

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

Commodity Futures Trading Commission,
*TO BE SERVED BY FAX @ 202-418-
5531*

Plaintiff,

-vs-

Case No. 6:03-cv-119-Orl-31DAB

Intertrade Forex, Inc., Stanley Craig
Wakefield, and Pritesh Patel,

Defendants.

ORDER ADOPTING REPORT AND RECOMMENDATION
AND FINAL JUDGMENT

On December 15, 2004, Magistrate Judge Baker rendered a Report and Recommendation (R&R) (Doc. 80), recommending that Plaintiff's Motion for Default Judgment (Doc. 65) be granted. Defendants, Intertrade Forex, Inc. (Intertrade) and Pritesh Patel (Patel) did not attend the hearing and have not filed objections to the R&R. Upon consideration of same, it is

ORDERED that the R&R is CONFIRMED and ADOPTED and made a part of this Order. Plaintiff's Motion for Default Judgment is GRANTED. This Order shall constitute a final judgment incorporating the monetary and injunctive relief set forth in the R&R.

DONE and ORDERED in Chambers, Orlando, Florida on January 4, 2005.

Copies furnished to:

Counsel of Record
Unrepresented Party


GREGORY A. PRESNELL
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

-vs-

Case No. 6:03-cv-119-Orl-31DAB

INTERTRADE FOREX, INC., STANLEY
CRAIG WAKEFIELD, AND PRITESH
PATEL,

Defendants.

REPORT AND RECOMMENDATION

TO THE UNITED STATES DISTRICT COURT

This cause came on for consideration with oral argument on the following motion filed herein:

MOTION: MOTION FOR DEFAULT JUDGMENT (Doc. No. 65)

FILED: September 30, 2004

THEREON it is RECOMMENDED that the motion be GRANTED.

On January 29, 2003, Plaintiff Commodity Futures Trading Commission ("Commission") filed suit against Defendants InterTrade Forex Inc. ("InterTrade"), Stanley Craig Wakefield ("Wakefield"), and Pritesh Patel ("Patel") alleging fraudulent sales of futures contracts and violations of the Commodity Exchange Act. 7 U.S.C. §§ 1 *et seq.* (2002); 17 C.F.R. §§ 1 *et seq.* (2003).

On January 30, 2003, the Court entered an *ex parte* statutory restraining order freezing all assets belonging to or related to the Defendants, and ordered the maintenance of, and access to,

business records. Doc. No. 10. On March 6, 2003, the Court issued a consent order of preliminary injunction against Wakefield and InterTrade. Doc. No. 30.

The Clerk of the Court entered a default against Patel on June 6, 2003, and against InterTrade on July 8, 2003. Doc. Nos. 47 & 55. On November 22, 2004, the Court heard argument on Plaintiff's Motion for Default Judgment. Although Defendants were served with the Motion, they did not respond or appear at the hearing.

II. Conclusions of Law

1. This Court has jurisdiction over this action pursuant to Section 6c of the Commodity Exchange Act¹ (the "Act"), 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. 7 U.S.C. § 13a-1.

2. Sections 2(c)(2)(B) and (C) of the Act, grant the Commission jurisdiction over certain retail transactions in foreign currency that are contracts for the sale of a commodity for future delivery (or option on such a contract), or an option on foreign currency, including the transactions alleged in the Complaint.

3. Venue properly lies with this Court pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1(e), in that InterTrade, and its employee, Patel transact 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.²

¹7 U.S.C. §§ 1 *et seq.* (2002), and regulations promulgated thereunder, 17 C.F.R. §§ 1 *et seq.* (2003).

²In February 2002, InterTrade applied to the Florida Secretary of State to transact business in Florida. Doc. No. 67, Majors-Guy Decl. at ¶ 5. Prior to December 17, 2002, InterTrade operated an office at 750 Office Plaza, Suite 303, Kissimmee, Florida 34744. Patel was the company's chief executive officer and main principal who oversaw the

(continued...)

4. On January 30, 2003, InterTrade was duly served with a copy of the summons and complaint. Doc. No. 14. On May 7, 2003, Patel was duly served with a copy of the summons and complaint. Doc. No. 44. InterTrade and Patel failed to plead or otherwise defend as to the complaint within the time permitted by Rule 12(a)(1) of the Federal Rule of Civil Procedure. Their respective defaults have been entered by the Clerk of the Court pursuant to Rule 55(a) of the Federal Rules of Civil Procedure. Doc. Nos. 47 & 55.

