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FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT, COMPLAINANT, v. **VINCENT P. MCCRUDDEN** (CRD NO. 1762690), **HEDGE FUND CAPITAL PARTNERS, LLC** (CRD NO. 113326), AND **HOWARD G. JAHRE** (CRD NO. 2238671), RESPONDENTS.	DISCIPLINARY PROCEEDING NO. 2007008358101 HEARING OFFICER: AHP **ORDER ACCEPTING OFFERS OF SETTLEMENT**

INTRODUCTION

Disciplinary Proceeding No. 2007008358101 was filed on June 26, 2008, by the Department of Enforcement of the Financial Industry Regulatory Authority (FINRA) (Complainant). Respondents Howard G. Jahre and Hedge Fund Capital Partners, LLC (HedgeCap) each submitted an Offer of Settlement to Complainant on January 9, 2009 (collectively, the Offers). Pursuant to FINRA Rule 9270(e), the Complainant and the National Adjudicatory Council (NAC), a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs (ODA) have accepted the uncontested Offers. Accordingly, this Order now is issued pursuant to FINRA Rule 9270(e)(3). The findings, conclusions and sanctions set forth in this Order are those stated in the Offers as accepted by the Complainant and approved by the NAC.

Under the terms of the Offers, Respondents Jahre and HedgeCap have consented, without admitting or denying the allegations of the Complaint, and solely for the purposes of this

proceeding and any other proceeding brought by or on behalf of FINRA, or to which FINRA is a party, to the entry of findings and violations consistent with the allegations of the Complaint, and to the imposition of the sanctions set forth below, and fully understand that this Order will become part of Respondents' permanent disciplinary records and may be considered in any future actions brought by FINRA.

BACKGROUND

Respondent Hedge Fund Capital Partners, LLC became registered with FINRA (formerly NASD) in 2001, and is currently registered. HedgeCap employs approximately six employees in four offices.

Respondent Howard G. Jahre, 61, became registered with FINRA in 1995. He holds Series 7, Series 24, and Series 63 licenses. He became associated with Hedge Fund Capital Partners, LLC ("HedgeCap") in July 2003 as a general securities representative (Series 7). In February 2004, Jahre became HedgeCap's President and Managing Member, and in 2005 acquired a majority ownership interest in the firm.

Respondent Vincent P. McCrudden, 48, became registered with FINRA in 1998. He was associated with HedgeCap from February 2005 to June 30, 2006 as a general securities representative (Series 7) and a principal (Series 24), although he ceased functioning in any principal capacity at HedgeCap in early October 2005. McCrudden worked on the trading desk at HedgeCap. McCrudden is not currently registered or associated with any member firm. Because the Complaint was filed within two years of the termination of McCrudden's registration with a member, McCrudden is subject to the jurisdiction of FINRA, pursuant to Article V, Section 4 of FINRA's By-Laws.

FINDINGS AND CONCLUSIONS

It has been determined that the Offer be accepted and that findings be made as follows:[1]

SUMMARY

1. In June and July 2006, McCrudden issued multiple threatening, abusive, harassing, coercive, intimidating and/or vulgar communications to members of his former firm, HedgeCap, in connection with a dispute primarily over floor brokerage fees and credit for certain commissions.

2. In July 2006, HedgeCap terminated McCrudden because of his threatening, intimidating and coercive behavior. Nevertheless, McCrudden requested that the firm submit a Form U5 filing that would misrepresent the reason for his termination, by stating that his termination had been voluntary. HedgeCap, acting through its President, Respondent Howard Jahre, agreed to file — and did, in fact, file — a misleading and inaccurate Form U5.

FACTS

3. In June 2006, a dispute arose between McCrudden and HedgeCap over approximately $24,850 in third-party floor trading expenses. HedgeCap claimed McCrudden charged these expenses to the firm when they were for the benefit of McCrudden's own accounts and accordingly should have been McCrudden's responsibility.

