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IN THE UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF MICHIGAN

COMMODITY FUTURES TRADING COMMISSION, Plaintiff, v. MARQUIS FINANCIAL MANAGEMENT SYSTEMS, INC., THE MARQUIS GROUP, INC., JOHN DANIEL LEE, DAVID PAUL KELLY II and JOEL SOFIA, Defendants.	CIVIL ACTION NO. 03-74206 Judge Lawrence P. Zatkoff Magistrate Judge Capel

ORDER GRANTING SUMMARY JUDGMENT AGAINST DEFENDANT JOHN DANIEL LEE

This matter came before the Court on Plaintiff's Motion for Summary Judgment Against Defendant John Daniel Lee. The Court has reviewed the Motion and the Memorandum submitted in support thereof, including the Appendix of Exhibits thereto, as well as the entire record in the case. The Court finds that Plaintiff is entitled as a matter of law to a judgment on liability against Lee, an award of restitution against Lee, and the imposition of a civil monetary penalty against Lee.

I.

PROCEDURAL HISTORY

On October 20, 2003, Plaintiff filed its Complaint in this action to enjoin defendants from engaging in practices that constituted violations of the Act and Commission Regulations. ("Complaint") More specifically, the Complaint alleged that there have been violations of

Sections 4b(a)(2)(i), (ii) and (iii), 4c(b), 4k(2), 4m(1), 4n(4), 4*o*(1) of the Commodity Exchange Act, as amended ("Act"), 7 U.S.C. §§ 6b(a)(2)(i), (ii) and (iii), 6c(b), 6k(2), 6m(1), 6*o*(1) (2002), and Commission Regulations §§ 4.21, 4.22 and 33.10, 17 C.F.R. 4.21, 4.22 and 33.10 (2004). The Complaint alleged that Marquis FMS and Marquis Group acted as commodity pool operators ("CPOs") in that they solicited, accepted and received money for the purpose of trading commodity futures, and specifically charged Marquis and Lee with violations of the Acts' antifraud provisions for making misrepresentations to participants and misappropriating participant funds. Marquis FMS and Marquis Group were also charged with failing to issue disclosure documents and with issuing false statements to participants while Kelly and Sofia were only named with having solicited participants without the benefit of registration with the Commission.

On October 20, 2003, this Court entered a statutory *ex parte* restraining order against all defendants. After conducting an evidentiary hearing, this Court entered a preliminary injunction against defendants Marquis FMS, Marquis Group and Lee ("Order") and entered Consent Orders for preliminary injunctive relief against Sofia ("Sofia Order") and Kelly ("Kelly Order") on November 12, 2003.[1] The preliminary injunctions ordered, in part, each of the defendants to prepare and file an Accounting with the Court within ninety days, delineating, in part, the source and disposition of Marquis FMS and Marquis Group participants' funds.

After ninety days, Lee had still not filed an Accounting. Thus, on June 18, 2004, this Court found Lee to be in contempt of the Order and Kelly Order. Lee included his "Accounting"

[1] On June 23, 2004, the Court entered an additional restraining order. This Order prohibited the transfer or dissipation of any assets held by Lee's church, United Believers, after the plaintiff had filed a motion on May 27, 2004 alleging that Lee had used Marquis' participant funds for the purchase of his residence ("Plaintiff's Motion to Modify PI").

(Lee's Accounting") *[Ex. 11, p. 20]* with his Amended Answer filed on July 12, 2004 ("Amended Answer"). Lee's Accounting included a number of material admissions.

Lee, who is litigating this case *pro se*, filed his Answer on January 28, 2004 ("Lee's Answer"). On July 1, 2004, Lee filed his Amended Answer.[2] Although Lee's Answer includes a number of alleged Affirmative Defenses, none of them have merit and they have not been raised in any dispositive motions filed by the defendants. Further, Lee's Amended Answer also includes a number of admissions of material fact. Lee gave sworn testimony, although he asserted his Fifth Amendment rights in response to most substantive questions. Plaintiff filed its Motion for Summary Judgment on February 9, 2005 and Lee responded to the Motion on March 11, 2005, stating simply "I cannot Assent to Plaintiff's Motion for Summary Judgment."