5. InterTrade and Patel were served with Plaintiff's Motion for Default Judgment. Doc. No. 65 at 5. Neither InterTrade nor Patel appeared at the hearing on Plaintiff's Motion for Default Judgment held on November 22, 2004.

II. Findings of Fact

A. Solicitation of Customers

1. Since at least March 2001, Defendants InterTrade and Patel offered and sold illegal futures contracts on foreign currencies ("forex futures contracts") to the retail public via the Internet at their website located at www.spotfx.net ("the InterTrade website"). Doc. No. 1, Complaint, ¶ 13; Doc. No. 77, Ex. A, Wakefield Decl., at ¶ 1; Doc. No. 67, Majors-Guy Decl. at ¶ 6.

2. From at least March 2001 to December 2002, Defendants InterTrade and Patel accepted money from retail customers to purchase forex futures contracts on their behalf. Doc. No. 1 ¶ 36.

3. From at least March 2001 to December 2002, Defendants InterTrade and Patel traded forex futures contracts for their retail customers. *Id.*

²(...continued)
company's trading operations.

4. The InterTrade website contained, among others, the following fraudulent material misrepresentations:

a. "InterTrade Forex, Inc. has a proven successful performance record and has demonstrated its ability to profit in bull and bear market cycles by providing investors with above-average returns"; and

b. InterTrade's managed forex accounts achieved "Historically High Rates of Return."

Doc. No. 1 ¶ 16; Doc. No. 67 ¶ 10.

5. As of November 4, 2002, the historical performance chart provided on the InterTrade website contained returns for the months of October 2000 through July 2002. *Id.* ¶ 18.

6. Patel provided the monthly returns listed in the historical performance charts on the website, and these charts indicated that InterTrade's managed forex accounts routinely made substantial returns. Wakefield Dep. at 22, 59; *Id.* ¶ 19; Doc. No. 77, Ex. A ¶ 6.

7. On November 4, 2002, InterTrade and Patel claimed on the InterTrade website that their trading gains from inception to the present date had been +114.26%, with average monthly returns since inception of +5.19%. Doc. No. 1 ¶ 20; Doc. No. 67 ¶ 10.

8. Contrary to highly profitable trading portrayed on InterTrade's website, since June 2001, InterTrade and Patel's trading of forex futures contracts had resulted in monthly losses averaging -2.82%. *Id.* ¶ 21; Wakefield Dep. at 95; Doc. No. 67 ¶ 18.

9. From at least March 2001 until December 2002, the InterTrade website contained a historical performance chart for its managed forex accounts in which some, if not all, of the monthly returns listed were false. *Id.* ¶ 17; Wakefield Dep. at 95.

10. Patel knew that the returns he provided to InterTrade were false, and that they would be included in the historical performance chart posted on InterTrade's website. *See* Doc. No. 77, Ex. A, ¶¶ 5-8.

11. Some, if not all, InterTrade customers made their decision to invest with InterTrade based on the profit claims contained in the historical performance chart.

12. Based on the false information submitted by Patel, InterTrade also provided customers with fraudulent account statements that supported the figures on their historical performance chart. Doc. No. 77, Ex. A at ¶ 6.

B. Defendants Offered and Sold Illegal Futures Contracts

13. InterTrade and Patel purported to offer contracts in "cash" and "spot" foreign currency to retail investors that in reality were illegal off-exchange futures contracts. The foreign currency contracts that InterTrade and Patel offered and sold were futures contracts because they have the characteristics indicative of a futures contract. Doc. No. 1 ¶ 25; Doc. No. 68, Hobson Decl., at ¶ 27.

14. The contracts represented contracts for future delivery of foreign currencies that were cash settled in US dollars. The prices were established at the time the contracts were initiated, and were settled through offset, cancellation, cash settlement or other means to avoid delivery. Doc. No. 1 ¶ 26; Doc. No. 68 ¶ 27.

15. The InterTrade contracts were marketed to the general public as a means to speculate and profit from anticipated price fluctuations in the markets for these currencies. Doc. No. 1 ¶ 27.

16. Unlike parties to a spot transaction, small retail investors, such as InterTrade's customers, who purchased these futures contracts, had no commercial need for the foreign currency. There was no provision on InterTrade's website or in its customer agreement which anticipated or

provided for customers taking delivery of the foreign currencies they purchased. *Id.* ¶ 28; Doc. No. 68 ¶ 30.

17. InterTrade and Patel did not conduct their foreign currency futures transactions on or subject to the rules of a board of trade that has been designated or registered by the Commission as a contract market or derivatives transaction execution facility for such commodity. *Id.* ¶ 29.

