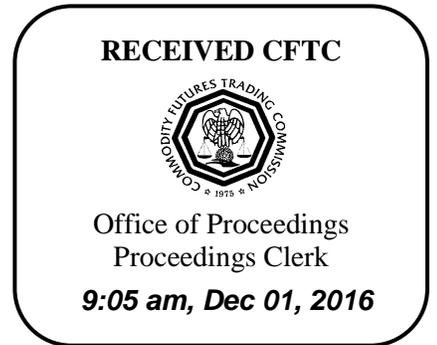




U.S. COMMODITY FUTURES TRADING COMMISSION

Three Lafayette Centre
1155 21st Street, NW, Washington, DC 20581
www.cftc.gov

Office of Proceedings



SUNTEX CORPORATION,
Complainant,

v.

JACOB MICHAEL HINKLE,
JOHN WILLIAM SENDLOSKY, and
TRADE STATION SECURITIES, INCORPORATED,
Respondents.

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) CFTC Docket No. 16-R006
) Served electronically
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ORDER OF DISMISSAL FOR CAUSE

As explained below, pursuant to CFTC rule 12.304, the complaint of Suntex Corporation (“Suntex”) has been dismissed, and respondents’ costs have been awarded, on grounds that Suntex’s representative and owner, Dr. Michael Elsaid (“Elsaid”), has abused this forum and disrupted the fair and orderly conduct of this proceeding. Because Elsaid owns and controls Suntex, his bad faith, contemptuous conduct has been imputed to Suntex.

Elsaid, who has advanced degrees and considerable experience as a *pro se* litigant, has repeatedly disregarded orders to refrain from filing repetitive motions which deal with the same subject matter. For example, Elsaid has unnecessarily reargued claims in Suntex’s complaint in many of his numerous motions, including procedural motions like an extension request and an opposition to respondents’ 10-day extension request. These claims include those that the CFTC Office of Proceedings had stricken before serving the complaint, because the claims either were not cognizable in

reparations, or because Elsaid had failed to make a *prima facie* showing. One stricken claim that Elsaid has repeatedly tried to resurrect, without bothering to identify or produce any reliable substantiating evidence, is for speculative damages based on Elsaid's pie-in-the-sky theory that, but for respondents decision to close his account after Elsaid and respondents had failed to resolve their dispute about trading losses, his trading system would have guaranteed risk-free profits of \$28 to \$56 million over the next ten years.

Elsaid, who is not a licensed lawyer, also has brazenly disregarded the bar on his appearing as the *de facto* attorney in another case, *Traina v. TradeStation Securities, et al.* (16-R16), and has attempted to circumvent that bar by forging the signature of Mr. Traina on a motion to consolidate his case and Mr. Traina's case. Dr. Elsaid's forgery, a gross violation of his duty of candor to the reparations forum, confirms that he has committed to a self-defeating course featuring bad faith and abusive tactics.

Background

The parties

1. Dr. Michael Elsaid, a resident of Wellesley, Massachusetts, as noted above is the representative of *pro se* respondent Suntex Corporation, a/k/a Suntex Capital Management, a Massachusetts corporation. Elsaid placed all trades in Suntex's TradeStation account. Elsaid also placed all trades in Kevin Traina's TradeStation account pursuant to a third-party trading authorization. Elsaid so far has not disputed respondents' assertions that he has extensive experience as a *pro se* litigant. [See respondents' June 14, 2016 motion for extension of time, at ¶ 7 and footnote 1; and respondents' November 23, 2016 motion to dismiss, at footnote 2, page 2.]

Elsaid indicated on his 2006 TradeStation account application that he was the chief executive officer of Suntex. In the Articles of Organization for Suntex dated March 12, 1993, Elsaid was listed as the sole director and officer. [Exhibit A, Suntex's opposition to respondents' motion to debar Elsaid, filed July 8, 2016.]

