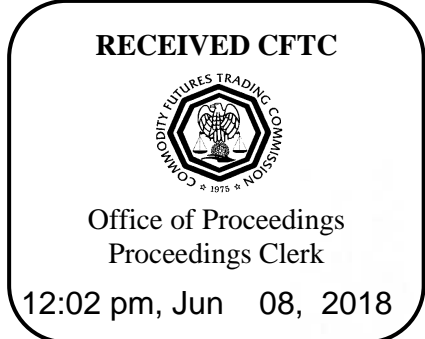




**U.S. COMMODITY FUTURES TRADING COMMISSION**

Three Lafayette Centre  
1155 21st Street, NW, Washington, DC 20581  
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Office of Proceedings

\_\_\_\_\_  
ADVANTA IRA TRUST LLC,  
FBO KEVIN TRAINA,  
Complainant,

v.

TRADESTATION SECURITIES, INC. \*  
JACOB MICHAEL HINKLE, and \*  
JOHN WILLIAM SENDLOSKY, \*  
Respondents. \*  
\_\_\_\_\_\*

CFTC Docket No. 16-R016  
Served electronically

**ORDER OF DISMISSAL  
FOR CAUSE**

*Before:* Kavita Kumar Puri, Judgment Officer  
Commodity Futures Trading Commission  
Washington, D.C.

*Appearances:* Kevin Traina, *pro se*  
Auburn, MA  
For Complainant

Steven M. Greenbaum, Vice President & General Counsel  
TradeStation Securities, Inc.  
Plantation, FL  
For Respondents

Respondents TradeStation Securities, Inc. (TradeStation), Jacob Michael Hinkle, and John William Sendlosky filed a motion requesting that this Office either terminate these proceedings against them, or impose sanctions against

Complainant, Kevin Traina, for egregious abuse of process.<sup>1</sup> This abuse of process took the form of repeated and knowing violations of this Office’s directive prohibiting Traina from allowing his friend and authorized trader—Dr. Michael Elsaid—from representing him or ghostwriting the pleadings in this case. In addition, Traina refused to engage in the discovery process. For the reasons that follow, pursuant to Commission Rule 12.304(c),(h) & (m), I grant Respondents’ Motion for Sanctions and dismiss the Complaint for cause. *See also* 17 C.F.R. §§ 12.35; 12.308(c)(2). I decline, however, to award attorneys’ fees against Complainant.<sup>2</sup>

## I. Background

### A. Dr. Michael Elsaid and The Parties

1. Dr. Michael Elsaid, a non-party in this case and a resident of Wellesley, Massachusetts, was affiliated with Suntex Corporation, a Massachusetts corporation that had a trading account at TradeStation. Elsaid placed all trades in

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<sup>1</sup> Respondents first filed their motion to terminate these proceedings before the case was formally submitted to the Judgment Officer for adjudication, but the Director of the Office of Proceedings denied that motion as premature on September 30, 2016, notifying Respondents that they could re-file at the appropriate juncture. Respondents renewed their motion on October 24, 2016, and then filed a Supplemental Memorandum of Law in support of their motion on December 5, 2016 in light of Complainant’s continued misconduct and motion to disqualify Judgment Officer McGuire (which motion was rendered moot by his retirement). This Opinion refers to these materials collectively as the “Motion for Sanctions.”

<sup>2</sup> On April 9, 2018 I was formally appointed by the Commission as its Judgment Officer. Pursuant to that appointment order, I was required to reconsider any procedural or substantive decisions made in this case prior to my appointment, and revise or ratify as necessary. I also gave Complainant until May 11, 2018 to submit any additional evidence pertinent to that reconsideration. *See* Notice of Appointment (April 23, 2018); Order Regarding Extension of Time (May 8, 2018). Complainant did not submit any additional evidence, and I ratify all previous decisions rendered in this proceeding.

