

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

RECEIVED
USDC, CLERK, CHARLESTON, SC

2010 APR -5 P 12:10

C.A. 2:08-3297-CWH

**COMMODITY FUTURES TRADING
COMMISSION,**

Plaintiff,

v.

**CSA TRADING GROUP, INC., AND
MICHAEL DERRICK PENINGER,
INDIVIDUALLY AND D/B/A
COOPER RIVER GROUP,**

Defendants,

**AMERICAN MIDDLE SCHOOL
ATHLETIC ASSOCIATION, INC.,
THE BLOOMING VILLAGE
FLORIST, INC., DANIEL ISLAND
BUILDERS, LLC AND
PALMETTO STATE COMMODITIES,**

Relief Defendants.

**ORDER OF FINAL JUDGMENT BY
DEFAULT,
PERMANENT INJUNCTION,
CIVIL PENALTIES AND
OTHER EQUITABLE RELIEF**

On September 29, 2008, the United States Commodity Futures Trading Commission ("Plaintiff" or "Commission"), filed a Complaint against defendants CSA Trading Group, Inc. ("CSA") and Michael Derrick Peninger ("Peninger"), individually and doing business as Cooper River Group, (collectively, "Defendants") and relief defendants American Middle School Athletic Association, Inc. ("AMSAA"), The Blooming Village Florist, Inc. ("Blooming Village"), Daniel Island Builders, LLC ("DIB") and Palmetto State Commodities ("PSC") (collectively, "Relief Defendants").

#1
CWH

The Complaint charged CSA and Peninger with fraudulent solicitation, misrepresentations, false statements, and misappropriation of funds in connection with a commodity pool, as well as with failure to register with the Commission and maintain required records, all in violation of Sections 4b(a)(2)(i)-(iii), 4k(2), 4m(1) and 4o(1)(A) and (B), 4m(1), and 4o(1)(A) and (B) of the Commodity Exchange Act ("Act"), 7 U.S.C. §§ 6b(a)(2)(i)-(iii), 6k(2), 6m(1) and 6o(1)(A) and (B) (2006), and Commission Regulations ("Regulations") 4.20(a) and (b), 4.21(a) and (b), and 4.22, 17 C.F.R. §§ 4.20(a) and (b), 4.21(a) and (b), and 4.22 (2008).

On November 18, 2008, Defendants and relief defendants AMSAA, DIB and PSC were properly served with the Complaint. *See* Docket Entry No. 17. Defendants and relief defendants AMSAA, DIB and PSC failed to appear or answer the Complaint within the time permitted by Fed. R. Civ. P. 12(a)(1). Accordingly, on May 19, 2009, the Clerk of this Court entered a default as to CSA, Peninger, AMSAA, DIB and PSC.

The Court has carefully considered the Complaint, the allegations of which are well-pleaded and hereby taken as true, and other submissions of the Commission filed with the Court, and, being fully advised, hereby enters findings of fact, conclusions of law, a permanent injunction, restitution, a civil monetary penalty and ancillary equitable relief pursuant to Sections 6c and 6d of the Act, 7 U.S.C. § 13a-1 (2006), as set forth herein.

#2
CLOA.

I. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. FINDINGS OF FACT

a. The Parties

1. Plaintiff Commodity Futures Trading Commission is an independent federal regulatory agency of the United States empowered by Congress to enforce the provisions of the Act, 7 U.S.C. §§ 1 *et seq.*, and the Regulations, 17 C.F.R. §§ 1.1. *et seq.* The Commission maintains its principal office at Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581.

2. Defendant CSA Trading Group, Inc., formerly known as CSA Group, Inc., is a South Carolina corporation formed in May 2003 that purports to trade commodity futures. The name change from CSA Group, Inc. to CSA took place in June 2004. Neither CSA Group, Inc. nor CSA has ever been registered with the Commission.

3. Defendant Michael Derrick Peninger is a resident South Carolina and at times did business as Cooper River Group. He served as president of CSA and Cooper River Group. From July 1989 through January 1993, Peninger was registered with the Commission as an associated person ("AP") of then registered futures commission merchant ("FCM") Dean Witter Reynolds, Inc. (currently Morgan Stanley DW, Inc.). From February through October 1996, Peninger was registered as an AP of Program Traders, Inc., which had been registered as an Introducing Broker ("IB"). From October 1996 through November 2002, Peninger did business as registered IB Palmetto State Commodities, and was registered as an AP with that firm. Peninger ceased to be registered in any capacity as of November 24, 2002. Peninger was never registered in any capacity relating to either Cooper River Group or CSA.

