

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

)	
U.S. COMMODITY FUTURES)	
TRADING COMMISSION,)	
)	
Plaintiff,)	
)	CASE NO. 3:10-cv-1473
v.)	
)	
)	
GROWTH CAPITAL MANAGEMENT)	
LLC, ROBERT MIHAILOVICH, SR.)	JUDGE JANE J. BOYLE
AND ROBERT MIHAILOVICH, JR.,)	
)	
Defendants.)	
)	
)	
)	

**CONSENT ORDER OF INJUNCTIVE AND OTHER
EQUITABLE RELIEF AGAINST DEFENDANT ROBERT MIHAILOVICH, JR.**

On July 27, 2010, Plaintiff U.S. Commodity Futures Trading Commission (“Commission” or “CFTC”) filed a *Complaint for Injunctive Relief, Civil Monetary Penalties, and Other Equitable Relief* (the “Complaint”) against defendants Growth Capital Management, LLC (“GCM”), Robert Mihailovich, Sr. (“Mihailovich, Sr.”), and Robert Mihailovich, Jr. (“Defendant” or “Mihailovich, Jr.”) seeking injunctive and other equitable relief, restitution, and the imposition of civil monetary penalties (“CMP’s”), for violations of the Commodity Exchange Act (the “Act”), as amended by the Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, Title XIII (the CFTC Reauthorization Act of 2008 (“CRA”)), §§ 13101-13204, 122 Stat. 1651 (enacted June 18, 2008), to be codified at 7 U.S.C. §§ 1 *et seq.*

I.

CONSENTS AND AGREEMENTS

1. To effect settlement of all charges alleged in the Complaint (“this action”), without a trial on the merits or any further judicial proceedings, defendant Mihailovich, Jr., consents to the entry of this *Consent Order of Permanent Injunction and Other Equitable Relief Against Defendant Mihailovich, Jr.* (“Order”).
2. Defendant acknowledges service of the summons and the Complaint.
3. Defendant admits that this Court and the Commission have jurisdiction over him and the subject matter of this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2006), and Section 2(c)(2) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 2(c)(2).
4. Defendant admits that venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2006), because Defendant transacted business in the Northern District of Texas and certain of the transactions, acts, practices, and courses of business alleged in the Complaint occurred in this District.
5. Defendant waives: (a) any and all claims that he 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 Commission Regulations, 17 C.F.R. §§ 148.1-30 (2011), relating to or arising from this action; (b) any and all claims that he 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, 204-205 (2007), relating to or arising from this action; (c) 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, including this Consent Order; and (d) any and all rights of appeal from this action.

6. By consenting to the entry of this Order, Defendant neither admits nor denies all of the findings made in this Order and all of the allegations contained in the Complaint, except as to jurisdiction and venue, which he admits. Further, Defendant agrees that all of the allegations contained in the Complaint and all of the Findings of Fact made by this Court and contained in Part II of this 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 bankrupt proceeding filed by, on behalf of, or against any or all of the 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. (2011); and/or (c) any proceeding to enforce the terms of this Order.
7. The Defendant also shall provide immediate notice to this Court and the Commission by certified mail in the manner required by Part VI, paragraph 45 of this Order of any bankruptcy filed by, on behalf of, or against him whether inside or outside of the United States.
8. The Defendant agrees that neither he nor any of his agents or employees under his authority or control shall take any action or make any public statement denying, directly or indirectly, any allegation in the Complaint or findings or conclusions in this Order or creating, or tending to create, the impression that the Complaint or this Order is without a factual basis; provided, however, that nothing in this provision shall affect the Defendant's (a) testimonial obligations or (b) right to take legal positions in other

proceedings to which the Commission is not a party. The Defendant shall take all necessary steps to ensure that all of his agents and/or employees under his authority or control understand and comply with this agreement.

