

UNITED STATES OF AMERICA
BEFORE THE
COMMODITY FUTURES TRADING COMMISSION

Office of
Proceedings
Procedings

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In the Matter of: :
 : **CFTC Docket No. 12-20**
 :
Ghassan Tawachi, : **ORDER INSTITUTING PROCEEDINGS**
 : **PURSUANT TO SECTIONS 6(c) AND 6(d)**
 Respondent. : **OF THE COMMODITY EXCHANGE ACT**
 : **AND MAKING FINDINGS AND**
 : **IMPOSING REMEDIAL SANCTIONS**
 :

I.

The Commodity Futures Trading Commission (the “Commission” or “CFTC”) has reason to believe that Ghassan Tawachi (“Tawachi” or the “Respondent”), a registered Commodity Trading Advisor (“CTA”), has violated Section 4b(a)(1)(A) and (C) of the Commodity Exchange Act (“Act”), 7 U.S.C. § 6b(a)(1)(A), (C) (Supp. III 2009). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and they hereby are, instituted to determine whether the Respondent engaged in the violations set forth herein, and to determine whether an order should be issued imposing remedial sanctions.

II.

In anticipation of the institution of an administrative proceeding, the Respondent has submitted an Offer of Settlement (“Offer”), which the Commission has determined to accept. Without admitting or denying any of the findings and conclusions herein, the Respondent acknowledges service of this Order Instituting Proceedings Pursuant to Sections 6(c) and 6(d) of the Act and Making Findings and Imposing Remedial Sanctions (“Order”).

III.

A. Summary

From July 2010 until at least September 30, 2011 (the “relevant period”), Tawachi defrauded customers through fraudulent sales of his software trading systems. Specifically, Tawachi touted his purported professional trading background to market his software trading systems, which he falsely maintained he had developed based upon his expertise as a successful professional trader. In addition, with respect to one customer, Tawachi accepted \$40,000, which he agreed to trade in his personal futures account and to pay the customer a fixed monthly profit. When the customer demanded the return of his funds, Tawachi failed to return them.

Accordingly, Tawachi violated Section 4b(a)(1)(A) and (C) of the Act.

B. Respondent

Ghassan Tawachi, a/k/a “Marco” Tawachi, has been registered with the National Futures Association (“NFA”) (NFA No. 0418560) as a CTA since July 28, 2010. Tawachi resides in Coral Gables, Florida.

C. Facts

Tawachi Defrauded Customers

In July 2010, Tawachi began marketing his software trading systems through two internet web sites. From the first website, bentleytradingsystem.com, Tawachi offered his “Bentley Automated Trading systems.” Tawachi designed the Bentley trading system for customers, who do not wish to conduct futures trading themselves, to have their brokers use the software to place the trades on behalf of the customers. From the second website, FuturesRule.com, Tawachi offered the “Avanti Automated Trading System,” which was similar to the Bentley system, but was geared to customers who executed their own futures trades. During the relevant period, Tawachi gained \$100,839.70 from sales of his systems and related “management” fees.

In his marketing presentation for both systems, Tawachi claimed that he formulated his trading software system based upon his purported substantial professional trading experience. On both web sites, Tawachi maintained that as a “Professional trader” he had developed his trading systems based upon “more than 10 years of professional experience.” Tawachi repeated his claims of professional expertise to individual customers, telling one customer that he had been trading for approximately 20 years and had spent years perfecting the Bentley system which he successfully traded for himself. In fact, Tawachi had no professional trading experience. His entire trading background was limited to a single personal futures account opened three years earlier, through which he had conducted limited and unsuccessful trading.

In addition to his sale of software trading systems, Tawachi accepted \$40,000 directly from one of his software customers to be traded in his personal futures account pursuant to a Tawachi trading system. Tawachi informed the customer that he ran a personal program for seven people, with two spots available. Tawachi maintained to the customer that with a \$10,000 account held for his son, he had made up to \$100,000 as a result of his successful trading. For each \$10,000 invested in Tawachi’s personal trading account, Tawachi guaranteed the customer a twenty percent monthly return, provided the customer would commit to a 90-day investment period.

