



U.S. COMMODITY FUTURES TRADING COMMISSION

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

In the Matter of)
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VERUUS WEALTH MANAGEMENT, LLC)
Registrant.)
_____)

CFTC Docket Number: SD 13-03

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INITIAL DECISION ON DEFAULT

Before: Philip V. McGuire,
Commodity Futures Trading Commission

Appearances: Susan B. Padove, Esq., Senior Trial Attorney
Division of Enforcement, Commodity Futures Trading Commission
525 W. Monroe Street, Chicago, Illinois 60661

Introduction

This is a proceeding to revoke the registrations of Veruus Wealth Management, LLC ("Veruus"), pursuant to Sections 8a(4) and 8a(3)(K) of the Commodity Exchange Act ("Act"), 7 U.S.C. §§ 8a(4) and 8a(3) (2012), and Commission rules 3.60(g) and 10.93, 17 C.F.R. §§ 3.60(g) and 10.93 (2013). Veruus, a Colorado limited liability company, has been registered with the Commission, since May 3, 2012, as a commodity pool operator ("CPO") and commodity trading advisor ("CTA").

By motion dated October 23, 2013, the Commission's Division of Enforcement ("Division") has moved for entry of a default judgment against registrant Veruus, based on its failure to answer, or otherwise to appear or respond to, the Notice of Intent to Revoke the Registrations of Veruus Wealth Management, LLC, issued by the

Commission on August 21, 2013 (“Notice”). The Commission’s Notice alleges that Veruus is subject to statutory disqualification from Commission registration based on an Order of Default Judgment against Veruus, issued on November 28, 2012, by the District Court for the City and County of Denver, Colorado (“Default Order”). *DRCK LLC, David William McCarthy, and Rosemarie L. McCarthy v. Direction Labs, Inc., Veruus Wealth Management, LLC, Steve Linnenkamp, and Chisan Chong a/k/a Christian Chong a/k/a Chris Chong*, Case No. 2012-CV5305 (Denver Co. D. Ct., 2nd JD) (“*DRCK v. Direction Labs*”). The Colorado Court’s Default Order in *DRCK v. Direction Labs*: one, made findings of fact and conclusions of law that Veruus was liable on the claims of civil theft, conversion, unjust enrichment and breach of contract that were filed against it; and two, awarded the private plaintiffs total damages of \$1,635,197.46.

On August 22, 2013, the Commission's Proceedings Clerk, via registered mail, served the Commission’s Notice on Veruus at its last address listed with the National Futures Association (“NFA”): 4600 S. Syracuse Street, Suite 900, Denver, Colorado 80237.¹ Thus, Veruus was properly served pursuant to CFTC rule 3.50.²

¹ The Notice and accompanying documents were also served via certified mail to the Denver and Aurora, Colorado addresses of Chisan Chong, a listed principal of Veruus. The U.S. Postal Service returned the mailings sent to Veruus’ and Chong’s Denver addresses, because it was unable to deliver or forward them. Delivery of the Notice mailed to Chong's Aurora, Colorado address was also unsuccessful, because no one picked it up. As explained *infra* in footnote 2, under the Commission's rules, service on Veruus was complete upon mailing to its Denver, Colorado business address on file with the NFA.

² Pursuant to CFTC rule 3.30(a), 17 C.F.R. § 3.30(a) (2013), the address of each registrant as submitted on its application for registration or as submitted on the biographical supplement shall be deemed to be the address for delivery to the registrant for any communications from the Commission, including any summons, complaint, notice and other written documents or correspondence, unless the registrant specifies another address for this purpose. CFTC rule 3.30(b), 17 C.F.R. § 3.30(b) (2013), provides that each registrant, while registered and for two years after the termination of registration, must notify the National Futures Association (“NFA”) of any change of address, and that failure to do so may result in an order of default in any Commission or NFA proceedings. Moreover, pursuant to CFTC rule 3.50, 17 C.F.R. § 3.50 (2013), for purposes of an action for the denial, suspension or revocation of registration, service upon a registrant will be sufficient if mailed by registered mail or certified mail return receipt requested properly addressed to the registrant at the address shown on his application or any amendment thereto, and will be complete upon mailing.

Veruus did not respond to the Commission's Notice. Therefore, on September 26, 2013; I issued a Default Notice finding that Veruus was in default, and setting deadlines for the Division to file a motion for entry of a default judgment and for Veruus to file any opposition to the Division's motion.³ Subsequently, the Division timely filed a motion for entry of a default judgment, and Veruus failed to file a response to the Default Notice or to the Division's motion. Accordingly, this matter is ripe for entry of a default judgment.

