

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION**

CASE No. 11-23554-CIV-ROSENBAUM

)
U.S. COMMODITY FUTURES)
TRADING COMMISSION,)
)
Plaintiff,)
)
v.)
)
MIDWAY TRADING COMPANY, LLC,)
CONQUEST INVESTMENT GROUP,)
INC., and OSCAR HERNANDEZ)
)
Defendants.)

**CONSENT ORDER FOR PERMANENT INJUNCTION,
CIVIL MONETARY PENALTY AND OTHER EQUITABLE RELIEF
AGAINST DEFENDANTS**

I. INTRODUCTION

On September 30, 2011, Plaintiff Commodity Futures Trading Commission (“CFTC” or the “Commission”) filed a Complaint against Defendants Midway Trading Company, LLC (“Midway”), Conquest Investment Group, Inc. (“Conquest”), and Oscar Hernandez (“Hernandez”) (collectively, “Defendants”) seeking injunctive and other equitable relief, as well as the imposition of civil penalties, for violations of the Commodity Exchange Act (“Act”), 7 U.S.C. §§ 1 et seq.(2006 and Supp. III 2009).

II. CONSENTS AND AGREEMENTS

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

1. Consent to entry of this Consent Order of Permanent Injunction, Civil Monetary Penalty, and Other Equitable Relief Against Defendants (“Consent Order”).
2. Affirm that they have read and agreed to this Consent Order voluntarily, and that no promise, other than as specifically contained herein, 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 Consent Order;
3. Acknowledge service of the summons and Complaint;
4. Admit the jurisdiction of this Court over them and the subject matter of this action pursuant to Section 6c of the Act, as amended, 7 U.S.C. § 13a-1;
5. Admit the jurisdiction of the Commission over the conduct and transactions at issue in this action pursuant to the Act, 7 U.S.C. §§ 1, *et seq.*;
6. Admit that venue properly lies with this Court pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1;
7. Waive:
 - a. any and all claims that they may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2006) and 28 U.S.C. § 2412 (2006), and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Regulations, 17 C.F.R. § 148.1, *et seq.* (2012), relating to, or arising from, this action;

- b. any and all claims that they may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, §§ 201-253, 110 Stat. 847, 857-868 (1996), as amended by Pub. L. No. 110-28, § 8302, 121 Stat. 112, 204-207 (2007), relating to, or arising from, this action;
- c. any and all claims 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 including this Consent Order; and
- d. any and all rights of appeal in this action;

8. Consent to the continued jurisdiction of this Court over them for the purpose of implementing and enforcing the terms and conditions of this Consent Order and for any other purpose relevant to this case, even if Defendants now or in the future reside outside the jurisdiction;

9. Agree that they will not oppose enforcement of this Consent Order by alleging that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure and waive any objection based thereon;

10. Agree that neither they nor any of their agents or employees under their authority or control shall take any action or make any public statement denying, directly or indirectly, any Findings of Fact or Conclusions of Law in this Consent Order, or creating, or tending to create, the impression that this Consent Order is without a factual basis; provided, however, that nothing in this provision shall affect their: (a) testimonial obligations; or (b) right to take legal positions in other proceedings to which the Commission is not a party. Defendants shall undertake all

steps necessary to ensure that all of their agents and/or employees under their authority or control understand and comply with this agreement;

11. Admit to all of the findings made in this Consent Order. Further, Defendants agree and intend that all of the Findings of Fact and Conclusions of Law contained in this Consent Order shall be taken as true and correct and be given preclusive effect, without further proof, in the course of: (a) any current or subsequent bankruptcy proceeding filed by, on behalf of, or against Defendants; (b) any proceeding pursuant to Section 8a of the Act, as amended, 7 U.S.C. § 12a, and/or Part 3 of the Regulations, 17 C.F.R. §§ 3.1 *et seq.* (2012); and/or (c) any proceeding to enforce the terms of this Consent Order;

12. Agree to provide immediate notice to this Court and the Commission by certified mail, in the manner required by Paragraph 43 of Part VI of this Consent Order, of any bankruptcy proceeding filed by, on behalf of, or against them, whether inside or outside the United States; and

13. Agree that no provision of this Consent Order shall in any way limit or impair the ability of any other person or entity to seek any legal or equitable remedy against any of the Defendants in any other proceeding.

