OFFICE OF PROCEEDINGS
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UNITED STATES OF AMERICA

Before the

COMMODITY FUTURES TRADING COMMISSION

In the Matter of: **STERLING INVESTMENTS OF AMERICA, INC., AN OREGON CORPORATION, STERLING INVESTMENTS OF AMERICA, INC., A FLORIDA CORPORATION, STERLING INVESTMENTS OF AMERICA, INC., A/K/A STERLING INVESTMENTS, and JOHN F. ACKERMANN,** **Respondents.**	**CFTC Docket Number 98-9**

INITIAL DECISION ON DEFAULT

On Behalf of the Division of Enforcement:

Myrna D. Morganstern, Esq.
Trial Attorney-Division of Enforcement
Commodity Futures Trading Commission
10900 Wilshire Boulevard, Suite 400
Los Angeles, CA 90024

Respondent Sterling Investments of America, Inc., an Oregon Corporation, *pro se*

Respondent Sterling Investments of America, Inc., a Florida Corporation, *pro se*

Respondent Sterling Investments of America a/k/a Sterling Investments, *pro se*

On Behalf of Respondent John F. Ackermann:

Gary M. Sinclair, Esq.
Swift, Popuch & Sinclair
200 West Adams Street, Suite 2004
Chicago, IL 60606

BEFORE: GEORGE H. PAINTER, ADMINISTRATIVE LAW JUDGE

PROCEDURAL BACKGROUND

The Commodity Futures Trading Commission ("Commission") issued the Complaint and Notice ("Complaint") in this matter on March 31, 1998. When originally served on respondents, the Office of Proceedings omitted the Appendix to the Complaint, which was subsequently served on respondents on April 8, 1998. Accordingly, the Office of Proceedings extended the filing due date for respondents' Answers to April 28, 1998.

On May 6, 1998, this Court issued an Order to Show Cause since none of the respondents had filed Answers to the Complaint. Respondents were ordered to show cause by May 20, 1998, why the allegations contained in the Complaint should not be deemed true and sanctions should not be imposed. Respondents were also instructed that any response should include an Answer to the Complaint. The Order also requested that the Division of Enforcement file a response.

Respondent Ackermann was the only respondent to file with this Court a Response to the Order to Show Cause. Ackermann's Response, although timely filed on May 14, 1998, did not include the mandated Answer to the Complaint and merely stated counsel's confusion as to the filing deadline in light of alleged representations made by the Division during settlement negotiations.

The Division of Enforcement filed its Response on May 20, 1998, entitled Motion for Entry of Default Judgment, which included proposed findings of fact and conclusions of law as well as its memorandum and declarations in support thereof ("Division's Motion").[1] The Division explicitly denied ever having made representations to respondent Ackermann's counsel

[1] On June 17, 1998, respondent Ackermann filed with this Court his Response to Default Order, even though this Court had not yet entered its present Order of Default. Respondent's attorney stated that Ackermann's financial inability to secure counsel prevented respondent from contesting any default judgment.

regarding filing extensions and submitted evidence directly to the contrary. See Division's Motion (Declaration of Morganstern; Exhibit C).

On May 22, 1998, respondent Ackermann filed with this Court, via facsimile, his Unopposed Motion for Extension of Time to Answer Complaint. Despite being unopposed[2], this Court denied the Motion on May 27, 1998, since respondent failed to show good cause for such an extension. Respondent merely reiterated the representation made by the Division that the Complaint would not go forward until complainant's offer of settlement was passed upon which the Division denied ever having made.

INTRODUCTION

The Complaint filed by the Commission in this matter charged respondents with violations of Sections 4c(b), 4b(a), and 4k of the Commodities Exchange Act ("Act"), 7 U.S.C. §§ 6c(b), 6b, and 6k, and Regulations 33.10 and 166.2, 17 C.F.R. §§ 33.10 and 166.2. The violations are based upon respondents alleged "false, deceptive, or misleading statements of material fact and [failure] to disclose facts material to customers' decisions to open commodity options trading accounts [involving the degree of risk and the likelihood of profit in trading commodity option accounts with respondents and the performance record of such accounts] . . . by engaging in unauthorized transactions in customers' accounts; and by employing unregistered persons as [associated persons] working on behalf of [respondents]." Division's Motion at 5.

