

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

FILED
CHARLOTTE, NC

SEP 27 2011

U.S. DISTRICT COURT
WESTERN DISTRICT OF NC

U.S. COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

v.

BARKI, LLC, a North Carolina limited
liability company, and
BRUCE C. KRAMER, an individual,

Defendants, and

RHONDA A. KRAMER, an individual, and
FOREST GLEN FARM, LLC, a North
Carolina limited liability company,

Relief Defendants.

CASE NO. 3:09-cv-106

**CONSENT ORDER OF DISGORGEMENT AND OTHER ANCILLARY
RELIEF AGAINST RELIEF DEFENDANT RHONDA KRAMER**

I.

BACKGROUND

On March 17, 2009, the U.S. Commodity Futures Trading Commission (“Plaintiff” or “Commission”), filed its Complaint for Injunctive Relief, Civil Monetary Penalties, and Other Equitable Relief (“Complaint”) against defendants Barki, LLC (“Barki”) and Bruce Kramer (“B. Kramer”) individually, and relief defendants Rhonda Kramer (“R. Kramer”) and Forest Glen Farm, LLC. (“Forest Glen”) (collectively, “Relief Defendants”).

The Complaint charged Barki's agent, B. Kramer, with fraudulent solicitation, misrepresentations, false statements, and misappropriation of funds in connection with at least \$38 million from 79 customers for the purported purpose of trading off-exchange foreign currency ("forex" or "foreign currency"), from June 2004 through February 2009 ("relevant period"), all in violation of Section 4b(a)(2)(A)-(C) of the Commodity Exchange Act ("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), to be codified at 7 U.S.C. § 6b(a)(2)(A)-(C). The Complaint further charged Barki with liability for the violations of the Act committed by its agent, B. Kramer, pursuant to Section 2(a)(1)(B) of Act, 7 U.S.C. § 2(a)(1)(B) (2006), and Commission Regulation 1.2, 17 C.F.R. § 1.2 (2010). In addition, the Complaint alleged that Relief Defendants received funds and assets from Barki and its agent, B. Kramer, to which they hold no legitimate interest or entitlement and which were derived from B. Kramer's fraudulent conduct while working on behalf of Barki. The Complaint sought disgorgement of funds transferred to Relief Defendants from Barki and/or its agent, B. Kramer. On March 17, 2009, pursuant to the Commission's filing, the Court issued a Statutory Restraining Order freezing the assets of Barki, Barki's agent B. Kramer, and Relief Defendants. On March 24, 2009, the Court appointed Joseph W. Grier, III ("Receiver") as receiver in this matter.

II.

CONSENTS AND AGREEMENTS

To effect settlement of the matters alleged in the Complaint in this action prior to a trial on the merits or further judicial proceedings, R. Kramer:

a. Consents to the entry of this Consent Order of Disgorgement and Other Ancillary Relief (“Consent Order” or “Order”);

b. Affirms that she and her counsel have read and agreed to this Order voluntarily, and that no promise, other than as set forth specifically herein, 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;

c. Acknowledges proper service upon her of the Summons and Complaint in this action;

d. Admits the jurisdiction of this Court over her and the subject matter of this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2006) and Section 2(c)(2) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 2(c)(2);

e. Admits that venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2006);

f. Waives:

(i) The entry of findings of fact or conclusions of law;

(ii) Any and all claims that she may possess, in any capacity, under the Equal Access to Justice Act (“EAJA”), 5 U.S.C. § 504 (2006) and 28 U.S.C. § 2412 (2006), and/or Part 148 of the Regulations, 17 C.F.R. §§ 148.1 *et seq.* (2010), relating to, or arising from, this action;

(iii) Any and all claims that she may possess under the Small Business Regulatory Enforcement Act of 1996, Pub. L. No. 104-121, §§ 201-253, 110 Stat. 847, 857-68 (1996), as amended by Pub. L. No. 110-28, § 8302, 121 Stat. 112, 204-205 (2007), relating to, or arising from, this action;

(iv) 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

(v) Any and all rights of appeal in this action.