III. FINDINGS AND CONCLUSIONS

THE PARTIES AGREE AND THE COURT HEREBY FINDS:

A. Findings of Fact

1. The Parties to this Consent Order

14. Plaintiff Commodity Futures Trading Commission is an independent federal regulatory agency that is charged by Congress with administering and enforcing the Act, as

amended, 7 U.S.C. §§ 1 *et seq.*, and the Regulations promulgated thereunder, 17 C.F.R. §§ 1.1 *et seq.* (2012).

15. Defendant Oscar Hernandez resides in Miami, Florida. He has never been registered with the Commission in any capacity.

16. Defendant Midway Trading Company, LLC is a Florida company formed by Hernandez in 2003, with a principal place of business in Miami, Florida. It has never been registered with the Commission in any capacity. Hernandez is the sole managing member of Midway and controlled its bank and trading accounts.

17. Defendant Conquest Investment Group, Inc. is a Florida company formed by Hernandez in 2005, with a principal place of business in Miami, Florida. It has never been registered with the Commission in any capacity. Hernandez is the sole officer and director of Conquest and controlled its bank and trading accounts.

2. Defendants' Fraud

18. In or about 2005, Hernandez began to set up commodities trading accounts in the names of Midway and Conquest. At about the same time, Hernandez began to solicit money from prospective participants in Midway and/or Conquest, telling prospective participants that he would pool their funds, that their pooled funds would be used to trade commodity futures, among other financial instruments, and that they would share in the profits generated by the trading in the accounts.

19. From that time through about December 2008, Hernandez knowingly and willfully made false and misleading representations to prospective and actual participants in Midway and Conquest. In particular, Hernandez promised that participants would earn exorbitant annual returns ranging from 20 to 60 percent of their principal. Hernandez also told prospective participants that their high returns would be generated through his trading of

commodities futures, as well as other investments, and that there were no risks associated with this investment.

20. Hernandez knew that these statements were false because he knew that significant losses were possible with all futures trading, that his trading in particular was generating significant losses, and that the “returns” Defendants were paying to participants came from funds Defendants received from new participants, not from trading profits.

21. Hernandez made these false and misleading representations directly to some prospective participants. He also encouraged current participants in Defendants’ scheme to recruit new participants through word-of-mouth, knowing that the current participants would repeat the false and misleading representations that he had made to them.

22. Many participants received promissory notes signed by one or more of the Defendants. These notes promised monthly interest payments representing 20-30% annual returns, with a balloon payment of the principal upon maturity

23. Hernandez caused Midway and/or Conquest to make monthly payments to their participants through late 2008. Those payments were made in the form of checks drawn from bank accounts set up in the names of Midway and Conquest. Those payments were purportedly drawn from profits generated by the futures trading done in Midway’s and Conquest’s accounts. In fact, the checks did not reflect profits from futures trading, but instead were taken funds that Hernandez had received from other participants and deposited in the Midway and Conquest bank accounts. In this way, Defendants operated a Ponzi scheme.

24. Hernandez made use of the mails or other means or instrumentalities of interstate commerce in connection with the fraudulent scheme, including wiring funds to and from the

Midway and Conquest trading accounts, communicating with participants over the telephone, and sending participants checks by mail.

25. At least 18 participants invested at least \$3.8 million with Defendants during 2006 through 2009. Hernandez pooled these funds, along with at least \$1,000,000 he obtained from other sources, and deposited approximately \$3,200,000 in futures trading accounts that he owned or controlled. Those accounts lost approximately \$1,300,000 through trading activities in 2006 through 2009. The remaining approximately \$1,900,000 in funds were withdrawn from the trading accounts, often shortly after they were deposited and before they could be used for any trading activities.

26. These and other funds in the Midway and Conquest bank accounts were frequently transferred between those accounts. Defendants returned approximately \$2,500,000 to participants, frequently paying a participant whose investment had been deposited in a Midway account with funds from a Conquest account, and vice versa. Defendants misappropriated the remaining approximately \$1,000,000 by using them to pay mortgage loans on several properties, luxury car payments, and American Express bills.

27. In about November 2008, Defendants began to skip their monthly payments to participants or send checks that were returned for insufficient funds. Defendants have failed to make any additional payments to participants during 2010, 2011, and 2012.

28. On September 30, 2011, Hernandez was charged with conspiracy to commit securities and commodities fraud in matter 11-20686-CR (S.D. Fla.). He pled guilty to that charge and, on March 5, 2012, was sentenced to 57 months imprisonment.

