

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 7/29/2011

U.S. COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

v.

OTMANE EL RHAZI,

Defendant.

Civil Case No. 11-cv-02576-DLC

~~Proposed~~
**Order for Entry of Default Judgment
Permanent Injunction, Civil
Monetary Penalties and Ancillary
and Equitable Relief Against Otmane
El Rhazi**

(ECF CASE)

On April 15, 2011, the U.S. Commodity Futures Trading Commission (“Commission”) filed a Complaint charging Defendant Otmane El Rhazi (“Defendant” or “El Rhazi”) with engaging in fictitious sales in violation of Section 4c(a), 7 U.S.C. § 6c(a), of the Commodity Exchange Act (the “CEA” or “Act”), 7 U.S.C. §§ 1 *et seq.* (2006), as amended by the Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, Title XIII (the CFTC Reauthorization Act (“CRA”)), §§ 13101-13204, 122 Stat. 1651 (effective June 18, 2008), multiple acts of fraud in violation of Sections 4b(a)(1)(A) and (C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(1)(A) and (C), and noncompetitive trading in violation of Commission Regulation 1.38(a), 17 C.F.R. § 1.38(a) (2011).

On April 15, 2011, the Commission also sought an *Ex Parte* Statutory Restraining Order (“SRO”), seeking to, among other things, freeze all funds in Defendant’s accounts, prohibit Defendant from altering or destroying books, records, and documents, and bar him from denying access to those books, records, or documents to any representative of the Commission. The SRO

application was accompanied by two factual sworn declarations, including one from Defendant's former employer. The Court issued the SRO that day.

On April 15, 2011, the SRO was served on Defendant.

On April 27, 2011, after notice to Defendant and an opportunity to be heard, the Court issued a Preliminary Injunction which continued the terms of the SRO and enjoined further violations of the Act and certain other conduct pending final judgment.

Proper service of process has been effected on April 19, 2011, by personal delivery to Arnold Feist, Chief Compliance Officer for Interactive Brokers LLC, the futures commission merchant where Defendant held his personal account. Pursuant to Commission Regulation 15.05(b), Interactive Brokers is deemed to be the agent for service of any communication from the Commission, including a summons or complaint. *See* 17 C.F.R. § 15.05(b); *CFTC v. Steele*, Civ. 05 C 3130, 2005 WL 3276359, at *1 (N.D. Ill. Nov. 22, 2005) (Shadur, J.) (upholding service having so been made in entering default judgment); *CFTC v. Garofalo*, Dkt. Entry #105, No. 10 C 2417 (N.D. Ill. Feb. 23, 2011) (minute order denying motion to quash service under Reg. 15.05); *CFTC v. Chateauforte Corp.*, No. 98-1755, slip op., at 5-7 (N.D. Ala. Mar. 14, 2000) (holding same in declining to vacate default judgment). Defendant has failed to answer or otherwise defend this action and the Clerk has issued a Certificate of Default.

Upon application by the Commission (the "Application"), on June 30, 2011, the Court issued an Order to Show Cause Why an Order of Default Judgment, Permanent Injunction and Ancillary Equitable Relief Should Not Be Entered against Defendant. 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 in the premises, pursuant to Fed. R. Civ. P. 55(b)(2), hereby:

GRANTS the Commission's application and enters findings of fact and conclusions of law finding Defendant El Rhazi liable as to all violations as alleged in the Complaint. The Court further grants the Commission's request to assess monetary damages against El Rhazi, including restitution and civil monetary penalties. Accordingly, the Court now issues the following Order for Default Judgment, Permanent Injunction Penalties and Ancillary and Equitable Relief ("Order") against Defendant.

I. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Jurisdiction and Venue

This Court has jurisdiction over the subject matter of this action and the Defendant pursuant to Section 6c of the Act, as amended, to be codified at 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, as amended, to be codified at 7 U.S.C. § 13a-1(e), in that Defendant transacted business in this district, and the certain transactions, acts, practices, and courses of business alleged in this Complaint occurred within this District. Venue also properly lies with this Court pursuant to 28 U.S.C. § 1391(d) (2006).

