

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

**COMMODITY FUTURES
TRADING COMMISSION,**

Plaintiff,

v.

RICO OMAR COX,

Defendant.

Case No: 0:22-CV-61024-RS

ORDER GRANTING MOTION FOR FINAL JUDGMENT UPON DEFAULT

This matter is before the Court on Plaintiff's Unopposed Motion for Final Judgment Upon Default, and Application for a Permanent Injunction, Civil Monetary Penalties, and Other Statutory and Equitable Relief Against Defendant Rico Omar Cox [DE 35] (the "Motion"). For the reasons stated herein, Plaintiff's Motion is granted.

On May 31, 2022, the Commodity Futures Trading Commission ("Commission" or "Plaintiff") filed a Complaint [DE 1] charging Defendant Rico Omar Cox ("Cox" or "Defendant") with violating Sections 4b(a)(1)(A)-(C), 4o(1)(A)-(B), and 4m(1) of the Commodity Exchange Act ("Act"), 7 U.S.C. §§ 6b(1)(A)-(C), 6o(1)(A)-(B), and 6m(1) (2012).

On June 9, 2022, Defendant Cox was properly served with the summons and Complaint pursuant to Rule 4e(2)(A) of the Federal Rules of Civil Procedure by personal service [DE 12]. On June 28, 2022, Defendant Cox filed an Answer and Affirmative Defenses to the Complaint [DE 6]. Plaintiff CFTC filed a Motion to Strike Defendant's Answer and Affirmative Defenses, [DE 13], which motion was granted on December 6, 2022 [DE 23]. The December 6, 2022 Order also required the Defendant to file a compliant Answer to Plaintiff's Complaint on or before December 30, 2022. (*See* DE 23.) That Order was mailed to the *pro se* Defendant by the Court's

Clerk and, on December 8, 2022, the CFTC told Cox about the Order and the filing deadline for his Answer. (*See* DE 27-2 ¶ 4.) Defendant Cox has failed to appear or answer the Complaint within the time permitted by the Court’s December 6, 2022 Order. Accordingly, the Commission filed a motion for entry of a clerk’s default against Defendant Cox on January 9, 2023 [DE 27] and, on January 9, 2023, the Clerk of this Court entered a default against Defendant Cox [DE 30].

The Commission has moved this Court to grant final judgment by default against Defendant Cox, order permanent injunctive relief, permanent trading and registration bans and impose a restitution obligation, disgorgement obligation and civil monetary penalty.

The Court enters findings of fact, conclusions of law, and an Order of Final Judgment by Default for Permanent Injunction, Civil Monetary Penalties, and Other Statutory and Equitable Relief (“Order”) pursuant to Sections 6c and 6d of the Act, 7 U.S.C. § 13a-1 (2012), as set forth herein.

A. FINDINGS OF FACT

The Parties

1. **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. §§ 1–26 (2012), and the Regulations promulgated thereunder, 17 C.F.R. pts. 1–190 (2018).

2. **Defendant Rico Cox** resides in Fort Lauderdale, Florida. On June 1, 2016, the United States District Court for the Southern District of Florida entered a final judgment by default against Cox. *See CFTC v. Cox*, No. 16-60226-civ-WJZ (S.D. Fla. June 1, 2016), DE 13 (“2016 Order”), requiring restitution of \$381,000 and imposing a \$560,000 civil monetary penalty against Cox for defrauding his customers in connection with a scheme almost identical to the one alleged here (the primary difference being that in the first case Cox lost the bulk of participant funds trading, whereas in the instant case Cox misappropriated a significant amount of the pool participants’

funds for direct personal benefit). The 2016 Order permanently enjoined Cox from further violations of the Commodity Exchange Act (“CEA”), 7 U.S.C. §§ 1-26, as charged, and imposed permanent trading and registration bans on him. In April 2013, Cox was convicted of third-degree felony fraud and acting as an unlicensed mortgage broker in Broward County, Florida and was sentenced to five years’ probation. *See Florida v. Cox*, Case No. 12016762CF10A (Fla. Broward Cty. Ct., Apr. 18, 2013). Later the same month, Cox was separately convicted of: (a) a felony scheme to defraud and operating as a broker/sales associate without a license; and (b) felony grand theft and operating as a broker/sales associate without a license, in Palm Beach County, Florida, and was sentenced to thirty days’ imprisonment and five years’ probation. *See Florida v. Cox*, Case Nos. 2012CF005665AXXX and 2013CF001453AXXX (Fla. Palm Beach Cty. Ct., Apr. 30, 2013). Cox has never been registered with the Commission in any capacity.