g. Agrees that she will not oppose enforcement of this Order on the ground that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure and waives any objections based thereon;

h. Consents to the continued jurisdiction of this Court for the purpose of enforcing the terms and conditions of this Order, to assure compliance with the Order, and for any other purpose relevant to this action, even if R. Kramer now or in the future is sited outside the jurisdiction; and

i. Neither admits nor denies the allegations of the Compliant, except as to jurisdiction and venue, which R. Kramer admits. R. Kramer does not consent to the use of this Order as the sole basis for any other proceeding brought by the Commission, other than a proceeding in bankruptcy relating to R. Kramer, a Commission registration proceeding relating to her, or a proceeding to enforce the terms of this Order. Solely with respect to any bankruptcy proceeding relating to R. Kramer, a Commission registration proceeding related to her, and any proceeding to enforce this Order, R. Kramer agrees that the allegations of the Complaint shall be taken as true and correct and be given preclusive effect, without further proof. Further, R. Kramer shall provide immediate notice to the Commission of any bankruptcy filed by, on behalf of, or against her in the manner required by Part VI, paragraph 57 of this Order.

j. Agrees that neither R. Kramer nor any of her agents or employees under her authority or control shall take any action or make any public statement denying, directly or

indirectly, any allegation in the Complaint or findings or conclusions 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 R. Kramer's (a) testimonial obligations; or (b) right to take legal positions in other proceedings to which the Commission is not a party. R. Kramer shall take all necessary steps to ensure that all of her agents and employees under her authority or control understand and comply with this agreement.

III.

FINDINGS OF FACT

a. Parties To The Consent Order

1. Plaintiff **Commodity Futures Trading Commission** is an independent federal regulatory agency that is charged by Congress with the administration and enforcement of the Act, as amended by the CRA, and the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act"), Pub. L. No. 111-203, Title VII (the Wall Street Transparency and Accountability Act of 2010), 7 U.S.C. § 1 *et seq.*, and the Regulations promulgated thereunder, 17 C.F.R. §§ 1.1 *et seq.* (2010). The Commission maintains its principal office at Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

2. Relief Defendant **Rhonda A. Kramer** resided in Midland, North Carolina at the time of the filing of the Complaint. R. Kramer had been a member-manager of Defendant Barki since June 1999 and a member-manager of Relief Defendant Forest Glen since September 2006. She has never been registered with the Commission. R. Kramer is the widow of Barki's agent, B. Kramer.

b. Other Parties

3. Defendant **Barki, LLC** is a North Carolina limited liability company formed on June 14, 1999, with its principal place of business at 5917 Foxcrest Drive, Mint Hill, North Carolina, 28227 for the time period of August 2002 through April 2007, and at 9939 Troutman Road, Midland, North Carolina, 28107 thereafter. Barki has never been registered with the Commission in any capacity. Barki is not a financial institution, registered broker or dealer (or their associated person), insurance company, bank holding company, or investment bank holding company. Albert Stuart McKaig is Barki's registered agent; Barki's two member-managers for the relevant period were B. Kramer and R. Kramer.

4. **Bruce C. Kramer** resided in Midland, North Carolina, was a member-manager of Barki since 1999, and acted as an agent for Barki for the relevant period. B. Kramer had been a member-manager of Relief Defendant Forest Glen since September 2006. B. Kramer had never been registered with the Commission. On February 25, 2009, B. Kramer died.

5. Relief Defendant **Forest Glen** was a North Carolina limited liability company, with the same principal place of business as the principal place of business of Barki during the relevant period. Forest Glen was formed in September of 2006. Forest Glen has never been registered with the Commission in any capacity. Forest Glen's two member-managers for the relevant period were B. Kramer and R. Kramer. Barki's agent B. Kramer, R. Kramer, and Forest Glen had no significant source of income during the relevant period other than Barki. Barki's agent B. Kramer and R. Kramer used \$1.35 million in Barki customer funds derived from Barki's agent B. Kramer's fraudulent and violative acts to purchase a horse farm and a residence in the name of Relief Defendant Forest Glen.

c. Barki's agent, B. Kramer's, Solicitation of over \$38 Million from Customers to Trade Forex

6. In June 1999, B. Kramer formed Barki to engage in financial and management consulting and trading. For the relevant period, Barki had two member-managers, B. Kramer and his wife, R. Kramer, each holding a 50% ownership interest in Barki. During the relevant period, B. Kramer and R. Kramer had no other significant source of income.

7. Throughout the relevant period, Barki's agent, B. Kramer, on behalf of Barki, solicited, directly or indirectly, at least 79 individuals and entities to trade foreign currency through Barki.

8. At least certain of Barki's customers, if not all, were individuals who each had total assets of less than \$5 million.

9. In his oral solicitations, B. Kramer, on behalf of Barki, directly and through others, represented that as Barki's agent, B. Kramer would trade foreign currency using a proprietary trading system developed by B. Kramer. B. Kramer, who claimed to be an expert mathematician, told customers and prospective customers that his trading system was a software program that allowed him to evaluate market trends and situations, aiding him in making successful trades.

