

NATIONAL FUTURES ASSOCIATION
BEFORE THE
BUSINESS CONDUCT COMMITTEE

FILED

JUN 30 2010

NATIONAL FUTURES ASSOCIATION
LEGAL DOCKETING

In the Matter of:)
)
TURTLE FUTURES, INC.)
(NFA ID #332644),)
)
and)
)
RUSSELL SANDS)
(NFA ID #60840),)
)
Respondents.)

NFA Case No. 10-BCC-016

COMPLAINT

Having reviewed the investigative report submitted by the Compliance Department of National Futures Association ("NFA"), and having found reason to believe that NFA Requirements are being, have been or are about to be violated and that the matter should be adjudicated, NFA's Business Conduct Committee ("Committee" or "BCC") issues this Complaint against Turtle Futures, Inc. ("TFI") and Russell Sands ("Sands").

ALLEGATIONS

JURISDICTION

1. At all times relevant to this Complaint, TFI was an independent introducing broker ("IB") NFA Member located in Boca Raton, Florida.
2. At all times relevant to this Complaint, Sands was the sole owner, principal, and associated person of TFI and an NFA Associate.

BACKGROUND

3. TFI has been an IB Member of NFA since July 2003. Sands has been an NFA Associate since July 2003.
4. Sands markets himself as former protege of renowned Chicago futures trader, Richard Dennis ("Dennis"), with whom Sands worked in the early 1980s. After working with Dennis, Sands started his own commodity trading advisor ("CTA") firm in 1990 and has worked in the futures industry in varying capacities since that time.
5. Throughout Sands' career, his primary business activity has been the promotion of his futures-related seminars and his Turtle Trading system. Sands primarily markets and promotes his seminars and the Turtle Trading system (and other related trading systems) through several websites that he owns and operates. Sands also advertises his trading systems through websites controlled by third-party marketers, many of which have the same deficiencies as Sands' own websites. An investor who is interested in utilizing the Turtle Trading system to trade commodities must subscribe to the Turtle Trading system's e-hotline and pay a \$2,400 annual fee. In return, the investor/subscriber receives a daily e-mail from Turtle Talk – a registered non-NFA Member CTA owned by Sands – which provides trading signals for 43 different markets.
6. *Subscribers to the Turtle Trading system's e-hotline also receive* recommendations from Sands as to futures commission merchants ("FCMs") and IBs where subscribers can open trading accounts. In return, these FCMs pay TFI trailing commissions for the accounts of customers referred by Sands.

7. The above arrangement has been very lucrative for Sands. In 2007, 2008 and 2009, Sands, as the sole owner of TFI, received a total of at least \$686,000 in trailing commissions from various FCMs, which constituted substantially all of TFI's revenue during those years.
8. In 1997, this Committee issued a Complaint against Sands and the predecessor of TFI, which was also called Turtle Futures, Inc. ("TFI #1") charging them with using misleading promotional material. In defending against the 1997 Complaint, Sands claimed that he and TFI #1 were not responsible for the misleading promotional material cited in the Complaint because, according to Sands, it was not the promotional material of TFI #1 but that of Sands' non-Member CTA. However, the NFA Hearing Panel that heard the 1997 BCC case rejected Sand's argument calling it "a classic example of form over substance." The Hearing Panel also concluded that it would be "an untenable result for an NFA Member to avoid the requirements of NFA's advertising rules by setting up a non-NFA Member to prepare and disseminate misleading materials which effectively solicit customers for the Member."
9. Notwithstanding the Hearing Panel's Decision in the 1997 BCC action, in NFA's 2009 audit of TFI, NFA found that Sands continued to promote the Turtle Trading system through websites owned or controlled by him and that these websites included many of the same deficiencies as did the promotional material involved in the 1997 action and, as Sands did in the prior case, he claimed that his websites were not TFI's but, rather, those of Turtle Talk, his non-NFA Member

CTA. According to Sands, TFI did not use any websites or promotional material to solicit investors for the Turtle Trading system.

10. Sand's contention that these websites were Turtle Talk's and not TFI's is sophistry. Sands controlled these websites, directly or through his webmaster, and he and TFI received a substantial financial benefit from these websites in that they received trailing commissions for accounts of subscribers to the Turtle Trading system's e-hotline which were opened at one of Sands' recommended FCMs. Thus, Sands, as an NFA Associate and TFI, as an NFA Member, were responsible for the content of these websites and are liable for any violations of NFA Requirements attributable to these websites.
11. As alleged in greater detail, below, Sand's websites were highly misleading in that they contained hypothetical performance results that were not clearly labeled as hypothetical and they included numerous profit claims that emphasized the profit potential of trading futures without providing a meaningful and balanced disclosure of the risk of loss. These deficiencies are the same as those cited in the 1997 BCC case against TFI and Sands.

