

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

In the Matter of:

MIDLAND EURO, INC.,

CFTC Docket No. SD 02-01

Respondent.

SUMMARY DISPOSTION

Appearances:

On Behalf of the Division of Enforcement:

John T. Wise
Commodity Futures Trading Commission
Division of Enforcement
10900 Wilshire Blvd., Suite 400
Los Angeles, CA 90024

On Behalf of Respondent:

Michael A. Cardenas
Law Offices of Michael A. Cardenas
15315 Magnolia Blvd., Suite 428
Sherman Oaks, CA 91403

Before: Painter, ALJ

RECEIVED
CFTC
2002 JAN 31 A 11:18
MIDLAND EURO, INC.

I. Procedural History

The Division of Enforcement (“DOE”) issued its Notice of Intent against Respondent Midland Euro, Inc. (“Midland Euro”) on or about November 16, 2001. Midland Euro filed its Answer on or about December 11, 2001, with a subsequent “further response” filed on or about December 18, 2001. (Cumulatively, Midland Euro’s two filings will be referred to, herein, as the “Answer.”) The DOE filed its Motion for Summary Disposition on or about December 26, 2001, requesting that the court enter an order suspending Midland Euro’s registration with the Commission until such time as it shows that it is no longer subject to statutory disqualification. Midland Euro made no response. Commission Regulation 10.26(b), 17 C. F. R. 10.26(b)(1998), provides that failure to respond to a motion may be considered in deciding whether to grant the requested relief.

II. Discussion

Pursuant to Commission Regulation 3.60(d), 17 C.F.R. 3.60(d)(1995) and Commission Regulation 10.91(e), 17 C.F.R. 10.91(e)(2001), an Administrative Law Judge may grant a motion for summary disposition upon motion of a party if the undisputed pleaded facts, affidavits, other verified statements, admissions, stipulations, depositions, and matters of official notice show that 1) there is no genuine issue as to any material fact, 2) there is no necessity that further facts be developed in the record, and 3) the party is entitled to a decision as a matter of law. *Also see In re LeClaire*, [1994-1996 Transfer Binder] Comm.Fut.L.Rep. (CCH) ¶26,282 at 42,429 (CFTC December 12, 1994).

The DOE has placed the National Futures Association's ("NFA") Notice of Member Responsibility Action Under NFA Compliance Rule 3-15 and the NFA's Decision on that Responsibility Action into the record. In its Answer, Midland Euro maintains that the NFA based its ruling solely on Midland Euro's inadvertent, faulty bookkeeping. The NFA action and ruling, together with Midland Euro's Answer, establishes that there is no genuine issue as to any material fact.

Midland Euro's Answer fails to demonstrate that the record need further be developed as it presents no "credible grounds" for finding it took any steps towards mitigation or rehabilitation. Midland Euro has the affirmative responsibility of showing "evidence mitigating the seriousness of the wrongdoing underlying the statutory disqualification set forth in the notice [and] evidence that [Midland Euro] has undergone rehabilitation since the time of the wrongdoing underlying the statutory disqualification" in any answer to the Notice of Intent. Commission Regulation 3.60(b)(2)(ii)(A) and (B), 17 C.F.R. 3.60(b)(2)(ii)(A) and (B)(1995). Midland Euro's witness summaries show neither mitigation nor rehabilitation. Midland Euro was obliged to "clearly describe both the facts [it] believes are material to [its] claim of mitigation and rehabilitation and how the testimony [it] intends to offer and documents [it] submits will establish these facts." *In re LeClaire*, ¶26,282 at 42,429. Midland Euro's Answer does not present the requisite degree of evidence needed for this court "to determine whether there is a significant likelihood [Midland Euro] will prevail on the merits if [its] allegations are proven." *Id.*

Section 8a(3)(J) of the Commodity Exchange Act gives the Commission authority to refuse to register, register conditionally, suspend the registration of, revoke registration of, or place restrictions on the registration of a person who "is subject to an outstanding

order denying, suspending, or expelling such person from membership in a registered entity, a registered futures association...[or] any other self regulatory organization.” Commodity Exchange Act §8a, 7 U.S.C. §§12a, *as amended*. As Midland Euro has been suspended from its NFA membership and has presented no evidence of mitigation or rehabilitation, the DOE’s unopposed motion for summary disposition and request for the suspension of registration is GRANTED.

III. Findings of Fact

1. Midland Euro is a California corporation with its principal place of business located at 15315 Magnolia Blvd., Suite 410, Sherman Oaks, CA 91403. (Notice of Intent, Para. 1; Answer, Para. 1.)
2. Since July 1987, Midland Euro has been a member of the NFA and has been registered with the Commission as a futures commission merchant since October 1994, pursuant to Section 4d and 4f of the Act, 7 U.S.C. §§ 6d and 6f (2000). (NFA Membership/Registration records.)
3. Midland Euro is in the business of trading retail off-exchange foreign currency contracts. (Notice of Intent, Para. 2; Answer, Para. 2.)
4. The NFA issued its Notice of Member Responsibility Action No. 01MRA000 (“MRA” or “MRA notice”) against Midland Euro under NFA Compliance Rule 3-15 on October 30, 2001. Midland Euro’s membership in the NFA was suspended at that time until further notice. (MRA notice, pgs. 1-4.)
5. The MRA alleged that the NFA had reason to believe that Midland Euro had submitted false or misleading information to the NFA in connection with the accounts

of a customer, Al Baraka, including the failure to disclose to the NFA the existence of Al Baraka's accounts and failure to disclose the existence of one of Midland Euro's own bank accounts into which \$8,000,000 of Al Baraka's funds had be deposited. (MRA notice, pgs. 1-4.)

6. Concluding that the NFA was unable to determine the accuracy of Midland Euro's books and records, the MRA continued to remain in effect until such time that Midland Euro was able to demonstrate compliance with NFA protocols. (MRA notice, pg. 4.)

7. Midland Euro invoked its right to a hearing, which was held before a three-member panel of the NFA in Chicago, IL, on November 8, 2001. (Decision of NFA Hearing Panel on Notice of Member Responsibility Action No. 01MRA000 ("Decision"), pg. 1.)

8. After hearing from several witnesses, the NFA panel determined that Al Baraka was an undisclosed customer of Midland Euro and, as a result, Midland Euro failed to demonstrate compliance with the NFA's financial requirements. (Decision, pgs. 7 and 8.)

9. The NFA panel then affirmed the MRA, ordering that Midland Euro continue to be suspended from NFA membership until such time as it can demonstrate compliance with NFA requirements. (Decision, pg. 9.)

IV. Conclusions of Law

1. Midland Euro's membership in the NFA has been suspended since at least October 30, 2001.

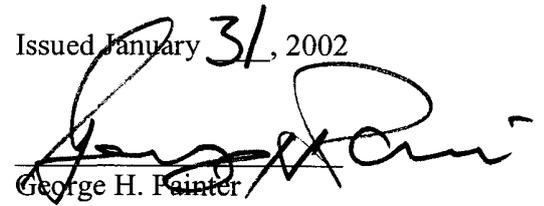
2. Midland Euro has failed to show that it is no longer subject to statutory disqualification.

ORDER

The DOE's Motion for Summary Disposition is GRANTED. Midland Euro's registration with this Commission is suspended until it shows that it is no longer subject to statutory disqualification.

So ordered.

Issued January 31, 2002



George H. Painter
Administrative Law Judge

David E. Vignola
Attorney-Advisor