II.

STANDARD FOR SUMMARY JUDGMENT

Under Federal Rule of Civil Procedure 56, summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). "The non-moving party must do more than show that there is some metaphysical doubt as to the material facts. It must present significant probative evidence in support of its opposition to the motion for summary judgment in order to defeat the motion for summary judgment. *See Moore v. Phillip Morris Co.*, 8 F. 3d 335, 339-40 (6th Cir. 1993)." *Networktwo Communications Group, Inc. v. Spring Valley Marketing Group and CommunityISP, Inc.*, 2003 WL 1119763 (E.D. Mich. 2003) and *U.S. v. Nevels*, 2000 WL 1137733 (E.D. Mich. 2000).

[2] The denials and affirmative defenses set forth in Lee's Answer were not realleged nor restated in Lee's Amended Answer.

Moreover, "the mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986) (emphasis in original). Under the Supreme Court rule in *Anderson*, "the trial judge must [enter summary judgment] if, under the governing law, there can be but one reasonable conclusion." *Id.* at 250. *See also Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986) ("where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no genuine issue for trial") (citation omitted). The Court must keep in mind that the purpose of Rule 56 is to eliminate the needless delay and expense of unnecessary trial. *Celotrex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986).

In the case of *Street v. J.C. Bradford & Company, et al.*, 886 F. 2d 1472, 1479 (6th Cir. 1990), the principles to be followed in summary judgment practice were outlined by the Sixth Circuit. Those principles are summarized as follows:

1. Complex cases are not necessarily inappropriate for summary judgment.
2. Cases involving state of mind issues are not necessarily inappropriate for summary judgment.
3. The movant must meet the initial burden of showing "the absence of a genuine issue of material fact" as to an essential element of the non-movant's case.
4. This burden may be met by pointing out to the court that the respondent, having had sufficient opportunity for discovery, has no evidence to support an essential element of his or her case.
5. A court should apply a federal directed verdict standard in ruling on a motion for summary judgment, *i.e.*, "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.
6. The respondent must adduce more than a scintilla of evidence to overcome the motion.
7. The substantive law governing the case will determine what issues of fact are material.
8. The respondent must "present affirmative evidence in order to defeat a properly supported motion for summary judgment."
9. The trial court no longer has the duty to search the entire record to establish that it is bereft of a genuine issue of material fact.

10. The respondent must "do more than simply show that there is some metaphysical doubt as to the material facts."

Under the analysis of the principles set forth in *Street,* these facts present a compelling case for summary judgment. In light of Lee's admissions and the absence of any counter affirmative evidence presented by Lee, the Court finds the entry of summary judgment against Lee to be proper.

III.

FINDINGS

THE COURT FINDS THAT:

JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action and all parties hereto pursuant to Section 6c of the Commodity Exchange Act, as amended ("Act"), 7 U.S.C. § 13a-1 (2001), which authorizes the Commission to seek injunctive relief against any person whenever it shall appear 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-1 (2001), in that the 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. The Defendant, directly and indirectly, has made use of the means and instrumentalities of interstate commerce, including the mail, in connection with the acts, practices and courses of business complained of herein.

THE PARTIES

4. Plaintiff, Commodity Futures Trading Commission is an independent federal regulatory agency that is charged with responsibility for administering and enforcing the provisions of the Act, 7 U.S.C. §§ 1 *et seq.* (2002), and the Regulations promulgated thereunder, 17 C.F.R. §§ 1 *et seq.* (2004).

5. Defendant Marquis Financial Management Systems, Inc. ("Marquis FMS") is a company incorporated in the Republic of Panama with a mailing address in Flint, Michigan, and another address in Bermuda.

6. Marquis FMS has never been registered with the Commission in any capacity.

7. Defendant The Marquis Group, Inc. ("Marquis Group") is a company incorporated in the Republic of Panama with a mailing address in Flint, Michigan, and another address in Ancon, Panama.