10. B. Kramer, on behalf of Barki, claimed great success trading foreign currency, boasting to customers and prospective customers that Barki and its agent, B. Kramer, never had a month wherein they lost money. B. Kramer touted his years as a successful trader for himself and for Barki, claiming to one customer that he "never lost a dollar of principal."

11. B. Kramer, on behalf of Barki, directly and through others, also represented to prospective customers that B. Kramer's trading program involved very little risk because it

prevented big losses, thereby limiting customers' exposure to risk, and that trading foreign currency with Barki was safer than investments in stocks.

12. B. Kramer, on behalf of Barki, also informed prospective customers that B. Kramer would earn a fee that would be a set percentage based on customers' supposed earnings.

13. B. Kramer, on behalf of Barki, provided prospective customers with a Barki trading agreement for them to execute (the "Trading Agreement"). The Trading Agreement provided that all funds would be traded through Barki and that customers would receive monthly statements and a year-end "K-1" showing any profits or losses allocated to the customers. The Trading Agreement also provided that B. Kramer's fee would vary depending upon the amount of customers' supposed earning. For yearly customer profits up to 100%, B. Kramer's percentage of profits would be 20%; B. Kramer was further entitled to half of customer profits over 100% for any year.

14. The Trading Agreement also reinforced Barki's agent, B. Kramer's, claims concerning the low risk and high profitability of B. Kramer's proprietary system and indicators, stating that B. Kramer's system "works equally well in both up and down markets."

15. Throughout the relevant period, B. Kramer paid purported returns to existing Barki customers from funds contributed by new Barki customers, akin to a classic Ponzi scheme. B. Kramer also used Barki customer funds for personal use.

16. B. Kramer, while working in the scope of his employment with Barki, failed to disclose to Barki's customers and prospective customers that he was operating a Ponzi scheme and misappropriating Barki customer funds.

17. Customers and prospective customers relied on Barki's agent B. Kramer's misrepresentations in making their decisions to invest with Barki and its agent, B. Kramer.

18. B. Kramer, on behalf of Barki, instructed Barki customers to write checks or send money directly to a bank account in the name of Barki. B. Kramer and R. Kramer were signatories on the Barki bank accounts during the relevant period.

d. B. Kramer, Trading Forex on Behalf of Barki, Sustained Net Losses of \$10 Million

19. Between January 2003 and September 2008, B. Kramer, on behalf of Barki, opened four trading accounts at FXCM, a registered Futures Commission Merchant, in the name of Barki. B. Kramer opened these accounts as corporate proprietary trading accounts.

20. In these FXCM accounts, B. Kramer traded foreign currency on behalf of Barki on a margined or leveraged basis. The foreign currency transactions conducted by Barki's agent, B. Kramer, at FXCM neither resulted in delivery within two days nor created an enforceable obligation to deliver between a seller and a buyer that had the ability to deliver and accept delivery, respectively, in connection with their lines of business. Rather, these foreign currency contracts remained open and were, ultimately, offset without anyone making or taking delivery of actual currency (or facing an obligation to do so).

21. Of the at least \$38 million solicited by B. Kramer for Barki, only \$17.6 million was deposited into the Barki trading accounts at FXCM.

22. Contrary to B. Kramer's representations, Barki and its agent, B. Kramer, were not successful foreign currency traders. In the Barki trading accounts at FXCM, Barki, through the acts of B. Kramer, sustained trading losses of over \$10 million and withdrew approximately \$6.9 million which was not returned to Barki customers. In fact, Barki and its agent, B. Kramer, sustained trading losses almost every single month for almost a 6 year period.

e. Barki's agent, B. Kramer, Used Remaining Barki Customer Funds to Pay Customers and For Personal Expenses

23. Barki's agent B. Kramer misappropriated customer funds that were not deposited into the FXCM trading accounts to pay purported profits and return principal to Barki's customers. Barki's agent B. Kramer also misappropriated funds that he withdrew from the FXCM trading accounts to finance the personal expenses of B. Kramer and R. Kramer, such as the \$1.35 million purchase of the 48-acre horse farm and 6,000 square foot residence for Forest Glen, luxury automobiles including a Maserati, artwork, a race horse, and extravagant parties. Working within the scope of his employment with Barki, Barki's agent B. Kramer misappropriated at least \$28 million.

