

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

CASE NO: 06-60886 CIV-DIMITROULEAS

COMMODITY FUTURES TRADING	:
COMMISSION,	:
	:
Plaintiff,	:
	:
v.	:
	:
EXECUTIVE COMMODITY CORP.,	:
THOMAS C. KENNEDY, DON D. CAMPBELL,;	:
and ALBERTO J. JIMENEZ,	:
	:
Defendants.	:

**CONSENT ORDER OF PERMANENT INJUNCTION AND OTHER
EQUITABLE RELIEF AGAINST DEFENDANT ALBERTO J. JIMENEZ**

I.BACKGROUND

On June 20, 2006, the Plaintiff, United States Commodity Futures Trading Commission ("CFTC" or "Commission"), filed the Complaint in this civil action against Executive Commodity Corporation ("Executive"), Thomas C. Kennedy ("Kennedy"), Don D. Campbell ("Campbell") and Alberto J. Jimenez ("Jimenez") (collectively, the "Defendants"). The Complaint charges Defendants with violating Section 4c(b) of the Commodity Exchange Act, as amended (the "Act"), 7 U.S.C. § 6c(b) (2002), and Commission Regulation 33.10, 17 C.F.R. § 33.10 (2005). The Complaint further charges Executive with violating Commission Regulation 33.7(f), 17 C.F.R. § 33.7(f)(2005).

II.CONSENTS AND AGREEMENTS

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

1. Consents to the entry of this Consent Order of Permanent Injunction and Other Equitable Relief (“Consent Order”);
2. Affirms that he has read and agreed to this Consent Order voluntarily, and that no threat or promise, other than as set forth specifically herein, has been made by the Commission or any member, officer, agent or representative thereof, or by any other person, to induce consent to this Consent Order;
3. Acknowledges service of the Summons and Complaint;
4. Admits that this Court has jurisdiction over him and the subject matter of this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2002);
5. Admits that venue properly lies with this Court pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2002);
6. Waives:
 - a. All claims that he may possess under the Equal Access to Justice Act (EAJA), 5 U.S.C. § 504 (2002) and 28 U.S.C. § 2412 (2002), relating to or arising from this action and any right under EAJA to seek costs, fees, and other expenses relating to or arising from this action;
 - b. Any claim of double jeopardy based upon the institution of this action or the entry in this action of any order imposing a civil monetary penalty or any other relief; and
 - c. All rights of appeal in this action;
7. Consents to the continued jurisdiction of this Court for the purpose of enforcing the terms and conditions of this Consent Order and for all other purposes related to this action, even if Jimenez now or in the future resides outside this jurisdiction;
8. Agrees that neither he nor any of his agents, servants, employees, contractors or attorneys shall take any action or make any public statement denying, directly or indirectly, any

allegation in the Complaint or any Findings of Fact and Conclusions of Law contained in this Consent Order, or creating, or tending to create, the impression that the Complaint and/or this Consent Order are without a factual basis; provided, however, that nothing in this provision shall affect Jimenez's (a) testimonial obligations; or (b) right to take legal positions in other proceedings to which the Commission is not a party. Jimenez shall take all necessary steps to ensure that all of his agents, servants, employees, contractors and attorneys under his authority and/or actual or constructive control understand and comply with this agreement;

9. By consenting to the entry of this Consent Order, Jimenez neither admits nor denies the allegations of the Complaint or the Findings of Fact and Conclusions of Law contained in this Consent Order, except as to jurisdiction and venue, which he admits; and

10. Jimenez does not consent to the use of this Consent Order, or the Findings of Fact or Conclusions of Law in this Consent Order, as the sole basis for any other proceeding brought by the CFTC, other than a proceeding in bankruptcy relating to Jimenez, a Commission registration proceeding relating to Jimenez, or to enforce the terms of this Consent Order.

11. Solely with respect to any bankruptcy proceeding relating to Jimenez, a Commission registration proceeding related to Jimenez and any proceeding to enforce this Consent Order, Jimenez agrees that the allegations of the Complaint and all the Findings of Fact and Conclusions of Law in this Consent Order shall be taken as true and correct and be given preclusive effect, without further proof. Furthermore, Jimenez agrees to provide immediate notice to this Court and the Commission by certified mail of any bankruptcy proceeding filed by, on behalf of, or against him.

III.FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court, being fully advised in the premises, finds that there is good cause for the entry

of this Consent Order and that there is no just reason for delay, FINDS THAT:

A.Findings of Fact

1. This Court has jurisdiction over this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, which authorizes the CFTC to seek injunctive relief against any person who 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), because Jimenez is a resident of this district and all Defendants transacted business, among other places, in this district, and the acts and practices in violation of the Act have occurred, among other places, within this district.