Suntex's account, and brought a reparations complaint against the same Respondents in this case, arising out of the same facts alleged herein. *See Suntex Corp. v. TradeStation*, CFTC Dkt. No. 16-R006 (*Suntex Docket*). That complaint was dismissed because of Elsaid's "forgery, [which amounted to] a gross violation of his duty of candor to the reparations forum," and his "commit[ment] to a self-defeating course featuring bad faith and abusive tactics." Order of Dismissal for Cause (Dec. 5, 2016), *Suntex Corp. v. Hinkle*, CFTC Dkt. No. 16-R006 (*Suntex Dismissal*). As will be discussed below, Elsaid directed the litigation and drafted pleadings in both this and the *Suntex* case. In fact, Elsaid and Traina treated their two separate proceedings as a single proceeding and attempted on more than one occasion to combine them.

2. Complainant Kevin Traina—a licensed physician assistant who is listed on several annual reports as a director and board member of Suntex—also opened a futures trading account with TradeStation in May 2015 in his individual capacity. On May 25, 2015, Traina signed a "third party trading authorization to his good friend Michael Elsaid, the Chief Executive Officer of Suntex Corporation to trade in his account." Compl. ¶ 12 (rec'd May 23, 2016). A few days after signing this authorization, Traina funded his account with \$350,000. *Id.* ¶ 15. Traina alleges that he never traded in his account; only Elsaid did. *Id.* ¶ 12 & Ex. E-2. That account was liquidated on November 12, 2015 for \$166,000. *Id.* ¶ 53.

When Traina first opened his account in May 2015, his financial and employment situation appeared healthy. Traina indicated in his account opening

documents that his: annual earnings were between \$100,000 and \$249,000; net assets were between \$500,000 and \$999,999; and liquid assets were between \$100,000 and \$199,000. Answer & Aff. Defenses at 10 & Ex. A. However, just one year later, his pleadings allege that he was in a very different financial situation. By July 2016, he was purportedly “about to retire, because of a severe illness,” and broke because of the crushing student debt of his children. Complainant’s Opp. to Motion to Dismiss ¶¶ 4-7 (July 22, 2016). By August 2017, Traina claimed that in fact he would soon be taking disability (not retiring) due to his illnesses. Email from Traina to Judgment Officer (JO) Puri (Aug. 16, 2017). As of May 7, 2018, he was “presently applying for disability.” Email from Traina to Office of Proceedings (May 7, 2018).

This “severe illness” is apparently attributable to many different things. Traina first identified this ailment as a kidney stone in a November 22, 2016 affidavit he submitted in support of his Motion to Disqualify JO McGuire. However, he later stated that he was unable to represent himself due to “Complex Sleep Apnea, Chronic Fatigue, Fibromyalgia, and Chronic Lyme Disease.” Email from Traina to JO Puri (Aug. 16, 2017). As of May 7, 2018, Traina asserts that he has been diagnosed with a “Major Cognitive Impairment.” Email from Traina to Office of Proceedings (May 7, 2018). Traina has never proffered any evidence, other than his own assertions, to verify his illness or illnesses.

3. Respondent TradeStation is an online broker-dealer and futures commission merchant, registered with the National Futures Association (NFA). It

offers an electronic trading platform enabling traders to test and automate rules-based trading strategies across multiple asset classes, such as equities, equity and index options, and futures. Answer & Aff. Defenses at 11.

4. Respondent Jacob Michael Hinkle is an NFA-registered associated person of TradeStation, and operates as a relationship manager for TradeStation clients, including Elsaid, helping them with the onboarding process, and providing some technical support and service-related guidance. *Id.* at 12.

5. Respondent John William Sendlosky is an NFA-registered associated person of TradeStation, and works as a supervisor on TradeStation's Futures Trade Desk.

