

CLOSED

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

**UNITED STATES COMMODITY
FUTURES TRADING COMMISSION**

Plaintiff,

CASE NO. 04-CV-45 (FSH)

v.

**CLEARVIEW CAPITAL
MANAGEMENT, INC., and
JAMES I. WEISS**

**CONSENT ORDER OF
PERMANENT INJUNCTION
AND ANCILLARY EQUITABLE
RELIEF AGAINST CLEARVIEW
CAPITAL MANAGEMENT, INC., and
JAMES I. WEISS**

Defendants.

INTRODUCTION

On January 8, 2004, Plaintiff United States Commodity Futures Trading Commission ("Commission") filed the complaint in this civil action against Clearview Capital Management, Inc. ("Clearview") and James I. Weiss ("Weiss"). The Complaint seeks injunctive and other equitable relief for violations of the antifraud provisions of the Commodity Exchange Act, as amended ("Act"), 7 U.S.C. § 1 *et seq* (2002), and the Regulations promulgated thereunder, 17 C.F.R. § 1.1 *et seq*. On March 1, 2004, Consent Orders of Preliminary Injunction were entered as to Defendants Clearview and Weiss.

I.

CONSENTS AND AGREEMENTS

To effect settlement of the matters alleged in the Complaint without a trial on the merits, Weiss individually, and Clearview (collectively referred to herein as the "Defendants") hereby:

1. Consent to the entry of this Consent Order;
2. Affirm that the Defendants have agreed to this Consent 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 Consent Order, other than as set forth specifically herein;
3. Admit the jurisdiction of this Court over them and the subject matter of this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2002);
4. Admit that venue properly lies with this Court pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2002);
5. Waive:
 - (a) all claims 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;
 - (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;
6. Consent 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;
7. Agree that neither the Defendants nor their agents, employees or representatives acting under their control shall take any action or make any public statement denying, directly or indirectly, any allegations in the Complaint or creating or tending to create the impression that

the Complaint is without factual basis; provided, however, that nothing in this provision shall affect the Defendants': i) testimonial obligations, or ii) right to take legal positions in other proceedings to which the Commission is not a party. The Defendants will undertake all steps to assure that all of their agents, employees and representatives understand and comply with this agreement.

8. By consenting to the entry of this Consent Order, the Defendants neither admit nor deny the allegations of the Complaint or the Findings of Fact contained in this Consent Order, except as to jurisdiction and venue. However, the Defendants agree and intend that the allegations of the Complaint and all of the Findings of Fact made by this Court and contained in Part II of this Consent Order shall be taken as true and correct and be given preclusive effect, without further proof, in the course of any subsequent bankruptcy proceeding filed by, on behalf of, or against any Consenting Party, or any proceeding to enforce this order, or any other proceeding relating to the fitness of the Defendants to act in various capacities governed by the Act. A Consenting Party shall provide immediate notice of any bankruptcy filed by, on behalf of, or against the Consenting Party in the manner required by Part VI of this Consent Order. Defendants do 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 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 Defendants or any other person in any other proceeding.

9. The Court, being fully advised in the premises, finds that there is good cause for the entry of this Consent Order and that there is no just reason for delay. The Court therefore directs the entry of findings of fact, conclusions of law and a permanent injunction and ancillary equitable relief, pursuant to § 6c of the Act, 7 U.S.C. § 13a-1, as set forth herein.

II.

FINDINGS OF FACT

The Court hereby makes the following findings of fact:

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

11. This Court has personal jurisdiction over the Defendants pursuant to Section 6c(a) of the Act, 7 U.S.C. § 13a-1(a).

12. Venue properly lies with this Court pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1(c), because Defendants resided in and transacted business in the District of New Jersey.

13. The **Commodity Futures Trading Commission** is an independent federal regulatory agency that is charged with responsibility for administering and enforcing the provisions of the Act, as amended, 7 U.S.C. §§ 1 *et seq.* (2002), and the regulations promulgated thereunder.

14. **Clearview Capital Management Inc.** is a New Jersey corporation. Clearview was incorporated in 2001 and has its principal place of business at 1275 15th Street, Apt. 19M, Fort Lee, N.J. 07024.

15. **James I. Weiss** is a resident of New Jersey. He resides at 1275 15th Street, Apt. 19M, Fort Lee, N.J. 07024.

16. Weiss founded Clearview in or about July 2002. He had no experience in foreign exchange futures trading and never successfully managed money for anyone else. He nevertheless opened Clearview to manage the off-exchange foreign currency futures accounts of others.

17. After the opening of Clearview, Weiss caused purported trading results to be disseminated to prospective clients in solicitation materials as actual trading results. Weiss also falsely identified another individual as the trader for Clearview.

18. In customer solicitations, Weiss supplemented the purported Clearview trading record with false numbers for subsequent months through November 2002.