8. Marquis Group has never been registered with the Commission in any capacity

9. Defendant John Daniel Lee resides in Flushing, Michigan, and has sometimes used the alias, "Jhon Leigh."

10. Lee has never been registered with the Commission in any capacity.

11. Defendant David Paul Kelly II ("Kelly") resides in Flint, Michigan, and sometimes used the alias "Dhavid Khelly".

12. Kelly has never been registered with the Commission in any capacity.

13. Defendant, Joel Sofia, resides in Glassboro, New Jersey and sometimes used the alias "Jhoel Sophia."

14. Sofia has never been registered with the Commission in any capacity.

OVERVIEW OF MARQUIS FMS AND MARQUIS GROUP

15. Lee was an agent with a general power of attorney to act on behalf of Marquis FMS.

16. Lee was an agent with a general power of attorney to act on behalf of the Marquis Group.

17. Lee sometimes conducted business under the names "JDL & Associates," "Justice, Divinity and Liberty Association," "JDL Association," "JDLA" or "EMI."

18. EMI, a purported Panamanian corporation, is also known as "Elite Marketing Internationale, S.A." and has a mailing address of address in Grand Blanc, Michigan.

19. Lee is a "minister" and "agent" for a purported "church" in Flint, Michigan, called "United Believers."

20. United Believers was an unincorporated church ministry with an address in Flint, Michigan 48532.

21. Lee had a power of attorney to act on behalf of United Believers.

22. During the latter part of 1999, Lee met Andrew Duncan ("Duncan") who convinced Lee to give him the "chance" to engage in "trading on commodities" for Marquis FMS and Marquis Group participants.

23. On August 30, 2001, the Commission filed an injunctive complaint against Duncan and his firm, the Aurum Society, *CFTC v. Andrew Duncan and The Aurum Society, Inc.*, Northern Dist. of Illinois, No. 01-C-6802. The complaint alleged, *inter alia*, that Duncan had acted as an unregistered commodity pool operator and an unregistered commodity trading advisor and had engaged in commodity pool fraud. A default judgment was entered on April 3, 2002 against both defendants, and the court entered a permanent injunction and granted other

ancillary relief, including payment of $3,456,555 in restitution and a civil monetary penalty of $360,000.

SOLICITATIONS TO PARTICIPANTS

24. Beginning in at least January 2000, Lee and others met with potential Marquis participants in various cities throughout the United States.

25. Marquis hosted seminars for the public with workshops on various asset management and privacy protection topics, including the use of international business corporations ("IBCs") and trusts as means for individuals to protect their assets.

26. At these seminars, attendees were also invited to private consultations if they were "serious entrepreneurs."

27. At the Marquis seminars, Lee and others solicited individuals to invest in Marquis.

28. Lee and others also met prospective Marquis participants at various privately arranged meeting places, including a restaurant and church in New Jersey.

29. Lee made vague presentations in which he told potential participants that they could work with Marquis to realize their "wealth building opportunities" by becoming "members" of the "JDL Association." As far as participants were concerned, "wealth building" meant the same thing as "investing."

30. Lee gave prospective participants a JDLA brochure that he had prepared that, in part, outlined so-called "Rules of Membership." The JDLA brochure included a listing of anticipated yields for Marquis participants ranging from 150% to 580% for each 410-day investment period.

31. Lee wrote and distributed an "Annual Membership Analysis" to participants in 2002 which states that the "value" [of a Marquis investment] "has grown at a good clip over the years, and our membership has risen correspondingly."

32. Lee never told potential participants that he planned to pool their investments to trade commodity futures with Duncan's assistance.

33. Lee never disclosed to participants that a significant portion of their funds would be used to trade commodity futures and options contracts and never gave any indication of the risks of such trading.

34. Lee made a variety of fraudulent statements to participants, including that:

(a) Marquis had been accepting investor funds for 14-15 years;

(b) Marquis had experienced "remarkable" returns for participants, having consistently outperformed the U.S. stock market;

(c) An investment with Marquis was very low risk with only 25% of the investment placed at risk and the remaining 75% of the investment placed in a non-risk account;

(d) Marquis had consistently achieved 300% annual returns; and

(e) A $100,000 investment would return amounts from $100,000 to $350,000 in the prescribed 410-day investment period.

