UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

U.S. Commodity Futures Trading Commission, Plaintiff, v. Mazen Abdeldayem Defendant.	03 CV 9128 (GBD) **Order For Entry of Injunctive Relief, Damages and Ancillary Equitable Relief Against Mazen Abdeldayem**

On November 18, 2003, the Commodity Futures Trading Commission (the "Commission") filed a Complaint charging Mazen Abdeldayem ("Mazen" or "Defendant") and others with violating Sections 4b(a)(2)(i), (ii) and (iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i), (ii) and (iii) (2002) and Commission Regulations 1.1(b)(i) (ii) and (iii), 17 C.F.R. §§ 1.1(b) (1), (2) and (3) (2001).

On November 19, 2003, Defendant was properly served pursuant to Rule 4(d)(1) of the Federal Rules of Civil Procedure ("Fed. R. Civ. P."). Defendant failed to answer or otherwise defend the Complaint within the time permitted by Rule 12(a)(1) of the Fed. R. Civ. P. Accordingly, on November 4, 2004, the Clerk of this Court entered a certificate of default against Defendant, and on May 2, 2005, this Court entered a default judgment against Defendant.

The Commission has now submitted its Application for Entry of Injunctive Relief, Damages and Ancillary Equitable Relief ("Application") against Defendant 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 Defendant 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 injunctive relief, damages, restitution and disgorgement. Accordingly, the Court now issues the following Order ("Order") against Defendant.

I. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Jurisdiction and Venue

This Court has jurisdiction over the subject matter of this action and Defendant 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 Defendant was found in, inhabited, or transacted business in this district, and the acts and practices in violation of the Act occurred within this district, among other places, and Defendant benefited from these acts and practices.

B. Findings of Fact

Mazen resides in Brooklyn, NY and was a broker with Madison Deane & Associates, Inc. ("Madison Deane"). Mazen has never been registered with the Commission in any capacity.

Mazen solicited funds from the retail public for the purpose of trading managed foreign currency accounts which were, in fact, illegal off-exchange foreign currency futures contracts. Mazen, with the knowledge and consent of other co-conspirators, prepared a list of clients and the amounts Mazen wanted each of his clients to lose in trading. As a result, Mazen's co-

conspirators knowingly posted fictitious trades showing losses to Mazen's customers' accounts totaling $30,427.47, and Mazen was then paid $10,000 for his participation in this scheme.

The foreign currency contracts that Madison Deane purported to offer and sell were for future delivery of foreign currencies that were cash settled in U.S. dollars. The prices or pricing formulas were established at the time the contracts were initiated and were settled through offset, cancellation, cash settlement or other means calculated to avoid delivery.

Madison Deane marketed its foreign currency trading accounts to individuals who had assets totaling less than $5 million and had no business, personal or other need to take or make delivery in foreign currency or to hedge against movements in the foreign currency markets. Instead, investors entered into these transactions to speculate and profit from anticipated price fluctuations in the markets for these currencies. Investors did not anticipate taking – and did not take – delivery of the foreign currencies they purchased as a consequence of these investments. Madison Deane did not require investors to set up banking relationships in order to facilitate delivery of the foreign currencies.

Madison Deane was not a financial institution, broker or dealer, or associated person or affiliate of a broker dealer. Madison Deane was never a futures commission merchant ("FCM") or an affiliate of a FCM. Madison Deane did not conduct its transactions on a facility designated as a contract market or registered as a derivatives transaction execution facility. Also, Madison Deane did not conduct its foreign currency futures transactions on or subject to the rules of a board of trade that had been designated by the Commission as a contract market, nor were its transactions executed or consummated by or through a member of such contract market.

C. Conclusions of Law

1. Defendant's Transactions Were Futures Contracts

The foreign currency contracts offered and sold by Defendant through Madison Deane were futures contracts. The contracts involved the purchase and sale of foreign currency for future -- as opposed to immediate or deferred -- delivery. The contracts provided for delivery of a specific type of foreign currency at an unspecified point in the future at a price or pricing formula that was determined at the time the contract is entered. Madison Deane has never been a proper counterparty or an affiliate of a proper counterparty authorized under the Act or Regulations to engage in foreign currency future transactions with retail customers.