19. At the same time, Weiss overstated his own credentials in Clearview customer solicitations by falsely representing that he had successful trading experience and by falsely representing that he had engaged in the business of publishing a successful forex advisory newsletter for institutional investors.

20. Through Weiss, Clearview represented to clients that it was in the business of managing funds for clients as a Commodity Trading Advisor. Consistent with the custom and practice of this business, Clearview and Weiss stated that Clearview's compensation would be a percentage of the net profits of each client's account.

21. Defendants fraudulent solicitations convinced investors to place their money under Clearview's management.

22. At least 42 clients placed funds under Clearview's management between July 2002 and June 2003 in accounts at a futures commission merchant. These client accounts were used for off-exchange foreign currency futures trading subject to the jurisdiction of the Commodity Futures Trading Commission.

23. While Clearview and Weiss were reporting successful trading, Clearview's clients were in fact steadily losing money.

24. As a result of Clearview's trading, clients of Clearview lost a total of approximately \$560,000.

25. Clearview received a rebate from its forex dealers on each customer trade. Neither Clearview nor Weiss disclosed this compensation to Clearview's clients.

26. At all relevant times, Weiss was the Managing Director of Clearview. Weiss wrote all of Clearview's solicitations. He supervised all trading at Clearview and the operation of the Clearview website.

27. Weiss was the sole manager of Clearview and made all management decisions for Clearview, including the training, hiring and firing of all employees.

28. During the time of the illegal activity alleged herein, Weiss was acting within the scope of his employment or office as an officer and agent of Clearview.

III.

CONCLUSIONS OF LAW

29. Since at least July 2002, Defendant Weiss made material misrepresentations, and failed to disclose material facts, while soliciting and accepting funds from retail investors to engage in speculative trading of foreign currency futures contracts. By virtue of this fraudulent conduct, Defendant Weiss has violated Section 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. § 6b(a)(2)(i) and (iii) (2002), and Commission Regulations 1.1(b)(1) and (3), 17 C.F.R. §1.1(b)(1) and (3) (2004).

30. Because Defendant Weiss and agents of Clearview engaged in fraudulent solicitations while acting as Clearview's agents, Clearview is liable for the violations of Section 4b(a)(2)(i) and (iii) of the Act and Commission Regulation 1.1(b)(1) and (3) pursuant to Section 2(a)(1)(B) of the Act and Section 1.2 of the Regulations.

31. Because Weiss directly controlled all the significant marketing and financial aspects of Clearview and knowingly induced the acts constituting these violations of Section 4(b)(a)(2)(i) and (iii) of the Act, and Commission Regulation 1.1(b)(1) and (3), he is the controlling person of Clearview for purposes of Section 13(b) of the Act, 7 U.S.C. § 13c(b).

32. Defendant Weiss, as the controlling person of Clearview, is liable for Clearview's violations of Section 4b(a)(2)(i) and (iii) of the Act and Commission Regulations 1.1(b)(1) and (3), pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b).

IV.

ORDER FOR PERMANENT INJUNCTION

IT IS HEREBY ORDERED that:

33. Defendants Clearview and Weiss are permanently restrained, enjoined, and prohibited from, directly or indirectly, cheating or defrauding or attempting to cheat or defraud other persons and willfully deceiving or attempting to deceive other persons by making false, deceptive or misleading representations or material facts, by failing to disclose material facts, and by misappropriating customer funds 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 any other person in violation of Section 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. § 6b(a)(2)(i) and (iii), and CFTC Regulation 1.1(b)(1) and (3), 17 C.F.R. § 1.1(b)(1) and (3).

IT IS HEREBY FURTHER ORDERED that:

34. Defendants Clearview and Weiss are permanently restrained, enjoined, and prohibited, directly or indirectly, from engaging in the following trading activities:

- A. Trading on or subject to the rules of any registered entity, as 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 of any futures or options accounts 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 contract;
- D. Placing orders or giving advice or price quotations, or other information in connection with the purchase or sale of commodity interest contracts for themselves and others;
- E. Introducing clients to any other person engaged in the business of commodity interest trading;
- F. Issuing statements or reports to others concerning commodity interest trading; and
- G. 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), or acting as a principal, agent, officer or employee of any person registered, required to be registered, or exempted from registration, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9).

35. The injunctive provisions of this Order shall be binding upon Defendants Clearview and Weiss, and any person insofar as he or she is acting in the capacity of officer, agent, servant, or attorney of Defendants Clearview and Weiss, and any person who receives actual notice of this Order by personal service or otherwise insofar as he or she is acting in active concert or participation with Defendants Clearview and Weiss.

V.

ORDER FOR OTHER EQUITABLE RELIEF

IT IS FURTHER ORDERED THAT:

36. **PAYMENT OF RESTITUTION:** Defendants Clearview and Weiss be and hereby are jointly and severally liable to make restitution in the amount of \$560,000, plus post-judgment interest at the interest rate set forth in 28 U.S.C. § 1961.