4. While he was engaged in a dispute with HedgeCap over trading expenses, McCrudden demanded payment of approximately $4,385 in brokerage commissions he claimed were owed to him by HedgeCap, as well as monies from a profitable trade he entered into the firm's error account.

[1] The findings herein are pursuant to the Offers of Settlement submitted by HedgeCap and Jahre and are not binding on any other person or entity named as a respondent in this or any other proceeding.

5. HedgeCap refused to pay the brokerage commissions until McCrudden reimbursed the firm for the floor broker expenses, and refused to pay any monies related to the error account. McCrudden threatened and harassed several HedgeCap employees by e-mail, instant message, and telephone.

Threatening, Coercive, Abusive, Harassing and Intimidating Acts by McCrudden Leading to his Termination

6. In an e-mail dated Friday, June 30, 2006 to HedgeCap's managing director, FN, regarding the dispute over brokerage commissions and the error account, McCrudden wrote:

> Ok [FN]. I have your number. . . . Have my fucking check made out to me by Monday and you can stick the $10k I did out of a favor to HedgeCap and James up your ass. You want to play this way? [O]k, fine. I have been around scumbags in wall street for 20 years. I know what to do.

7. In another e-mail later on June 30, 2006 to FN, with a copy to Jahre, McCrudden wrote:

> Listen buddy. My relationship is with Howard Jahre. Not you. Your [sic] pretty brave with my fucking money. Stay the fuck away from me. Your creative accounting says volumes about the way you conduct business. I am an equity owner of Hedge Fund Capital Partners and I helped build the business. Your petty scumbag methods will eventually get you into trouble. Luckily, it was [a] small amount of money for me. I know your kind. Take my advice and go back to cooking. You are not a legitimate businessman. You are [a] small time broker/crook who is trying to squeeze hard working people who actually take risk and make the money. [T]he street is littered with people like you.
>
> I will work directly with Howard [Jahre] from now on and develop my own ways to raise capital for funds like Stan's. I have enough going on right now. My advice to you is stay out of my way.

8. McCrudden sent a threatening instant message on June 30, 2006 to JS, who was a joint employee of HedgeCap and its joint venture partner and clearing firm: "[I]f I find out its

[sic] you behind this crap . . . you and I are going to have a major problem. [Y]ou understand me?"

McCrudden's Termination

9. As a result of these threats, abuse, and harassment, HedgeCap decided to fire McCrudden. Jahre, who was McCrudden's supervisor at the time, memorialized this intention in an e-mail to FN and JS later that day on June 30, 2006:

> I think its [sic] obvious that we are dealing with a bad guy. He is paranoid and thinks he never is in the wrong and it is always the other guys [sic] fault. . . . .
>
> Unless you have a reason, I want to fire him effective Sunday so he does not come into the office anymore. I will [U]5 him on Wednesday as well. If he fights it, we have proof he tried to stick us with his own brokerage as well as his threatening emails to both of you guys.
>
> Any objections? Please let me have your thoughts - I want him out of the organization ASAP.

10. The next morning, Saturday, July 1, 2006, FN replied to Jahre's e-mail: "no objections from me . . ." (ellipses in original).

11. Accordingly, that same day HedgeCap prepared to fire McCrudden. FN sent an e-mail to Jahre containing a draft termination letter for his review. FN also outlined the plan for McCrudden's termination. This plan included e-mailing the termination letter to McCrudden on Sunday so that he would not return to HedgeCap on Monday, July 3; denying him access to e-mail and the firm's file server; terminating his telephone line; changing the office locks to prevent him from entering HedgeCap's suite; and having the building's security request identification from everyone going to HedgeCap's floor to prevent McCrudden from entering the office. FN noted in his e-mail that "[i]ts [sic] worth a few bucks to keep him out of our offices."