Other Relevant Entity

3. **Smart Edge Investments LLC** (“Smart Edge”) was a Florida limited liability company with its business address in Ft. Lauderdale, Florida. Smart Edge’s articles of organization were filed with the State of Florida on March 7, 2016. According to documents on file with the State of Florida, Division of Corporations, Smart Edge’s registered agent and manager is Cox’s wife, Jennifer Cox. According to records of the State of Florida, the last annual report filed for Smart Edge was on March 12, 2020. Smart Edge is currently an inactive company, and administratively dissolved. Pool Participant funds were deposited into bank accounts in the name of Smart Edge. Smart Edge has never been registered with the Commission in any capacity.

Statutory Background

4. A commodity pool is defined in Section 1(a)(10) of the Act, 7 U.S.C. § 1(a)(10), in relevant part, as any investment trust, syndicate, or similar form of enterprise operated for the purpose of trading in commodity interests.

5. A Commodity Pool Operator (“CPO”) is defined in relevant parts of Section 1a(11) of the Act, 7 U.S.C. § 1a(11)(A)(i), and Regulation 1.3, 17 C.F.R. § 1.3 (2021), as any person engaged in a business that is of the nature of a commodity pool, investment trust, syndicate, or similar form of enterprise, and who, in connection therewith, solicits, accepts, or receives from others, funds, securities, or property, either directly or through capital contributions, the sale of stock or other forms of securities, or otherwise, for the purpose of trading in commodity interests.

6. A “participant” is defined in Regulation 4.10(c), 17 C.F.R. § 4.10(c) (2021), as any person that has any direct financial interest in a pool.

7. Section 4o(1)(A)-(B) of the Act, 7 U.S.C. § 6o(1)(A)-(B), in relevant part, makes it unlawful for CPOs to make use of the mails or any other means of interstate commerce, directly or indirectly, to employ any device, scheme or artifice to defraud any client or participant or prospective client or participant, or to engage in any transaction, practice, or course of business that operates as a fraud or deceit upon any client or participant or prospective client or participant.

8. A futures commission merchant (“FCM”) is defined in Section 1a(28)(A) of the Act, 7 U.S.C. § 1a(28)(A), in relevant part, as an individual, association, partnership, corporation, or trust that is: (i) engaged in soliciting or in accepting orders for regulated transactions, including futures, swaps, commodity options, or retail forex or commodity transactions, or (ii) acts as a counterparty to retail forex or commodity transactions; and which, in connection with these activities, “accepts any money, securities, or property (or extends credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom.”

Overview

9. During the relevant period, from December 2019 to May 31, 2022, Cox solicited and accepted \$865,467 in funds from pool participants for the purported purpose of trading commodity futures contracts. Of that \$865,467, \$154,800 was returned to pool participants representing pool

withdrawals, leaving a balance of \$710,667 owing to pool participants. The balance of \$710,667 owing to participants is accounted for as follows: only a portion, \$478,600, of pool participant funds went into a futures account for trading and Cox lost \$313,185 of that amount through trading. A total of \$339,300 was accepted from pool participants and never deposited into the trading account; rather, it was deposited into bank accounts controlled by Cox and misappropriated. The sum of \$58,182 was also overpaid to one pool participant. The total sum owing to pool participants is thus: $\$339,300 + \$313,185 + \$58,182 = \$710,667$. In order to conceal his misappropriation and trading losses, Cox created and distributed to at least some pool participants fraudulent account statements and/or screen shots that falsely reported trading profits, balances of the futures account he was trading on behalf of pool participants, and transfers and cash balances in bank accounts.

Pool Participant 1

10. Through a friend, Cox met a prospective pool participant (hereinafter “Pool Participant 1”), who attended the same religious congregation as Cox.

