

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
FLORIDA

Commodity Futures Trading Commission v. Notus LLC d/b/a ROFX,
et al.

No. 1:22-CV-20291-GAYLES-TORRES, United States District Court for the Southern District of Florida
(March 25, 2026)

SUMMARY

The United States District Court for the Southern District of Florida denied Defendant Borys Konovalenko’s amended motion to set aside a default judgment under Federal Rule of Civil Procedure 60(b)(1), (4), and (6). The Court held that Konovalenko failed to establish excusable neglect or extraordinary circumstances, and that service through his private mailbox was proper under Florida Statute § 48.031(6)(a), so the judgment was not void.

CASE DETAILS

COURT	United States District Court for the Southern District of Florida
JURISDICTION	United States District Court for the Southern District of Florida
DECIDED	March 25, 2026
DOCKET	1:22-CV-20291-GAYLES-TORRES
DISPOSITION	other
PROCEDURAL POSTURE	Defendant Borys Konovalenko moved under Federal Rule of Civil Procedure 60(b)(1), (4), and (6) to set aside a default judgment. The district court denied the motion.
STANDARD OF REVIEW	Relief from a final judgment under Federal Rule of Civil Procedure 60(b) is discretionary; the movant bears the burden of establishing the applicable grounds for relief. A Rule 60(b)(4) challenge to a void judgment turns on whether service was valid.
PRECEDENTIAL VALUE	Unpublished federal district court order; persuasive value only.
PARTIES	Commodity Futures Trading Commission

TOPICS

- default judgment
- service of process
- default
- civil procedure
- commercial litigation

PRACTICE AREAS

civil procedure

commercial litigation

administrative law

remedies

QUESTIONS PRESENTED

1. Whether Konovalenko established excusable neglect warranting relief from the default judgment under Federal Rule of Civil Procedure 60(b)(1).
2. Whether the default judgment was void under Federal Rule of Civil Procedure 60(b)(4) because service at Konovalenko's private mailbox was invalid.
3. Whether extraordinary circumstances justified relief under Federal Rule of Civil Procedure 60(b)(6).

HOLDINGS

1. A defaulting party seeking relief for excusable neglect must show a meritorious defense, lack of prejudice to the nondefaulting party, and a good reason for failing to respond. Konovalenko failed to satisfy those requirements, so relief under Rule 60(b)(1) was denied.
2. Service was valid under Federal Rule of Civil Procedure 4(e)(1) and Florida Statute § 48.031(6)(a), and the default judgment was therefore not void under Rule 60(b)(4).
3. Relief under Rule 60(b)(6) was unwarranted because Konovalenko failed to show circumstances sufficiently extraordinary to justify setting aside the judgment.

KEY QUOTATIONS

“This is anything but excusable neglect.” (Section II.A)

“Indeed, it would be absurd for the Court to require the CFTC to search for other locations to serve Konovalenko when he expressly stated that the only place he could receive documents was his Private Mailbox.” (Section II.B)

FACTUAL BACKGROUND

The CFTC alleged that Konovalenko and others participated in a fraudulent enterprise that misappropriated at least \$58 million from investors. Konovalenko previously identified a Houston private mailbox as his actual mailing address and stated that other addresses were invalid and could not accept correspondence. The CFTC served him at that mailbox by leaving the summons and pleadings with the person in charge, but Konovalenko did not respond to either the original or amended complaint. He later claimed excusable neglect, invalid service, and extraordinary circumstances based partly on his detention in Spain and an alleged confidential agreement with the government.

PROCEDURAL HISTORY

The CFTC filed this action alleging violations of the Commodity Exchange Act and CFTC regulations. After service at Konovalenko's private mailbox, he failed to respond, and the clerk entered defaults after the original and amended complaints. The court entered a default judgment on April 22, 2024. Konovalenko filed the motion to vacate on April 22, 2025, and the court denied it on March 25, 2026.

DISPOSITION

other

CASES CITED

- Birmingham et al. v. Rofx.net, et al., Case No. 21-cv-23472-RS
- United States v. Borys Konovalenko, 23-cr-20022-RAR
- S.E.C. v. Simmons, 241 F. App'x 660, 663 (11th Cir. 2007)
- Florida Physician's Ins. Co., Inc. v. Ehlers, 8 F.3d 780, 783 (11th Cir. 1993)
- Sloss Indus. Corp. v. Eurisol, 488 F.3d 922, 935 (11th Cir. 2007)
- Barbato v. Wilcox, No. 9:23-CV-81582, 2024 WL 5106792, at *2 (S.D. Fla. May 6, 2024)
- Aldana v. Del Monte Fresh Produce N.A., Inc., 741 F.3d 1349, 1355 (11th Cir. 2014)
- Motes v. Couch, 766 F. App'x 867, 869 (11th Cir. 2019)

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