As a result of its default, Veruus: one, has waived the opportunity for a hearing on the issues; and two, is precluded from introducing evidence of mitigation and rehabilitation which is necessary to rebut the presumption of unfitness for registration created by the findings of fact, conclusions of law, and sanctions in the Colorado Court's Default Order. Thus, the well-plead allegations in the Notice, as augmented by the evidence produced by the Division, and as supplemented by the proposed findings and conclusions in the Division's motion, are deemed true and conclusive for purposes of finding that Veruus is statutorily disqualified from registration under Sections 8a(4) and 8a(3)(K) of the Act. Accordingly, as set out below, the Division's motion has been granted, Veruus has been found to be conclusively unfit for registration and statutorily disqualified from registration, and the CPO and CTA registrations of Veruus have been revoked.

³ The Default Notice was served upon Chong at his Aurora, Colorado address. The U.S. Postal Service sent the Office of Proceedings a receipt dated September 28, 2013 confirming delivery. In addition, the U.S. Postal Service reported that service of the Default Notice in care of Daniel Suh, another listed principal of Veruus and its designated contact for compliance and regulation matters and communications from the CFTC, at Suh's Aurora, Colorado address was unsuccessful because no one picked it up. This Initial Decision will be served on Veruus: one, at its Denver, Colorado address listed with the NFA, two, in care of Chong at his Aurora, Colorado address, and three, in care of Suh (via UPS, signature waived).

Findings of Fact

1. Veruus Wealth Management, LLC, ("Veruus"), a Colorado Limited Liability Company, has been registered with the Commission as a CPO and as a CTA since May 3, 2012, pursuant to Section 4m of the Act, 7 U.S.C. § 6m (2012).⁴

2. On August 24, 2012, David W. McCarthy, his wife, and their Colorado limited liability company DRCK LLC ("DRCK") (collectively the "private plaintiffs") filed a Colorado state court civil injunctive action against Veruus, Direction Labs, Incorporated ("Direction Labs"), a Colorado corporation that solicited them to invest in a Veruus-managed foreign exchange trading account, and Veruus' and Direction Labs' chief executive officers, Chisan Chong and Steve Linnenkamp, respectively. *DRCK LLC, David William McCarthy, and Rosemarie L. McCarthy v. Direction Labs, Inc., Veruus Wealth Management, LLC, Steve Linnenkamp, and Chisan Chong a/k/a Christian Chong a/k/a Chris Chong*, Case No. 2012-CV5305 (Denver Co. D. Ct, 2nd JD) ("*DRCK v. Direction Labs*").

The private plaintiffs' alleged: one, that, from January through June 2012, Veruus and the other defendants knowingly obtained or exercised control over monies that private plaintiffs provided to Veruus to invest in a trading account to be managed by Veruus, after Direction Labs and other defendants solicited private plaintiffs by falsely promising that an initial \$300,000 investment would yield \$1,000,000 within twelve months, and that, without authorization and with the intent to deprive private plaintiffs of the use or benefit of those monies, Veruus and the other defendants improperly commingled and used the private plaintiffs' funds for operating expenses instead of for trading activity, thereby constituting civil theft and conversion; two, that

⁴ NFA records, attachment to Jung Affidavit and Certification, Exhibit I, Division's motion.

private plaintiffs made a \$500,000 investment in Direction Labs through a stock purchase agreement and advanced an additional \$48,000 for payroll to Direction Labs in exchange for additional stock in the company, and Veruus and the other defendants breached this agreement by improperly commingling funds; and three, that Veruus and the other defendants received a benefit at the private plaintiffs' expense by using private plaintiffs' trading funds for purposes other than those stated to the private plaintiffs, thereby unjustly enriching themselves at private plaintiffs' expense.

3. On November 28, 2012, in *DRCK v. Direction Labs*, the District Court for the City and County of Denver, Colorado entered an Order of Default Judgment against Veruus and Direction Labs ("Default Order"). The Default Order found that the private plaintiffs had filed claims for civil theft, conversion, unjust enrichment and breach of contract, that Veruus and Direction Labs had been properly served and had defaulted, and that Veruus and Direction Labs were jointly and several liable on those claims.

