

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

vs.

THOMAS W. LAMAR,

Defendant

CIVIL ACTION NO. 98-70169
Judge Denise Page Hood

**CONSENT ORDER OF PERMANENT INJUNCTION AND OTHER
EQUITABLE RELIEF AGAINST DEFENDANT THOMAS W. LAMAR**

Plaintiff Commodity Futures Trading Commission ("Commission"), on February 13, 1998, filed a Complaint (the "Complaint") against Thomas W. Lamar, seeking injunctive and other equitable relief for violations of the Commodity Exchange Act, as amended, 7 U.S.C. §§ 1 et seq. (1994) ("Act"), and the Regulations promulgated thereunder, 17 C.F.R. §§ 1 et seq. (1998).

To effect a settlement of the matters alleged in the complaint in this action prior to a trial on the merits or any further judicial proceedings, defendant Lamar consents to the entry of this Order of Permanent Injunction and Other Equitable Relief Against Thomas W. Lamar ("Order"). As admitted below, Lamar also acknowledges service of the Summons and Complaint; waives the entry of findings of fact and conclusions of law as provided by Rule 52 of the Federal Rules of Civil Procedure, except as stated below; and waives all rights of appeal from this Order. In addition, Lamar waives all claims which he may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (1994) and 28 U.S.C. § 2412 (1994), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, §§ 231-32, 110 Stat. 862-63, and Part

148 of the Commission's Regulations, 17 C.F.R. §§ 148.1 et seq. (1999), to seek costs, fees and other expenses relating to, or arising from, this action. Further, defendant Lamar waives any claim of Double Jeopardy based upon the institution of this proceeding or the entry in this proceeding of any order imposing relief.

Lamar also consents to the continued jurisdiction of this Court for the purpose of enforcing the terms and conditions of this Order.

Lamar further affirms that he has agreed to this Order voluntarily, and that no promise or threat has been made by the Commission or any member, officer, agent or representative thereof, or by any other person, to induce consent to this Order, other than as set forth specifically herein.

By consenting to the entry of this Order, Lamar admits the allegations of the Complaint.

It further appearing to the Court that there is no just reason for delay, and the Court being fully advised in the premises,

THE PARTIES AGREE AND THE COURT HEREBY FINDS THAT:

1. This Court has jurisdiction over this action and all parties hereto pursuant to Section 6c of the Act, 7 U.S.C. §13a-1 (1994), 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 promulgated thereunder.

2. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (1994), in that the defendant is found in, inhabits, or transacts business in this district, and the acts and practices in violation of the Act have occurred within this district, among other places.

ORDER

A. IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT Defendant Lamar and any person insofar as he or she is acting in the capacity of officer, agent, servant, employee, and attorney of the Defendant, and any person insofar as he or she is acting in active concert or participation with the Defendant who receives actual notice of such order by person service or otherwise, is permanently enjoined from directly or indirectly:

1. violating Section 4b(a)(i)-(iii) of the Act, 7 U.S.C. § 6b(a)(i)-(iii) (1994), in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery, made or to be made, for or on behalf of any other person by (i) cheating or defrauding or attempting to cheat or defraud such other person; (ii) willfully making or causing to be made to such other person any false report or statement thereof, or willfully entering or causing to be entered for such person any false record thereof; or (iii) willfully deceiving or attempting to deceive such other person;
2. violating Section 4m(1) of the Act, 7 U.S.C. § 6m(1), by using the mails and instrumentalities of interstate commerce, without being registered with the Commission as a commodity trading advisor ("CTA") and a commodity pool operator ("CPO");
3. violating Section 4o(1) of the Act, 7 U.S.C. § 6o(1), by employing devices, schemes or artifices to defraud commodity customers and/or pool participants or prospective customers or participants, and engaging in transactions, practices or courses of business that operate as a fraud or deceit upon commodity customers and/or pool participants or prospective customers or participants;
4. violating Section 4n(3)(B) and 4n(4), 7 U.S.C. §§ 6n(3)(B) and 6n(4), by failing to provide full and complete disclosure to the pool participants of all futures market positions taken or held by the individual principals of the pool while not registered as a CPO or CTA and failing to furnish statements of account on a regular basis to each pool participant, with complete, accurate or truthful information as to the current status of trading accounts;
5. violating Regulation 4.20(a), 17 C.F.R. § 4.20(a) (1999), by failing to operate a commodity pool as an entity cognizable as a legal entity separate from the pool operator, Regulation 4.20(b), 17 C.F.R. § 4.20(b) (1999), by accepting investor funds in his own name rather than in the name of the pool, and Regulation 4.20(c), 17 C.F.R. § 4.20(c) (1999), by commingling pool funds with his own by depositing investor funds into futures trading and bank accounts which contained his own funds;