On or about May 20, 2010, the customer sent Tawachi \$10,000 together with a “Letter of Direction” that set out the terms of the investment agreement including a monthly payment schedule. Within a week Tawachi was sending the customer emails telling the customer that his trading was profitable and that he was on target to make the twenty percent monthly return. Based on Tawachi’s assurances, the customer agreed to make additional \$10,000 investments in the name of his wife and daughter totaling \$40,000. When Tawachi fell behind on his monthly payments, the customer sought the return of his investment. However, despite repeated demands

from the customer, Tawachi has failed to return any of the customer's funds. Tawachi's account records demonstrate that none of the customer's funds were deposited into Tawachi's futures trading account.

D. Legal Discussion

Tawachi Engaged in Fraud in Violation of Section 4b(a)(1)(A) and (C) of the Act

Section 4b(a)(1)(A) and (C) of the Act makes it unlawful to cheat, defraud, or deceive, or to attempt to cheat, defraud, or deceive, any person in or in connection with any order to make, or the making of any contract or sale of any commodity for future delivery. Section 4b(a)(1)(A) and (C) of the Act applies to Tawachi's misrepresentations. Fraudulent statements that induce members of the public to purchase software that generates specific buy and sell signals for commodity futures trading satisfy the "in connection with" requirement of Section 4b(a). *R&W Technical Svcs., Ltd. v. CFTC*, 205 F.3d 165, 173 (5th Cir. 2000). See also *Hirk v. Agri-Research Council, Inc.*, 561 F.2d 96 (7th Cir. 1977).

Sales Fraud

Fraudulent misrepresentations and/or omissions in violation of Section 4b(a) of the Act, are established through the proof of three elements: (1) that a party misrepresented or failed to disclose certain information; (2) that the misrepresentation or omission was "material"; and (3) that the party knew the information was false and calculated to cause harm, or recklessly disregarded the truth or falsity of the information, *i.e.*, that the defendant acted with scienter. *CFTC v. R.J. Fitzgerald & Co., Inc.*, 310 F.3d 1321, 1328 (11th Cir. 2002), *cert. denied*, 543 U.S. 1034 (2004). See also *In re Slusser*, [1998-1999 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,701 at 48,313 (CFTC July 19, 1999), *aff'd in relevant part and rev'd in part sub nom.*, *Slusser v. CFTC*, 210 F. 3d 783 (7th Cir. 2000); and *Hammond v. Smith Barney Harris Upham & Co.*, [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,617 at 36,654 (CFTC Mar. 1, 1990).

Tawachi was well aware that he was not a trader with ten years of professional experience when he placed his deceptive claims on his web pages and repeated them to customers. His claim that the development of his trading software was based upon his professional trading experience was material to the buyers of his software. See *Hirk v. Agri-Research Council Inc.*, 561 F.2d 96, 103-104 (7th Cir. 1977) (misrepresentations regarding the trading record and experience of firm or broker are fraudulent because past success and experience are material factors to reasonable investors). Moreover, Tawachi's false claim of professional trading success was at the heart of his deceptive sales pitch. Tawachi knew that he was not a futures trader who had successfully used his own trading methodology to make profits. *In the Matter of R&W Technical Services, Ltd.*, [1998-1999 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶27,582 at 47,742 (CFTC Mar. 16, 1999) (falsely claiming profitable trading through respondents' own use of the trading system constitutes fraud; "the use of a trading system by its developers is important to reasonable consumers because it reflects a meaningful vote of self-confidence and a sign of authenticity") *aff'd in relevant part sub nom. R&W*

Technical Services, Ltd. v. CFTC, 205 F.3d 165, 169-70 (5th Cir. 2000), *cert. denied* 531 U.S. 817 (2000).

