

IN THE UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

v.

KEITH ELSESSER and

PHOENIX GLOBAL TRADING, INC.
a Florida corporation,

Defendants.

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)
) CIVIL ACTION NO. 8:03-CV-681-
) T-23TBM
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) Hon. Steven D. Merryday
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CONSENT ORDER OF PERMANENT INJUNCTION
AND OTHER EQUITABLE RELIEF AGAINST
DEFENDANT KEITH ELSESSER

On April 15, 2003, plaintiff Commodity Futures Trading Commission ("Commission") filed a Complaint against Keith Elsesser ("Elsesser") and Phoenix Global Trading, Inc. ("Phoenix") (collectively, "defendants") seeking injunctive and other equitable relief for violations of the Commodity Exchange Act, as amended ("Act"), 7 U.S.C. §§ 1 *et seq.* (2001), and the Regulations promulgated thereunder, 17 C.F.R. §§ 1 *et seq.* (2002). Entry of this Consent Order of Permanent Injunction and Other Equitable Relief would conclude this action as to defendant Keith Elsesser.

I.

CONSENTS AND AGREEMENTS

To effect settlement of the matters alleged in the Complaint against Elsesser without a trial on the merits or any further judicial proceedings, defendant Elsesser:

1. Consents to the entry of this Consent Order of Permanent Injunction and Other Equitable Relief Against Defendant Keith Elsesser ("Order").

2. Affirms that the defendant 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.

3. Acknowledges service of the Summons and Complaint.

4. Admits jurisdiction of this Court over him and the subject matter of this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2001).

5. Admits that venue properly lies with this Court pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2001).

6. Waives:

- a. the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure, except as set forth below;
- b. 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 Pub. L. No. 104-121, §§ 231-32, 110 Stat. 862-63, and Part 148 of the Regulations, 17 C.F.R. § 148.1, et seq. (2002), relating to, or arising from, this action;
- c. any claim of double jeopardy based upon the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief; and
- d. all rights of appeal from this Order.

7. By consenting to the entry of this Order, defendant Elsesser neither admits nor denies the allegations of the Complaint except as to jurisdiction and venue, which he admits. Defendant Elsesser agrees that neither he nor any of his agents or employees acting under his authority or control shall take any action or make any public statement denying, directly or

indirectly, any allegation in the Complaint or findings or conclusions in this Order, or creating, or tending to create, the impression that the Complaint or this Order is without a factual basis; provided, however, that nothing in this provision shall affect defendant's (i) testimonial obligations; or (ii) his right to take legal positions in other proceedings to which the Commission is not a party. Defendant shall take all necessary steps to ensure that all of his agents and employees understand and comply with this agreement.

8. Defendant consents to the continued jurisdiction of this Court for the purpose of enforcing the terms and conditions of this Order and for any other purposes relevant to this case.

II.

FINDINGS AND CONCLUSIONS

It further appearing to this Court that there is no just reason for delay, the Court being fully advised in the premises and the Court finding that there is just cause for entry of this Order that fully disposes of all issues in this matter, THE PARTIES AGREE AND THE COURT FINDS THAT:

1. This Court has jurisdiction over the subject matter of this action and all parties hereto pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2001), 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.

2. This Court has personal jurisdiction over Elsesser and Elsesser has waived service of Summons and Complaint and consented to the Court's jurisdiction over him.

3. Venue properly lies with this Court pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, 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, are occurring, or are about to occur within this district, among other places.

III.

