

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 06-60001-CIV-DIMITROULEAS

COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

vs.

DOREEN ROSE VALKO, FRANK A.
DESANTIS, a.k.a. JOSEPH ANTHONY, and
INTERNATIONAL HOLDING CORP.,
Defendants.

vs.

JASON TODD DEAN, et al.,
Relief Defendants.

_____/

**ORDER GRANTING PLAINTIFF'S MOTION FOR FINAL JUDGMENT BY DEFAULT
AND ORDER OF DISGORGEMENT AS TO RELIEF DEFENDANT
AMERICAN LIGHTHOUSE TRADING, INC.**

THIS CAUSE is before the Court upon Plaintiff's Motion for Final Judgment by Default and Order of Disgorgement as to Relief Defendant American Lighthouse Trading, Inc., filed herein on May 14, 2008. [DE-211]. The Court has carefully considered the Motion and is otherwise fully advised in the premises. The Clerk entered default on January 10, 2008. [DE-194]. As no response had been filed by the due date, this Court issued an Order to Show Cause Why Default Judgment Should Not Be Entered on June 3, 2008. [DE-226]. Relief Defendant American Lighthouse Trading, Inc. had until June 17, 2008 to file a Response to the instant Motion. As of the date of this Order, no response has been filed.

Plaintiff Commodity Futures Trading Commission (the "Commission" or Plaintiff), filed this action in this Court on or about January 3, 2006, charging that defendants International

Investments Holdings Corp. ("IIHC"), Doreen Valko ("Valko") and Frank A. DeSantis ("DeSantis") (collectively the "Defendants") have engaged, are engaging, and may be about to engage in acts and practices which constitute violations of Section 4c(b) of the Commodity Exchange Act ("Act"), 7 U.S.C. § 6c(b), and Commission Regulations ("Regulations") 1.1(b)(1) and (3), 32.9(a), (b) and (c), 32.11(a) (2002), 17 C.F.R. §§ 1.1(b)(1) and (3), 32.9(a), (b) and (c), and 32.11(a) (2006), by soliciting the public for the offer and sale of illegal, off-exchange foreign currency options, generating false statements for customer accounts and misappropriating customer funds. The Complaint also seeks disgorgement of ill-gotten gains from a number of relief defendants, including American Lighthouse Trading, Inc. ("ALT").

The Commission has moved this Court for Judgment by Default and Order of Disgorgement as to relief defendant ALT. Based upon the Commission's memorandum in support of its motion and exhibits attached thereto, the record in this case, and the Court being otherwise advised in the premises, it is hereby:

ORDERED AND ADJUDGED that the Plaintiff's Motion for Final Judgment by Default and Order of Disgorgement as to Relief Defendant American Lighthouse Trading, Inc. [DE-211] is **GRANTED** and Judgment by Default and Order of Disgorgement as to Relief Defendant American Lighthouse Trading, Inc. ("ALT") is hereby **ENTERED**. The Court hereby enters the following findings of fact and conclusions of law, finding Relief Defendant ALT liable as to all claims against it in the Complaint. Accordingly, the Court now issues the following Judgment by Default and Order of Disgorgement as to ALT (the "Order").

I. 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 Order and that there is no just reason for delay. The Court therefore, further directs the entry of the following Findings of Fact and Conclusions of Law, and Order of Disgorgement, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2002), as set forth herein.

A. JURISDICTION

1. This Court has subject matter jurisdiction over this action and the allegations in the Complaint pursuant to Section 6c(a) of the Act, 7 U.S.C. § 13a-1(a) (2002).

2. This Court has personal jurisdiction over ALT pursuant to Section 6c(a) of the Act, 7 U.S.C. § 13a-1(a) (2002).

3. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2002), because ALT resided in and transacted business in the Southern District of Florida.

B. PARTIES

4. The Commodity Futures Trading Commission is an independent federal regulatory agency that is charged with responsibility for administering and enforcing the provisions of the Act, as amended, 7 U.S.C. §§ 1 et seq. (2002), and the Regulations promulgated thereunder.

5. American Lighthouse Trading, Inc. is a dissolved Florida corporation with its principal place of business was located at 3937 NW 7th Court, Delray Beach, Florida 33445. ALT's registered agent is the Corporation Service Company, whose address is 1201 Hays Street, Tallahassee, Florida 32301-2525. ALT has never been registered with the Commission in any capacity.

