

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

**U.S. COMMODITY FUTURES
TRADING COMMISSION,**

Plaintiff,

vs.

**JOSEPH A. DAWSON and
DAWSON TRADING LLC,**

Defendants.

Civil Action No. 10-cv-04510

Judge: Virginia M. Kendall

Magistrate Judge: Jeffrey Cole

**[PROPOSED] DEFAULT JUDGMENT ORDERING A
PERMANENT INJUNCTION, CIVIL MONETARY PENALTY, AND OTHER
ANCILLARY RELIEF AGAINST DEFENDANT DAWSON TRADING LLC**

I. INTRODUCTION

On July 20, 2010, Plaintiff Commodity Futures Trading Commission (“CFTC” or “Commission”) filed a Complaint for Injunctive and Other Equitable Relief and Penalties Under the Commodity Exchange Act (“Complaint”) against Defendants Joseph A. Dawson (“Dawson”) and Dawson Trading LLC (“DT”) (collectively, “Defendants”) alleging violations of the Commodity Exchange Act (“Act”), 7 U.S.C. §§ 1 *et seq.* (2006), the 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. §§ 1 *et seq.*, and the Commission Regulations promulgated thereunder (“Regulations”), 17 C.F.R. §§ 1.1 *et seq.* (2010).

On August 17, 2010, the Commission properly served DT with the Complaint and summons. No counsel appeared on behalf of DT, and DT failed to answer, plead, or otherwise respond to the Complaint within the time permitted by the Federal Rules of Civil Procedure. Accordingly, on May 12, 2011, this Court entered DT's default.

Dawson represented himself in this matter. On April 26, 2011, this Court entered a Consent Order for Permanent Injunction and Other Ancillary Relief Against Defendant Joseph A. Dawson ("Permanent Injunction Order"), in which Dawson admitted the findings of fact and conclusions of law contained therein. The Permanent Injunction Order found, *inter alia*, that Defendants misappropriated approximately \$2.1 million of DT participant funds, that DT acted as a commodity pool operator ("CPO") but did not register with the Commission as a CPO, and that Dawson was acting as an agent of DT when he committed the acts constituting his violations of the Act. The Permanent Injunction Order permanently enjoined Dawson from further violating the provisions of the Act he was found to have violated and imposed comprehensive trading and registration bans on him. It reserved for further determination the issues of restitution and a civil monetary penalty. DT was not a party to the Permanent Injunction Order.

Subsequently, on May 19, 2011, Dawson signed a Supplemental Consent Order Imposing a Civil Monetary Penalty against Defendant Joseph A. Dawson ("Supplemental Order"), which was filed with this Court along with an Agreed Motion to Approve Supplemental Consent Order Imposing a Civil Monetary Penalty Against Defendant Joseph A. Dawson on July 5, 2011. The Supplemental Order requires Dawson to pay a civil monetary penalty of \$2.1 million plus post-judgment interest for his violations of the Act. The Supplemental Order also acknowledges the \$3,330,874 in restitution Dawson was ordered to pay as part of the March 8, 2011 criminal

judgment entered against him in *United States v. Dawson*, 09-cr-01037 (N.D. Ill.) without ordering any further restitution. DT is not a party to the Supplemental Order.

This matter is now before the Court on Plaintiff's Motion for Default Judgment Ordering a Permanent Injunction, Civil Monetary Penalty, and Other Ancillary Relief Against Defendant Dawson Trading LLC ("Motion"). The Court having considered the CFTC's Complaint, Motion, and Memorandum in Support of Plaintiff's Motion for Default Judgment Ordering a Permanent Injunction, Civil Monetary Penalty, and Other Ancillary Relief Against Defendant Dawson Trading LLC ("Memorandum"); the Court being fully advised in the premises; and Defendants having had actual notice of the Motion, the Court now issues this Default Judgment Ordering a Permanent Injunction, Civil Monetary Penalty, and Other Ancillary Relief Against Defendant Dawson Trading LLC ("Order").