B. Parties

Plaintiff, the United States Commodity Futures Trading Commission, is an independent federal regulatory agency that is charged by Congress with responsibility for administering and enforcing the provisions of the Act, 7 U.S.C. §§ 1 *et seq.*, and the Regulations promulgated thereunder, 17 C.F.R. §§ 1.1 *et seq.* (2011).

Defendant, Otmane El Rhazi, is a Moroccan national residing in Essex, England during the course of conduct described below. As of the commencement of this case, Defendant was a Vice President for Citigroup Global Markets Limited in the United Kingdom and was a Futures and Options Trader on the “Exotics Desk.” As of the commencement of this case, El Rhazi was registered with the United Kingdom Financial Services Authority.

C. Findings of Fact

The New York Mercantile Exchange (“NYMEX”) is a market designated by the Commission pursuant to Section 5(b) of the Act and Commission Regulations 38.3(a)(1)(ii) and (iii), for the buying and selling of contracts for sale of a commodity for future delivery (also known as “futures contracts”). Futures contracts traded on the NYMEX involve commodities such as precious metals, heating oil and natural gas, among others. Globex is an electronic trading platform used to trade, i.e. buy or sell, futures contracts listed on NYMEX and other markets owned and/or affiliated with the Chicago Mercantile Exchange. Globex is accessible for trading purposes approximately 23 hours per day, and, therefore, trading on Globex is not restricted by geography or time zones.

The palladium (PA) futures contracts traded on NYMEX are for a volume of 100 troy ounces of 99.95% pure palladium, quoted in U.S. Dollars and Cents per troy ounce. Palladium contracts are traded Sunday through Friday from 6:00 p.m. EST to 5:15 p.m. EST on Globex and Monday through Friday from 8:30 a.m. EST to 1:00 p.m. EST through open outcry on the floor of NYMEX. March, June, September and December palladium contracts are generally considered liquid contracts and, thus, are traded at higher volumes than other contract months. Trading is at its highest volume on Globex during the open outcry trading hours.

The platinum (PL) futures contracts traded on NYMEX are for a volume of 50 troy ounces of 99.95% pure platinum, quoted in U.S. Dollars and Cents per troy ounce. Platinum contracts are traded Sunday through Friday from 6:00 p.m. EST to 5:15 p.m. EST on Globex and Monday through Friday from 8:20 a.m. EST to 1:05 p.m. EST through open outcry on the floor of NYMEX. January, April, July and October platinum contracts are generally considered liquid contracts and, thus, are traded at higher volumes than other contract months. Trading is at its highest volume on Globex during the open outcry trading hours.

Including, but not limited to, the period beginning on November 23, 2010 and ending on April 5, 2011, El Rhazi held trading authority over, at least, two accounts for the purposes of trading commodity futures and options on NYMEX and other contract markets: (1) Defendant's personal account (the "Personal Account") held at Interactive Brokers LLC, headquartered at Greenwich, CT; and (2) an account held by Citibank, N.A. (the "Citi Account"), over which El Rhazi held trading authority in connection with his employment by Citigroup Global Markets Limited in the United Kingdom.

Starting on November 23, 2010, El Rhazi engaged in a series of palladium and platinum futures transactions executed on Globex in order to steal money from the Citi Account and pass the money to his own Personal Account at Interactive Brokers LLC. El Rhazi engaged in two patterns of inter-account trading as follows:

a. El Rhazi would buy commodity futures contracts for his Personal Account from the Citi Account and sell them back to the Citi Account at higher prices,

or

b. El Rhazi would sell commodity futures contracts from his Personal Account to the Citi Account and buy them back from the Citi Account at lower prices.

In each of the above examples, El Rhazi would make one of the two trades necessary to effectuate the scheme at an off-market price, i.e., a price that diverged from market prices or spreads between prices otherwise observed in the contracts in question and in related, more heavily traded contract months for the same commodity. In so doing, El Rhazi consistently profited his Personal Account at the expense of the Citi Account.

