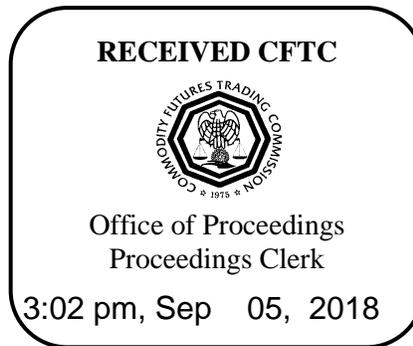




U.S. COMMODITY FUTURES TRADING COMMISSION

Three Lafayette Centre
1155 21st Street, NW, Washington, DC 20581
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Office of Proceedings



SUNTEX CORPORATION,
Complainant,

v.

JACOB MICHAEL HINKLE,
JOHN WILLIAM SENDLOSKY, and
TRADESTATION SECURITIES, INC.,
Respondents.

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CFTC Docket No. 16-R006
Served electronically

**INITIAL DECISION
ON REMAND**

This case was remanded to me upon my appointment by the Commission on April 6, 2018. On remand, the Commission directed me to reconsider the record, including all substantive and procedural actions undertaken by the Judgment Officer, who at the time was Philip V. McGuire. I have completed that review, and ratify all actions previously undertaken, including Complaint’s dismissal for cause.

I. Procedural History

On December 1, 2016, JO McGuire dismissed this matter for cause due to the “bad-faith, abusive, contemptuous conduct of Suntex Corporation’s owner and representative, Dr. Michael Elsaid, particularly his forgery of the signature of another party.” Dismissal Order at 14-15 (Dec. 1, 2016), appended at Appendix A. He also awarded attorneys’ fees to Respondents of \$4,171 due to that same

misbehavior. *Id.* at 15. Elsaid, on behalf of Suntex, timely filed a notice of appeal on December 8, 2016, and briefing on that appeal was complete on January 26, 2017.

Since the completion of briefing on appeal, Complainant-Appellant filed several motions before the Commission. First, on January 28, 2017, Elsaid filed an Emergency Motion for Oral Argument to be held before the Commission regarding his appeal. Second, Elsaid filed an Emergency Motion to remove the Dismissal Order from the Commission's website on June 6, 2017. Third, Elsaid filed a "Motion to DEMAND the Following names Individually and in their Professional Capacity to Enforce Justice and assure Fairness and impartiality: 1 - Commission Christopher Giancarlo; 2 - Melissa Jurgens; 3 - Philips McGuire; 4 - Tempest Thomas" on June 10, 2017 (as original but for colon and semi-colons). Finally, Elsaid filed a "Motion to Compel the (BASKET OF DEPLORABLES) Individually and in their Professional Capacity to AVOID INJUSTICE and guarantee impartiality, neutrality" with regards to the same four named individuals in his June 10, 2017 motion. In this last Motion, Elsaid characterizes various employees at the Commission as follows:

- "The Deplorable, demeaning, and disparaging Philips *[sic]* McGuire;"
- "This revolting Philips *[sic]* McGuire;"
- The "Rude, demeaning and condescending [Clerk Tempest Thomas];" and
- "The arrogant Melissa Jurgens" who apparently acted in a "nonsens[ical]" and "unlawful" manner when she told Elsaid he could not bring a case for damages suffered by someone other than himself.

Before ruling on these Motions, the Commission remanded the case for reconsideration because of my appointment as the Judgment Officer. *See* Commission Ratification and Reconsideration Order (April 6, 2018). This remand effectively mooted these Motions before the Commission, and they are not properly before me for purposes of resolving them, although I do treat them as part of the record.

In the Ratification and Reconsideration Order, the Commission directed me to: reconsider the record, including all procedural and substantive actions undertaken in this case previously; give the parties time to submit additional evidence; and determine whether either ratification or revision was necessary based on the reconsideration. *Id.* To that end, on April 23, 2018, I issued a Notice of Appointment to the parties in this case informing them of the Commission's Order, and giving them until May 9, 2018 to submit any evidence relevant to my reconsideration. Neither Complainant nor Respondents met that deadline.¹

I have completed my review of the record, and ratify all previous orders and decisions. Although I adopt all fact findings and legal conclusions from all prior orders and notices, I am augmenting the analysis in the Dismissal Order, which is incorporated in full here and appended at Appendix A, as follows.

¹ On May 27, 2018, Elsaid filed a Motion for Extension of time, stating that he mistakenly recorded the deadline as June 9, 2018 instead of May 9, 2018. That Motion is denied. In the same Motion, Elsaid requested an evidentiary hearing be held to litigate the merits of his case. Because I ratify the dismissal for cause, I also deny that request.

II. Legal Analysis and Conclusions

A. Findings of Fact

The prior Dismissal Order made plain the litany of abuses of process committed by Complainant's representative, Elsaid, and familiarity with the record is assumed. These abuses include, but are not limited to:

1. Representing Kevin Traina in a separate reparations proceeding, *Traina v. TradeStation Securities, et al.*, 16-R016 (dismissed by Order on June 8, 2018 (*Traina* Dismissal Order)), despite multiple warnings that he was prohibited from doing so by Commission Rule 12.9(a), *see, e.g.*, Dismissal Order at ¶¶ 5-10 & n.3;
2. Forging Traina's signature on a Motion to Consolidate the *Suntex* and *Traina* cases, *see, e.g.*, Dismissal Order ¶¶ 10-13;²
3. Arguing the merits of the Complaint with each filing despite warnings not to do so, *see, e.g.*, Dismissal Order ¶ 10; and
4. Filing seven spurious "emergency" motions that served no legitimate purpose, *see, e.g.*, Dismissal Order ¶ 15.

