

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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U.S. Commodity Futures Trading Commission,

03 CV 9125 (GBD)

Plaintiff,

-against-

Anthony DiNapoli,

**Order For Entry of
Injunctive Relief, Damages and
Ancillary Equitable Relief Against
Anthony DiNapoli**

Defendant.
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On November 18, 2003, the Commission filed a Complaint charging Defendant Anthony DiNapoli ("DiNapoli" or "Defendant") and others with willfully aiding and abetting the commission of the violation of Regulation 1.1(b), 17 C.F.R. § 1.1(b) (2002), pursuant to Section 13(a) of the Commodity Exchange Act (the "Act"), 7 U.S.C. § 13(a) (2001).

On November 19, 2003, DiNapoli was properly served pursuant to Rule 4(d)(1) of the Federal Rules of Civil Procedure ("Fed. R. Civ. P.").¹ DiNapoli failed to answer or otherwise defend the Complaint within the time permitted by Rule 12(a)(1) of the Fed. R. Civ. P. Accordingly, on September 16, 2004, the Clerk of this Court entered a certificate of default against DiNapoli, and on January 13, 2005, this Court entered a default judgment against DiNapoli.

The Commission has now submitted its Application for Entry of Injunctive Relief, Damages and Ancillary Equitable Relief ("Application") against DiNapoli pursuant to Fed. R.

¹ Rule 4(d)(1) provides, in pertinent part, that Service on an individual may be made by leaving copies of the summons and complaint "at his dwelling, house or usual place of abode with some person of suitable age and discretion then residing therein."

Civ. P. 55(b)(2) and Local Rule 55.2(b). The Court has carefully considered the Complaint, the allegations of which are well-pleaded and hereby taken as true, the Application, and other written submissions of the Commission filed with the Court, and being fully advised, hereby:

GRANTS the Commission's Application against DiNapoli and enters findings of fact and conclusions of law relevant to the allegations in the Complaint. The Court further grants the Commission's request for injunctive relief, damages and restitution. Accordingly, the Court now issues the following Order ("Order") against DiNapoli.

I. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Jurisdiction and Venue

This Court has jurisdiction over the subject matter of this action and DiNapoli 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.

Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1, in that DiNapoli was found in, inhabited, or transacted business in this district, and the acts and practices in violation of the Act occurred within this district, among other places.

B. Findings of Fact

DiNapoli is a New York State resident. DiNapoli has never been registered with the Commission.

From at least May to November 2003, DiNapoli, a former interbank broker, engaged in a scheme with other co-conspirators to defraud and deceive banks. This scheme was called the "knowledgeable trades" scheme. Through these knowledgeable trades, DiNapoli helped to

defraud and deceive banks by knowingly and willfully engaging in illegal foreign currency futures transactions to convert bank funds for his own use and the use of his co-conspirators and to conceal this conversion from the banks.

The knowledgeable trades scheme operated as follows. In Step 1, in order to convert money from his employer, a trader at a defrauded bank (Bank #1) initiates two foreign currency transactions, in which he buys and sells foreign currency, between Bank #1 and a co-conspirator at another bank ("Bank #2"). The transactions are arranged through a co-conspirator at an interbank broker. Bank #1, the defrauded bank, is on the losing side of these transactions. In Step 2, the interbank broker arranges for another set of foreign currency transactions between Bank #2 and a co-conspirator at 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 who maintains accounts at a futures commission merchant ("FCM") and at a retail foreign currency dealer. In Step 4, the retail customer who holds the account at either the FCM or at the retail foreign currency dealer splits the cash proceeds with his co-conspirators. The persons and entities involved in all of these transactions know from the outset that they are participating in illegal conversions of funds from the banks involved.

DiNapoli knowingly aided and abetted these fraudulent foreign currency trades by introducing interbank brokers to other co-conspirators and assisted in the transfer of cash from these illegal foreign currency futures transactions to other co-conspirators. As a result of this scheme in which DiNapoli participated, banks were defrauded in the amount of \$557,586.

