

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

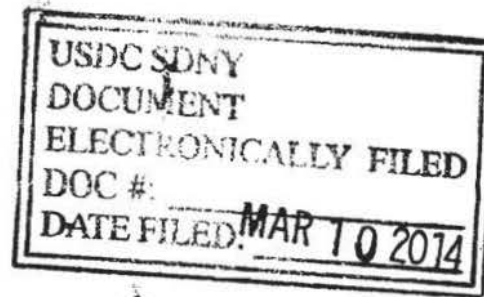
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UNITED STATES COMMODITY FUTURES :  
TRADING COMMISSION, :  
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Plaintiff, :  
:

-against- :  
:

ANTHONY J. KLATCH II; AMERICAN :  
PRIVATE EQUITY, LLC; ARM CAPITAL :  
MANAGEMENT, LLC; TASK CAPITAL :  
MANAGEMENT LLC; and VIGILANT :  
CAPITAL MANAGEMENT, LLC, :  
:

Defendants. :  
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ORDER OF FINAL JUDGMENT

11 Civ. 5191 (GBD)

GEORGE B. DANIELS, United States District Judge:

In accordance with, and as stated more fully in, the Court’s Order on Plaintiff’s Motion for Default Judgment, Permanent Injunction, and Other Equitable Relief (ECF No. 31) in the above-captioned proceeding, finding that Anthony J. Klatch II (“Klatch”), American Private Equity, LLC (“APE LLC”), ARM Capital Management, LLC (“ARM Management”), TASK Capital Management, LLC (“TASK Management”), and Vigilant Capital Management, LLC (“Vigilant Management”) (collectively “Defendants”) violated Sections 4b(a)(2)(i) and (iii), 4b(a)(1)(A) and (C), 4o, and 4c(b) of the Commodity Exchange Act (the “Act”), 7 U.S.C. §§ 6b(a)(2)(i) and (iii), 6b(a)(1)(A) and (C); 6o, and 6c(b) (2006 and Supp. V 2012), and Commission Regulations 33.10(a) and (c), 17 C.F.R. §§ 33.10(a) and (c) (2011) by, among other things, 1) making material misrepresentations and omissions relating to the profitability of and risk controls in place over the Pools that Defendants managed; and 2) misappropriating at least \$2.1 million from those Pools; IT IS HEREBY ORDERED THAT:

## I. JUDGMENT

1. Judgment is hereby entered for Plaintiff U.S. Commodity Futures Trading Commission (“Commission”) against Defendants for all counts contained in Plaintiff’s complaint.

## II. PERMANENT INJUNCTION

2. Based upon and in connection with the foregoing conduct, pursuant to Section 6c of the Act, as amended, 7 U.S.C. § 13a-1, Defendants Klatch, APE LLC, ARM Management, TASK Management, and Vigilant Management are permanently restrained, enjoined and prohibited from directly or indirectly:

- a. Cheating or defrauding, or attempting to cheat or defraud, other persons in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery that is made, or to be made, for or on behalf of, or with, any other person in violation of Sections 4b(a)(2)(i) and (iii), 4b(a)(1)(A) and (C), 4g, and 4c(b), of the Act (the “Act”), 7 U.S.C. § 6b(a)(2)(i) and (iii), 6b(a)(1)(A) and (C), 6g, and 6c(b) (2013) and Commission Regulations 33.10(a) and (c), 17 C.F.R. §§ 33.10(a) and (c) (2013).

3. Defendants are also permanently restrained, enjoined and prohibited from directly or indirectly:

- a. Trading on or subject to the rules of any registered entity (as that term is defined in Section 1a of the Act, as amended, 7 U.S.C. § 1a);
- b. Entering into any transactions involving commodity futures, options on commodity futures, commodity options (as that term is defined in Regulation 1.3 (hh), 17 C.F.R. § 1.3(hh) (2013)) (“commodity options”), security futures products, and/or foreign currency (as described in Sections 2(c)(2)(B) and 2(c)(2)(C)(i) of the Act, as