24. Forest Glen's two member-managers for the relevant period were B. Kramer and R. Kramer. Barki's agent B. Kramer, R. Kramer, and Forest Glen had no significant source of income during the relevant period other than Barki. Despite receiving \$1.35 million in Barki customer funds, Relief Defendant Forest Glen did not provide any legitimate services or have any legitimate entitlement to the funds it received from Barki or its agent, B. Kramer.

f. Barki's Agent, B. Kramer, Concealed Losses and Misappropriation With False Statements

25. Barki's agent, B. Kramer, through false representations and statements, concealed the unsuccessful trading and misappropriation by providing oral and written reassurances that Barki and its agent, B. Kramer, were profitably trading forex on behalf of Barki customers. Barki's agent, B. Kramer, sent false monthly account statements to Barki customers showing consistent returns of at least three to four percent.

26. Barki's agent, B. Kramer, never reported a losing month to Barki customers even though B. Kramer's actual trading on behalf of Barki resulted in net losses in almost every month.

27. B. Kramer, on behalf of Barki, also reported on the monthly statements to Barki customers debits from the individual customer's accounts of 20% management fees for B. Kramer earned on fictional trading profits.

28. Relying on the consistently profitable monthly and annual account statements, existing customers invested additional funds with Barki. In addition, prospective customers decided to invest with Barki after hearing of the consistent monthly returns existing customers were achieving.

29. To further conceal and perpetuate the fraud, Barki's agent, B. Kramer, told certain customers that Barki held approximately \$59 million in the Barki trading accounts at FXCM when in fact Barki held, at most, \$1 million in those accounts. Barki's agent, B. Kramer, supported the \$59 million claim to certain customers by creating fictitious FXCM trading records.

30. Despite the trading losses and the unaccounted-for funds, Barki's agent, B. Kramer, professed to Barki's customers that customers' funds would be returned if so requested. These statements were false. Barki did not possess sufficient funds to return each customer's principal and purported investment returns.

g. R. Kramer Turned Over All Ill-Gotten Gains In Her Possession to the Receiver

31. R. Kramer, individually and in her capacity as a member-manager of Barki, as a member-manager of Forest Glen, and as B. Kramer's surviving spouse, received Barki customer funds from Barki and its agent, B. Kramer that were obtained through Barki's agent B. Kramer's

fraudulent and violative acts. R. Kramer had no significant source of income during the relevant period other than Barki, and did not provide any legitimate services for Barki or have any legitimate entitlement to the funds she received from Barki or its agent, B. Kramer.

32. R. Kramer has turned over to the Receiver all assets in her possession which were obtained with the ill-gotten gains from the fraudulent scheme B. Kramer ran as Barki's agent. To R. Kramer's knowledge, the Receiver has taken possession, custody, or control of all existing assets and property (or funds derived from the sale of such assets or property) that R. Kramer obtained, individually, as B. Kramer's spouse, as a member-manager of Barki, and as a member-manager of Forest Glen, with funds derived from Barki's agent, B. Kramer's, violative acts. The Receiver has collected \$3,861,889.03 in value for these assets and properties.

33. R. Kramer waives, individually and in any other capacity, any legal or equitable right, title, or interest to any such assets or property (or the funds derived from the sale of such assets or property) in the possession, custody, or control of the Receiver. Further, R. Kramer, individually or in any other capacity, has no legal or equitable right, title, or interest in any assets or property obtained from the fraudulent scheme B. Kramer ran as Barki's agent. This paragraph includes, without limitation, all bank accounts, securities accounts, commodity futures accounts, retirement accounts, any financial instruments, annuities, life insurance policies purchased following the commission of the Ponzi scheme or premiums for pre-existing life insurance policies, vehicles, jewelry, and other personal or real property.

34. Pursuant to this Court's August 5, 2009 *Order Granting Receiver's Motion Relative to (1) Approval of Proposed Claims Verification Procedures and Claims Bar Date; And (2) For Authority to Make Interim Distributions to Customers; and Reserving Judgment as to Receiver's Proposed Claims Distribution Method* ("Claims Order") [Docket Entry ("DKT.") 97] and this

Court's December 14, 2009 *Order Granting Receiver's Motion to Make Interim Distribution and to Establish Distribution Amounts* ("First Interim Distribution Order") [DKT. 137] the Receiver made an interim distribution to customers in the collective amount of \$1,650,000 on or about December 16, 2009.

35. Pursuant to this Court's *Order Granting Receiver's Motion to Make Second Interim Distribution and to Establish Distribution Amounts* ("Second Interim Distribution Order") [DKT. 189] entered on September 20, 2010 the Receiver made a second interim distribution to customers in the collective amount of \$1,432,200 on or about December 3, 2010.