35. Lee testified that Marquis was set up in approximately 1999; thus, it clearly had not been accepting funds from participants for a period of 14-15 years as Lee told participants.

36. Marquis has never earned a profit for any of their participants.

37. A portion of participant funds was invested in commodity futures and options trading.

38. The defendants told individual members of the public that in order to become Marquis participants they would have to pay a fee to Marquis in order to set up their own international business corporation ("IBC").

39. Marquis charged fees between $7,500 and $10,300 for this service. Marquis also charged participants an additional administrative fee of 10% of their total investment amount.

40. After their purported IBC was set up, participants were instructed to wire their investment funds to one of the two following bank accounts, although at least one investor gave cash to Sofia to fund his Marquis FMS and Marquis Group investment: Gold and Silver Reserve at AmSouth Bank in Birmingham, Alabama, and Marq-E-Gold International, Inc. at Citizens Bank in Flint, Michigan.

SUMMARY OF INDIVIDUAL PARTICIPANT TOTALS

41. From January 2000 through the present, Lee solicited deposits of $2,015,833 from 45 participants.

42. The individual investment amounts ranged from $1,000 to $370,000.

43. A total of $592,029 was distributed back to Marquis participants, although some participants were paid back more money than they had invested. The participants are still owed a total of $1,692,501 by Lee.

COMMODITY FUTURES TRADING BY MARQUIS FMS AND MARQUIS GROUP

44. From July 2000 through the present, Marquis invested in commodity futures and options through trading accounts at several FCMs under the names of Marquis FMS and Marquis Group, and funded those accounts with over $717,000 of participant funds funneled through AmSouth Bank.

45. Marquis gave Duncan written authorization to trade two of its accounts at the FCMs.

46. Marquis lost money every month that it traded, losing over $625,818 trading commodity futures and options in its accounts. Those trading accounts currently have a balance of just $3,912.

MISAPPROPRIATION OF MARQUIS PARTICIPANT FUNDS

47. Of the approximate $2,831,081 that was deposited into the Marquis accounts, the following is a summary of how most of those funds were disbursed:

a) $592,029 was distributed back to the identified Marquis participants;

b) $625,818 was lost trading commodity futures and options;

c) $293,406 was used to make payments to Marquis Certified Information Coordinators ("CIC") (individuals who solicited investments for Marquis);

d) $72,893 was taken out in cash withdrawals;

e) $294,580 was paid to credit card companies;

f) $104,500 was paid to United Believers; and

g) $182,658 was used for personal expenses, including a car purchase for Lee ($136,708) and miscellaneous expenses ($45,950).

48. A total of 45 participants in the Pool were identified, and they deposited $2,025,242 in Marquis. There was an additional $430,697 in deposits from a bank in the Republic of Panama from unidentified participants. Therefore, Marquis received a total of $2,455,939 from participants. Marquis made $592,029 in disbursements to participants. As a result, Marquis owes $1,863,910[3] in restitution to participants.

[3] $2,025,242 + $430,697 - $592,029 = $1,863,910

49. Lee owes $1,692,501 in restitution, derived as follows: ($2,015,833 of participant funds were deposited into Lee's accounts from identified participants) + ($268,697, an additional sum that was deposited into Lee's accounts from unidentified participants) – ($592,029, the amount repaid to participants).

50. The plaintiff has been able to locate 14 of the 45 identified Marquis participants. They are owed restitution in the amount of $920,151 and comprise the restitution distribution list attached hereto as Exhibit A.

51. Of the $60,000 that Marquis wire-transferred to United Believers in April 2001, at least $43,402.51 was used for Lee's purchase of his residence located at 1470 Flushing Road, Flushing, Michigan, in the name of United Believers.