In annual reports filed with the Massachusetts Secretary of State for CY 2011, 2012, 2013 and 2014, Elsaid listed himself as president and CEO. However, in annual reports filed CY 2006, 2007, 2008, 2009, 2010, and 2015, Elsaid did not list himself as an officer or director. Although not listed, Elsaid signed the 2008 report as an "other officer." [Exhibit A, respondents' June 29, 2016 motion to debar Elsaid.]

In this connection, on June 29, respondents filed a motion to debar Elsaid as representative for *pro se* Suntex on grounds that he was not listed on the latest annual report as a *bona fide* officer of Suntex. This prompted Elsaid to act a few days later, on July 5, by filing amended articles with the Massachusetts Secretary of State, in which Elsaid substituted his name as president, treasurer, CEO and CFO, condensed the list of directors, and offered the following ludicrous and feckless explanation: "Reason the names of officers and directors were filled incorrectly: Family and friends helping out without being paid." [Exhibit C, complainant's July 8, 2016 opposition to respondents' motion to debar Elsaid.] In his opposition to the debarment motion, Elsaid claimed, implausibly, that he had only recently discovered -- on his own -- that the annual reports had been prepared by family and friends. [Complainant's opposition to respondents' motion to debar Elsaid, at page 2.]

Elsaid's handling of the annual reports may show, among other things, that his corporate governance and management has been dubious and shoddy at best.

Nonetheless, it is sufficient for purposes of this proceeding to support the conclusion

that no one but Elsaid has controlled the operation of Suntex during the relevant time, *i.e.*, from the account opening up to today.

Elsaid indicated on his 2006 TradeStation account application that Suntex's annual earnings were between \$100,000 and \$249,000, net assets between \$1,000,000 and \$4,999,999, and liquid assets between \$500,000 and \$999,000. Elsaid indicated on his 2006 TradeStation account application that his personal annual income was \$900,000, and his net worth (excluding residence) was \$1,000,000; and that he had over ten years' experience trading equities, options, futures and forex. More recently, Elsaid has represented: that Suntex is out of business; that he was rendered indigent in 2015 when TradeStation closed his account; that he is "living without income," or, in the alternative, forced to trade out his home; and that he has been disabled by a variety of ailments, including neuropathic pain, high blood pressure and a potentially life-threatening blood clot.¹ [Elsaid affidavit dated November 21, 2016.]

The Suntex website states the following about Suntex:

Suntex Capital Management is a Boston-based firm focused on various investment strategies. . . .

The Suntex team has over 40 years of experience in asset management, investment strategy, and corporate finance/financial planning Founded in 1991, Suntex has provided partners with significant annual returns representing a premium to major asset classes.

[Exhibit A, answer.]

The Suntex website states the following about Elsaid:

Dr. Michael Elsaid is the founder and CEO of Suntex Capital.

¹ To date, Elsaid has not rebutted respondents' assertion that in 2014 – well before the disputed 2015 liquidation out of which his reparations complaint arose – Elsaid represented to a Massachusetts court that he was indigent. See respondents' November 23, 2016 motion to dismiss, at footnote 2.

Dr. Elsaid has more than 30 years of experience in corporate finance, risk and financial management, and investment management.

As a valuable business partner, Dr. Elsaid has served as a board member for several corporations in the United States, Europe, and the Middle East. He has been the main speaker in numerous seminars on financial management, portfolio management and investment strategy.

Before organizing Suntex as a capital management firm, Dr. Elsaid operated Suntex as a multi-national holding company focused on textiles materials and consumer goods. He began his career as a CPA and Head of Budgeting for Lockheed Martin Corporation followed by financial and accounting roles at various firms. He currently serves as Justice of Peace and Notary Public in the state [sic] of Massachusetts. After obtaining his bachelor's degree in accounting from the University of Cairo, he received an MBA in International Financial Management from the University of Dallas, and a PhD in Finance from University of California, Berkeley Haas School of Business.

[Exhibit A, answer; see answer, at pp. 12-13.] On August 29, 2016, Elsaid notified the Office of Proceedings that he would be traveling to Stockholm at the invitation of the Royal Academy of Science which had accepted his nomination for the Nobel Prize in Economics. There is a first time for almost anything, but such a nomination would arguably appear to be quite anomalous and unprecedented given the conspicuous absence of any references to noteworthy publications or academic appointments in Dr. Elsaid's curriculum vitae posted on the Suntex website.