The illegal foreign currency futures transactions between the retail foreign currency dealer and the retail customer involved in the knowledgeable trades scheme were not conducted

on or subject to the rules of a board of trade that has been designated by the Commission as a contract market, nor were these transactions executed or consummated by or through a contract market or on a facility registered as a derivatives transaction execution facility. The parties involved in these foreign currency futures transactions were not eligible contract participants or enumerated regulated counterparties. The retail forex 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 forex dealer was not a FCM, or an affiliate of a FCM. Further, these parties did not have any business or personal need for the foreign currency. These parties 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. There was never any conversion from U.S. dollars to another currency. All trades were liquidated by offsetting the position by entering into an equal and opposite transaction and thereby taking the profits in dollars. The terms and conditions of these contracts were standardized.

C. Conclusions of Law

1. Aiding and Abetting the Violation of Commission Regulation 1.1(b)

From at least May 2003 to November 2003, Defendant DiNapoli cheated or defrauded or attempted to cheat or defraud banks and willfully deceived or attempted to deceive banks by, among other things, intentionally aiding and abetting in the conversion of funds that had been misappropriated from banks in violation of Regulation 1.1(b), 17 C.F.R. § 1.1(b) pursuant to pursuant to Section 13(a) of the Commodity Exchange Act (the "Act"), 7 U.S.C. § 13c(a) (2001).

Defendant DiNapoli's conduct was in connection with accounts, agreements, contracts, or transactions that were contracts of sale of commodities for future delivery.

2. The Knowledgeable Trades Transactions Were Futures Contracts

The Commission has jurisdiction over the knowledgeable trades transactions between the retail forex dealer and the retail customer because these transactions were foreign currency futures contracts. These contracts involved the purchase and sale of foreign currency for future delivery at prices or using pricing formulas that were established at the time the contracts were initiated and were fulfilled through offset to avoid delivery. 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). Furthermore, the retail forex dealer acted as the counterparty to the transactions with the retail customer. The retail forex dealer was not a proper counterparty or an affiliate of a proper counterparty pursuant to Section 2(c)(2)(B) of the Act, 7 U.S.C. § 2(c)(2)(B). Accordingly, the Commission has jurisdiction over these knowledgeable trades transactions.

3. Appropriate Relief

Permanent injunctive relief is warranted in light of the egregious nature of DiNapoli's conduct in aiding and abetting the conversion of funds from banks through the sale of illegal foreign currency futures contracts from May to November 2003 as well as his high level of scienter in participating in this well-planned scheme to systematically defraud banks. These facts demonstrate a reasonable likelihood of futures violations.

Imposition of a civil monetary penalty is appropriate in this case as DiNapoli's violations of the Act were intentional. Likewise, restitution also is appropriate to compensate the victims of DiNapoli's wrongful conduct.

II. ORDER FOR RELIEF

A. Permanent Injunction

IT IS HEREBY ORDERED that Defendant DiNapoli is permanently restrained, enjoined and prohibited from directly or indirectly:

- 1) cheating or defrauding or attempting to cheat or defraud any person 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 Regulation 1.1(b), 17 C.F.R. § 1.1(b);
- 2) trading on or subject to the rules of any registered entity;
- 3) soliciting funds for, engaging in, 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; and
- 4) 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 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).

B. Restitution

IT IS FURTHER ORDERED that as of the date of this Order, Defendant shall pay and be jointly and severally liable with his co-conspirators to pay restitution to defrauded victims in the amount of \$557,586 (five hundred fifty seven thousand and five hundred eighty six dollars) plus pre-judgment and post-judgment interest. Pre-judgment interest from May 1, 2003, to the date of this Order shall be determined by using the underpayment rate established quarterly by

the Internal Revenue Service pursuant to 26 U.S.C. § 6621(a)(2). Post-judgment interest shall accrue beginning on the date of entry of this Order and shall be determined by using the Treasury Bill rate prevailing on the date of this Order pursuant to 28 U.S.C. § 1961.

