



U.S. COMMODITY FUTURES TRADING COMMISSION

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In the Matter of

LESLIE JEAN WNUKOWSKI,

Registrant.

CFTC Docket No. SD 05-01

INITIAL DECISION

Statutory disqualification proceedings are designed to move quickly and cases such as this move faster than most. Registrant Leslie Jean Wnukowski chose not to submit a timely response to the Commission's notice of intent to suspend, revoke, or restrict her registrations.¹ For this reason and because the

¹ Order, dated February 16, 2005, at 1-2, 7; Notice of Intent to Suspend, Revoke, or Restrict the Registrations of Leslie Jean Wnukowski, dated December 30, 2004 ("Notice"). Wnukowski is registered as a commodity pool operator ("CPO"), a commodity trading advisor ("CTA") and an associated person. Notice ¶2; Division of Enforcement's Appendix of Exhibits in Support of Its Motion for a Default Judgment Order Against Leslie Jean Wnukowski, dated March 9, 2005, Exhibit ("Ex.") 4.

The Notice includes allegations that: (1) Wnukowski is subject to statutory disqualification pursuant to 7 U.S.C. §12a(3)(G) and 7 U.S.C. §12a(4) because she submitted an application for registration to the National Futures Association ("NFA") in which she willfully failed to disclose part of her employment history, and (2) she is subject to statutory disqualification pursuant to 7 U.S.C. §12a(3)(M) and 7 U.S.C. §12a(4) as the result of (a) failing to meet financial obligations arising from a consent order in which she agreed to pay restitution, (b) violating 7 U.S.C. §6n(3)(A) and 17 C.F.R. §1.31(a) by refusing to make records of her CPO and CTA activities available for inspection in a prompt manner and (c) intentionally seeking to circumvent NFA oversight by refusing to apply for membership with the self-regulatory organization. Notice ¶¶3-15.

Proceedings Clerk served the notice in a manner that satisfied Rule 3.50, she fell into default.² This default and the Division of Enforcement's motion for a default judgment³ leave us with only one issue to resolve, whether the Division has adequately demonstrated Wnukowski's statutorily disqualification pursuant to Sections 8a(3)(G) (or 8a(3)(M)) and 8a(4) of the Commodity Exchange Act.⁴ If we answer that question affirmatively, then Wnukowski will

² This proceeding is conducted pursuant to Rule 3.60, 17 C.F.R. §3.60. Rule 3.50, 17 C.F.R. §3.50, governs service in Rule 3.60 proceedings. 17 C.F.R. §3.50(a). Rule 3.50 permits service by a number of methods but lists only one method as per se sufficient by stating, "service upon an applicant or registrant will be sufficient if mailed by registered mail or certified mail return receipt requested properly addressed to the applicant or registrant at the address shown on his application or any amendment thereto, and will be complete upon mailing." Id. On December 30, 2004, the Proceedings Clerk sent the Notice by certified mail to 5558 Maple Lane, Midlothian, Illinois 60445. Ex. 1 at 1. In her most recent applications for registration, Wnukowski listed this as her address and there has been no amendment changing it. Ex. 4 at 31-32, 40. Consequently, service was proper and completed on December 30th. In failing to respond by January 31, 2005, Wnukowski automatically fell into default. 17 C.F.R. §§3.50(a), 3.60(a)(3)-(4), 3.60(b), 3.60(k), 10.5; Notice at 7.

³ Division of Enforcement's Motion for Entry of a Default Judgment Order Against Leslie Jean Wnukowski, dated March 9, 2005; Division of Enforcement's Brief in Support of its Motion for Entry of a Default Judgment Order Against Leslie Jean Wnukowski, dated March 9, 2005.

⁴ The Division's burden in this case is eased by the registrant's default but success is not guaranteed. Rule 10.93, 17 C.F.R. §10.93, governs the disposition of Rule 3.60 default judgment motions. 17 C.F.R. §3.60(g). In determining whether it is appropriate to issue a default judgment under this regulation, we take as true a notice of intent's well-pled allegations of fact, as augmented by any evidence the Division may submit in support of the motion, and draw our own legal conclusions. In re Collins, [2003-2004 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶29,607 at 55,621 (CFTC Nov. 4, 2003).

be found presumptively unfit for registration and the presumption will not be disturbed.⁵

Section 8a(4) authorizes the Commission to revoke the registrations of a persons such as Wnukowski if there are grounds under Section 8a(3) for

⁵ Generally, the Division must establish the grounds for statutory disqualification by a preponderance of the evidence. 17 C.F.R. §3.60(e); In re Gath, [1994-1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶26,751 at 44,111 (CFTC Aug. 2, 1996). Once the Division satisfies this requirement, a registrant is deemed presumptively unfit for registration and the burden of proof shifts. 17 C.F.R. §3.60(e)(1)-(2); In re Moskowitz, [1992-1994 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶25,656 at 40,141 (CFTC Feb. 5, 1993). To overcome the presumption of unfitness, the registrant must show, by a preponderance of the evidence (or, when 7 U.S.C. §12a(2) supplies the basis for disqualification, by clear and convincing evidence), that she does not pose a substantial threat to the public if permitted to remain registered. 17 C.F.R. §3.60(e)(1)(2); Gath, [1994-1996 Transfer Binder] ¶26,751 at 44,111. To make this showing, the registrant must present "[e]vidence mitigating the seriousness of the wrongdoing underlying the . . . disqualification," evidence that the "registrant has undergone rehabilitation since the time of the wrongdoing underlying the statutory disqualification" and/or, in the case of certain registrants, evidence of adequate supervision. 17 C.F.R. §3.60(f). See Gath, [1994-1996 Transfer Binder] ¶26,751 at 44,111.

