

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

COMMODITY FUTURES TRADING  
COMMISSION,

Plaintiff,

v.

AMERICAN ENERGY EXCHANGE and YORK  
COMMODITIES,

Defendants.

06 CV 7017 (LAK)

ECF CASE

[Proposed]  
Order For Entry of  
Judgment By Default  
Against American Energy Exchange  
and York Commodities

On September 12, 2006, the Commodity Futures Trading Commission ("Commission") filed a Complaint charging defendant American Energy Exchange ("AMENX") with illegally offering off-exchange futures contracts in violation of Section 4(a) of the Commodity Exchange Act ("Act"), 7 U.S.C. § 6(a) (2005) and charging AMENX and defendant York Commodities ("York") (collectively the "Defendants") with options fraud in violation of Section 4c(b) of the Act, 7 U.S.C. § 6c(b) and Commission Regulation 32.9(a) and (c), 17 C.F.R. § 32.9(a) and (c) (2006) ("Complaint").

On September 12, 2006, the Court issued an *Ex Parte* Statutory Restraining Order ("SRO"), which, among other things, prohibited Defendants from altering or destroying books, records, and documents, and barring them from denying access to those books, records, or documents to any representative of the Commission;

Proper service of process has been effected, Defendants have failed to answer or otherwise defend this action and the Clerk has issued a Certificate of Default;

The Commission has now submitted its Application for Entry of Default Judgment, Permanent Injunction and Ancillary Relief ("Application") against AMENX and York pursuant

to Fed. R. 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 in the premises, hereby:

**GRANTS** the Commission's Application for Entry of Judgment by Default Against AMENX and York and enters findings of fact and conclusions of law finding AMENX and York liable as to all violations as alleged in the Complaint. The Court further grants the Commission's request to assess monetary damages against AMENX and York, including restitution and civil monetary penalties. Accordingly, the Court now issues the following Order for Default Judgment, Permanent Injunction and Ancillary Equitable Relief ("Order") against Defendant AMENX and York on issues of liability and ancillary equitable relief.

**I. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**A. Jurisdiction and Venue**

This Court has jurisdiction over the subject matter of this action and the Defendants pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2002), 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 (2002), in that the acts and practices in violation of the Act and Commission Regulations occurred within this district, among other places.

**B. Findings of Fact**

AMENX, through representations made on its website, [www.amenx.com](http://www.amenx.com), purports to be an exchange for energy products based at 85 Broad Street, New York, New York that was formed by independent oil and gas traders in the USA in 2002 with trading facilities added in Chicago in 2005. The AMENX website describes: 1) the energy futures and options contracts for which AMENX purportedly serves as an exchange; 2) expiry schedules for those futures contracts; and 3) the purported members of AMENX.

A number of the member firms that the AMENX website purports to be members of AMENX are not, in fact, members of AMENX and have never heard of AMENX.

AMENX is not a board of trade designated by, or registered with, the Commission as either a contract market or a derivatives transaction execution facility. Moreover, there is no such entity located at the New York address listed on the AMENX website. According to publicly available documents, the AMENX website is registered to American Energy Exchange, Two North La Salle Street, Chicago IL 60602 U.S.A, with a telephone number of 1 888 460 3582. There is no such entity located at that address. The website administrator is listed as [net4all.ch](http://net4all.ch), a web services company located in Lausanne, Switzerland.

York fraudulently solicited customers to purchase options on future contracts purportedly traded on AMENX. York purports through its website, [www.york-commodities.com](http://www.york-commodities.com), to be a non-clearing member of both NYMEX and AMENX and to be registered with NYMEX. In fact, York is neither a non clearing member of nor is registered with NYMEX.

The websites for York and AMENX could be viewed by prospective customers in the United States. Neither the York nor AMENX websites restrict the purported opportunity to trade

futures and options on futures contracts on AMENX to persons outside the United States. In fact, account opening documents contain sections to be completed by U.S. customers.

York solicited customers to trade options on energy futures contracts with AMENX through direct telephone solicitations. These customers were led to believe that AMENX is an exchange and York is its broker, and that both were located in the United States. Customers were given a fax number of (212) 202-7927 and two different toll free numbers to mislead them to believe that York is located in the United States. The fax number (212) 202-7927 is registered to a United States communications company, j2 Communications, which maintains servers located in the United States. That company in turn leases the use of that number to York.

Once, the customers were advised that they have opened an online trading account on AMENX that they could access through the AMENX website and were instructed to wire their funds to bank accounts located in Hong Kong and/or Germany.

Customers were promised substantial profits when, in fact, the customers lost nearly all of the money that they had forwarded to Defendants. Customers of York and AMENX lost in excess of \$3,262,788.70.