Misappropriation

Tawachi violated Section 4b(a) of the Act by misappropriating funds his customer provided to him to be traded in Tawachi's personal account. Misappropriation of customer funds constitutes "willful and blatant" fraud in violation of Sections 4b(a) of the Act. *CFTC v. Noble Wealth Data Info. Serv., Inc.*, 90 F. Supp. 2d 676, 687 (D. Md. 2000) (defendants violated Section 4b(a)(i) and (iii) (the predecessor to 4b(a)(1)(A) and (C)) by diverting investor funds for operating expenses and personal use); *see also CFTC v. Skorupskas*, 605 F. Supp. 923, 932 (E.D. Mich. 1985) (holding that defendant violated Section 4b when he misappropriated pool participant funds by soliciting funds for trading and then trading only a small percentage of those funds, while disbursing the rest of the funds to investors, herself, and her family); *In re Slusser*, [1998-1999 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,701 at 48,315 (CFTC July 19, 1999), *aff'd in relevant part and rev'd in part sub nom., Slusser v. CFTC*, 210 F. 3d 783 (7th Cir. 2000) (respondents violated Section 4b by surreptitiously retaining money in their own bank accounts that should have been traded on behalf of participants).

In sum, Tawachi cheated or defrauded, or attempted to cheat or defraud customers by his false material representations regarding his professional experience and the success of his trading systems, and by misappropriating customer funds, all in violation of Section 4b(a)(1)(A) and (C) of the Act.

IV.

FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that Tawachi violated Section 4b(a)(1)(A) and (C) of the Act, 7 U.S.C. § 6b(a)(1)(A), (C) (Supp. III 2009).

V.

OFFER OF SETTLEMENT

The Respondent has submitted an Offer in which he acknowledges service of this Order and admits the jurisdiction of the Commission with respect to the matters set forth in this Order and waives: (1) the service and filing of a complaint and notice of hearing; (2) a hearing and all post-hearing procedures; (3) judicial review by any court; (4) any and all objections to the participation of any member of the Commission's staff in the Commission's consideration of the Offer; (5) any and all claims that he may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2006) and 28 U.S.C. § 2412 (2006), and/or part 148 of the Regulations, 17 C.F.R. §§ 148.1-30 (2010), relating to, or arising from this action; (6) any and all claims that he may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, §§ 201-232, 110 Stat. 847, 857-68 (1996), as amended by Pub. L. No. 110-28, § 8302, 121 Stat. 112, 204-205 (2007), relating to, or arising from, this proceeding; and (7) any claim of

double jeopardy based upon the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief.

The Respondent stipulates that the record basis on which this Order is entered consists of this Order and the findings in this Order consented to in his Offer.

Respondent consents to the Commission's issuance of this Order that:

1. makes findings by the Commission that Respondent violated Section 4b(a)(1)(A) and (C) of the Act, 7 U.S.C. § 6b(a)(1)(A), (C) (Supp. III 2009);
2. orders Respondent to cease and desist from violating Section 4b(a)(1)(A) and (C) of the Act, as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act"), Pub. L. No. 111-203, Title VII (the Wall Street Transparency and Accountability Act of 2010), §§ 701-774, 124 Stat. 1376 (enacted July 21, 2010), to be codified at 7 U.S.C. § 6b(a)(1)(A), (C);
3. orders that Respondent be permanently prohibited from, directly or indirectly, engaging in trading on or subject to the rules of any registered entity (as that term is defined in Section 1a of the Act, 7 U.S.C. § 1a (2006)) and all registered entities shall refuse Respondent trading privileges;
4. orders Respondent to pay a civil monetary penalty in the amount of one hundred forty thousand dollars (\$140,000) within ten (10) days of the date of entry of this Order;
5. orders Respondent to pay restitution in the amount of one hundred forty thousand eight hundred and thirty-nine dollars and seventy cents (\$140,839.70) within ten (10) days of the date of entry of this Order;
6. appoints the National Futures Association ("NFA") as monitor, for the purpose of accepting, handling, and distributing funds to be paid by Respondent as Restitution; and
7. orders Respondent to comply with his undertakings consented to in the Offer and set forth below in Section VII of this Order.