#### B. The Substantive Allegations

Traina opened his account with \$350,000 on May 25, 2015, and had it liquidated on November 2, 2015, with a closing value of \$166,000. Compl. ¶ 53. Whether the losses suffered by Traina were the result of Elsaid's mismanagement, the risks of trading in these markets generally, or TradeStation's misconduct is the ostensible subject of this dispute. Traina contends (because Elsaid contends), that TradeStation's trading platform malfunctioned on June 10, 2015 for 15 minutes, creating various execution and confirmation delays. *Id.* ¶¶ 16-35. These alleged delays purportedly caused Traina \$133,503 in damages (including commissions). *Id.* ¶ 35. Traina was purportedly made whole for these losses by Elsaid, who reimbursed Traina using his own monies. *See* Compl., *Suntex v. TradeStation*, CFTC Dkt. No. 16-R006 (filed Jan. 5, 2016).

Traina alleges that Elsaid “complained several times to the Tech support,” *id.* ¶ 20, but it is not clear whether Elsaid’s complaints were about the June 10, 2015 issues specifically, or platform issues generally. Respondents contend that Traina never lodged a formal complaint regarding these events. Answer & Aff. Defenses at 16 (rec’d July 13, 2016).

Regardless of whether Elsaid formally complained about these technological malfunctions, Elsaid continued trading in Traina’s account thereafter. Compl. ¶ 35; Answer & Aff. Defenses at 16-17. However, problems arose again in October 2015, when Elsaid allegedly moved both his account and Traina’s account to a block trading system. Compl. ¶43. Elsaid contends that problems and failed disclosures with respect to TradeStation’s block trading allocation led to \$74,000 in damages to Traina’s account in October 2015. *Id.* ¶¶ 42-53. Thus by October 2015, Traina had purportedly suffered \$207,503 in damages: \$133,503 for trading malfunctions on June 10, 2015 (for which Traina was purportedly made whole by Elsaid, his authorized trader); and \$74,000 for alleged problems with the block trading platform in October.

At this point, the relationship between Elsaid and TradeStation became acrimonious. On October 27, 2015, Elsaid sent an e-mail to Respondent Hinkel, Elsaid’s client relations manager at TradeStation, complaining about the purported block trading problems. Compl. Ex. E-1. In that e-mail, Elsaid stated: “I am completely disgruntled at the complete failure of Trade Station technology and I

expect that our accounts must be refunded for the losses we experienced as a result of the unforgivable incompetence . . . .” *Id.* He further stated,

My main concern now is that, I just signed an agreement with two very wealthy investors from abroad with \$11 million ready to invest in our Suntex Corporation highly profitable with controlled risk parameters investment model. It is planned that the two investors will visit Boston on November 6, 2015 and I am concerned that they will withdraw their offer to invest \$11 million with me if they review what happened in the two accounts. . . . I am so worry [*sic*] that I will lose \$11 million of potential investment if this problem is not corrected and the accounts are not brought back to the October 20, 2015 end of the day balances before we started the training of the Block account.

*Id.* (emphasis added).

A few days after Elsaid sent his e-mail complaint, Respondent Sendlosky, a supervisor at TradeStation, contacted Elsaid and informed him that he would be blocked from accessing Suntex’s and Traina’s accounts and that those accounts must be liquidated. Compl. ¶ 50. At this time, Elsaid stated “that he was misinformed about” TradeStation, which in his view was in fact “a gang [of] very dangerous people.” *Id.* ¶ 51. Between that conversation, and November 11, 2015, TradeStation apparently pressured him to get off its platform. *Id.* ¶ 52. And on November 11, 2015, a TradeStation representative purportedly told Elsaid that they wanted him to liquidate immediately and that he was no longer welcome to do business with TradeStation. *Id.* On November 12, 2015, Elsaid liquidated Traina’s account with an ending balance of \$166,000. *Id.* ¶ 53.

Elsaid then promptly filed a complaint on behalf of Suntex Corporation (and included claims on behalf of Traina) with this Office on January 5, 2016.