I ratify and adopt these findings of fact, which are echoed in the *Traina* Dismissal Order. I also ratify and adopt the facts and analyses set forth in the: Order Denying Respondents' Renewed Motion to Debar Elsaid (Nov. 9, 2016); Notice Regarding Defective Filings (Nov. 14, 2016); and Order Denying Complainant's Motion to Consolidate the *Suntex* and *Traina* Cases (Nov. 16, 2016); as well as all other issuances by this Office.

B. Legal Analysis Regarding Dismissal for Cause

Although "generally a decision on the merits based on full participation by all parties is the preferred outcome of a reparations proceeding," "[c]ourts have

² I use the words "forgery" and "forge" as a shorthand to refer to Elsaid's mimicking of Traina's signature without giving this Office any indication that Traina himself did not sign the documents in question. In doing so, I am not making a criminal finding of forgery.

inherent power to dismiss an action when a party has willfully deceived the court and engaged in conduct utterly inconsistent with the orderly administration of justice.” *Robinson v. Alternative Commodity Traders*, 2001 WL 741672, *6 (CFTC July 2, 2001), *aff’d* 2005 WL 2978171 (CFTC Nov. 4, 2005) (quoting *Fjelstad v. American Hondo Motor Corp.*, 762 F.2d 1334, 1337 (9th Cir. 1984)). Such dismissal should not be imposed unless: (1) there was advanced notice to the party; and (2) a specific finding is made on the issue of bad faith. *Marlow v. Oppenheimer Rouse Futures, Inc.*, 1987 WL 106915, *2 (CFTC Sept. 9, 1987). Both those preconditions are met here.

First, the notice requirement has been satisfied. On November 9, 2016, JO McGuire warned Elsaid that failure to “immediately drop[] the *ad hominin* attacks on respondents’ counsel and immediately stop[] the practice of repetitively arguing the merits of his complaint with each filing” would constitute “grounds for finding Elsaid in contempt, and thus dismissing Suntex’s complaint.” Order Denying Renewed Motion to Debar Elsaid (Nov. 9, 2016); *see also* Notice Regarding Defective Filings (Nov. 14, 2016) (warning Elsaid that “if he continues to insert [frivolous, repetitive requests] or immaterial arguments in his submissions, Suntex will be subject to sanctions, ranging from non-consideration or striking such abusive submissions, to dismissal of Suntex’s complaint”). Those notices concerned the tone and substance of Elsaid’s filings.

But a second set of notices was also provided to Elsaid with respect to his representation of Traina in the *Traina* case. As JO McGuire found, Elsaid filed a

complaint on behalf of Traina on March 28, 2016, which complaint was substantially similar to the one he filed on behalf of Suntex. *See* Dismissal Order ¶ 5; *see also* Compl. (March 28, 2016), *Traina v. TradeStation Securities, Inc.*, 16-R016. Elsaid was warned twice before the matter was forwarded to the Judgment Officer for disposition that he could not represent Traina under Commission Rule 12.9(a). Dismissal Order ¶ 6.

Despite Elsaid having been informed that he was prohibited by Commission Rules from representing Traina, JO McGuire found, in an order dated November 4, 2016 on the *Traina* docket, that “Mr. Elsaid continues to act, not so effectively, as Mr. Traina’s *de facto* attorney, in contravention” of prior notices barring such representation. JO McGuire, in that same Order, put Traina “on notice that his complaint [would] be summarily dismissed if future submissions or communications reveal the direct or indirect participation of Mr. Elsaid.”

Thus Elsaid was on notice that he was to: (1) stop filing repetitive and redundant motions filled with personal attacks against Respondents’ counsel; and (2) stop his unauthorized representation of Traina.

Second, Elsaid violated these orders in bad faith. As JO McGuire found, in each submission filed subsequent to the November 9, 2016 Order, Elsaid disregarded JO McGuire’s warnings as to both the tone and substance of his motions, and as to the prohibition on representing Traina. Dismissal Order ¶ 9. For example, on November 28, 2016, Elsaid filed seven emergency motions (Seven Emergency Motions), the titles of which alone evidence his bad faith:

1. “Emergency Motion to Remove Philip McGuire from serving in CFTC in order to investigate his demeaning, biased, harassing and collusion with the defendants and their in-house counsel. . . . This man’s approach and attitude towards small investors’ litigants is a defamation to the CFTC.”

Elsaid filed this First Emergency Motion on November 28, 2016, despite the fact that he had already filed a Motion to Disqualify JO McGuire on November 21, 2016, and that Motion to Disqualify was not even fully briefed when Elsaid decided to file a second, redundant motion to disqualify—this one styled as an “emergency”—just one week later.

2. “Emergency Motion to enforce the Mission statement of CFTC to protect investors against fraudulent activities by the members. . . . Defendants and their in house counsel committed fraud, manipulation, and abusive practice cause Plaintiffs Suntex to lose \$28,921,000.00 and caused Traina to lose \$207,000.00. Plaintiffs want their money back.”

