

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

U.S. Commodity Futures Trading Commission,

Plaintiff,

v.

Ian Bursztyn, John Capuano, Anthony DiNapoli,
Anthony Iannuzzi, John Messina, Stephen Moore,
Vito Napoletano, Patrick Sweeney, Joseph Torre,
and Itradecurrency USA, LLC,

Defendants.

03 CV 9125 (GBD)

ORDER

On November 18, 2003, the Commission filed a Complaint charging Defendant Anthony Iannuzzi ("Iannuzzi" or "Defendant") and others with willfully aiding and abetting the commission of the violation of Commission Regulation 1.1(b), 17 C.F.R. § 1.1(b) (2002), pursuant to Section 13(a) of the Commodity Exchange Act (the "Act"), 7 U.S.C. § 13c(b) (2001). Iannuzzi also was charged with violating Regulation 1.1(b), 17 C.F.R. § 1.1(b) (2002), as a controlling person, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2001). In addition, Iannuzzi was charged with violating Section 4(a) of the Act, 7 U.S.C. § 6(a) (2001), as a controlling person, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2001).

On November 20, 2003, Iannuzzi was properly served with the Complaint pursuant to Rule 4(e)(2) of the Federal Rules of Civil Procedure ("Fed. R. Civ. P."). Iannuzzi failed to answer the Complaint within the time permitted by Rule 12(a)(1) of the Fed. R. Civ. P.

Accordingly, on May 15, 2006, the Clerk of this Court entered a certificate of default against Iannuzzi for this Complaint.

The Commission has now submitted its Application for Entry of Default Judgment, Injunctive Relief, Damages and Ancillary Equitable Relief (“Application”) against Iannuzzi pursuant to Fed. R. Civ. P. 55(b)(2) and Local Rule 55.2(b). The Court has carefully considered the Complaint, the allegations of which are well-pleaded and hereby taken as true, the Application, and other written submissions of the Commission filed with the Court, and being fully advised, hereby:

GRANTS the Commission's Application against Iannuzzi and enters findings of fact and conclusions of law relevant to the allegations in the Complaint. The Court further grants the Commission's request for entry of a default judgment, injunctive relief, damages and ancillary equitable relief. Accordingly, the Court now issues the following Order (“Order”) against Iannuzzi.

I. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Jurisdiction and Venue

This Court has jurisdiction over the subject matter of this action and Iannuzzi pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, which authorizes the Commission to seek injunctive relief against any person whenever it shall appear that such person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of any provision of the Act or any rule, regulation, or order thereunder.

Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1, in that Iannuzzi was found in, inhabited, or transacted business in this district, the acts and

practices in violation of the Act occurred within this district, among other places, and Iannuzzi benefited from these acts and practices.

B. Findings of Fact

Iannuzzi is a New York State resident.

Iannuzzi owned, operated and was the Secretary, principal and manager of a retail foreign currency dealer.

From at least May to November 2003, Iannuzzi knowingly aided and abetted in a scheme with other co-conspirators to defraud and deceive banks. This scheme was called the "knowledgeable trades" scheme. Through these knowledgeable trades, Iannuzzi helped to defraud and deceive banks by knowingly and willfully engaging in illegal foreign currency futures transactions to convert bank funds and conceal this conversion from the banks.

The knowledgeable trade scheme operated as follows. In Step 1, in order to convert money from his employer, a trader at a defrauded bank (Bank #1) initiates two foreign currency transactions, in which he buys and sells foreign currency, between Bank #1 and a co-conspirator at another bank ("Bank #2"). The transactions are arranged through a co-conspirator at an interbank broker. Bank #1, the defrauded bank, is on the losing side of these transactions. In Step 2, the interbank broker arranges for another set of foreign currency transactions between Bank #2 and a co-conspirator at a retail foreign currency dealer. Bank #2 is on the losing side of these transactions. In Step 3, the retail foreign currency dealer engages in illegal foreign currency futures transactions in which it loses money to a retail customer who maintains accounts at a futures commission merchant ("FCM") and at a retail foreign currency dealer. In Step 4, the retail customer who holds the account at either the FCM or at the retail foreign currency dealer splits the cash proceeds with his co-conspirators. The persons and entities

involved in all of these transactions know from the outset that they are participating in illegal conversions of funds from the banks involved.

Iannuzzi knowingly facilitated and profited from this knowledgeable trades scheme. Iannuzzi helped convert funds totaling \$447,315⁴ from banks and received \$1,700 from this scheme.