9. The Defendant agrees that he has read this Order and affirms that he has agreed to this 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 Order, other than as set forth specifically herein.
10. The Defendant consents to the continued jurisdiction of this Court in order to implement, enforce and carry out the terms of all orders and decrees that may be entered herein, to entertain any suitable application or motion for additional relief within the jurisdiction of this Court, to assure compliance with the Order and for any other purpose relevant to this action, even if he now or in the future resides or operates outside the jurisdiction of this Court.
11. The Defendant agrees that he will not oppose enforcement of this Order by alleging that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure and waives any objection based thereon.
12. The Defendant agrees that no provision of this Order shall in any way limit or impair the ability of any other person or entity to seek any legal or equitable remedy against Defendant in any other proceeding.
13. 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 directs the entry of findings of fact, conclusions of law, injunctive relief, and ancillary equitable

relief pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2006), as set forth herein, and Section 2(c)(2) of the Act, as amended by the CRA, codified at 7 U.S.C. § 2(c)(2).

II.

FINDINGS OF FACT

14. Commencing in at least June 2008, and continuing through the present, Defendants GCM, a registered Commodity Trading Advisor (“CTA”) and Commodity Pool Operator (“CPO”), and Mihailovich, Sr., solicited over \$30 million from approximately 93 customers to open individual managed accounts and trade on-exchange commodity futures and off-exchange foreign currency (“forex”) on a managed or leveraged basis pursuant to an electronic trading software program and powers of attorney granted to GCM and Mihailovich, Sr.
15. In the fall of 2008, Mihailovich, Sr. formed GCM, with Mihailovich, Jr. as its listed president. Mihailovich, Sr. formed GCM to engage in the solicitation of customers to open managed individual accounts to trade on-exchange commodity futures and off-exchange forex on a managed or leveraged basis.
16. On September 12, 2008, GCM became registered with the Commission as a CTA and on October 13, 2008, as a CPO. On September 12, 2008, Mihailovich, Jr. became registered with the Commission as an Associated Person (“AP”) of GCM.
17. In regulatory filings, specifically CFTC Forms 7-R and 8-R required to be filed with the Commission through the National Futures Association (“NFA”), a registered futures association and industry self-regulatory organization, GCM, through Mihailovich, Jr., identified Mihailovich, Jr. as the president and principal of GCM. There was no

disclosure in GCM's filings concerning Mihailovich, Sr. and/or his involvement with GCM.

18. In the time they were solicited and while trading with GCM, most, if not all, of the customers did not know that Mihailovich, Sr. was a felon convicted of a federal mail fraud charge. Mihailovich, Sr. did not affirmatively disclose to any current or prospective customers that he was a felon convicted of a federal mail fraud charge.
19. However, Mihailovich, Sr. managed and controlled GCM's daily operations. Mihailovich, Sr. solicited most, if not all, managed account customers to trade commodity futures and forex. Mihailovich, Sr. directed the trading in the customers' accounts and conducted the webinar presentations. Mihailovich, Sr. was the main contact at GCM for customers and routinely contacted customers to help them set up their accounts or deal with problems. Customers believed that Mihailovich, Sr. was in charge of GCM because he was the main person with whom they dealt. Customers also believed that Mihailovich, Sr. was in charge of GCM because the due diligence marketing materials contained biographies of Mihailovich, Sr. only and stated that he had decades of experience trading commodity futures and forex.
20. Mihailovich, Sr. also routinely signed his name and social security number on customer account documents as the trader of those accounts. Mihailovich, Sr. corresponded with the various FCMs to set up GCM's trading program and conducted GCM's business with the FCMs.
21. Further, when initially questioned by the NFA during an audit in early 2009, Mihailovich, Sr. answered approximately ninety percent of the questions asked by the NFA examiner

concerning GCM. The NFA examiner further reported that Mihailovich, Jr., who was also on the call, did not appear to know much about GCM's business.