This Second Motion was filed despite the fact that (1) Complainant had not (and indeed has not) produced evidence in support of his claims; and (2) JO McGuire and this Office ruled repeatedly that Suntex’s damages amount of \$28 million for breach of contract was not supported by any allegations of fraud as to the contract. *See, e.g.*, Letter from Jurgens to Elsaid at 2 (May 27, 2016); Notice Regarding Defective Filings at 3 (Nov. 14, 2016).

3. “Emergency Motion to strike the filing by the Defendants’ in-house attorney Greenbaum . . . for committing fraud and misrepresentation.”
4. “Emergency Motion to order the Enforcement Division to investigate Defendants Trade Station and its parent company Monex Inc. . . .”
5. “Emergency Motion to Compel the Defendants and their in-house counsel to answer the Plaintiff’s request for documents and Interrogatories by emailing their answers no later than November 29, 2016.”

This Fifth Motion compelling discovery is particularly puzzling because Elsaid himself filed a motion to extend his deadline to serve discovery requests from November 11, 2016 to November 21, 2016 because he was “severely ill.” Motion to Extend Discovery Deadline (Nov. 9, 2016). Notwithstanding filing this Motion to Extend, Elsaid filed his discovery requests just two days later. Thus Elsaid completely wasted this court’s time by filing a Motion to Extend he plainly did not need.

And on the same day he filed his discovery requests (notwithstanding the fact that he had just been “severely ill”), November 11, 2016, Elsaid also filed a Motion to Consolidate the *Suntex* and *Traina* cases. But despite having himself filed an extension request regarding discovery deadlines and an intervening Motion to Consolidate, Elsaid found it necessary on November 28, 2016 to file a request compelling discovery the very next day (which in addition to being irrational given the context of the request, would be impracticable, if not impossible, to comply with).

Further adding to the irrationality of Elsaid’s Fifth Motion, JO McGuire had, in denying the Motion to Consolidate, ordered the parties to respond to each other’s discovery requests no later than December 15, 2016. Order Denying Motion to Consolidate at 2 (November 16, 2018). So instead of waiting a mere two weeks to receive discovery, Elsaid wasted this court’s time by demanding discovery the very next day.

6. “Emergency Motion to issue an order that Plaintiff Suntex and its sole owner recover all their losses in the reparation program of \$28,921,000.00.”

This Sixth Motion duplicates a request made in the Second Emergency Motion. It also suffers from the same defect as in the Second Emergency Motion—it requests relief that Elsaid was told he was not entitled to, based on the allegations he himself chose to make.

7. “Emergency MOTION TO REQUEST A HEARING BY THE COMMISSIONS FOR THE CASES 16-R006[, the *Suntex* case] and 16-R016[, the *Traina* case].”

This Seventh Motion makes clear that no matter how many times Office staff or this court warned Elsaid he could neither bring claims on behalf of Traina, nor represent him during these reparations proceedings, he continued to disregard that prohibition and treat Traina’s case as if it were his own.

These Seven Emergency Motions represent just one small sample of the way Elsaid chose to prosecute his reparations case—by using insults, repetition, bombast, and the imposition of untenable and illegitimate deadlines to make his points, rather than using evidence to make them. Because of these repeated spurious filings, dismissal was and remains appropriate. *Dick v. Chicago Commodities Inc.*, 1986 WL 66156 (CFTC Feb 3. 1986) (finding default sanction warranted where two prior motions for sanctions were filed against Respondent and Respondent’s misconduct was willful).

Moreover, Elsaid unabashedly admits that he helped prepare Traina’s submissions and would continue to do so, despite repeated warnings by this Office that such conduct violated Commission Rules:

- “I will continue to help Pro-Se Mr. Traina to recover his losses.” Motion to Disqualify JO McGuire at 5 (Nov. 21, 2016).
- “I attest that Mr. Traina spent the entire weekend at my home; we both were helping each other’s to prepare very difficult and formidable pleadings to remove Mr. McGuire and vacate all his Judgments” Elsaid Affidavit to Vacate Judgment at 1 (Nov. 22, 2016).
- “Mr. Traina and I and our family had been close friends for many years, and I have never charged him for trading his account and I have never charged him for helping with his legal proceeding.” *Id.*
- “I still see nothing is wrong with helping a close friend with legal proceeding.” *Id.*

This repeated and knowing violation of this Office’s Rules constitutes bad faith.

Furthermore, Elsaid admitted that he forged Traina’s name on the Motion to Consolidate, filed November 11, 2016, because Traina “was nauseous, vomiting, [and] quivering.” *See* Elsaid Affidavit ¶ 19 in Support of Motion to Disqualify (Nov. 21, 2016). But this admission does not explain two seemingly inconsistent facts. First, according to Elsaid, on November 11, 2016—the very day he signed and filed the Motion to Consolidate—Elsaid had to go to the emergency room in the evening due to “severe exhaustion,” “High Blood Pressure,” and “a blood clot that [might have] kill[ed] him.” *Id.* ¶ 13. That same day, Elsaid had to sign Traina’s name because Traina was incapacitated due to nausea and quivering. *Id.* ¶ 19. I find it completely unbelievable, in the absence of any documentary or corroborating evidence other than the self-serving writings of Elsaid, that “nauseous” and “quivering” Traina could not use a pen, but Elsaid, who was severely exhausted and suffering from high blood pressure and a potentially fatal blood clot on the same day, could. Second, Elsaid’s admission that he signed on behalf of Traina does not

explain why he attempted to mimic Traina's signature (as can clearly be seen by comparing Traina's actual signature and Elsaid's signature of Traina), or why Elsaid simply did not indicate that he was signing on behalf of Traina.