11. Cox represented to Pool Participant 1 that he was an experienced and successful commodity futures trader. On December 2, 2019, Pool Participant 1 deposited funds into a bank account in the name of Cox that were to be used to trade commodity futures for the benefit of Pool Participant 1.

12. Cox later told Pool Participant 1 the funds would be traded in a futures account in the name of Smart Edge, which Cox managed and controlled.

13. Cox told Pool Participant 1 that because the futures account was carried in the name of Smart Edge, any funds had to be deposited to a bank account in the name of Smart Edge or his wife.

14. No futures account in the name of Cox or Smart Edge existed during the relevant period.

15. Nonetheless, Cox reported profitable trading to Pool Participant 1, and Pool Participant 1 told family and friends about the profits.

Depositing of Funds and Account Opening at FCM

16. Beginning in January 2020, family and friends of Pool Participant 1 began to deposit funds, either directly with Cox or through Pool Participant 1, to be traded by Cox.

17. Pool Participant 1 accepted funds from other Pool Participants and then deposited the funds into his personal bank account. As instructed by Cox, Pool Participant 1 then transferred the pool participant funds to bank accounts in the name of Cox, Cox's wife, or Smart Edge through cash deposits, inter-account transfers, or wire transfers. When other pool participants deposited their funds directly with Cox, they did so through bank accounts in the name of Cox, Jennifer Cox, or Smart Edge.

18. On March 27, 2020, at the direction of Cox, Pool Participant 1 opened a futures trading account at an FCM in his own name ("Futures Account").

19. After the Futures Account opened, Pool Participant 1 accepted funds from other pool participants and either transferred the funds directly to the Futures Account that Cox managed and controlled or sent them to a bank account in the name of Smart Edge. Other pool participants continued to send their funds directly to Cox to be traded by Cox.

20. In or around March 2020, when opening the Futures Account, Cox instructed Pool Participant 1 to answer "no" to an account application question of whether anyone other than the account owner would have authority to trade the Futures Account and not to disclose to the FCM that Cox would be trading the account. Cox also instructed Pool Participant 1 to answer "no" to a question about whether anyone else's funds besides his own would be traded, and not to disclose

that most of the funds deposited to the account would belong to other pool participants. Cox told Pool Participant 1 that he, Cox, needed the username and password for the account in order for him to trade the account. Using Pool Participant 1's account login credentials, Cox began trading the account in or around May 2020.

21. Cox's trading the Futures Account in this fashion concealed Cox's identity and involvement from the FCM. In addition, it allowed Cox to assuage pool participants' concerns by telling them he was only able to trade and could not take any money directly from their account.

Cox Misappropriated Pool Participant Funds

22. Excluding pool participant funds that were sent to some pool participants as payments, the remainder of pool participant funds deposited with Cox for trading have been misappropriated, totaling \$710,667. The sum of \$313,185 of pool participant funds were misappropriated when those funds were deposited into a trading account that Cox was barred from trading, which trading account was not owned or controlled by the pool or pool participants and which funds were lost through trading by Cox. The additional sum of \$58,182 was overpaid to one pool participant. Finally, Cox misappropriated other pool participant funds by using them for his personal expenses.

23. Cox has misappropriated \$339,300 of pool participant funds for personal expenses. For example, Cox has used pool participant funds to pay for hotels, restaurants, and retail and online purchases, including furniture.

Cox's Fraudulent Solicitation and Misrepresentations About Trading Experience and Profit

24. Cox knowingly made fraudulent and material misrepresentations and omitted material facts in soliciting pool participants. For example, Cox told at least Pool Participant 1 that he was a successful trader with years of experience trading mainly in crude oil futures contracts. Cox did not achieve the profits he represented to pool participants, was never a successful futures

trader, and cannot substantiate any of the touted returns. Additionally, when soliciting pool participants, Cox failed to disclose the 2016 Order, which permanently banned him from commodity trading, as well as his 2013 felony fraud and theft convictions in the State of Florida.

25. Cox made promises of quick profits from trading to some pool participants. For example, on December 2, 2019, Cox sent a text message to Pool Participant 1 asking him to deposit \$2,000 for futures trading, and Cox claimed he could turn that amount into a \$1,000 profit by January 3, 2020. Cox also told some pool participants that he would give them their principal and profits at the end of six months. Cox's promises of quick returns were false statements. Cox lost most of the amounts he traded for the pool participants.