2. Kevin Traina, a resident of Auburn, Massachusetts, is the complainant in *Traina v. TradeStation Securities, et al.* (16-R16). As noted above, Traina gave Elsaid discretion to trade his TradeStation account. Traina -- a licensed physician assistant, and listed on several annual reports as a director and board member of Suntex Corporation -- indicated on his May 2015 TradeStation account application that his

annual earnings were between \$100,000 and \$249,000, net assets between \$500,000 and \$999,000, and liquid assets between \$100,000 and \$199,000, and that he had over two years' experience trading equities, options and futures. [Exhibits A and C, answer.]

In his opposition to respondent's motion for sanctions, dated July 21, and filed July 22, 2016, Traina asserted: one, that he is "about to retire, because of a severe illness;"² and two, that he has "no money," lives "paycheck to paycheck" and is helping to pay off the heavy student debt of his three children, and thus cannot afford an attorney. [Traina opposition to respondent's motion to dismiss, dated July 21, and filed July 22, 2016, at ¶¶ 4, 5 and 7.]

3. Respondent TradeStation Securities, located in Plantation, Florida, is a registered future commission merchant. Respondents Jason Hinkle and John Sendlosky are registered associated persons with TradeStation. [National Futures Association records; and joint answer, at pp. 11-15.] Respondents are represented by Steven Greenbaum, general counsel for TradeStation.

Pleadings and bar on Elsaid representing Traina

Suntex complaint

4. On January 5, 2016, Elsaid filed a complaint on behalf of his firm Suntex Corporation. The complaint arose out of a disputed liquidation in an account in the name of Suntex, and an account in the name of Advanta Trust f/b/o Kevin Traina for which Elsaid had been given discretionary authority to trade. Elsaid sought various actual, speculative and punitive damages ranging up to six and eight figures, and sought

² More recently, Traina identified his ailment as kidney stones. See Traina affidavit, dated November 22, 2016.

various forms of extraordinary relief on a variety of theories. The *Suntex* case was assigned docket number 16-R6.

By letter dated March 4, 2016, Belinda Pugh of the Office of Proceedings advised Elsaid that he could not file a complaint on behalf of Traina, and struck all of Suntex's claims with the exception of the claim for actual damages totaling \$74,000. By letter dated May 27, 2016, Melissa Jurgens, the Chief of the CFTC Executive Secretariat Branch in her capacity as acting Director of the Office of Proceedings, would reiterate that all of Elsaid's claims with the exception of the claim for actual damages totaling \$74,000 had been stricken.

Traina complaint

5. On March 28, 2016, Elsaid filed a complaint on behalf of Traina similarly seeking various actual, speculative and punitive damages, and various forms of extraordinary relief on a variety of theories. The *Suntex* and *Traina* complaints are identical or substantially similar, because they arise from the same factual circumstances and because they were prepared by Elsaid. By letter dated June 3, 2016, Melissa Jurgens, the acting Director of the Office of Proceedings, struck all of Traina's claims with the exception of the claim for actual damages.

Bar on Elsaid representing Traina

6. In *Suntex* (16-R6), in the May 27 letter, Jurgens advised Elsaid that CFTC rule 12.9(a) barred Elsaid from representing Traina in the *Traina* case, because Elsaid is not

a licensed attorney.³ Similarly, in *Traina* (16-R16), in the June 3rd letter, Jurgens informed Traina that CFTC rule 12.9 barred Elsaid from representing Traina.

In *Traina*, by letter dated June 24, 2016, Jurgens granted respondents' request to preclude Elsaid from participating in the *Traina* case. Subsequently by orders dated November 4 and 9, 2016, I would warn Traina that his complaint would be dismissed if he and Elsaid continue to disregard the bar on Elsaid's participation in the *Traina* case.