Upon consideration, the Commission has determined to accept Respondent's Offer.

VI.

ORDER

Accordingly, **IT IS HEREBY ORDERED THAT:**

- A. Respondent shall cease and desist from violating Section 4b(a)(1)(A) and (C) of the Act, as amended by the Dodd-Frank Act, to be codified at 7 U.S.C. § 6b(a)(1)(A), (C).
- B. Respondent is permanently prohibited from, directly or indirectly, trading on or subject to the rules of any registered entity (as that term is defined in Section 1a of the Act, 7 U.S.C. § 1a (2006)).
- C. Respondent shall pay a civil monetary penalty in the amount of one hundred forty thousand dollars (\$140,000) ("CMP Obligation") within ten (10) days of the date of entry of this Order. Should Respondent not satisfy the CMP Obligation within ten (10) days of the date of entry of this Order, post-judgment interest shall accrue on the CMP Obligation beginning on the date of entry of this Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Order pursuant to 28 U.S.C. § 1961. Respondent shall pay his CMP Obligation by electronic funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money order. If payment is to be made by other than electronic funds transfer, the payments shall be made payable to the Commodity Futures Trading Commission, and sent to the address below:

Commodity Futures Trading Commission
Division of Enforcement
ATTN: Accounts Receivable --- AMZ 340
E-mail Box: 9-AMC-AMZ-AR-CFTC
DOT/FAA/MMAC
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
Telephone: 405-954-5644

If payment by electronic transfer is chosen, Respondent shall contact Linda Zurhorst or her successor at the above address to receive payment instruction and shall fully comply with those instructions. Respondent shall accompany payment of his penalty with a cover letter that identifies Respondent and the name and docket number of this proceeding. Respondent shall simultaneously transmit copies of the cover letter and the form of payment to (1) the Director, Division of Enforcement, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington, D.C. 20581 and (2) the Chief, Office of Cooperative Enforcement, Division of Enforcement, Commodity Futures Trading Commission, at the same address.

- D. Respondent shall pay restitution in the amount of one hundred forty thousand eight hundred and thirty-nine dollars and seventy cents (\$140,839.70) ("Restitution

Obligation”) within ten (10) days of the date of entry of this Order. Should Respondent not satisfy the Restitution Obligation within ten (10) days of the date of entry of this Order, post-judgment interest shall accrue on the Restitution Obligation beginning on the date of entry of this Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Order pursuant to 28 U.S.C. § 1961. To effectuate the distribution of restitution, the Commission appoints the National Futures Association (“NFA”) as Monitor. The Monitor shall collect restitution payments from Respondent and make distributions to Respondent’s customers as set forth below. Because the Monitor is not being specially compensated for these services, and these services are outside the normal duties of the Monitor, NFA shall not be liable for any action or inaction arising from NFA’s appointment as Monitor, other than actions involving fraud. Respondent shall make their required restitution payments under this Order in the name and docket number of this proceeding shall send such restitution payments by electronic funds transfer, or by U.S. postal money order, certified check, bank cashier’s, or bank money order, payable to the “Ghassan Tawachi Restitution Fund,” to the Office of Administration, National Futures Association, 300 South Riverside Plaza, Suite 1800, Chicago, Illinois 60606, under cover of a letter that identifies Respondent and the name and Docket number of this action. Respondent shall simultaneously transmit copies of the cover letter and form of payment to: (a) the Director, Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581; and (b) the Chief, Office of Cooperative Enforcement, Division of Enforcement, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581. The Monitor shall distribute restitution funds to Respondent’s customer in an equitable manner as determined by the Monitor. The Monitor shall oversee the distribution of funds of the Restitution Obligation and shall have the discretion to defer distribution until such time as it may deem appropriate. In the event that the amount of restitution payments made by Respondent to the Monitor are of a *de minimis* nature such that the Monitor determines that the administrative costs of the making a restitution distribution to customers is impractical, the Monitor may, in its discretion, treat such restitution payments as civil monetary penalty payments, which the Monitor shall forward to the Commission following the instructions for the CMP Obligation as set forth above. To the extent any funds accrue to the U.S. Treasury in satisfaction of Respondent’s Restitution Obligation, such funds shall be transferred to the Monitor for disbursement in accordance with the procedures set forth in this Order.