18. Defendants did not execute or consummate their contracts by or through a contract market. *Id.* ¶ 30.

19. Section 2(c)(2)(B)(i) and (ii) of the Act provides that the Commission shall have jurisdiction over an agreement, contract or transaction in foreign currency that is a sale of a commodity for future delivery, so long as the contract is “offered to, or entered into with, a person that is not an eligible contract participant” (meaning the person is a retail customers) unless the counter-party, or the person offering to be the counter-party, is a regulated entity, as enumerated in the Act. *Id.* ¶ 31.

20. No Defendant is a proper counter-party for retail foreign currency transactions. *Id.* ¶ 32.

21. Section 1a(12)(A)(xi) of the Act, as amended by the CFMA, 7 U.S.C. § 1, defines an eligible contract participant as an individual who has total assets in excess of: a) \$10 million; or b) \$5 million and who enters the transaction to manage the risk associated with an asset owned or a liability incurred, or reasonably likely to be owned or incurred. At least some, if not all, of the forex futures transactions alleged herein were offered to or entered into with persons who were not eligible contract participants. *Id.* ¶ 33.

C. Violations of the Commodity Exchange Act and Regulations

The complaint alleges, and the facts set forth above establish, that InterTrade and Patel violated Sections 4(a) and 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. § 6(a) and §6b(a)(2)(a)(i) and (iii) (2002) and Commission Regulation §1.1(b)(1) and (3), 17 C.F.R. § 1.1(b)(1) and (3)(2003).

1. InterTrade and Patel's Foreign Currency Futures Transactions Violate Section 4(a) of the Commodity Exchange Act

Section 4(a) of the Act, 7 U.S.C. § 6(a), makes it unlawful to conduct a business dealing in commodity futures contracts if the transactions are not "conducted on or subject to the rules of a board of trade which has been designated by the [CFTC] as a contract market or derivatives transaction execution facility for such commodity [and] . . . executed or consummated by or through a contract market; and such contract is evidenced by a record in writing" Thus, three elements must be established to show a Section 4(a) violation: (1) the contract in question is a futures contract; (2) the contract was not traded on or subject to the rules of a designated contract market or a derivatives transaction execution facility; and (3) the contract is evidenced by a record in writing.

2. InterTrade and Patel's Foreign Currency Futures Transactions Violated Section 4b(a)(2)(i) and (iii) of the Commodity Exchange Act and Commission Regulation Section 1.1(b)(1) and (3)

InterTrade and Patel violated Section 4b(a)(2)(i) and (iii) of the Act and Commission Regulation § 1.1(b)(1) and (3) by making fraudulent misrepresentations concerning the profitability of the company's historical performance record.

InterTrade and Patel knowingly made material misrepresentations of fact by placing a fraudulent returns chart on their website and by providing customers with fraudulent account statements. By providing customers with fraudulent information and willfully misrepresenting material features of a forex futures investment, InterTrade and Patel violated the anti-fraud provisions of the Act and Regulations.

Need for Permanent Injunction and Other Ancillary Equitable Relief

1. Permanent Injunction

The facts set forth establish, by a preponderance of the evidence, the violations alleged, and the totality of the circumstances establish the likelihood of future violations unless InterTrade and Patel are enjoined by this Court. Based on InterTrade and Patel's pattern of misrepresentations to their clients, the likelihood of future violations is substantial and injunctive relief is appropriate and necessary to protect the public interest. The declarations and testimony excerpts supplied to the Court prove that the InterTrade and Patel committed fraud over a prolonged period of time. Without an injunction in place, InterTrade and Patel are free to engage in the same illegal activities, placing members of the public at risk in the future. Therefore, the Court will impose a permanent injunction, enjoining InterTrade and Patel from violating Sections 4(a) and 4b(a)(2)(i) and (iii) of the Act, and Sections 1.1(b)(1) and (3) of the Commission's Regulations.

2. Civil Monetary Penalty

Section 6c(d)(1) of the Act, 7 U.S.C. § 13a-1(d)(1), permits this Court to assess against a person who violates the Act a civil monetary penalty of not more than the higher of \$120,000 or triple the monetary gain to such person for each violation. See 17 C.F.R. § 143.8 and 61 Fed. Reg. 55,564 (Oct. 28, 1996) (adjusting the allowable civil monetary penalty for inflation for violations occurring after November 28, 1996).³

InterTrade and Patel's violations were intentional and they should be required to pay a substantial civil monetary penalty as a deterrent. InterTrade and Patel's violations fall into two distinct categories: fraud and illegal trading, fundamental provisions of the Act. This Court orders

³ Here, the acts alleged in the complaint are alleged to have occurred after November 1996, thereby permitting the imposition of an inflation-adjusted civil monetary penalty.