II. FINDINGS OF FACT

A. Jurisdiction and Venue

1. This Court has jurisdiction over this action pursuant to Section 6c(a) of the Act, 7 U.S.C. § 13a-1(a), which authorizes the CFTC to seek injunctive relief in a district court whenever it appears to the CFTC that a person or entity has engaged, is engaging, or is about to engage in any act or practice that constitutes a violation of any provision of the Act or any rule, regulation, or order promulgated thereunder.

2. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e), because Defendants transacted business in this District and the acts and practices in violation of the Act have occurred, are occurring, or are about to occur within this District, among other places.

B. Parties

3. Plaintiff **Commodity Futures Trading Commission** is an independent federal regulatory agency that is charged by Congress with administering and enforcing the Act, 7 U.S.C. §§ 1 *et seq.* (2006), 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), §§ 701-774, 124 Stat. 1376 (enacted July 21, 2010), and the Regulations promulgated thereunder, 17 C.F.R. §§ 1.1 *et seq.* (2011).

4. Defendant **Dawson Trading LLC** is a Delaware limited liability company established in October 2004 with a business address in McHenry, Illinois. DT has acted as a CPO by pooling participant funds and using them to trade commodity futures, among its various investment activities. DT has never been registered with the Commission in any capacity.

C. Other Relevant Party

5. Defendant **Joseph A. Dawson** was the sole manager of DT and was responsible for all facets of DT’s operations. At the time the Complaint was filed, Dawson resided in Fox Lake, Illinois. Since 1996, Dawson has been registered with the Commission as an associated person (“AP”) of various registered entities other than DT. Most recently, Dawson has been registered as an AP of Strategic Research, LLC, a registered commodity pool operator (“CPO”), since February 2009. Dawson acted as an AP of DT, an unregistered CPO, but he has never been registered as an AP of DT.

D. The Fraudulent Course of Conduct

6. In approximately 2000, Dawson established the LEAP Fund. Shortly thereafter, he began to accept funds from friends and family members. The participant funds were pooled and invested in various financial instruments, including trading in commodity futures.

7. In October 2004, Dawson established DT. Shortly thereafter, he opened bank and trading accounts in the name of DT and transferred all LEAP Fund funds to DT, where the funds were again invested as a pool in various financial instruments, including trading in commodity futures. Dawson thereafter began soliciting additional funds for DT from family members and friends with whom Dawson had long-standing relationships.

8. Defendants customarily documented transactions with DT participants solely using a “guaranteed note with incentives” (“note”), the terms of which were similar, if not identical, from participant to participant. The note customarily acknowledged that DT “invests in all forms of investments including stocks, commodities, bonds, and real estate.” The note also customarily provided for a certain rate of return to be compounded quarterly and a “bonus of fifty (50%) of the trading gains of the borrowed funds.”

9. The note customarily stated that DT “hopes to make a profit from the spread between gains in the trading accounts and what must be paid in interest costs and incentives.”

10. The customary note did not provide for a management fee or other form of compensation. Additionally, the customary note did not explain how “guaranteed” principal and interest would be paid to participants if there were not sufficient trading profits.

11. From approximately May 2005 through December 2009, Defendants traded securities and commodity futures with pooled participant funds primarily in an account maintained in the name of DT at Interactive Brokers, LLC (“Interactive”), a registered futures

commission merchant. Defendants received periodic account statements from Interactive for this account.

12. From at least July 2005 through December 2009, Defendants lost approximately \$945,000 trading securities and commodity futures in the Interactive account.

13. On multiple occasions when soliciting and accepting funds, Defendants communicated to pool participants, including by use of the mails, email, and interstate telephone wires, that DT's trading was profitable, when in fact Dawson knew that DT suffered numerous monthly trading losses of as much as tens or hundreds of thousands of dollars.

14. Between at least February 2005 and December 2009, Defendants misappropriated approximately \$2.1 million of participant funds.