APPLICABLE RULES

12. NFA Compliance Rule 2-2(a) provides that no Member or Associate shall cheat, defraud or deceive, or attempt to cheat, defraud or deceive, any commodity futures customer.
13. NFA Compliance Rule 2-29(b)(1) provides that no Member or Associate shall use any promotional material which is likely to deceive the public.

14. NFA Compliance Rule 2-29(b)(3) provides that no Member or Associate shall use any promotional material which mentions the possibility of profit unless accompanied by an equally prominent statement of the risk of loss.
15. NFA Compliance Rule 2-29(b)(6) provides, in pertinent part, that no Member or Associate shall use any promotional material which includes a testimonial that is not representative of all reasonable comparable accounts and does not prominently state that the testimonial is not indicative of future performance or success.
16. NFA Compliance Rule 2-29(c)(1) provides, in pertinent part, that any Member or Associate who uses promotional material – which includes a measurement or description of or makes any reference to hypothetical performance results which could have been achieved had a particular trading system of the Member or Associate been employed in the past – must include in the promotional material the hypothetical disclaimer prescribed by the rule.
17. NFA Compliance Rule 2-29(c)(5) requires that any Member or Associate utilizing promotional material containing hypothetical performance results must adhere to all the requirements contained in the Board's Interpretive Notice ("Notice") relating to this issue. In pertinent part, the Notice requires Members and Associates to describe in the promotional material all of the material assumptions that were made in preparing the hypothetical results. At a minimum, the description of material assumptions must cover points such as initial investment amount, reinvestment or distribution of profits, commission charges,

management and incentive fees, and the method used to determine purchase or sale prices for each trade.

18. NFA Compliance Rule 2-39(a) provides, in pertinent part, that Members and Associates who solicit customers, introduce customers to a counterparty, or manage accounts on behalf of customers in connection with forex transactions shall comply with Sections (a), (b), (c), (e), (h), and (i) of Compliance Rule 2-36.
19. NFA Compliance Rule 2-36(b)(1) provides that no Forex Dealer Member or Associate of a Forex Dealer Member engaging in any forex transaction shall cheat, defraud or deceive, or attempt to cheat, defraud or deceive, any commodity futures customer.
20. NFA Compliance Rule 2-36(i), as incorporated by NFA Compliance Rule 2-36(a), requires any Member who uses promotional material that includes a measurement or description or makes any reference to hypothetical forex transaction performance results that could have been achieved had a particular trading system of the Member or Associate been employed in the past comply with Compliance Rule 2-29(c) and the related Interpretive Notice as if the performance results were for transactions in on-exchange futures contracts.

COUNT I

VIOLATION OF NFA COMPLIANCE RULES 2-2(a), 2-29(b)(1), 2-29(c)(1), 2-29(c)(5), 2-36(b)(1) AND 2-36(i): USING DECEPTIVE AND MISLEADING PROMOTIONAL MATERIAL WHICH FAILED TO CLEARLY LABEL HYPOTHETICAL PERFORMANCE AS HYPOTHETICAL AND FAILED TO INCLUDE THE REQUIRED HYPOTHETICAL DISCLAIMER.

21. The allegations contained in paragraphs 1 through 13 and 16 through 20 are realleged as paragraph 21.

22. As of NFA's June 2009 audit of TFI and Sands, Sands maintained at least four websites which he used to promote the Turtle Trading system. These websites included [www.russellsandsoriginalturtle.com], [www.turtletalk.net], [www.turtle-forex-trading.net], and [www.balancedtrader.net] (collectively referred to as "Sands' websites"). Sands' websites promoted the Turtle Trading system and explained how investors could subscribe to the system and begin trading commodities and forex.
23. Neither Sands nor TFI actually trade any accounts so all of the performance claims for the Turtle Trading system which appeared in Sands' websites were based on hypothetical rather than actual trading. However, Sands' websites failed to clearly label such hypothetical performance claims as hypothetical.
24. For example, in the website [www.russellsandsoriginalturtle.com], Sands had a link titled "Historical Performance." By clicking on this link, a potential investor was brought to a page which included a performance chart detailing the Turtle Trading system performance from 1990 through 2004. The page included a breakdown of, among other things, the total net profit over this period (over \$17 million), total number of winning trades (over 4,000) and percent of profitable trades (35%). The page also included a graphed line chart showing steady upward gains for this period. All of the above performance data was hypothetical. Yet, such performance data was not labeled as hypothetical, nor was it accompanied by the hypothetical disclaimer statement, as required by Compliance Rule 2-29(c)(1).

