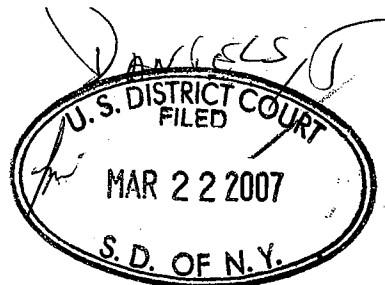


DOC # 63



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

U.S. Commodity Futures Trading Commission,

Plaintiff,

v.

John Messina

Defendant.

03 CV 9125 (GBD)

I.

**CONSENT ORDER OF PERMANENT INJUNCTION,
CIVIL MONETARY PENALTY, AND OTHER EQUITABLE RELIEF
AGAINST DEFENDANT JOHN MESSINA**

On November 18, 2003, the Commission filed a Complaint charging Defendant John Messina ("Messina" or "Defendant") and others with willfully aiding and abetting the violation of the Commission's Regulations 1.1(b)(1), (2) and (3), 17 C.F.R. § 1.1(b)(1), (2) and (3) (2002), pursuant to Section 13(a) of the Commodity Exchange Act (the "Act"), 7 U.S.C. § 13c(a) (2001). The complaint sought injunctive and other equitable relief. The Court entered an *ex parte* statutory restraining order on November 18, 2003 that, among other things, froze all assets belonging to or related to Defendant and ordered the maintenance of, and access to, business records.

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II.

CONSENT AND AGREEMENT

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

1. Consents to the entry of this Consent Order of Permanent Injunction, Civil Monetary Penalty, and Other Equitable Relief Against Defendant John Messina (“Order”).
2. Affirms that he has agreed to this Order voluntarily, and that no threats, or promises other than as contained herein, have been made to induce Defendant’s consent to this order.
3. Acknowledges service of the Summons and Complaint.
4. Admits jurisdiction of this Court over him, admits that the Court has subject matter jurisdiction over this action, and admits that venue properly lies with this Court pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2002).
5. Waives:
 - (a) all claims that he may possess under the Equal Access to Justice Act, 5 U.S.C § 504 (2000) and 28 U.S.C. § 2412 (2000), relating to, or arising from, this action;
 - (b) all claims that he may possess under the Small Business Regulatory Enforcement Act, Pub. L. 104-121, Subtitle B, Section 223, 110 Stat. 862-63 (March 29, 1996), 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.
6. Does not consent to the use of this Order in any other proceedings other than those to which the Commission is a party. However, no provision of this Order shall in any way

limit or impair the ability of any person, including third-party beneficiaries, to seek any legal or equitable remedy against Messina or any other person in any other proceeding, including any current or subsequent bankruptcy.

7. The allegations of the Complaint shall be taken as true and be given preclusive effect without further proof only for the purpose of any current or subsequent bankruptcy proceeding filed by, or on behalf of, Messina for the purpose of determining whether his civil monetary penalty obligation ordered herein is excepted from discharge. Messina shall also provide immediate notice to the Director and the Office of Cooperative Enforcement, 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 of any bankruptcy filed by, on behalf of, or against him.

8. 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 of the Complaint or findings or conclusions of law 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 Messina's (i) testimonial obligations; or (ii) rights to take legal, factual or equitable positions in other proceedings to which the Commission is not a party. Messina shall take all necessary steps to ensure that all of his agents and employees understand and comply with this agreement.

9. 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.

III.

FINDINGS of FACT and CONCLUSIONS of LAW

The Court, being fully advised of the facts, finds that there is good cause for the entry of this Order and that there is no just reason for delay. The Court therefore directs the entry of findings of fact, conclusions of law, a permanent injunction, a civil monetary penalty and ancillary equitable relief pursuant to § 6c of the Act, 7 U.S.C. § 13 a-1 (2002), as set forth herein.

A. Findings of Fact

1. The Commission is an independent federal regulatory agency charged with the responsibility of administering and enforcing the provisions of the Act and Regulations promulgated thereunder ("Regulations" or "Commission Regulations").

2. Messina is a New York State resident. Messina is not registered with the Commission in any capacity.

3. From at least May to November 2003, Messina, a former interbank broker, engaged in a scheme with other co-conspirators to defraud and deceive a bank. This scheme was called the "knowledgeable trades" scheme. Through these knowledgeable trades, Messina helped to defraud and deceive a bank by knowingly and willfully aiding and abetting the use of foreign currency transactions to convert bank funds for his own use and the use of his co-conspirators and to conceal this conversion from the banks.