### **C. Conclusions of Law**

#### **1. Violations of Section 4(a) of the Commodity Exchange Act by AMENX**

Section 4(a) of the Act, 7 U.S.C. § 6(a) (2002), provides that unless exempted by the Commission, "it shall be unlawful for any person to offer to enter into, execute, confirm the execution of, or conduct an office or business in the United States for the purpose of soliciting, accepting any order for, or otherwise dealing in transactions in, or in connection with, a contract for the purchase or sale of a commodity for future delivery..." when: (1) such transactions have not been conducted on or subject to the rules of a board of trade which has been designated or

registered by the Commission as a contract market or derivatives transaction execution facility for such commodity; (2) such contracts have not been executed or consummated by or through such contract market; and (3) such contract is not evidenced by a written record showing the date, parties, property covered, price, and terms of delivery.

AMENX offered to enter into, executed, confirmed the execution of, for the purchase or sale of a commodity for future delivery when: (1) such transactions have not been conducted on or subject to the rules of a board of trade which has been designated or registered by the Commission as a contract market or derivatives transaction execution facility for such commodity; and (2) such contracts have not been executed or consummated by or through such contract market in violation of Section 4(a) of the Act, 7 U.S.C. § 6(a) (2002).

**2. Violations by Defendants of Section 4c(b) of the Act and Section 32.9(a) and (c) of the Regulations: Options Fraud**

Section 4c(b) of the Act, 7 U.S.C. § 6c(b), makes it unlawful to offer to enter into, enter into or confirm the execution of, any transaction involving any commodity regulated under the Act which is of the character of, or is commonly known to the trade as, an "option," "privilege," "indemnity," "bid," "offer," "put," "call," "advance guaranty," or "decline guaranty," contrary to any rule, regulation, or order of the Commission prohibiting any such transaction or allowing any such transaction under such terms and conditions as the Commission shall prescribe.

Commission Regulation 32.9(a) and (c), 17 C.F.R. § 32.9(a) and (c), makes it unlawful for any person, directly or indirectly (a) to cheat or defraud or attempt to cheat or defraud any person; or (c) to deceive any other person by any means whatsoever, in or in connection with an offer to enter into, the entry into, or the confirmation of the execution of any commodity option transaction.

AMENX and York, in connection with offers to enter into, entry into and confirmation of the execution of, commodity options transactions, cheated or defrauded or attempted to cheat or defraud customers, and deceived or attempted to deceive customers, in violation of Section 4c(b) of the Act, 7 U.S.C. § 6c(b), and Section 32.9(a) and (c) of the Commissions Regulations, 17 C.F.R. §§ 32.9(a) and (c).

**3. Appropriate Relief**

Permanent injunctive relief is warranted in light of the egregious nature of the Defendants' conduct in fraudulently soliciting and receiving over \$3,262,788.70 from customers to invest in options on futures contracts as well as Defendants' high level of scienter in conducting a well-planned scheme to systematically defraud the public. These facts demonstrate a reasonable likelihood of future violations.

Imposition of civil monetary penalties is appropriate in this case because Defendants' violations of the Act and Commission Regulations were intentional and directly impacted the numerous victims of this fraud. Likewise, the remedy of restitution is appropriate to compensate the victims of Defendants' wrongful acts.

**II. ORDER FOR PERMANENT INJUNCTION**

**IT IS HEREBY ORDERED** that:

A. AMENX is permanently restrained, enjoined and prohibited from directly or indirectly offering to enter into, entering into, executing, confirming the execution of, or conducting an office or business anywhere in the United States, its territories or possessions, for the purpose of soliciting, or accepting any order for, or otherwise dealing in, any transaction in, or in connection with, a contract for the purchase or sale of a commodity for future delivery in violation of Section 4(a) of the Act, 7 U.S.C. § 6(a); and

B. AMENX and York are permanently restrained, enjoined and prohibited from directly or indirectly:

1. cheating or defrauding or attempting to cheat or defraud any persons; or deceiving or attempting to deceive any person by any means whatsoever, in or in connection with an offer to enter into, the entry into, or the confirmation of the execution of any commodity option transaction, in violation of Section 4c(b) of the Act and Commission Regulations 32.9(a) and (c); and

2. offering to enter into, entering into, executing, confirming the execution of, or conducting business for the purpose of soliciting, accepting any order for, or otherwise dealing in any transaction in, or in connection with, a commodity option contrary to any rule, regulation, or order of the Commission prohibiting any such transaction or allowing any such transaction under such terms and conditions as the Commission shall prescribe, in violation of Section 4c(b) of the Act.

C. Defendants are permanently 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 Act, , 7 U.S.C. § 1a(4) (“commodity interest”), including but not limited to, the following:

- a. trading on or subject to the rules of any registered entity, at that term is defined in Section 1a(29) of the Act, 7 U.S.C. § 1a(29);
- b. 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;
- c. soliciting or accepting any funds from any person in connection with the purchase or sale of any commodity interest;
- d. 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); and

- e. engaging in any business activities related to commodity interest trading.

