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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

vs.

Case No. 2:02-cv-94-FtM-29SPC

THOMAS D. CHILCOTT d/b/a Trade
Master of Southwest Florida; TED E.
WHIDDEN; LEONA WESTBROOK,

Defendants.

ORDER

On September 23, 2002, the Court entered a Consent Order of Permanent Injunction, the Appointment of a Receiver, and Other Equitable Relief as to Defendant Ted E. Whidden (Doc. #67) (the Consent Order).¹ The Consent Order briefly summarized the procedural history of this case, entered a permanent injunction, appointed a Receiver, and directed that Ted E. Whidden (Whidden) pay restitution and a civil monetary penalty in an amount to be determined later. The parties agreed to attempt to reach an agreement as to the amounts of the restitution and the civil

¹On July 18, 2002, the Court entered a similar Consent Order of Permanent Injunction, the Appointment of a Receiver, and Other Equitable Relief as to defendants Thomas D. Chilcott and Leona Westbrook (Doc. #63). Plaintiff and defendants Chilcott and Westbrook reached an agreement regarding the appropriate restitution and civil penalties, and on December 18, 2003, the Court approved the Supplemental Consent Order Concerning Restitution and Civil Monetary Penalty Against Defendants Thomas D. Chilcott and Leona Westbrook (Doc. #127).

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monetary penalty within ninety days, and if they were not successful the matter would be determined by the Court following a hearing. (Doc. #67, ¶ V.1 and 2.). Plaintiff and defendant Whidden were unable to reach an agreement, and after numerous extensions of time to facilitate settlement of the issue, an evidentiary hearing was conducted on January 6, 2004.

At the evidentiary hearing plaintiff relied upon the previously filed Declaration of Kyong J. Koh Pursuant to 28 U.S.C. 1746. (Doc. #125, Exhibit A). Defendant Whidden presented no specific objections or evidence, and declined the opportunity to examine witnesses (including Mr. Koh) who were available in court. Plaintiff did submit a letter to the Court on December 31, 2003, in response to the Court's December 17, 2003, Order (Doc. #129), stating a general objection to all proceedings. In light of the Consent Order (Doc. #67), this objection is overruled.

Having reviewed the Koh Declaration and the court file, the Court finds by a preponderance of the evidence that defendant Whidden is jointly and severally liable with the other defendants for: (1) restitution to the Trade Master of South West Florida Pool participants identified in Attachment A of this Order in the amount of \$2,107,092.37; (2) pre-judgment interest on the restitution in the amount of \$172,428.78 as of October 31, 2003, and thereafter at the rate established by the Internal Revenue Service pursuant to 26

U.S.C. § 662(a)(2); and (3) a civil monetary penalty in the amount of \$990,000.

On March 19, 2002, the Court entered an Order (Doc. #27) which directed financial institutions to freeze the defendants' assets. In doing so, the Court allowed defendant Ted Whidden a living allowance of \$3,000, per month to be first taken from current and future earnings and second from any personal accounts. (See Doc. #27). Paragraph 4, Page 11, of the Consent Order of Permanent Injunction, the Appointment of a Receiver, and Other Equitable Relief as to Defendant Ted E. Whidden (Doc. #67), provides that "[t]he monthly living allowance shall continue until further order of the Court, which shall be entered following an order for restitution and/or civil monetary penalty." Having determined the amount of restitution and civil penalties, the monthly living allowance limitation of \$3,000, is hereby lifted, and defendant Whidden shall forthwith have full access to all assets, accounts, or safe deposit boxes.

Accordingly, it is hereby

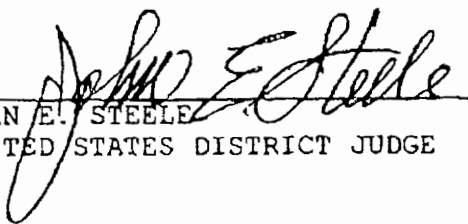
ORDERED AND ADJUDGED:

1. That defendant Ted E. Whidden is jointly and severally liable, with the other named defendants, for restitution to the Trade Master of South West Florida Pool participants in the amount of \$2,107,092.37, plus pre-judgment interest on the restitution of \$172,428.78 as of October 31, 2003, and thereafter at the rate

established by the Internal Revenue Service pursuant to 26 U.S.C. § 662(a)(2); and civil monetary damages in the amount of \$990,000. Let execution so issue. The Clerk shall provide plaintiff a certified copy of this Order.

2. The monthly living allowance limitation of \$3,000 set forth in previous Orders is hereby **lifted**, and defendant Whidden shall forthwith have full access to all assets, accounts, or safe deposit boxes.

DONE AND ORDERED at Fort Myers, Florida, this 10th day of January, 2004.


JOHN E. STEELE
UNITED STATES DISTRICT JUDGE

5)

Copies:
United States Magistrate Judge
Counsel of record
Ted E. Whidden
DCCD
DCLC