in the Respondent's registrations with the Commission. See 17 C.F.R. § 3.50. After receiving the case, the undersigned granted several extensions of time for the parties to either negotiate settlement or for Respondent to file a response to the Notice of Intent.¹ Respondent did not file an Answer or an otherwise responsive pleading to the Notice of Intent and their attempts to settle the case failed.²

The Agency moved to find Respondent in default. I granted the motion finding Respondent in default and deemed the allegations in the Notice of Intent admitted. The Agency then moved for an Entry of Default Order giving rise to this Initial Decision. Respondent's counsel filed a Declaration in Opposition to which the Agency filed a Reply. The case is ripe for decision.

FACTS OF THE CASE³

Respondent is an individual residing in New York, NY. Notice of Intent at ¶ 1. He has been a registered floor broker and a member of the Commodity Exchange, Inc. ("COMEX") since 2005. Id. at ¶ 2. The Agency has designated COMEX as a contract market. Id. Since 2011, Respondent has been the subject of two COMEX self-regulatory organization ("SRO") disciplinary actions. The first action occurred on August 9, 2011. Pursuant to an offer of settlement, a panel of the COMEX Business Conduct Committee

¹ See Order Granting Extension of Time to Answer dated December 23, 2013; Order Granting Extension of Time to Answer dated January 10, 2014; and, Order Granting Third Extension of Time to Answer dated February 28, 2014.

² Respondent's email communication does not serve as an Answer or other responsive pleading to the Notice of Intent even though Respondent asked that the email "be considered to avoid a default." The email communication did not contain specific admissions or denials of each allegation as required by 17 C.F.R. § 10.23(b)(1).

³ Because this was a default case, the facts are derived from the allegations deemed admitted in the Notice of Intent. The allegations containing statements of law and regulation are not deemed admitted; the statutes and regulations speak for themselves.

(“Panel”) found Respondent violated several COMEX Rules and New York Mercantile Exchange, Inc. (“NYMEX”) Rules. Specifically, the Panel found:

1. From October 2008 to December 4, 2008, [Respondent] engaged in four (4) noncompetitive, prearranged trades of COMEX Silver and Gold options while in possession of executable customer orders that he withheld from the marketplace and allowed other select traders to realize gains by noncompetitively trading opposite these orders.
 2. On November 13, 2008 [Respondent] engaged in noncompetitive, prearranged trades of COMEX Silver options opposite another broker’s customer order without bidding or offering in the ring.
 3. On November 21, 2008, [Respondent] accepted a profiting round-turn transaction into his personal account that was executed noncompetitively by another trader.
- Id. at ¶ 3.

The Panel ordered Respondent to pay \$135,000 fine, \$1,400 disgorgement, and \$44,700 in customer restitution. The Panel also imposed a two-week trading ban and suspension of membership. Id.

The second action occurred on February 12, 2013. Pursuant to another offer of settlement, the Panel found Respondent violated COMEX rules on three occasions in June and July 2011 when he prearranged round-turn trades in Silver Options on the trading floor for the purpose of receiving money passes from other COMEX members. Id. at ¶ 4. The Panel ordered Respondent to pay a \$20,000 fine and imposed a 20-day trading ban and suspension of membership. Id.

In the instant case, the Agency served Respondent with a subpoena on August 14, 2012 for the production of various documents, including “trading cards and order tickets used in the trading of silver or gold futures or silver or gold options on futures” from “January 1, 2008 to the present.” Id. at ¶ 5.

Respondent, through counsel, informed the Agency he would invoke his privilege against self-incrimination under the Fifth Amendment to the United States Constitution, thus refusing to produce any documents in response to the subpoena. Id. at ¶ 7.

On January 31, 2013, the Agency sent a letter to Respondent's counsel confirming its understanding that Respondent "d[id] not intend to produce any responsive documents called for by the CFTC's August 14, 2012 subpoena, nor make responsive documents available for inspection by CFTC staff, pursuant to Section 4g(a) of the Act and Commission Regulations 1.31 and 1.35." Id. at ¶ 8. The Agency's letter requested a response if its understanding was incorrect. Respondent did not respond. Id. To date Respondent has not made available for inspection or produced the trading cards, order tickets, or other similar records documenting his trades as requested by the Agency's subpoena. Id. at ¶ 12.

ANALYSIS

Lack of responsive pleading

Title 17 C.F.R. § 3.60(a)(4)(i), states in pertinent part that if a registrant does not file a timely response to a notice of statutory disqualification, the registrant "will be deemed to have waived his right to a hearing on all issues and the facts stated in the notice shall be deemed to be true and conclusive for the purpose of finding that the . . . registrant is subject to statutory disqualification under sections 8a (2). . .of the Act." After a request from the Agency, the Administrative Law Judge may issue an order of default to deny, condition, suspend, revoke or restrict a registrant's registration based solely upon the facts set forth in the Notice of Intent. See 17 C.F.R. § 3.60(a)(4)(ii). Here, Respondent failed to file a timely responsive pleading to the Agency's Notice of Intent giving rise to the instant Initial Decision and Order.