**IT IS FURTHER ORDERED** that AMENX and York shall provide an accounting to the Court within thirty (30) days hereof of all of AMENX's and York's assets and liabilities, together with all funds it received from and paid to clients and other persons in connection with commodity interest transactions or purported commodity interest transactions, and all disbursements for any purpose whatsoever of funds received from commodity interest transactions, including salaries, commissions, interest, fees, loans and other disbursements of money and property of any kind, from, but not limited to, January 2006 through and including the date of such accounting.

The injunctive provisions of this Order shall be binding upon AMENX and York, upon any person insofar as he or she is acting in the capacity of officer, agent, servant or employee of AMENX or York, and upon any person who receives actual notice of this Order, by personal service, email or facsimile, insofar as he or she is acting in active concert or participation with AMENX or York.

### **III. RESTITUTION AND CIVIL MONETARY PENALTIES**

**IT IS FURTHER ORDERED** that:

A. Civil Monetary Penalties - Upon entry of this Order, AMENX is liable for and judgment is entered against it in the amount of \$260,000, plus post-judgment interest, as a civil monetary penalty, and York is liable for and judgment is entered against it in the amount of \$130,000, plus post-judgment interest, as a civil monetary penalty. Post-judgment interest shall accrue beginning on the date of entry of this Order and will be calculated using the Treasury Bill rate prevailing on the date of entry of this Order pursuant to 28 U.S.C. § 1961. Defendants shall pay this penalty by making electronic funds transfer, U.S. postal money order, certified check,



bank cashier's check, or bank money order 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, OK 73169

If payment by electronic transfer is chosen, contact Marie Bateman at 405-954-6569 for instructions. The paying Defendant shall accompany payment of the penalty with a cover letter that identifies the paying Defendant, and the name and docket number of this proceeding. The paying Defendant shall simultaneously transmit a copy of the cover letter and the form of payment to:

Office of Cooperative Enforcement  
Division of Enforcement  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21st Street, NW  
Washington, DC 20581

B. Restitution - Upon entry of this Order, AMENX and York shall pay and be jointly and severally liable for restitution to defrauded AMENX and York customers in the amount of \$3,262,788.70 (three million two hundred sixty two thousand seven hundred eighty eight dollars and seventy cents), plus post-judgment interest. Post-judgment interest shall accrue beginning on the date of entry of this Order and will be calculated using the Treasury Bill rate prevailing on the date of entry of this Order pursuant to 28 U.S.C. § 1961. Defendants are ordered to make such payments to the Registry of this Court by cashier's check, certified check or postal money order, under cover of a letter that identifies the paying Defendant, the name and docket number of this action and the name of this Court. The paying Defendant shall simultaneously transmit copies of the cover letter and form of payment to the Regional Counsel, U.S. Commodity Futures



Trading Commission, Division of Enforcement - Eastern Regional Office, 140 Broadway, 19th floor, New York, New York 10005 and to the Office of Cooperative Enforcement, Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21<sup>st</sup> Street, N.W., Washington, D.C. 20581. Restitution to defrauded customers shall be made pursuant to a payment plan that will be determined by the Court.

C. All payments made pursuant to this Order by Defendants shall first be applied to their restitution obligation, until such obligation (including interest) is fully satisfied. All payments after satisfaction of the Defendants' restitution obligation shall be applied to the Defendants' civil monetary penalty obligations described herein;

#### IV MISCELLANEOUS PROVISIONS

A. Prohibition on Transfer of Funds: AMENX and York 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 Commission, or any officer that may be appointed by the Court;

B. Third-Party Beneficiaries: Pursuant to Rule 71 of the Federal Rules of Civil Procedure, each of the defrauded customers of AMENX and York is explicitly made an intended third-party beneficiary of this Order and may seek to enforce obedience of this Order to obtain satisfaction of any portion of the restitution amount which has not been paid by Defendants;

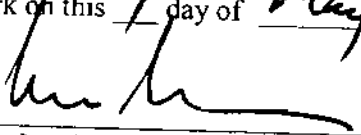
C. Notices: All notices required to be given by any provision in this Order shall be sent by certified mail, return receipt requested, as follows:

Notice to Commission: Stephen J. Obie, Regional Counsel  
U.S. Commodity Futures Trading Commission  
Division of Enforcement - Eastern Regional Office  
140 Broadway, 19<sup>th</sup> floor  
New York, New York 10005; and

D. 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 New York, New York on this 7 day of May, 2007.

*Ward*  
*2:11 pm*

  
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Honorable Lewis A. Kaplan  
UNITED STATES DISTRICT JUDGE