22. In that same audit, Mihailovich, Jr. stated that he did not have any discretionary managed futures accounts for customers. The NFA had discovered certain individual managed accounts for customers over which GCM and "Robert Mihailovich" held trading authority. When asked about these accounts by the NFA, Mihailovich, Jr. stated that he had nothing to do with those accounts and that they were his dad's accounts.
23. Mihailovich, Jr. knowingly filed a false CTA application for registration and failed to disclose Mihailovich, Sr. as a principal of GCM. Mihailovich, Jr., on behalf of GCM, filed a CFTC Form 7-R, the purpose of which is to disclose the names of all of a firm's principals pursuant to Commission Regulation ("Regulation") 3.10(a)(2), 17 C.F.R. § 3.10(a)(2) (2010). Mihailovich, Jr., on behalf of GCM, was also required to accompany the CFTC Form 7-R with a CFTC Form 8-R for each natural person who is a principal of GCM, as defined by Regulation 3.1(a), 17 C.F.R. § 3.1(a). Mihailovich, Jr. attached a CFTC Form 8-R to the CFTC Form 7-R identifying himself as a principal, but did not attach a CFTC Form 8-R for Mihailovich, Sr. or otherwise disclose that Mihailovich, Sr. was a principal of GCM.
24. At no time subsequent to the initial filing of the CFTC Form 7-R did GCM, or Mihailovich, Jr., acting on behalf of GCM, file a CFTC Form 8-R disclosing that Mihailovich, Sr. was a principal of GCM.

III.

CONCLUSIONS OF LAW

25. This Court has jurisdiction over the subject matter of this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2006), which authorizes the Commission to seek injunctive relief against any person whenever it shall appear to the Commission 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.
26. Venue properly lies with this Court pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2006).
27. By the conduct described in paragraphs 14 through 24, above, Defendants GCM and Mihailovich, Jr. violated Sections 6(c) and 9(a)(3) of the Act and Regulation 3.10(a)(2) by knowingly omitting required information from their registration forms, namely, a Form 8-R application for Mihailovich, Sr. disclosing that he was a principal of GCM since the inception of GCM because, among other things, he managed the daily operations of GCM, directed trading and marketing at GCM and has an ownership interest in GCM.
28. By the conduct described in paragraphs 14 through 24, above, Defendant Mihailovich, Jr. has willfully aided, abetted, counseled, commanded, induced, procured, caused or acted in combination or concert with other persons in the foregoing violations of the Act and the Regulations by GCM. Mihailovich, Jr. is therefore responsible for these violations by operation of Section 13(a) of the Act, 7. U.S.C § 13c(a).

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

IV.

PERMANENT INJUNCTION

30. **IT IS HEREBY ORDERED THAT:** Based upon and in connection with the foregoing conduct, pursuant to Section 6c of the Act, as amended, to be codified at 7 U.S.C. § 13a-1, Defendant Robert Mihailovich, Jr. is permanently restrained, enjoined and prohibited from directly or indirectly:
- a. Willfully making any false or misleading statement of a material fact in any registration application or any report filed with the Commission, under this Act, or willfully omitting to state in any such application or report any material fact which is required to be stated therein, in violation of Sections 6(c) of the Act, 7 U.S.C. § 9;
 - b. Knowingly making, or causing to be made, any statement in any application, report, or document required to be filed under the Act, or any rule or regulation thereunder or any undertaking contained in a registration statement required under the Act, or by any registered entity or registered futures association in connection with an application for membership, or participation therein or to become associated with a member thereof, which statement was false or misleading with respect to any material fact, or knowingly to omit any material fact required to be

stated therein or necessary to make the statements therein not misleading in violation of Section 9(a)(3) of the Act, 7 U.S.C. § 13; and/or