Pattern of conduct

Title 7 U.S.C. § 12a(4) (2012) authorizes the Agency to suspend, revoke or restrict the registration of any person if cause exists under 7 U.S.C. § 12a(3) (2012) which would warrant refusal of registration. One of the grounds warranting refusal of registration is a showing of “other good cause.” See 7 U.S.C. § 12a(3)(M) (2012). The Agency has interpreted “other good cause” to include “any act or pattern of conduct attributable to a person, although never the subject of formal action or proceeding before either a court or governmental agency” that demonstrates the “person’s potential disregard of or the inability to comply with the requirements of the Act or the rules, regulations or order thereunder, or such person’s moral turpitude, or lack of honesty or financial responsibility. . . .” 17 C.F.R. Part 3, Appx. A.

Here, Respondent has admitted to two (2) prior SRO disciplinary actions against him. While both actions were settled with no admission of wrongdoing, his history establishes a pattern of conduct demonstrating an inability to abide by the rules and regulations associated with him and his floor broker registration. Further, and as set forth below, Respondent failed to comply with a Commission subpoena.

Failure to comply with regulations

Under section 4g of the Act, 7 U.S.C. § 6g, Respondent, as a Commission-registered COMEX floor broker, must (1) make such reports as required by the Commission regarding, among other things, his own transactions and transactions for customers; (2) keep books and records pertaining to such transactions in the form and

manner required by the Commission; and, (3) keep such books and records “open to inspection” by Commission representatives.⁴

Commission Regulation 1.31(a), 17 C.F.R. § 1.31 (a), mandates that all books and records required to be kept by the Act or Commission Regulations be “open to inspection” by any representative of the Commission and provided to such representative “upon the representative’s request.”

Title 17 C.F.R. § 1.31(a)(2) provides that when requested by an Agency representative, either the originals or copies of such records shall be provided promptly.

Title 17 C.F.R. § 1.35(d) requires members of a contract market to prepare trading cards or similar records documenting their trades.

Finally, 17 C.F.R. § 1.35(a) mandates that a member of a contract market must maintain and produce for inspection required records such as trading cards and order tickets, and furnish true and correct information and reports when and as requested by an authorized representative of the Commission.

Here, Respondent does not contest he is an individual who is subject to these rules and regulations based on his floor broker registration. Further, Respondent admits he did not comply with the Commission’s subpoena. Respondent states he did not comply with the subpoena because he asserted his Fifth Amendment right against self-incrimination under the United States Constitution.

The validity of Respondent’s Fifth Amendment assertion is not germane to the issue raised in the Notice of Intent and the undersigned need not decide that issue here.⁵

⁴ Section 4g of the Act is codified at 7 U.S.C. § 6g.

⁵ The validity of Respondent’s Fifth Amendment assertion is at issue in the related case under CFTC Docket Number 13-41. The Initial Decision in that case contains an analysis concerning whether Respondent’s invocation of the Fifth Amendment was proper under these circumstances.

The only issue before the undersigned in this case is whether or not good cause exists to revoke Respondent's floor broker registration. Here the relevant regulations direct Respondent to maintain certain books and records and to make them available to the Commission. He did not do so. Therefore, he was not in compliance with the requirements for his floor broker registration. While the Fifth Amendment might provide an excuse for not producing certain records, it does not allow him to continue to hold his registration while simultaneously not complying with the required regulations. Respondent has demonstrated a disregard of or an inability to comply with the statutory and regulatory requirements applicable to holding his floor broker registration; therefore, good cause exists for revocation.

ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Agency timely served on Respondent its Notice of Intent to Revoke.
2. Respondent is in default for failing to timely file a responsive pleading to the Notice of Intent.
3. Good cause exists for Respondent's statutory disqualification from holding a floor broker registration pursuant to 7 U.S.C. §§ 12a(3)(m) and 12a(4).

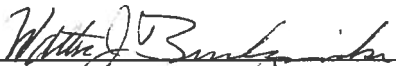
WHEREFORE,

ORDER

IT IS HEREBY ORDERED that upon thorough consideration of the entire record, an **ENTRY OF DEFAULT** is entered against Respondent Dominick Anthony Cognata.

IT IS FURTHER ORDERED that the registration of Respondent Dominick Anthony Cognata as a Floor Broker with the Commission is **REVOKED** effective immediately.

Done and dated October 22, 2014
Washington, D.C.



HON. WALTER J. BRUDZINSKI
CHIEF ADMINISTRATIVE LAW JUDGE