12. FN's draft termination letter prohibited McCrudden from "making any further threats" or entering into HedgeCap's offices; required McCrudden to return corporate property and pay the $24,849.75 in floor brokerage expenses McCrudden had charged to the firm; denied McCrudden's claim for a payout from HedgeCap's error account; and addressed return of McCrudden's personal property. The draft termination letter concluded with the following language about McCrudden's U5 filing:

> I anticipate entering your U5 on the NASD CRD system on Monday, July 3rd. If all items above are complied with and your actions are performed in a professional, respectful manner, I will not have a reason to U5 you "for cause". However, if you fail to comply with everything listed above to my satisfaction, as your employer, I do reserve the right to U5 you "for cause" and will do so if I am not satisfied that all items have been taken care of properly and in an expedited fashion.

13. On Sunday, July 2, 2006, Howard Jahre sent McCrudden an "Official Notice" via e-mail (attached hereto as **Exhibit A**) terminating his employment with the firm, referencing McCrudden's conduct in e-mails sent to the firm's employees on June 30, 2006. This e-mail advised McCrudden that he was prohibited from entering the firm's office building; he was prohibited from "**making any further threats**" (emphasis in original); his access to firm e-mail and the firm's file server would be shut down; he needed to return firm property; and HedgeCap would return McCrudden's property to him via courier. The e-mail stated that it "**will serve as your official termination notice . . . effective immediately**" (emphasis in original); addressed the financial disputes between the parties; and indicated that Hedge Cap would file McCrudden's Form U5 on July 3, 2006.

14. Later that day, FN directed the firm's IT consultants to remove McCrudden's e-mail and server access and shut down his telephone line. He also had the firm's web designer

remove McCrudden's biography from the firm's website. McCrudden's electronic access card to the firm's office building was disabled.

15. McCrudden conceded in sworn testimony before FINRA investigative staff that he was fired by HedgeCap. When asked why he decided to leave HedgeCap he responded, "I didn't leave. I was basically fired and locked out."

McCrudden's Threatening, Coercive, Abusive, Harassing and Intimidating Post-Termination Actions

16. On Monday, July 3, 2006, at 9:32 a.m., McCrudden sent an instant message to JS stating "you and I are going to have our day brother . . . thats [sic] I promise you!" Minutes later, he sent the following e-mail to FN and a director of a private investment firm that had recently explored a business relationship with FN:

> DO NOT deal with this scumbag [FN] or Hedge Fund Capital Partners. They are stealing money from me and are the most unethical firm I have ever dealt with. I will explain later, but when I get done with them for what they have done to me, they will be out of business within a year. I will explain in more detail when I speak with you.

17. Also on Monday morning, July 3, 2006, in response to Jahre's termination e-mail, McCrudden sent an e-mail to Jahre seeking, among other things, access to HedgeCap's financial records to assist McCrudden in resolving his financial dispute with the firm. The e-mail concludes:

> I know you take pleasure in being a slimy bastard. After all I have done for you and the firm, to do this to me, you've set a new low. I will put you out of business. And you did this to get out of the 5% shares you owed me? Howard, you are a slimy piece of shit. I PROMISE you . . . you will not get away with this!

18. Later that morning, July 3, 2006, McCrudden sent a long e-mail to several employees of HedgeCap's joint venture partner and clearing firm, with copies to Jahre, FN, and

JS, which (1) noted that McCrudden had been "released" from HedgeCap; (2) described his existing financial disputes with HedgeCap, including a claim that he was owed a five percent equity interest in HedgeCap; (3) cast aspersions upon the ethics, professionalism, and abilities of Jahre, FN and JS; (4) accused Jahre, FN, and JS of numerous regulatory and criminal violations; and (5) noted "I will be contacting the regulatory and criminal agencies about this conduct and Howard Jahre's, [FN's] and [HedgeCap's] role in" regulatory and criminal violations. Later that day, McCrudden forwarded this e-mail to a trader HedgeCap hired in April 2006 with the warning "Be very careful with these guys, they are as low as they come" and similar warnings. The e-mail also pledged, "I am going to try and shut them down and report them to the regulatory and criminal authorities immediaitely [sic]."