4. The knowledgeable trades scheme operated as follows. In Step 1, in order to convert money from his employer, a trader at the defrauded bank (Bank #1) initiates two foreign currency transactions, in which he buys and sells foreign currency, between Bank #1 and another bank ("Bank #2"). Bank #1, the defrauded bank, is on the losing side of these transactions. In Step 2, another set of foreign currency transactions occurs between Bank #2 and

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. In Step 4, the retail customer splits the cash proceeds with his co-conspirators. Messina knew from the outset that he was participating in the illegal conversion of funds from the bank.

5. Messina knowingly aided and abetted these fraudulent foreign currency trades by introducing co-conspirators to each other and by helping to move profits from a bank to a retail foreign currency dealer by entering into foreign currency transactions. Messina also assisted in the transfer of cash from these illegal foreign currency transactions to other co-conspirators. Messina also knowingly received \$15,000 from this scheme and caused losses to a bank in the amount of \$235,000.

6. The retail foreign currency dealer was not 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 the retail foreign currency dealer was not a futures commission merchant ("FCM"), or an affiliate of a FCM. Further, the retail foreign currency dealer and the retail customer did not have any business or personal need for the foreign currency. The retail foreign currency dealer and the retail customer 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. All trades were liquidated by offsetting the position by entering into an equal and opposite transaction and thereby taking the profits in dollars. The size of the contracts traded was standardized.

B. Conclusions of Law

1. With the aforementioned practices, Messina violated Commission Regulations 1.1(b)(1), (2) and (3), 17 C.F.R. § 1.1(b)(1), (2) and (3) (2001) pursuant to § 13(a) of the Act.
2. This Court has subject matter jurisdiction over this action and the allegations in the Complaint pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2002).
3. This Court has personal jurisdiction over Messina pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2002).
4. Venue properly lies with this Court pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2002).
5. The foreign currency contracts offered and sold between the retail foreign currency dealer and the retail customer were futures contracts. Further, these foreign currency futures transactions were offered to or entered into with a retail customer who was not an eligible contract participant pursuant to Section 1a(12) of the Act, 7 U.S.C. § 1a(12) (2002). Furthermore, the retail foreign currency dealer which acted as the counterparty to the transactions with the retail customer was not an enumerated regulated counterparty or an affiliate of an enumerated regulated counterparty pursuant to Section 2(c)(2)(B) of the Act, 7 U.S.C. § 2(c)(2)(B) (2002). Accordingly, the Commission has jurisdiction over these knowledgeable trades transactions.
6. There is good cause for entry of an order permanently enjoining Messina from engaging in future violations of the Commission Regulations, requiring Messina to pay a civil monetary penalty in the amount of \$45,000, and for the other equitable relief stated in this Order. It is further noted that there is no need for restitution in this Order since Messina has been

ordered in the parallel criminal proceeding, *U.S. v. Messina*, Docket 04 Cr. 0480, to make full restitution for the conduct charged in this complaint.

IV.

ORDER FOR PERMANENT INJUNCTION

IT IS THEREFORE ORDERED THAT:

1. Messina is permanently restrained, enjoined and prohibited from directly or indirectly 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 in violation of Regulations 1.1(b)(1), (2) and (3), 17 C.F.R. § 1.1(b);
2. Messina is further permanently restrained, enjoined and prohibited from directly or indirectly:
 - A. Trading on or subject to the rules of any registered entity;
 - B. Soliciting funds for, engaging in, controlling or directing the trading for any commodity futures or options accounts for or on behalf of any other person or entity, whether by power of attorney or otherwise; and
 - C. 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 a principal, 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).

V.

ORDER FOR CIVIL MONETARY PENALTY AND OTHER EQUITABLE RELIEF

IT IS FURTHER ORDERED THAT:

1. Civil Monetary Penalty: Messina shall pay a civil monetary penalty of \$45,000 ("Civil Monetary Penalty"). Messina shall pay his civil monetary penalty upon satisfaction or

discharge of his restitution obligations in the parallel criminal proceeding, *U.S. v. Messina*, Docket 04 Cr. 0480.

a. Messina 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 Marie Bateman, or her successor, U.S. Commodity Futures Trading Commission, Division of Enforcement, ATTN: Marie Bateman, AMZ-300, DOT/FAA/MMAC, 6500 S. Macarthur Blvd., Oklahoma City, OK 73169, under cover of a letter that identifies Messina and the name and Docket number of the proceeding; Messina 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.