I find, given Elsaid's pattern of mendacious behavior and the attempt to mimic Traina's signature,³ it was more likely that he was trying to deceive this court into thinking Traina had in fact signed the affidavit himself. This forgery—that is, allowing an unauthorized person to deceptively sign your own name—constitutes fraud on the Commission. *Cf. Vargas v. FX Solutions, LLC*, 2009 WL 1543722, * 4 (CFTC June 1, 2009) (finding that signing a document that was prepared by another violated Commission Rule 12.12(b) and constituted fraud on the court).

These actions—filing repeated, spurious motions; willfully violating the prohibition on representing Traina; and forging Traina's signature—plainly demonstrate bad faith.

C. The Ineffectiveness of Lesser Sanctions

In granting a dismissal or default based on a party's misconduct, the Commission has stated that it is "not unmindful of the fact that courts have suggested that a default or dismissal should not be ordered as a sanction until other sanctions have proved unavailing." *Dick*, 1986 WL 66156 at *2-*9 (affirming default judgment award for failure to comply with discovery orders). Such lesser sanctions could include ruling that certain documents not produced would have been adverse

³ See Respondents' Answer to Motion to Consolidate & Ex. A (Nov. 15, 2016); Dismissal Order ¶¶ 10-13; and Elsaid Affidavit in Support of Motion to Disqualify ¶ 19 (Nov. 21, 2016).

to the misbehaving party (*i.e.*, issuing an adverse inference); excluding evidence from consideration; or striking all or part of a pleading. *See, e.g.*, 17 C.F.R. § 12.35(a)-(d) (listing consequences short of dismissal or default for failure to comply with a discovery order). But imposing such lesser sanctions here would not change the outcome of this proceeding, and would anyways be inadequate.

Complainant has no path forward for prevailing on the merits even if I were to allow the proceeding to continue, with or without imposition of any sanction at all. Complainant's misconduct has resulted in self-inflicted wounds to his credibility and ability to prevail in this case. The main witness in this case is himself, and although discovery was not closed, *see* Order Denying Motion to Consolidate (Nov. 16, 2016), Elsaid has proved more interested in filing spurious motions than engaging in any discovery that might actually support his claims, *see, e.g.*, Seven Emergency Motions (November 28, 2016).

Moreover, he willfully defied this Office's directives prohibiting him from representing Traina or ghostwriting his submissions; and he continues to file motions rife with personal attacks. In fact, his motions before the Commission on appeal show that—instead of reforming his ways—he has widened his insult net to catch Commission and other government personnel that have little to no impact on the substantive outcome of his case. *See* Motion regarding Basket of Deplorables, *supra* at 2. In short, Elsaid has “continued to file ridiculous pleadings . . . brought discovery to a screeching halt, and generally embarked on a scurrilous campaign to discredit and scandalize these proceedings and this Court.” *Robinson*, 2001 WL

741672 at *6. In light of this misconduct, there is no lesser sanction that could adequately safeguard the integrity of this court.

D. Award of Attorneys' Fees

The Commission authorizes the award of attorneys' fees in various situations. *See, e.g.*, 17 C.F.R. § 12.30(c) (authorizing attorneys' fees associated with the making of any discovery-related motions that are granted); § 12.314(c) (awarding costs in formal proceedings if warranted). The Commission has explained that when its:

ability to conduct a hearing is threatened by willful acts of "bad faith," to the detriment of orderly proceeding and the interests of complainants, the Commission will not hesitate to assess attorney fees.

Sherwood v. Madda Trading Co., 1979 WL 11487, at *11 (CFTC Jan. 5, 1979). Thus JO McGuire's grant of \$4,171 in attorneys' fees is ratified here "to remedy [the] bad faith or vexatious conduct" of Complainant. *Id.*; 17 C.F.R. § 12.314(c).

CONCLUSION

For these reasons and those stated in the Dismissal Order, I ratify the previously issued dismissal of this case for cause, as well as all prior substantive and procedural actions undertaken in this reparations proceeding.

DATED: September 5, 2018


Kavita Kumar Puri
Judgment Officer

Appendix A
(Order of Dismissal for Cause)

reparations, or because Elsaid had failed to make a *prima facie* showing. One stricken claim that Elsaid has repeatedly tried to resurrect, without bothering to identify or produce any reliable substantiating evidence, is for speculative damages based on Elsaid's pie-in-the-sky theory that, but for respondents decision to close his account after Elsaid and respondents had failed to resolve their dispute about trading losses, his trading system would have guaranteed risk-free profits of \$28 to \$56 million over the next ten years.

Elsaid, who is not a licensed lawyer, also has brazenly disregarded the bar on his appearing as the *de facto* attorney in another case, *Traina v. TradeStation Securities, et al.* (16-R16), and has attempted to circumvent that bar by forging the signature of Mr. Traina on a motion to consolidate his case and Mr. Traina's case. Dr. Elsaid's forgery, a gross violation of his duty of candor to the reparations forum, confirms that he has committed to a self-defeating course featuring bad faith and abusive tactics.