Specifically, El Rhazi's orders for his Personal Account were entered on the "opposite side of the market" as the orders entered for Citigroup's Account. As a direct result of El Rhazi trading the accounts "opposite" of one another, once these orders matched as a trade, they provided El Rhazi's Personal Account and the Citi Account equal and opposite positions in the market. El Rhazi subsequently entered orders at a different and favorable price to offset these respective positions. This successive round of orders again matched with one another to generate a second trade, with El Rhazi's Personal Account realizing a profit and the Citi Account realizing a loss as a result of the purchase and sale. In general, this series of offsetting transactions resulted in no change in open positions held by the Accounts. However, these transactions, in which El Rhazi's Personal Account bought from and sold to the Citi Account at prices benefiting the Personal Account, effected the transfer of money from Citibank, N.A. to El Rhazi.

To avoid having other market participants' orders matched with his orders, El Rhazi executed trades often during low volume periods outside of the pit trading hours. Further, El Rhazi traded contracts for delivery months that are generally illiquid.

From November 23, 2010 through April 5, 2011, over the course of 27 days, El Rhazi purchased and sold approximately 736 platinum and/or palladium contracts among his Personal Account and the Citi Account in the manner described above. During this period, all of El

Rhazi's Personal Account trades in Palladium and Platinum Futures were executed opposite to the Citi Account. El Rhazi did not have permission from his employer to trade the Citi Account opposite his own personal account and, indeed, had failed to disclose the existence of his Personal Account as required by his employer. NYMEX rule 539.C.1. does not allow El Rhazi to execute prearranged trades without the permission of the Citi Account holder.

As a result of these transactions, the Citi Account lost \$373,860.00. El Rhazi's Personal Account grossed the same amount.

D. Conclusions of Law

1. Defendant is liable for Violations of Section 4c(a) of the Act, as amended, to be codified at 7 U.S.C. § 6c(a)

From at least November 2010 through the present, by executing illegally prearranged purchases and sales of palladium and/or platinum futures contracts, Defendant El Rhazi offered to enter into, entered into, or confirmed the execution of transactions that are fictitious sales involving the purchase or sale of a commodity for future delivery which transactions were used or may have been used to hedge any transaction in interstate commerce in the commodity or the product or byproduct of the commodity; or to determine the price basis of any such transaction in interstate commerce in the commodity; or to deliver any such commodity sold, shipped, or received in interstate commerce for the execution of the transaction all in violation of Section 4c(a) of the Act, as amended, to be codified at 7 U.S.C. § 6c(a). El Rhazi directly engaged in these acts and practices described above knowingly or with reckless disregard for the truth. Therefore, El Rhazi is liable for violations of Section 4c(a) of the Act, as amended, to be codified at 7 U.S.C. § 6c(a).

2. **Defendant is liable for Violations of Sections 4b(a)(1)(A) and (C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(1)(A) and (C)**

From at least November 2010 through the present, Defendant El Razi 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 futures 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, including Citibank N.A, cheated or defrauded or attempted to cheat or defraud Citibank N.A. and willfully deceived or attempted to deceive Citibank N.A. by, among other things, (i) knowingly misappropriating Citi Account funds; (ii) failing to disclose that he was trading the Citi Account opposite his Personal Account; and (iii) purposefully executing trades on behalf of the Citi Account at unfavorable prices all in violation of Sections 4b(a)(1)(A) and (C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(1)(A) and (C). El Rhazi directly engaged in these acts and practices described above knowingly or with reckless disregard for the truth. Therefore, El Rhazi is liable for violations of Sections 4b(a)(1)(A) and (C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(1)(A) and (C).

3. **Defendant is liable for Violations of Regulation 1.38(a), 17 C.F.R. § 1.38(a) (2011)**

From at least November 2010 through the present, Defendant El Rhazi purchased and sold commodities for future delivery on or subject to the rules of a contract market, which purchases and sales he failed to execute openly and competitively by open outcry or posting of bids and offers or by other equally open and competitive methods, in the trading pit or ring or similar place provided by the contract market, during the regular hours prescribed by the contract market for trading in such commodity or commodity option in violation of Regulation 1.38(a), 17 C.F.R. § 1.38(a)(2011). Defendant El Rhazi's purchase and sales were not executed in

accordance with written rules of the contract market which have been submitted to and approved by the Commission, specifically providing for the non-competitive execution of such transactions. Therefore, Defendant El Rhazi is liable for violations of Regulation 1.38(a), 17 C.F.R. § 1.38(a)(2011).