Defendant is ordered to make such payments to Brian Rosner, Esq., the Court-appointed Receiver, Rosner, Moscow & Napierala, LLP, 26 Broadway, 22nd floor, New York, NY 10004-24424 by cashier's check, certified check or postal money order, under cover of a letter that identifies the name and Docket number of this action and the name of this Court, with a copy to the Director and to 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.

All payments made pursuant to this Order by Defendant shall first be made to the defrauded banks for restitution, pursuant to a payment plan that will be determined by the Court, until those amounts (including interest) are fully satisfied. All payments after the restitution obligation has been satisfied shall then be applied to the civil monetary penalty described herein.

Defendant's restitution obligation coincides with his criminal judgment restitution obligation entered against DiNapoli on September 20, 2006, U.S. v. DiNapoli et al., SDNY Docket number 03 Cr. 1489, such that satisfaction in any part of his criminal judgment restitution obligation shall simultaneously result in satisfaction of his restitution obligation to the same extent.

C. Civil Monetary Penalty

IT IS FURTHER ORDERED that as of the date of this Order, Defendant shall pay a civil monetary penalty in the amount of \$120,000 plus post-judgment interest. Post-judgment interest shall be determined by using the Treasury Bill rate prevailing on the date of this Order pursuant to 28 U.S.C. § 1961. Post-judgment interest shall accrue beginning on the date of entry of this Order.

All payments made by Defendant pursuant to this Order shall be applied first to satisfy his Civil Restitution obligations and, upon satisfaction of such obligations, shall thereafter be applied to satisfy the civil monetary penalty.

Defendant 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, 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 Defendant's name and the name and Docket number of the proceeding; Defendant 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.

D. Prohibition on Transfer of Funds

IT IS FURTHER ORDERED that DiNapoli 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.

E. Permanent Receiver

IT IS FURTHER ORDERED that Brian Rosner, Esq., Rosner, Moscow & Napierala, LLP, 26 Broadway, 22nd floor, New York, NY 10004-24424 is appointed as a permanent equity receiver to take into his or her immediate custody, control, and possession all cash, cashier's checks, funds, assets, and property of Defendant, including funds or property of investors wherever found, whether held in the name of Defendant or otherwise, including, but not limited to, all books and records of account and original entry, electronically stored data, tape recordings, all funds, securities, contents of safety deposit boxes, metals, currencies, coins, real or personal property, commodity futures trading accounts, bank and trust accounts, mutual fund accounts, credit card line-of-credit accounts and other assets, of whatever kind and nature and wherever situated, and authorizing, empowering and directing such receiver to collect and take charge of and to hold and administer the same subject to further order of the Court, in order to prevent irreparable loss, damage and injury to investors, to conserve and prevent the dissipation of funds, to prevent further evasions and violations of the federal commodity laws by Defendant and to satisfy Defendant's obligation to pay restitution and a civil monetary penalty.

The Receiver shall report the status of collections and distributions of disgorgement and restitution to 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. The Receiver shall make such reports within ten days of receipt from Defendant of any disgorgement or restitution payment. Such reports shall specify: the amount of funds received from Defendant; the total amount of funds received from Defendant since entry of the Order; and the total amount of disgorgement and restitution paid by the Receiver to victims of Defendant's violations.

F. Notices

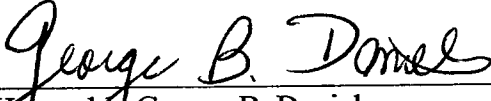
IT IS FURTHER ORDERED that all notices required to be given by any provision in this Order shall be sent by certified mail, return receipt requested, as follows:

Notice to Commission: Regional Counsel
 U.S. Commodity Futures Trading Commission
 Division of Enforcement - Eastern Regional Office
 140 Broadway, 19th floor
 New York, New York 10005.

G. Jurisdiction

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this case to assure compliance with this Order and for all other purposes related to this action.

SO ORDERED, at MAR 23 2007, New York on this ___ day of _____, 2007.



Honorable George B. Daniels
UNITED STATES DISTRICT JUDGE
HON. GEORGE B. DANIELS