15. Dawson used the misappropriated funds for various personal expenses and purchases, including, but not limited to, a down payment on a personal residence, mortgage payments, an in-ground swimming pool, landscaping, furniture, restaurants, movie tickets, and car payments. Dawson admitted his misappropriation of participant funds to multiple pool participants.

16. From at least September 2005 through September 2009, Defendants prepared and delivered, including by use of the mails and email, a number of periodic DT statements to pool participants showing that the trading of their funds had been profitable, when in fact Dawson knew the trading of their funds had not been profitable and the periodic statements were false.

III. CONCLUSIONS OF LAW

17. Dawson was acting as an agent of DT when he engaged in the conduct constituting his violations of Sections 4b(a)(2)(i)-(iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i)-(iii) (2006); Sections 4b(a)(1)(A)-(C) of the Act as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(1)(A)-(C); and Sections 4o(1) and 4k(2) of the Act, 7 U.S.C. §§ 6o(1) and 6k(2) (2006). DT, as Dawson's principal, is therefore liable for the acts constituting Dawson's violations of the Act 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 (2011), which impose liability on principals for the acts, omissions, and failures of their agents acting within the scope of their agency.

18. By misrepresenting the pool's profitability, misappropriating pool participant funds, and willfully making or causing to be made false statements to pool participants that misrepresented the pool's profitability and/or the value of participants' respective interests in the pool, in connection with acts occurring before June 18, 2008, DT violated Sections 4b(a)(2)(i)-(iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i)-(iii) (2006), which made it unlawful for any person: (i) to cheat or defraud or attempt to cheat or defraud other persons; (ii) willfully to make or cause to be made to other persons any false report or statement, or willfully to enter or cause to be entered for other persons any false record; or (iii) willfully to deceive or attempt to deceive by any means whatsoever 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 made, or to be made, for or on behalf of such other persons if such contract for future delivery is or may be used for: (A) hedging any transaction in interstate commerce in such commodity, or the products or byproducts thereof; (B) determining the price basis of any transaction in interstate commerce in such commodity; or

(C) delivering any such commodity sold, shipped, or received in interstate commerce for the fulfillment thereof, in connection with acts occurring before June 18, 2008.

19. By misrepresenting the pool's profitability, misappropriating pool participant funds, and willfully making or causing to be made false statements to pool participants that misrepresented the pool's profitability and/or the value of participants' respective interests in the pool, in connection with acts occurring on or after June 18, 2008, DT violated Sections 4b(a)(1)(A)-(C) of the Act as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(1)(A)-(C), which make 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 in interstate commerce or for future delivery that is made, or to be made, on or subject to the rules of a designated contract market, for or on behalf of any other person: (A) to cheat or defraud or attempt to cheat or defraud such other person; (B) willfully to make or cause to be made to such other person any false report or statement or willfully to enter or cause to be entered for such other person any false record; or (C) willfully to deceive or attempt to deceive such 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 such other person, in connection with acts occurring on or after June 18, 2008.

20. By misrepresenting the pool's profitability, misappropriating pool participant funds, and willfully making or causing to be made false statements to pool participants that misrepresented the pool's profitability and/or the value of participants' respective interests in the pool through use of the mails or other means or instrumentalities of interstate commerce, DT violated Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (2006), which makes it unlawful for a CPO, by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly:

(A) to employ any device, scheme, or artifice to defraud any participant; or (B) to engage in any transaction, practice, or course of business that operates as a fraud or deceit upon any participant.

21. By using the mails in connection with its CPO business without registering as a CPO, DT violated Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2006), which makes it unlawful for a CPO to make use of the mails or other means or instrumentalities of interstate commerce in connection with its CPO business unless registered with the Commission as a CPO.

