

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

U.S. Commodity Futures Trading Commission,

Plaintiff,

v.

Patrick M. Sweeney,

Defendant(s).

03 CV 9125 (GBD)

**Order For Entry of Judgment by  
Default with Injunctive Relief, Civil  
Monetary Penalties, and Ancillary  
Equitable Relief Against  
Patrick M. Sweeney**

On November 18, 2003, the Commodity Futures Trading Commission (the “Commission”) filed a Complaint charging defendant Patrick M. Sweeney (“Sweeney” or “Defendant”) and others. Specifically, the Complaint charges Sweeney, pursuant to Section 13(a) of the Commodity Exchange Act, as amended (the “Act”), 7 U.S.C. § 13(a) (2001), with violation of Commission Regulation (“Regulation” 1.1(b) 17 C.F.R. § 1.1(b) (2002), by willfully aiding and abetting the commission of fraud in connection with illegal foreign currency (“forex”) futures.

On November 19, 2003, Sweeney was properly served pursuant to Rule 4(e)(2)(A) of the Federal Rules of Civil Procedure (“Fed. R. Civ. P.”). Sweeney failed to answer or otherwise defend the Complaint within the time permitted by Rule 12(a)(1) of the Fed. R. Civ. P. Accordingly, on September 8, 2008, the Clerk of this Court entered a certificate of default against Sweeney.

The Commission has now submitted its Application for Entry of Injunctive Relief, Damages and Ancillary Equitable Relief (“Application”) against Sweeney pursuant to Fed. R. Civ. P. 55(b)(2) and Local Rule 55.2(b). The Court has carefully considered the Complaint, the

allegations of which are well-pleaded and hereby taken as true, the Application, and other written submissions of the Commission filed with the Court, and being fully advised, hereby:

**GRANTS** the Commission's Application against Sweeney and enters findings of fact and conclusions of law relevant to the allegations in the Complaint. The Court further grants the Commission's request for injunctive relief, restitution, and a civil monetary penalty. Accordingly, the Court now issues the following Order for Entry of Judgment by Default, Permanent Injunction, Ancillary Equitable Relief and Civil Monetary Penalty Against Defendant Patrick M. Sweeney ("Order").

## **I. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

### **A. Jurisdiction and Venue**

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

Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1, in that Sweeney was found in, inhabited, or transacted business in this district, and the acts and practices in violation of the Act occurred within this district, among other places.

### **B. Findings of Fact**

Sweeney's last known address is in Freehold, New Jersey. Sweeney is not presently registered with the Commission in any capacity.

From at least May to November 2003, Sweeney, a former interbank broker, engaged in a scheme with other co-conspirators to defraud and deceive banks. This scheme was called the

“knowledgeable trades” scheme. Through these knowledgeable trades, Sweeney, helped to defraud and deceive banks by knowingly and willfully engaging in illegal forex futures transactions to convert bank funds for his own use and the use of his co-conspirators to conceal this conversion from the banks.

The knowledgeable trades scheme operated as follows. In Step 1, in order to convert money from his employer, a trader at a defrauded bank (Bank #1) initiates two forex transactions, in which he buys and sells forex, between bank #1 and a co-conspirator at another bank (“Bank #2). The transactions are arranged through a co-conspirator at an interbank broker. Bank #1, the defrauded bank, is on the losing side of these transactions. In Step 2, the interbank broker arranges for another set of forex transaction between Bank #2 and a co-conspirator at a retail forex dealer. Bank #2 is on the losing side of these transactions. In Step 3, the retail forex dealer engages in illegal forex futures transaction in which it loses money to a retail customer who maintains an account at a retail forex dealer. In Step 4, the retail customer who holds the account at the retail forex dealer splits the cash proceeds with his co-conspirators. The persons and entities involved in all of the transactions know from the outset that they are participating in illegal conversions of funds from the banks involved.

Sweeney knowingly aided and abetted these fraudulent forex trades by introducing interbank brokers to other co-conspirators and assisted in the transfer of cash from these illegal forex futures transactions to other co-conspirators. As a result of this scheme in which Sweeney participated, banks were defrauded in the amount of \$424,001.

The illegal forex futures transaction between the retail forex dealer and the retail customer involved in the knowledgeable trades scheme were not conducted on or subject to the rules of a board of trade that has been designated by the Commission as a contract market, nor

were these transactions executed or consummated by or through a contract market or on a facility registered as a derivatives transaction execution facility. The parties involved in these forex futures transactions were not eligible contract participants or enumerated regulated counterparties. The retail forex dealer was not a financial institution, a broker or dealer, an associated person of a broker or dealer, an insurance company, a financial holding company, or an investment bank holding company. In addition the retail forex dealer was not a futures commission merchant ("FCM"), or an affiliate of a FCM. Further, these parties did not have any business or personal need for the forex. These parties did not intend to, and did not, take or make delivery of the foreign currencies as a consequence of these transactions. No accounts were maintained at any foreign financial institution to take or make delivery of forex for any of the parties involved in these transactions. There was never any conversion from U.S. dollars to another currency. All trades were liquidated by offsetting the position by entering into an equal and opposite transaction and thereby taking the profits in dollars.

