

cc

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

U. S. COMMODITY FUTURES
TRADING COMMISSION,

Plaintiff,

v.

PEREGRINE FINANCIAL GROUP, INC.,
AND
RUSSELL R. WASENDORF, SR.,

Defendants.

Civil Action No: 1:12-cv-05383

Judge: Rebecca R. Pallmeyer

Magistrate Judge: Young B. Kim

RRF ~~PROPOSED~~ SUPPLEMENTAL DEFAULT JUDGMENT ASSESSING CIVIL
MONETARY PENALTIES AGAINST DEFENDANTS

I. BACKGROUND

On July 10, 2012, the Plaintiff U.S. Commodity Futures Trading Commission (“CFTC” or “Commission”) filed a civil injunctive Complaint against Peregrine Financial Group, Inc. (“PFG”), and Russell R. Wasendorf, Sr. (“Wasendorf”) (together “Defendants”), alleging multiple violations of the Commodity Exchange Act, as amended by the Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, Title XIII (the CFTC Reauthorization Act of 2008 (“CRA”)), §§ 13101-13204, 122 Stat. 1651 (enacted June 18, 2008) and the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Pub. L. No. 111-203 (“Dodd-Frank Act”), Title VII (the Wall Street Transparency and Accountability Act of 2010), §§701-774, 124 Stat. 1376 (enacted July 16, 2010), 7 U.S.C. §§ 1 *et seq.* (2006, Supp. II 2009 and Supp. IV 2011), and the Commission’s Regulations (the “Regulations”) promulgated thereunder, 17 C.F.R. §§ 1.1 *et seq.* (2012). The Complaint alleged violations concerning the Defendants’ failure to segregate

customer funds, fraudulent misappropriation of such funds, and making of false statements to the Commission.

The Court entered a Preliminary Injunction against Defendants on August 8, 2012. (Docket Entry, hereafter “Dkt.” 56). On February 13, 2013, the Court entered Default Judgment Order of Permanent Injunction and Other Ancillary Relief against Defendants (“Permanent Injunction”). Dkt. 195. The Permanent Injunction explicitly reserved issues of necessary relief pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2012), regarding a restitution order against Defendant Wasendorf and appropriate civil monetary penalties to be assessed against Defendants.

The Commission is not seeking an order of restitution against Defendants for two separate reasons. First, as to Defendant PFG, the Permanent Injunction provided that, in light of the pendency of the bankruptcy case *In re Peregrine Financial Group, Inc.*, 12-27488 (Bkrcty. N.D. Ill., filed July 10, 2012), in which defrauded customers may file claims against the Defendant PFG for amounts owed them, the Commission will not seek an order of restitution against Defendant PFG in this action. Second, as to Defendant Wasendorf, although his violations of the Act and Regulations certainly merit an award of restitution to his customers, the Commission recognizes that in the Judgment in a Criminal Case, dated January 31, 2013, the federal court in *United States v. Wasendorf*, 6:12 CR 2021 (N.D. Iowa), ordered that Defendant Wasendorf pay restitution in the amount of two hundred fifteen million, five hundred thirty thousand, forty one dollars and thirty nine cents (\$215,530,041.39) to defrauded investors in connection with the same conduct at issue in this action. Accordingly, an order of restitution against Defendants is not being sought by the Commission in this action as part of necessary relief pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2012).

The Plaintiff Commission now requests that the Court enter a Supplemental Default Judgment Assessing Civil Monetary Penalties against Defendants (“Supplemental Default Judgment”).

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Findings of Fact and Conclusions of Law contained in the Permanent Injunction are incorporated herein by reference and given preclusive effect as provided in the Permanent Injunction.

2. Section 6c(d)(1) of the Act, 7 U.S.C. § 13a-(1)(d)(1) (2012), in conjunction with Commission Regulation 143.8, 17 C.F.R. § 143.8 (2014), provides that the Commission may seek and the district court shall have jurisdiction to impose upon any person committing violations after October 23, 2008, a civil monetary penalty of not more than the higher of \$140,000 for each violation of the Act or triple the monetary gain to a defendant.

3. The Defendants’ calculated monetary gain in this matter is \$215,530,041.39 which equals the amount of restitution still owed to customers as calculated in the criminal case, *United States v. Wasendorf*.

4. The Commission seeks a civil monetary penalty of \$645 million be entered jointly and severally against Defendants Wasendorf and PFG, which equals a little less than three times the calculated monetary gain of \$215,530,041.39. The extreme gravity and breadth of Defendants’ blatant fraud justifies imposition of this significant amount.

5. The Commission acknowledges that, while that a civil monetary penalty constitutes a fine or penalty under 11 U.S.C. § 726(a)(4) (2012), it intends that any claim based upon any such civil monetary penalty that it may subsequently file in *In re Peregrine Financial Group, Inc.*, No. 12-27488 (Bkrcty. N.D. Ill., filed July 10, 2012) be fully subordinated to any

and all allowed claims by parties under 11 U.S.C. §§ 726(a)(1)-(3) in that matter, which includes any and all allowed claims by PFG customers.

III. CIVIL MONETARY PENALTY

IT IS HEREBY ORDERED that Defendants shall comply fully with the following terms, conditions, and obligations relating to the payment of a civil monetary penalty:

25. Defendants shall, jointly and severally, pay a civil monetary penalty in the amount of six hundred and forty-five million dollars (\$645 million) (“CMP Obligation”), plus post-judgment interest. Post-judgment interest shall accrue on the CMP Obligation beginning on the date of entry of this Supplemental Default Judgment and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Supplemental Default Judgment pursuant to 28 U.S.C. § 1961 (2012).

26. Defendants shall pay their CMP Obligation by electronic funds transfer, U.S. postal money order, certified check, bank cashier’s check, or bank money order. If payment is to be made other than by electronic funds transfer, then the payment shall be made payable to the Commodity Futures Trading Commission and sent to the address below:

Commodity Futures Trading Commission
Division of Enforcement
ATTN: Accounts Receivables – AMZ 340
E-mail Box: 9-AMC-AMZ-AR-CFTC
DOT/FAA/MMAC
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
Telephone: (405) 954-7262

If payment by electronic funds transfer is chosen, Defendants shall contact Nikki Gibson or her successor at the address above to receive payment instructions and shall fully comply with those instructions. Defendants shall accompany payment of the CMP Obligation with a cover letter that identifies Defendants and the name and docket number of this proceeding. Defendants shall

simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

29. Partial Satisfaction: Any acceptance by the Commission of partial payment of Defendants' CMP Obligation shall not be deemed a waiver of their obligation to make further payments pursuant to this Judgment or a waiver of the Commission's right to seek to compel payment of any remaining balance.

IV. MISCELLANEOUS PROVISION

30. Change of Address/Phone: Until such time as Defendants satisfy in full their CMP Obligation, they shall provide written notice to the Commission by certified mail of any change to their telephone numbers and mailing addresses within ten (10) calendar days of the change. Said notice should be addressed to: Director, Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

There being no just reason for delay, the Clerk of the Court is hereby directed to enter this Supplemental Default Judgment Assessing Civil Monetary Penalties against Defendants.

IT IS SO ORDERED on this 30th day of April, 2014


REBECCA A. PALLMEYER
UNITED STATES DISTRICT JUDGE