ORDER FOR PERMANENT INJUNCTION

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. Defendant Elsesser is permanently restrained, enjoined and prohibited from directly or indirectly:
 - A. Cheating, defrauding or willfully deceiving or attempting to cheat, defraud or willfully deceiving or attempting to deceive other persons in or in connection with any offer to enter into, the entry into, or the confirmation of the execution of, any commodity option transaction, in violation of Section 4c(b) of the Act, 7 U.S.C. § 6c(b) (2001), and Commission Regulations 1.1(b)(1) and (3) and 32.9(a) and (c), 17 C.F.R. §§ 1.1(b)(1) and (3) and 32.9(a) and (c) (2002); and
 - B. Offering to enter into, entering into, confirming the execution of, or conducting business for the purpose of soliciting, accepting any order for, or otherwise dealing in any transaction in, or in connection with, a commodity option when: (a) such transactions have not been executed, (b) such transactions, if executed, have not been conducted on or subject to the rules of a board of trade which has been designated by the Commission as a "contract market" for such commodity, and (c) such contracts, if executed, have not been executed or consummated by or through a member of such contract market, in violation of Section 4c(b) of the Act, 7 U.S.C. § 6c(b) (2001), and Commission Regulations 32.11 and 33.3(a), 17 C.F.R. §§ 32.11 and 33.3(a) (2002).
2. Defendant Elsesser is further permanently restrained, enjoined and prohibited from directly or indirectly:
 - A. Trading on or subject to the rules of any registered entity;
 - B. Engaging in, controlling, or directing the trading of any commodity futures, options on futures, or options on foreign currency accounts for or on behalf of any other person or entity, whether by power of attorney or otherwise; and

- C. Applying for registration or claiming exemption from registration with the Commission in any capacity, and engaging in any activity requiring such registration or exemption from registration, except as provided for in Section 4.14(a)(9) of the Commission's Regulations, 17 C.F.R. § 4.14(a)(9) (2002), or acting, directly or indirectly, as a principal, agent, or any other officer, agent or employee of any person registered, required to be registered, or exempted from registration with the Commission, unless such exemption is pursuant to Section 4.14(a)(9) of the Commission's Regulations, 17 C.F.R. § 4.14(a)(9). This includes, but is not limited to, soliciting, accepting or receiving any funds, revenue, or other property from any person, giving advice for compensation, or soliciting prospective customers, related to the purchase or sale of any commodity futures, options on futures, or options on foreign currency.

3. The injunctive provisions of this Order shall be binding on defendant Elsesser and upon any person insofar as he or she is acting in the capacity of officer, agent, servant, employee or attorney of the defendant, and upon any person who receives actual notice of this Order by personal service or otherwise insofar as he or she is acting in active concert or participation with defendant Elsesser.

IV.

ORDER FOR OTHER EQUITABLE RELIEF

IT IS FURTHER ORDERED THAT:

1. RESTITUTION: Defendant Elsesser shall pay restitution to investors in the amount of \$72,000 plus pre-judgment interest thereon from April 15, 2003 to the date of this Order, in the amount of \$1,507.50. Pre-judgment interest is calculated at the underpayment rate established by the Internal Revenue Service, pursuant to 26 U.S.C. § 662(a)(2). Interest after the date of this Order until the restitution is paid in full shall be paid at the post-judgment interest rate set forth in 28 U.S.C. § 1961. Attachment A, attached hereto, includes the names and last known addresses of the investors to whom restitution shall be made pursuant to this paragraph, together with the amount of restitution payable by the defendant Elsesser to each of them (not including required interest).

2. CIVIL MONETARY PENALTY: Elsesser shall pay a contingent civil monetary penalty of \$120,000, commencing on his fulfillment, or the discharge, of his total restitution obligations as set forth in Paragraph IV.1., above. Elsesser shall make such payment 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 Commodity Futures Trading Commission, and sent to Dennese Posey, Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581, with a copy to Division Director Gregory M. Mocek, under cover of a letter that identifies Elsesser and the name and docket number of the proceedings.

3. THIRD-PARTY BENEFICIARIES: Pursuant to Rule 71 of the Federal Rules of Civil Procedure, each of the individuals identified in Attachment A is explicitly made an intended third-party beneficiary of this Order and may seek to enforce obedience of this Order to obtain satisfaction of any portion of the restitution amount which has not been paid by the defendant, to ensure continued compliance with any provision of this Order and to hold the defendant in contempt for any violations of any provision of this Order.

V.