3. Plaintiff Commodity Futures Trading Commission is an independent federal regulatory agency that is charged with responsibility for administering and enforcing the provisions of the Act, 7 U.S.C. §§ 1 et seq. (2002), and the regulations promulgated thereunder, 17 C.F.R. §§ 1 et seq. (2007). The CFTC is authorized by Section 6c of the Act, 7 U.S.C. § 13a-1 (2002), to bring a civil action to enjoin any act or practice constituting a violation of the Act or Commission Regulations, to enforce compliance with the Act and Commission Regulations, and to seek civil penalties.

4. Defendant Alberto J. Jimenez resides in Coral Gables, Florida. Jimenez was employed as a senior broker of registered introducing broker (“IB”) Executive until November 29, 2005, and was registered as an associated person (“AP”) of Executive from May 2003 until November 2005.

5. From approximately May 2003 through November 2005, Jimenez, as an employee of Executive, solicited existing and prospective retail customers through telephone calls to

purchase and sell exchange-traded options on commodity futures contracts (“options”).

6. Executive structured its AP sales force into two layers, with the first layer of APs soliciting customers to open accounts and to make an initial option purchase. After the initial option purchase, virtually all customers were transferred to the second layer of designated AP “senior brokers”, which consisted exclusively of Jimenez and a second broker during most of the period of the Complaint. Thereafter, these senior brokers serviced all such accounts for the duration of the customer relationship.

7. Executive APs solicited existing and prospective customers by making telephone solicitations to individuals identified on lead lists. During these telephone solicitations, Jimenez recommended that existing and prospective customers enter into trades in particular options, such as options on heating oil futures or options on currency futures.

8. When soliciting existing and prospective customers, Jimenez exaggerated the magnitude and likelihood of potential profits and downplayed the risk of loss. Jimenez told one customer to buy 100 option positions of August '04 Light Crude Oil, which within the next seven to ten days had the potential to make \$80,000. Jimenez told the customer that if he could send \$95,000 by that Wednesday, Jimenez could make this happen and that both would make a lot of money off of this deal.

9. The minimization of risk by Jimenez was a component of the sales pitch he employed at Executive.

10. While prospective customers of Executive were told of the great profit potential if they invested with Executive, they were never told that the vast majority of Executive’s customers closed their accounts at a loss.

11. During the period from January 1, 2003 through December 2004, for example,

Executive solicited approximately 793 members of the public to trade options; over 93% of these customers closed their accounts at a loss and approximately two-thirds lost over 95% of their investment trading through Executive.

12. During the period from January 1, 2003 through December 2004, Executive's customers lost money on their investments, totaling more than \$11 million.

13. During the period of time that Jimenez was employed as a senior broker at Executive, he earned approximately \$387,000, and this income was derived from commissions paid by Executive customers whose accounts and trades Jimenez handled.

14. Jimenez knew that his statements to existing and prospective customers regarding actual or likely profits, and his statements minimizing risks, were false, or he made them with reckless disregard for the truth, because he had access to customers' accounts and he knew that an overwhelming majority of Executive's customers closed their accounts at a loss.

15. Jimenez's failure to disclose the material fact that an overwhelming majority of Executive customers closed their accounts at a loss was a material omission given that he made claims to actual and prospective customers that conveyed that profits were highly likely.

16. Executive customers relied almost exclusively upon the recommendations of Executive's APs, including Jimenez, when investing.

B.Conclusions Of Law

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, 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. Venue properly lies with this Court pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, in that Jimenez 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.

3. This Court has personal jurisdiction over Jimenez, who acknowledges service of the Complaint and Summons and consents to the Court's jurisdiction over him.

4. By the conduct described in Part III.A above, Jimenez violated 4c(b) of the Act, 7 U.S.C. § 6c(b) (2002), and Commission Regulation 33.10, 17 C.F.R. § 33.10 (2005), in that, in or in connection with offers to enter into, the entry into, or the confirmation of the execution of, commodity option transactions, he cheated or defrauded or attempted to cheat or defraud customers or prospective customers and deceived or attempted to deceive customers or prospective customers by, among other things: misrepresenting the likelihood that customers will profit from the trading of commodity options and misrepresenting, and omitting discussion of, the risks and costs of trading commodity options; misrepresenting the urgency of trading commodity options; and misrepresenting and failing to disclose, in light of the profit predictions he made, Executive customers' performance record trading commodity options.