- c. Failing, where required, to file a CFTC Form 7-R filed in accordance with the requirements of paragraph (a)(1)(i) of Regulation 3.10(a)(2), 17 C.F.R. § 3.10(a)(2), which must be accompanied by a CFTC Form 8-R, completed in accordance with the instructions thereto and executed by each natural person who is a principal of the applicant, and must be accompanied by the fingerprints of that principal on a fingerprint card provided by the NFA for that purpose in violation of Regulation 3.10(a)(2), 17 C.F.R. § 3.10(a)(2).
31. Defendant is, for the period of five years, further 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(40) of the Act, as amended by the CRA and the Dodd-Frank Act, to be codified at 7 U.S.C. § 1a(40));
 - 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) (2011)) (“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, 7 U.S.C. §§ 2(c)(2)(B) and 2(c)(2)(C)(i)) (“forex contracts”) for Defendant’s own personal account(s) or for any account(s) in which Defendant has 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 Defendant's 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;
32. Defendant is, for the period of 10 years, further restrained, enjoined, and prohibited from, directly or indirectly,:
- 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 Commission Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9)(2011); and/or
 - g. acting as a principal (as that term is defined in Commission Regulation 3.1(a), 17 C.F.R. § 3.1(a)(2011), agent or any other officer or employee of any person (as that term is defined in Section 1a of the Act, as amended, 7 U.S.C. § 1a) registered, exempted from registration or required to be registered with the Commission, except as provided for in Commission Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9)(2011);

33. The injunctive provisions of this Consent Order shall be binding upon Defendant, upon any person who acts in the capacity of an agent, employee, representative, and/or assign of Defendant and upon any person who receives actual notice of this Consent Order, by personal service or otherwise, insofar as he or she is acting in active concert or participation with Defendant.

V.

CIVIL MONETARY PENALTY

IT IS FURTHER ORDERED THAT:

34. Defendant shall comply fully with the following terms, conditions and obligations relating to the payment of a civil monetary penalty. The equitable and statutory relief provisions of this Consent Order shall be binding upon Defendant and any person who is acting in the capacity of officer, agent, employee, servant, or attorney of Defendant, and any person acting in active concert or participation with Defendant.
35. Pursuant to Section 6c of the Act, as amended, to be codified at 7 U.S.C. § 13a-1, and Regulation 143.8(a)(1), 17 C.F.R. § 143.8(a)(1) (2010), this Court may impose an order directing the Defendant to pay a civil monetary penalty (“CMP”) to be assessed by the Court, in amounts of not more than the greater of (1) triple the monetary gain to the Defendant for each violation of the Act, the Act, as amended by the CRA, and Regulations; or (2) \$130,000 for each violation of the Act, the Act, as amended by the CRA, and Regulations occurring from October 23, 2004 through October 22, 2008, and \$140,000 for each violation of the Act, the Act, as amended by the CRA, and Regulations occurring on or after October 23, 2008.

36. In determining the amount of the CMP to be paid by the Defendant, the Court has considered the egregiousness, duration, and scope of the conduct and violations of the Act, as amended by the CRA, and Regulations. A proper showing having been made, Defendant Mihailovich, Jr. is hereby assessed a total CMP in the amount of \$40,000.00 plus post-judgment interest (“CMP Obligation”). Defendant shall pay this CMP Obligation, plus post-judgment interest, within ninety (90) days of the date of entry of this Consent Order. Should Defendant not satisfy his CMP Obligation within ninety (90) days of the date of entry of this 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.

37. Defendant shall pay the 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 by other than electronic funds transfer, the payment shall be made payable to the United States Commodity Futures Trading Commission and sent to the address below:

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

Defendant shall accompany the payment of the CMP Obligation with a cover letter that identifies the paying Defendant and the name and docket number of this proceeding.

Defendant shall simultaneously transmit copies of the cover letter and the form of payment to the Director, Division of Enforcement, United States Commodity Futures

Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, DC 20581; and to the Chief, Office of Cooperative Enforcement, Division of Enforcement, at the same address. If the payment is to be made by electronic funds transfer, Defendant shall contact Linda Zurhorst, or her successor, at the above address in Oklahoma City, OK for payment instructions, and shall fully comply with her instructions.