MISCELLANEOUS PROVISIONS

A. ENTIRE AGREEMENT, AMENDMENTS and SEVERABILITY. This Order incorporates all of the terms and conditions of the settlement among the parties. Nothing shall serve to amend or modify this Order in any respect whatsoever, unless: (1) reduced to writing, (2) signed by all parties, and (3) approved by order of the Court. If any provision of this Order or the application of any provision or circumstance is held invalid, the remainder of this Order shall not be affected by the holding.

B. WAIVER. The failure of any party at any time or times to require performance of any provision hereof shall in no manner affect the right of such party at a later time to enforce the same or any other provision of this Order. No waiver in one or more instances of the breach of any provision contained in this Order shall be deemed to be, or construed as, a further or continuing waiver of such breach or waiver of the breach of any other provision of this Order.

C. SUCCESSORS AND ASSIGNS. This Order shall inure to the benefit of and be binding on the parties' successors, assigns, heirs, beneficiaries and administrators.

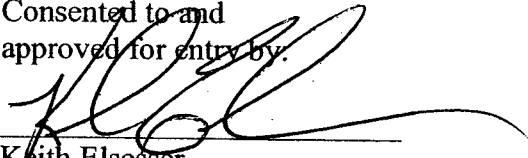
D. TRANSFER OF ASSETS. Defendant Elsesser shall not transfer or cause others to transfer funds or other property to the custody, possession, or control of any other person for the purpose of concealing such funds from the Court, the Commission, or any investor until the restitution and civil monetary payments have been paid in full, including interest.

E. JURISDICTION. This Court shall retain jurisdiction of this cause to assure compliance with this Order and for all other purposes related to this action.

There being no just reason for delay, the Clerk of the Court is hereby directed to enter this Consent Order of Permanent Injunction and Other Equitable Relief Against Defendant Keith Elsesser.

Done and ordered on this 2 day of December, 2003.

Consented to and
approved for entry by:




Keith Elsesser

Pro Se

Dated: 12/2/03

UNITED STATES DISTRICT COURT JUDGE

 1/14/04

Mark Bretscher
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ATTACHMENT A
RESTITUTION SCHEDULE

CUSTOMER NAME	NET OWED TO CUSTOMER	PRORATED DISTRIBUTION AMOUNT
	\$72,000	100.00%
Richard Bainbridge	\$25,000.00	34.7%
Juanita Bainbridge	\$36,000.00	50.0%
Les Darling	\$11,000.00	15.3%

FILED

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

JAN 26 PM 3:19
CLERK, U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA, FLORIDA

COMMODITY FUTURES
TRADING COMMISSION,

Plaintiff,

v.

Case No. 8:03-cv-681-T-TBM

KEITH ELSESSER,¹

Defendant.

MAGTRL

ORDER

THIS MATTER is before the court on the parties' proposed Consent Order of Permanent Injunction and Other Equitable Relief Against Defendant Keith Elsesser (Doc. 36). By way of their proposed consent order, the parties seek to resolve this case in its entirety.

Upon consideration, it is ORDERED that the parties' proposed Consent Order of Permanent Injunction and Other Equitable Relief Against Defendant Keith Elsesser (Doc. 36) is APPROVED. The relief awarded therein is so ordered. As the consent order has resolved all matters pending in this case, the cause is hereby DISMISSED. As set forth in the consent order, the court reserves and retains jurisdiction of the cause to assure compliance

¹The Honorable Steven D. Merryday entered default judgment against Defendant Phoenix Global Trading, Inc., on September 4, 2003. See (Doc. 25). Thereafter, the parties consented to the exercise of jurisdiction by a United States magistrate judge. See (Doc. 30).

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with its provisions and for other necessary purposes arising from this settlement. The Clerk is directed to terminate any pending motions and close the file.

Done and Ordered in Tampa, Florida, this 26th day of January 2004.



THOMAS B. McCOUN III
UNITED STATES MAGISTRATE JUDGE

Copies furnished to:
Counsel of Record