

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Amy J. St. Eve	Sitting Judge If Other than Assigned Judge	
CASE NUMBER	03 C 8571	DATE	8/3/2004
CASE TITLE	US Commodity Futures vs. Krysinski		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

MOTION:

DOCKET ENTRY:

(1) Filed motion of [use listing in "Motion" box above.]

(2) Brief in support of motion due _____.

(3) Answer brief to motion due _____. Reply to answer brief due _____.

(4) Ruling/Hearing on _____ set for _____ at _____.

(5) Status hearing held.

(6) Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.

(7) Trial[set for/re-set for] on _____ at _____.

(8) [Bench/Jury trial] [Hearing] held/continued to _____ at _____.

(9) This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
 FRCP4(m) Local Rule 41.1 FRCP41(a)(1) FRCP41(a)(2).

(10) [Other docket entry] Enter Consent Order of Permanent Injunction and other Equitable Relief. The Court enters judgment in the amount of \$413,821.28, plus post-judgment interest, against the Defendant and in favor of the Commission. See Consent Order for further details. This Court retains jurisdiction to enforce the terms of the Consent Order. Case dismissed with prejudice. Any pending dates are stricken. Any pending motions are denied as moot.

Amy J. St. Eve

(11) [For further detail see order attached to the original minute order.]

<input type="checkbox"/> No notices required, advised in open court.			Document Number
<input type="checkbox"/> No notices required.		number of notices	
<input type="checkbox"/> Notices mailed by judge's staff.		date docketed	
<input type="checkbox"/> Notified counsel by telephone.		docketing deputy initials	
<input checked="" type="checkbox"/> Docketing to mail notices.		date mailed notice	
<input type="checkbox"/> Mail AO 450 form.		mailing deputy initials	
<input type="checkbox"/> Copy to judge/magistrate judge.			
TH <input checked="" type="checkbox"/>	courtroom deputy's initials	Date/time received in central Clerk's Office	

1. Consents to the entry of this Consent Order of Permanent Injunction and Other Equitable Relief ("Order").
2. Affirms that he has agreed to this 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 Order, other than as set forth specifically herein.
3. Acknowledges service of the Summons and Complaint.
4. Admits jurisdiction of this Court over him, admits that the Court has subject matter jurisdiction over this action, and admits that venue properly lies with this Court pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1.
5. Waives:
 - (a) the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure, except as set forth below;
 - (b) all claims which they may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2000) and 28 U.S.C. § 2412 (2000), 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; and
 - (d) all rights of appeal from this Order.
6. Neither admits nor denies any findings of facts or conclusions of law, except as set forth herein. No provision of this Order shall in any way limit or impair the ability of any person, including those third-party beneficiaries designated in Section V paragraph 1 herein, to seek any legal or equitable remedy against the Defendant or any other person in any other proceeding, including any current or subsequent bankruptcy. Furthermore, the allegations of the Complaint and the findings in this Order shall be taken as true and be given preclusive effect without further proof for the purpose of any current or subsequent bankruptcy proceeding filed

by, or on behalf of, the Defendant. Defendant shall also provide immediate notice of any bankruptcy filed by, on behalf of, or against him in the manner required by paragraph 8 of Section V of this Order.

7. Agrees that neither he nor any of his agents or employees acting 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 Defendant's: i) testimonial obligations; or ii) rights 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 employees understand and comply with this agreement.

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

9. Agrees to comply with the following undertakings:

(a) For a minimum of 5-years from the date of this Order, Defendant will not trade commodity futures, security futures or commodity options for his personal commodity trading account on or subject to the rules of any registered entity. This five year personal trading ban will be followed by 5 years of supervised trading by a registered futures commission merchant ("FCM"), such that the FCM must verify that the source of funds deposited into Krysinski's personal trading account are his own personal funds, including inquiring into and verifying the original source of funds that were ultimately deposited in Krysinski's financial account that then funded the trading account. If full restitution, including pre- and post- judgment interest, is paid within 5 years of the date of this Order, then the personal trading ban will expire five years from the date of this Order, and the 5 year period of supervised trading from a registered FCM shall commence. If, after five years from the date of this Order, full restitution has not been paid, the personal trading ban will stay in effect for ten years, or until restitution is fully paid, whichever occurs first, followed by 5 years of supervised trading by a registered FCM; and

(b) For a minimum of 7-years from the date of this Order, Defendant will not engage in, control, or direct the trading of any commodity futures, security futures or commodity options accounts for or on behalf of any other person or entity, whether by power of attorney or otherwise. If after seven years from the date of this Order full restitution, including pre- and post- judgment interest, has not been paid, this trading ban shall stay in effect for ten years, or until restitution is fully paid, whichever occurs first.

