

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

File No. 1:06-CV-166

v.

HON. ROBERT HOLMES BELL

AURIFEX COMMODITIES RESEARCH
COMPANY, et al.,

Defendants.

ORDER AND JUDGMENT

In accordance with the opinion entered this date,

IT IS HEREBY ORDERED that **JUDGMENT** is entered in favor of Plaintiff Commodity Futures Trading Commission and against Defendants Ty Klotz and Monette Klotz on all counts of the complaint.

IT IS FURTHER ORDERED that a **PERMANENT INJUNCTION** is entered against Defendants Ty Klotz and Monette Klotz as follows:

A. Defendants Ty Klotz and Monette Klotz are permanently restrained, enjoined, and prohibited from directly or indirectly:

1. Cheating, defrauding or willfully deceiving or attempting to cheat, defraud or willfully deceive other persons in or in connection with an offer to enter into, the entry into, the confirmation of the execution of, or the maintenance of, any commodity futures transactions, in violation

of sections 4b(a)(2)(i) and (iii) of the Commodity Exchange Act (“CEA”), 7 U.S.C. § 6b(a)(2)(i) and (iii);

2. Cheating, defrauding or deceiving or attempting to cheat, defraud or deceive other persons and making or causing to be made to any other person any false report or statement thereof or causing to be made for any person any false record thereof, in or in connection with an offer to enter into, the entry into, the confirmation of the execution of, or the maintenance of, any commodity option transactions, in violation of section 4c(b) of the CEA, 7 U.S.C. § 6c(b) and Commission Regulation 33.10, 17 C.F.R. § 33.10; and

3. While acting in the capacity of a commodity pool operator, employing any device, scheme or artifice to defraud any participant or prospective participant or engaging in any transaction, practice, or course of business which operates as a fraud or deceit upon any participant or prospective participant by use of the mails or any means or instrumentality of interstate commerce, in violation of section 4o(1) of the CEA, 7 U.S.C. § 6o(1).

B. Defendant Ty Klotz is permanently restrained, enjoined and prohibited, from directly or indirectly 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, in violation of section 4b(a)(2)(ii) of the CEA, 7 U.S.C. § 6b(a)(2)(ii);

C. Defendants Ty Klotz and Monette Klotz are permanently restrained, enjoined and prohibited, from directly or indirectly:

1. Using the mails or any means or instrumentality of interstate commerce, while acting in the capacity of a commodity pool operator, without being registered under the CEA, in violation of section 4m(1) of the CEA, 7 U.S.C. § 6m(1);

2. Failing to provide Annual Reports, prepared by a certified independent accountant, and periodic account statements to

participants, while acting in the capacity of a commodity pool operator, in violation of section 4n(4) of the CEA, 7 U.S.C. § 6n(4) and Regulation 4.22;

3. Failing to deliver to prospective participants an accurate Disclosure Document containing the information set forth in Regulation 4.24, 17 C.F.R. § 4.24, including a risk disclosure document, while acting in the capacity of a commodity pool operator, in violation of Regulation 4.21, 17 C.F.R. § 4.21; and

4. Commingling the property received from any Pool participants with the property of any other person, while acting in the capacity of a commodity pool operator, in violation of 4.20(c).

D. Ty Klotz and Monette Klotz are 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 CEA, 7 U.S.C. § 1a(4) (“commodity interest”), including but not limited to, the following:

1. trading on or subject to the rules of any registered entity, at that term is defined in section 1a(29) of the CEA, 7 U.S.C. § 1a(29);

2. 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;

3. soliciting or accepting any funds from any person in connection with the purchase or sale of any commodity interest;

4. 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) (2004), or acting as a principal, agent or any other officer or employee of any person registered, exempted from registration or required to be registered with the Commission, except

as provided for in Regulation 4.14 (a)(9), 17 C.F.R. § 4.14(a)(9) (2004);

5. 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

6. engaging in any business activities related to commodity interest trading.

E. The injunctive provisions of this Order shall be binding on Ty Klotz and Monette Klotz, and any person insofar as he or she is acting in the capacity of an agent, servant, employee, successor, assign, or attorney of Ty Klotz or Monette Klotz, and upon any person who receives actual notice of this Order by personal service or otherwise insofar as he or she is acting in concert or participation with Ty Klotz or Monette Klotz.

IT IS FURTHER ORDERED THAT Ty Klotz and Monette Klotz are liable, jointly and severally, for, and a judgment is entered against them in the amount of, one million eight hundred twenty-six thousand seven hundred eight dollars and sixteen cents (\$1,826,708.16), as **RESTITUTION** to Aurifex pool participants (“Restitution Amount”) and prejudgment interest in an amount to be determined. Post-judgment interest after the date of this Order until the restitution is paid in full shall be paid at the post-judgment interest rate set forth in 28 U.S.C. § 1961. Restitution shall be paid as follows:

A. All payments made pursuant to this Order shall first be paid to the Equity Receiver, Rodger D. Young, appointed by this Court for further distribution to

claimants whose claims are allowed in the claims process. After the termination of the Receivership, restitution shall be made on a *pro rata* basis according to the Final Order of Distribution to claimants with allowed claims until those amounts (including interest) are fully satisfied. All payments after satisfaction of the restitution shall be applied to the civil monetary penalty described below.

B. Within thirty days of the date of this Order, Ty Klotz and Monette Klotz shall pay the Restitution Amount to Rodger D. Young, Equity Receiver. Such payment shall be mailed to: Rodger D. Young, Young & Susser, PC, 26200 American Drive, Ste. 305, Southfield, MI 48034, under cover letter identifying Ty Klotz or Monette Klotz by name as a defendant in this action and the name and docket number of the proceeding. Ty Klotz and Monette Klotz shall simultaneously transmit copies of the cover letter and form of payment to Gregory Mocek, Director, Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Centre, 1152 21st Street, N.W., Washington, D.C. 20581, and the Chief, Office of Cooperative Enforcement, at the same address. The Receiver shall oversee Ty Klotz and Monette Klotz's restitution obligation, shall make periodic distribution of funds to customers as appropriate, or may defer distribution until such time as it deems appropriate.

IT IS FURTHER ORDERED that Ty Klotz is liable for a **CIVIL MONETARY PENALTY** in the amount of nine hundred sixty thousand dollars (\$960,000), plus post-judgment interest.

IT IS FURTHER ORDERED that Monette Klotz is liable for a **CIVIL MONETARY PENALTY** in the amount of three hundred fifty thousand dollars (\$350,000), plus post-judgment interest.

IT IS FURTHER ORDERED that the civil monetary penalties are payable as follows:

A. The civil monetary penalties are due and owing immediately upon entry of this Order. 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 entry of this Order pursuant to 28 U.S.C. § 1961.

B. Ty Klotz and Monette Klotz shall pay their respective civil monetary penalties by making 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, Oklahoma 73169
Telephone: 405-954-6569

C. If payment is to be made by electronic funds transfer, Ty Klotz or Monette Klotz shall contact Marie Batemen or her successor at the above address to receive

payment instructions and shall fully comply with those instructions. Ty Klotz or Monette Klotz shall accompany payment of the penalty with a cover letter that identifies Ty Klotz or Monette Klotz and the name of the docket number of the proceedings. Ty Klotz or Monette Klotz shall simultaneously transmit copies of the cover letter and form of payment to the Director, Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581, and the Chief, Office of Cooperative Enforcement, at the same address.

IT IS SO ORDERED.

Date: February 1, 2008

/s/ Robert Holmes Bell
ROBERT HOLMES BELL
CHIEF UNITED STATES DISTRICT JUDGE