#3
CSA

4. Relief defendant American Middle School Athletic Association, Inc. is a South Carolina corporation formed in 2004 for the purpose of sponsoring basketball tournaments. Peninger served as the registered agent of AMSAA. Peninger was a shareholder of AMSAA, which operated from the same office as CSA and Cooper River Group.

5. Relief defendant The Blooming Village Florist, Inc. is a South Carolina corporation formed in 2003 for the purpose of operating flower shops. Peninger served as the registered agent of Blooming Village. Teresa Ann Dodds and Peninger served as president and vice president, respectively, of Blooming Village.

6. Relief defendant Daniel Island Builders LLC is a South Carolina corporation formed in 2005 for the purpose of purchasing, selling and developing real estate. Peninger served as president of DIB.

7. Relief defendant Palmetto State Commodities, Inc. was a corporation formed in South Carolina in 1995. Peninger served as the registered agent and vice-president of PSC. Although the corporation was dissolved in 1997, Peninger continued to do business as PSC. Peninger, doing business as registered IB PSC, was registered as an AP of that firm from 1996 to 2002.

b. Peninger's Formation and Operation of Cooper River Group and CSA

8. Commencing in at least October 2002, Peninger, with the assistance of another individual, Billy Calvin Lee ("Lee"), began doing business as Cooper River Group for the purported purpose of operating commodity pools that were to trade commodity futures or to otherwise engage in commodity futures trading on behalf of others. Peninger was the president of Cooper River Group.

9. In the fall of 2002, Peninger hired Michael Ledoyen III ("Ledoyen") as a trader.

#4
CSA

10. In May 2003, Peninger formed and incorporated CSA with Lee and Ledoyen, also for the purported purpose of operating commodity pools that were to trade commodity futures or to otherwise engage in commodity futures trading on behalf of others. Peninger was the president of CSA.

11. As president of CSA and Cooper River Group, Peninger controlled both entities' day-to-day operations, including, but not limited to: directing and approving the solicitations of prospective participants, hiring and firing of new employees, and directing and supervising the activities of Lee and Ledoyen, including the handling of pool participants' funds.

12. Peninger, doing business as Cooper River Group, and CSA directly and through others, including Lee and Ledoyen, solicited individuals to trade commodity futures and participate in commodity pools that were to trade commodity futures.

13. By soliciting or supervising the soliciting of funds for participation in a commodity pool, Peninger acted as an AP of CSA and Cooper River Group.

14. Defendants never organized pools for trading commodity futures as separate legal entities from CSA or Cooper River Group.

15. From at least October 2002, Peninger, doing business as Cooper River Group, directly and through others, solicited individuals to participate in a commodity pool for the purpose of trading commodity futures.

16. Beginning in 2003, CSA, through Peninger and others, solicited individuals to participate in a commodity pool for the purpose of trading futures contracts.

17. In most instances, CSA and Peninger, doing business as Cooper River Group, issued letters to participants that stated "[p]lease accept this letter agreement from our firm regarding

#5
Cliff

your desire to participate with us in the trading of futures contracts” for a period of typically 12 to 36 months.

18. Under these letter agreements, CSA or Cooper River Group promised to repay funds placed by participants and guaranteed “interest” of at least 1% per month.

19. Some of the letter agreements also promised additional payments based on trading performance.

20. During the relevant period, Defendants solicited in excess of \$1 million from at least 20 individuals.

c. Defendants Fraudulently Solicited Individuals

21. To induce participation, Peninger described himself as a successful trader and touted the performance of a trading system he purportedly developed to trade commodity futures, including Treasury note futures contracts and the S&P 500 futures contracts. Peninger characterized his trading results in glowing terms. Lee and Ledoyen repeated these claims to others solicited to place funds with CSA or Cooper River Group.

22. Defendants, directly and through others, falsely told prospective participants that their funds would be pooled with the funds of others for purposes of trading commodity futures.

23. Defendants, directly and through others, guaranteed profitable returns, claimed that any trading losses would be guaranteed by trust funds held by Peninger, and represented that Peninger’s trading system virtually eliminated the risks associated with commodity futures trading. Lee and Ledoyen repeated these claims to others solicited to place funds with CSA or Cooper River Group.