6. violating Regulations 4.21(a), 17 C.F.R. § 4.21(a) (1999), while acting as a CPO, by failing to deliver to pool participants a disclosure document for the pool containing the information set forth in Regulation 4.21(b), 17 C.F.R. § 4.21(b) (1999), and Regulation 4.24, 17 C.F.R. § 4.24 (1999), by soliciting, accepting or receiving funds and entering into an agreement to direct the participants' trading accounts without first receiving from participants a signed acknowledgment;
7. violating Regulation 4.22, 17 C.F.R. § 4.22 (1999), by failing to provide account statements and annual reports to pool participants showing total pool value and activity;
8. violating Regulation 4.30, 17 C.F.R. § 4.30 (1999), by accepting funds in the name of the CTA; and
9. violating Regulation 4.31(b), 17 C.F.R. § 4.31(b)(1999), while acting as a CTA, by soliciting, accepting or receiving funds and entering into an agreement to direct the participants' trading accounts without first receiving from participants a signed acknowledgment.

B. IT IS HEREBY FURTHER ORDERED that Defendant Lamar and any person insofar as he or she is acting in the capacity of officer, agent, servant, employee, and attorney of the Defendant, and any person insofar as he or she is acting in active concert or participation with the Defendant who receives actual notice of such order by personal service or otherwise, is permanently enjoined from directly or indirectly:

1. Soliciting or accepting any funds from any person in connection with the purchase or sale of any commodity futures and options on futures ("commodity interest") contract, placing orders, giving advice or price quotations or other information in connection with the purchase or sale of commodity interest contracts for himself or others, introducing customers to any other person engaged in the business of commodity interest trading, issuing statements or reports to others concerning commodity interest trading, and otherwise engaging in any business activities relating to commodity interest trading;
2. Controlling or directing the trading for any commodity interest account for or on behalf of any other person or entity, whether by power of attorney or otherwise;
3. Trading commodity interests for his own personal accounts or having any commodity interests traded on his behalf; and

4. Seeking registration in any capacity under the Act and acting in any capacity, including in a capacity exempt from registration under the Act or the Commission's Regulations, as a futures commission merchant, CPO, CTA, introducing broker, floor trader, floor broker or associated person or other agent or principal of any registrant as defined in the Act.

C. IT IS HEREBY FURTHER ORDERED that Lamar shall make restitution and disgorgement in the amount of \$2,838,169.08. Payment of restitution of \$2,838,169.08, as ordered in part by this Court in the criminal sentencing in United States v. Lamar, No. 98-80173 (E.D. Mich. 1998), satisfies the restitution and disgorgement obligations ordered in this action.

D. IT IS HEREBY FURTHER ORDERED that if any provision of this Order or the application of any provision or circumstance is held invalid, the remainder of the Order, and the application of the provision to any other person or circumstances, shall not be affected by the holding.

E. IT IS HEREBY FURTHER ORDERED that this Court shall retain jurisdiction of this action in order to implement and carry out the terms of all orders and decrees which have been or may be entered herein, to entertain any suitable application or motion for additional relief within the jurisdiction of this Court, and to assure compliance with this Order.

Done and ordered this AUG 05 1999 day of July, 1999 at Detroit, Michigan.

DENISE PAGE HOOD
UNITED STATES DISTRICT JUDGE

A TRUE COPY
CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

BY _____
DEPUTY CLERK

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