### *Elsaid and Traina's Misconduct*

By letter dated March 4, 2016, Belinda Pugh of the Office of Proceedings informed Elsaid that he could not file a complaint on behalf of Traina, and struck all his claims for damages involving Traina's damages. Thereafter, on March 28, 2016, Elsaid filed a complaint on behalf of Traina that was identical, or substantially similar, to the *Suntex* complaint. Because this complaint was signed and verified by Elsaid (who was not the Complainant) instead of Traina (who was the Complainant), on June 3, 2016, this Office informed Traina that Elsaid could not represent him in this case pursuant to Commission Rule 12.9(a), which prohibits non-attorneys from representing others in reparations proceedings. This prohibition was repeated by this Office in a letter to Traina on June 24, 2016. That amounts to three warnings to Elsaid and Traina not to have Elsaid advance proceedings on Traina's behalf before this case was even assigned to a JO.

The case was then forwarded to JO McGuire for disposition. He found, in an order dated November 4, 2016, that "Mr. Elsaid continues to act, not so effectively, as Mr. Traina's *de facto* attorney, in contravention" of prior notices barring such representation. JO McGuire, in that same Order, put Traina "on notice that his complaint [would] be summarily dismissed if future submissions or communications reveal the direct or indirect participation of Mr. Elsaid." JO McGuire reiterated this warning in an order dated November 9, 2016, in which he also noted that Elsaid could not be banned from the case entirely because Elsaid—as the trader on Traina's account who had first-hand knowledge of the facts at issue—might be



called to provide written or oral testimony. JO McGuire thus warned Traina twice not to allow Elsaid to ghostwrite or otherwise direct his pleadings.

JO McGuire's second such warning prompted Traina, through his unauthorized representative Elsaid, to file a Motion to Disqualify JO McGuire on November 21, 2016. In that Motion to Disqualify, Traina admitted that, notwithstanding the repeated warnings by this Office, Elsaid helped prepare his submissions and that Elsaid would continue to do so:

- "I received help from Dr. Elsaid to prepare my pleadings which is completely normal. A pro-Se can receive help from anyone." Complainant's Motion to Disqualify at 3 (November 20, 2016).
- "I will continue to receive help from others including the help of Dr. Elsaid. It is completely legal for me to seek help. This Judge must understand that a Pro-se seeking help from others is not in violation of Rule 12.9(a) as he stated in his order of November 9, 2016."

Motion to Disqualify at 3 (Nov. 21, 2016). Traina also admitted that he allowed Elsaid to sign his name on an affidavit without giving any indication on the signature line that someone other than Traina was signing it—in other words, that he allowed Elsaid to "forge" his signature.

- "This Judge alleged that Dr. Elsaid forged my signature on the Motion to consolidate the two cases. This statement by this Judge is absolutely false because I read the Motion and I understood it but I asked Dr. Elsaid to sign my name for me because I was physically incapacitated by illness. I am aware that Dr. Elsaid is A Notary Public and I authorized him to sign my name."

Motion to Disqualify at 4 (emphasis in original).<sup>3</sup>

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<sup>3</sup> I use the words "forgery" and "forge" as a shorthand to refer to Elsaid's mimicking of Traina's signature without giving this Office any indication that Traina himself did not sign the documents in question. In doing so, I am not making a criminal finding of forgery.