25. In another section of the website, [www.russellsandsoriginalturtle.com], entitled "Learn to Trade," Sands included another hypothetical performance chart that was not labeled as hypothetical. This hypothetical performance chart showed a \$1 million investment made in 1990 growing to \$10 million in 2003. Sands included his own version of a hypothetical disclaimer statement in this section of the website but it was neither prominently displayed nor in immediate proximity to the hypothetical performance chart. Instead, Sands' hypothetical disclaimer statement appeared five pages after the hypothetical performance chart. As a consequence, a potential investor reviewing the hypothetical performance chart, and the overwhelming positive performance it showed for the Turtle Trading system, would very likely not realize that such performance was hypothetical rather than actual performance.
26. Sands also sent e-mails to potential investors which included hypothetical performance charts that were not labeled as hypothetical and were not accompanied by the required hypothetical disclaimer statement. This was illustrated when an NFA auditor – who had sent his contact information to the [www.turtletalk.net] website – received an e-mail with an attachment containing two hypothetical performance charts that showed, once again, overwhelmingly positive performance for the Turtle Trading system. In this instance, one of the hypothetical charts showed a \$1 million investment growing to almost \$1.8 million in a fourteen-day period while the other chart showed a \$1 million investment growing to almost \$2.5 million. Neither of the two hypothetical performance

charts was labeled as hypothetical or accompanied by the required hypothetical disclaimer statement.

27. In addition to the futures websites Sands operated, he also operated a Forex website, [www.turtle-forex-trading.net]. Sands included several hypothetical performance charts on this website that showed positive performance for the Turtle Trading system and was accompanied by Sands' own version of a hypothetical disclaimer statement but did not include the hypothetical disclaimer statement required by NFA Compliance Rule 2-29(c), as incorporated in NFA Compliance Rule 2-36(i).
28. NFA Compliance Rule 2-29(c)(5) requires any Member or Associate who uses promotional material containing hypothetical performance results to adhere to all the requirements of the Interpretive Notice relating to this Rule, including the requirement that all hypothetical performance results must describe the material assumptions that were made in preparing the hypothetical results.
29. In contravention of NFA Compliance Rule 2-29(c)(5), Sands' websites, which contained hypothetical performance results, did not contain the material assumptions that were made in preparing these hypothetical results.
30. Sands' repeated failure to clearly label hypothetical performance as hypothetical, include the required hypothetical disclaimer statement, or the material assumptions that were made in preparing the hypothetical results, caused Sands' websites and promotional material to be misleading and deceptive in that they implied that the hypothetical results included therein were actual trading results as opposed to hypothetical.

31. By reason of the foregoing acts and omissions, TFI and Sands are charged with violations of NFA Compliance Rules 2-2(a), 2-29(b)(1), (c)(1) and (c)(5) and 2-36(b)(1) and (i), as incorporated by NFA Compliance Rule 2-39(a).

COUNT II

VIOLATION OF NFA COMPLIANCE RULES 2-2(a), 2-29(b)(1) AND 2-29(b)(3): USING DECEPTIVE AND MISLEADING PROMOTIONAL MATERIAL WHICH EXAGGERATED THE PROFIT POTENTIAL AND DOWNPLAYED THE RISK OF LOSS OF TRADING COMMODITIES.

32. The allegations contained in paragraphs 1 through 14 are realleged as paragraph 32.
33. Sands also marketed the Turtle Trading system through his book titled the "Turtle Book," which Sands advertised and sold through his website, [www.russellsandsoriginalturtle.com]. This website claimed that the "Turtle Book" would teach investors to trade the Turtle Trading system, which was described on the website as, "**The Most Powerful, Valuable and Profitable Trading Method EVER...!**" The website also claimed that the Turtles, as a group, managed \$2 billion and earned over \$300 million for their investors over a fourteen-year period.
34. In addition, Sands' website claimed that the Turtle Trading system would give investors their "ticket to wealth and freedom," and that investors could expect to spend no more than an hour a day trading using the Turtle Trading system. The website exclaimed, "Imagine – one hour a day and great profits!" – "sure as hell beats working for a living." The website also claimed that investors who used the Turtle Trading system would earn "**five times the money you can get from most so-called jobs.**"