- amended, 7 U.S.C. §§ 2(c)(2)(B) and 2(c)(2)(C)(i)) (“forex contracts”) for their own personal account or for any account in which they have a direct or indirect interest;
- c. Having any commodity futures, options on commodity futures, commodity options, security futures products, and/or forex contracts traded on their behalf;
  - d. Controlling or directing the trading for or on behalf of any other person or entity, whether by power of attorney or otherwise, in any account involving commodity futures, options on commodity futures, commodity options, security futures products, and/or forex contracts;
  - e. Soliciting, receiving or accepting any funds from any person for the purpose of purchasing or selling any commodity futures, options on commodity futures, commodity options, security futures products, and/or forex contracts;
  - f. 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) (2013); and/or
  - g. Acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2013)), agent or any other officer or employee of any person (as that term is defined in Section 1a of the Act, as amended, 7 U.S.C. § 1a) 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) (2013).

### III. RESTITUTION<sup>1</sup>

4. Defendants shall pay restitution in the total amount of Sixteen million, five hundred eight thousand, six hundred and forty-three dollars (\$16,508,643) (“Restitution Obligation”), plus post-judgment interest. The total Restitution Obligation is equal to the amount of the aggregate pool participant funds invested but not returned to investors, regardless of whether the particular pool participants were able to be located so that their investment amounts could be included in the Receiver’s distribution plan. (ECF No. 41 at 3.) Defendant Klatch’s total joint and several liability for the Pools with which he was involved (i.e. Vigilant, ARM and TASK) amounts to \$12,919,739. Post-judgment interest shall accrue on the Restitution Obligation 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.

5. Allocation of the Restitution Obligation amongst Defendants shall be as follows:

- a. Klatch and Vigilant Management are jointly and severally liable for the total amount of investor funds placed in the Vigilant Pool, totaling \$5,187,469;
- b. Klatch, ARM Management, and APE LLC are jointly and severally liable for the total amount of investor funds placed in the ARM Pool, totaling \$5,421,900;
- c. Klatch, TASK Management, and APE LLC are jointly and severally liable for the total amount of investor funds placed in the TASK Pool, totaling \$2,310,370. This restitution amount shall receive dollar-for-dollar credit for any payments made on the restitution order in Defendant Klatch’s criminal case<sup>2</sup>; and

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<sup>1</sup> All monetary amounts are based on the Receiver’s Report of Status of Distributions to Investors (ECF No. 41-2, Sept. 6, 2013).

<sup>2</sup> The restitution ordered in Defendant Klatch’s related criminal proceeding (No. 11-cv-202-01, S.D. Ala.) pertained only to the losses sustained by investors in the TASK Pool.

d. APE LLC is solely liable for the total amount of investor funds placed in APE LLC, totaling \$3,588,904.

6. To effect payment of the Restitution Obligation and the distribution of any restitution payments to Defendants' pool participants, the Court appoints Mark Silverio, whom the Court has already appointed as the permanent receiver ("Receiver"). The Receiver shall collect restitution payments from Defendants and make distributions as set forth below. This Order incorporates and continues in force the Receiver's powers, rights, duties, and responsibilities, as set forth in the Court's Order of Preliminary Injunction of December 1, 2011 (ECF No. 25).

7. Defendants shall make Restitution Obligation payments under this Order to the Receiver in the name "Anthony Klatch, et al – Restitution Fund" and shall send such Restitution Obligation payments by electronic funds transfer, or by U.S. postal money order, certified check, bank cashier's, or bank money order, to the Receiver at his office, Silverio & Hall, P.A., 255 8<sup>th</sup> Street South, Naples, FL 34102 under cover letter that identifies the paying Defendant and the name and docket number of this proceeding. Defendant 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.

8. The Receiver shall provide the Commission at the beginning of each calendar year with a report detailing the disbursement of funds to Defendants' pool participants during the previous year. The Receiver shall transmit this report under a cover letter that identifies the name and docket number of this proceeding to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

9. Upon the termination of the receivership estate, the Receiver shall provide the Commission with a report detailing the disbursement of funds to Defendants' pool participants.