A registrant preserves the right to show that her continued licensure would pose no substantial risk to the public despite the existence of one or more statutory disqualifications by stating, in a response to the notice of intent, an intent to making such a showing. 17 C.F.R. §3.60(b)(2)(i). Here, Wnukowski is precluded from introducing evidence of rehabilitation, mitigation or supervision as a result of her default. Moreover, in her untimely and rejected Rule 3.60 response, Wnukowski did not express the intent to establish that her continued registration would pose no substantial risk to the public despite any statutory disqualification. Response of Leslie Jean Wnukowski to Notice of Intent to Suspend, Revoke or Restrict the Registrations of Leslie Jean Wnukowski, dated February 11, 2005, at 1-2. See Order, dated February 16, 2005, at 6. Thus, if we find the registrant to be statutorily disqualified, the resulting presumption of unfitness will become conclusive.

rejecting their applications for registration.⁶ Section 8a(3)(G) permits this agency to withhold registration from any person who "willfully made any materially false or misleading statement or willfully omitted to state any material fact in such person's application or any update thereto, in any report required to be filed with the Commission by this Act or the regulations thereunder, in any proceeding before the Commission or in any registration disqualification proceeding."⁷ Taking the Notice's well-pled factual allegations to be true, the pleading (as augmented by the Division's evidentiary submissions) suffices to establish that Wnukowski could have been refused registration pursuant to Section 8a(3)(G).

An application for Commission registration is one of the submissions that falls within the coverage of Section 8a(3)(G).⁸ The Commodity Futures Trading Commission Form 8-R, the application for registration as an associated person, requires the disclosure of present employment as well as past employment over the previous 10 years.⁹ In the Notice, the Division alleged

⁶ 7 U.S.C. §12a(4).

⁷ 7 U.S.C. §12a(3)(G).

⁸ See In re Riley, [2000-2002 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶28,611 at 52,221-23 (CFTC Aug. 9, 2001).

⁹ Ex. 4 at 32. This part of the form requires an applicant to list the names and addresses of past and present employers, the dates of employment, the positions held and, as applicable, the reasons for ending the employment relationships. Id.

that, when she completed the employment history portion of the Form 8-R that she submitted in January 2002, Wnukowski omitted all of the requested information concerning an employment relationship to which she had been a party since June 2000.¹⁰ These allegations are, with one exception,¹¹ well-pled as is the claim that Wnukowski's omission was willful.¹² Moreover, Commission precedent teaches that the withheld information is material.¹³ Accordingly, Wnukowski is statutorily disqualified pursuant to Sections 8a(3)(G) and 8a(4), and, therefore, presumptively unfit for registration.¹⁴ There

¹⁰ Notice ¶¶3-4. It alleged that, since June of 2000, Wnukowski has been employed by and received a considerable salary from a corporation named Commodity Futures, Inc. (and, later, renamed Unique Strategies, Inc.) but she did not disclose this employment relationship in her application. Id.

¹¹ The Division alleged that the application in question was submitted in January 2002 but the record indicates that it was filed in December of 2001. Ex. 4 at 31, 36. This contradiction renders the January 2002 allegation not well-pled. Collins, [2003-2004 Transfer Binder] ¶29,607 at 55,621 n.43.

¹² Notice ¶4.

¹³ In re Auster, [1980-1982 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶21,274 at 25,344 (CFTC Oct. 4, 1981) ("one may generally surmise that if the Commission has specifically requested information on its application form, it may be a significant ingredient in the Commission's determination of the applicant's fitness for registration"); In re Menkes, [1980-1982 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶21,258 at 25,273 (CFTC Sept. 22, 1981) ("Of particular and material importance to the Commission is the specific information required to be disclosed on a Commission application which pertains to the employment history of an applicant." (footnote omitted)).

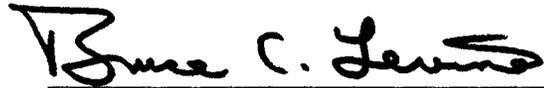
¹⁴ Because there is no evidence to rebut the presumption of unfitness, we need not to consider the other alleged grounds for revoking her registrations. Cf. In re Interstate Sec. Corp., [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶25,295 at 38,954-55 (CFTC June 1, 1992).

being no substantial material in the record to rebut it, the presumption of unfitness is conclusive and we find Wnukowski to be unfit for registration.

For the reasons set forth above, we **GRANT** the Division's motion for a default judgment and hereby **REVOKE** Wnukowski's registrations as a commodity trading advisor, commodity pool operator and associated person.

IT IS SO ORDERED.¹⁵

On this 29th day of March, 2005

A handwritten signature in black ink, appearing to read "Bruce C. Levine". The signature is written in a cursive style with a horizontal line underneath it.

Bruce C. Levine
Administrative Law Judge

¹⁵ Any party may appeal this initial decision to the Commission by filing a notice of appeal with the Proceedings Clerk within 15 days of the date upon which this order is served. 17 C.F.R. §§3.60(i)(1), 10.102(a). If no party files a notice of appeal and the Commission chooses not to place the case on its docket for review sua sponte, this initial decision shall automatically become the final decision of the Commission 30 days after service. 17 C.F.R. §3.60(i).