V.ORDER OF PERMANENT INJUNCTION

NOW THEREFORE, IT IS ORDERED THAT:

1. Jimenez is permanently restrained, enjoined and prohibited from directly or indirectly:
 - a. Offering to enter into, entering into, executing, confirming the execution of, any transaction involving any option contrary to any rule, regulation, or order of the Commission prohibiting any such transaction or allowing any such transaction under such terms and conditions as the Commission shall prescribe, in violation of Section 4c(b) of the Act, 7 U.S.C. § 6c(b) (2002); and

b. In or in connection with an offer to enter into, the entry into, or the confirmation of the execution of, or the maintenance of, any option transaction, cheating or defrauding or attempting to cheat or defraud any person; making or causing to be made to any other person any false report or statement thereof or causing to be entered for any person any false record thereof; or deceiving or attempting to deceive any person by any means whatsoever, in violation of Section 4c(b) of the Act, 7 U.S.C. § 6c(b) (2002), and Commission Regulation 33.10, 17 C.F.R. § 33.10 (2007).

2. Jimenez is permanently restrained, enjoined and prohibited from engaging, directly or indirectly, in any activity related to trading in any commodity, as that term is defined in Section 1a(4) of the Act, 7 U.S.C. § 1a(4) (2002) (“commodity interest”), including, but not limited to, the following:

- a. Soliciting, receiving, or accepting any funds from any person in connection with the purchase or sale of any commodity interest;
- b. Controlling or directing the trading of any commodity interest account for or on behalf of any person or entity, directly or indirectly, whether by power of attorney or otherwise;
- 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 Commission Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2007) or acting as a principal, agent, officer or employee of any person registered, exempted from registration or required to be registered with the Commission, unless such exemption is pursuant to Commission Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2007);
- d. Trading on or subject to the rules of any registered entity, as that term is defined in Section 1a(29) of the Act, 7 U.S.C. § 1a(29)(2002);
- e. Entering into any commodity interest transactions for his own personal account, for any account in which he has a direct or indirect interest and/or having any commodity interests traded on his behalf; and
- f. Engaging in any business activities related to commodity interest trading.

3. The injunctive and other provisions of this Consent Order shall be binding on Jimenez, upon any person insofar as he or she is acting in the capacity of officer, agent, servant,

employee or attorney of Jimenez, and upon any person who receives actual notice of this Consent Order by personal service or otherwise insofar as he or she is acting in active concert or participation with Jimenez.

VI. RESTITUTION, CIVIL MONETARY PENALTY, AND ANCILLARY RELIEF

IT IS FURTHER ORDERED THAT:

A. Restitution

1. Jimenez shall pay restitution in the amount of \$250,000.00, plus post-judgment interest, within ten days of entry of this Consent Order.

2. Post-judgment interest shall accrue beginning on the date of entry of this Consent Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Consent Order pursuant to 28 U.S.C. § 1961.

3. To effect payment by Jimenez and distribution of restitution, the Court appoints the National Futures Association (“NFA”) as Monitor (“Monitor”). The Monitor shall collect restitution payments from Jimenez, and make distributions as set forth below. Because the Monitor is not being specially compensated for these services, and these services are outside the normal duties of the Monitor, the Monitor shall not be liable for any action or inaction arising from the Monitor’s appointment, other than actions involving fraud.

4. Jimenez shall make restitution payments under this order in the name “Alberto J. Jimenez- Restitution Fund” and shall send such restitution payments by electronic funds transfer, or by U.S. postal money order, certified check, bank cashier check, or bank money order, to Office of Administration, National Futures Association, 200 W. Madison Street #1600, Chicago, Illinois 60606-3447 under cover letter that identifies himself and the name and docket number of the proceeding. Jimenez shall simultaneously transmit copies of the cover letter and the form of

payment to (a) the Director, Division of Enforcement, U.S. Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581, and (b) the Chief, Office of Cooperative Enforcement, Division of Enforcement, at the same address.

5. The Monitor shall oversee Jimenez's restitution obligation, and shall have discretion to determine the manner for distribution of funds in an equitable fashion to defrauded Executive customers, as appropriate, or may defer distribution until such time as it deems appropriate. In the event that the amount of restitution payments to the Monitor are of a de minimis nature such that the Monitor determines that the administrative costs of the making a restitution distribution is impractical, the Monitor may, in its discretion, treat such restitution payments as civil monetary penalty payments, which the Monitor shall forward to the Commission following the instructions for civil monetary penalty payments set forth in Part VI.B., below.