Background

The parties

1. Dr. Michael Elsaid, a resident of Wellesley, Massachusetts, as noted above is the representative of *pro se* respondent Suntex Corporation, a/k/a Suntex Capital Management, a Massachusetts corporation. Elsaid placed all trades in Suntex's TradeStation account. Elsaid also placed all trades in Kevin Traina's TradeStation account pursuant to a third-party trading authorization. Elsaid so far has not disputed respondents' assertions that he has extensive experience as a *pro se* litigant. [See respondents' June 14, 2016 motion for extension of time, at ¶ 7 and footnote 1; and respondents' November 23, 2016 motion to dismiss, at footnote 2, page 2.]

Elsaid indicated on his 2006 TradeStation account application that he was the chief executive officer of Suntex. In the Articles of Organization for Suntex dated March 12, 1993, Elsaid was listed as the sole director and officer. [Exhibit A, Suntex's opposition to respondents' motion to debar Elsaid, filed July 8, 2016.]

In annual reports filed with the Massachusetts Secretary of State for CY 2011, 2012, 2013 and 2014, Elsaid listed himself as president and CEO. However, in annual reports filed CY 2006, 2007, 2008, 2009, 2010, and 2015, Elsaid did not list himself as an officer or director. Although not listed, Elsaid signed the 2008 report as an "other officer." [Exhibit A, respondents' June 29, 2016 motion to debar Elsaid.]

In this connection, on June 29, respondents filed a motion to debar Elsaid as representative for *pro se* Suntex on grounds that he was not listed on the latest annual report as a *bona fide* officer of Suntex. This prompted Elsaid to act a few days later, on July 5, by filing amended articles with the Massachusetts Secretary of State, in which Elsaid substituted his name as president, treasurer, CEO and CFO, condensed the list of directors, and offered the following ludicrous and feckless explanation: "Reason the names of officers and directors were filled incorrectly: Family and friends helping out without being paid." [Exhibit C, complainant's July 8, 2016 opposition to respondents' motion to debar Elsaid.] In his opposition to the debarment motion, Elsaid claimed, implausibly, that he had only recently discovered -- on his own -- that the annual reports had been prepared by family and friends. [Complainant's opposition to respondents' motion to debar Elsaid, at page 2.]

Elsaid's handling of the annual reports may show, among other things, that his corporate governance and management has been dubious and shoddy at best. Nonetheless, it is sufficient for purposes of this proceeding to support the conclusion

that no one but Elsaid has controlled the operation of Suntex during the relevant time, *i.e.*, from the account opening up to today.

Elsaid indicated on his 2006 TradeStation account application that Suntex's annual earnings were between \$100,000 and \$249,000, net assets between \$1,000,000 and \$4,999,999, and liquid assets between \$500,000 and \$999,000. Elsaid indicated on his 2006 TradeStation account application that his personal annual income was \$900,000, and his net worth (excluding residence) was \$1,000,000; and that he had over ten years' experience trading equities, options, futures and forex. More recently, Elsaid has represented: that Suntex is out of business; that he was rendered indigent in 2015 when TradeStation closed his account; that he is "living without income," or, in the alternative, forced to trade out his home; and that he has been disabled by a variety of ailments, including neuropathic pain, high blood pressure and a potentially life-threatening blood clot.¹ [Elsaid affidavit dated November 21, 2016.]

The Suntex website states the following about Suntex:

Suntex Capital Management is a Boston-based firm focused on various investment strategies. . . .

The Suntex team has over 40 years of experience in asset management, investment strategy, and corporate finance/financial planning Founded in 1991, Suntex has provided partners with significant annual returns representing a premium to major asset classes.

[Exhibit A, answer.]

The Suntex website states the following about Elsaid:

Dr. Michael Elsaid is the founder and CEO of Suntex Capital.

¹ To date, Elsaid has not rebutted respondents' assertion that in 2014 – well before the disputed 2015 liquidation out of which his reparations complaint arose – Elsaid represented to a Massachusetts court that he was indigent. *See* respondents' November 23, 2016 motion to dismiss, at footnote 2.

Dr. Elsaid has more than 30 years of experience in corporate finance, risk and financial management, and investment management.

As a valuable business partner, Dr. Elsaid has served as a board member for several corporations in the United States, Europe, and the Middle East. He has been the main speaker in numerous seminars on financial management, portfolio management and investment strategy.

Before organizing Suntex as a capital management firm, Dr. Elsaid operated Suntex as a multi-national holding company focused on textiles materials and consumer goods. He began his career as a CPA and Head of Budgeting for Lockheed Martin Corporation followed by financial and accounting roles at various firms. He currently serves as Justice of Peace and Notary Public in the state [sic] of Massachusetts. After obtaining his bachelor's degree in accounting from the University of Cairo, he received an MBA in International Financial Management from the University of Dallas, and a PhD in Finance from University of California, Berkeley Haas School of Business.

[Exhibit A, answer; *see* answer, at pp. 12-13.] On August 29, 2016, Elsaid notified the Office of Proceedings that he would be traveling to Stockholm at the invitation of the Royal Academy of Science which had accepted his nomination for the Nobel Prize in Economics. There is a first time for almost anything, but such a nomination would arguably appear to be quite anomalous and unprecedented given the conspicuous absence of any references to noteworthy publications or academic appointments in Dr. Elsaid's curriculum vitae posted on the Suntex website.