**C. Conclusions of Law**

**1. Aiding and Abetting the Violation of Commission Regulation 1.1(b)**

From at least May 2003 to November 2003, Sweeney cheated or defrauded or attempted to cheat or defraud banks and willfully deceived or attempted to deceive banks by, among other thing, intentionally aiding and abetting in the conversion of funds that had been misappropriated from banks. Defendant Sweeney's conduct was in connection with accounts, agreements, contracts, or transactions that were contracts of sale of commodities for future delivery. Therefore, pursuant to Section 13(a) of the Act, 7 U.S.C. § 13c(a) (2001), Sweeney violated Regulation 1.1(b), 17 C.F.R. § 1.1(b) (2002).

**2. The Knowledgeable Trades Transactions Were Futures Contracts**

The Commission has jurisdiction over the knowledgeable trades transactions between the retail forex dealer and the retail customer because these transactions were forex futures contracts. These contracts involved the purchase and sale of forex for future delivery at prices or using pricing formulas that were established at the time the contracts were initiated and were fulfilled through offset to avoid delivery. Further, these forex futures transactions were offered to or entered into with a retail customer who was not an eligible contract participant pursuant to Section 1a(12) of the Act, 7 U.S.C. § 1a(12). Furthermore, the retail forex dealer acted as the counterparty to the transaction with the retail customer. The retail forex dealer was not a proper counterparty or an affiliate of a proper counterparty pursuant to Section 2(c)(2)(B) of the Act, 7 U.S.C. 2(c)(2)(B). Accordingly, the Commission has jurisdiction over these knowledgeable trades transactions.

**3. Appropriate Relief**

Permanent injunctive relief is warranted in light of the egregious nature of Sweeney's conduct in aiding and abetting the conversion of funds from banks through the sale of illegal forex futures contracts from May to November 2003 as well as his high level of scienter in participating in this well-planned scheme to systematically defraud banks. These facts demonstrate a reasonable likelihood of futures violations

Imposition of a civil monetary penalty is appropriate in this case because Sweeney's violations of the Act were intentional. Likewise, restitution also is appropriate to compensate the victims of Sweeney's wrongful conduct.

## II. ORDER FOR RELIEF

### A. Permanent Injunction

**IT IS THEREFORE ORDERED** that:

1. Sweeney is permanently restrained, enjoined and prohibited from directly or indirectly cheating or defrauding or attempting to cheat or defraud any person or willfully deceiving or attempting to deceive any person by any means whatsoever for any forex transaction within the Commission's jurisdiction in violation of Regulation 1.1(b), 17 C.F.R. § 1.1(b) (2008).

2. Sweeney is further permanently restrained, enjoined and prohibited from engaging directly or indirectly in any activity related to trading in any commodity, as that term is defined in Section 1a(4) of the Act, 7 U.S.C. § 1a(4) (2008), ("commodity interest"), including but not limited to the following:

- A. Trading on or subject to the rules of any registered entity, at that term is defined in Section 1a(29) of the Act, 7 U.S.C. § 1a(29) (2006);
- B. Engaging in, controlling or directing the trading for any commodity interest account for or on behalf of any other person or entity, whether by power of attorney or otherwise;
- C. Soliciting, receiving, or accepting any funds from any person in connection with the purchase or sale of any commodity interest contract;
- D. Applying for registration or claiming exemption from registration with the Commission in any capacity, and engaging in any activity requiring such registration or exemption from registration with the Commission, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2008), or acting as a principal, agent or any other officer or employee of any person registered, exempted from registration or required to be registered with the Commission, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2008);
- E. Entering into any commodity interest transactions for their own personal accounts, for any account in which they have a direct or indirect interest and/or having any commodity interests traded on their behalves; and/or
- F. Engaging in any business activities related to commodity interest trading.

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

**B. Restitution**

**IT IS FURTHER ORDERED** that as of the date of this Order, Defendant shall pay restitution to defrauded banks in the amount of \$424,001 (four hundred twenty four thousand and one dollar) plus pre-judgment and post-judgment interest (the "Restitution Obligation"). Pre-judgment interest on the Restitution Obligation shall accrue from May 1, 2003, to the date of this Order shall be determined by using the underpayment rate established quarterly by the Internal Revenue Service pursuant to 26 U.S.C. § 6621(a)(2). Post-judgment interest on the Restitution Obligation shall accrue beginning on the date of entry of this Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Order pursuant to 28 U.S.C. § 1961.

Defendant is ordered to make payments on the Restitution Obligation to Brian Rosner, Esq., the Court-appointed Receiver, Rosner, and Napierala, LLP, 26 Broadway, 22<sup>nd</sup> floor, New York, NY 10004-24424 by electronic funds, U.S. postal money order, certified check, bank cashier's check, or bank money order under cover of a letter that identifies Sweeney, the name and Docket number of this action and the name of this Court. Shuster shall simultaneously transmit copies of the cover letter and form of payment to: (a) the Director, Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21<sup>st</sup> Street, NW, Washington, D.C. 20581; (b) the Chief, Office of Cooperative Enforcement,

Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21<sup>st</sup> Street, NW, Washington, D.C. 20581; and (c) the Regional Counsel, Commodity Futures Trading Commission, Eastern Regional Office, 140 Broadway, 19<sup>th</sup> floor, New York, NY 10005.