This forgery was committed in a Motion to Consolidate the *Suntex* case with this case, filed on the *Suntex* Docket on November 14, 2016. *See* Motion to Consolidate *Suntex* and *Traina*, *Suntex* Docket (Nov. 14, 2016). Traina purportedly “signed” his name in support of such consolidation. Motion to Consolidate at 3. However, on November 15, 2016, Respondents filed an opposition to the Motion to Consolidate on the *Suntex* Docket, submitting compelling proof from a handwriting expert that although some attempt had been made to mimic Traina’s signature as best as possible, Traina’s signature was in fact a forgery. *See* Resps. Answer to Petitioner’s Motion to Consolidate & Ex. A, *Suntex* Docket (Nov. 15, 2016); Resps. Supp. Mem. In Support of Motion for Sanctions at 2-3 (Dec. 5, 2016). A week after Respondents submitted this proof of forgery on the *Suntex* Docket, Traina and Elsaid admitted the forgery in their Motion to Disqualify JO McGuire, filed in this case. Motion to Disqualify at 4 (Nov. 21, 2016). Importantly, this forgery was not an isolated incident. Respondents also filed persuasive evidence that the Complainant’s Motion for Clarification filed in this case on November 8, 2016 also contained Traina’s forged signature. Resp. Supp. Mem. In Supp. of Motion to Terminate at 2 (Dec. 5, 2016).

C. Motion To Disqualify and Current Involvement of Elsaid

JO McGuire denied the Motion to Disqualify on December 7, 2016, and Traina elected to appeal the decision on December 12, 2016. JO McGuire then stayed these proceedings on December 22, 2016 pending the outcome of the appeal.

On August 3, 2017, the Commission denied Traina’s Motion to Disqualify JO McGuire because JO McGuire retired, and the case was then assigned to a new

deciding official. Commission Order at 1 (August 3, 2017). The Commission further found no basis for disqualification, noting that the Judgment Officer “must have wide latitude to manage the docket, and [that] nothing in the record here suggests that [JO McGuire] abused that authority.” Commission Order at 3 (Aug. 3, 2017).

Following the return of the case to this forum, Traina sent an email on August 16, 2017 e-mail, addressed to me, stating the following:

My name is Kevin Traina and I am writing you to update information I believe is pertinent to my case. Previously I had a friend assisting me with my case who is no longer helping me. I mention this because his rhetoric was incendiary and at the time I felt powerless to disagree with him because I was very ill, later getting diagnosed with Complex Sleep Apnea, Chronic Fatigue, Fibromyalgia and Chronic Lyme Disease. Over the last few months I have gotten incrementally better, but still have a long way to go. I may still need to file for disability, which is another reason I had to fight for what I believe was my wrongful financial losses on Trade Station’s part.

In summary from the beginning I over heard [*sic*] the argument between Dr. Elsaid and Trade Station when their software failed to work as promised. It was a heated argument. As a result of forcing him to liquidate my positions prematurely (when they were in a retracement), and considering the losses I, their client would incur, we wouldn’t be in this mess. If Trade Station representatives weren’t so reactive and thought things through with me, their client, and instructed him to finish the trade and then stop him from further trading my losses never would have occurred and would have made a substantial profit. This is my case pure and simple. If there is any further information I can provide please let me know. I thank you for your time and consideration.

Despite this representation that Traina has turned a corner and will no longer rely on Elsaid to write his pleadings, Traina’s complaint is dismissed for cause.

## II. Legal Analysis and Conclusions

### A. Inherent Authority To Dismiss

Although “generally a decision on the merits based on full participation by all parties is the preferred outcome of a reparations proceeding,” “[c]ourts have inherent power to dismiss an action when a party has willfully deceived the court and engaged in conduct utterly inconsistent with the orderly administration of justice.” *Robinson v. Alternative Commodity Traders*, 2001 WL 741672, \*6, [2000-2002 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 28,585 (CFTC July 2, 2001), *affirmed on appeal*, [2005-2007 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 30,155 (CFTC Nov. 4, 2015) (quoting *Fjelstad v. American Hondo Motor Corp.*, 762 F.2d 1334, 1337 (9th Cir. 1984)). Such dismissal should not be imposed unless: (1) there was advanced notice to the party; and (2) a specific finding is made on the issue of bad faith. *Marlow v. Oppenheimer Rouse Futures, Inc.*, CFTC No. 86-R142, 1987 WL 106916, \*2, [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 23,904 (CFTC Sept. 9, 1987). Both those preconditions are met here.

