

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

ROCK FINANCIAL GROUP, LLC
and SCOTT SCHAFFER

v.

NATIONAL FUTURES ASSOCIATION

CFTC Docket No. CR04-1-01

ORDER DENYING STAY

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Administration

2008 DEC 10 PM 12:26

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C.F.T.C.

Rock Financial Group, LLC (“RFG”), a commodity trading advisor, and its associated person Scott Schaffer (“Schaffer”) petition the Commission to stay the Member Responsibility Action (“MRA”) taken against them by the National Futures Association (“NFA”) when RFG and Schaffer did not promptly produce books and records requested by the NFA. The petitioners assert that the records requested by NFA concern real estate transactions, not futures trading, and that neither RFG nor Schaffer has any futures customers at this time. Petition to Stay MRA at 2-3. NFA did not file a response. For the reasons that follow, the petition to stay is denied.

* * *

Under the terms of the MRA, the petitioners are prohibited from: soliciting or accepting funds from customers or investors; soliciting commodity investments or placing trades for customers except to liquidate open positions; and disbursing or transferring customer funds without the NFA’s approval. *In re Rock Financial Group LLC and Scott Schaffer*, NFA Case No. 10-MRA-006 (Notice of Member Responsibility Action and Association Responsibility Action) (“Notice”), slip op. at 1. The petitioners also are required to provide copies of the Notice to their customers, investors and all financial institutions holding deposits in their name or under

their control. *Id.* The NFA instituted the MRA following an emergency examination of RFG prompted by a customer's complaint. *See generally id.*

Under Regulation 171.41(d), the Commission reviews petitions for staying the effectiveness of an MRA, to determine whether: the notice and opportunity for a hearing provided by the NFA are consistent with the principles of fundamental fairness; the likelihood that denying the petition will result in irreparable harm to the petitioner; the effect on the NFA of granting the petition; and the effect a grant of denial would have on the public interest. 17 C.F.R. § 171.41(d).

First, NFA's procedural rules are consistent with the principles of fundamental fairness as they contain due process protections, including the opportunity for a prompt post-deprivation hearing. The petitioners requested such a hearing.

Second, there is no evidence that a denial of this petition will cause the petitioners irreparable harm. The petitioners assert that the NFA's public notices of its action caused them to be "displayed in an adverse condition in the public eye," with a resulting "negative impact" on Schaffer's real estate business, which is conducted under the name of RFG. *Id.* at 7.

Accordingly, Schaffer contends that he and RFG will suffer irreparable reputational harm if their petition is not granted. *Id.* However, even assuming the petitioners' allegations are true, the reputational harm alleged has already occurred as a result of the MRA and its publication. Moreover, this harm is speculative, at best.

RFG and Schaffer also argue that denying the stay will have no negative impact on the NFA, *see id.* at 7-8, but will have a "negative impact on the public interest with respect to how the public views" the petitioners and that granting the stay will benefit the petitioners without "exposing the general public to any harm or threat of harm." *Id.* at 9. Even assuming the former

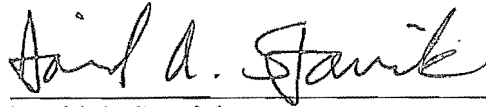
is true, the latter is simply a restatement of the petitioners' irreparable injury argument; it does not concern the public interest. Accordingly, the petitioners have failed to make a showing under Regulation 171.41(d) sufficient to warrant granting a stay.

CONCLUSION

For the foregoing reasons, the petition to stay the MRA is denied.

IT IS SO ORDERED.

By the Commission (Chairman GENSLER and Commissioners DUNN, SOMMERS, CHILTON and O'MALIA).



David A. Stawick
Secretary of the Commission
Commodity Futures Trading Commission

Dated: December 9, 2010