IV.

CONCLUSIONS OF LAW

a. **Jurisdiction and Venue**

36. This Court has jurisdiction over the transactions at issue in this case pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2006), which authorizes the Commission to seek injunctive relief 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 promulgated thereunder.

37. In addition, Section 2(c)(2) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 2(c)(2), confers upon the Commission jurisdiction over certain retail transactions in forex for future delivery, including the transactions alleged in the Complaint.

38. This Court has personal jurisdiction over R. Kramer, who acknowledges service of the Summons and Complaint and consents to the court's jurisdiction over her.

39. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2006), in that Barki and its agent, B. Kramer, are found in, inhabit, or transact

business in this District, and/or the acts and practices in violation of the Act and Regulations have occurred, are occurring, or are about to occur within this District.

b. B. Kramer Violated Section 4b(a)(2)(A)-(C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 6b(a)(2)(A)-(C), and Barki is Derivatively Liable for these Violations

40. The conduct described in paragraphs 1 through 31 is incorporated herein by reference.

41. Section 4b(a)(2)(A)-(C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 6b(a)(2)(A)-(C), makes it unlawful

for any person, in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery, or other agreement, contract, or transaction subject to paragraphs (1) and (2) of section 5a(g), that is made, or to be made, for or on behalf of, or with, any other person, other than on or subject to the rules of a designated contract market –

(A) to cheat or defraud or attempt to cheat or defraud the other person;

(B) willfully to make or cause to be made to the other person any false report or statement or willfully to enter or cause to be entered for the other person any false record; [or]

(C) willfully to deceive or attempt to deceive the other person by any means whatsoever in regard to any order or contract or the disposition or execution of any order or contract, or in regard to any act of agency performed, with respect to any order or contract for or, in the case of paragraph (2), with the other person.

Section 4b(a)(2)(A)-(C) of the Act, as amended by the CRA, applies to Barki's agent, B.

Kramer's, foreign currency transactions "as if" they were a contract of sale of a commodity for future delivery. Section 2(c)(2)(C)(iv) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 2(c)(2)(C)(iv).

42. B. Kramer, on behalf of Barki, made misrepresentations and omissions of material fact, issued or caused to be issued false reports and statements, and misappropriated customer funds, and by such acts, violated Section 4b(a)(2)(A)-(C) of the Act, as amended by the CRA.

See *CFTC v. King*, No. 3:06-CF-1583-M, 2007 WL 1321762, at *2 (N.D. Tex. May 7, 2007) (citing *CFTC v. R.J. Fitzgerald & Co.*, 310 F. 3d 1321, 1328 (11th Cir. 2002)).

43. As set forth above, from at least June 2004, in or in connection with foreign currency contracts, made, or to be made, for or on behalf of, or with, other persons, Barki's agent, B. Kramer, through his acts and omissions on behalf of Barki, violated Section 4b(a)(2)(A) and (C) of the Act, as amended by the CRA, when, as Barki's agent, he knowingly misrepresented to customers that, among other things, (i) all Barki customer funds would be used and were used to trade forex; (ii) Barki customers would and did receive returns on their forex investments because of the success Barki enjoyed trading forex; and (iii) Barki had sufficient funds on hand to return all customers' principal. In actuality, only \$17.6 million of the at least \$38 million solicited by Barki's agent, B. Kramer, to trade forex was actually used to trade forex. Barki's agent, B. Kramer, failed to disclose that he only deposited a portion of the customer funds into trading accounts and that he lost more than \$10 million trading forex on behalf of Barki. Barki's agent, B. Kramer, further failed to disclose that he was misappropriating Barki customer funds and that any returns on investment provided to Barki customers came from either existing Barki customers' original investments or money invested by subsequent Barki customers. In sum, Barki's agent, B. Kramer, failed to disclose that he was operating a Ponzi scheme in which he misappropriated millions of dollars of Barki customer funds and lost millions through trading.