II. Findings of Fact

The Court hereby makes the following findings of fact:

1. This Court has jurisdiction over the subject matter of this action and all parties hereto pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1.
2. Venue properly lies with this Court pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, in that Defendant is found in, inhabits, or transacts business in this district, and the acts and practices in violation of the Act have occurred, are occurring, or are about to occur within this district, among other places.
3. From at least May 2002 to October 2003 (“relevant time period”), Defendant solicited potential customers to provide funds to be used to trade commodity futures contracts in accounts held in the Defendant’s name.
4. During the relevant time period, Defendant made oral misrepresentations when he misrepresented his past trading profits in the solicitation of potential customers for use in trading commodity futures contracts. At least two potential customers relied on these misrepresentations.
5. During the relevant time period, Defendant solicited and accepted over \$200,000 from one member of the public to trade commodity futures contracts when he was not registered as a futures commission merchant and then commingled that customer’s funds with his own funds.

6. During the relevant time period, Defendant misappropriated the funds of at least one customer entrusted to him for trading.

7. During the relevant time period, Defendant created and showed a false trading account statement representing the value of the commodity futures trading account that purportedly contained customer funds to at least one customer.

III. Conclusions of Law

1. From at least May 2002 to October 2003, Defendant violated Section 4b(a)(2)(i) of the Act, 7 U.S.C. § 6b(a)(2)(i) (2001), by, among other things: (1) soliciting investments through fraudulent misrepresentations about Defendant's past performance results when trading his own or others' funds; (2) making material misrepresentations and omitting material facts, including misrepresentations of each customer's profits and account balances; and (3) misappropriating customer funds.

2. During the relevant time period, Defendant violated Section 4b(a)(2)(ii) of the Act by, among other things, making or causing to be made false reports and false statements issued or communicated to at least one customer who invested money with Krynski to trade commodity futures contracts.

3. During the relevant time period, Defendant violated Section 4d(a) of the Act by, among other things: (1) acting as a FCM without registering as such when he solicited and accepted customer funds to trade commodity futures; (2) failing to treat and deal with all customer money and property received in order to trade commodity futures contracts as belonging to such customer; and (3) failing to separately account for and commingling his own funds with that of his customers when he deposited customer funds into his personal bank account.

IV. Order For Permanent Injunction

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. Defendant is permanently restrained, enjoined and prohibited from directly or indirectly
 - (a) cheating or defrauding or attempting to cheat or defraud such other persons in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery made, or to be made, for or on behalf of any other person where such contracts for future delivery were or may have been used for (a) hedging any transaction in interstate commerce in such commodity, or the products or byproducts thereof, or (b) determining the price basis of any transaction in interstate commerce in such commodity, or (c) delivering any such commodity sold, shipped or received in interstate commerce for the fulfillment thereof, in violation of Section 4b(a)(2)(i) of the Act, 7 U.S.C. § 6b(a)(2)(i) (2001);
 - (b) willfully making or causing to be made to other persons false reports or statements, or willfully entering or causing to be entered for other persons false records in or in connection with orders to make, or the making of, contracts of sale of commodities, for future delivery, made, or to be made, for or on behalf of such other persons where such contracts for future delivery were or may have been used for (a) hedging any transaction in interstate commerce in such commodity, or the products or byproducts thereof, or (b) determining the price basis of any transaction in interstate commerce in such commodity, or (c) delivering any such commodity sold, shipped or received in interstate commerce for the fulfillment thereof, in violation of Section 4b(a)(2)(ii) of the Act, 7 U.S.C. § 6b(a)(2)(ii) (2001);
 - (c) soliciting and accepting orders for the purchase or sale of any commodity for future delivery, or accepting money, securities, or property of any person to margin, guarantee, or secure the futures trades or contracts of any person or engaging in any other act involving any contracts of sale of any commodity for future delivery, as a futures commission merchant in violation of Section 4d(a) of the Act, 7 U.S.C. § 6d(a) (2001).