24. Defendants, directly and through others, failed to disclose the risks of trading commodity futures.

#6
ADH,

25. Thus, Defendants made material misrepresentations and omissions about the operation and performance of the pools.

26. Defendants knew or were reckless in not knowing that these representations and omissions were false or misleading.

27. Defendants routinely failed to provide participants with required disclosure documents. Defendants also failed to receive signed acknowledgements from prospective participants that they had received required disclosure documents for the respective pools prior to accepting or receiving funds from the prospective participants.

28. Defendants failed to provide required, regular written account statements and did not provide required annual reports concerning the performance of the pools. Instead, Peninger, directly and through others, routinely provided oral assurances that trading was going well and, on occasion, provided cursory account statements that did not provide the information required by the Regulations and reflected profitable returns.

d. Defendants Misappropriated Nearly All of the Participants' Funds

29. The vast majority of pool participants' funds placed with CSA and/or Cooper River Group was never used for trading commodity futures.

30. Defendants opened only one commodity futures trading account in the name of CSA at a registered FCM. That trading account was opened as a corporate proprietary account, not a pool account, and funded with only \$10,000, most of which was lost in trading during the period October 2005 through February 2006.

31. Defendants never opened a commodity futures trading account in the name of Cooper River Group or in the name of any commodity pools managed by Cooper River Group, Peninger or CSA.

#7
CSA

32. Instead of trading commodity futures on behalf of the purported pools and the participants, Defendants misappropriated participants' funds to pay for personal expenses, to pay off other participants, and to fund various other business ventures.

33. Relief defendants, AMSAA, DIB and PSC, each received pool participants' funds. The Relief Defendants provided no legitimate services to the purported pools, CSA or Cooper River Group and otherwise have no legitimate entitlement to the pool participants' funds.

34. Defendants commingled pool participants' funds with funds from the Relief defendants AMSAA, DIB and PSC.

B. CONCLUSIONS OF LAW

a. Jurisdiction and Venue

1. This Court has jurisdiction over this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2006), 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 there under, the Commission may bring an action against such person to enjoin such practice or to enforce compliance with the Act.

2. This Court has personal jurisdiction over the Defendants and Relief Defendants, who acknowledge service of the Summons and Complaint and consent to the Court's jurisdiction over them.

3. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2006), in that Defendants are found in, inhabit, or transact business in this District, and/or the acts and practices in violation of the Act and Regulations have occurred, are occurring, or are about to occur within this District.

#8
cc: [signature]

b. Defendants Violated Sections 4b(a)(2)(i)-(iii) of the Act by Fraudulently Soliciting Participants and Misappropriating Funds

4. Section 4b(a)(2) of the Act, 7 U.S.C. § 6b(a)(2) (2006), made 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 for future delivery, made, or to be made, for or on behalf of any other person 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, or (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—(i) to cheat or defraud or attempt to cheat or defraud such other person; (ii) willfully to make or cause to be made to such other person any false report or statement thereof, or willfully enter or cause to be entered for such person any false record thereof; (iii) willfully to deceive or attempt to deceive such other person by any means whatsoever in regard to any such order or contract or disposition or execution of any such order or contract, or in regard to any act of agency performed with respect to such order or contract for such person.

5. Defendants, directly and through others, in or in connection with the orders to make, or the making of, contracts of sale of commodities for future delivery, made or to be made, for or on behalf of any other persons, where such contracts for future delivery were or could be used for the purposes set forth in Section 4b(a)(2) of the Act, 7 U.S.C. § 6b(a)(2) (2006), have cheated or defrauded or attempted to cheat or defraud pool participants or prospective pool participants, and willfully deceived or attempted to deceive pool participants or prospective pool participants by, among other things, knowingly (1) making fraudulent representations concerning Peninger's trading performance, (2) falsely claiming that Peninger's trading system eliminated the risks of trading commodity futures and otherwise failing to disclose those risks, (3) guaranteeing profits and interest in connection with commodity futures trading, (4) issuing false periodic statements to pool participants, (5) making fraudulent representations that participants' funds would be invested in commodity futures when such funds

#9
CASH,

were not for the most part, in fact, invested in commodity futures and instead were misappropriated by Defendants, (6) failing to disclose the risks of trading commodity futures, and (7) misappropriating pool participants' funds, all in violation of Sections 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i) and (iii) (2006).

6. Further, Defendants violated Section 4b(a)(2)(ii) of the Act, 7 U.S.C. § 6b(a)(2)(ii) (2006), by issuing false periodic statements to various pool participants.