35. The profit claims described in paragraphs 33 and 34 exaggerated the profit *potential of trading futures without providing any disclosure or balanced discussion of the risk of loss.*
36. In addition to the Turtle Trading system, Sands also has another trading system, called the Balanced Trader system, which he promoted on the website, [www.russellsandsoriginalturtle.com]. According to this website, the Balanced Trader system is for investors who have "been dreaming of finding **the (almost) perfect trading system**, [and] working minimal hours and still making unlimited income." The website also included the statement that "most people are afraid to trade or invest in the stock market because of the horror stories they've heard...[but] now, for the first time, you'll understand for yourself exactly how easy it is to start earning a great living in the most feared and misunderstood market in the world..." The website asked investors to "imagine a trading approach where over **sixty percent of the trades are profitable....**"
37. The above profit claims exaggerated the profit potential of trading futures by suggesting that investors could expect to make easy and exceptional profits using Sands' Balanced Trader system. Yet, in the thirteen-page section of the website which discussed the Balanced Trader system there were only two references to risk of loss but these references failed to accurately describe risk of loss and, instead, downplayed it. The first reference to risk stated as follows:

Is it risky? This is something that I am often asked, and it is a reasonable question, particularly as you may believe that trading can be a risky gamble. Well, the simple answer is that yes, of course, **there is risk involved, just like with almost anything in life.** But, of course, the **rewards are much larger as well**, which is why we do it..." (Emphasis added.)

38. The second reference to risk of loss appeared on the very last page of the thirteen-page section of the website which discussed the Balanced Trader system and also downplayed the risk of loss by stating that the website was "legally obligated" to give this information.
39. The above websites were deceptive, misleading, and unbalanced in that they exaggerated profit potential – by suggesting that investors could make large profits with relative ease using the Turtle Trading and the Balanced Trader trading systems – and, at the same time, downplayed the risk of loss of trading futures.
40. By reason of the foregoing acts and omissions, TFI and Sands are charged with violations of Compliance Rules 2-2(a), 2-29(b)(1) and (3).

COUNT III

VIOLATION OF NFA COMPLIANCE RULES 2-2(a) AND 2-29(b)(1): USING DECEPTIVE AND MISLEADING PROMOTIONAL MATERIAL THAT ATTEMPTED TO MINIMIZE THE SIGNIFICANCE OF NFA'S EARLIER DISCIPLINARY COMPLAINT.

41. The allegations contained in paragraphs 1 through 13 are realleged as paragraph 41.
42. In Sands' 1997 BCC case, an NFA Hearing Panel found that Sands' and TFI's promotional material was deceptive and misleading and that their conduct was inconsistent with just and equitable principles of trade. The Hearing Panel *ordered Sands and TFI to pay a \$20,000 fine and submit all promotional material to NFA for one year.*
43. Sands' websites sought to minimize the significance of the 1997 BCC case by comparing it to an exchange action for "swearing in the pit, or writing [your] orders in blue pen not black pen as per the rule." Sands' websites also implied

that Sands was charged and sanctioned in the 1997 BCC case not because of his misleading and deceptive promotional material but because "NFA needs to justify (and pay for) its existence...." Lastly, Sands' websites claimed that "given the (sometimes ridiculous) regulatory environment in this country, any large entity is going to at some point encounter minor infractions in the course of doing regular business...."

44. In downplaying the seriousness of the 1997 BCC case, Sands' website painted a deceptive and misleading picture of that case which, contrary to Sands' representations, involved serious NFA rule violations and a significant monetary sanction.
45. By reason of the foregoing acts and omissions, TFI and Sands are charged with violations of NFA Compliance Rules 2-2(a) and 2-29(b)(1).

COUNT IV

**VIOLATION OF NFA COMPLIANCE RULES 2-2(a), 2-29(b)(1) AND 2-29(b)(6):
USING DECEPTIVE AND MISLEADING PROMOTIONAL MATERIAL WHICH FAILED
TO STATE THAT TESTIMONIALS ARE NOT INDICATIVE OF FUTURE
PERFORMANCE, AND THAT GAINS TOUTED IN THE TESTIMONIALS WERE NOT
REPRESENTATIVE OF ALL REASONABLY COMPARABLE ACCOUNTS.**

46. The allegations contained in paragraphs 1 through 15 are realleged as paragraph 46.
47. Sands' websites also used testimonials that promoted the Turtle Trading system but failed to disclose that testimonials are not necessarily indicative of future performance.
48. In the "Testimonial" section of the website, [www.russellsandsoriginalturtle.com], there appeared two testimonials from customers who claimed to have enjoyed

profitable trading gains using the Turtle Trading system. One customer purportedly experienced a 50% gain, while another customer's account purportedly grew approximately \$25,000 over an unspecified period of time. However, these two testimonials were unaccompanied by the required disclaimer that testimonials are not necessarily indicative of future performance.