44. Barki's agent, B. Kramer, violated Section 4b(a)(2)(A) and (C) of the Act, as amended by the CRA, by misappropriating customer funds and using those funds to meet redemption requests of Barki customers or for B. Kramer's personal use. Misappropriation of customer funds constitutes "willful and blatant" fraud in violation of Section 4b(a)(2)(A) and (C) of the Act, as amended by the CRA. *See, e.g., CFTC v. Noble Wealth Data Info. Servs., Inc.*, 90

F. Supp. 2d 676, 687 (D. Md. 2000) (defendants violated Section 4b(a)(2)(i) and (iii) (the predecessor to 4b(a)(2)(A) and (C)) by diverting customer funds for operating expenses and personal use), *aff'd sub nom. CFTC v. Baragosh*, 278 F.3d 319 (4th Cir. 2002); *see also CFTC v. Skorupskas*, 605 F. Supp. 923, 932 (E.D. Mich. 1985) (holding that defendant violated Section 4b when he misappropriated pool participant funds by soliciting funds for trading and then trading only a small percentage of those funds, while disbursing the rest of the funds to customers, herself, and her family); *CFTC v. King*, No. 3:06-CV-1583-M, 2007 WL 1321762, at *2 (N.D. Tex. May 7, 2007) (“King’s violation of section 4b(a)(2)(i), (iii) of the CEA is further proven by his admitted misappropriation of customer funds for personal and professional use.”); *CFTC v. McLaurin*, [1994-1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,768, U.S. Dist. LEXIS 9417, at *10-11 (N.D. Ill. July 3, 1996) (by depositing customer funds in accounts in which the customers had no ownership interest and making unauthorized disbursements for his own use, defendant violated Section 4b of the Act).

45. Barki’s agent, B. Kramer, violated Section 4b(a)(2)(B) of the Act, as amended by the CRA, by providing false account statements to Barki customers which misstated the value of customer accounts and the profitability of B. Kramer’s trading on behalf of Barki. Specifically, Barki’s agent, B. Kramer, provided monthly and annual account statements that falsely represented that, based on B. Kramer’s purported profitable forex trading on behalf of Barki, customers had earned profits each month. Barki’s agent, B. Kramer, also created and showed to at least one customer fictitious FXCM trading records reflecting approximately \$59 million in assets.

46. The making of false statements concerning profitability of trading violates Section 4b(a)(2)(B) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §6b(a)(2). *See, e.g.,*

CFTC v. FX Prof'l Intern. Solutions, Inc., No. 1:10-cv-22311-PCH, 2010 WL 5541050 at *6 (S.D. Fla. Nov. 29, 2010) (delivering false account statements to customers regarding transactions regulated by the Commission constitutes a violation of Section 4b(a)(2)(B) of the Act, as amended); *CFTC v. Noble Wealth Data Info. Servs., Inc.*, 90 F. Supp. 2d at 686 (finding that defendants violated Section 4b(a)(i)-(iii) because they issued false account statements, misappropriated customer funds, misrepresented profits and risks associated with foreign exchange currency contracts, and falsely characterized the experience of the firm's traders).

47. Barki's agent, B. Kramer, engaged in the acts and practices described above knowingly or with reckless disregard for the truth. Barki's agent, B. Kramer, made misrepresentations and omissions to Barki customers with the requisite scienter. When Barki's agent, B. Kramer, while working in the course and scope of his employment with Barki, made the above-described representations and issued the false written statements to Barki customers regarding their forex trading, lofty returns, and the ability to pay Barki customers, B. Kramer clearly knew such representations and statements were false. Barki's agent, B. Kramer, conducted the trading on behalf of Barki and was the sole person responsible for the handling of customer funds. Barki's agent, B. Kramer knew he was not successfully trading forex on behalf of Barki and that he was using customer funds to pay purported profits and return principal to existing customers. Accordingly, Barki's agent, B. Kramer, acted with the requisite scienter.

48. The foregoing acts, misrepresentations, omissions, and failures of B. Kramer occurred within the scope of his employment, office or agency with Barki; therefore, Barki is liable for these acts, misrepresentations, omissions, and failures pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006), and Regulation 1.2, 17 C.F.R. § 1.2 (2010).

49. Each act of misappropriation, misrepresentation or omission of material facts, and making or causing to be made a false report or statement, including, but not limited, to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4b(a)(2)(A)-(C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 6b(a)(2)(A)-(C).

c. Disgorgement of Funds from Relief Defendant R. Kramer

50. Barki's agent, B. Kramer, defrauded Barki customers.

51. Relief Defendant R. Kramer, individually and in her capacity as a member-manager of Barki, as a member-manager of Forest Glen, and as B. Kramer's surviving spouse, received funds as a result of Barki's agent, B. Kramer's, fraudulent conduct and has been unjustly enriched thereby.

52. Relief Defendant R. Kramer has no legitimate entitlement to or interest in any of the funds received as a result of Barki's agent, B. Kramer's, fraudulent conduct.

53. Relief Defendant R. Kramer, individually and in her capacity as a member-manager of Barki, as a member-manager of Forest Glen, and as B. Kramer's surviving spouse, should be required to disgorge funds up to the amount she received from Barki's agent, B. Kramer's, fraudulent conduct or the value of those funds that she may have subsequently transferred to third parties.