Defendant's Restitution Obligation coincides with the criminal restitution obligation imposed against Defendant in *U.S. v. Patrick M. Sweeney*, Docket 04 Cr. 566 (BSJ), such that satisfaction in any part of his criminal judgment restitution obligation shall simultaneously result in satisfaction of his Restitution Obligation to the same extent. In addition, Defendant's Restitution Obligation also coincides with the criminal restitution obligations imposed against co-conspirators Eduard Wehrli ("Wehrli") in *U.S. v. Wehrli*, Docket 04 CR 270 (SAS) and against Patrick Marzo ("Marzo") in *U.S. v. DiNaopli, et. al.*, Docket 03 CR 1489 (BSJ). Accordingly, satisfaction of any part of Wehrli's and/or Marzo's criminal restitution obligation(s) shall simultaneously result in satisfaction of Defendant's Restitution Obligation to the same extent.

To the extent that any funds accrue to the U.S. Treasury as a result of the Restitution Obligation, such funds shall be transferred to the Receiver for disbursement in accordance with the procedures set forth in the preceding paragraph.

**C. Civil Monetary Penalty**

**IT IS FURTHER ORDERED** that as of the date of entry of this Order, Sweeney shall pay a civil monetary penalty in the amount of \$120,000 plus post-judgment interest (the "CMP Obligation"). Post-judgment interest shall accrue beginning on the date of entry of this Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Order pursuant to 28 U.S.C. § 1961.

Sweeney shall pay this 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 by other than electronic funds transfer, Sweeney shall make the payment payable to the Commodity Futures Trading Commission and send it to the following address:

Commodity Futures Trading Commission  
Division of Enforcement  
ATTN: Marie Bateman – AMZ-300  
DOT/FAA/MMAC  
6500 S. Macarthur Blvd.  
Oklahoma City, OK 73169  
Telephone: 405-954-6569

If the payment is to be made by electronic funds transfer, Sweeney shall contact Marie Bateman, or her successor, at the above address to receive payment instructions and shall fully comply with those instructions. Sweeney shall accompany the payment of the penalty with a cover letter that identifies Sweeney and the name and docket number of this proceeding.

Sweeney shall simultaneously transmit copies of the cover letter and the form of payment to: (a) the Director, Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21<sup>st</sup> Street, NW, Washington, D.C. 20581; (b) the Chief, Office of Cooperative Enforcement, Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21<sup>st</sup> Street, NW, Washington, D.C. 20581; and (c) Regional Counsel, Commodity Futures Trading Commission, Eastern Regional Office, 140 Broadway, 19<sup>th</sup> Floor, New York, NY 10005.

**D. Application of Payments to Monetary Sanctions and Partial Payments**

All payments by Defendant pursuant to this Order shall first be applied to satisfaction of his Restitution Obligation. After satisfaction of the Restitution Obligation, payments by Defendant pursuant to this Order shall be applied to satisfy Defendant's CMP Obligation.

Any acceptance by the Commission and/or Receiver of partial payment of Defendant's Restitution Obligation and/or CMP Obligation shall not be deemed a waiver of the respective requirement to make further payments pursuant to this Order, or a waiver of the Commission's and/or Receiver's right to seek to compel payment of any remaining balance.

**E. Prohibition on Transfer of Funds**

**IT IS FURTHER ORDERED** that Sweeney 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 Plaintiff, or any other officer that may be appointed by the court.

**F. Notices**

**IT IS FURTHER ORDERED** that 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:       Regional Counsel  
  U.S. Commodity Futures Trading Commission  
  Division of Enforcement - Eastern Regional Office  
  140 Broadway, 19<sup>th</sup> floor  
  New York, New York 10005.

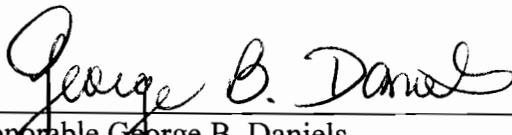
Notice to Receiver:         Brian Rosner, Esq.  
  Rosner & Napierala, LLP  
  26 Broadway, 22<sup>nd</sup> Floor  
  New York, NY 10004-2442  
  Phone: (212) 785-2577  
  Fax: (212) 785-5203

**G. Jurisdiction**

**IT IS FURTHER ORDERED** that this Court shall retain jurisdiction of this case to assure compliance with this Order and for all other purposes related to this action.

**AUG 31 2009**

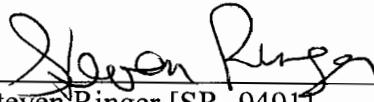
**SO ORDERED**, at \_\_\_\_\_, New York on this \_\_\_ day of \_\_\_\_\_, 2009.

  
HONORABLE GEORGE B. DANIELS  
UNITED STATES DISTRICT JUDGE

**SEP 14 2009**

Respectfully submitted,

U.S. COMMODITY FUTURES TRADING  
COMMISSION

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