

FILED IN CHAMBERS
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JAMES N. HATTEN, Clerk
By:  Deputy Clerk

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

U.S. COMMODITY FUTURES
TRADING COMMISSION,

Plaintiff,

v.

AMERICAN DERIVATIVES CORP.,
et al.,

Defendants.

CASE NO. 1:05-CV-2492 RWS

**CONSENT ORDER OF JUDGMENT AGAINST
DEFENDANTS NATIONAL COMMODITIES CORPORATION INC.
AND INTERNATIONAL COMMODITY CLEARING LLC**

On September 26, 2005, Plaintiff Commodity Futures Trading Commission (the "Commission" or "Plaintiff") filed a two-count complaint against American Derivatives Corp. ("American Derivatives"), National Commodities Corporation Inc. ("NCCI"), International Commodity Clearing LLC ("ICC"), and the other Defendants alleging, among other things, fraud in connection with the offer and sale of options on commodity futures contracts ("commodity options") and that certain Defendants failed to adequately supervise their employees in violation of the Commodity Exchange Act, as amended (the "Act"), 7 U.S.C. §§ 1 *et seq.*

(2002), and the Regulations promulgated thereunder (“Regulations”), 17 C.F.R. § 1.1 *et seq.* (2007). The Complaint also alleges that for specific periods of time, and pursuant to written guarantee agreements, American Derivatives was a guaranteed introducing broker of NCCI and ICC and, therefore, NCCI and ICC are jointly and severally liable for American Derivatives’ violations of the Act and Regulations committed during their respective time periods as guarantors of American Derivatives.

I. CONSENTS AND AGREEMENTS

To effect a settlement of the matters alleged in the Complaint in this action without a trial on the merits, the presentation of evidence, or further judicial proceedings, NCCI and ICC:

1. Consent to entry of this Consent Order of Judgment (“Consent Order”);
2. Affirm that NCCI and ICC have agreed to this Consent Order voluntarily, and that no promise 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, other than as set forth specifically herein;
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, 7 U.S.C. § 13a-1 (2002);

5. Admit that venue properly lies with this Court pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2002);

6. Waive:

- a. all claims which they may possess under the Equal Access to Justice Act ("EAJA"), 5 U.S.C. § 504 (2000) and 28 U.S.C. § 2412 (2000), 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 proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief; and
- c. all rights of appeal from this action;

7. Consent to the continued jurisdiction of this Court for the purpose of enforcing the terms and conditions of this Consent Order and for any other purposes relevant to this case;

8. Agree that neither NCCI, ICC, nor their agents, employees or representatives acting under their control shall take any action or make any public

statement denying, directly or indirectly, any allegations in the Complaint or findings in this Consent Order, or creating or tending to create the impression that the Complaint and/or this Consent Order are without factual basis; provided, however, that nothing in this provision shall affect NCCI's and ICC's: i) testimonial obligations, or ii) right to take legal positions in other proceedings to which the Commission is not a party. NCCI and ICC will undertake all steps necessary to assure that their agents, employees, and representatives understand and comply with this agreement.

9. In consenting to the entry of this Consent Order, NCCI and ICC neither admit nor deny the Findings of Fact and Conclusions of Law contained herein. NCCI and ICC do not consent to the use of this Consent Order, or the Findings of Fact or Conclusions of Law, as the sole basis for any other proceeding brought by or involving the Commission, other than in a proceeding (i) in bankruptcy relating to NCCI or ICC, or (ii) to enforce the terms of this Consent Order. Solely with respect to any such proceeding in bankruptcy relating to NCCI or ICC or to enforce this Consent Order, NCCI and ICC agree that the allegations in the Complaint and 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, NCCI and ICC agree to provide immediate notice to

this Court and to the Commission by certified mail of any bankruptcy proceeding filed by, on behalf of, or against them, and of any change of address. No provision of this Consent Order shall in any way bind any party not a signatory hereto.