V.

ORDER FOR EQUITABLE RELIEF

IT IS HEREBY ORDERED that:

Relief Defendant R. Kramer shall comply fully with the following terms, conditions, and obligations relating to the payment of disgorgement and other ancillary relief.

a. Disgorgement

54. Effective immediately, R. Kramer, individually and in her capacity as a member-manager of Barki, as a member-manager of Forest Glen, and as B. Kramer's surviving spouse, shall disgorge or otherwise relinquish any legal or equitable right, title, or interest she has in the assets or other property in the possession, custody, or control of the Receiver, as well as any legal or equitable right, title, or interest she has in any funds that are or will be obtained by the Receiver as the result of the sale of any receivership assets.

b. Return of Funds to Customers

55. On March 24, 2009, the Court appointed Joseph W. Grier, III, as Receiver in this matter. Pursuant to this Court's March 17, 2009 *Order Granting Plaintiff's Motion for Statutory Restraining Order, Appointment of Receiver, An Accounting, Expedited Discovery and to Show Cause Regarding Preliminary Injunction, and Other Equitable Relief* [DKT. 5], which was modified by this Court's March 24, 2009 *Order Appointing Receiver* [DKT. 14], the Receiver, to date, has collected \$3,861,889.03 from Barki, B. Kramer and the Relief Defendants, including R. Kramer, for the benefit of the Barki Receivership. This collection of funds from Barki, B. Kramer, and the Relief Defendants, including R. Kramer, by the Receiver fulfills R. Kramer's obligation with respect to this Consent Order. These funds, along with any additional funds derived from the sale or liquidation of Barki receivership assets, as well as any interest earned on these funds, should be returned to Barki's customers (less any court-approved fees and expenses incurred or to be incurred by the Receiver), and shall satisfy, in full, R. Kramer's disgorgement obligations as set forth in this Consent Order. The Court orders that these funds be distributed to

Barki's customers pursuant to and consistent with the distribution plans approved by the Court, and that Relief Defendant R. Kramer's rights, if any, to these funds be extinguished.¹

56. Any amount paid to one of Barki's customers pursuant to this Consent Order shall not limit the ability of that customer to independently prove in a separate action that a greater amount is owed from any person or entity, and nothing herein shall be construed in any way to limit or abridge the rights of any customer that may exist under federal, state, or common law to assert a claim for recovery against Relief Defendant R. Kramer subject to any offset or credit that Relief Defendant R. Kramer may be entitled to claim under the law governing that customer's claim. Further, nothing in this Consent Order shall preclude Relief Defendant R. Kramer from asserting any applicable defenses in connection with any potential claim for recovery asserted against her by any Barki customer, subject to the restrictions set forth in Section II, paragraph j of this Consent Order. Pursuant to Rule 71 of the Federal Rules of Civil Procedure, each customer is explicitly made an intended third-party beneficiary of this Consent Order and may seek to enforce obedience of this Consent Order to obtain satisfaction of any portion of the disgorgement amount that has not been paid, to ensure compliance with any provision of this Consent Order, and to hold Relief Defendant R. Kramer in contempt for any violations of any provision of this Consent Order.

57. The Court orders that the funds obtained pursuant to this Consent Order be distributed to Barki's customers pursuant to and consistent with the Receiver's distribution plan approved by this Court.

58. Relief Defendant R. Kramer shall continue to cooperate with the Receiver as appropriate to provide such information as the Receiver deems reasonably necessary to identify,

¹ Pursuant to the Claims Order [DKT. 97], the First Interim Distribution Order [DKT. 137], and the Second Interim Distribution Order [DKT.189], this Court previously approved the distribution of \$3,082,200 of these funds.

locate, and conserve any additional potential receivership assets. Subsequent to the entry of this Consent Order, Relief Defendant R. Kramer shall provide the CFTC and the Receiver with immediate notice of any subsequent filing or compromise and settlement of any private or governmental actions relating to the subject matter of this Consent Order in the manner required by Section VI. Paragraph 58 of this Consent Order.

VI.

MISCELLANEOUS PROVISIONS

IT IS FURTHER ORDERED THAT:

59. The equitable relief provisions of this Consent Order shall be binding upon Relief Defendant R. Kramer and any person who is acting in the capacity of her officer, agent, employee, servant, or attorney, and any person acting in active concert or participation with her who receives actual notice of this Consent Order by personal service or otherwise.