22. By permitting Dawson to be associated with DT, an unregistered CPO, as an agent in a capacity involving the solicitation of funds for participation in a commodity pool even though DT knew or should have known Dawson was not registered as an AP of DT, DT violated Section 4k(2) of the Act, 7 U.S.C. § 6k(2) (2006), which makes it unlawful for a CPO to permit a person to be associated with the CPO as a partner, officer, employee, consultant, or agent, or a person occupying a similar status or performing similar functions, in any capacity that involves the solicitation of funds, securities, or property for participation in a commodity pool if the CPO knows or should know that the person is not registered with the Commission as an AP of the CPO.

23. Unless restrained and enjoined by this Court, there is a reasonable likelihood that DT will continue to engage in the acts and practices alleged in the Complaint or in similar acts and practices in violation of the Act. Other ancillary equitable relief is imposed to carry out the goals of the Act.

IV. PERMANENT INJUNCTION

IT IS HEREBY ORDERED THAT:

24. DT is permanently restrained, enjoined, and prohibited from directly or indirectly:

- A. Cheating or defrauding, or attempting to cheat or defraud, other persons; willfully making, or causing to be made, any false report or statement to other persons, or willfully entering, or causing to be entered, any false record for other persons; or willfully deceiving, or attempting to deceive, other persons in or in connection with any order to make, or the making of, any contract of sale of any commodity in interstate commerce or for future delivery that is made, or to be made, on or subject to the rules of a designated contract market, for or on behalf of any other person, in violation of Sections 4b(a)(1)(A)-(C) of the Act as amended by the CRA and the Dodd-Frank Act, to be codified at 7 U.S.C. §§ 6b(a)(1)(A)-(C);
- B. Employing any device, scheme, or artifice to defraud any pool participant, or engaging in any transaction, practice, or course of business that operates as a fraud or deceit upon any participant, by use of the mails or any means or instrumentality of interstate commerce, in violation of Section 4o(1) of the Act as amended by the CRA and the Dodd-Frank Act, to be codified at 7 U.S.C. § 6o(1);
- C. Using the mails or other means or instrumentalities of interstate commerce in connection with a CPO business without registering as a CPO in violation of Section 4m(1) of the Act as amended by the CRA and the Dodd-Frank Act, to be codified at 7 U.S.C. § 6m(1); and
- D. Permitting a person to be associated with DT as a partner, officer, employee, consultant, or agent, or a person occupying a similar status or performing similar functions, in any capacity that involves the solicitation of funds, securities, or property for participation in a commodity pool, if DT knows or should know that such person is not registered as an AP of DT, in violation of Section 4k(2) of the Act as amended by the CRA and the Dodd-Frank Act, to be codified at 7 U.S.C. § 6k(2).

25. DT is further 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 by the CRA and the Dodd-Frank Act, to be codified at 7 U.S.C. § 1a), including, but not limited to, trading for DT;
- B. Entering into any transactions involving commodity futures, options on commodity futures, commodity options (as that term is defined in Regulation 32.1(b)(1), 17 C.F.R. § 32.1(b)(1) (2011)) (“commodity options”), swaps (as defined in Section 1a of the Act as amended by the CRA and the Dodd-Frank Act, to be codified at 7 U.S.C. § 1a) (“swaps”), and/or foreign currency (as described in Sections 2(c)(2)(B) and

2(c)(2)(C)(i) of the Act as amended by the CRA and the Dodd-Frank Act, to be codified at 7 U.S.C. §§ 2(c)(2)(B) and 2(c)(2)(C)(i) (“forex contracts”), for any personal or proprietary account or for any account in which it has a direct or indirect interest, including, but not limited to, any DT account;

- C. Having any commodity futures, options on commodity futures, commodity options, swaps, and/or forex contracts traded on DT’s 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, swaps, and/or forex contracts, including, but not limited to, any DT account;
- 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, swaps, and/or forex contracts, including, but not limited to, doing so on behalf of DT;
- 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) (2011); and
- G. Acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2011)), agent, or any other officer or employee of any person (as that term is defined in Section 1a of the Act as amended by the CRA and the Dodd-Frank Act, to be codified at 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) (2011).

