

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

COMMODITY FUTURES TRADING COMMISSION v. WALL STREET UNDERGROUND, INC., et al.,)))))))) CIVIL ACTION No. 03-2193-CM
Plaintiff, Defendants.)))	

**CONSENT ORDER OF PERMANENT INJUNCTION AND OTHER EQUITABLE
RELIEF AND A CIVIL MONETARY PENALTY AGAINST DEFENDANT DEREK
ABRAHAMS**

On April 22, 2003, plaintiff Commodity Futures Trading Commission (“Commission”) filed a complaint against Defendants Wall Street Underground, Inc. (“WSU”); Web Fulfillment Centre, Inc. (“Web”); Nicholas A. Guarino, Jr.; Derek Abrahams; and Frank Asaro (collectively “the Defendants”), seeking injunctive and other equitable relief, and a civil monetary penalty, for violations of the Commodity Exchange Act, as amended (“Act”), 7 U.S.C. §§ 1 *et seq.* (2002) relating to the offer and sale of commodity futures contracts to residents of the United States.

I. Consents and Agreements

To effect settlement of the matters alleged in the Complaint against Defendant Abrahams without a trial on the merits or any further judicial proceedings:

1. Defendant Abrahams consents to the entry of this Consent Order of Permanent Injunction and Other Equitable Relief and a Civil Monetary Penalty (“Order”).
2. Defendant Abrahams 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. Defendant Abrahams consents to the jurisdiction of this Court to enter this Order.

4. Defendant Abrahams waives:

(a) all claims he 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;

(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 Order.

5. Defendant Abrahams neither admits nor denies any of the findings of fact or conclusions of law contained in this Order. Defendant Abrahams does not consent to the use of this Order, or the findings of fact or conclusions of law, as the sole basis for any other proceeding brought by the Commission other than a proceeding brought to enforce the terms of the Order, any proceeding in bankruptcy, or as set forth in Part VI, paragraph 1 of this Order. No provision of this Order shall in any way limit or impair the ability of any person to seek any legal or equitable remedy against Defendant or any other person in any other proceeding.

6. Defendant Abrahams agrees that neither he nor any of his agents or employees acting under their authority or control shall take any action or make any public statement denying, directly or indirectly, any allegation in the Complaint regarding his conduct, or the findings of fact or conclusions of law 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 Abrahams' testimonial obligations or right to take legal, factual or equitable positions in other proceedings to which the Commission is not a party. Defendant Abrahams shall take all necessary steps to ensure that all of his agents and employees understand and comply with this order.

7. Defendant Abrahams 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.

II. Findings of Fact

Solely on the basis of Defendant's consent, the Court hereby makes the following findings of fact:

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

2. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e), in that 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. Since at least January 1999 to March 2001, ("relevant time period"), Defendant Abrahams participated in the scheme of WSU and Web whereby several systems to be used for trading commodity futures and commodity options were fraudulently promoted and sold to the public. The advertising for these systems overstated the profit potential of the trading systems, failed to adequately warn of the risks inherent in trading commodity futures and commodity options, and made false money-back guarantees.

4. Defendant Abrahams handled aspects of the financial operations of both WSU and Web, helped establish Web, and assisted in coordinating efforts between Web and WSU.

5. During the relevant time period, Abrahams controlled Web and WSU and knowingly induced, directly or indirectly, the acts described below that were in furtherance of Web's and WSU's violations of the Act.

6. During the relevant time period, Abrahams gave Asaro money to pay Web's everyday business expenses and to pay client refunds. Abrahams paid Asaro to help market and

distribute WSU's trading systems. He also participated in establishing leasing and rental agreements for Web.

7. Abrahams opened offshore bank accounts in the Cayman Islands for WSU, and used those accounts to wire-transfer funds to Web to pay its everyday business expenses. He opened two credit card accounts that were connected to offshore bank accounts as a means of directing funds to Guarino. He also paid some of the fees required to maintain both WSU's and Web's corporate status.