Respondent Sterling Investments of America, Inc., an Oregon Corporation, respondent Sterling Investments of America, Inc., a Florida Corporation, and respondent Sterling Investments of America, Inc., a/k/a Sterling Investments, have failed to file any Answer to the

[2] On May 27, 1998, the Division filed its Response to Respondent Ackermann's Request for Extension of Time, reiterating its lack of opposition. This Court had already ruled on the Motion earlier that day.

Complaint and have failed to file any response to this Court's Order to Show Cause why a default judgment should not be entered.

Respondent Ackermann has also failed to file an Answer to the Complaint. Although he filed a response to the Order to Show Cause it was fatally deficient since it did not include an Answer to the Complaint, as mandated in the Order, and merely addressed an unsubstantiated and subsequently refuted representation by the Division regarding filing deadlines. Respondent Ackermann's Response, May 14, 1998.

Pursuant to Regulation 10.93, 17 C.F.R. § 10.93, the Division may move that this Court "enter findings and conclusions and a default order against [the] respondent based upon the matters set forth in the complaint, which shall be deemed to be true . . ." when a respondent has failed to file an Answer. Accordingly, the Division submitted its Motion for Entry of Default Judgment with this Court on May 20, 1998, which includes its proposed findings of fact and conclusions of law, and memorandum and declarations in support thereof ("Division's Motion"). This Court, therefore, enters a default judgment against each of the respondents based upon the matters set forth in the Complaint and the Division's Motion.

FINDINGS OF FACT

The Parties

1. **Respondent Sterling Investments of America, Inc. ("Sterling Oregon")** was an Oregon corporation with its principal place of business in Ashland, Oregon, and registered with the Commission in June 1994 as an introducing broker. (Complaint at ¶ 5.) Respondent's registration was suspended in September 1996. (Id.)

2. **Respondent Sterling Investments of America, Inc. ("Sterling Florida")** was a Florida corporation with its principal place of business in Ashland, Oregon, and registered with the Commission in late 1993 as an introducing broker. (Complaint at ¶ 6.) Respondent's registration was suspended in September 1996. (Id.)

3. **Respondent Sterling Investments of America a/k/a Sterling Investments ("Sterling Partnership")** was a partnership, co-founded by respondent Ackermann, with its principal place of business in Ashland, Oregon, and registered with the Commission on July 7, 1994, as an introducing broker. (Complaint at ¶ 7.) Respondent's registration was terminated on December 25, 1994. (Id.)

4. **Respondent John F. Ackermann ("Ackermann")** was the incorporator, registered agent, director, president, sole shareholder, branch manager, and an associated person of respondent Sterling Oregon. (Complaint at ¶ 8.) Respondent Ackermann was the President and an associated person of respondent Sterling Florida, and was an associated person of respondent Sterling Partnership. (Complaint at ¶¶ 7, 8.)

The Events

5. Between January 1994 and December 1994, respondent Ackermann negotiated and signed introducing broker and guarantee agreements with various futures commission merchants on behalf of respondent Sterling Oregon, respondent Sterling Florida, and respondent Sterling Partnership (to be collectively referred to as "Sterling Investments"). (Complaint at ¶¶ 9-11.)

6. Between January 1, 1994, and April 30, 1995, respondent Ackermann directly or indirectly controlled respondents Sterling Investments, and directly or indirectly

controlled all employees and agents of respondents Sterling Investments. (Complaint at ¶ 12.)

7. Between January 1, 1994, and April 30, 1995, respondents Ackermann and Sterling Investments, pursuant to agreements with various futures commission merchants, introduced commodity interest accounts exclusively to each of these futures commission merchants. (Complaint at ¶¶ 13-16.) Respondents Ackermann and Sterling Investments, and each futures commission merchant, received commissions from trades placed by respondents on behalf of customers. (Id.)