38. Satisfaction: Upon full satisfaction of the Defendant's CMP Obligation, satisfaction of judgment will be entered as to the Defendant.
39. Partial Satisfaction: Any acceptance by the CFTC of partial payment of CMP Obligation ordered in this Consent Order shall not be deemed a waiver of the Defendant's requirement 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

40. If any provision of this Order or the application of any provision or circumstance is held invalid, then the remainder of this Order and the application of the provision to any other person or circumstance shall not be affected by such holding.
41. Subsequent to the entry of this Order, the Defendant shall provide the Commission and the NFA with immediate notice of any filing or compromise and settlement of any private or governmental actions relating to the subject matter of this Order in the manner required by paragraph 45 of this Section.
42. Defendant shall cooperate fully and expeditiously with the Commission and any other federal or state government agency seeking to enforce the CMP provisions of this Order by providing any requested information relating to his financial status, including, but not

limited to, income and earnings, assets, financial statements, asset transfers, tax returns, and assets held by them in foreign countries.

43. Upon being served with copies of this Order after entry by the Court, Defendant shall sign an acknowledgment of such service and serve such acknowledgment on the Commission within seven (7) calendar days.
44. This Court shall retain jurisdiction of this action for the purpose of enforcing the terms and conditions of this Order and for any other purpose relevant to this action, even if Defendant now or in the future resides or operates outside this jurisdiction.
45. All notices required to be given by any provision in this Order shall be sent by overnight mail (e.g., Federal Express) or email, as follows:

To the Commission: Alison B. Wilson, Esq.
Commodity Futures Trading Commission
1155 21st Street, NW
Washington, D.C. 20581
(202) 418-5568
awilson@cftc.gov

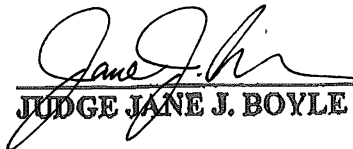
To the Defendant: Robert Mihailovich, Jr.
6018 Wimbledon Drive
Rockwall, TX 75087

46. In the event that the Defendant changes his residential or business telephone number(s) and/or address(es) at any time, he shall provide written notice of the new number(s) and/or address(es) to the Commission within twenty (20) calendar days thereof.
47. This 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 Order in any respect whatsoever, unless: 1) reduced to writing; 2) signed by all parties hereto; and 3) approved by order of this Court.

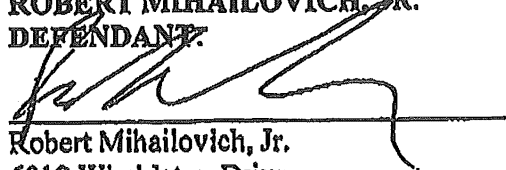
48. Waiver: The failure of any party hereto at any time or times to require performance of any provision hereof shall in no manner affect the right of such party at a later time to enforce the same or any other provision of this Order. No waiver in one or more instances of the breach of any provision contained in this Order shall be deemed to be a waiver, or construed as a further or continuing waiver, of such breach or waiver of the breach of any other provision of this Order.
49. Acknowledgements: Upon being served with copies of this Order after entry by the Court, Defendant shall sign acknowledgment of such service and serve such acknowledgments on the Court and the Commission within 14 calendar days.
50. Counterparts and Facsimile Execution: This 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 (by facsimile, e-mail, 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 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 Order.
51. Defendant understands that the terms of the Order are enforceable through contempt proceedings, and that, in any such proceedings he may not challenge the validity of this Order.

There being no just reason for delay, the Clerk of the Court is hereby directed to enter this Consent Order of Injunctive and Other Equitable Relief Against Robert Mihailovich, Jr.

AND IT IS SO ORDERED.


6/11/2012 (DC)
JUDGE JANE J. BOYLE

Consented to and approved for entry by
ROBERT MIHAILOVICH, JR.
DEFENDANT.


Robert Mihailovich, Jr.
6018 Wimbledon Drive
Rockwall, TX 75087

ATTORNEYS FOR PLAINTIFF:

Respectfully submitted,

**U.S. COMMODITY FUTURES TRADING
COMMISSION**

/s/ Alison B. Wilson

Gretchen L. Lowe, DC Bar No. 421995

Associate Director

Alison B. Wilson, DC Bar No. 475992

Chief Trial Attorney

Anne M. Termine

Chief Trial Attorney, LA Bar No. 26530

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(202) 418-5523 (fax)

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