2. Violations of Section 4b(a)(2) of the Commodity Exchange Act and Commission Regulation 1.1(b)

From at least spring 2002 to November 2003, Defendant cheated or defrauded or attempted to cheat or defraud customers or prospective customers of Madison Deane and willfully deceived or attempted to deceive customers or prospective customers by, among other things: 1) preparing a list of customers and the amounts Mazen wanted each of his customers to lose in trading; 2) having his co-conspirators knowingly post fictitious trades showing losses to Mazen's customers' accounts totaling $30,427.47; and 3) receiving $10,000 for participation in this scheme all in violation of Sections 4b(a)(2)(C)(i), (ii) and (iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(C)(i), (ii) and (iii), and Regulations 1.1(b)(1), (2) and (3), 17 C.F.R.§§ 1.1(b)(1), (2) and (3). Defendant's conduct was in connection with the orders to make, or the making of, contracts of sale of commodities for future delivery, made or to be made, for or on behalf of any other persons, and such contracts for future delivery were or could be used for the purposes set forth in Sections 4b(a)(2)(C)(i), (ii) and (iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(C)(i), (ii) and (iii).

3. Appropriate Relief

Permanent injunctive relief is warranted in light of the egregious nature of the Defendant's conduct in misappropriating customer funds over a period of time as well as Defendant's high level of scienter in conducting a well-planned scheme to systematically defraud the public. These facts demonstrate a reasonable likelihood of future violations.

Imposition of a civil monetary penalty is appropriate in this case as Defendant's violations of the Act were intentional and directly impacted numerous victims of this fraud. Likewise, the remedies of disgorgement and restitution are appropriate to compensate the victims of Defendant's wrongful acts and to deprive Defendant of the use of ill-gotten gains.

II. ORDER FOR RELIEF

A. Permanent Injunction

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

1) cheating or defrauding or attempting to cheat or defraud such other person or willfully deceiving or attempting to deceive such other person by any means whatsoever in regard to any such order or contract in or in connection with any sale of any futures contract of any commodity that is or may be used for hedging or determining the price basis of any transaction or for delivering any commodity in interstate commerce for or on behalf of any other person;

2) cheating or defrauding or attempting to cheat or defraud any person 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 $120,000 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 the Director, Division of Enforcement, U.S. Commodity Futures Trading Commission, at the following address: Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581, and to the Regional Counsel, U.S. Commodity Futures Trading Commission, Eastern Regional Office, at the following address: 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. Defendant is therefore liable to disgorge his ill-gotten gains in the amount of $10,000 plus pre-judgment interest and post-judgment interest. Pre-judgment interest from April 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 customers. 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, Mazen's disgorgement obligation is co-terminus with Mazen's criminal judgment restitution obligation entered against Mazen on May 15, 2006, by the U.S. District Court for the Southern District of New York in U.S. v. Napoletano, et al., S.D.N.Y. Docket No.

04 Cr. 156 ("criminal judgment obligation"). Accordingly, partial or full satisfaction or discharge of Mazen's criminal judgment obligation shall simultaneously result in identical or partial or full satisfaction or discharge of Mazen'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 Steven Ringer, counsel of record for the plaintiff U.S. Commodity Futures Trading Commission and to the Director, Division of Enforcement, U.S. Commodity Futures Trading Commission, at the following address: Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581, and to the Regional Counsel, U.S. Commodity Futures Trading Commission, Eastern Regional Office, at the following address: 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 and be jointly and severally liable with his co-conspirators for restitution to defrauded customers in the amount of $30,427.47 (thirty thousand four hundred twenty seven dollars and forty seven cents) plus pre-judgment and post-judgment interest. Pre-judgment interest from April 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 Steven Ringer, counsel of record for the plaintiff U.S. Commodity Futures Trading Commission and to the Director, Division of Enforcement, U.S. Commodity Futures Trading Commission, at the following address: Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581, and to the Regional Counsel, U.S. Commodity Futures Trading Commission, Eastern Regional Office, at the following address: 140 Broadway, 19th floor, New York, NY 10005.

All payments made pursuant to this Order by Defendant shall first be made to the defrauded customers 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.

Mazen's restitution obligation is co-terminus with Mazen's criminal judgment obligation entered against Mazen on May 15, 2006, U.S. District Court for the Southern District of New York in U.S. v. Napoletano, et al., S.D.N.Y. Docket No. 04 Cr. 156. Accordingly, partial or full satisfaction or discharge of Mazen's criminal judgment obligation shall simultaneously result in identical or partial or full satisfaction or discharge of Mazen's civil restitution obligation.

D. 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.

E. 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 or her 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, and authorizing, empowering and directing such receiver to collect and take charge of and to hold and administer the same subject to further order of the Court, in order to prevent irreparable loss, damage and injury to investors, to conserve and prevent the dissipation of funds, to prevent further evasions and violations of the federal commodity laws by the Defendant and to satisfy Defendant's obligation to pay restitution, disgorge his ill-gotten gains and pay a civil monetary penalty.

F. 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, 19th floor
New York, New York 10005.

G. 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 NOV 07 2006, New York on this ___ day of _____, 2006.

George B. Daniels

Honorable George B. Daniels
UNITED STATES DISTRICT JUDGE

HON. GEORGE B. DANIELS