V. Order For Other Equitable Relief

IT IS FURTHER ORDERED THAT:

1. Restitution: Defendant shall pay and be liable for restitution to customers/creditors in the amount of \$333,509 plus pre- and post-judgment interest. Pre-

judgment interest is calculated from the date the funds were deposited to Defendant to the date of this Order calculated at the underpayment rate established by the Internal Revenue Service, pursuant to 26 U.S.C. § 6621, minus any amounts paid to customer/creditor as of the date of those payments. See Schedule A for a list of dates of deposits and payments. 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. Listed in the table below are the names of the customers/creditors to whom restitution shall be made pursuant to this paragraph, together with the amount of restitution payable by Defendant to each of them (not including required interest) and the pro rata distribution percentage by which each customer/creditor shall be paid:

Restitution Payable to Customer/Creditor	Amount of Restitution	Pro Rata Distribution Percentage
Curt Hartig	\$183,509	55%
William Thomas	\$150,000	45%

All payments made pursuant to this Order by Defendant shall first be made to the customer/creditors for restitution on a pro rata basis 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. Defendant's payments made to Curt Hartig pursuant to this Order shall serve as a set-off to outstanding principal and interest payments due pursuant to a Secured Promissory Note for \$200,000 dated November 3, 2003 executed by Keith Krynski as debtor in favor of Curt Hartig as payee. Nothing in this Order shall affect the validity or enforcement of the aforementioned promissory note, except the set-off as stated herein.

2. Civil Monetary Penalty: Defendant Krynski shall pay a civil monetary penalty of \$60,000 plus post-judgment interest. Interest after the date of this Order until the civil monetary penalty is paid in full shall be paid at the post-judgment interest rate set forth in 28

U.S.C. § 1961. Defendant shall pay such civil monetary penalty by electronic funds transfer, or by 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 Dennese Posey, or her successor, Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581, under cover of a letter that identifies Defendant and the name and docket number of the proceeding; Defendant shall simultaneously transmit a copy of the cover letter and the form of payment to the Director, Division of Enforcement, Commodity Futures Trading Commission, at the following address:

1155 21st Street, NW, Washington, D.C. 20581.

3. Third-Party Beneficiaries: Pursuant to Rule 71 of the Federal Rules of Civil Procedure, each of the customers/creditors identified in the table in number 1 above 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 Defendant.

4. Collateral Agreements: Defendant shall immediately notify the Commission if he makes any agreement with any customer/creditor obligating him to make payments outside of this Order. Defendant shall also provide immediate evidence to the Court and to the Commission of any payments made pursuant to such agreement.

5. Freeze Orders Dissolved: All prior freeze orders are dissolved.

6. Withdraw Appeal: Defendant agrees to withdraw his appeal in case No. 04-1185, *Keith Krynski v. Commodity Futures Trading Commission*, before the Court of Appeals for the Seventh Circuit.

7. Scope of Injunctive Relief: The injunctive provisions of this Order shall be binding on the Defendant, upon any person insofar as he or she is acting in the capacity of officer, agent, servant, employee or attorney of the Defendant, and upon any person who receives actual notice of this Order by personal service, facsimile or otherwise insofar as he or she is acting in active concert or participation with the Defendant.

8. 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 Commission:

Regional Counsel
Division of Enforcement - Central Region
Commodity Futures Trading Commission
525 West Monroe Street, Suite 1100
Chicago, Illinois 60661

Notice to Defendants:

Jeffry M. Henderson, Esq. and/or
Robert Christie, Esq.
Henderson & Lyman
174 West Jackson Blvd., Suite 240
Chicago, IL 60604
(312) 986-6960

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 his new number(s) and/or address(es) to the Commission within twenty (20) calendar days thereof.

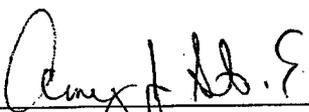
9. Entire Agreement and Amendments: This Order incorporates all of the terms and conditions of the settlement among the parties hereto. Nothing shall serve to amend or modify this Consent Order in any respect whatsoever, unless: (1) reduced to writing; (2) signed by all parties hereto; and (3) approved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

10. 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 construed as a further or continuing waiver of a breach of any other provision of this Order.

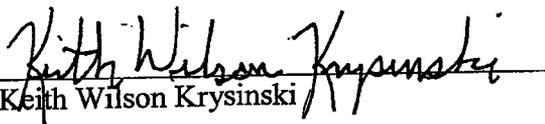
11. The Court enters judgment in the amount of \$413,821.28, plus post-judgment interest, against the Defendant and in favor of the Commission.

IT IS SO ORDERED.

Dated: 8-3-04


The Honorable Judge Amy J. St. Eve
UNITED STATES DISTRICT JUDGE

CONSENTED TO AND APPROVED BY:


Keith Wilson Krynski


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