49. The above testimonials also failed to disclose that the type of gains purportedly made by these two accounts were not representative of all reasonably comparable accounts which used the Turtle Trading system.
50. In addition to the above testimonials, the website included notes from various attendees of Sands' seminars who claimed to be overwhelmingly satisfied with Sands' seminar presentations and trading advice. Again, however, these notes were unaccompanied by the disclaimer that past results are not indicative of future performance.
51. By reason of the foregoing acts and omissions, TFI and Sands are charged with violations of Compliance Rules 2-2(a), 2-29(b)(1) and (6).

PROCEDURAL REQUIREMENTS

ANSWER

You must file a written Answer to the Complaint with NFA within thirty days of the date of the Complaint. The Answer shall respond to each allegation in the Complaint by admitting, denying or averring that you lack sufficient knowledge or information to admit or deny the allegation. An averment of insufficient knowledge or information may only be made after a diligent effort has been made to ascertain the relevant facts and shall be deemed to be a denial of the pertinent allegation.

The place for filing an Answer shall be:

National Futures Association
300 South Riverside Plaza
Suite 1800
Chicago, Illinois 60606
Attn: Legal Department-Docketing

E-Mail: Docketing@nfa.futures.org
Facsimile: 312-781-1672

Failure to file an Answer as provided above shall be deemed an admission of the facts and legal conclusions contained in the Complaint. Failure to respond to any allegation shall be deemed an admission of that allegation. Failure to file an Answer as provided above shall be deemed a waiver of hearing.

POTENTIAL PENALTIES, DISQUALIFICATION AND INELIGIBILITY

At the conclusion of the proceedings conducted as a result of or in connection with the issuance of this Complaint, NFA may impose one or more of the following penalties:

- (a) *expulsion or suspension for a specified period from NFA membership;*
- (b) *bar or suspension for a specified period from association with an NFA Member;*
- (c) *censure or reprimand;*
- (d) *a monetary fine not to exceed \$250,000 for each violation found; and*
- (e) *order to cease and desist or any other fitting penalty or remedial action not inconsistent with these penalties.*

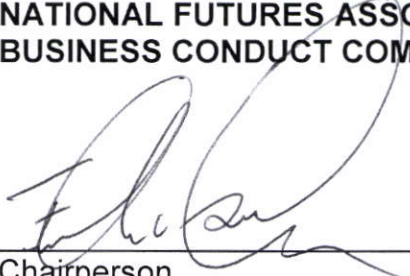
The allegations in this Complaint may constitute a statutory disqualification from registration under Section 8a(3)(M) of the Commodity Exchange Act. Respondents in this matter who apply for registration in any new capacity, including as an

associated person with a new sponsor, may be denied registration based on the pendency of this proceeding.

Pursuant to the provisions of Commodity Futures Trading Commission ("CFTC") Regulation 1.63 penalties imposed in connection with this Complaint may temporarily or permanently render Respondents who are individuals ineligible to serve on disciplinary committees, arbitration panels and governing boards of a self-regulatory organization, as that term is defined in CFTC Regulation 1.63.

**NATIONAL FUTURES ASSOCIATION
BUSINESS CONDUCT COMMITTEE**

Dated: 06/30/2010

By: 
Chairperson

m/rvh (Turtle Complaint)

AFFIDAVIT OF SERVICE

I, Nancy Miskovich-Paschen, on oath state that on June 30, 2010, I served copies of the attached Complaint, by sending such copies in the United States mail, first-class delivery, and by overnight mail, in envelopes addressed as follows to:

Turtle Futures, Inc.
449 N.W. 35th Street
Boca Raton, FL 33431
Attn: Russell J. Sands, President

Russell J. Sands
17615 Foxborough Lane
Boca Raton, FL 33496

Nancy Miskovich-Paschen
Nancy Miskovich-Paschen

Subscribed and sworn to before me
on this 30th day of June 2010.

Mary A. Patton
Notary Public