Unprofitable Trading and False Statements

26. Starting at least in June 2020 and continuing through November 2020, Cox sent Pool Participant 1 reports on a nearly weekly basis concerning the trading of the Futures Account. Cox sent Pool Participant 1 the reports via email. These reports were narrative in form and provided an update on the purported performance of Cox's trading on behalf of the pool participants.

27. For example, on June 28, 2020, Cox sent an email to Pool Participant 1 with the "weekly report" stating "[b]asically, we made 100K in a day, we are holding the trade with profit and there is extreme potential for much more profit." In fact, the Futures Account did not make a \$100,000 profit in a day, and as of June 30, 2020, it had a net loss of \$40,821.

28. Cox also created and sent pool participants false FCM and bank account statements showing large account balances and monthly profits. For example:

(a) Cox sent Pool Participant 1 an FCM statement dated January 8, 2021 that showed an ending monthly cash balance of \$1,389,091.26. This statement was false as the account had ceased trading in October 2020 and had a zero balance as of November 3, 2020;

(b) On January 31, 2020, Cox sent Pool Participant 1 a statement from a different FCM showing a purported cash balance of \$190,394.42 in an account in the name of Smart Edge.

This statement was false in that Smart Edge never even had an account at this FCM; and

(c) In October 2020, Cox sent a pool participant a false bank statement dated October 15, 2020 showing that a \$485,000 wire transfer was sent from the account on October 7, 2020.

29. Cox created and sent some pool participants account screen shots that he distributed via text that falsely reported trading profits and balances of the futures account he was trading on behalf of pool participants. Cox knew that his representations were false while making these representations.

30. Cox created and sent Pool Participant 1 a false confirmation statement from Wells Fargo Bank purporting to show a transfer from an account for Smart Edge, to Pool Participant 1 in the amount of \$281,000. According to the statement, funds were to be transferred to Pool Participant 1 on February 1, 2021. Pool Participant 1 never received the funds, and the statement was false as Smart Edge never had an account at Wells Fargo Bank.

The Unraveling

31. By creating false account statements and/or account screen shots that he issued to Pool Participant 1 via text or email, Cox sought to conceal his trading losses and to reflect that he was making a profit trading the pool participants' funds. Cox knew that his representations were false.

32. At the end of August 2020, Pool Participant 1 informed Cox that all the pool participants expected to be repaid at the conclusion of their six-month investment term. Cox told Pool Participant 1 he would prepare for the withdrawals.

33. Throughout the fall of 2020, Cox promised to pay the pool participants their principal investment plus the trading profits. However, none of the pool participants ever received the promised payouts.

34. Cox offered a myriad of excuses as to why he could not provide the pool participants their payouts. For example, Cox told Pool Participant 1 that the banks were holding up the transfers and that the accounts were frozen pending the finalizing of his divorce. Further, in an effort to assuage Pool Participant 1's concerns, on or around December 27, 2020, Cox made false representations by sharing a video with Pool Participant 1 in which he purported to show up-to-date trading information including trade orders and a cash balance of more than \$1.1 million. In fact, the Futures Account was closed in November 2020 and there were no funds remaining in the Futures Account.

35. As an additional part of his efforts to create an illusion that pool participant funds were still available, Cox created and sent Pool Participant 1 at least one false email, addressed to Smart Edge, dated January 11, 2021. According to the email, Smart Edge purportedly requested a wire in the amount of \$500,000 in funds which was purportedly approved and submitted to the FCM. Cox intended to mislead the pool participants by creating the impression that there was \$500,000 in the Futures Account at the FCM by falsely representing that he had made a request to redeem the funds from the FCM.

B. CONCLUSIONS OF LAW

Jurisdiction and Venue

36. This Court has jurisdiction over this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2012), 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 act or practice, or to enforce compliance with the Act, or any rule, regulation or order thereunder.

37. Venue properly lies with this Court pursuant to 7 U.S.C. § 13a-1(e), because the Defendant Cox resides or transacts business in this jurisdiction and the acts and practices in violation of the Act and Regulations occurred, are occurring or are about to occur within this District, among other places.