FALSE STATEMENTS WERE ISSUED TO PARTICIPANTS

52. In October 2001, Lee sent an e-mail to participants stating that, due to the September 11 tragedies, Pool participants would not receive their payouts in November 2001 as promised. The letter did not state that any of the Pool participant's funds had been lost; rather, it stated that the Pool intended to reach its expected yields.

53. In January 2002, Lee, sent a statement to participants entitled "Membership Overview for the Year 2001" ("Membership Overview"). This statement made no mention of any losses in the trading accounts nor, for that matter, of the basic fact that commodity futures or options trading was even being done with their funds.

54. The January 2002 statement sent by Lee to participants reported each investor's initial investment amount and "anticipated yield" for the period just ended, showing a profit of 250% for the completed time period. For instance, Lee sent a false statement to two participants

and expressly told them that they could expect to receive a disbursement of approximately $350,000 on their $100,000 investment.

VIOLATIONS OF THE ACT AND REGULATIONS

55. Defendant Lee violated Sections 4b(a)(2)(i) and (iii), 4b(a)(2)(ii), 4c(b), 4k(2) and 4*o*(1) of the Act, 7 U.S.C. §§ 6b(a)(2)(i) and (iii), 6b(a)(2)(ii), 6c(b), 6k(2) and 6*o*(1) (2001);

IV.

IMPOSITION OF PERMANENT INJUNCTION AND OTHER RELIEF

Unlike private actions, which are grounded in equity, a CFTC request for injunctive relief has its basis in Section 6c of the Act, 7 U.S.C. § 13a-1. Under 6c, the CFTC must show only two things to obtain permanent injunctive relief: first, that a violation of the Act has occurred (see discussion above) and second, that there is a reasonable likelihood of future violations. *CFTC v. Muller*, 570 F.2d 1296, 1300 (5th Cir. 1978). Because enforcement proceedings under Section 6c of the Act, 7 U.S.C. § 13a-1, involve the public interest rather than a private controversy, the equitable jurisdiction of the district court is not to be denied or limited in the absence of a clear legislative command. *CFTC v. Hunt*, 591 F.2d 1211, 1223 (7th Cir. 1979), *cert. denied*, 442 U.S. 921 (1979), (citing *Porter v. Warner Holding Co.*, 328 U.S. 395, 398 (1946)); *see also Kelly v. Carr*, 442 F.Supp. 346 (W.D. Mich. 1977) *aff'd in part, rev'd in part*, 691 F.2d 800 (6th Cir. 1980) (granting default judgment for permanent injunction). In such a case, the court's equitable powers are broader and more flexible than in private controversies. *Hunt*, 591 F.2d at 1211.

Actions for statutory injunctions need not meet the requirements for an injunction imposed by traditional equity jurisprudence. Once a violation is demonstrated, the moving party needs show only that there is some reasonable likelihood of future violations. When the violation has been founded on systematic wrongdoing, rather than an isolated occurrence, a court

should be more willing to enjoin future misconduct. *Hunt*, 591 F.2d at 1220. ("[W]hile past misconduct does not lead necessarily to the conclusion that there is a likelihood of future misconduct, it is "highly suggestive of the likelihood of future violations."); *CFTC v. American Metals Exchange Corp.*, 693 F.Supp. 168, 191 (D.N.J. 1988). *Cf. SEC v. Zale Corp.*, 650 F.2d 718, 720 (5th Cir.), *cert. denied*, 454 U.S. 1124 (1981) ("the Commission is entitled to prevail when the inferences flowing from the defendant's prior illegal conduct, viewed in light of the present circumstances, betoken a 'reasonable likelihood' of future violations) (citations omitted). In *Hunt*, the Seventh Circuit reversed the district court's denial of injunctive relief, stating: [I]t is evident that the trial court's discretion has not been exercised *to effectuate the manifest objectives of the specific legislation* involved. *Hunt*, 591 F.2d at 1219-20 (emphasis added). The *Hunt* court identified several factors in determining the reasonable likelihood of future misconduct, including the systematic wrongdoing of the defendants and the fact that it was not unlikely that the defendants would be in a position to commit future violations. *Hunt*, 591 F.2d at 1220-21 & n.4.