First, Traina was put on notice three times before his case was formally assigned to JO McGuire that Elsaid could not represent him in these reparations proceedings. He ignored those warnings. Once the case was formally assigned, JO McGuire twice, in two separate orders, warned him that his complaint would be dismissed summarily if he continued allowing Elsaid to ghostwrite his submissions. Having been duly warned this case would be dismissed if he continued his prohibited conduct, Traina’s case must be dismissed to preserve the orderly administration of justice. *Robinson v. Alternative Commodity Traders*, 2001 WL

741672 at \*6 (finding that allowing unlicensed party to act as a de facto attorney in ghostwriting submissions to Office of Proceedings violated Commission rule § 12.12 and amounted to fraud on the court); *Dick v. Chicago Commodities Inc.*, CFTC Nos. 83-R892, R896, 1986 WL 66156 [1986-1987 Transfer Binder] Comm. Fut. L. Rep. (CCH) (CFTC Feb 3. 1986) (finding default sanction warranted where two prior motions for sanctions were filed against Respondent and misconduct willful).

Second, Traina violated Commission Rules in bad faith. After being warned no less than five times not to use Elsaid in any representative capacity, he attempted to circumvent this prohibition by lying to this Office and allowing Elsaid to forge his signature.<sup>4</sup> Traina (or likely Elsaid) used the forgery to trick this Office into thinking that Elsaid was no longer involved in his case, when in fact Elsaid was in the driver's seat. This forgery—that is allowing an unauthorized person to deceptively sign your own name—constitutes fraud on the Commission. *Cf. Vargas v. FX Solutions, LLC*, CFTC Dkt. No. 07-R025, 2009 WL 1543722, \* 4, [2009-2011 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 31,360, at 31,362 (CFTC June 1, 2009) (finding that signing a document that was prepared by another violated Commission Rule 12.12(b) and constituted fraud on the court). When Respondents' expert laid bare Elsaid's deception, Traina promptly filed a motion to disqualify the presiding JO and represented that he would continue to violate this Office's prohibition.

Traina was warned repeatedly that he could not continue to allow Elsaid to ghostwrite his submissions, and finally warned that his complaint would be

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<sup>4</sup> See *supra* n.3.

dismissed if he continued to do so. The notice factor for imposing sanctions has been satisfied. In addition, he failed to heed such notice, and admitted as much in his Motion to Disqualify JO McGuire and his August 16, 2017 e-mail to me. This knowing violation of this Office's notice is sufficient to establish willful misconduct and bad faith, as is the forgery that attempted to cover up his misconduct. Traina's Complaint is therefore dismissed for cause.

B. Discovery Sanctions

In addition, Traina's Complaint could be independently dismissed for his abuse of the discovery process. Commission Rule 12.30(c) authorizes the JO to award reasonable expenses with respect to discovery motions against the misbehaving party, and Rule 12.35 authorizes the imposition of sanctions ranging from adverse inferences to outright dismissal for failure to comply with discovery orders. 17 C.F.R. §§ 12.30(c), 12.35. Traina has evinced no desire to actually prosecute his case using any evidence. He never participated in the discovery process, and elected to ignore JO McGuire's discovery orders and deadlines.

Respondents made clear they had documents relevant to discovery. They averred that they had recordings of conversations between TradeStation and Elsaid as well as other documents, Answer & Aff. Defenses ¶¶ 50-52, each of which could be crucial pieces of evidence in evaluating the merits of the complaint. Yet Traina allowed the November 29, 2016 deadline for serving and filing discovery requests to pass without trying to get the very evidence that could substantiate his claims. JO McGuire thus held that he had "waived the opportunity to seek relevant information through discovery." Order at 2 (Dec. 7, 2017). Traina also failed to