**Violation of Section 4b(a)(1)(A) and (C) of the Act, 7 U.S.C. § 6b(a)(1)(A), (C):
Fraud by Making False Misrepresentations and Omissions and Misappropriating Funds**

38. By the conduct described in paragraphs 1 through 37 above, Defendant Cox cheated and defrauded, or attempted to cheat and defraud, and willfully deceived, or attempted to deceive, his pool participants by, among other things, knowingly or recklessly: making false representations of material fact and knowingly omitting to disclose material facts to pool participants, including by misrepresenting that he was a successful trader with years of experience trading futures; misrepresenting that all pool participant deposits would be used to trade commodity futures contracts when some funds were simply misappropriated by the Defendant; and misrepresenting the performance of the pool, including by providing false information and statements regarding the profits and balances of the futures account and the pool. In addition, Defendant Cox failed to disclose material facts to pool participants including, among other things, that their funds were misappropriated for Defendant Cox's personal use and the existence of the 2016 civil injunction that permanently banned him from commodity trading and his felony fraud and theft criminal convictions in Florida in 2013, which conduct was in violation of 7 U.S.C. § 6b(a)(1)(A) and (C).

**Violation of Section 4(b)(a)(1)(B) of the Act, 7 U.S.C. § 6b(a)(1)(B):
Fraud by Making False Reports/Statements**

39. By the conduct described in paragraphs 1 through 37 above, Defendant Cox by, among other things, willfully made or caused to be made to another person a false report or statement or willfully entered or caused to be entered for another person a false record, by providing some pool participants with the following: (a) account statements showing Defendant Cox's profitable trading activity of pool participant funds, when in reality, such statements were false account statements; (b) screen shots of profitable trading activity and overstated account balances that Defendant Cox created himself, when in reality Cox's trading of pool participant funds caused losses of most of the principal; (c) reports sent via email concerning the trading of the Futures Account claiming profitable trading activity of pool participant funds, when in fact the account was never profitable; and (d) false confirmation statement from a bank purporting to show a transfer to Pool Participant 1 when Pool Participant 1 never received the funds, in violation of 7 U.S.C. § 6b(a)(1)(B).

**Violations of Section 4o(1)(A)-(B) of the Act, 7 U.S.C. § 6o(1)(A)-(B):
Fraud by a Commodity Pool Operator**

40. By the conduct described in paragraphs 1 through 37 above, Defendant Cox by, among other things, misrepresented the performance of the pool and provided false information and statements regarding profits and balances of the Futures Account and pool, misappropriated pool participant funds, and failed to disclose to pool participants the 2016 Order which permanently banned him from commodity trading, and his felony fraud and theft criminal convictions in Florida in 2013, in violation of 7 U.S.C. § 6o(1)(A)-(B).

**Violations of Section 4m(1) of the Act, 7 U.S.C. § 6m(1):
Failure to Register as a CPO**

41. By the conduct described in paragraphs 1 through 37 above, Defendant Cox has acted as a CPO within the meaning of Section 1a(11) of the Act, 7 U.S.C. § 1a(11), and Regulation 1.3, 17 C.F.R. § 1.3 (2022), and violated 7 U.S.C. § 6m(1) by using the mails or other means or

instrumentalities of interstate commerce in connection with his business as a CPO without being registered as such.

42. Unless restrained and enjoined by this Court, there is a reasonable likelihood that Defendant Cox will continue to engage in the acts and practices alleged in the Complaint and in similar acts and practices in violation of the Act and Regulations.

The Court has carefully considered the Complaint, the allegations of which are well-pleaded and hereby taken as true, the Commission's memorandum in support of its motion, the record in this case, and the Court being otherwise advised in the premises, it is hereby:

ORDERED that the Plaintiff's Unopposed Motion for Final Judgment Upon Default, and Application for a Permanent Injunction, Civil Monetary Penalties, and Other Statutory and Equitable Relief Against Defendant Rico Omar Cox [DE 35] is **GRANTED**. In accordance with Federal Rule of Civil Procedure 58, a separate final judgment will be entered.

DONE AND ORDERED in Fort Lauderdale, Florida, this 20th day of June, 2023.



RODNEY SMITH
UNITED STATES DISTRICT JUDGE

cc: All Counsel of Record