2. Cooperation: Messina shall fully cooperate with and assist the Receiver and the Commission in this proceeding and in any related inquiry, investigation, or legal proceeding. Such cooperation shall include, but not be limited to (1) responding promptly, completely, and truthfully to any inquiries or requests for information; (2) authenticating documents; (3) testifying completely and truthfully; (4) not asserting privileges under the Fifth Amendment of the United States Constitution; (5) transferring or repatriating Messina's funds; and (6) producing any password required to access any electronic files in any medium under control of Messina.

3. Freeze Orders Dissolved: All prior freeze orders or orders limiting the amount that Messina can spend on a monthly basis are dissolved.

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

5. Prohibition on Transfer of Funds: 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.

6. Notices: All notices required to be given by any provision in this Consent Order shall be sent certified mail, return receipt requested, as follows:

Notice to Commission:

Regional Counsel
Division of Enforcement – Eastern Regional Office
U.S. Commodity Futures Trading Commission
140 Broadway, 19th Floor
New York, NY 10005

Notice to Defendants:

Patrick Burke, Esq.
Burke, Miele & Golden
Counsel to Anthony Iannuzzi
100 Washington Avenue
Suffern, NY 10901

Vivian Drohan, Esq.
Drohan & Drohan, LLP
Counsel to ITradeCurrency USA, LLC
150 East 58th Street, 34th Floor
New York, NY 10155

Barry Zone, Esq.
Gersten, Savage,
Kaplowitz Wolf &
Marcus
Counsel to Stephen Moore
101 East 52nd Street
New York, NY 10022

Michael Bachner, Esq.
Counsel to Vito Napoletano
26 Broadway, Suite 2310
New York, NY 10004

James Froccaro, Esq.
Counsel to Joseph Torre
7 Old Shore Road
Port Washington, NY 11050

Maranda Fritz, Esq.
*Counsel to Patrick
Sweeney*
565 Fifth Ave., 9th floor
New York, NY 10017

Notice to Receiver:

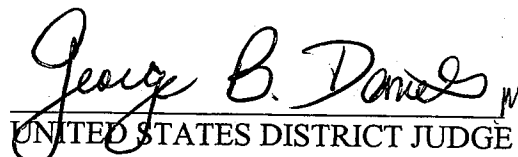
Brian Rosner, Esq.
Rosner Moscow & Napierala, LLP
Court-appointed Receiver
26 Broadway, 22nd floor
New York, NY 10004-2442

9. Entire Agreement and Amendments: This Order incorporates all of the terms and conditions of the settlement between the Commission and Defendant Messina. Nothing shall serve to amend or modify this Consent Order in any respect whatsoever, unless (1) reduced to writing; (2) signed by all parties hereto; and (3) approved by order of this Court.

10. This Order shall remain in effect until further order of the Court and the Court shall retain jurisdiction over this action to ensure compliance with this Order and for all other purposes related to this action.

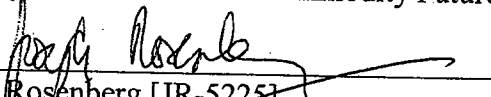
IT IS SO ORDERED.

Dated: MAR 22 2007



UNITED STATES DISTRICT JUDGE


CONSENTED TO AND APPROVED BY:


U.S. COMMODITY FUTURES TRADING COMMISSION
Attorney for Plaintiff U.S. Commodity Futures Trading Commission

By: 
Joseph Rosenberg [JR-5225]
140 Broadway, 19th Floor
New York, New York 10005

John Messina
Defendant

By: 
John Messina

Robert Aiello
Counsel for Defendant
By: 
Robert Aiello
69-06 Grand Ave.
Maspeth, NY 11378

Brian Rosner, Esq.
Receiver
By: 
Heather J. Haase, Esq. (HH-0222)
Counsel for Brian Rosner, Receiver
Rosner, Moscow & Napierala, LLP
26 Broadway, 22nd floor
New York, NY 10004-2442