2. Kevin Traina, a resident of Auburn, Massachusetts, is the complainant in *Traina v. TradeStation Securities, et al.* (16-R16). As noted above, Traina gave Elsaid discretion to trade his TradeStation account. Traina -- a licensed physician assistant, and listed on several annual reports as a director and board member of Suntex Corporation -- indicated on his May 2015 TradeStation account application that his

annual earnings were between \$100,000 and \$249,000, net assets between \$500,000 and \$999,000, and liquid assets between \$100,000 and \$199,000, and that he had over two years' experience trading equities, options and futures. [Exhibits A and C, answer.]

In his opposition to respondent's motion for sanctions, dated July 21, and filed July 22, 2016, Traina asserted: one, that he is "about to retire, because of a severe illness;"² and two, that he has "no money," lives "paycheck to paycheck" and is helping to pay off the heavy student debt of his three children, and thus cannot afford an attorney. [Traina opposition to respondent's motion to dismiss, dated July 21, and filed July 22, 2016, at ¶¶ 4, 5 and 7.]

3. Respondent TradeStation Securities, located in Plantation, Florida, is a registered future commission merchant. Respondents Jason Hinkle and John Sendlosky are registered associated persons with TradeStation. [National Futures Association records; and joint answer, at pp. 11-15.] Respondents are represented by Steven Greenbaum, general counsel for TradeStation.

Pleadings and bar on Elsaid representing Traina

Suntex complaint

4. On January 5, 2016, Elsaid filed a complaint on behalf of his firm Suntex Corporation. The complaint arose out of a disputed liquidation in an account in the name of Suntex, and an account in the name of Advanta Trust f/b/o Kevin Traina for which Elsaid had been given discretionary authority to trade. Elsaid sought various actual, speculative and punitive damages ranging up to six and eight figures, and sought

² More recently, Traina identified his ailment as kidney stones. See Traina affidavit, dated November 22, 2016.

various forms of extraordinary relief on a variety of theories. The *Suntex* case was assigned docket number 16-R6.

By letter dated March 4, 2016, Belinda Pugh of the Office of Proceedings advised Elsaid that he could not file a complaint on behalf of Traina, and struck all of Suntex's claims with the exception of the claim for actual damages totaling \$74,000. By letter dated May 27, 2016, Melissa Jurgens, the Chief of the CFTC Executive Secretariat Branch in her capacity as acting Director of the Office of Proceedings, would reiterate that all of Elsaid's claims with the exception of the claim for actual damages totaling \$74,000 had been stricken.

Traina complaint

5. On March 28, 2016, Elsaid filed a complaint on behalf of Traina similarly seeking various actual, speculative and punitive damages, and various forms of extraordinary relief on a variety of theories. The *Suntex* and *Traina* complaints are identical or substantially similar, because they arise from the same factual circumstances and because they were prepared by Elsaid. By letter dated June 3, 2016, Melissa Jurgens, the acting Director of the Office of Proceedings, struck all of Traina's claims with the exception of the claim for actual damages.

Bar on Elsaid representing Traina

6. In *Suntex* (16-R6), in the May 27 letter, Jurgens advised Elsaid that CFTC rule 12.9(a) barred Elsaid from representing Traina in the *Traina* case, because Elsaid is not

a licensed attorney.³ Similarly, in *Traina* (16-R16), in the June 3rd letter, Jurgens informed Traina that CFTC rule 12.9 barred Elsaid from representing Traina.

In *Traina*, by letter dated June 24, 2016, Jurgens granted respondents' request to preclude Elsaid from participating in the *Traina* case. Subsequently by orders dated November 4 and 9, 2016, I would warn Traina that his complaint would be dismissed if he and Elsaid continue to disregard the bar on Elsaid's participation in the *Traina* case.

Answers to Suntex and Traina complaints

7. On May 27, 2016, the CFTC Office of Proceedings served the *Suntex* complaint. On September 26, 2016, respondents filed their amended joint answer to the *Suntex* complaint. Between May 27 and October 12, 2016, Elsaid and Greenbaum exchanged multiple motions, including motions by Elsaid to deny Greenbaum's reasonable 10-day extension request and to strike the answer, and a motion by Greenbaum to debar Elsaid. In each motion, Elsaid repeated, virtually verbatim, the various allegations in the complaint, including those that had been stricken.

On October 12, 2016, the *Suntex* (16-R6) case was assigned to my docket and the CFTC Proceedings Clerk issued the Notice of Formal Proceeding ("NFP"). The NFP, among other things, provided a link to the CFTC reparations rules, provided contact information, and provided basic procedural advice. For example, the NFP stated: "If you anticipate that you may not be able to meet a deadline, you should contact the office of the Judgment Officer as soon as practicable – before the deadline – to request an extension of time."

³ CFTC rule 12.9(a) provides that an individual complainant or respondent may represent him or herself, or may be represented by an attorney who is admitted to practice, and who is in good-standing, before the highest court in any state, territory or DC. In other words, rule 12.9(a) does not permit an individual party to be represented by a non-attorney.