- F. Respondent shall comply with the following undertakings set forth in the Offer:
1. Public Statements: Respondent agrees that neither he nor any of his agents or employees under his authority or control shall take any action or make any public statement denying, directly or indirectly, any findings or conclusions in this Order, or creating, or tending to create, the impression that this Order is without a factual basis; provided, however, that nothing in this provision affects Respondent’s: (i) testimonial obligations; or (ii) rights to take legal positions in other proceedings to which the Commission is not a party. Respondent shall undertake all steps necessary

to ensure that all of his agents and/or employees under his authority and control understand and comply with this undertaking;

2. Respondent shall withdraw his registration as a CTA within ten (10) days of the date of entry of this Order;
3. Respondent agrees that he shall never engage, directly or indirectly, in:
 - (a) entering into any transactions involving commodity futures, options on commodity futures, commodity options (as that term is defined in Regulation 1.3(hh), 17 C.F.R. § 1.3(hh) (2011)) (“commodity options”), security futures products, and/or foreign currency (as described in Sections 2(c)(2)(B) and 2(c)(2)(C)(i) of the Act, 7 U.S.C. §§ 2(c)(2)(B) and 2(c)(2)(C)(i) (Supp. III 2009) (“forex contracts”) for Respondent’s own personal account(s) or for any account(s) in which Respondent has a direct or indirect interest;
 - (b) having any commodity futures, options on commodity futures, commodity options, security futures products, and/or forex contracts traded on Respondent’s behalf;
 - (c) controlling or directing the trading for or on behalf of any other person or entity, whether by power of attorney or otherwise, in any account involving commodity futures, options on commodity futures, commodity options, security futures products, and/or forex contracts;
 - (d) soliciting, receiving, or accepting any funds from any person for the purpose of purchasing or selling any commodity futures, options on commodity futures, commodity options, security futures products, and/or forex contracts;
 - (e) applying for registration or claiming exemption from registration with the Commission in any capacity, and engaging in any activity requiring such registration or exemption from registration with the Commission except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2011); and/or
 - (f) acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2011)), agent, or any other officer or employee of any person (as that term is defined in Section 1a of the Act, as amended, 7 U.S.C. § 1a (Supp. III 2009) registered, required to be registered, or exempted from registration with the Commission except as provided for in Regulation 4.14(a)(9), 17 C.F.R § 4.14(a)(9) (2011);
4. Partial Payments: Respondent agrees and understands that any acceptance by the Commission or the Monitor of partial payment of Respondent’s CMP Obligation or Restitution Obligation shall not be deemed a waiver of the Respondent’s requirement to make further payments pursuant to this Order, or a waiver of the Commission’s right to seek to compel payment of any remaining balance.

5. Cooperation with Monitor: Respondent shall cooperate with the Monitor as appropriate to provide such information as the Monitor deems necessary and appropriate to identify Respondent's customers, whom the Monitor, in its sole discretion, may determine to include in any plan for distribution of any restitution payments.

The provisions of this Order shall be effective on this date.

By the Commission:



David A. Stawick
Secretary of the Commission
Commodity Futures Trading Commission

Dated: April 26, 2012