The *Hunt* standards have retained their vitality to this date. *See CFTC v. Rosenberg*, 85 F.Supp.2d 424, 453 (D. NJ. 2000) (granting permanent injunction for violation of antifraud provisions of the Commodity Exchange Act); *SEC. v. Holschuh*, 694 F.2d 130, 144 (7th Cir. 1982) (affirming permanent injunction against registration and antifraud violations of federal securities laws). Based upon the above standards, this Court will enjoin defendant Lee from further violations of each section of the Act that he violated. Lee's fraudulent conduct extended over a period of more than three years and injured many members of the public. Unless he is enjoined, defendant Lee will certainly be in a position to commit future violations by soliciting

and accepting funds from participants and lying to them about potential profits and risk of loss and misappropriating participant funds.

In addition, the court should invoke its discretion under Section 6c(c) of the Act, 7 U.S.C. § 13a-1, to require the default defendants to "take such action as is necessary to remove the danger of violation of this Act," by enjoining them from engaging in business activities which might again involve them in future violations. *Cf. Holschuh*, 694 F.2d at 144 (in assessing the likelihood of future violations, a court should consider the likelihood that defendant's customary business activities might again involve them in illegal transactions).

Although only a "reasonable likelihood of future violations" is required for an injunction under the *Hunt* standard, the pervasive nature of defendants' conduct and the fraudulent nature of the business Lee operated indicates there is a substantial likelihood of future fraud unless Lee is enjoined, not only from further statutory violations, but also from further business activities related to soliciting and accepting money from and issuing statements to commodity pool participants. Therefore, this Court should find that the injunction requested by the Plaintiff here "is necessary to remove the danger of violation of the Act." Such an injunction would effectuate the manifest objectives of the antifraud provisions of the Act.

Although not relevant to determining liability, customer reliance is relevant to obtaining restitution in a fraud action under the Act to the extent that it tends to prove or disprove a causal nexus between the respondent's fraudulent conduct and the injury suffered by his victim. *Indosuez Carr Futures, Inc. v. CFTC*, 27 F.3d 1260, 1264-65 (7th Cir. 1994). However, in a case based on omission of material facts, reliance is presumed. *Affiliated Ute Citizens v. United States*, 406 U.S. 128, 92 S.Ct. 1456, 31 L.Ed.2d 741 (1972). The case need not be exclusively an omissions case for customer reliance to be presumed. *Waters v. International Precious Metals*

Corp., 172 F.R.D. 479, 485 (S.D. Fla. 1996) *citing Huddleston v. Herman,* 640 F.2d 534 (5th Cir. 1981). Rather, if the case is based primarily on defendants' failure to disclose material facts then there is a presumption of reliance, ". . . positive proof of reliance is not a prerequisite to recovery. All that is necessary is that the facts withheld be material in the sense that a reasonable investor might have considered them important in the making of the decisions to buy or sell." *Waters*, 172 F.R.D. at 485 *citing Affiliated Ute*, 406 U.S. at 153-154. Here, Lee solicited funds from participants for investment, but he failed to tell the prospective participants that a portion of their funds would be used to trade commodity futures. Also, once Marquis began futures trading, Lee failed to alert prospective participants about the significant losses Marquis had sustained. Further, the customer declarations clearly demonstrate that they relied on Lee's omissions to their detriment.

Even if the Court finds that this is primarily a misrepresentation case, and reliance is not presumed, Plaintiff has presented sufficient evidence to establish customer reliance. Declarations and other documents in the Appendix show that if Marquis participants had known that some of their funds would be used to trade commodity futures or that Marquis had been sustaining significant losses through its commodity futures trading activity, they most certainly would not have invested and/or added additional funds to their existing investments. "Indeed, misrepresentations regarding profit potential and risk go to the heart of a customer's investment decision and are therefore material as a matter of law." *CFTC v. Noble Wealth Data Information Services, Inc.*, 90 F.Supp.2d. 676, 686 (D. Md. 2000), *aff'd sub nom.*, 278 F. 3d 319 (4th Cir. 2002).