10. In the event that the Commission deems it necessary to request information and/or testimony, including trial declarations and authentication of documents, from NCCI and/or ICC as part of the continuing litigation of this matter against any Defendant not a party to this Consent Order, NCCI and ICC agree, subject to all applicable privileges, to comply fully, promptly and truthfully to any such requests.

11. The Court, being fully advised of the premises, finds that there is good cause for the entry of this Consent Order and that there is no just reason for delay. The Court therefore directs the entry of findings of fact, conclusions of law, and a permanent injunction and equitable relief, pursuant to § 6c of the Act, 7 U.S.C. § 13a-1, as set forth herein.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court hereby makes the following Findings of Fact and Conclusions of Law:

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

13. This Court has personal jurisdiction over NCCI and ICC pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1.

14. Venue properly lies with this Court pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, because NCCI and ICC conducted business in the Northern District of Georgia.

15. The Commission, NCCI, and ICC have agreed that this Court shall retain jurisdiction over each of them for the purpose of enforcing the terms of this Consent Order.

16. Defendant NCCI, a Virginia corporation, was a registered futures commission merchant pursuant to Section 1a(20) of the Act, 7 U.S.C. § 1a(20), from April 22, 1997 through July 7, 2004.

17. Defendant ICC, a Florida corporation, was a registered futures commission merchant pursuant to Section 1a(20) of the Act, 7 U.S.C. § 1a(20), from April 29, 2004 through February 27, 2007.

18. Defendant American Derivatives was a registered introducing broker pursuant to Section 1a(23) of the Act, 7 U.S.C. § 1a(23), from January 6, 2004 through January 22, 2006.

19. American Derivatives and NCCI entered into a standard Guarantee Agreement (CFTC Form 1-FR-IB; Part B) on or about December 31, 2003 ("NCCI Guarantee Agreement") that terminated on or about May 31, 2004.

20. On or about May 10, 2004, American Derivatives and ICC entered into an identical Guarantee Agreement ("ICC Guarantee Agreement"), effective June 1, 2004, that terminated on or about October 22, 2004.

21. Under the terms of both the NCCI Guarantee Agreement and the ICC Guarantee Agreement, American Derivatives agreed to introduce all its customers to NCCI or ICC to open accounts. In exchange, NCCI and ICC each agreed that it:

. . . guarantees performance by [American Derivatives] of, and shall be jointly and severally liable for, all obligations of [American Derivatives] under the Commodities Exchange Act . . . and the rules, regulations and orders which have been or may be promulgated thereunder with respect to the solicitation of and transactions involving all commodity customer, option customer, foreign futures customer and foreign options customer accounts of [American Derivatives] entered into on or after the effective date of this agreement. . . .

Termination of this agreement will not affect the liability of [NCCI or ICC] with respect to obligations of [American Derivatives] incurred on or before the date this agreement is terminated.

22. In its Complaint, the Commission alleges, *inter alia*, that while the NCCI and ICC Guarantee Agreements were in effect, American Derivatives,

through its employees and owners, committed fraud in soliciting customers to trade commodity options by knowingly misrepresenting and failing to disclose material facts concerning, among other things: (i) the likelihood that a customer would realize large profits from trading options; (ii) the risk involved in trading options; and (iii) American Derivative's poor trading record in light of the profit representations made.

23. The Commission also alleges that American Derivatives failed to diligently supervise its brokers.

24. The Commission alleges that these misrepresentations and omissions and the failure to supervise violated Section 4c(b) of the Act, 7 U.S.C. §6c(b), and Regulations 33.10 and 166.3, 17 CFR §§ 33.10 and 166.3.

25. In its Complaint, the Commission further alleges that American Derivatives is liable for the fraudulent acts of its employees pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B).

26. If an order is entered by the Court that American Derivatives violated Section 4c(b) of the Act, 7 U.S.C. § 6c(b), and/or Regulations 33.10 and 166.3, 17 C.F.R. §§ 33.10 and 166.3 (hereinafter, "Court Order"), then pursuant to their respective guarantee agreements with American Derivatives, NCCI and ICC are jointly and severally liable for American Derivatives' obligations to pay that

portion of any restitution and/or disgorgement penalties (the “restitution obligation” and “disgorgement obligation”, respectively) as a result of those violations that is attributable to American Derivatives’ customers whose accounts were cleared through NCCI and/or ICC.