B. Conclusions Of Law

1. Jurisdiction and Venue

29. This Court has jurisdiction over this action pursuant to Section 6c of the Act, as amended, 7 U.S.C. § 13a-1, which provides that whenever it shall appear to the Commission that any 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 promulgated thereunder, the Commission may bring an action in the proper district court of the United States against such person to enjoin such act or practice, or to enforce compliance with the Act, or any rule, regulation or order thereunder.

30. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, as amended, 7 U.S.C. § 13a-1(e), because the Defendant(s) reside(s) in this jurisdiction and the acts and practices in violation of the Act occurred within this District.

2. Commodities Fraud

31. By the conduct described in paragraphs 1 through 28 above, Defendants cheated and defrauded, or attempted to cheat or defraud, and willfully deceived, or attempted to deceive, their pool participants by, among other things, knowingly or recklessly misrepresenting the potential risks and likelihood of profits of commodities trading and misappropriating pool participant funds in violation Sections 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i), (iii) (2006) (in connection with acts occurring before June 18, 2008) and Sections 4b(a)(1)(A) and (C) of the Act, 7 U.S.C. §§ 6b(a)(1)(A), (C) (Supp. III 2009) (in connection with acts occurring on or after June 18, 2008).

32. Further, by misrepresenting the potential risks and likelihood of profits of commodities trading and misappropriating pool participant funds through use of the mails or

other means or instrumentalities of interstate commerce, Defendants knowingly or recklessly violated Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (2006).

3. Registration Violations

33. By the conduct described in paragraphs 1 through 25 above, Defendants knowingly or recklessly violated Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2006), which makes unlawful for a commodity pool operator (“CPO”) to make use of the mails or other means or instrumentalities of interstate commerce in connection with its CPO business unless registered with the Commission as a CPO.

34. Further, by permitting Hernandez to be associated with Midway and Conquest, unregistered CPOs, as an agent in a capacity involving the solicitation of funds for participation in a commodity pool even though Midway and Conquest knew or should have known that Hernandez was not registered as an Associated Person (“AP”) of Midway or Conquest, Midway and Conquest knowingly or recklessly violated Section 4k(2) of the Act, 7 U.S.C. § 6k(2) (2006). In addition, Hernandez knowingly or recklessly violated Section 4k(2) by acting as an AP of Midway and Conquest by soliciting participants while unregistered.

4. Derivative Liability

35. Hernandez controlled Midway and Conquest directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, Midway’s and Conquest’s acts in violation of the Act; therefore, pursuant to Section 13(b) of the Act, as amended, 7 U.S.C. § 13c(b), Hernandez is liable for Midway’s and Conquest’s violations of Sections 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i), (iii) (2006) (in connection with acts occurring before June 18, 2008), Sections 4b(a)(1)(A) and (C) of the Act, 7 U.S.C. §§ 6b(a)(1)(A), (C) (Supp. III

2009) (in connection with acts occurring on or after June 18, 2008), and Sections 4k(2), 4o(1) and 4m(1) of the Act, 7 U.S.C. §§ 6k(2), 6o(1), 6m(1) (2006).

36. The foregoing acts, omissions and failures of Hernandez occurred within the scope of his employment, office, or agency with Midway and Conquest; therefore, pursuant to Section 2(a)(1)(B) of the Act, as amended, 7 U.S.C. § 2(a)(1)(B), and Regulation 1.2, 17 C.F.R. § 1.2 (2012), Midway and Conquest are liable for Hernandez's acts, omissions, and failures in violation of Section 4b(a)(2)(i) and (iii) (with respect to conduct prior to June 18, 2008), Section 4b(a)(1)(A) and (C) (with respect to conduct on or after June 18, 2008), and Sections 4k(2) and 4o(1).

37. Unless restrained and enjoined by this Court, there is a reasonable likelihood that Defendants will continue to engage in the acts and practices alleged in the Complaint and in similar acts and practices in violation of the Act..

IV. PERMANENT INJUNCTION

IT IS HEREBY ORDERED THAT:

38. Based upon and in connection with the foregoing conduct, pursuant to Section 6c of the Act, as amended, 7 U.S.C. § 13a-1 Midway, Conquest, and Hernandez are permanently restrained, enjoined, and prohibited from directly or indirectly:

- A. Cheating or defrauding, or attempting to cheat or defraud, other persons; or willfully deceiving, or attempting to deceive, other persons in or in connection with any order to make, or the making of, any contract of sale of any commodity in interstate commerce or for future delivery that is made, or to be made, on or subject to the rules of a designated contract market, for or on behalf of any other person, in violation of Sections 4b(a)(1)(A) and (C) of the Act, as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act"), Pub. L. No. 111-203, Title VII (the Wall Street Transparency and Accountability Act of 2010), §§ 701-774, 124 Stat. 1376 (enacted July 21, 2010), to be codified at 7 U.S.C. §§ 6b(a)(1)(A) and (C);
- B. Employing any device, scheme, or artifice to defraud any pool participant, or engaging in any transaction, practice, or course of business that

operates as a fraud or deceit upon any participant, by use of the mails or any means or instrumentality of interstate commerce, in violation of Section 4o(1) of the Act, as amended by the Dodd-Frank Act, to be codified at 7 U.S.C. § 6o(1);

- C. Using the mails or other means or instrumentalities of interstate commerce in connection with a CPO business without registering as a CPO in violation of Section 4m(1) of the Act, as amended by the Dodd-Frank Act, to be codified at 7 U.S.C. § 6m(1); and
- D. Permitting a person to be associated with Midway or Conquest as a partner, officer, employee, consultant, or agent, or a person occupying a similar status or performing similar functions, in any capacity that involves the solicitation of funds, securities, or property for participation in a commodity pool, if Midway or Conquest knows or should know that such person is not registered as an AP, or acting as an AP without being registered, in violation of Section 4k(2) of the Act, as amended by the Dodd-Frank Act, to be codified at 7 U.S.C. § 6k(2).

39. Defendants are further permanently restrained, enjoined, and prohibited from directly or indirectly:

- A. Trading on or subject to the rules of any registered entity (as that term is defined in Section 1a of the Act, as amended by the Dodd-Frank Act, to be codified at 7 U.S.C. § 1a);
- B. Entering into any transactions involving commodity futures, options on commodity futures, commodity options (as that term is defined in Regulation 1.3 (hh), 17 C.F.R. § 1.3(hh) (2012)) (“commodity options”), security futures products, and/or foreign currency (as described in Sections 2(c)(2)(B) and 2(c)(2)(C)(i) of the Act as amended by the Dodd-Frank Act, to be codified at 7 U.S.C. §§ 2(c)(2)(B) and 2(c)(2)(C)(i)) (“forex contracts”), for their own personal accounts or for any account in which they have a direct or indirect interest;
- C. Having any commodity futures, options on commodity futures, commodity options, security futures products, and/or forex contracts traded on their behalf;
- D. Controlling or directing the trading for or on behalf of any other person or entity, whether by power of attorney or otherwise, in any account involving commodity futures, options on commodity futures, commodity options, security futures products, and/or forex contracts;

- E. Soliciting, receiving, or accepting any funds from any person for the purpose of purchasing or selling any commodity futures, options on commodity futures, commodity options, security futures products, and/or forex contracts;
- F. 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 with the Commission, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2012); and
- G. Acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2012)), agent, or any other officer or employee of any person registered, exempted from registration or required to be registered with the CFTC except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2012).

V. CIVIL MONETARY PENALTY

40. Defendants shall jointly and severally pay a civil monetary penalty in the amount of one million, four hundred thousand dollars (\$1,400,000) ("CMP Obligation"), plus post-judgment interest, within thirty (30) days of the date of the entry of the Consent Order. Post-judgment interest shall accrue on the CMP Obligation 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 (2006).

41. Defendants shall pay their CMP Obligation 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 following address:

Commodity Futures Trading Commission
Division of Enforcement
Attn: Accounts Receivables – AMZ 340
E-mail Box: 9-AMC-AMZ-AR-CFTC
DOT/FAA/MMAC
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
Telephone: (405) 954-5644

If payment by electronic funds transfer is chosen, Defendants shall contact Linda Zurhorst or her successor at the address above to receive payment instructions and shall fully comply with those instructions. Defendants shall accompany payment of the CMP Obligation with a cover letter that identifies Defendants and the name and docket number of this proceeding. Defendants shall simultaneously transmit a copy of the cover letter and the form of payment to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

42. **Partial Satisfaction:** Any acceptance by the CFTC of partial payment of Defendants' CMP Obligation shall not be deemed a waiver of their obligation to make further payments pursuant to this Consent Order or a waiver of the CFTC's right to seek to compel payment of any remaining balance.