This Court orders Lee to pay restitution of $1,692,501 which represents net losses to Marquis participants, plus pre-judgment and post judgment interest thereon. [Ex. G ¶ 21] *See*

United States v. Beatrice Foods Co., 493 F.2d 1259, 1272 (8th Cir. 1974) (District Court's inherent equitable powers can be used to sustain a restitution order); *see also SEC v. First Jersey Securities, Inc.*, 101 F.3d 1450, 1474 (2nd Cir. 1996) (once a violation of the federal securities laws has been found, a district court "has broad equitable power to fashion appropriate remedies.")

Finally, Section 6c(d)(1) of the Act, 7 U.S.C. § 9(d)(1), provides that a civil penalty may be assessed against a defendant for each violation of the Act. Section 6c(d)(1) allows assessing a civil monetary penalty of not more than $110,000, for violations occurring before October 23, 2002 ($120,000 for violations occurring after that date) or triple the monetary gain to the defendants, whichever is greater, for each violation of the Act and regulations. In light of the egregiousness and continuing nature of the fraud in this case, such an assessment is appropriate and Lee should be ordered to pay a civil monetary penalty of $110,000 per count, which is substantially less than $110,000 per violation as allowed by the Act.

V.

ORDER FOR PERMANENT INJUNCTION

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that final judgment shall be and hereby is entered in favor of Plaintiff Commission and against defendant Lee as follows:

1. Defendant Lee is permanently restrained, enjoined and prohibited from, directly or indirectly:

   a. Cheating, defrauding or deceiving investors 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 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)(i) and (iii) of the Act, 7 U.S.C. §§ 6b(a)(i) and (iii);

b. Directly or indirectly employing one or more devices, schemes, or artifices to defraud pool participants or prospective pool participants, or engaging in transactions, practices or courses of business which operate as a fraud or deceit upon pool participants or prospective pool participants, or engaging in transactions, practices or courses of business which operate as a fraud or deceit upon pool participants or prospective pool participants, in violation of Section 4*o*(1)(A) and (B) of the Act, 7 U.S.C. § 6*o*(1)(A) and (B); and

c. Cheating or defrauding or attempting to cheat or defraud any other person, or deceiving or attempting to deceive any other person by any means whatsoever in connection with an offer to enter into, the entry of or confirmation of the execution of, any commodity option contract, in violation of Section 4c(b) of the Act and Regulation 33.10, 17 C.F.R. § 33.10.

2. Defendant Lee and all persons insofar as they are or have been acting in the capacity of agents, servants, employees, successors, assigns, or attorneys of and all persons insofar as they are or have been acting in active concert or participation with Lee, who receive actual notice of this Order by personal service or otherwise, are permanently restrained, enjoined and prohibited from, directly or indirectly, willfully making or causing to be made to such other

person any false report or statement thereof, in violation of Section 4b(a)(ii) of the Act, 7 U.S.C. § 6b(a)(ii).

3. Defendant Lee is permanently restrained, enjoined and prohibited from soliciting, accepting, or receiving from others, funds, securities, or property, for the purpose of trading in any commodity for future delivery on or subject to the rules of any contract market while associated with a commodity pool operator without being registered with the Commission as an AP of a CPO, in violation of Section 4k(2) of the Act, 7 U.S.C. § 6k(2).

4. Defendant Lee is permanently restrained, enjoined and prohibited from directly or indirectly engaging in any commodity futures or options related activity, including but not limited to:

a. Trading on or subject to the rules of any registered entity;

b. Engaging in, controlling or directing the trading for any commodity futures, security futures, options, options on futures, or foreign currency futures or options account for or on behalf of himself or 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 (a0(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).

5. The injunctive provisions of this Order shall be binding on defendant Lee and any person insofar as he or she is acting in the capacity of an agent, servant, employee, successor, or assign or attorney of defendant Lee, and upon any person who receives actual notice of this Order by personal service or otherwise insofar as he or she is acting in concert or participation with Lee.

VI.