8. From January 1994 until respondents Ackermann and Sterling Investments ceased operating, respondents acting through their officers, directors, managers, employees, and agents, solicited customers by mail, telephone, and other means of interstate commerce to open commodity interest accounts. (Complaint at ¶ 17.) Such accounts were for the purpose of trading commodity futures contracts and options on commodity futures contracts, primarily for granting or writing options on commodity futures contracts. (Id.)

9. Respondents Ackermann and Sterling Investments, during their solicitations, failed to inform prospective customers that there was more than one company operating under the name "Sterling Investments." (Complaint at ¶ 18.)

10. Respondents Ackermann and Sterling Investments, during their solicitations by oral and printed means, made materially false, deceptive or misleading representations or omitted material facts concerning the risks of customers losing their investments by trading options through respondents Sterling Investments. (Complaint at ¶¶ 18-26.)

11. Respondents Ackermann and Sterling Investments, during their solicitations by oral and printed means, made materially false, deceptive or misleading representations or omitted material facts concerning the profitability of commodity interest accounts traded by respondent Sterling Investments and the performance record of respondents Sterling Investments. (Complaint at ¶¶ 25-26.)

12. Between January 1, 1994, and April 30, 1995, the 346 customer accounts introduced by respondents Sterling Investments lost approximately $1,066,000 trading and paid approximately $1,159,000 in commissions and fees. (Complaint at ¶ 27.) Of the 346 customer accounts, 198 accounts traded options strangles, almost all of which were discretionary accounts controlled by respondent Ackermann, and lost approximately $553,000 trading and paid approximately $921,000 in commissions and fees. (Id.)

13. Respondent Ackermann, in the course of conducting the business of respondents Sterling Investments, instructed others to effect, or failed to prevent other employees of respondents Sterling Investments from effecting, transactions in commodity futures and options on commodity futures contracts in customers' accounts without authorization to do so. (Complaint at ¶ 29.)

14. Respondent Ackermann also, in the course of engaging in transactions pursuant to a power of attorney, intentionally acted in disregard of the specific instructions given to him by certain customers for the management of their respective accounts. (Complaint at ¶ 29; See Appendix to Complaint for list of customer accounts in which unauthorized transactions were effected.)

15. From approximately August 1994 through December 1994, at the direction of respondent Ackermann, respondents Sterling Investments solicited customers through

Sterling Marketing Research, an unincorporated telemarketer, which employed persons who were not registered with the Commission as associated persons of an introducing broker. (Complaint at ¶ 28.)

16. Between January 1, 1994, and April 30, 1995, respondent Ackermann directly or indirectly controlled respondents Sterling Investments and did not act in good faith or knowingly induced, directly or indirectly, the violations set out in the Complaint. (Complaint at ¶ 30.)

CONCLUSIONS OF LAW

1. Between January 1, 1994, and April 30, 1995, respondents Ackermann and Sterling Investments, cheated, defrauded, or deceived or attempted to cheat, defraud, or deceive other persons by making false, deceptive, or misleading representations or omissions of material fact during the course of soliciting customers or prospective customers in violation of Section 4c(b) of the Act, 7 U.S.C. § 6c(b) (1994), and Regulation 33.10, 17 C.F.R. § 33.10 (1997). (Complaint at ¶ 32.)
2. Between January 1, 1994, and April 30, 1995, respondents Ackermann and Sterling Investments engaged in unauthorized transactions in the accounts of customers and intentionally acted in disregard of specific instructions regarding the management of the accounts of customer, thereby cheated and defrauded or attempted to cheat and defraud other persons in connection with orders to make, or the making of, contracts of sale of commodities for future delivery, made, or to be made on behalf of such other persons where such contracts for future delivery ore or may be used for (a) hedging any transaction in interstate commerce in such commodities, or (b)

determining the price basis of any transaction in interstate commerce in such commodities, or (c) delivering any such commodities sold, shipped, or received in interstate commerce for the fulfillment thereof, in violation of Section 4b(a) of the Act, 7 U.S.C. § 6b (1994), and Regulation 166.2, 17 C.F.R. § 166.2 (1997). (Complaint at ¶ 39.)