7. Peninger controlled CSA and Cooper River Group, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, CSA's and Cooper River Groups' acts in violation of Sections 4b(a)(2)(i)-(iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i)-(iii) (2006). Therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006), Peninger is liable for CSA's and Cooper River Group's violations.

8. The foregoing acts, misrepresentations, omissions, misappropriations and failures of Peninger and others occurred within the scope of their employment, office or agency with CSA or with Peninger, doing business as Cooper River Group; therefore, CSA and Peninger, doing business as Cooper River Group, are liable for these acts in violation of Sections 4b(a)(2)(i)-(iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i)-(iii) (2006), 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 (2009).

c. Defendants Violated Sections 40(1)(A) and (B) of the Act by Fraudulently Soliciting Participants and Misappropriating Funds

9. As defined in Section 1a(5) of the Act 7 U.S.C. § 1a(5) (2006), a CPO is

any person engaged in a business that is of the nature of an investment trust, syndicate, or similar form of enterprise, and who, in connection therewith, solicits, accepts, or receives from others, funds, securities, or property . . . for the purpose of trading in any commodity for future delivery on or subject to the rules of any contract market or derivatives transaction execution facility.

#10
C. Allen

10. As defined in Regulation 1.3(aa)(3), 17 C.F.R. § 1.3(aa)(3) (2009), an AP of a Commodity Pool Operator (“CPO”) is a natural person who is associated with a CPO

as a partner, officer, employee, consultant, or agent (or any natural person occupying a similar status or performing similar functions), in any capacity which involves (i) the solicitation of funds, securities, or property for a participation in a commodity pool or (ii) the supervision of any person or persons so engaged; ...

11. Section 40(1) of the Act, 7 U.S.C. § 60(1) (2006), prohibits CPOs and APs of CPOs from using the mails or any other means of interstate commerce to:

(A) employ any device, scheme, or artifice to defraud any client or participant or prospective client or participant; or

(B) engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or participant or prospective client or participant.

12. Since at least October 2002, CSA and Peninger, doing business as Cooper River Group, while acting as unregistered CPOs, and Peninger, Lee and Ledoyen, while acting as unregistered APs of a CPO, solicited, accepted or received funds from others and engaged in a business that is of the nature of an investment trust, syndicate, or similar form of enterprise, for the purpose of trading in commodity futures.

13. Defendants, directly and through Lee, Ledoyen and others, employed a device, scheme or artifice to defraud pool participants and prospective pool participants or engaged in a transaction, practice or course of business knowingly or which operated as a fraud or deceit upon pool participants and prospective pool participants in violation of Sections 40(1)(A) and (B) of the Act, 7 U.S.C. §§ 60(1)(A) and (B) (2006), by: (1) making fraudulent representations concerning Peninger’s trading performance, (2) falsely claiming that Peninger’s trading system eliminated the risks of trading commodity futures and otherwise failing to disclose those risks,

(3) guaranteeing profits and interest in connection with commodity futures trading, (4) issuing false periodic statements to pool participants, (5) making fraudulent representations that participants' funds would be invested in commodity futures when such funds were not, in fact, invested in commodity futures and instead were misappropriated by Defendants, (6) failing to disclose the risks of trading commodity futures, and (7) misappropriating pool participants' funds.

14. Peninger controlled CSA and Cooper River Group, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, CSA's and Cooper River's conduct in violation of Sections 4o(1)(A) and (B) of the Act, 7 U.S.C. §§ 6o(1)(A) and (B) (2006). Therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006), Peninger is liable for CSA's and Cooper River's violations of.

15. The foregoing acts, misrepresentations, omissions, misappropriations and failures of Peninger and others occurred within the scope of their employment, office or agency with CSA and Peninger, doing business as Cooper River Group; therefore, CSA and Peninger, doing business as, Cooper River Group are liable for these acts in violation of Sections 4o(1)(A) and (B) of the Act, 7 U.S.C. §§ 6o(1)(A) and (B) (2006), 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 (2009).

d. Defendants Violated Sections 4m(1) of the Act by Failing to Register as Commodity Pool Operators

16. Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2006), provides that it is unlawful for any CPO, unless registered under the Act, to make use of the mails or any means or instrumentality of interstate commerce in connection with his business as a CPO.

17. Since at least October 2002, Peninger, doing business as Cooper River Group, used the mails or instrumentalities of interstate commerce in or in connection with his business

#12
Cloth

as a CPO while failing to register as a CPO, in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2006).