ORDER FOR OTHER EQUITABLE RELIEF

IT IS FURTHER ORDERED THAT:

1. Restitution. Within thirty (30) days of the date of this Order, defendant Lee shall pay restitution in the amount of $1,692,501 ("Restitution Amount"). In addition, Lee shall pay pre-judgment interest thereon from October 20, 2003 to the date of this Order calculated at the underpayment rate established by the Internal Revenue Service, pursuant to 26 U.S.C. § 662(a)(2). Lee shall also pay post-judgment interest at the Treasury Bill rate prevailing on the date this Order is entered, pursuant to 28 U.S.C. § 1961(a), from the date this Order is entered until the date full payment of restitution is made, or such other amount that the Plaintiff may prove is equitable and justly owed. The persons to whom the restitution amounts shall be paid, and pro rata distribution percentages by which each participant shall be paid from the Restitution Amount are set forth in Attachment A hereto. Omission from Attachment A shall in no way limit the ability of any participant from seeking recovery from Lee or any other person or entity. Within thirty days of the date of this Order, Lee shall provide the Restitution Amount to the National Futures Association ("NFA") c/o Daniel A. Driscoll, Esq., Executive Vice President,

Chief Compliance Officer, or his successor, at the following address: National Futures Association, 200 West Madison Street, Chicago, IL 60606 under cover of a letter that identifies the defendant making payment and the name and docket number of the proceeding. Upon the receipt of funds for the payment of the Restitution Amount, The NFA will subsequently distribute the funds to investors in accordance with Attachment A and only after the NFA verifies each participant's claim to a portion of the Restitution Amount. Further, any money paid to the NFA above and beyond the amount sufficient to pay full restitution to the participants identified on the distribution list, Attachment A, shall be converted to disgorgement and shall be sent by the NFA to the Commission to the attention of Dennese Posey, or her successor, Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, DC 20581, under cover of a letter that identifies defendant making payment and the name and docket number of the proceeding, as payment of disgorgement.

2. Civil Monetary Penalty. Within thirty (30) days of the date of this Order, Lee shall pay a civil penalty of $550,000 to the Commission sent to Dennese Posey, or her successor, Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, DC 20581, under cover of a letter that identifies defendant making payment and the name and docket number of the proceeding. The defendant making payment shall simultaneously transmit a copy of the cover letter and the form of payment to Gregory G. Mocek, Director, Division of Enforcement, Commodity Futures Trading Commission, at the following address: 1155 21st Street, NW, Washington, DC 20581.

3. Lee 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 or property from the Court, the Commission, or any officer that may be appointed by the Court.

4. IT IS FURTHER ORDERED AND ADJUDGED that this Court shall retain jurisdiction of this action for all purposes, including the implementation and enforcement of this Final Judgment.

IT IS SO ORDERED.

DATED: JUN 08 2005, 2005

UNITED STATES DISTRICT JUDGE

	Investor	Investment	Return	Net Investment	Pro Rata Share
1	Frank Clemens	24,240	0	-24,240	2.6%
2	Gary Offenbacker	9,455	0	-9,455	1.0%
3	Gloucester County Community Church	297,930	115,000	-182,930	19.9%
4	Jerry Clendenen	120,300	15,000	-105,300	11.4%
5	Joanna Clendenen	5,320	0	-5,320	0.6%
6	Joe Miduski	40,900	0	-40,900	4.4%
7	Joseph Burton	29,920	0	-29,920	3.3%
8	Joseph Silverberg	9,120	0	-9,120	1.0%
9	Kathleen & Richard Lansberry	117,745	75,000	-42,745	4.6%
10	Peter Schrader	7,710	0	-7,710	0.8%
11	Shannon Miduski	7,980	0	-7,980	0.9%
12	Stephen Famelli Jr.	30,000	22,000	-8,000	0.9%
13	Stephen Famelli Sr.	117,710	15,000	-102,710	11.2%
14	Sam Epstein	370,000	26,178	-343,822	37.4%
	OVERALL TOTAL	1,188,329	268,178	-920,151	100%