4. A Permanent Injunction, Civil Monetary Penalties, and other Equitable Relief are Appropriate Remedies

Permanent injunctive relief is warranted in light of the egregious nature of Defendant's conduct in illegally engaging in fictitious sales, defrauding his employer, and executing trades in a noncompetitive manner. These facts demonstrate a reasonable likelihood of future violations.

Imposition of civil monetary penalties is appropriate in this case because Defendant's violations of the Act and Commission Regulations were intentional and directly impacted the victim of this fraud. Likewise, the remedy of restitution is appropriate to compensate the victim of Defendant's wrongful acts.

II. ORDER FOR RELIEF

A. Permanent Injunction

IT IS THEREFORE ORDERED that El Rhazi and any of his agents, servants, assigns, attorneys, and persons in active concert or participation with the Defendant are permanently restrained, enjoined and prohibited from directly or indirectly:

- (1) violating section 4c(a) of the Act, 7 U.S.C. § 6c(a), by entering into transactions that are of the character of, or are commonly known to the trade as, "wash sales" or "accommodation trades" or are fictitious sales involving the purchase or sale of a commodity for future delivery which transaction was used or may have been used to hedge any transaction in interstate commerce in the commodity or the product or byproduct of the commodity; or to determine the price basis of any such transaction in interstate

commerce in the commodity; or to deliver any such commodity sold, shipped, or received in interstate commerce for the execution of the transaction.

- (2) violating Commission Regulation 1.38(a), 17 C.F.R. § 1.38(a) (2011), by engaging in any posting of bids and offers for the purchase or sale of any commodity for future delivery, and of any commodity option, on or subject to the rules of a contract market, that are not executed openly and competitively.
- (3) violating Sections 4b(a)(1) (A) and (C) of the Act, as amended, to be codified at 7 U.S.C. §§ 6b(a)(1)(A) and (C), by cheating or defrauding or attempting to cheat or defraud any other person, or deceiving or attempting to deceive any other person by any means whatsoever, 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.
- (4) Trading on or subject to the rules of any registered entity (as that term is defined in Section 1a(29) of the Act, as amended, to be codified at 7 U.S.C. § 1a(29));
- (5) 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”), 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, to be codified at 7 U.S.C. §§ 2(c)(2)(B) and 2(c)(2)(C)(i)) (“forex contracts”) for his own personal account or for any account in which he has a direct or indirect interest;
- (6) having any commodity futures, options on commodity futures, commodity options and/or forex contracts traded on his behalf;

- (7) 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 and/or forex contracts;
- (8) 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 and/or forex contracts;
- (9) 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
- (10) 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 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).

IT IS FURTHER ORDERED that El Rhazi shall provide an accounting to the Court within thirty (30) days hereof of all of his assets and liabilities, together with all funds he received in connection with commodity transactions or purported commodity transactions, and all disbursements for any purpose whatsoever of funds received from commodity transactions, including salaries, commissions, interest, fees, loans and other disbursements of money and property of any kind, from, but not limited to, November 2010 through and including the date of such accounting. *dlc*

The injunctive provisions of this Order shall be binding upon El Rhazi, upon any person insofar as he or she is acting in the capacity of agent or servant or employee of El Rhazi, and

upon any person who receives actual notice of this Order, by personal service, first-class mail, email or facsimile, insofar as he or she is acting in active concert or participation with El Rhazi.

B. Civil Monetary Penalties and Restitution

1. Civil Monetary Penalty

IT IS FURTHER ORDERED that as of the date of this Order, Defendant shall pay civil monetary penalties in the amount of \$1,121,580.00 (One million, one hundred and twenty-one thousand, five hundred and eighty dollars), plus post-judgment interest. This sum constitutes triple the monetary gain to Defendant of \$373,860.00. Post-judgment interest shall accrue beginning on the date of entry of this Order and will be calculated using the Treasury Bill rate prevailing on the date of entry of this Order pursuant to 28 U.S.C. § 1961.

