

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

RECEIVED

SEP 14 2005

U.S. Commodity Futures Trading Commission,

Plaintiff,

v.

Bernadette Flavell,

Defendant.

05 CIV

MICHAEL W. DOBINS
CLERK, U.S. DISTRICT COURT

COMPLAINT FOR INJUNCTIVE
AND OTHER EQUITABLE
RELIEF AND FOR PENALTIES
UNDER THE COMMODITY
EXCHANGE ACT, AS
AMENDED, 7 U.S.C. §§ 1-25

05C 5263
MAGISTRATE JUDGE KEYS

JUDGE MORAN

I. SUMMARY

1. Defendant Bernadette Flavell ("Defendant") has violated, and continues to violate, an order entered by the U.S. Commodity Futures Trading Commission ("Commission") in settlement of fraud charges.

2. In September 2000, the Commission filed an administrative proceeding against Defendant, among others, alleging that she defrauded clients and prospective clients through material misrepresentations in newspaper advertisements and written promotional materials regarding a commodity futures trading system, in violation of the anti-fraud provisions of the Act and regulations promulgated by the Commission ("Regulations").

3. In July 2002, the Commission issued an order making findings and imposing remedial sanctions ("Order") requiring Defendant and another defendant to pay, jointly and severally, a \$50,000 civil monetary penalty ("CMP") pursuant to a payment plan, among other sanctions and undertakings.

4. Defendant was ordered to pay the CMP pursuant to a ten-year payment plan. In accordance with the payment plan, Defendant is required to provide sworn financial statements on June 30 and December 31 each year so that the amount of CMP owed by Defendant for that

year can be determined. Accordingly, Defendant was responsible for filing six sworn financial statements from the date of the Order until the present. Defendant, however, has filed only three financial statements, and in these three statements, she reported false information in violation of the Order and Section 6c of the Act, 7 U.S.C. §13a-1 (2002).

5. Defendant has engaged in, is engaging in and, unless restrained and enjoined will continue to engage in, acts and practices which constitute violations of the Order and Section 6c of the Act, 7 U.S.C. §13a-1 (2002).

6. Accordingly, the Commission brings this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2002), to enjoin Defendant's unlawful acts and practices and to compel her compliance with the Act and the Order. In addition, the Commission seeks a civil monetary penalty, a trading ban and such equitable relief as this Court may deem necessary or appropriate.

II. JURISDICTION AND VENUE

7. This Court has jurisdiction over this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2002), which provides that whenever it shall appear to the Commission that any 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 promulgated thereunder, the Commission may bring an action in the proper District Court of the United States against such person to enjoin such practice, or to enforce compliance with the Act, or any rule, regulation or order thereunder.

8. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2002), because the acts and practices in violation of the Order have occurred within this District, among other places.

9. Unless restrained and enjoined by this Court, Defendant is likely to engage in the acts and practices alleged in this Complaint or in similar acts and practices, as described more fully below.

III. THE PARTIES

10. Plaintiff Commission is an independent federal regulatory agency that is charged with the administration and enforcement of the Act, 7 U.S.C. §§ 1 *et seq.* (2002), and the regulations promulgated thereunder. The Commission maintains its Eastern Regional Office at 140 Broadway, 19th floor, New York, New York 10005.

11. Defendant Bernadette Flavell's last known residence is 9947 NW 45th Street, Coral Springs, Florida 33065. Defendant, however, has recently represented that she will be residing in the near future at 7667 West Sample Road, #289, Coral Springs, Florida 33065. Defendant's registration as a Commodity Trading Advisor ("CTA") was revoked September 6, 2002, pursuant to the Order.

IV. FACTUAL BACKGROUND

12. On September 6, 2000, the Commission issued a Complaint and Notice of Hearing against Defendant and others. The Complaint charged Defendant with (1) cheating, defrauding and willfully deceiving other persons in connection with futures contracts in violation of Section 4b(a)(i) and (iii) of the Act, 7 U.S.C. § 6b(a)(i) and (iii) (1994); and (2) defrauding and deceiving clients and prospective clients as CTAs in violation of Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (1994), and Section 4.41(a) and (b) of the Regulations, 17 C.F.R. § 4.41(a) and (b) (1999). *In the Matter of Systems of Success. et al.*, CFTC Docket No. 00-27 (Sept. 2000).