26. The injunctive provisions of this Order shall be binding upon DT, all persons insofar as they are acting in the capacity of DT’s officers, agents, servants, employees, and attorneys, and all persons insofar as they are acting in active concert or participation with DT who receive actual notice of this Order by personal service or otherwise.

V. CIVIL MONETARY PENALTY AND RESTITUTION

IT IS FURTHER ORDERED THAT:

A. Civil Monetary Penalty

27. Section 6c(d) of the Act, 7 U.S.C. § 13a-1(d) (2006), permits the imposition of a civil monetary penalty on any person found to have committed a violation of the Act of up to three times the monetary gain to that person for each violation.

28. Upon the date of entry of this Order, DT is hereby liable for, and a judgment is entered against it to pay, a civil monetary penalty in the amount of \$2.1 million (\$2,100,000) plus post-judgment interest (“CMP obligation”). To the extent that Dawson makes a payment in satisfaction of the CMP obligation imposed on Dawson by the Supplemental Order, such payment shall be deemed payment in satisfaction of DT’s CMP obligation pursuant to this Order.

29. Post-judgment interest shall accrue on the civil monetary penalty 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.

30. DT 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 other than by electronic funds transfer, the payment shall be made payable to the Commodity Futures Trading Commission and sent to the following address:

Commodity Futures Trading Commission
Division of Enforcement
Attn: Accounts Receivables – AMZ 340
E-mail Box: 9-AMC-AMZ-AR-CFTC
DOT/FAA/MMAC
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
Telephone: (405) 954-5644

If payment by electronic funds transfer is chosen, DT shall contact Linda Zurhorst or her successor at the address above to receive payment instructions and shall fully comply with those instructions. DT shall accompany payment of the CMP obligation with a cover letter that identifies DT and the name and docket number of this proceeding. DT shall simultaneously transmit a copy of the cover letter and the form of payment to: (1) the Director, Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581; and (2) the Chief, Office of Cooperative Enforcement, Division of Enforcement, Commodity Futures Trading Commission, at the same address.

31. Any acceptance by the CFTC of partial payment of the CMP obligation shall not be deemed a waiver of DT's requirement to make further payments pursuant to this Order or a waiver of the CFTC's right to seek to compel DT's payment of any remaining balance.

B. Restitution

32. On March 8, 2011, Dawson was sentenced in the matter captioned *United States of America v. Joseph A. Dawson*, No. 09-cr-1037 (N.D. Ill.), and his criminal judgment in that matter included an order of restitution in the amount of \$3,330,874. No further restitution is ordered against DT.

VI. NOTICES

IT IS FURTHER ORDERED THAT:

33. All notices required to be given by this Order shall be sent via certified mail, return receipt requested, as follows:

Notice to Plaintiff Commission:
Director of the Division of Enforcement
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street NW
Washington, D.C. 20581

Notice to Defendant DT:
Dawson Trading LLC
C/O Joseph A. Dawson
28036 North Lakeview Circle
McHenry, IL 60051-7240

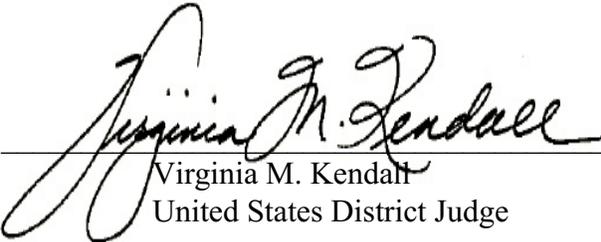
VII. CONTINUING JURISDICTION OF THIS COURT

IT IS FURTHER ORDERED THAT:

34. This Court shall retain jurisdiction over this action to implement and carry out the terms of this Order, to ensure compliance with this Order, and for any suitable application or motion for additional relief within the jurisdiction of this Court.

IT IS SO ORDERED.

Date: July 11, 2011



Virginia M. Kendall
United States District Judge