

accounts (“victim accounts”) and winning trades in the accounts of the Relief Defendants and other friends (“favored accounts”) in violation of the Act. Thomas did not answer or otherwise defend against the Complaint within the time permitted by the Federal Rules of Civil Procedure and the Commission has now moved for a default judgment of disgorgement.

The Court has considered the Complaint, declaration, exhibits, memorandum in support of the Application for Default Judgment and other papers filed herein and being fully advised of the premises:

THE COURT FINDS:

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

2. Venue properly lies with this Court pursuant to Section 6c of the Act, 7 U.S.C. § 13a-(e), because the Defendants and Relief Defendants are found in, inhabit or transact business, among other places, in this District, or the acts and practices conducted in violation of the Act have occurred, are occurring, or about to occur, among other places, within this District. Specifically, the fraudulent allocation scheme committed by the Defendants took place at F.C. Stone (“Stone”), a registered Futures Commission Merchant (“FCM”) located in Chicago, Illinois. Illicit proceeds of the fraud were wired to Thomas’ bank account at a Chicago bank.

3. On April 17, 2002, Thomas was personally served with a copy of the summons and complaint. However, Thomas failed to plead or otherwise defend as to the Complaint within

the time permitted by Rule 12 of the Federal Rules of Civil Procedure and this Court. This Court found Thomas in default on May 15, 2002.

4. The allegations of the Complaint are well pleaded and hereby taken as true.

5. The Plaintiff has made a showing that the Defendants have engaged in acts and practices which violate sections 4b(a)(2)(C)(i) and (iii) of the Act, 7 U.S.C. § 6b(a)(2)(C)(i) and (iii) (2001), and Commission Regulation 166.2, 17 C.F.R. § 166.2 (2002).

6. Thomas received ill-gotten gains of \$229,066 from the fraudulent scheme executed by the Defendants.

7. Thomas has no legitimate entitlement to or interest in the funds received from the Defendants' fraudulent conduct and therefore holds the illicit funds she received from the Defendants' fraudulent conduct in constructive trust for the benefit of Stone customers who were victimized by Defendants' fraudulent scheme.

8. Under the totality of the circumstances, the imposition of an order of disgorgement is an appropriate form of equitable relief and is in compliance with the basic objectives of the Act.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:

Judgment shall be and hereby is entered in favor of Plaintiff Commission and against Relief Defendant Bernadette Thomas as follows:

A. Thomas is ordered to disgorge \$229,066 (Two Hundred Twenty-Nine Thousand, Sixty-Six Dollars), representing profits or proceeds she received as a result of the acts and/or conduct alleged in the Complaint, plus pre-judgment interest in the amount of \$37,336.63, as

calculated at the underpayment rate established by the Internal Revenue Service, pursuant to 26 U.S.C. § 662(a)(2), and post-judgment interest thereon.

B. All disgorgement payments received from Thomas will first be applied in satisfaction of restitution to be made to the victim account holders, or to Stone, to the extent Stone has already paid off victim account holders. When the victim account holders have been made whole, all disgorgement payments received from Thomas will be deposited into the United States Treasury.

C. This Court shall retain jurisdiction of this cause to assure compliance with this order.

ORDERED, ADJUDGED AND DECREED this _____ day of
_____, 2002.

George W. Lindberg
United States District Judge