InterTrade and Patel to pay a civil monetary penalty of \$120,000 for their violations in each of the categories, for a total of \$240,000.

3. Ancillary Equitable Relief – Restitution

In addition to injunctive relief, the Commission is entitled to ancillary equitable relief, in the form of appointment of a permanent receiver, disgorgement, restitution, and other relief to comply with the basic objectives of the Act.

The objectives of the Act are best served in this case by ordering full restitution to all persons whose funds were received and invested by InterTrade and Patel in violation of the Act and Commission Regulations. The customer account information and declaration of Co-defendant Stanley Craig Wakefield submitted in this matter show that InterTrade's customers lost a total of \$353,556.29 as a result of the Defendants' violations. Doc. No. 77, Ex. 1 at 5.

Therefore, the Court orders InterTrade and Patel to pay restitution of \$353,556.29, plus pre-judgment interest of \$80,540.78.

It is respectfully **RECOMMENDED** that judgment be entered in favor of Plaintiff Commission and against Defendants InterTrade and Patel as follows:

1. Defendants InterTrade and Patel are permanently restrained, enjoined and prohibited from directly or indirectly

a. offering to enter into, entering into, executing, confirming the execution of, or conducting any office or business anywhere in the United States, its territories or possessions, for the purpose of soliciting or accepting any order for, or otherwise dealing in, any transactions in, or in connection with, a contract for the purchase or sale of a commodity for future delivery when: (a) such transactions have not been conducted on or subject to the rules of a board of trade which has been designated or registered by the CFTC as a contract market or derivatives transaction execution facility for such commodity future; (b) such contracts have not been executed or consummated by or through such contract market; and (c) such contracts are not evidenced by a record in writing in violation of Section 4(a) of the Act;

b. cheating or defrauding or attempting to cheat or defraud and willfully deceiving or attempting to deceive other persons in or in connection with any order to make, or the making of, any contract or sale of any commodity for future delivery, made, or to be made, for or on behalf of any person if such contract for future delivery is or may be used for (i) hedging any transaction in interstate commerce in such commodity or the products or by products thereof; (ii) determining the price basis of any transaction in interstate commerce in such commodity; or (iii) delivering any such commodity sold, shipped, or received in interstate commerce for the fulfillment thereof, in violation of Section 4b(a)(2)(i) and (iii) of the Act and Section 1.1(b)(1) and (3) of the Commission's Regulations.

2. The injunctive provisions of this Order shall be binding on Defendants InterTrade and Patel, upon any person insofar as he or she is acting in the capacity of officer, agent, servant, employee or attorney of InterTrade or Patel, and upon 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 InterTrade or Patel.

It is further respectfully **RECOMMENDED** that Defendants Intertrade and Patel shall pay restitution and a civil monetary penalty as follows:

1. **RESTITUTION:** Defendants InterTrade and Patel shall pay within ten (10) days of the entry of any Order adopting this Report and Recommendation and be jointly and severally liable for restitution to investors in the amount of \$353,556.39 plus pre-judgment interest of \$80,540.78. Post-judgment 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. Attachment A to this Order includes the names of the investors to whom restitution shall be made pursuant to this paragraph, together with the amount of restitution payable by Defendants to each of them (not including required interest) and the *pro rata* distribution percentage by which each investor shall be paid. Defendants InterTrade and Patel's obligations to make restitution under this paragraph shall be reduced by any amounts paid to the investors listed in Attachment A pursuant to any restitution ordered in any other legal proceeding

or pursuant to any collateral agreement, subject to the conditions as set forth in paragraph 6 below. All payments made pursuant to this Order by Defendants InterTrade and Patel shall be considered restitution payments and dispersed 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.

2. **RESTITUTION AGENT:** Restitution payments shall be sent to Daniel Driscoll, the Restitution Agent, at the National Futures Association, 200 W. Madison Street, #1600, Chicago, Illinois 60606, and made payable to InterTrade Forex Settlement Fund. The Restitution Agent shall distribute restitution payments to customers on a *pro rata* basis unless, at his sole discretion, based upon the amount of funds available for distribution, the Restitution Agent decides to defer distribution.