C. FINDINGS OF FACT

6. In July 2000, IIHC entered into a written “Clearing and Business Agreement” (“Agreement”) with World Banks.¹ The Agreement states that “IIHC is a clearing and options merchant. Accepting and transferring risk from various options or clearing firms (sic).” The Agreement further provides that “IIHC will receive and execute orders, but will not be obligated for order execution . . . IIHC will prepare and transmit, or have prepared and transmitted by a third party organization customer reports of execution, monies due, call, and monthly statements.” Pursuant to the terms of the Agreement, the parties agreed that “IIHC will hold cash, securities and other property received from [World Banks . . .] on behalf of customers” in connection with the purchase or sale of commodity options contracts. IIHC ultimately accepted at least \$1.13 million in customer funds, purportedly for executing transactions involving commodities on behalf of customers.

7. IIHC, through its agents, prepared and transmitted to customers statements entitled “Transaction Summary.” These statements were issued on IIHC letterhead, purportedly from the “Chancery House, The Mall, Freeport, Grand Bahama” address listed at the top of the statement. The “Transaction Summary” issued by IIHC to customers stated “[T]he following trades have been made this day for your account and risk,” and listed options contracts purportedly bought or sold on behalf of customers. The “Transaction Summary” statements were issued to 205

¹ On August 16, 2006, the Court entered a Judgment by Default and Order of Permanent Injunction against IIHC, *et al.*, wherein the Court entered Findings of Fact and Conclusions of Law as to IIHC and ordered that IIHC pay: restitution in the amount of \$6,060,000, which represents the amount solicited from customers; and a civil monetary penalty in the amount of \$6,060,000. [DE-105]. The factual allegations in those Findings of Fact were deemed admitted only for the purpose of that Default Judgment and Permanent Injunction. See Aug. 16, 2006 Order n. 1 (S.D. Fla. Aug. 16, 2006). Similarly, the factual allegations contained herein are admitted only for purposes of this Order of Default against American Lighthouse.

customers beginning on or about July of 2000, and ending in late March of 2001 when World Banks began winding down its operations. Each "Transaction Summary" issued by IIHC to customers constituted a false statement because none of the "trades" detailed in the "Transaction Summary" ever took place.

8. Despite the representations that IIHC traded for customer accounts, bank records for the period July 2000 through November 2004 regarding IIHC's offshore accounts at the Bank of Nevis and the Canadian Imperial Bank of Commerce ("CIBC") in the Bahamas demonstrate that no trading took place. For example, on or about February 12, 2001, World Banks wire transferred \$554,226.50 to IIHC's account 8290132 at the Bank of Nevis. In March and April of 2001, the records for this account show that customer funds were used to pay \$44,000 to relief defendant Erin DeSantis and \$5,000 to relief defendants Jason and Tara Dean. In May 2001, over \$318,700 was wired to a Florida title company to purchase real estate located at 2410 NE 31st Court, Lighthouse Point, FL – Frank and Erin DeSantis' former waterfront home.

9. Similarly, between July 2000 and May 2001, other customer funds were wired by World Banks to IIHC's account at CIBC - over \$164,650 - and used for a variety of purposes unrelated to options trading.

10. The monthly account statements of the two IIHC accounts at the Bank of Nevis show that approximately \$6 million was wire transferred for a variety of purposes unrelated to options trading, including transfers to ALT in the amount of \$6,795.62.

D. CONCLUSIONS OF LAW

1. IIHC Directly Violated Section 4c(b) of the Act and Regulations 1.1 and 32.9(a) and (c)

11. Misappropriation of customer funds violates the antifraud provision of the Act as

well as Commission regulations. See CFTC v. Skorupskas, 605 F. Supp. 923, 932 (E.D. Mich. 1985) (commodity pool operator's disbursing of investor funds to other investors, herself and her family violated Section 4b of the Act). See also, CFTC v. Morse, 762 F. 2d 60, 62 (8th Cir. 1985) (defendant's use of customer funds for personal use violated Section 4b of the Act); and In re Slusser, ¶27,701 at 48,315 (respondents violated Section 4b of the Act by surreptitiously retaining money in their own bank accounts that should have been traded on behalf of the investors); and In re Staryk, [1994-1996 Transfer Binder] Comm Fut. L. Rep. (CCH) ¶ 26,701, at 43,923-24 (CFTC June 5, 1996), *aff'd in rel. part*, [1998-1999 Transfer Binder] Comm. Fut. L. Rep. ¶ 27,515 at 47,374 (CFTC Dec. 4, 1998) (outlining requirements for options fraud under Section 4c(b) of the Act and noting parallels between applicable Commission regulation and Section 4b(a) of the Act).

12. IIHC has cheated customers by misappropriating their funds. As set forth above, the money trail associated with IIHC's activities leads to the inescapable conclusion that no trading activity ever occurred. Rather, a substantial majority of the funds are sent to offshore accounts in a sporadic manner never to be returned to customers.