18. Beginning in 2003, CSA used the mails or instrumentalities of interstate commerce in or in connection with its business as a CPO while failing to register as a CPO, in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2006).

19. Neither CSA nor Peninger, doing business as Cooper River Group, qualified for a registration exemption under either the Act or Regulations.

20. Peninger controlled CSA, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, CSA's conduct in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2006). Therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006), Peninger is liable for CSA's violations.

21. The foregoing conduct of Peninger occurred within the scope of his employment, office or agency with CSA, therefore CSA is liable for these acts of Peninger in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2006), 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 (2009).

e. Defendants Violated Sections 4k(2) of the Act by Failing to Register as Associated Persons of a Commodity Pool Operator

22. Section 4k(2) of the Act, 7 U.S.C. § 6k(2) (2006), states that it is:

unlawful for any person to be associated with a [CPO] as a partner, officer, employee, consultant or agent . . . in any capacity that involves (i) the solicitation of funds, securities or property for participation in a commodity pool or (ii) the supervision of any person or persons so engaged, unless such person is registered with the Commission . . . as an associated person of such [CPO] It shall be unlawful for a [CPO] to permit such a person to become or remain associated with the [CPO] in any such capacity if the [CPO] knew or should have known that such person was not so registered . . .

#13
COW

23. Since at least October 2002, Peninger and others were associated with a CPO, Peninger doing business as Cooper River Group, and involved in the solicitation of funds for participation in pools while failing to register as an AP of the CPO, in violation of Section 4k(2) of the Act, 7 U.S.C. § 6k(2) (2006).

24. Since May 2003, Peninger and others were associated with a CPO, CSA, and involved in the solicitation of funds for participation in pools while failing to register as an AP of the CPO, in violation of Section 4k(2) of the Act, 7 U.S.C. § 6k(2) (2006).

25. CSA and Peninger, doing business as Cooper River Group, permitted Peninger and others to become and remain associated with CSA and Peninger, doing business as Cooper River Group, and knew, or should have known, that Peninger and others, were not registered as APs of CSA and Peninger, doing business as Cooper River Group, in violation of Section 4k(2) of the Act, 7 U.S.C. § 6k(2) (2006).

26. Peninger controlled CSA, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, CSA's conduct in violation of Section 4k(2) of the Act, 7 U.S.C. § 6k(2) (2006). Therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006), Peninger is liable for CSA's violations.

f. Defendants Violated Commission Regulations 4.20(a) and (b) by Failing to Treat the Pools as Separate Entities and Receive Funds in Their Names

27. Regulation 4.20(a), 17 C.F.R. § 4.20(a) (2009), requires a CPO to operate its pool as an entity cognizable as a legal entity separate from that of the pool. Regulation 4.20(b), 17 C.F.R. § 4.20(b) (2009), requires a CPO to receive all funds from pool participants in the pool's name.

#14
CLOH

28. CSA and Peninger, doing business as Cooper River Group, never established separate legal entities or accounts in the name of the pools, in violation of Regulation 4.20(a), 17 C.F.R. § 4.20(a) (2009).

29. CSA and Peninger, doing business as Cooper River Group, received pool participants' money in their own names, rather than in the names of the pools, in violation of Regulation 4.20(b), 17 C.F.R. § 4.20(b) (2009).

30. Peninger controlled CSA, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, CSA's in violation of Regulation 4.20(a) and (b), 17 C.F.R. § 4.20(a) and (b) (2009). Therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006), Peninger is liable for CSA's violation.

g. Defendants Violated Commission Regulations 4.21(a) and (b) by Failing to Comply With Disclosure Requirements

31. Regulation 4.21(a), 17 C.F.R. § 4.21(a) (2009), provides that "each commodity pool operator registered or required to be registered under the Act must deliver or cause to be delivered to a prospective participant in a pool that it operates or intends to operate a Disclosure Document for the pool prepared in accordance with §§4.24 and 4.25" of the Regulations.

32. Regulation 4.21(b), 17 C.F.R. § 4.21(b) (2009), provides, in relevant part, that a CPO may not accept or receive funds from a prospective pool participant unless the CPO "first receives from the prospective participant an acknowledgment signed and dated by the prospective participant stating that the prospective participant received a Disclosure Document for the pool."