The contracts in the knowledgeable trade scheme involved the purchase and sale of foreign currency for future as opposed to immediate or deferred delivery. The parties involved in these transactions did not have any business or personal need for the foreign currency. These parties did not intend to, and did not, take or make delivery of the foreign currencies as a consequence of these transactions. No accounts were maintained at any foreign financial institution to take or make delivery of foreign currency for any of the parties involved in these transactions. There was never any conversion from U.S. dollars to another currency. All trades were liquidated by offsetting the position by entering into an equal and opposite transaction and thereby taking the profits in dollars. The terms and conditions of these contracts were standardized.

The transactions involved in the knowledgeable trade scheme were not conducted on or subject to the rules of a board of trade that has been designated by the Commission as a contract market, nor were these transactions executed or consummated by or through a contract market or on a facility registered as a derivatives transaction execution facility. The parties involved in these foreign currency futures transactions were not eligible contract participants or enumerated regulated counterparties. None of the parties was a financial institution, a broker or dealer, an associated person of a broker or dealer, an insurance company, a financial holding company, or

an investment bank holding company. In addition, none of the parties was a FCM or an affiliate of a FCM.

C. Conclusions of Law

1. Commission Regulation 1.1(b)

From at least May 2003 to November 2003, Defendant Iannuzzi cheated or defrauded or ~~attempted to cheat or defraud banks and willfully deceived or attempted to deceive banks by,~~ among other things, intentionally aiding and abetting in the conversion of funds that had been misappropriated from banks in violation of Regulation 1.1(b), 17 C.F.R. § 1.1(b) pursuant to Section 13(a) of the Act, 7 U.S.C. § 13c(a) (2001).

Defendant Iannuzzi also is liable as a controlling person for the violation of Commission Regulation § 1.1(b), 17 C.F.R. § 1.1(b), to the same extent as all persons and entities under his control who have committed these violations pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2001).

2. Violation of Section 4(a) of the Commodity Exchange Act

From at least May 2003 to November 2003, the Defendant offered to enter into, executed, confirmed the execution of, or conducted an office or business in the United States for the purpose of soliciting, accepting any order for, or otherwise dealing in transactions in, or in connection with, a contract for the purchase or sale of a commodity for future delivery when: (a) such transactions were not conducted on or subject to the rules of a board of trade which was designated or registered by the Commission as a contract market or derivatives transaction execution facility for such commodity, and (b) such contracts were not executed or consummated by or through such contract market. Defendant is liable as a controlling person for the violation

of Section 4(a) of the Act, 7 U.S.C. § 6(a), pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2001), to the same extent as all persons and entities under his control who have committed this violation.

3. The Knowledgeable Trades Transactions Were Futures Contracts

The Commission has jurisdiction over the knowledgeable trades transactions because these transactions were foreign currency futures contracts. These contracts were fulfilled through offset to avoid delivery. Further, these foreign currency futures transactions were offered to or entered into with a customer who was not an eligible contract participant pursuant to Section 1a(12) of the Act, 7 U.S.C. § 1a(12). The counterparty to the customer was not a proper counterparty or an affiliate of a proper counterparty pursuant to Section 2(c)(2)(B) of the Act, 7 U.S.C. § 2(c)(2)(B). Accordingly, the Commission has jurisdiction over these knowledgeable trades transactions.

4. Appropriate Relief

Permanent injunctive relief is warranted in light of the egregious nature of Iannuzzi's conduct in aiding and abetting the conversion of funds from banks through the sale of illegal foreign currency futures contracts from May to November 2003 as well as his high level of scienter in participating in this well-planned scheme to systematically defraud banks. These facts demonstrate a reasonable likelihood of future violations.

Imposition of a civil monetary penalty is appropriate in this case as Iannuzzi's violations of the Act were intentional. Likewise, restitution is appropriate to make the bank victims whole and disgorgement is appropriate to deprive Iannuzzi of the use of ill-gotten gains.

