

UNITED STATES OF AMERICA
Before the
U.S. COMMODITY FUTURES TRADING COMMISSION

RECEIVED
C.F.T.C.

2007 OCT 29 P 12:48

In the Matter of:)	
)	CFTC Docket No. SD 07-05
)	PROCEEDINGS CLERK
Udo Rotmistrenko,)	Administrative Law Judge
)	George H. Painter
Registrant.)	
)	

INITIAL DECISION ON DEFAULT

The Commission issued a Notice of Intent to Revoke the Registration of Udo Rotmistrenko (“Rotmistrenko”) on July 30, 2007, directing that a public hearing be conducted to determine whether Rotmistrenko is subject to statutory disqualification pursuant to Section 8a(2)(D) and 11(A) of the Commodity Exchange Act, as amended, and, if so, whether the registration of Rotmistrenko as a commodity trading advisor and associated person should be revoked. Rotmistrenko was directed to file an answer to the Notice within 30 days after issuance the Commission’s Notice.

Rotmistrenko did not file an answer, and on September 10, 2007, this Court deemed the allegations set forth in the Notice to be true, and directed the Division of Enforcement to file proposed findings of fact and conclusions of law based on the deemed truth of the allegations set forth in the Notice, and to recommend sanctions to be imposed. The Court granted the registrant the opportunity to file, by October 19, 2007, an answer to the Division’s proposed findings and sanctions. Pursuant to its request for an enlargement of time, the Division made its filing on October 22, 2007. Rotmistrenko has not filed an answer. This Court finds and concludes as follows:

I.

FINDINGS OF FACT

1. Udo Rotmistrenko is an individual whose present address is 342 52nd Street, Apartment 1, Brooklyn, New York 11220.
2. Rotmistrenko is a convicted felon who is presently out of custody on his own recognizance. He is due to report to federal prison in Florida by October 31, 2007. Assuming he reports, his mailing address will be FPC Pensacola, Federal Prison Camp, 110 Raby Avenue, Pensacola, FL 32509.

3. Rotmistrenko owned and operated Rittmeister Capital Management, Inc. (“Rittmeister”). Rittmeister was a New York limited liability company with offices located at 67 Wall Street, New York, New York.

4. On or about March 15, 2000, the National Futures Association (“NFA”) approved Rotmistrenko’s membership in the NFA and his registration with the Commission as a commodity trading advisor (“CTA”) in his own name and as an associated person (“AP”) of his CTA, pursuant to Section 4d of the Act and in accordance with Section 4f of the Act, 7 U.S.C. §§ 6d and 6f (2007).

5. On March 18, 2005, an Administrative Law Judge (“ALJ”) suspended Rotmistrenko’s registration as a CTA and AP.

6. In May 2004, the United States Attorney for the Southern District of New York filed a criminal complaint against Rotmistrenko. The complaint charged him with three counts of wire fraud in violation of 18 U.S.C. § 1343.

7. On September 30, 2004, the United States Attorney filed a superseding twenty-four count indictment, which alleged that Rotmistrenko engaged in an illegal scheme to defraud customers. The indictment alleged that, from March 1999 through December 2003, Rotmistrenko solicited retail investors to trade in the foreign currency exchange (“forex”) market.

8. The indictment stated that Rotmistrenko induced potential customers to open accounts and to entrust funds to him and Rittmeister by misrepresenting Rittmeister’s history of generating profits for customers through trading in the forex market. Rotmistrenko also misrepresented how he and Rittmeister used investors’ funds.

9. The indictment stated that Rotmistrenko falsely claimed that Rittmeister had generated profits as high as 43 per cent per year for its customers through forex trading, when in fact Rittmeister generated little or no profits through forex trading.

10. The indictment stated that Rotmistrenko sent account statements to his customers that falsely claimed that Rittmeister had generated profits for them trading in the forex market. When investors demanded that he return their funds, Rotmistrenko made several false claims, including that the transfer of investor funds back into the United States was delayed due to purported restrictions placed by the United States government upon such international transfers in the wake of the terrorist attacks on September 11, 2001.

11. The indictment stated that Rotmistrenko misappropriated more than \$1 million that investors had entrusted to him for forex trading by using investors’ money to pay his personal expenses, including college tuition for his wife and wedding expenses.

12. The indictment charged Rotmistrenko with twenty-four counts of wire and mail fraud, in violation of 18 U.S.C. §§ 1341 through 1343, occurring between February 1, 1999 and September 22, 2003.

13. On August 6, 2004, the Commission filed a “Notice of Intent to Suspend or Modify Registration of Udo Rotmistrenko” (the “Notice of Intent to Suspend”). The Notice of Intent to Suspend alleged that Rotmistrenko’s registration should be suspended pursuant to Section 8a(11)(A) of the Act, 7 U.S.C. § 12a(11)(A). Section 8a(11)(A) of the Act authorizes the Commission to suspend or modify the registration of any registrant who is charged with the commission of a crime that would reflect upon the honesty or the fitness of the person to act as a fiduciary, and that is punishable by imprisonment for more than one year if the Commission determines that continued registration of the person may pose a threat to the public interest or may threaten to impair public confidence in any market regulated by the Commission.

14. On March 18, 2005, an ALJ of the Commission issued an order suspending Rotmistrenko’s registration. In his order, the ALJ held that Rotmistrenko had not responded to the Notice of Intent to Suspend and was therefore in default, and that the Division had demonstrated that the criminal charges satisfied the requirements for a suspension contained in Section 8a(11)(A) of the Act, 7 U.S.C. § 12a(11). Accordingly, the ALJ suspended Rotmistrenko’s registration as a CTA and AP.