33. CSA and Peninger, doing business as Cooper River Group, failed to provide to prospective pool participants a pool disclosure document prepared in accordance with Regulations 4.24 and 4.25 in violation of Regulation 4.21(a), 17 C.F.R. § 4.21(a) (2009).

#15
COH

34. Peninger controlled CSA, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, CSA's violation of Regulation 4.21, 17 C.F.R. § 4.21 (2009). Therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006), Peninger is liable for CSA's violation.

h. Defendants Violated Commission Regulation 4.22 by Failing to Comply With Requirements for Reporting to Pool Participants

35. Regulation 4.22, 17 C.F.R. § 4.22 (2009), provides that a CPO registered or required to be registered under the Act must periodically distribute to each pool participant an "Account Statement" containing the information required by the Regulation.

36. CSA and Peninger, doing business as Cooper River Group, failed to provide account statements to pool participants in the required form and at the specified intervals in violation of Regulation 4.22, 17 C.F.R. § 4.22 (2009).

37. Peninger controlled CSA, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, CSA's conduct in violation of Regulation 4.22, 17 C.F.R. § 4.22 (2009). Therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006), Peninger is liable for CSA's violation.

i. Disgorgement of Funds from Relief Defendants AMSAA, DIB and PSC

38. Defendants, directly and indirectly, have engaged in a fraudulent scheme that defrauded CSA and Cooper River Group pool participants.

39. Relief defendants AMSAA, DIB and PSC each have received funds that were obtained as a result of the Defendants' fraudulent conduct. However, the amount of funds ASMAA received from CSA and/or Cooper River is less than the amount of funds AMSAA transferred to CSA and/or Cooper River.

40. Relief defendants DIB and PSC have no legitimate entitlement to or interest in the

#16
C.R.G.

funds received from the Defendants' fraudulent conduct.

41. By reason of the foregoing, relief defendants DIB and PSC hold funds in constructive trust for the benefit of Defendants' pool participants who were victimized by Defendants' fraudulent scheme.

42. Relief defendants DIB and PSC should be required to disgorge the funds they received from the Defendants' fraudulent conduct, or the value of those funds that the relief defendants may have subsequently transferred to third parties.

j. Availability of Relief

43. Section 6c(d)(1) of the Act, 7 U.S.C. § 13a-1 (2006), and Regulation 143.8, 17 C.F.R. § 143.8 (2009), further provide that the Commission may seek, and a district court of the United States shall have jurisdiction to impose, a civil monetary penalty for violations of the Act and Regulations in the amount of not more than the greater of i) triple the monetary gain to the person for each violation, or ii) \$110,000 for violations committed between November 27, 1996 and October 22, 2000, \$120,000 for violations committed between October 23, 2000 and October 22, 2004, \$130,000 for violations committed between October 22, 2004, and/or \$140,000 for violations committed on or after October 23, 2008.

44. Permanent injunctive relief is warranted in light of the egregious nature and scope of Defendants' fraudulent conduct and their high level of scienter. These facts demonstrate a reasonable likelihood of future violations.

45. Imposition of a substantial civil monetary penalty is appropriate in this case because Defendants' violations of the Act and Regulations were egregious and their customer fraud is a violation that goes to the core provisions of the Act.

#17
COH,

II. ORDER FOR EQUITABLE RELIEF

A. PERMANENT INJUNCTION

IT IS HEREBY ORDERED that:

1. Defendants, in or in connection with any order to make, or the making of, any contract of sale for any commodity:

- A. 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 person, or
- B. for any person for future delivery, or other agreement, contract, or transaction subject to paragraphs (1) and (2) of Section 5a(g) of the Act, that is made, or to be made, for or on behalf of, or with, any other person, other than on or subject to the rules of a designated contract market,

are permanently restrained, enjoined and prohibited from directly or indirectly: cheating or defrauding or attempting to cheat or defraud the other person; and/or willfully deceiving or attempting to deceive the 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 or, in the case of subparagraph (B) above, with the other person in violation of Section 4b(a) of 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")), § 13102, 122 Stat. 1651 (to be codified at 7 U.S.C. § 6b(a)).

2.

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

- A. while acting as a CPO, using the mails or other means or instrumentalities of interstate commerce, to employ a device, scheme or artifice to defraud any clients or participants, or prospective clients or participants or engage in a transaction, practice or course of business which operates as a fraud or deceit upon any clients or participants or prospective clients or

#18
COH,

participants, in violation of Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (2006).