II. ORDER FOR RELIEF

A. Permanent Injunction

IT IS HEREBY ORDERED that Defendant Iannuzzi is permanently restrained, enjoined and prohibited from directly or indirectly:

- 1) offering or entering into, executing, confirming the execution of, or conducting an office or business in the United States for the purpose of soliciting, accepting any order for, or otherwise dealing in transactions in, or in connection with, a contract for the purchase or sale of a commodity for future delivery;
- 2) cheating or defrauding or attempting to cheat or defraud any person; or willfully making or causing to be made to any person any false report or statement or causing to be entered for any person any false record; or willfully deceiving or attempting to deceive any person by any means whatsoever for any foreign currency transaction within the Commission's jurisdiction;
- 3) trading on or subject to the rules of any registered entity;
- 4) soliciting funds for, engaging in, controlling, or directing the trading of any commodity futures or options accounts for any other person or entity, whether by power of attorney or otherwise; and
- 5) applying for registration or seeking exemption from registration with the Commission in any capacity, and engaging in any activity requiring such registration or exemption from registration, except as provided in Regulation 4.14(a)(9) or acting as an agent or officer of any person registered, exempted from registration or required to be registered with the Commission, except as provided in Regulation 4.14(a)(9).

B. Civil Monetary Penalty

IT IS FURTHER ORDERED that as of the date of this Order, Defendant shall pay a civil monetary penalty in the amount of \$240,000 plus post judgment interest. Post-judgment interest shall be determined by using the Treasury Bill rate prevailing on the date of this Order pursuant to 28 U.S.C. § 1961.

All payments made by Defendant pursuant to this Order shall be applied first to satisfy Defendant's civil restitution and disgorgement obligations and, upon satisfaction of such obligations, shall thereafter be applied to satisfy the civil monetary penalty. Post-judgment interest shall accrue beginning on the date of entry of this Order.

Defendant shall pay such civil monetary penalty by electronic funds transfer, or by U.S. postal money order, certified check, bank cashier's check or bank money order, made payable to the U.S. Commodity Futures Trading Commission, and sent to Dennese Posey, or her successor, Division of Enforcement, U.S. Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581, under cover of a letter that identifies Defendant and the name and docket number of the proceeding; Defendant shall simultaneously transmit a copy of the cover letter and the form of payment to (a) Director, Division of Enforcement, U.S. Commodity Futures Trading Commission, at Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581, and (b) Regional Counsel, U.S. Commodity Futures Trading Commission, Eastern Regional Office, at 140 Broadway, 19th floor, New York, NY 10005.

C. Disgorgement and Restitution

1. Disgorgement

IT IS FURTHER ORDERED that as of the date of this Order, Defendant shall disgorge all benefits received, directly or indirectly, from acts or practices which constitute violations of the Act and Regulations as described herein. Defendant is therefore liable to disgorge his ill-gotten gains in the amount of \$1,700 (one thousand seven hundred dollars), plus pre-judgment interest and post-judgment interest. Pre-judgment interest from May 1, 2003, to the date of this Order shall be determined by using the underpayment rate established quarterly by the Internal Revenue Service pursuant to 26 U.S.C. § 6621(a)(2). Post-judgment interest shall accrue beginning on the date of entry of this Order and shall be determined by using the Treasury Bill rate prevailing on the date of this Order pursuant to 28 U.S.C. § 1961.

All disgorgement payments made by the Defendant shall be used to pay restitution to the defrauded victims. Defendant's disgorgement obligation is co-terminus with his restitution obligation, such that partial or full satisfaction or discharge of his disgorgement obligation shall simultaneously result in identical partial or full satisfaction or discharge of his restitution obligation. Further, Defendant's disgorgement obligation is co-terminus with Defendant's criminal judgment restitution obligation entered against Defendant on January 12, 2006, by the U.S. District Court for the Southern District of New York in *U.S. v. Iannuzzi*, S.D.N.Y. Docket No. 04 Cr. 0367 ("criminal judgment obligation"). Accordingly, partial or full satisfaction or discharge of Defendant's criminal judgment obligation shall simultaneously result in identical partial or full satisfaction or discharge of Defendant's civil disgorgement obligation.

Defendant shall pay such disgorgement to Brian Rosner, Esq., the Court-appointed Receiver, Rosner, Moscow & Napierala, LLP, 26 Broadway, 22nd floor, New York, NY 10004-

24424 by electronic funds transfer, or by U.S. postal money order, certified check, bank cashier's check or bank money order, under cover of a letter that identifies Defendant and the name and docket number of the proceeding; Defendant shall simultaneously transmit a copy of the cover letter and the form of payment to (a) Steven Ringer, Counsel of record for the plaintiff U.S. Commodity Futures Trading Commission, (b) Director, Division of Enforcement, U.S. Commodity Futures Trading Commission, at Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581, and (c) Regional Counsel, U.S. Commodity Futures Trading Commission, Eastern Regional Office, at 140 Broadway, 19th floor, New York, NY 10005.