Answers to Suntex and Traina complaints

7. On May 27, 2016, the CFTC Office of Proceedings served the *Suntex* complaint. On September 26, 2016, respondents filed their amended joint answer to the *Suntex* complaint. Between May 27 and October 12, 2016, Elsaid and Greenbaum exchanged multiple motions, including motions by Elsaid to deny Greenbaum's reasonable 10-day extension request and to strike the answer, and a motion by Greenbaum to debar Elsaid. In each motion, Elsaid repeated, virtually verbatim, the various allegations in the complaint, including those that had been stricken.

On October 12, 2016, the *Suntex* (16-R6) case was assigned to my docket and the CFTC Proceedings Clerk issued the Notice of Formal Proceeding ("NFP"). The NFP, among other things, provided a link to the CFTC reparations rules, provided contact information, and provided basic procedural advice. For example, the NFP stated: "If you anticipate that you may not be able to meet a deadline, you should contact the office of the Judgment Officer as soon as practicable – before the deadline – to request an extension of time."

³ CFTC rule 12.9(a) provides that an individual complainant or respondent may represent him or herself, or may be represented by an attorney who is admitted to practice, and who is in good-standing, before the highest court in any state, territory or DC. In other words, rule 12.9(a) does not permit an individual party to be represented by a non-attorney.

8. On June 3, 2016, the CFTC Office of Proceedings served the *Traina* complaint. Also on June 3, as noted above, Jurgens informed Traina that the CFTC reparations rules barred Elsaid from representing Traina. On July 13, 2016, respondents filed their joint answer. Between June 16 and October 12, 2016, Traina filed a series of motions nearly identical or substantially similar to those filed by Elsaid in *Suntex*. On October 12, 2016, the *Traina* (16-R16) case was assigned to my docket and the CFTC Proceedings Clerk issued the Notice of Formal Proceeding (“NFP”).

Recent actions in the Suntex case

9. By order issued Wednesday November 9, 2016, I denied respondents renewed motion to debar Dr. Elsaid as Suntex’s representative, but warned him:

This ruling should not be construed as finding any merit in Elsaid’s assertion that the motion was filed in bad faith. Also, this ruling is conditioned on Elsaid immediately dropping the *ad hominen* attacks on respondents’ counsel and immediately stopping the practice of repetitively arguing the merits of his complaint with each filing. Failure to do so will be grounds for finding Elsaid in contempt, and thus dismissing Suntex’s complaint because Elsaid’s contempt would be imputed to Suntex.

In each of Suntex’s and Traina’s subsequent submissions, Elsaid would disregard this warning: one, the tone, style, organization and substance of Traina’s submissions clearly indicate that Elsaid has continued to dictate, if not actually draft, Traina’s submissions, and otherwise has continued to provide tactical, strategic and quasi-legal guidance to Traina; and two, in each of Suntex’s and Traina’s subsequent motions, Elsaid has continued to repeatedly argue the merits of the complaints, particularly the stricken \$28 million speculative damages claim, despite the fact that those arguments are not relevant to the subject matter of the motions.

10. Also on November 9, 2016, Elsaid filed a request for an extension of the Monday November 14 deadline to serve discovery requests. In his request, Elsaid claimed that he needed the extension because he “has been severely ill.” However, on the morning of Friday November 11, less than two full days later, Elsaid had sufficiently recuperated to e-serve his numerous, discursive and argumentative, discovery requests. Also on Friday November 11, 2016, Elsaid electronically submitted a motion to consolidate the *Suntex* and *Traina* cases. Since that day was the Veterans Day federal holiday, Elsaid’s motion to consolidate was deemed to have been filed Monday November 14, 2016, per CFTC rules 12.3 and 12.5(a).

The motion to consolidate stated, in pertinent part: “The undersigned Michael Elsaid and Kevin Traina move this court to consolidate the two cases” The signature purporting to be Traina’s signature appeared substantially different from his signatures on previous submissions. For example, the signature was noticeably “shaky,” compared to the relatively “smooth” signatures on Traina’s previous submissions, and the angle of the signature was significantly different from signatures on Traina’s previous submissions.