- B. using the mails or instrumentalities of interstate commerce in or in connection with its business as a CPO while failing to register with the Commission as a CPO, in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2006).
- C. while acting as a CPO, (1) failing to operate the pool as a separate legal entity from the CPO, and (2) accepting pool participant funds not in the name of the pool, in violation of Regulations 4.20(a)(1), (b) and (c), 17 C.F.R. §§ 4.20 (a)(1), (b) and (c) (2009).
- D. while acting as a CPO, failing to furnish Disclosure Documents to pool participants and/or accepting or receiving funds from a prospective pool participant prior to receiving a signed and dated acknowledgment from the prospective pool participant that stating that the prospective pool participant received a Disclosure Document for the pool, in violation of Regulations 4.21(a)(1) and (b), 17 C.F.R. §§ 4.21(a)(1) and (b) (2009).
- E. while acting as a CPO, failing to furnish monthly account statements to pool participants, in violation of Regulation 4.22, 17 C.F.R. § 4.22 (2009).

3. Defendants are permanently restrained, enjoined and prohibited from engaging,

directly or indirectly, in:

- A. trading on or subject to the rules of any registered entity (as that term is defined in Section 1a(29) of the Act, 7 U.S.C. § 1a(29) (2006));
- 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) (2009)) (“commodity options”), and/or foreign currency (as described in Sections 2(c)(2)(B) and/or 2(c)(2)(C)(i) of the Act as amended by the CRA, to be codified in 7 U.S.C. §§ 2(c)(2)(B) and/or 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, 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, and/or forex contracts;

#19
Client

- 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, and/or forex contracts;
- F. applying for registration or claiming exemption from registration with the CFTC 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) (2009); and
- G. acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2009)), 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) (2009).

4. The injunctive provisions of this Order shall be binding on Defendants, upon any person insofar as he or she is acting in the capacity of officer, agent, servant, employee or attorney of Defendants, and upon any person who receives actual notice of this Order by personal service, facsimile or otherwise, insofar as he or she is acting in active concert or participation with Defendants.

B. RESTITUTION

IT IS FURTHER ORDERED that:

1. Defendants shall pay, jointly and severally, restitution in the amount of \$1,548,377.08, plus post-judgment interest ("Restitution Obligation"), subject to the provisions of paragraph C.1, below.

2. Post judgment interest on the Restitution Obligation shall accrue commencing on the date of the entry of this Order and shall be determined using the Treasury Bill rate prevailing on the date of the entry of this Order pursuant to 28 U.S.C. § 1961.

#20
CWA,

C. DISGORGEMENT

IT IS FURTHER ORDERED that:

1. Relief Defendants DIB and PSC shall each disgorge funds in the amounts of \$13,323.55 and \$31,547.62, respectively, plus post-judgment interest (“Disgorgement Obligations”). Any funds received in satisfaction of the Disgorgement Obligations shall offset the Restitution Obligation by an equivalent amount.

2. Post judgment interest on the Disgorgement Obligations shall accrue commencing on the date of the entry of this Order and shall be determined using the Treasury Bill rate prevailing on the date of the entry of this Order pursuant to 28 U.S.C. § 1961.

D. CIVIL MONETARY PENALTY

IT IS FURTHER ORDERED that:

1. Defendants shall pay, jointly and severally, a civil monetary penalty in the amount of \$2,400,000, plus post-judgment interest (“CMP Obligation”).

2. Post judgment interest on the CMP Obligation shall accrue commencing on the date of the entry of this Order and shall be determined using the Treasury Bill rate prevailing on the date of the entry of this Order pursuant to 28 U.S.C. § 1961.

3. Defendants shall pay their CMP Obligation by electronic funds transfer, or U.S. postal money order, certified check, bank cashier’s check, or bank money order. If payment is to be made by other than electronic funds transfer, Defendants shall make payment payable to the Commodity Futures Trading Commission and deliver it the following address:

#21
Cody

Commodity Futures Trading Commission
Division of Enforcement
Attention: Marie Bateman – AMZ-300
DOT/FAA/MMAC
6500 South MacArthur Boulevard
Oklahoma City, OK 73169
Telephone: 405.954.6569

4. If payment is to be made by electronic funds transfer, Defendants shall contact Marie Bateman or her successor at the above address to receive payment instructions and shall comply fully with those instructions. Defendants shall accompany the payment of the penalty with a cover letter that identifies the paying Defendant and the name and docket number of the proceeding. Defendants shall simultaneously transmit copies of the cover letter and the form of payment to: (a) Director, Division of Enforcement, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington, D.C. 20581; and (b) Chief, Office of Cooperative Enforcement, at the same address.