III. Conclusions of Law

1. The facts as stated above regarding Web and WSU represent violations of Sections 4o(1)(A) and (B) of the Act, 7 U.S.C. § 6o(1)(A) and (B), and Commission Regulation 4.41(a), 17 C.F.R. § 4.41(a).

2. From at least January 1999 to March 2001, Defendant Abrahams directly or indirectly controlled some of the financial and corporate activities of Web and WSU, including those activities alleged in the Complaint.

3. Abrahams did not act in good faith, or knowingly induced, directly or indirectly, the acts constituting Web's and WSU's violations. Defendant Abrahams is thus liable for Web's and WSU's violations of Sections 4o(1)(A) and (B) of the Act, 7 U.S.C. § 6o(1)(A) and (B), and Commission Regulation 4.41(a), 17 C.F.R. § 4.41(a).

IV. Order for Permanent Injunction

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendant Abrahams and all persons insofar as they are acting in the capacity of his agents, servants, employees, successors, assigns, and attorneys, and all persons insofar as they are acting in active concert or participation with Defendant who receive actual notice of such order by personal service or otherwise, are permanently prohibited from directly or indirectly:

- A. Engaging in, controlling, or directing the trading of any commodity futures and options accounts, on their own behalf or on behalf of any other person or entity, whether by power of attorney or otherwise;
- B. Introducing customers to any other person engaged in the business of trading in commodity futures and options;
- C. Placing orders, giving advice or price quotations or other information in connection with the purchase or sale of commodity futures and options contracts for themselves and others;
- D. Otherwise engaging in any business activities related to commodity futures and options trading; and
- E. Advertising or offering to the public any product created by Wall Street Underground, Inc. including, but not limited to, Nick's Samurai Forecaster, Nick's Guerilla Trading Hotline and the Electronic Wall Street Underground.

V. Order for Civil Monetary Penalty

IT IS FURTHER ORDERED THAT Defendant Abrahams shall pay, within five (5) business days of the entry of this Order, a civil monetary penalty of \$50,000. Defendant Abrahams 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 the Defendant and the name and docket number of the proceeding. Defendant Abrahams 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.

VI. Cooperation

IT IS FURTHER ORDERED THAT Defendant Abrahams shall be available to testify on behalf of the Commission against Defendants Guarino, Asaro, Web, and WSU upon reasonable notice and shall testify fully and truthfully in such testimony. Abrahams shall provide whatever additional assistance is reasonably asked of him by the Commission in the Commission's prosecution of the case against Defendants Guarino, Asaro, Web, and WSU.

VII. Miscellaneous Provisions

1. **Default:** Any failure by Defendant Abrahams to carry out any of the terms, conditions or obligations under any paragraph of this Order shall constitute an Event of Default. If any Event of Default occurs the Commission (or its designee) shall be entitled to:

- (a) an order requiring immediate payment of any unpaid civil monetary penalty, or, at the Commission's option, the entire unpaid balance, or any unpaid portion, of the civil monetary penalty amount set forth above; and/or
- (b) move the Court for imposition of all other available remedies, including, but not limited to, an order holding Defendant in contempt for violation of this Order.

2. **Notice to Commission:** All notices required to be given to the Commission by any provision in this consent Order shall be sent certified mail, return receipt requested, as follows:

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

3. **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.

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

5. 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.

6. Acknowledgments: Upon being served with copies of this Order after entry by the Court, Defendants shall sign acknowledgments of such service and serve such acknowledgments on the Court and the Commission within seven days.

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

8. Effect on Preliminary Injunction. The Memorandum and Order dated July 18, 2003, imposing a preliminary injunction and asset freeze on the defendants is hereby lifted as to Defendant Abrahams.

There being no just reason for delay, the Clerk of the Court is hereby directed to enter this Consent Order of Permanent Injunction and Other Equitable Relief and a Civil Monetary Penalty.

Dated this 19th day of April 2005, at Kansas City, Kansas.

s/ Carlos Murgua
CARLOS MURGUIA
United States District Judge