3. **CIVIL MONETARY PENALTY:** Defendants InterTrade and Patel shall pay within ten (10) days of the entry of any Order adopting this Report and Recommendation and be jointly and severally liable for a civil monetary penalty of \$240,000.00 plus post-judgment interest. Interest after the date of any Order adopting this Report and Recommendation 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. InterTrade and Patel 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; InterTrade and Patel 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.

4. **PARTIAL PAYMENTS:** Any acceptance by the Commission of partial payment of InterTrade and Patel's restitution and/or civil monetary obligations, shall not be deemed a waiver of their obligation to make further payments pursuant to any Order adopting this Report and Recommendation, or a waiver of the Commission's right to seek to compel payment of any remaining balance.

5. **THIRD-PARTY BENEFICIARIES:** Pursuant to Rule 71 of the Federal Rules of Civil Procedure, each of the individuals identified in Attachment A is explicitly made an intended third-party beneficiary of any Order adopting this Report and Recommendation and may seek to enforce obedience of the Order to obtain satisfaction of any portion of the restitution amount which has not been paid by any Defendant, to ensure continued compliance with any provision of the Order and to hold InterTrade and Patel in contempt for any violations of any provision of the Order.

6. **COLLATERAL AGREEMENTS:** InterTrade and Patel shall immediately notify the Commission and Restitution Agent if they make or have previously made any agreement with any investor obligating them to make payments outside of any Order adopting this Report and Recommendation. They shall also provide immediate evidence to the Court, the Commission and Restitution Agent of any payments made pursuant to such agreement. Upon being notified of any payments made by InterTrade or Patel to investors outside of any Order adopting this Report and Recommendation, and receiving evidence of such payments, the Restitution Agent will have the right to reduce and offset InterTrade or Patel's obligation to specified investors and to make any other changes in the restitution distribution schedule that he deems appropriate.

7. **TRANSFER OF ASSETS:** InterTrade and Patel shall not transfer or cause others to transfer funds or other property to the custody, possession, or control of any other person for the

purpose of concealing such funds from the Court, the Commission, or any investor or until the Restitution Amounts have been paid in full.

8. **FREEZE ORDER DISSOLVED:** All prior freeze orders are dissolved and assets held pursuant to any order transferred to the Restitution Agent.

9. **JURISDICTION:** This Court shall retain jurisdiction of this cause to assure compliance with any Order adopting this Report and Recommendation and for all other purposes related to this action.

Failure to file written objections to the proposed findings and recommendations contained in this report within ten (10) days from the date of its filing shall bar an aggrieved party from attacking the factual findings on appeal.

Recommended in Orlando, Florida on December 15, 2004.

David A. Baker

DAVID A. BAKER
UNITED STATES MAGISTRATE JUDGE

Copies furnished to:

Presiding District Judge
Counsel of Record
Unrepresented Party
Courtroom Deputy

Exhibit A

Customer	Invested	\$ Returned	\$ Owed	% Share
Atlantic Capital Funding	\$30,000.00	\$0.0	\$30,000.00	8.49%
Clary, James	\$15,000.00	\$0.0	\$15,000.00	4.24%
Gallagher, Brian	\$20,000.00	\$0.0	\$20,000.00	5.66%
Hutcherson, Chris	\$15,000.00	\$0.0	\$15,000.00	4.24%
Manitou, Inc.	\$50,000.00	\$46,353.26	\$3,646.74	1.03%
Marina Bay Investments	\$15,000.00	\$0.0	\$15,000.00	4.24%
Davidson, Jack	\$15,000.00	\$4,749.85	\$10,250.15	2.90%
Fisher, Michael	\$15,000.00	\$0.0	\$15,000.00	4.24%
Phillipp, Phyllis	\$15,000.00	\$13,529.65	\$1,470.35	0.42%
Quartemont, Joel	\$15,000.00	\$0.0	\$15,000.00	4.24%
Senkbeil, Albert	\$15,000.00	\$0.0	\$15,000.00	4.24%
Sloan, James	\$50,000.00	\$0.0	\$50,000.00	14.14%
Sprecher, David	\$13,100.00	\$0.0	\$13,100.00	3.71%
Liu, Tsung-shih	\$15,000.00	\$13,047.85	\$1,952.15	0.55%
Watters, Joseph	\$15,000.00	\$7,056.99	\$7,943.01	2.25%
Windword Capital	\$75,193.89	\$50,000.00	\$25,193.89	7.13%
Young, William	\$100,000.00	\$0.0	\$100,000.00	28.28%
	\$488,293.89	\$134,737.60	\$353,556.29	100.00%