13. IIHC, through its agents, also defrauded prospective and actual customers by making various misrepresentations and omissions. Whether a misrepresentation has been made depends on the “overall message” of the communication and the “common understanding of the information conveyed.” CFTC v. R.J. Fitzgerald Co., Inc., 310 F.3d 1321, 1328 (11th Cir. 2002); Hammond v. Smith Barney Harris Upham & Co., [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) 24,617, at 36,675 & n.12 (CFTC Mar.1, 1990). Scierter has been found when representations are made intentionally or with a reckless disregard for the truth. In re Slusser, [1998-1999 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,701 at 48,313 (CFTC July

19, 1999), *aff'd in relevant part and rev'd in part sub nom.*, Slusser v. CFTC, 210 F. 3d 783 (7th Cir. 2000). A fact is material if a reasonable person would view the information as important in making a trading decision – in other words, as including facts significantly altering the total mix of information already in his possession. R.J. Fitzgerald, 310 F. 3d at 1328. Such actionable misrepresentations include those made to customers when soliciting their funds. CFTC v. Rosenberg, 85 F. Supp. 2d 424, 447-448 (D.N.J. 2000); Saxe v. E. F. Hutton & Co., Inc., 789 F. 2d 105, 110-111 (2d Cir. 1986); Hirk v. Agri-Research Council Inc., 561 F. 2d 96, 103-104 (7th Cir. 1977).

14. IIHC made material misrepresentations to customers and potential customers by holding itself out as a clearing firm that actually acted as a counterparty to forex options transactions and confirmed the execution of those transactions. IIHC also made material misrepresentations to customers every time it issued a “Transaction Summary” to a customer, purportedly detailing forex options transactions that were executed on behalf of customers. Since no trading actually occurred, this representation was necessarily false. In a similar manner, by failing to disclose the fact that the entire enterprise was simply a scheme designed to cheat customers, it omitted a material fact. See Waters v. Int'l Precious Metals, 172 F.R.D. 479, 488-90 (S.D. Fla. 1996).

15. At no time did IIHC advise customers that their funds were to be used, or actually used, to enrich the defendants and relief defendants instead of trading foreign currency options contracts. Misrepresenting material facts such as these in soliciting funds from prospective and existing customers violates Section 4c(b) of the Act and Regulations 1.1 & 32.9.

2. IIHC Directly Violated Section 4c(b) of the Act and Regulations 1.1 and 32.9(b)

16. Section 4c(b) of the Act provides that “no person shall offer to enter into or confirm the execution of, any transaction involving any commodity regulated under this Act which is of the character of, or is commonly known to the trade as, an ‘option,’ ... contrary to any rule, regulation or order of the Commission prohibiting any such transaction...” Commission Regulation 32.9(b) states that it is unlawful for any person to make or cause to be made to any other person any false report or statement in connection with the entry into or the confirmation of the execution of any commodity option transaction. Account statements that falsely represent the value of a customer's account and performance of accounts constitute false statements in violation of Regulation 32.9(b), and are material and constitute fraud with respect to options transactions under 4c(b) of the Act.

17. From approximately July 2000 and continuing thereafter, IIHC and its agents made or caused to be made false reports or statements in connection with the confirmation of the execution of commodity option transactions by preparing and transmitting to customers false statements entitled “Transaction Summary.” As previously discussed, these statements were issued on IIHC letterhead, purportedly from the “Chancery House, The Mall, Freeport, Grand Bahama” address listed at the top of the statement. The statements stated “[T]he following trades have been made this day for your account and risk,” and listed options contracts purportedly bought or sold on behalf of customers.

18. Despite the representations set forth in each statement, customer funds were not used by IIHC to purchase options on foreign currency. The statements were patently fraudulent because IIHC misappropriated the customer funds.

3. IIHC Violated Section 4c(b) of the Act and Regulation 32.11(a)

19. The Commodity Futures Modernization Act (“CFMA”) clarified the Commission's jurisdiction over retail foreign currency options when engaged with a counterparty that is not a regulated financial institution. By the terms of the CFMA, the Commission's jurisdiction over foreign currency options includes options on physical currencies, and not just options on forex futures contracts.

20. Sections 2(c)(2)(B)(i) and (ii) of the Act, 7 U.S.C. §§ 2(c)(2)(B)(i) and (ii) provides that the Commission shall have jurisdiction over an agreement, contract or transaction in foreign currency that is a sale of a commodity for future delivery or an option, so long as the contract is “offered to, or entered into with, a person that is not an eligible contract participant” unless the counterparty, or the person offering to be the counterparty, is one of the regulated entities enumerated in Sections 2(c)(2)(B)(ii)(I-VI). Futures commission merchants (“FCMs”) and certain statutorily defined affiliates are regulated entities enumerated in that Section. Because IIHC's customers are not eligible contract participants and because IIHC has never been a registered FCM or an affiliate, the entire Act applies to the transactions at issue here. Consequently, Section 4c(b) applies to these transactions.