respond to Respondents' discovery requests, and thus each of Respondents' Requests for Admissions was deemed admitted. Order at 3 (Dec. 7, 2016). Traina's refusal to comply with discovery deadlines—despite the warning to do so—is grounds for dismissal. *See, e.g., Buckwalter v. Preferred Commodity Corp.*, CFTC No. 94-R106, 1995 WL 17723, \*2, [1994-1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,289 (CFTC Jan. 17, 1995) (dismissing complaint in such circumstances, holding that “fairness to the respondents—as well as the integrity of this Court’s process—demand that the complaint be DISMISSED.”); *Wildenhaus v. Fischer*, CFTC No. 92-R124, 1993 WL 445364, \* 5 & n.40, [1992-1994 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,881 (CFTC Nov. 1, 1993) (collecting cases); *Dick*, 1986 WL 66156 at \*2-\*9 (affirming default judgment award for failure to comply with discovery orders).

Instead of substantiating his claims according to the discovery and other procedures governing reparations proceedings, he has wasted Respondents' time and money by filing specious motions that simply repeated the (unsubstantiated) fact allegations. *See, e.g.,* Opposition to Motion to Extend Time to File Answer (June 16, 2016); Motion to Strike Answer & Affirmative Defenses (rec'd July 19, 2016); Motion for Clarification and Discovery Deadline Extension (Nov. 8, 2016); Motion to Disqualify JO (Nov. 21, 2016); Motion to Clarify (Interlocutory Appeal of Orders) (Nov. 22, 2016). This fact pattern falls squarely within that of *Robinson*, in which this Office previously dismissed a complaint because complainant “continued to file ridiculous pleadings . . . brought discovery to a screeching halt, and generally

embarked on a scurrilous campaign to discredit and scandalize these proceedings and this Court.” 2001 WL 741672 at \*6.

C. The Ineffectiveness of Lesser Sanctions

In granting a dismissal or default based on a party’s misconduct, the Commission has stated that it is “not unmindful of the fact that courts have suggested that a default or dismissal should not be ordered as a sanction until other sanctions have proved unavailing.” *Dick*, 1986 WL 66156 at \*2-\*9 (affirming default judgment award for failure to comply with discovery orders). Such lesser sanctions could include ruling that certain documents not produced would have been adverse to the misbehaving party (*i.e.*, issuing an adverse inference); excluding evidence from consideration; or striking all or part of a pleading. *See, e.g.*, 17 C.F.R. § 12.35(a)-(d) (listing consequences short of dismissal or default for failure to comply with a discovery order). But imposing such lesser sanctions here would not change the outcome of this proceeding in any way, and would anyways be inadequate.

First, Complainant has no path forward to prevailing on the merits even if I were to allow the proceeding to continue, with or without imposition of any sanction at all. Complainant’s misconduct has resulted in self-inflicted wounds to his credibility and ability to prevail in this case. He willfully defied this Office’s directives prohibiting Elsaid from representing him or ghostwriting his submissions, and he allowed Elsaid to forge his signature and then found a very convenient excuse for the forgery that is both incredible and inadequate. It is incredible because Traina’s illness apparently did not stop him from reading and understanding the Motion to Consolidate, but it did render him so “physically



incapacitated” that he could not sign his name. Motion to Disqualify at 4 (Nov. 21, 2016). He also apparently recovered from being “physically incapacitated” within less than two weeks, because he was able to sign his affidavit for the Motion to Disqualify. *Compare* Motion to Consolidate at 3 (Nov. 14, 2016), *with* Motion to Disqualify at 4 (Nov. 21, 2016). The excuse is also inadequate. It does not explain why Traina did not indicate, by footnote or otherwise, that Elsaid was signing on his behalf with his permission. It also does not explain why Elsaid attempted to mimic his signature so closely that a handwriting expert was employed to make clear that it was inauthentic.