13. On July 11, 2002, the Commission accepted Defendant's and Systems of Success's offers of settlement, and issued an Order against Defendant and Systems of Success,

which, among other things, ordered Defendant and Systems of Success, jointly and severally, to pay a CMP of \$50,000, among other sanctions and undertakings. *In the Matter of Systems of Success. et al.*, CFTC Docket No. 00-27 (Sept. 2000).

14. The Order required Defendant to pay the CMP pursuant to a ten-year payment plan, the amount of CMP payable during each year to be based on the amount of Defendant's adjusted gross income plus net cash receipts in that year.

15. Pursuant to the Order, the National Futures Association ("NFA") was appointed as monitor to oversee Defendant's payment plan.

16. Pursuant to the Order, Defendant was required to provide sworn financial statements to the NFA twice a year. Defendant's sworn financial statements for each time-period were required to provide: (1) a true and complete itemization of Defendant's assets; (2) the itemization, description and explanation of all transfers of assets with a value of \$1,000 or more, and (3) a detailed description of the source and amount of all of Defendant's income or earnings however generated for that time period.

17. Pursuant to the Order, the NFA would determine the amount of CMP due that year based upon Defendant's sworn financial statements and other records and so advise Defendant.

18. Defendant was required to file six sworn financial statements with the NFA between the date of the Order and the present. To date, Defendant has filed only three sworn financial statements.

19. Defendant was required to list in each of her sworn financial statements "all cash, bank and money market accounts...held by [her]."

20. At various points after July 11, 2002, the date of the Order, Defendant maintained bank accounts in her own name and was a signatory to bank accounts maintained in the name of various corporate entities.

21. Defendant maintained two accounts at World Savings Bank in her own name that were funded on December 17, 2002 with a total of \$805,000.

22. Defendant also controlled a Citibank account in the name of Big Deal Real Estate Investments, Inc. ("Big Deal"), which was funded between January and March 2003 with deposits totaling \$704,000 from Defendant's two World Savings Bank accounts.

23. Defendant used \$675,000 from the Big Deal Citibank account in April 2003 to open a bank account at Bank of America in the name of In Focus Films, Inc. ("In Focus"), another company Defendant controlled.

24. Defendant appears to have had actual control over the funds contained in another bank account at Bank of America in the name of U.S. Business Alliance, Inc. ("USBAI"). Defendant's two World Savings Banks were credited a total of \$805,000, the source of which was a USBAI check made payable to Defendant individually.

25. Defendant failed to report the existence of these bank accounts controlled by her in any of the sworn financial statements that she provided to the NFA as required by the Consent Order.

26. All of the sworn financial statement also required Defendant to list "all businesses for which [she]...[is] an officer, director or owner."

27. According to Articles of Incorporation for USBAI dated May 2, 2001 and submitted to Bank of America as part of opening bank account documentation on or about June 11, 2001, Defendant is listed as the sole member of the Board of Directors of USBAI.

28. According to an unsigned "Resolution of the Board of Directors" dated April 1, 2003 and submitted to Bank of America as part of opening bank account documentation for In Focus Films on or about April 11, 2003, Defendant is listed as the new President, Secretary and Treasurer and sole signatory for all In Focus corporate bank accounts.

29. Defendant failed to report her interests in these businesses in any of the sworn financial statements that she provided to the NFA as required by the Consent Order.

