



U.S. COMMODITY FUTURES TRADING COMMISSION
Three Lafayette Centre
1155 21st Street, NW, Washington, DC 20581

In the Matter of
BRUCE N. CROWN,
Registrant.

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CFTC Docket No. SD 04-04

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INITIAL DECISION

On September 15, 2004, we granted the Division of Enforcement's motion for summary disposition, in part, and found that registrant Bruce N. Crown was statutorily disqualified pursuant to 7 U.S.C. §12a(3)(M) and 7 U.S.C. §12a(4).¹ This finding rendered Crown presumptively unfit for registration and placed upon him the burden of presenting evidence that his continued registration would pose no substantial risk of harm to the public.² Before considering whether there were additional grounds for statutory disqualification or whether the record precluded full summary disposition because Crown had made sufficient allegations of mitigation or rehabilitation,³ we

¹ In re Crown, CFTC Docket No. SD 04-04, 2004 CFTC LEXIS 122, at *10-11 (CFTC Sept. 15, 2004). This finding rests on the undisputed fact that Crown is subject to an outstanding disbarment order issued by the Florida Supreme Court. Id.

² Id. at *7-8.

³ One unusual facet of a Part 3 proceeding is that a registrant or applicant may oppose a motion for summary disposition on the
(continued..)

confronted the possibility that a trial in this proceeding might be no more than an empty ritual.⁴

Crown placed the propriety of a hearing in doubt because of his failure to comply with Rule 3.60(b)(2)(ii), 17 C.F.R. §3.60(b)(2)(ii).⁵ It states,

If, in the response, the applicant or registrant states that he intends to make the showing referred to in paragraph (b)(2)(i) of this section, he shall also . . . file with the Proceedings Clerk . . . a submission which includes a statement . . . identifying and summarizing the testimony of each witness whom the applicant or registrant intends to have testify in support of facts material to his showing, and copies of all documents which the applicant or registrant intends to introduce to support facts material to his showing. The factors forming the basis for a disqualified applicant's or registrant's showing referred to in paragraph (b)(2)(i) of this section may include:

(A) Evidence mitigating the seriousness of the wrongdoing underlying the statutory disqualification set forth in the notice;

(B) Evidence that the applicant or registrant has undergone rehabilitation . . . and

(C) . . . evidence that the applicant's or registrant's registration on a conditioned or restricted basis would be subject to supervisory controls likely both to detect future wrongdoing by the applicant or registrant and protect the public from any harm arising from the applicant's

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basis of bare assertions and not evidence. 17 C.F.R. §3.60(c)(1).

⁴ Crown, 2004 CFTC LEXIS 122 at *12.

⁵ See Id. at *12-15.

or registrant's future wrongdoing, including proposed conditions or restrictions.⁶

We read this regulation as having established conditions that must be satisfied before a registrant may present, as part of his case-in-chief, evidence that his registration would not pose a substantial risk to the public despite the existence of the disqualification(s).⁷ Finding that Crown had not met Rule 3.60(b)(2)(ii)'s express requirements,⁸ we directed him to show cause why we should not rule that he had waived the right to present evidence that his disbarment by the Florida Supreme Court was mitigated, that he has undergone rehabilitation or that his registration on a conditioned or restricted basis would be subject to adequate supervisory controls.⁹ The deadline for responding to our show cause order was September 22, 2004¹⁰ and the date passed without any response from Crown.

⁶ 17 C.F.R. §3.60(b)(2)(ii) (emphasis added). The "showing referred to in paragraph (b)(2)(i)" is "that registration would not pose a substantial risk to the public despite the existence of the disqualification." 17 C.F.R. §3.60(b)(2)(i).

⁷ See In re Zuccarelli, [1998-1999 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶27,651 at 48,105-06 n.10 (ALJ May 24, 1999).

⁸ Crown, 2004 CFTC LEXIS 122, at *14. We noted one exception. Crown had filed a letter that did not have substantial probative value with respect to his disbarment. Id. at *15 n.38.

⁹ Id. at *14.

¹⁰ Id.

Given Crown's failure to comply with Rule 3.60(b)(2)(ii), the absence of any explanation for this noncompliance and the lack of adequate grounds for relieving him of the need to satisfy the regulation, we **FIND** that Crown is precluded from presenting, as part of his case-in-chief additional evidence¹¹ in support of claims that, despite his statutory disqualification, he poses no substantial risk to the public. In other words, Crown cannot introduce evidence that his disbarment was mitigated, that he has undergone rehabilitation from his disbarment or that, if registered on a conditioned or restricted basis, he would be subject to adequate supervisory controls to protect the public. Consequently, additional fact finding would be meaningless.¹² Since Crown's presumption of unfitness has not and now cannot be rebutted, we **FIND** that Bruce N. Crown is unfit for registration

¹¹ See supra note 8.

¹² Because Crown is presumptively unfit for registration, the Division would not need to present additional evidence and, now, Crown cannot do so.

with the Commission and **REVOKE** his registration as an Associated Person.¹³

IT IS SO ORDERED.

On this 23rd day of September, 2004



Bruce C. Levine
Administrative Law Judge

¹³ When it initiated this proceeding, the Commission established an accelerated procedural schedule. Notice of Intent to Revoke Registration Pursuant to Sections 8a(2)(G), 8a(3)(M) and 8a(4) of the Commodity Exchange Act, dated July 30, 2004, at 6-8. As a result, "appeals must be initiated through the filing of a Notice of Appeal within seven (7) days of the service of the Initial Decision." Id. at 8. Accordingly, if there is no notice of appeal filed within seven days after service of this initial decision and if the Commission does not place the case on its docket for review sua sponte, this order shall, without further order, become the final decision of the Commission within 30 days after service of our initial decision. 17 C.F.R. §3.60(i).