Defendant shall pay this penalty by making electronic funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money order made payable to the Commodity Futures Trading Commission and sent to the address below:

Commodity Futures Trading Commission
Division of Enforcement
ATTN: Accounts Receivables—AMZ340
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 transfer is chosen, contact Linda Zurhorst or her successor for instructions. The Defendant shall accompany payment of the penalty with a cover letter that identifies the Defendant and the name and docket number of this proceeding. The Defendant shall simultaneously transmit a copy of the cover letter and the form of payment to: (1) Director, Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581; (2) the Chief, Office of Cooperative

Enforcement, Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581; and (3) Regional Counsel, Division of Enforcement, Commodity Futures Trading Commission, at the following address: 140 Broadway, 19th Floor, New York, NY 10005.

2. Restitution and Appointment of Monitor

IT IS FURTHER ORDERED that as of the date of this Order, Defendant shall pay and be liable for restitution to the defrauded entitie(s) in the amount of \$373,860.00 (three hundred and seventy-three thousand, eight hundred and sixty dollars). In addition, Defendant is required to pay post-judgment interest on the restitution amount.

Post-judgment interest shall accrue beginning on the date of entry of this Order and will be calculated using the Treasury Bill rate prevailing on the date of entry of this Order pursuant to 28 U.S.C. § 1961.

To effect payment by Defendant and distribution of restitution, the Court appoints the National Futures Association (“NFA”) as Monitor (“Monitor”). The Monitor shall collect restitution payments from the Defendant, including collection of Defendant’s assets that were subject to the SRO entered by this Court on April 15, 2011, and make distributions as set forth below. Because the Monitor is not being specially compensated for these services, and these services are outside the normal duties of the Monitor, the Monitor shall not be liable for any action or inaction arising from the Monitor’s appointment, other than actions involving fraud.

Defendant shall make restitution payments under this order in the name “Otmene El Rhazi-Restitution Fund” and shall send such restitution payments by electronic funds transfer, or by U.S. postal money order, certified check, bank cashier check, or bank money order, to Office of Administration, National Futures Association, 300 South Riverside Plaza, Suite 1800,

Chicago, Illinois 60606 under cover letter that identifies himself and the name and docket number of the proceeding. Defendant shall simultaneously transmit copies of the cover letter and the form of payment to (a) the Director, Division of Enforcement, U.S. Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581; (b) the Chief, Office of Cooperative Enforcement, Division of Enforcement, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581; and (c) the Regional Counsel, U.S. Commodity Futures Trading Commission, Eastern Regional Office, 140 Broadway, 19th floor, New York, NY 10005.

The Monitor shall oversee Defendant's restitution obligation, and shall have discretion to determine the manner for distribution of funds in an equitable fashion to defrauded entitie(s), a list of which shall be provided to the Monitor upon entry of this Order, as appropriate, or may defer distribution until such time as it deems appropriate. In the event that the amount of restitution payments to the Monitor are of a *de minimis* nature such that the Monitor determines that the administrative costs of the making a restitution distribution is impractical, the Monitor may, in its discretion, treat such restitution payments as civil monetary penalty payments, which the Monitor shall forward to the Commission following the instructions for civil monetary penalty payments set forth above.

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 NFA for disbursement in accordance with the procedures set forth in the preceding paragraph.

3. Partial Payments

Any acceptance by the Commission of partial payment of Defendant's CMPs shall not be deemed a waiver of his requirement to make further payments pursuant to this Order, or a waiver of the Commission's right to seek to compel payment of any remaining balance.

III. MISCELLANEOUS PROVISIONS

A. Prohibition on Transfer of Funds: Defendant 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 Commission, or any officer that may be appointed by the Court;

B. Third-Party Beneficiaries: Pursuant to Rule 71 of the Federal Rules of Civil Procedure, Citibank, N.A. 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 amount which has not been paid by Defendant;

C. 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: Regional Counsel
 U.S. Commodity Futures Trading Commission
 Division of Enforcement - Eastern Regional Office
 140 Broadway, 19th floor
 New York, New York 10005

Notice to Monitor: Office of Administration
 National Futures Association
 300 South Riverside Plaza, Suite 1800
 Chicago, Illinois 60606

D. Retention of Jurisdiction: This Court shall retain jurisdiction of this case to assure compliance with this Order and for all other purposes related to this action.

*The Clerk of Court
shall close the case.*

So ordered.

*Denise Cole
July 29, 2011*

SO ORDERED, at New York, New York on this ____ day of _____, 2011.

Honorable Denise L. Cote
UNITED STATES DISTRICT JUDGE