30. To date, neither Defendant nor Systems of Success has made any payments to satisfy the CMP.

V. VIOLATIONS OF THE COMMODITY EXCHANGE ACT

COUNT ONE

**VIOLATION OF THE JULY 11, 2002 ORDER
AND SECTION 6c OF THE ACT**

31. The allegations contained in paragraphs 1 through 30 are realleged and incorporated herein by reference.

32. Section VI, paragraphs E and F of the Order require Defendant to pay a CMP of \$50,000 pursuant to a ten-year payment plan, in an amount to be determined each year based upon a portion of: 1) the adjusted gross income earned or received by Defendant during the course of the preceding calendar year; plus 2) all other net cash receipts, net cash entitlements or net proceeds of non-cash assets received by Defendant during the course of the preceding calendar year.

33. Section VI, paragraph I, subsection 1, of the Order requires Defendant to provide sworn financial statements to the Monitor on June 30 and December 31 of each calendar year, starting on June 30, 2002 and continuing through and including June 30, 2011. By reason of the conduct described above, Defendant has violated this provision of the Order.

34. Section VI, paragraph I, subsection 1(a), of the Order requires Defendant to provide sworn financial statements containing true and complete itemizations of all of Defendant's rights, title and interest in (or claimed in) any asset, wherever, however, and by whomever held. By virtue of the conduct described above, Defendant has violated this provision of the Order.

35. Section VI, paragraph I, subsection 1(b), of the Order requires Defendant to provide sworn financial statements containing itemizations, descriptions and explanations of all transfers of assets with a value of \$1,000 or more made by or on behalf of Defendant over the preceding six-month intervals. By reason of the conduct described above, Defendant has violated this provision of the Order.

36. In violating the Order, Defendant has thereby violated Section 6c of the Act, 7 U.S.C. § 13a-1 (2002).

37. Each violation of the Order by Defendant constitutes a separate and distinct violation of Section 6c of the Act, U.S.C. § 13a-1 (2002).

VI. RELIEF REQUESTED

WHEREFORE, the Commission respectfully requests that this Court, as authorized by Section 6c of the Act, 7 U.S.C. § 13a-1 (2002), and pursuant to its own equitable powers, enter:

- a) orders of preliminary and permanent injunctions prohibiting Defendant from violating the Commission's Order of July 11, 2002, and from violating Section 6c of the Act, 7 U.S.C. § 13a-1 (2002);

- b) a civil penalty against Defendant in the amount of not more than the higher of \$120,00, or to the extent that any violation took place after October 23, 2004, \$130,000, or triple the monetary gain for each violation of the Act; and
- c) an order prohibiting Defendant from trading on or subject to the rules of any entity registered with the U.S. Commodity Futures Trading Commission; and
- d) such other and further equitable or remedial ancillary relief as the Court may deem appropriate, including costs and attorney's fees.

Dated: September 13, 2005

Respectfully submitted,

ATTORNEYS FOR PLAINTIFF

U.S. COMMODITY FUTURES
TRADING COMMISSION

Stephen J. Obie
Regional Counsel / Associate Director

By: 

Elizabeth C. Brennan [EB-2612]

Senior Trial Attorney

Steven Ringer [SR-9491]

Chief Trial Attorney

U.S. COMMODITY FUTURES
TRADING COMMISSION

140 Broadway, 19th Floor

New York, New York 10005

(646) 746-9747

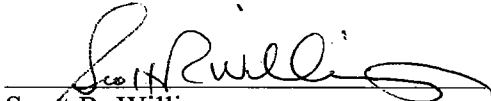
(646) 746-9940 (facsimile)

ebrennan@CFTC.gov

LOCAL COUNSEL:



Rocell Cyrus
Trial Attorney, Division of Enforcement
U.S. COMMODITY FUTURES TRADING COMMISSION
525 W. Monroe Street, Suite 1100
Chicago, IL 60661
(312) 596-0522 direct
(312) 596-0714 fax
rcyrus@cftc.gov
ARDC No. 6244137



Scott R. Williamson
Deputy Regional Counsel, Division of Enforcement
U.S. COMMODITY FUTURES TRADING COMMISSION
525 W. Monroe Street, Suite 1100
Chicago, IL 60661
(312) 596-0560 direct
(312) 596-0714 fax
swilliamson@cftc.gov
ARDC No. 6191293
Member, Trial Bar, N.D.Ill.