37. **PAYMENT OF CIVIL MONETARY PENALTY:** Defendants Clearview and Weiss be and hereby are jointly and severally liable to pay a civil monetary penalty of \$240,000. Defendants shall make such payment 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, Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581, under a cover letter that identifies Clearview, Weiss and the name and docket number of the proceedings.

38. **APPOINTMENT OF MONITOR:** The National Futures Association is hereby appointed as the Monitor for the receipt and distribution of the Judgment of Restitution. The National Futures Association shall be the Monitor for this action until the complete satisfaction of the Judgment of Restitution and the complete distribution of all funds paid or collected in satisfaction of this Judgment of Restitution.

39. **COLLECTION OF RESTITUTION:** Defendants shall make payments in satisfaction of the Judgment of Restitution 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 National Futures Association, and sent to Daniel A. Driscoll, Esq., Executive Vice President, Chief Operating Officer, or his successor, at the National Futures Association, 200 West Madison Street, Chicago, Illinois 60606. All such payments shall be sent under a cover letter that identifies Clearview, Weiss and the name and docket number of the proceedings.

40. **DISTRIBUTION OF RESTITUTION:** As Monitor, the National Futures Association shall distribute restitution payments according to a list of clients and calculation of each client's loss, provided to the Monitor by the Commission. In addition, the Commission shall provide the National Futures Association with the last known address for each client.

41. MONITOR'S DISCRETION TO MAKE PRO RATA DISTRIBUTIONS: In the event that the Judgment of Restitution is only partially satisfied, the Monitor is authorized, in its sole discretion, to make one or more partial distributions. Any partial distribution shall be made on a pro rata basis to those clients who can be located at the time of the distribution.

VI.

MISCELLANEOUS PROVISIONS

42. 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:

Director of Enforcement
Commodity Futures Trading Commission
1155 21st Street N.W.
Washington, DC 20581

Todd Kelly
Division of Enforcement
Commodity Futures Trading Commission
1155 21st Street N.W.
Washington, DC 20581

Notice to Defendants:

Michael F. Bachner, Esq.
Bachner & Herskovits, PC
26 Broadway, Suite 2310
New York, NY 10004

Notice to Monitor

Daniel A. Driscoll, Esq., Executive Vice President
Chief Operating Officer
National Futures Association
200 West Madison Street
Chicago, Illinois 60606

43. Entire Agreement and Amendments: This Consent 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.

44. Invalidation: If any provision of this Consent Order, or the application of any provisions or circumstances is held invalid, the remainder of the Consent Order and the

application of the provision to any other person or circumstance shall not be affected by the holding.

45. Waiver: The failure of any party hereto or of any customer 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 Consent Order. No waiver in one or more instances of the breach of any provision contained in this Consent Order shall be deemed to be or construed as a further or continuing waiver of such breach or waiver of the breach of any other provision of this Consent Order.

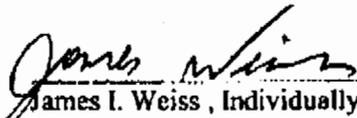
46. Acknowledgements: Upon being served with copies of this Consent Order after entry by the Court, the Defendants shall sign acknowledgments of such service and serve such acknowledgments on the Court and the Commission within seven (7) calendar days

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

48. Authority: Weiss hereby warrants that he is the Managing Director of Clearview, that this Consent Order has been duly authorized by Clearview and he has been duly empowered to sign and submit it on behalf of Clearview.

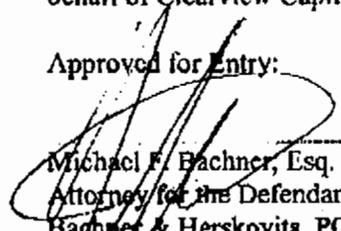
There being no just reason for delay, the Clerk of the Court is hereby directed to enter this Order of Permanent Injunction.

CONSENTED TO AND APPROVED BY:

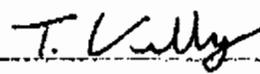

James I. Weiss, Individually and on
behalf of Clearview Capital Management, Inc.

Date: 7/8/2004

Approved for Entry:


Michael F. Bachner, Esq.
Attorney for the Defendants
Bachner & Herskovits, PC
26 Broadway, Suite 2310
New York, NY 10004

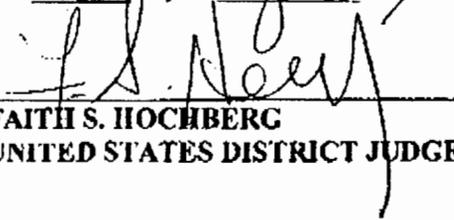
Date: 10/22/04


Todd Kelly, Trial Attorney
Paul Hayeck, Associate Director
U.S. Commodity Futures Trading Commission

Date: 12/15/04

SO ORDERED, at Newark, New Jersey on this

17th day of Jan, 2005


FAITH S. HOCHBERG
UNITED STATES DISTRICT JUDGE