UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

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| CHRIS CAMERON | : | |
| v. | : | CFTC Docket No. CRAA 10-02 |
| NATIONAL FUTURES ASSOCIATION | : | ORDER OF SUMMARY AFFIRMANCE |

Upon review of the record and the parties' appellate submissions, we have determined that the findings and conclusions of the National Futures Association are supported by the weight of the evidence; we therefore adopt them. We have carefully considered the arguments on appeal, familiarity with which is presumed. We find that none of the arguments on appeal present important questions of law or policy because we find that the NFA proceedings were conducted in a manner consistent with fundamental fairness and NFA rules, the weight of the evidence supports the NFA's findings, and the NFA's conclusions are consistent with the purposes of the Commodity Exchange Act. *See* Commission Rule 171.34(b), 17 C.F.R. § 171.34(b).

Nonetheless, we briefly address Cameron's claim that he was denied due process of law. His claim is without merit. As Cameron concedes, procedural due process requires notice of regulatory action and an opportunity for a hearing. *See* Cameron Br. at 9-10, 13. There is no dispute that Cameron received notice of NFA's intent to deny his registration and that Cameron was accorded a hearing to contest this denial. Thus, as the cases Cameron cites make clear, Cameron received all the process he was due. *Matthews v. Eldrige*, 424 U.S. 319, 348 (1976) ("The essence of due process is the requirement that a 'person in jeopardy of serious loss (be

given) notice of the case against him and opportunity to meet it.'") (quoting *Joint Anti-Fascist Comm v. McGrath*, 341 U.S. 123-171-72 (1951) (Frankfurter, J., concurring)).

Cameron appears to suggest that he was deprived of equal protection of the laws because two registrants allegedly in similar situations were afforded conditional registration while he was not. By failing to properly raise and brief this argument, including with citation to appropriate law, Cameron – who was represented by counsel – has waived it. *See Modlin v. Cane*, [1999-2000 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 28,059 at 49,553 n.25 (CFTC Mar. 15, 2000), 2000 WL 279227 at *12 n. 25.

In any event, any equal protection argument is without merit. Cameron does not suggest he suffered discrimination because of his membership in a protected class; rather, he appears to pursue a class-of-one equal protection claim. *See Village of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000) (per curiam). It is unlikely that class-of-one equal protection claims are valid in this context. *See Del Marcelle v. Brown County Corp.*, 680 F.3d 887, 905 (7th Cir. 2012) (en banc) (separate opinion of Easterbrook, C.J.) ("[T]here is no class-of-one doctrine in federal administrative law[.]"); *see also id.* ("An argument that similarly situated persons [are not targets of an agency enforcement action] does not authorize judicial review of the complaint—indeed does not authorize a court to set aside the final decision either."); *Engquist v. Or. Dept. of Agric.*, 553 U.S. 591, 602-03 (2008) (noting that class-of-one claim is not suitable for governmental functions that involve discretionary decisionmaking).

Furthermore, even assuming that the class-of-one doctrine would apply to this case, Cameron was not entitled to relief. In order to bring a successful equal protection claim in this matter, Cameron must show that "the laws were not applied to him as they were applied to similarly situated individuals and that the difference was intentional and unreasonable." *Deegan*

*v. City of Ithaca*, 444 F.3d 135, 146 (2d Cir. 2006) (citing *Olech*, 528 U.S. at 546). Cameron identifies two instances in which NFA permitted applicants to register conditionally despite a failure to report prior criminal charges, but those conditional registrations were the result of settlements without a fully developed record demonstrating the quality and quantity of mitigation and rehabilitation evidence those applicants would have adduced. *See, e.g.*, *Marzano v. NFA*, [2005-2007 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 30163 at 57,641 (CFTC Jan. 4, 2006), 2006 WL 38276 at *5-6 (describing mitigation and rehabilitation evidence and noting that mitigation and rehabilitation evidence can be outweighed by "other evidence [in the] record"). As a result, it is unclear whether and to what extent Cameron was similarly situated to those two individuals. In addition, nothing in the record persuades us that Cameron has shown that any disparate treatment that Cameron may have received was intentional and unreasonable.[1]

Accordingly, with these observations, we summarily affirm the decision of the National Futures Association without opinion.[2]

IT IS SO ORDERED.

By the Commission (Chairman GENSLER and Commissioners CHILTON, O'MALIA and WETJEN.)

Melissa D. Jurgens
Secretary of the Commission
Commodity Futures Trading Commission

Dated: August 28, 2013

[1] Indeed, the difficulty second-guessing discretionary decisions like entering settlements is one reason the Supreme Court has suggested that the class of one theory is inappropriate in this context. *Engquist*, 553 U.S. at 602-03.
[2] Pursuant to Commission Regulation 171.33(b), 17 C.F.R. § 171.33(b), neither the initial decision nor the Commission's order of summary affimance shall serve as a Commission precedent in other proceedings.