E. MATTERS RELATED TO MONETARY PENALTIES

1. All Payments by Defendants pursuant to this Order shall first be applied to satisfaction of the Restitution Obligation consistent with the authority granted the Monitor above. After satisfaction of the Restitution Obligation, payments by Defendants pursuant to this Order shall be applied to satisfy Defendants' CMP Obligation.

2. Any acceptance by the Commission or the Monitor of partial payment from Defendants of their Restitution Obligation and/or CMP Obligation or from Relief Defendants of their Disgorgement Obligations shall not be deemed a waiver of Defendants' and/or Relief Defendants' obligations to make further payments pursuant to this Order, or a waiver of the Commission's and/or Monitor's right to seek to compel payment from Defendants and/or Relief Defendants of any remaining balance.

#22
CWH,

3. Appointment of Monitor: To effect payment by Defendants and Relief Defendants and the distribution of restitution and disgorged funds, the Court appoints the National Futures Association ("NFA") as Monitor. The Monitor shall collect restitution payments from Defendants and disgorgement payments from Relief Defendants 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, it shall not be liable for any action or inaction arising from its appointment as Monitor, other than actions involving fraud.

4. Defendants and Relief Defendants shall make their required restitution and disgorgement payments under this Order in the name of the "CSA Settlement Fund" and shall send such payments by electronic funds transfer, or U.S. postal money order, certified check, bank cashier's check, or bank money order to the Office of Administration, National Futures Association, 300 South Riverside Plaza, Suite 1800, Chicago, Illinois 60606, under a cover letter that identifies the paying Defendant or Relief Defendant and the name and docket number of the proceeding. The paying Defendant or Relief Defendant shall simultaneously transmit copies of the cover letter and the form of payment to: (a) Director, Division of Enforcement, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington, D.C. 20581; and (b) Chief, Office of Cooperative Enforcement, at the same address.

5. The Monitor shall oversee Defendants' Restitution Obligation and Relief Defendants' Disgorgement Obligations, and shall have the discretion to determine the manner of distribution of funds in an equitable fashion to participants or may defer distribution until such time as it may deem appropriate. In the event the amount of restitution payments and/or disgorgement payments to the Monitor are of a de minimus nature such that the Monitor

#23
COH

determines that the cost of making a distribution to participants is impractical, the Monitor may, in its discretion, treat such restitution and/or disgorgement payments as civil monetary penalty payments, which the Monitor shall forward to the Commission following the instructions for civil monetary penalties as set forth in Section II.D, above.

6. Defendants and Relief Defendants shall execute any documents necessary to release funds that they have in any repository, bank, investment or other financial institution wherever located, in order to make partial or total payment toward their respective Restitution Obligation and Disgorgement Obligations.

7. To the extent that funds accrue to the U.S. Treasury as a result of the Restitution Obligation and/or Disgorgement Obligations, such funds shall be transferred to the Monitor for disbursement in accordance with the procedures set forth in paragraph 5 of this Section.

8. Pursuant to Fed. R. Civ. P. 71, pool participants are explicitly made intended third-party beneficiaries of this Order and may seek to enforce obedience with this Order to obtain satisfaction of any portion of the restitution and/or disgorgement that Defendants and/or Relief Defendants have not paid.

F. MISCELLANEOUS PROVISIONS

IT IS FURTHER ORDERED THAT:

1. Prohibition on Transfer of Funds: Defendants 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 Plaintiff or any officer that may be appointed by the Court.

2. Notices: All notices required to be given by any provision in this Order shall be sent by certified mail, return receipt requested, as follows:

#24
COB

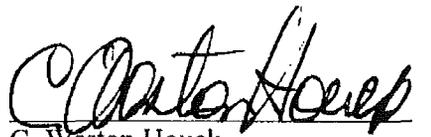
Notice to Commission: James A. Garcia
Commodity Futures Trading Commission
1155 21st Street, NW
Washington, DC 20581

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

3. Invalidation: If any provision of this Order or the application of any provision or circumstance is held invalid, the remainder of this Order, and the application of the provision to any other person or circumstance, shall not be affected by the holding.

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

SO ORDERED, at Charleston South Carolina on this 1st day of April 2010.


C. Weston Houck
Senior United States District Judge

#25
CWH