2. Restitution

IT IS FURTHER ORDERED that as of the date of this Order, Defendant shall pay restitution to defrauded victims in the amount of \$447,31⁴ (four hundred forty seven thousand and three hundred fifteen dollars) plus pre-judgment and post-judgment interest. Pre-judgment interest from May 1, 2003, to the date of this Order shall be determined by using the underpayment rate established quarterly by the Internal Revenue Service pursuant to 26 U.S.C. § 6621(a)(2). Post-judgment interest shall accrue beginning on the date of entry of this Order and shall be determined by using the Treasury Bill rate prevailing on the date of this Order pursuant to 28 U.S.C. § 1961. Defendant is ordered to make such payments to Brian Rosner, Esq., the Court-appointed Receiver, Rosner, Moscow & Napierala, LLP, 26 Broadway, 22nd floor, New York, NY 10004-24424 by cashier's check, certified check or postal money order, under cover of a letter that identifies the name and docket number of this action and the name of this Court, with a copy to (a) Steven Ringer, counsel of record for the plaintiff U.S. Commodity Futures Trading Commission, (b) Director, Division of Enforcement, U.S. Commodity Futures Trading Commission, at Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581, and (c)



Regional Counsel, U.S. Commodity Futures Trading Commission, Eastern Regional Office, at 140 Broadway, 19th floor, New York, NY 10005.

D. Application of Civil Monetary Penalty and Restitution Payments

All payments made pursuant to this Order by Defendant shall first be made to the defrauded victims for restitution pursuant to a payment plan that will be determined by the Court until those amounts (including interest) are fully satisfied. All payments after satisfaction of the restitution shall be applied to the civil monetary penalty described herein.

Defendant's restitution obligation is co-terminus with Defendant's criminal judgment obligation entered against Defendant on January 12, 2006 by the U.S. District Court for the Southern District of New York in *U.S. v. Iannuzzi, et al.*, S.D.N.Y. Docket No. 04 Cr. 0367. Accordingly, partial or full satisfaction or discharge of Defendant's criminal judgment obligation shall simultaneously result in identical partial or full satisfaction or discharge of Defendant's civil restitution obligation.

E. Prohibition on Transfer of Funds

IT IS FURTHER ORDERED that Defendant shall not transfer or cause others to transfer funds or other property to the custody, possession or control of any other person for the purpose of concealing such funds or property from the Court, the Plaintiff, or any officer that may be appointed by the Court.

F. Permanent Receiver

IT IS FURTHER ORDERED that Brian Rosner, Esq., Rosner, Moscow & Napierala, LLP, 26 Broadway, 22nd floor, New York, NY 10004-24424 is appointed as a permanent equity receiver to take into his immediate custody, control, and possession all cash, cashier's checks, funds, assets, and property of Defendant, including funds or property of investors wherever

found, whether held in the name of Defendant or otherwise, including, but not limited to, all books and records of account and original entry, electronically stored data, tape recordings, all funds, securities, contents of safety deposit boxes, metals, currencies, coins, real or personal property, commodity futures trading accounts, bank and trust accounts, mutual fund accounts, credit card line-of-credit accounts and other assets, of whatever kind and nature and wherever situated. It is further ordered that such receiver is hereby authorized, empowered and directed to collect, take charge of, hold, and administer the same subject to further order of the Court in order to prevent irreparable loss, damage and injury to investors, conserve and prevent the dissipation of funds, prevent further evasions and violations of the federal commodities laws by the Defendant, and satisfy Defendant's obligation to pay restitution, disgorge his ill-gotten gains and pay a civil monetary penalty.

G. Notices

IT IS FURTHER ORDERED that all notices required to be given by any provision in this Order shall be sent by certified mail, return receipt requested, as follows:

Notice to Commission:	Regional Counsel U.S. Commodity Futures Trading Commission Division of Enforcement - Eastern Regional Office 140 Broadway, 19 th floor New York, New York 10005.
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H. Jurisdiction

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this case to assure compliance with this Order and for all other purposes related to this action.

SO ORDERED, at _____, New York on this ___ day of _____, 2006.

NOV 09 2006
George B. Daniels
Honorable George B. Daniels
UNITED STATES DISTRICT JUDGE

Respectfully submitted,
U.S. COMMODITY FUTURES TRADING
COMMISSION
Stephen J. Obie
Regional Counsel

By: *Steven Ringer*
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