19. On Monday afternoon, July 3, 2006, McCrudden sent an e-mail to FN, with a copy to Jahre, in which he referred to them respectively as "Fat Boy and Scumbag." After leveling several profanity-laced accusations against them, the e-mail closes as follows: "You for sure have finally messed with the absolute wrong guy at the wrong time! You have made a career out of fucking honest people out of their money. That's all going to end for you my man!"

20. As a result of McCrudden's threats, Jahre, FN, and JS believed that McCrudden would harm them physically. On Wednesday morning, July 5, 2006, Jahre and FN discussed obtaining restraining orders that would prohibit McCrudden from contacting Jahre, FN, and JS, because they were concerned he was going to wait for them outside of the firm's office building and assault them.

21. On July 5, 2006, McCrudden sent a long e-mail to LC, an officer at HedgeCap's joint venture partner and clearing firm, with copies to Jahre and FN. McCrudden confirmed that

the termination has taken him by surprise, claimed that he has "additional information [that] will shut down" HedgeCap, but offers to "move forward" and not harm the firm if several criteria are met, including a U5 that reflects a voluntary termination: "I want to be able to resign. I do not want them further effecting [sic] my career by putting some bullshit reason on my U5. If they do, I will of course fight it, but they will be out of business anyway by then." The e-mail further requests:

> I am urging you to try and get them to enforce my above requests so we can all move on with our careers and lives. If not, I will inflict as much damage as I possibly can for as long as I can in any way shape or capacity that I can use. If I don't hear back today, I will start the process.

22. In response to McCrudden's e-mail, FN e-mailed a long point-by-point rebuttal to LC, without copying McCrudden. Regarding the U5 issue, FN wrote:

> Although we haven't U5'd him yet, we would have every right to mark his U5 based on his conduct during the past five (5) days. We have no intention of attempting to mark up his U5 if he complies with the items listed in Howard's Office [sic] Notice on July 2nd.

23. Later on July 5, 2006, after failing to receive a satisfactory reply to his e-mail to LC, McCrudden sent the following e-mail to LC, with copies to Jahre and FN:

> Ok [LC]. Am sorry to hear that. I am headed into the city now and this is going to get ugly. Its [sic] an absolute shame no one is willing to do the right thing. Ok, I will take matters into my own hands. I tried to do it diplomatically. After all I have done for HedgeCap and [joint venture partner], I will absolutely not tolerate this shit. God help the people who get in my fucking way now!

24. McCrudden sent numerous e-mails and instant messages that contained statements that were threatening, abusive, harassing, intimidating, vulgar, and/or coercive over the course of several days in June and July 2006. Several of the e-mails insinuated threats of violence and threatened or attempted to cause harm to the personal and professional reputations

of HedgeCap and several of its personnel. McCrudden attempted to gain an advantage in his negotiations with HedgeCap by using threatening, intimidating, coercive, abusive, and harassing tactics. Such actions represent a profound departure from the high standards of commercial honor and just and equitable principles of trade that NASD Conduct Rule 2110 demands of its members.

HedgeCap, Jahre, and McCrudden Agree to File a Misleading and Inaccurate Form U5

25. After his dismissal from HedgeCap, McCrudden and the firm, through Jahre, agreed to settle the matter of the floor brokerage expenses, commissions, and other termination-related issues. Although McCrudden was unambiguously fired, he demanded as part of any settlement with HedgeCap that they agree to file a Form U5 with FINRA stating that his termination had been "voluntary."

26. In 2006, the General Instructions for Form U5 listed five available selections as the "Reason for Termination" — "Voluntary," "Deceased," "Permitted to Resign," "Discharged," or "Other." The Form U5 required an "explanation in the space provided" if "Permitted to Resign," Discharged," or "Other" was selected. McCrudden's termination from HedgeCap could not accurately and truthfully be described as "voluntary."