On November 14, 2016, before *Suntex*’s motion to consolidate had been forwarded to me, I issued a Notice concerning *Suntex*’s extension request. Among other things, I reminded Dr. Elsaid that he should sign each submission and submit each submission in an unalterable format:

While certain concessions can be made in light of Elsaid’s *pro se* status, he cannot be relieved of these obligations which are not burdensome and are not trivial. The requirement that each filing be in an unalterable format assures the integrity of the document. The requirement that each filing be signed essentially requires a litigant to “stop and think” before making legal or factual contentions in a filing, and emphasizes the litigant’s “duty of candor,” the elements of which are spelled out in CFTC rule 12.11(d)(2).

[Underscore added for emphasis.] I also noted that Dr. Elsaid had disregarded the warning in the November 9th order to refrain from repetitively arguing the merits of the complaint with each filing:

While due consideration has been given to Elsaid's *pro se* status, it is not unreasonable to expect him to exercise a modicum of common-sense and comply with this simple, straightforward instruction. In this connection, Elsaid inserted in Suntex's extension request a repetitive argument about Suntex's \$28 million dollar breach of contract claim:

“[Complainant] Suntex are [sic] determined to recover under this reparation program their [sic] losses of \$28 Million.”

This assertion, in sharp contrast to the assertion about his illness, had nothing to do with Elsaid's apparent need for an additional 10 days to prepare Suntex's discovery requests, and thus was gratuitous and frivolous, particularly in light of the fact that Elsaid had been clearly and explicitly advised that Suntex's \$28 million breach of contract claim was not under consideration. Accordingly, Elsaid should consider today's Notice to be a “first-strike” warning that, if he continues to insert similar repetitive or immaterial arguments in his submissions, Suntex will be subject to sanctions, ranging from non-consideration or striking of such abusive submissions, to dismissal of Suntex's complaint.

[Footnotes deleted.]

11. On November 15, respondents filed their answer to Suntex's motion to consolidate. In their answer, respondents raised a serious, plausible allegation that Dr. Elsaid had forged Mr. Traina's signature on the motion to consolidate, substantiated that allegation with facially compelling evidence, stated that they were prepared to hire a hand-writing expert to prove that the signature was not Traina's, and asserted that if their suspicion was confirmed, that the *Suntex* case and the *Traina* case should both be summarily dismissed for abuse of process. [Respondents' November 15, 2016 answer to Suntex's motion to consolidate, at footnote 1, page 1.]

12. By order dated November 16, 2016, I denied the motion to consolidate on the grounds that any efficiency and cost-saving that would accrue with consolidation of the two cases would be substantially outweighed by the significant problems associated with Dr. Elsaid's persistent efforts to sidestep the ban on his appearing as Traina's *de facto* attorney. I also noted that if respondents' forgery allegation proved to be more likely than not to be true, it would be grounds to dismiss the complaint in this proceeding and to award respondents their related costs. Thus, I set a November 29 deadline for Elsaid to file a response to the forgery allegation, and instructed Elsaid that his response should be narrowly and strictly focused on the question of the authenticity of Traina's purported signature. I also set a November 29, 2016 deadline for respondents to substantiate their costs incurred in connection with their answer to Suntex's motion to consolidate and to produce an affidavit by a hand-writing expert.

13. On November 21, 2016, Elsaid and Traina filed substantially similar motions requesting that I be disqualified as the presiding official for their respective proceedings. Elsaid essentially embedded his response to respondents' forgery allegation in paragraph 11 of Traina's accompanying affidavit and paragraphs 18 and 19 of Elsaid's accompanying affidavit. As a result, Elsaid disregarded the instructions in the November 9th order to narrowly and strictly focus his response on the question of the authenticity of Traina's purported signature.