8. On June 3, 2016, the CFTC Office of Proceedings served the *Traina* complaint. Also on June 3, as noted above, Jurgens informed Traina that the CFTC reparations rules barred Elsaid from representing Traina. On July 13, 2016, respondents filed their joint answer. Between June 16 and October 12, 2016, Traina filed a series of motions nearly identical or substantially similar to those filed by Elsaid in *Suntex*. On October 12, 2016, the *Traina* (16-R16) case was assigned to my docket and the CFTC Proceedings Clerk issued the Notice of Formal Proceeding (“NFP”).

Recent actions in the Suntex case

9. By order issued Wednesday November 9, 2016, I denied respondents renewed motion to debar Dr. Elsaid as Suntex’s representative, but warned him:

This ruling should not be construed as finding any merit in Elsaid’s assertion that the motion was filed in bad faith. Also, this ruling is conditioned on Elsaid immediately dropping the *ad hominen* attacks on respondents’ counsel and immediately stopping the practice of repetitively arguing the merits of his complaint with each filing. Failure to do so will be grounds for finding Elsaid in contempt, and thus dismissing Suntex’s complaint because Elsaid’s contempt would be imputed to Suntex.

In each of Suntex’s and Traina’s subsequent submissions, Elsaid would disregard this warning: one, the tone, style, organization and substance of Traina’s submissions clearly indicate that Elsaid has continued to dictate, if not actually draft, Traina’s submissions, and otherwise has continued to provide tactical, strategic and quasi-legal guidance to Traina; and two, in each of Suntex’s and Traina’s subsequent motions, Elsaid has continued to repeatedly argue the merits of the complaints, particularly the stricken \$28 million speculative damages claim, despite the fact that those arguments are not relevant to the subject matter of the motions.

10. Also on November 9, 2016, Elsaid filed a request for an extension of the Monday November 14 deadline to serve discovery requests. In his request, Elsaid claimed that he needed the extension because he “has been severely ill.” However, on the morning of Friday November 11, less than two full days later, Elsaid had sufficiently recuperated to e-serve his numerous, discursive and argumentative, discovery requests. Also on Friday November 11, 2016, Elsaid electronically submitted a motion to consolidate the *Suntex* and *Traina* cases. Since that day was the Veterans Day federal holiday, Elsaid’s motion to consolidate was deemed to have been filed Monday November 14, 2016, per CFTC rules 12.3 and 12.5(a).

The motion to consolidate stated, in pertinent part: “The undersigned Michael Elsaid and Kevin Traina move this court to consolidate the two cases” The signature purporting to be Traina’s signature appeared substantially different from his signatures on previous submissions. For example, the signature was noticeably “shaky,” compared to the relatively “smooth” signatures on Traina’s previous submissions, and the angle of the signature was significantly different from signatures on Traina’s previous submissions.

On November 14, 2016, before *Suntex*’s motion to consolidate had been forwarded to me, I issued a Notice concerning *Suntex*’s extension request. Among other things, I reminded Dr. Elsaid that he should sign each submission and submit each submission in an unalterable format:

While certain concessions can be made in light of Elsaid’s *pro se* status, he cannot be relieved of these obligations which are not burdensome and are not trivial. The requirement that each filing be in an unalterable format assures the integrity of the document. The requirement that each filing be signed essentially requires a litigant to “stop and think” before making legal or factual contentions in a filing, and emphasizes the litigant’s “duty of candor,” the elements of which are spelled out in CFTC rule 12.11(d)(2).

[Underscore added for emphasis.] I also noted that Dr. Elsaid had disregarded the warning in the November 9th order to refrain from repetitively arguing the merits of the complaint with each filing:

While due consideration has been given to Elsaid's *pro se* status, it is not unreasonable to expect him to exercise a modicum of common-sense and comply with this simple, straightforward instruction. In this connection, Elsaid inserted in Suntex's extension request a repetitive argument about Suntex's \$28 million dollar breach of contract claim:

“[Complainant] Suntex are [sic] determined to recover under this reparation program their [sic] losses of \$28 Million.”

This assertion, in sharp contrast to the assertion about his illness, had nothing to do with Elsaid's apparent need for an additional 10 days to prepare Suntex's discovery requests, and thus was gratuitous and frivolous, particularly in light of the fact that Elsaid had been clearly and explicitly advised that Suntex's \$28 million breach of contract claim was not under consideration. Accordingly, Elsaid should consider today's Notice to be a “first-strike” warning that, if he continues to insert similar repetitive or immaterial arguments in his submissions, Suntex will be subject to sanctions, ranging from non-consideration or striking of such abusive submissions, to dismissal of Suntex's complaint.

[Footnotes deleted.]

11. On November 15, respondents filed their answer to Suntex's motion to consolidate. In their answer, respondents raised a serious, plausible allegation that Dr. Elsaid had forged Mr. Traina's signature on the motion to consolidate, substantiated that allegation with facially compelling evidence, stated that they were prepared to hire a hand-writing expert to prove that the signature was not Traina's, and asserted that if their suspicion was confirmed, that the *Suntex* case and the *Traina* case should both be summarily dismissed for abuse of process. [Respondents' November 15, 2016 answer to Suntex's motion to consolidate, at footnote 1, page 1.]