Even assuming that Traina’s intentional misconduct is insufficient to irredeemably damage his credibility, there are other inconsistencies in the record that independently raise questions about his credibility. First, just one year ago, Traina was on the verge of retirement. Compl. Opp. To Motion To Dismiss ¶5 (July 22, 2016). Now, instead, he is on the cusp of taking disability. E-mail from Traina to JO Puri (Aug. 16, 2017). Second, his various illnesses, for which he has never provided any independent documentation, have sometimes prohibited him from signing documents and sometimes not. *See supra* p. 16. Third, now he claims to have overheard an argument between Elsaid and TradeStation regarding TradeStation’s purported misconduct. *Id.* But in his December 12, 2016 interlocutory appeal, Traina specifically stated that he could not provide any discovery responses because he was not party to any of the communications. Traina’s Interlocutory Appeal at 1-2 (December 12, 2016). Overhearing a key

conversation about his account contradicts this assertion. None of these individual inconsistencies is sufficient to damage his credibility in isolation, but given the entirety of Traina's course of conduct, the inconsistencies add up to an entirely non-credible Complainant.

Traina has thus destroyed his ability to prevail on the strength of his testimony alone. And Traina's main fact witness—Elsaid—suffers from the same credibility deficits. Elsaid also suffers from a quagmire of conflicted interests. It appears that Elsaid—not Traina—has an interest in recovering \$133,503 of the \$207,503 in damages claimed because according to Elsaid, he has already made Traina whole for that amount. *See* Compl., *Suntex v. TradeStation*, CFTC Dkt. No. 16-R006 (filed Jan. 5, 2016). And it appears that Elsaid wants his name cleared largely, as he admitted in an email to TradeStation, Compl. Ex. E-1, to attract additional funds for him to manage. In short, both Traina's witnesses—himself and Elsaid—are badly compromised. And because Traina has wasted the Respondents' time and money by refusing to engage in the discovery process, he has no way of prevailing on the documents or telephone calls between Elsaid and TradeStation. Sanctions such as adverse inferences or striking pleadings have no impact here because Traina has neither sought nor presented any evidence in support of his claim.

Second, I find Traina's newly found contrition and representation that Elsaid will no longer participate as his *de facto* attorney implausible. If in fact Traina felt "powerless" to stop Elsaid from overriding his will, why does Traina still refer to

Elsaid as his “friend”? E-mail from Traina to JO Puri (Aug. 16, 2017). In addition, Elsaid’s necessary participation in this case as a fact witness, coupled with the fact that Elsaid may have an independent interest in recovering a large portion of the damages on behalf of Traina, creates ample invitation for future misconduct, even if Traina is sincere in his current belief that Elsaid will no longer represent him. Thus sanctioning Traina for allowing Elsaid to represent him in the past is no safeguard against its future occurrence. This is particularly true since express orders not to have Elsaid ghostwrite Traina’s pleadings were admittedly ignored.

D. Attorneys’ Fees


On November 4, 2016, JO McGuire ordered that because the motions filed by Traina as of that date were “separately and together, frivolous and vexatious,” Respondents were entitled to the costs incurred in defending those motions, to be awarded at the termination of these proceedings. To that end, JO McGuire requested that Respondents produce “a statement that details and substantiates these costs.” Order (Nov. 4, 2016). Respondents did so, requesting that they be awarded between \$1,445.66 and \$4,160. Affidavit of Steven M. Greenbaum, Vice President and General Counsel of TradeStation (Nov. 7, 2016).

Although this Office is empowered to award attorneys’ fees and costs in situations like this one, I elect not to here. Traina has had the substance of his claim dwarfed, and ultimately dismissed, by the misconduct of his “friend” Elsaid. And although Traina himself was complicit in this misconduct, dismissal of Traina’s Complaint against Respondents with prejudice is sufficient sanction.

**CONCLUSION**

For these reasons, this Complaint is DISMISSED with prejudice for cause.

DATED: June 8, 2018

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Kavita Kumar Puri,  
Judgment Officer