In his affidavit, Elsaid admitted that he had signed Traina's name on the motion to consolidate, and asserted that he did so because Traina, who was "nauseous, vomiting, [and] quivering and was unable to sign his name," orally authorized Elsaid to sign for him. In his affidavit, Traina admitted that Elsaid had signed Traina's name on the motion to consolidate, and asserted that because he "was physically incapacitated by

[an unspecified and unsubstantiated] illness,” he had orally authorized Elsaid. By notice issued on November 21, I informed the parties that I was treating those paragraphs in the two affidavits as Elsaid’s response to respondents’ forgery allegation. Notably absent from both affidavits was: one, any explanation for why Elsaid and Traina had not waited until Traina got stronger, which he would a week later on November 21st when he signed the disqualification motion, or in the alternative, if they had felt rushed for some reason not apparent on the record, why they had not filed an extension request based on the extraordinary circumstances of Traina’s purported incapacitation; two, why Elsaid had not stated in the transmittal e-mail that he had signed for Traina because Traina was incapacitated; and three, why Elsaid had not signed his own name “for Kevin Traina” in the space designated for Traina’s signature. As a result, the Elsaid and Traina affidavits, separately and together, have the quality of a strained, after-the-fact construct.

14. On November 23, 2016, respondents filed their motion to dismiss the proceeding based on Elsaid’s repeated abuse of process and disregard of various orders. Respondents attached evidence substantiating that they had incurred \$4,171 in costs in connection with their answer to Suntex’s sham motion to consolidate: \$2,571 for attorney’s costs, and \$1,600 for the hand-writing expert.

15. On November 29, 2016, Elsaid filed seven “emergency” motions, none of which serve a discernable legitimate purpose: some seek the same relief sought in previous motions, some seek to circumvent the Commission’s reparations rules (*e.g.*, demanding an immediate hearing before the full Commission, despite the fact that discovery has not been completed and that the rules do not provide for *en banc* trial

hearings), and some seek various forms of extraordinary relief beyond the scope of this proceeding.

Conclusion

Since the Commission's reparations program started over 35 years ago, hundreds of *pro se* complainants and respondents have represented themselves in reparations cases. With a few rare exceptions, these *pro se* litigants have managed to represent themselves without abusing the forum by disregarding orders, filing repetitive motions, or filing sham submissions with forged signatures. Unfortunately, Dr. Elsaid is one of those exceptions. Rather than focus on Suntex's cognizable \$74,000 claim, Dr. Elsaid has disregarded orders and repeatedly attempted to resurrect specious claims for millions of dollars in speculative damages that have been stricken, has brazenly disregarded the bar on his appearing as the *de facto* attorney for Mr. Traina in his separate case, and has attempted to circumvent that bar by forging Mr. Traina's signature on Suntex's motion to consolidate the *Traina* and *Suntex* cases. As a result, Dr. Elsaid has regularly abused this forum and disrupted the fair and orderly conduct of this proceeding, with no sign that he intends to correct course. Since he owns and controls Suntex, and treats Suntex as one and the same as himself, Dr. Elsaid's bad faith, abusive and contemptuous conduct is imputed to Suntrust. In these circumstances, dismissal of the complaint, and an award of respondents' \$4,171 in costs incurred in connection with their answer to Suntex's sham motion to consolidate, is justified.

ORDER

Based on the bad-faith, abusive and contemptuous conduct of Suntex Corporation's owner and representative, Dr. Michael Elsaid, particularly his forgery of

the signature of another party: one, the complaint in this matter is hereby dismissed for cause;⁴ and two, Suntex Corporation and Dr. Michael Elsaid are ordered to pay to respondents the \$4,171 in costs incurred in connection with their answer to Suntex's sham motion to consolidate.⁵

Dated December 1, 2016.



Philip V. McGuire,
Judgment Officer

⁴ Suntex's motion to disqualify me as presiding official in this proceeding is hereby denied. However, Suntex may bring its objections to my handling of this case to the attention of the Commission in its appeal brief. Also, although this order of dismissal effectively suspends the deadline for the parties to produce discovery replies, Dr. Elsaid and respondents remain obligated to preserve any documents and records that are responsive to each other's discovery requests until the termination of this proceeding.

⁵ The liability of Suntex Corporation and Dr. Elsaid for this award shall be joint and several. Payment should be made within 30 days after the termination of this proceeding.