3. Between January 1, 1994, and April 30, 1995, respondents Ackermann and Sterling Investments cheated or defrauded or attempted to cheat and defraud other persons in or in connection with offers to enter into, the entry into, the confirmation of the execution of, or the maintenance of commodity option transaction, contrary to the rules, regulations or orders of the Commission, in violation of Section 4c(b) of the Act, 7 U.S.C. §6c(b) (1994), and Regulation 33.10(a), 17 C.F.R. § 33.10(a) (1997). (Complaint at ¶ 39.)

4. From at least August 1994 through December 1994, respondents Ackermann and Sterling Investments operated Sterling Marketing Research as a telemarketer for respondents Sterling Investments. The employees of Sterling Marketing Research, who were not registered with the Commission, were employees of respondent Sterling Investments, for which those persons solicited and accepted orders for the purchase and sale of a commodity for future delivery (and for options on contracts for the purchase or sale of a commodity for future delivery), or subject to the rules of a contract market, in violation of Section 4k of the Act, 7 U.S.C. § 6k (1994). (Complaint at ¶ 41.)

5. From August 1994 through December 1994, respondent Ackermann was responsible for the management of, and directly or indirectly controlled the employees of Sterling

Marketing Research and has not acted in good faith or has knowingly induced, directly or indirectly, the violations set forth in the Complaint, in violation of Section 4k(1) of the Act, 7 U.S.C. § 6k(1) (1994), pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (1994). (Complaint at ¶ 42.)

6. Respondents Sterling Investments are liable, pursuant to Section 2(a)(1)(A)(iii) of the Act, 7 U.S.C. § 2 (1994)[3], and Regulation 1.2, 17 C.F.R. § 1.2 (1997), for all of the misrepresentations and omissions of their salesmen and agents in that all such violations were within the scope of each such individual's office or employment with respondents Sterling Investments. (Complaint at ¶ 35.)

7. Respondent Ackermann is liable, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (1994), for the violations of respondents Sterling Investments in that he directly or indirectly controlled those entities and did not act in good faith or knowingly induced, directly or indirectly, the acts, omissions, or failures constituting such violations. (Complaint at ¶ 36.)

ORDER

Respondents are in default and all allegations in the Complaint are deemed true, pursuant to Regulation 10.23 and 10.93, 17 C.F.R. §§ 10.23 and 10.93. After review and consideration of the sanctions requested by the Division[4] pursuant to Sections 6(c) and 6(d) of the Act, 7 U.S.C. §§ 9 and 13b, this Court hereby **ORDERS** that:

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[3] This Court believes that the Complaint's citation to the United State Code, 7 U.S.C. § 4, is mistaken. Complaint at ¶ 35.

[4] See Division's Motion (Proposed Findings of Fact and Conclusions of Law at ¶ 34); Complaint at pp. 16-17.

1. Respondents Sterling Oregon, Sterling Florida, Sterling Partnership, and Ackermann immediately cease and desist from violating the Act as set out above;
2. The registrations of respondents Sterling Oregon, Sterling Florida, Sterling Partnership, and Ackermann are revoked;
3. Respondents Sterling Oregon, Sterling Florida, Sterling Investments, and Ackermann are permanently banned from trading on or subject to the rules of any contract market and prohibiting all contract markets from granting said respondents trading privileges thereon;
4. A civil monetary penalty in the amount of $700,000, is imposed against respondents Sterling Oregon, Sterling Florida, Sterling Partnership, and Ackermann. Respondents are jointly and severally liable for payment of this penalty.

Issued this 19th of June, 1998

George H. Painter
Administrative Law Judge