The Colorado Court's Default Order also found that the private plaintiffs suffered \$339,517.79 in damages under the civil theft claim, comprised of the \$300,000 investment and \$39,517.79 in reported profits in the trading account. Further, the Court ordered that the private plaintiffs were entitled to treble the damages of \$339,517.79 pursuant to C.R.S.A. § 18-4-405 (2012), which allows treble damages as a punitive remedy for stealing an owner's property. The Default Order therefore awarded total damages of \$1,589,557.56, which includes the \$339,517.79 trading account loss, trebled, plus \$548,000 recompense for private plaintiffs' stock purchase. The Colorado Court entered a final judgment amount of \$1,635,197.46, after adding fees, costs and pre-judgment interest.

Discussion and Conclusions of Law

In 1982, Congress created a two-tiered system of statutory disqualification, Futures Trading Act of 1982, Pub. L. No. 97-444, 96 Stat. 2294 (1983). The most egregious bases for disqualification are set out in Section 8a(2) of the Act. Additional bases for disqualification are set out in Section 8a(3) of the Act. Although less egregious than a Section 8a(2) disqualification, a Section 8a(3) disqualification is sufficiently serious to operate as a presumption that a person or firm is unfit to do business in a relevant registered capacity. The presumption of unfitness under Section 8a(3) can be rebutted by a showing of the preponderance of the evidence that full, conditioned or restricted registration would not pose a risk to the public, including, for example, mitigating circumstances, rehabilitation, or close supervision by another registrant. By defaulting, Veruus has precluded itself from presenting such rebuttal evidence, and has waived the opportunity for a hearing. *See* Commission rules 3.60(b)(1), 3.60(b)(2)(i), 3.60(b)(2)(ii)(A)-(C), and 3.60(e)(ii), 17 C.F.R. §§ 3.60(b)(1), 3.60(b)(2)(i), 3.60(b)(2)(ii)(A)-(C), and 3.60(e)(ii) (2013). *See generally* H.R. report No. 97-565, Part I at 49-50, and 96 (May 17, 1982); Sen. Rep. No. 384, 97th Cong, 2d Sess. 35-37 (1982); and Parts I and III of the preamble to the CFTC final rules implementing registration provisions of the Act, as amended by the Futures Trading Act of 1982, 49 Fed. Reg. 8208 (March 5, 1984), reported in Comm. Fut. L. Rep. ¶ 22,019, at 28,568-28,569, 28,572-28,573, and 28,578-28,579; and *In re Walter*, Comm. Fut. L. Rep. ¶ 24,215, at 35,009-35,011 (CFTC 1988).

Section 8a(4) of the Act, 7 U.S.C. § 12a(4) (2012), in relevant part, authorizes the Commission to revoke the registration of any person if cause exists under Section 8a(3) of the Act which would warrant a refusal of registration of that person, after the

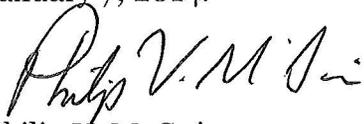
opportunity for a hearing. Section 8a(3)(K) of the Act, 7 U.S.C. § 12a(3)(K) (2012), in relevant part, authorizes the Commission to revoke the registration of any person who has been found by a court of competent jurisdiction to have violated any state or any rule, regulation or order thereunder which involves, among other things, theft or fraudulent conversion of funds.

Here, on November 28, 2012, in *DRCK v. Direction Labs*, the District Court for the City and County of Denver, Colorado, a court of competent jurisdiction, entered an Order of Default Judgment against Veruus. The Colorado Court's Default Order made findings of fact and conclusions of law that Veruus was liable on the claims of civil theft, conversion, unjust enrichment and breach of contract that had been filed against it, and awarded the private plaintiffs \$1,635,197.46 in damages. The Colorado Court's Default Order in *DRCK v. Direction Labs* therefore constitutes a valid basis for revoking Veruus' CPO and CTA registrations pursuant to Sections 8a(4) and 8a(3)(K) of the Act.

ORDER

Veruus Wealth Management, LLC is statutorily disqualified from registration under Sections 8a(4) and 8a(3)(K) of the Commodity Exchange Act. Accordingly: one, the Division's motion for entry of a default judgment is hereby granted; two, Veruus Wealth Management, LLC is found conclusively unfit for registration; and three, the commodity pool operator and commodity trading advisor registrations of Veruus Wealth Management, LLC are hereby revoked.

Dated January 7, 2014.


Philip V. McGuire,
Judgment Officer