15. Pursuant to Commission Regulation 3.56(e)(2), 17 C.F.R. § 3.56(e)(2), the ALJ’s order became a final decision of the Commission fifteen days after service was made in accordance with Regulation 3.50(a), 17 C.F.R. § 3.50(a).

16. Pursuant to Section 8a(11)(C) of the Act, 7 U.S.C. § 12a(11)(C), the Commission’s suspension of Rotmistrenko remained in effect until his indictment “is disposed of” or until the Commission terminates the suspension.

17. On May 31, 2005, in the criminal case in the United States District Court for the Southern District of New York, Rotmistrenko pled guilty to all twenty-four counts in the indictment charging violations of 18 U.S.C. §§ 1341 through 1343.

18. On June 18, 2007, the United States District Court for the Southern District of New York sentenced Rotmistrenko to 51 months imprisonment and ordered him to pay \$1,800,410 in restitution. *See* Certified “Judgment in a Criminal Case,” *United States v. Udo Rotmistrenko*, Case No. 04-CR-1092-01 (DAB), attached as exhibit A, at pages 2 & 5. Therefore, the District Court has disposed of Rotmistrenko’s indictment.

19. On July 30, 2007, the Commission filed a “Notice of Intent to Revoke Pursuant to Sections 8a(2)(D) and 8a(11)(A) of the Commodity Exchange Act” (the “Notice of Intent to Revoke”). The Notice of Intent to Revoke alleged that Rotmistrenko’s registration should be revoked pursuant to Sections 8a(2)(D)(iii) and (iv) and 8a(11) of the Act, 7 U.S.C. §§ 12a(2)(D)(iii), (iv) and 12a(11)(A) (2007).

20. On September 10, 2007, an ALJ held that Rotmistrenko was in default:

Registrant was served on July 30, 2007, with the Commission's Notice of Intent to Revoke Registration and of the right to file a written submission responding to the allegations made within thirty (30) days after that service. The Registrant has failed to file an Answer and it is therefore deemed that the allegations set forth in the complaint are true.

Registrant is in default.

Order, *In the Matter of Udo Rotmistrenko*, CFTC Dock. No. 07-05 (Sept. 10, 2007).

21. Since September 10, 2007, Rotmistrenko has not filed a response to the Notice of Intent to Revoke, contacted the Division, or attempted to vacate his default.

II.

CONCLUSIONS OF LAW

1. Pursuant to Section 8a(2)(D)(iv) of the Act, 7 U.S.C. § 12a(2)(D)(iv) (2007), the Commission may revoke the registration of any person "who has been convicted . . . of any felony that . . . involves the violation of section . . . 1341, 1342, 1343 . . . of title 18, United States Code"

2. Pursuant to Section 8a(11)(A) of the Act, 7 U.S.C. § 12a(11)(A) (2007), the Commission may revoke the registration of any person

who is charged (in any information, indictment, or complaint authorized by a United States Attorney . . .) with the commission of or participation in a crime involving . . . any . . . provision of Federal . . . law that would reflect on the honesty or the fitness of the person to act as a fiduciary (including an offense specified in subparagraph (D) of paragraph (2) [*i.e.*, Section 8a(2)(D) set forth above]) that is punishable by imprisonment for a term exceeding one year, if the Commission determines that continued registration of the person may pose a threat to the public interest or may threaten to impair public confidence in any market regulated by the Commission.

3. Pursuant to Rule 10.67, 17 C.F.R. § 10.67 (2007), this Court may take official notice of the certified copy of Rotmistrenko's judgment of conviction. Accordingly, this Court may take official notice that Rotmistrenko pled guilty to twenty-

four felony mail and wire fraud counts in violation of 18 U.S.C. §§ 1341 through 1343, and that he has been sentenced to 51 months imprisonment.

4. Further, the facts stated in the Notice of Intent to Revoke have been deemed true pursuant to this Court's September 10, 2007 order. These facts demonstrate that Rotmistrenko is unfit to act as a Commission registrant and constitute a valid basis for the Commission to disqualify and revoke Rotmistrenko's registration as a CTA and AP pursuant to Sections 8a(2)(D) and 8a(11)(A) of the Act, 7 U.S.C. §§ 12a(2)(D) and 12a(11)(A) (2007).

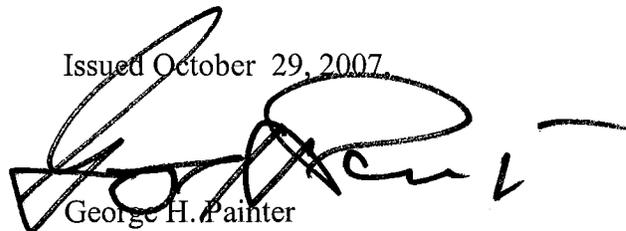
5. The Commission has previously observed that once a statutory disqualification is established under Section 8a(2) of the Act, a presumption arises that the applicant is unfit to act as a registrant, and the Division's burden of producing evidence is fulfilled. *In re Horn*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,836 at 36,939 (CFTC Apr. 18, 1990).

6. Thus, pursuant to Sections 8a(2)(D) and 8a(11)(A) of the Act, 7 U.S.C. §§ 12a(2) and 12a(11) (2007), cause exists for revocation of Rotmistrenko's registration as a CTA and an AP.

ORDER

Pursuant to Sections 8a(2)(D) and 8a(11)(C) of the Commodity Exchange Act, Udo Rotmistrenko is statutorily disqualified from registration with this Commission. Accordingly, his registrations as a Commodity Trading Advisor and an Associated Person are REVOKED effective the date this decision becomes final.

Issued October 29, 2007.



George H. Painter
Administrative Law Judge