

UNITED STATES OF AMERICA  
Before the  
COMMODITY FUTURES TRADING COMMISSION

ADVANTA IRA TRUST LLC f/b/o  
KEVIN TRAINA,

Complainant,

v.

JACOB MICHAEL HINKLE, JOHN WILLIAM  
SENDLOSKY, and TRADESTATION  
SECURITIES, INCORPORATED,

Respondents.

CFTC Docket No. 16-R016

**ORDER**

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12:58 pm Aug 03, 2017

Complainant Advanta IRA Trust LLC f/b/o Kevin Traina (“Traina”) brings this interlocutory appeal from an order of Judgment Officer Philip McGuire (“JO”) denying Traina’s motion to disqualify the JO on the basis of alleged bias.<sup>1</sup> Traina requests that his complaint be re-assigned to a different JO. For the reasons below, we dismiss this appeal as moot. We also explain that even if the appeal were not moot, we would find no misconduct.

**1. The Request that the JO be Disqualified Is Moot**

JO McGuire has now retired. Accordingly, this case will be assigned to a different deciding official. The appeal is, therefore, moot and must be dismissed. *Baclini v. Citigroup*, [2007-09 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 30,946 at 62,360 (Nov. 18, 2008) (denying as moot motion to disqualify ALJ because case had been consolidated before a different ALJ).

<sup>1</sup> Traina raised additional issues, but the Office of General Counsel, under authority delegated by the Commission, ruled that those issues could not be raised in an interlocutory appeal.

## 2. There Is No Basis for Disqualification

Although we decide this appeal on mootness grounds, we also conclude that it has no merit.

Bias warranting disqualification may be found only when the record establishes that a judicial officer has either (1) a personal bias stemming from an extrajudicial source or (2) a deep-seated favoritism or antagonism that would make fair judgment impossible. *In re R&W Technical Services, Ltd*, [1998-1999 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,582 at 47,746 (CFTC Mar. 16, 1999), *aff'd in relevant part, R&W Technical Servs. v. CFTC*, 205 F.3d 165 (5th Cir. 2000). Traina makes no allegation of bias arising from an extrajudicial source. Therefore, his showing of bias must be based upon application of the latter standard. In applying that standard, the Commission requires evidence that the presiding officer has an “unfavorable disposition” toward a party that is undeserved or excessive in degree. *In re Mayer*, [1996-98 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,259 at 46,130-31; 1998 WL 80513 at \*16 (CFTC Feb. 3, 1998). Adverse rulings almost never constitute grounds for disqualification. *Kelly v. First Investors Group of the Palm Beaches*, [1994-96 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶26,753 Comm. Fut. L. Rep.; 1996 WL 417509 (CFTC July 25, 1996), *citing Liteky v. United States*, 510 U.S. 540, 556 (1994). Nor do intemperate, impatient, or inappropriate remarks satisfy the disqualification standard. *Olson v. Ulmer*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,987 at 37,627 (CFTC Jan. 23, 1991); *Ferriola v. Kearse-McNeill*, [1999-2000 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 28,172 at 50,153; 2000 WL 873653 (CFTC June 30, 2000). Rather, “the ALJ’s conduct must be so extreme that it deprives the hearing of that fairness and impartiality necessary to that fundamental fairness required by

due process.” *Gimbel v. CFTC*, 872 F.2d 196, 198 (7th Cir. 1989) (internal citations and quotations omitted).

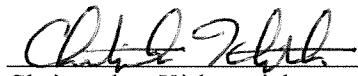
Traina claims that the JO “colluded” with Respondent’s counsel but fails to support this claim. He also cites various rulings of the JO that in his view demonstrate bias, including (among others): the JO’s order barring a non-attorney from representing Traina in violation of Commission rules; an order awarding costs against Traina for a series of motions the JO found frivolous; orders directing Traina to make and respond to discovery requests; and denial of a motion to consolidate. Traina also claims that the JO’s orders contained legal jargon that confused him as a *pro se* litigant. None of the examples cited by Traina, however, satisfy the “extreme” conduct standard for disqualification. The JO must have wide latitude to manage the docket, and nothing in the record here suggests that this JO abused that authority.

**Conclusion**

For the above reasons, the interlocutory appeal is dismissed.

IT IS SO ORDERED.

By the Commission (Acting Chairman GIANCARLO and Commissioner BOWEN).

  
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Christopher Kirkpatrick  
Secretary of the Commission  
Commodity Futures Trading Commission

Dated: August 3, 2017