6. Jimenez shall cooperate with the Monitor as appropriate to provide such information as the NFA deems necessary and appropriate to identify Executive customers to whom the Monitor, in his sole discretion, may determine to include in any plan for distribution of any restitution payments.

7. Pursuant to Rule 71 of the Federal Rules of Civil Procedure, Jimenez's former customers who opened accounts at Executive from May 2003 through November 2005 are explicitly made intended third-party beneficiaries of this Consent Order and may seek to enforce obedience of this Consent Order to obtain satisfaction of any portion of the restitution that has not been paid by Jimenez, to ensure continued compliance with any provision of this Consent Order and to hold Jimenez in contempt for any violations of any provision of this Consent Order.

8. Further, the amount payable for restitution set forth above shall not limit the

ability of any Executive customer from proving that a greater amount is owed from Jimenez or any other person or entity, and nothing herein shall be construed in any way to limit or abridge the rights of any investor that exist under state or common law.

B. Civil Monetary Penalty

1. Jimenez shall pay a civil monetary penalty in the amount of \$300,000.00, plus post-judgment interest, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1. The civil monetary penalty shall be paid within ten days of entry of this Consent Order.

2. Post-judgment interest shall accrue beginning on the date of entry of this Consent Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Consent Order, pursuant to 28 U.S.C. § 1961.

3. Jimenez shall pay this civil monetary penalty by electronic funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money order. If payment is to be made other than by electronic funds transfer, the payment shall be made payable to the Commodity Futures Trading Commission and sent to the address below:

Commodity Futures Trading Commission
Division of Enforcement
Attn: Marie Bateman-AMZ-300,
DOT/FAA/MMAC
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
Telephone: 405-954-6569

If the payment is to be made by electronic funds transfer, Jimenez shall contact Marie Bateman or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Jimenez shall accompany the payment of this penalty with a cover letter that identifies Jimenez and the name and docket number of this proceeding. Jimenez shall simultaneously transmit copies of the cover letter and the form of payment to (a) the Director,

Division of Enforcement, Commodity Futures Trading Commission, 1155 21st Street, NW, Washington, D.C. 20581, and (b) the Chief, Office of Cooperative Enforcement, Division of Enforcement, at the same address.

C. Priority of Monetary Sanctions and Partial Payments

1. All payments by Jimenez pursuant to this Consent Order shall first be applied to satisfaction of his restitution obligation, consistent with the authority granted the Monitor in Part VI.A., above. After satisfaction of his restitution obligation, payments by Jimenez pursuant to this Consent Order shall be applied to satisfy Jimenez's civil monetary penalty obligation.

2. Any acceptance by the Commission and/or Monitor of partial payment of Jimenez's restitution obligation and/or civil monetary penalty shall not be deemed a waiver of the respective requirement to make further payments pursuant to this Consent Order, or a waiver of the Commission's and/or Monitor's right to seek to compel payment of any remaining balance.

D. Cooperation

Jimenez shall cooperate fully with the Commission, the Monitor, and any government agency seeking to enforce the restitution and civil monetary provisions of this Consent Order by providing any requested information relating to their financial status including, but not limited to, income and earnings, assets, financial statements, asset transfers, and tax returns.

E. Equitable Relief Provisions

The equitable relief provisions of this Consent Order shall be binding upon Jimenez and any person who is acting in the capacity of officer, agent, employee, servant or attorney of Jimenez, and any person acting in active concert or participation with Jimenez who receives actual notice of this Consent Order by personal service or otherwise.

VII.MISCELLANEOUS PROVISIONS

1. Entire Agreement, Amendments and Severability. This Consent Order incorporates all of the terms and conditions of the settlement among the parties. Nothing shall serve to amend or modify this Consent 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 Consent Order or the application of any provision or circumstance is held invalid, the remainder of this Consent Order shall not be affected by the holding.

2. Counterparts. This Consent Order may be executed by the parties in counterparts and by facsimile.

3. Invalidation. If any provision of this Consent Order, or the application of any provision or circumstances is held invalid, the remainder of the Consent Order and the application of the provision to any other person or circumstance shall not be affected by the holding.

4. Waiver. The failure of any party hereto 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 Consent Order. No waiver in one or more instances of the breach of any provision contained in this Consent 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 Consent Order.

5. Jurisdiction. This Court shall retain jurisdiction of this cause in order to implement and carry out the terms of all orders and decrees that may be entered herein, to assure compliance with this Consent 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.

DONE AND ORDERED in chambers in Broward County, Fort Lauderdale, Florida this
21st day of February, 2008.


WILLIAM P. DIMITROULEAS
United States District Judge

Copies furnished to:

Counsel of record