60. Notices: All notices required to be given by any provision in this Order shall be sent by certified mail, return receipt requested, as follows:

Notice to Commission:

Rishi K. Gupta
Division of Enforcement
Commodity Futures Trading Commission
1155 21st Street, NW
Washington, DC 20581

Notice to Relief Defendant Rhonda Kramer:

c/o Robert Adams Blake, Jr.
Attorney
Wyatt & Blake, LLP
435 East Morehead Street
Charlotte, NC 28202

Notice to the Receiver:

Joseph A. Grier, III
Grier Furr & Crisp, P.A.
101 North Tryon St., Suite 1240
Charlotte, NC 28246

All such notices to the Commission shall reference the name and docket number of this proceeding.

61. Change of Address/Phone: In the event that Relief Defendant R. Kramer changes telephone number(s) and/or address(es) at any time prior to her satisfying her obligations with respect to this Consent Order, she shall provide written notice of the new number(s) and/or address(es) to the Commission within ten (10) calendar days thereof.

62. Entire Agreement and Amendments: This Consent Order incorporates all of the terms and conditions of the settlement among the parties hereto to date. Nothing shall serve to amend or modify this Consent Order in any respect whatsoever, unless: (a) reduced to writing; (b) signed by all parties hereto; and (c) approved by order of this Court.

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

64. 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 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

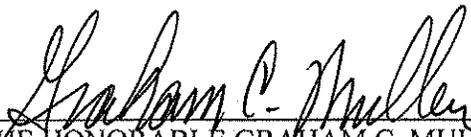
as a further or continuing waiver of such breach or waiver of the breach of any other provision of this Consent Order.

65. Continuing Jurisdiction of this Court: This Court shall retain jurisdiction of this case to assure compliance with this Consent Order and for all other purposes related to this action, including any motion by Relief Defendant R. Kramer to modify or for relief from the terms of this Consent Order.

66. Counterparts and Facsimile Execution: This Consent Order may be executed in two or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties and delivered (by facsimile or otherwise) to the other party, it being understood that all parties need not sign the same counterpart. Any counterpart or other signature to this agreement that is delivered by facsimile or otherwise shall be deemed for all purposes as constituting good and valid execution and delivery by such party of this Consent Order.

67. Relief Defendant R. Kramer understands that the terms of this Consent Order are enforceable through contempt proceedings and that, in any such proceedings, she may not challenge the validity of this Consent Order.

SO ORDERED, at Charlotte, North Carolina on this 27 day of September, 2011.



THE HONORABLE GRAHAM C. MULLEN
UNITED STATES DISTRICT JUDGE
WESTERN DISTRICT OF NORTH CAROLINA

Consented to and

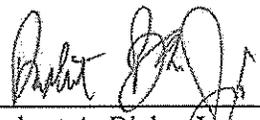
Approved for Entry by:



Rhonda Larson (f/k/a Rhonda Kramer)
Relief Defendant

8/29/11

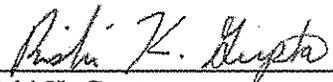
Date



Robert A. Blake, Jr.
Wyatt & Blake, LLP
435 East Morehead Street
Charlotte, NC 28202
Counsel for Rhonda Larson (f/k/a Rhonda Kramer)

8-29-11

Date



Rishi K. Gupta
U.S. Commodity Futures Trading Commission
Division of Enforcement
1155 21st Street, NW
Washington, DC 20581
Counsel for Plaintiff

9/1/2011

Date

CERTIFICATE OF SERVICE

I hereby certify that on September 20, 2011, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served on all parties or counsel of record identified below in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing:

1. Rhonda Kramer
c/o
Robert Adams Blake, Jr.
Wyatt & Blake, LLP
435 East Morehead Street
Charlotte, NC 28202
Phone: 704-331-0767
Fax: 704-331-0773
Email: rblake@wyattlaw.net
[CM/ECF transmission]

2. Joseph W. Grier, III
c/o
Anna S. Gorman
Grier Furr & Crisp, PA
101 N. Tryon Street, Ste. 1240
Charlotte, NC 28246
Phone: 704-332-0208
Fax: 704-332-0215
Email: agorman@grierlaw.com
[CM/ECF transmission]

3. Forest Glen Farms, LLC
c/o
A. Stuart McKaig
219 Greenwich Rd.
Charlotte, NC 28211
[UPS]

4. BARKI, LLC
c/o
A. Stuart McKaig
219 Greenwich Rd.
Charlotte, NC 28211
[UPS]

/s/ Rishi K. Gupta
Rishi K. Gupta