The Receiver shall transmit this report under a cover letter that identifies the name and docket number of this proceeding to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

10. The amounts payable to each pool participant shall not limit the ability of any pool participant from proving that a greater amount is owed from Defendants or any other person or entity, and nothing herein shall be construed in any way to limit or abridge the rights of any pool participant that exist under state or common law.

11. Pursuant to Rule 71 of the Federal Rules of Civil Procedure, each pool participant of Defendants' who suffered a loss is explicitly made an intended third-party beneficiary of this Order and may seek to enforce obedience of this Order to obtain satisfaction of any portion of the restitution that has not been paid by Defendants to ensure continued compliance with any provision of this Order and to hold Defendants in contempt for any violations of any provision of this Order.

12. To the extent that any funds accrue to the U.S. Treasury for satisfaction of Defendants' Restitution Obligation, such funds shall be transferred to the Receiver for disbursement in accordance with the procedures set forth above.

#### **IV. CRIMINAL MONETARY PENALTIES**

13. This Court has considered Defendant Klatch's arguments concerning his ability to pay, as well as the Commission's arguments on the need for deterrence, and declines to impose criminal monetary penalties in this case beyond restitution. Given Defendant Klatch's lack of resources and the significant amount of restitution ordered based on investor losses, of which he is jointly and severally liable for \$12,919,739 plus post-judgment interest, no further financial penalties are necessary for deterrence purposes. Defendant Klatch's restitution obligations,

combined with his criminal conviction and sentence of five years' imprisonment and three years' supervised release, provide sufficient general and specific deterrence in this case.

#### **V. RECEIVER**

14. This Court's Order of December 1, 2011 appointing Mark Silverio as Permanent Receiver of APE LLC, ARM Management, TASK Management, and Vigilant Management will remain in effect until investor funds are distributed in full, as approved by this Court.

15. The ongoing activities of the Receiver will not hinder or prevent the entry of this Order of Judgment.

#### **VI. MISCELLANEOUS PROVISIONS**

16. Notice: All notices required to be given by any provision in this Order of Final Judgment shall be sent certified mail, return receipt requested, as follows:

Notice to Commission:

David Meister, Director of Enforcement (or his successor)  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21<sup>st</sup> Street, NW  
Washington, DC 20009

Notice to Defendant Anthony J. Klatch II:

Anthony J. Klatch II  
FCI Talladega Satellite Camp – Inmate Legal Mail  
P.O. Box 2000  
Talladega, AL 35160

Notice to Defendant APE LLC:

Mark V. Silverio, Esq.  
Silverio & Hall, P.A.  
255 8<sup>th</sup> Street South  
Naples, Florida 34102  
(239) 649-1001  
msilverio@silveriohall.com

Notice to Defendant ARM Management:

Mark V. Silverio, Esq. (see contact information above)

Notice to Defendant TASK Management:

Mark V. Silverio, Esq. (see contact information above)

Notice to Defendant Vigilant Management:

Mark V. Silverio, Esq. (see contact information above)

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

17. Change of Address/Phone: Until such time as Defendants satisfy in full their Restitution Obligation and CMP Obligation as set forth in this Order, Defendants shall provide written notice to the Commission by certified mail of any change to his telephone number and mailing address within ten (10) calendar days of the change.

18. Continuing Jurisdiction of this Court: This Court shall retain jurisdiction of this action to ensure compliance with this Order of Final Judgment and for all other purposes related to this action, including any motion by Defendants to modify or for relief from the terms of this Order of Final Judgment.


19. Injunctive and Equitable Relief Provisions: The injunctive and equitable relief provisions of this Order of Final Judgment shall be binding upon Defendants, upon any person under their authority or control, and upon any person who receives actual notice of this Order, by personal service, e-mail, facsimile or otherwise insofar as he or she is acting in active concert or participation with Defendants.



The Clerk of the Court is directed to close the motion at ECF No. 36.

Dated: New York, New York  
March 10, 2014

SO ORDERED.

  
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GEORGE B. DANIELS  
United States District Judge