12. By order dated November 16, 2016, I denied the motion to consolidate on the grounds that any efficiency and cost-saving that would accrue with consolidation of the two cases would be substantially outweighed by the significant problems associated with Dr. Elsaid's persistent efforts to sidestep the ban on his appearing as Traina's *de facto* attorney. I also noted that if respondents' forgery allegation proved to be more likely than not to be true, it would be grounds to dismiss the complaint in this proceeding and to award respondents their related costs. Thus, I set a November 29 deadline for Elsaid to file a response to the forgery allegation, and instructed Elsaid that his response should be narrowly and strictly focused on the question of the authenticity of Traina's purported signature. I also set a November 29, 2016 deadline for respondents to substantiate their costs incurred in connection with their answer to Suntex's motion to consolidate and to produce an affidavit by a hand-writing expert.

13. On November 21, 2016, Elsaid and Traina filed substantially similar motions requesting that I be disqualified as the presiding official for their respective proceedings. Elsaid essentially embedded his response to respondents' forgery allegation in paragraph 11 of Traina's accompanying affidavit and paragraphs 18 and 19 of Elsaid's accompanying affidavit. As a result, Elsaid disregarded the instructions in the November 9th order to narrowly and strictly focus his response on the question of the authenticity of Traina's purported signature.

In his affidavit, Elsaid admitted that he had signed Traina's name on the motion to consolidate, and asserted that he did so because Traina, who was "nauseous, vomiting, [and] quivering and was unable to sign his name," orally authorized Elsaid to sign for him. In his affidavit, Traina admitted that Elsaid had signed Traina's name on the motion to consolidate, and asserted that because he "was physically incapacitated by

[an unspecified and unsubstantiated] illness,” he had orally authorized Elsaid. By notice issued on November 21, I informed the parties that I was treating those paragraphs in the two affidavits as Elsaid’s response to respondents’ forgery allegation. Notably absent from both affidavits was: one, any explanation for why Elsaid and Traina had not waited until Traina got stronger, which he would a week later on November 21st when he signed the disqualification motion, or in the alternative, if they had felt rushed for some reason not apparent on the record, why they had not filed an extension request based on the extraordinary circumstances of Traina’s purported incapacitation; two, why Elsaid had not stated in the transmittal e-mail that he had signed for Traina because Traina was incapacitated; and three, why Elsaid had not signed his own name “for Kevin Traina” in the space designated for Traina’s signature. As a result, the Elsaid and Traina affidavits, separately and together, have the quality of a strained, after-the-fact construct.

14. On November 23, 2016, respondents filed their motion to dismiss the proceeding based on Elsaid’s repeated abuse of process and disregard of various orders. Respondents attached evidence substantiating that they had incurred \$4,171 in costs in connection with their answer to Suntex’s sham motion to consolidate: \$2,571 for attorney’s costs, and \$1,600 for the hand-writing expert.

15. On November 29, 2016, Elsaid filed seven “emergency” motions, none of which serve a discernable legitimate purpose: some seek the same relief sought in previous motions, some seek to circumvent the Commission’s reparations rules (*e.g.*, demanding an immediate hearing before the full Commission, despite the fact that discovery has not been completed and that the rules do not provide for *en banc* trial

hearings), and some seek various forms of extraordinary relief beyond the scope of this proceeding.

Conclusion

Since the Commission's reparations program started over 35 years ago, hundreds of *pro se* complainants and respondents have represented themselves in reparations cases. With a few rare exceptions, these *pro se* litigants have managed to represent themselves without abusing the forum by disregarding orders, filing repetitive motions, or filing sham submissions with forged signatures. Unfortunately, Dr. Elsaid is one of those exceptions. Rather than focus on Suntex's cognizable \$74,000 claim, Dr. Elsaid has disregarded orders and repeatedly attempted to resurrect specious claims for millions of dollars in speculative damages that have been stricken, has brazenly disregarded the bar on his appearing as the *de facto* attorney for Mr. Traina in his separate case, and has attempted to circumvent that bar by forging Mr. Traina's signature on Suntex's motion to consolidate the *Traina* and *Suntex* cases. As a result, Dr. Elsaid has regularly abused this forum and disrupted the fair and orderly conduct of this proceeding, with no sign that he intends to correct course. Since he owns and controls Suntex, and treats Suntex as one and the same as himself, Dr. Elsaid's bad faith, abusive and contemptuous conduct is imputed to Suntrust. In these circumstances, dismissal of the complaint, and an award of respondents' \$4,171 in costs incurred in connection with their answer to Suntex's sham motion to consolidate, is justified.

ORDER

Based on the bad-faith, abusive and contemptuous conduct of Suntex Corporation's owner and representative, Dr. Michael Elsaid, particularly his forgery of

the signature of another party: one, the complaint in this matter is hereby dismissed for cause;⁴ and two, Suntex Corporation and Dr. Michael Elsaid are ordered to pay to respondents the \$4,171 in costs incurred in connection with their answer to Suntex's sham motion to consolidate.⁵

Dated December 1, 2016.


Philip V. McGuire,
Judgment Officer

⁴ Suntex's motion to disqualify me as presiding official in this proceeding is hereby denied. However, Suntex may bring its objections to my handling of this case to the attention of the Commission in its appeal brief. Also, although this order of dismissal effectively suspends the deadline for the parties to produce discovery replies, Dr. Elsaid and respondents remain obligated to preserve any documents and records that are responsive to each other's discovery requests until the termination of this proceeding.

⁵ The liability of Suntex Corporation and Dr. Elsaid for this award shall be joint and several. Payment should be made within 30 days after the termination of this proceeding.