27. McCrudden had a strong motive to ensure that his U5 reflected a voluntary termination. His Central Registration Depository (CRD) record already revealed that he had been "Discharge[d]" from one firm on February 3, 2003 and "Permitted to Resign" from another firm on April 8, 2004. As with HedgeCap, McCrudden had sent vulgar, threatening, harassing, and coercive e-mails to employees of the firm he left on or about April 2004, some of which pressured the firm to describe his termination in more favorable terms. McCrudden's CRD

record also contained a Form U6 disclosing that the National Futures Association had issued an order denying his application for membership.

28. On July 13, 2006, FN sent an e-mail to McCrudden's lawyer, with a copy to Jahre, enclosing a proposed "letter . . . to summarize the terms of your separation from the Company." The letter proposed a settlement of the dispute between McCrudden and HedgeCap over commissions and floor brokerage expenses, but did not address McCrudden's U5 filing.

29. On July 20, 2006, McCrudden, through counsel, sent a counterproposal to Jahre. The counterproposal addressed the monetary and other disputes between McCrudden and HedgeCap, and included the following language concerning the filing of the Form U5:

> You [McCrudden] shall make said Settlement Payment to Howard Jahre, Esq., who shall hold the Settlement Payment in escrow pending the completion of the following events:
>
> 1. Filing of a U-5, that states you [McCrudden] voluntarily resigned, were not under investigation at the time you resigned, and contains no explanation or comments. The Parties acknowledge and agree that such a U-5 is truthful and accurate. . . .

30. After further negotiations, on or about August 8, 2006, Jahre and McCrudden executed a revised settlement agreement (dated August 2, 2006). Among other things, the executed agreement between McCrudden and HedgeCap acknowledged that the date of termination was June 30, 2006. As in the earlier draft, the executed agreement also contained the provision that a condition of settlement was the "Filing of a U-5, that states that you [McCrudden] voluntarily resigned, were not under investigation at the time you resigned, and contains no explanation or comments."

31. The filing of a Form U5 that falsely characterized the termination as voluntary was critical to the settlement between McCrudden and HedgeCap. This is underscored in an internal e-mail from FN to HedgeCap's compliance officer on August 16, 2006: "I need to provide proof of the clean U5 to his attorney before he releases our settlement money."

32. On August 16, 2006, Jahre on behalf of HedgeCap filed a Form U5 for McCrudden indicating that he voluntarily terminated his employment with the firm on June 30, 2006. Under Section 3 of the U5, in response to the question "Reason for Termination," the U5 stated "voluntary," and no comments were included in the free text field. After HedgeCap filed the U5, McCrudden's attorney paid HedgeCap $20,464.17, which was the amount due under the settlement.

Based upon the foregoing, Respondents violated NASD Rules and FINRA By-Laws as follows:

Respondent Jahre: By filing, on behalf of HedgeCap, a misleading and inaccurate Form U5, Jahre violated NASD Rule IM-1000-1 and Article V, Section 3 of FINRA's By Laws. He also thereby violated NASD Conduct Rule 2110.

Respondent HedgeCap: By filing, through HedgeCap, a misleading and inaccurate Form U5, HedgeCap violated NASD Rule IM-1000-1 and Article V, Section 3 of FINRA's By Laws. The firm also thereby violated NASD Conduct Rule 2110

Based upon these considerations, the sanctions hereby imposed by the acceptance of the Offer are in the public interest, are sufficiently remedial to deter Respondents from any future misconduct, and represent a proper discharge by FINRA, of its regulatory responsibility under the Securities Exchange Act of 1934.

SANCTIONS

It is ordered that Respondent HedgeCap

1. be censured; and

2. pay a fine in the amount of 10,000.

It is ordered that Respondent Jahre:

1. be suspended from acting in any principal capacity with any FINRA member firm for a period of ten (10) business days; and

2. pay a fine in the amount of $10,000.

The sanctions imposed herein shall be effective on a date set by FINRA staff.

SO ORDERED.

FINRA

Signed on behalf of the
Director of ODA, by delegated authority

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Dated: January 30, 2009