21. Section 4c(b) of the Act provides that “no person shall offer to enter into, enter into, or confirm the execution of, any transaction involving any commodity regulated under this Act which is of the character of, or is commonly known to the trade as, an ‘option,’ ... contrary to any rule, regulation or order of the Commission prohibiting any such transaction....” Commission Regulation 32.11(a), a rule promulgated pursuant to Section 4c(b), states that it is unlawful for any person to solicit or accept orders for the purchase or sale of any commodity option, or accept money in connection with the purchase or sale of any commodity option, except

for commodity option transactions conducted or executed on or subject to the rules of a contract market. The options offered by IIHC, and for which it accepted money, were not “conducted or executed on or subject to the rules of a contract market.” Accordingly, IIHC violated Regulation 32.11(a).

4. Relief Defendant ALT

22. A nominal or relief defendant is a person or entity that has received ill-gotten funds, and does not have a legitimate claim to those funds. SEC v. Cavanagh, 155 F.3d 129, 136 (2nd Cir. 1998). A relief or nominal defendant is joined to aid in full relief without asserting separate subject matter jurisdiction over the person or entity. CFTC v. Kimberlynn Creek Ranch, 276 F.3d 187, 193 (4th Cir. 2002); SEC v. Cherif, 933 F.2d 403, 414 (7th Cir. 1991) (nominal defendant is joined as a means of facilitating collection, no subject matter jurisdiction needs to be asserted as the relief defendant has no ownership interest, but merely possession of the funds that are at the center of the controversy.); SEC v. Collelo, 139 F.3d 674, 677 (9th Cir. 1998) (in order to effect full relief in recovering assets that are the fruit of the underlying fraud, the Securities and Exchange Commission could name a non-party depository as a relief defendant.)

23. ALT has received \$6,750 in funds from the Defendants that were obtained through fraudulent activities. ALT has received these funds but does not appear to have provided any legitimate services in exchange for the payments it received. ALT appears instead to be a vehicle by which IIHC and others hid assets and/or moved customer funds to off-shore accounts.

24. Equitable remedies, including disgorgement of ill-gotten gains, are remedies for violations of the Act. CFTC v. American Metals Exch. Corp., 991 F.2d 71, 76 (3rd Cir. 1993) (“A number of courts have held that district courts have the power to order disgorgement as a remedy for violations of the Commodity Exchange Act for the purpose of depriving the

wrongdoer of his ill-gotten gains and deterring violations of the law.”). In this case, disgorgement by ALT is necessary and appropriate because ALT does not have a legitimate claim to the funds and a deterrent is necessary.

II. ORDER FOR DISGORGEMENT

IT IS HERE BY ORDERED THAT:

25. PAYMENT OF DISGORGEMENT: Relief defendant ALT shall disgorge within ten days of the date of entry of this Order \$6,795.62, plus post-judgment interest. The Commission may enforce the Court's judgment for disgorgement and interest through all collection procedures authorized by law.

26. Post-judgment interest is payable on all the above amounts allowable by law at the statutory rate of 2.51%, from the date this judgment is entered until the date this judgment is paid.

27. Payments to Receiver: To effect payment by the Relief Defendants and distribution of disgorgement to Defendants' customers, the Relief Defendants shall make all disgorgement payments under this Order in the name of the “Doreen Valko Settlement Fund” and shall send such disgorgement payments to the Court-appointed Receiver herein, Gerald B. Wald, by electronic funds transfer, or by U.S. postal money order, certified check, bank cashier's check, or bank money order, to:

Gerald B. Wald, Esq.

Murai, Wald, Biondo, Moreno & Bochin, PA

Two Alhambra Plaza, Penthouse 1B

Coral Gables, FL 33134

(305) 444-0101

The paying Relief Defendant shall simultaneously transmit copies of the cover letter and the form of payment to: (a) the Director, Division of Enforcement, 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.

28. The Receiver shall oversee the Relief Defendants' disgorgement obligations and shall have the discretion to determine the manner for distribution of funds in an equitable fashion to IIHC's customers, as appropriate. Based upon the amount of funds available, the Receiver may defer distribution until such time as it deems appropriate.

29. To the extent that any funds accrue to the U.S. Treasury as a result of the restitution obligation in this Order, such funds shall be transferred to the Receiver for disbursement in accordance with the procedures set forth in paragraph 28 above.

There being no just reason for delay, the Clerk of the Court is hereby directed to enter this Order.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida,
this 18th day of June, 2008.


WILLIAM P. DIMITROULEAS
United States District Judge

Copies furnished to:

David A. Reed, Esq.
Timothy Mulreany, Esq.
Francisco O. Sanchez, Esq.
Adam Shonson, Esq.

Gerald B. Wald, Court Appointed Receiver

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3937 NW 7th Court
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