IT IS HEREBY ORDERED that:

27. If a Court Order is entered as the result of a settlement agreement between the Commission and American Derivatives in this matter, then NCCI shall be jointly and severally liable with American Derivatives for 9.3 percent of the restitution obligation and/or disgorgement obligation, plus post-judgment interest.

28. If a Court Order is entered as the result of a settlement agreement between the Commission and American Derivatives in this matter, then ICC shall be jointly and severally liable with American Derivatives for 74.4 percent of the restitution obligation and/or disgorgement obligation, plus post-judgment interest.

29. If a Court Order is entered as a result of an outcome other than a settlement between the Commission and American Derivatives in this matter, then NCCI shall be jointly and severally liable to pay that portion of any restitution obligation and/or disgorgement obligation ordered against American Derivatives that is attributable to American Derivatives’ customers whose accounts were cleared through NCCI, plus post-judgment interest.

30. If a Court Order is entered as a result of an outcome other than a settlement between the Commission and American Derivatives in this matter, then ICC shall be jointly and severally liable to pay that portion of any restitution obligation and/or disgorgement obligation ordered against American Derivatives that is attributable to American Derivatives' customers whose accounts were cleared through ICC, plus post-judgment interest.

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

32. In the event of any such award of restitution or disgorgement, the Court, with the advice of the parties, shall establish a mechanism by which the Commission shall establish payment to customers of American Derivatives.

III. MISCELLANEOUS PROVISIONS

33. Notices: All notices required to be given by any provision in this Consent Order shall be sent certified mail, return receipt requested, as follows:

Notice to the Commission:

Attention - Director of Enforcement
Commodity Futures Trading Commission
Division of Enforcement
1155 21st Street N.W.

Washington, DC 20581

34. Entire Agreement and Amendments: This Consent Order incorporates all of the terms and conditions of the settlement among the parties hereto. Nothing shall serve to amend or modify this Consent Order in any respect whatsoever, unless: (1) reduced to writing; (2) signed by all parties hereto; and (3) approved by order of this Court.

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

36. Waiver: The failure of any party hereto at any time or times 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.

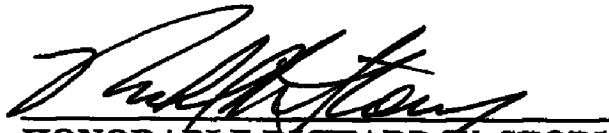
37. Continuing Jurisdiction of this Court: This Court shall retain jurisdiction of this cause to assure compliance with this Consent Order and for all other purposes related to this action.

38. Authority (NCCI): Sal Husain hereby warrants that he is an officer of NCCI, and that this Consent Order has been duly authorized by NCCI and he has been duly empowered to sign and submit it on behalf of NCCI.

39. Authority (ICC): Sal Husain hereby warrants that he is an officer of ICC, and that this Consent Order has been duly authorized by ICC and he has been duly empowered to sign and submit it on behalf of ICC.

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

SO ORDERED, at Atlanta, Georgia on this 7th day of February, 2008.


HONORABLE RICHARD W. STORY
UNITED STATES DISTRICT JUDGE
NORTHERN DISTRICT OF GEORGIA

CONSENTED TO AND APPROVED BY:

_____ Date: _____

_____ on behalf of National Commodities Corporation
Inc.

_____ Date: _____

_____ on behalf of International Commodity Clearing
LLC

/s/ Daniel C. Jordan _____

Date: February 6, 2008

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Attorneys for Plaintiff

Date: _____

SMC 1/4/81
 on behalf of International Commodity Clearing
 LLC
 Date: 12/3/07

SMC 1/4/81
 on behalf of National Commodities Corporation
 Inc.
 Date: 12/3/07