VI. MISCELLANEOUS PROVISIONS

43. **Notice:** All notices required to be given by any provision in the Consent Order shall be sent via certified mail, return receipt requested, as follows:

Notice to Plaintiff Commission:
Director of the Division of Enforcement
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street NW
Washington, D.C. 20581

Notice to Defendant Midway:
Midway Trading Company, LLC

c/o John Bergendahl
Law Offices of John E. Bergendahl
25 S.E. 2nd Ave, Suite 1105
Miami, FL 33131

Notice to Defendant Conquest:
Conquest Investment Group, Inc.
c/o John Bergendahl
Law Offices of John E. Bergendahl
25 S.E. 2nd Ave, Suite 1105
Miami, FL 33131

Notice to Defendant Hernandez:
Oscar Hernandez
c/o John Bergendahl
Law Offices of John E. Bergendahl
25 S.E. 2nd Ave, Suite 1105
Miami, FL 33131

All such notices to the Commission shall reference the name and docket number of this action.

44. Change of Address/Phone: Until such time as Defendants satisfy in full their CMP Obligation as set forth in this Consent Order, Defendants shall provide written notice to the Commission by certified mail of any change to their telephone number and mailing address within ten (10) calendar days of the change

45. Entire Agreement and Amendments: This Consent Order incorporates all of the terms and conditions of the settlement among the parties hereto to date. Nothing shall serve to amend or modify this Consent Order in any respect whatsoever, unless: (a) reduced to writing; (b) signed by all parties hereto; and (c) approved by order of this Court.

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

47. Waiver: The failure of any party to this Consent Order at any time to require performance of any provision of this Consent Order shall in no manner affect the right of the 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.

48. Continuing Jurisdiction of this Court: This Court shall retain jurisdiction of this action to ensure compliance with this Consent Order, and for all other purposes related to the action, including any motion by Defendants to modify or for relief from the terms of this Consent Order.

49. Injunctive and Equitable Relief Provisions: The injunctive and equitable relief provisions of this Consent Order shall be binding upon Defendants, upon any person under their authority or control, and upon any person who receives actual notice of this Consent Order, by personal service, e-mail, facsimile or otherwise insofar as he or she is acting in active concert or participation with Defendants.

50. Authority: Oscar Hernandez hereby warrants that he is the sole officer, member and/or manager of Midway and Conquest, and that this Consent Order has been duly authorized by Midway and Conquest and that he has been duly empowered to sign and submit this Consent Order on behalf of Midway and Conquest.

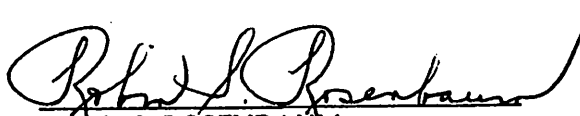
51. Counterparts and Facsimile Execution: This Consent Order may be executed in two or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties hereto and delivered (by facsimile, email, or otherwise) to the other party, it being understood that all

parties need not sign the same counterpart. Any counterpart or other signature to this Consent Order that is delivered by any means shall be deemed for all purposes as constituting good and valid execution and delivery by such party of this Consent Order.

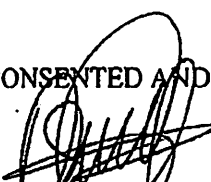
52. Defendants understand that the terms of the Consent Order are enforceable through contempt proceedings, and that, in any such proceedings they may not challenge the validity of this Consent Order.

IT IS SO ORDERED.


Date: 9/27, 2012


ROBIN S. ROSENBAUM
UNITED STATES DISTRICT JUDGE

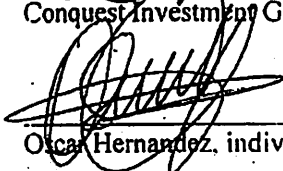
CONSENTED AND APPROVED BY:


Oscar Hernandez, Managing Member
Midway Trading Company, LLC

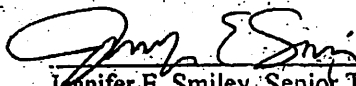
Date: 9/11/12


Oscar Hernandez, Officer and Director
Conquest Investment Group, Inc.

Date: 9/11/12

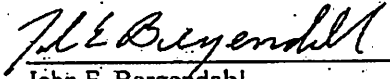

Oscar Hernandez, individually

Date: 9/11/12


Jennifer E. Smiley, Senior Trial Attorney
Joseph A. Konizeski, Chief Trial Attorney
Counsel for Plaintiff
U.S. Commodity Futures Trading Commission
525 W. Monroe Street, 11th Floor
Chicago, IL 60661
312-596-0700

Date: 9/26/12

Approved as to form:



John E. Bergendahl
Attorney for Defendants
Law Offices of John E. Bergendahl
25 S.E. 2nd Ave, Suite 1105
Miami, FL 33131

Date: 9/11/12