

**IN THE UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

<b>COMMODITY FUTURES TRADING COMMISSION,</b>	)	
	)	<b>CIVIL ACTION NO. 00 C 7344</b>
<b>Plaintiff,</b>	)	<b>The Honorable Judge</b>
	)	<b>George W. Lindberg</b>
<b>v.</b>	)	
	)	
<b>MARTIN BROWN, GEOFFRY S. THOMPSON, and YDIYELL HOWARD,</b>	)	<b>Magistrate Judge Bobrick</b>
	)	
<b>Defendants,</b>	)	
	)	<b>FIRST AMENDED COMPLAINT</b>
<b>BRENDA L. BROWN, PRAIRIE GARDEN CONDOS, INC., JAVETTE L. KING, LOREN HAYES, and BERNADETTE THOMAS,</b>	)	
	)	
<b>Relief</b>	)	
<b>Defendants.</b>	)	
	)	
	)	
	)	
	)	

**FIRST AMENDED COMPLAINT FOR INJUNCTIVE AND OTHER  
EQUITABLE RELIEF AND FOR CIVIL PENALTIES  
UNDER THE COMMODITY EXCHANGE ACT**

**I. SUMMARY**

1. Since at least November 1999 and continuing through October 2000 (“relevant time”), Defendants Martin Brown (“Brown”), Geoffrey S. Thompson (“Thompson”) and Ydiyell Howard (“Howard”) (collectively, “Defendants”) have violated the Commodity Exchange Act,

as amended (“Act”), 7 U.S.C. §§ 1 *et seq.* (1994)<sup>1</sup> and regulations thereunder, by engaging in a scheme to fraudulently allocate commodity interest trades among several customer accounts and engaging in unauthorized trading while Brown, Thompson and Howard were employed at F.C. Stone, LLC (“Stone”), a registered futures commission merchant (“FCM”).

2. From its inception until the scheme was discovered in October 2000, the Defendants fraudulently allocated commodity interest trades to certain “favored accounts”, including accounts benefiting relief defendants Javette King (“King”), Prairie Garden Condos, Inc. “Prairie Garden”, Loren Hayes (“Hayes”), and Bernadette Thomas (“Thomas”), resulting in profits of approximately \$2.2 million to the favored accounts. Meanwhile, the Defendants fraudulently allocated other commodity interest trades to “victim accounts”, resulting in losses of approximately \$1.3 million.

3. To date, approximately \$1.1 million has been recovered from Defendant Brown and Relief Defendants Prairie Garden Condo, Brenda Brown and King. The Defendants and Relief Defendants have failed to return or reveal the whereabouts of the remaining illicitly obtained funds.

4. Thus, the Defendants have engaged, are engaging, and are about to engage in acts and practices which violate Sections 4b(a)(i) and (iii) and 13(a) of the Commodity Exchange Act, as amended (“Act”), 7 U.S.C. § 6b(a)(i) and (iii), 13c(a) (1994) and Commission Regulation 166.2, 17 C.F.R. § 166.2 (2001).

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<sup>1</sup> The Act was recently amended by the Commodity Futures Modernization Act of 2000 (“CFMA”), Appendix E to Pub. L. No. 106-554, 114 Stat. 2763 (2000). The CFMA amendments do not materially affect any allegation or cause of action alleged in the Complaint or the First Amended Complaint.

5. Pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (1994), the plaintiff Commodity Futures Trading Commission (“Commission” or “CFTC”) brings this action to enjoin such acts and practices, and to compel compliance with the provisions of the Act. In addition, the Commission seeks civil penalties and an accounting, disgorgement, restitution, and such other equitable relief as the Court may deem necessary or appropriate.

## **II. JURISDICTION AND VENUE**

6. The Act establishes a comprehensive system for regulating the purchase and sale of commodity futures contracts and options. This Court has jurisdiction over this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, which authorizes the Commission to seek injunctive relief against any person whenever it shall appear to the Commission 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.

7. Venue properly lies with this Court pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1(e) (1994), in that the Defendants and the Relief Defendants are found in, inhabit, or transact business in this district, and the act and practices in violation of the Act have occurred, are occurring, or are about to occur within this district.

## **III. THE PARTIES**

8. Plaintiff Commodity Futures Trading Commission is an independent federal regulatory agency charged with the responsibility for administering and enforcing the provisions of the Act, 7 U.S.C. §§ 1 *et seq.* (1994), and Regulations promulgated under it, 17 C.F.R. §§ *et seq.* (2001).

9. Defendant Geoffrey S. Thompson, age 28, resides in Chicago, Illinois 60619. From March 6, 1996, until September 26, 2000, Thompson was an officer and employee of

Stone or its predecessor corporation, Saul Stone & Company LLC (“Saul Stone”). From March 6, 1996, until September 26, 2000, Thompson was registered with the Commission as an associated person (“AP”) of Stone or Saul Stone pursuant to Section 4k of the Act, 7 U.S.C. § 6k (1994). Thompson is not currently registered with the Commission in any capacity.

10. Defendant Martin Brown, age 32, resides in Chicago, Illinois 60605. At all relevant times, Brown was employed as a clerk in Stone’s risk management department. Brown has never been registered with the Commission in any capacity. Brown is no longer employed at Stone.

11. Defendant Ydiyell Howard, age 30, resides in Chicago, Illinois 60626. From July 1999 until October 2000, Howard was employed as a margin clerk in Stone’s risk management department. Howard had been employed at Stone as a runner from November 1997 to October 1998 and was rehired in July 1999. Howard has never been registered with the Commission in any capacity. Howard is no longer employed at Stone.

12. Relief Defendant Brenda L. Brown resides in Alsip, Illinois 60803. Brenda L. Brown is Martin Brown’s sister. Brenda L. Brown has never been registered with the Commission in any capacity.

13. Relief Defendant Prairie Garden Condos is an Illinois corporation. Brenda Brown is its registered agent and was duly authorized to open and trade a commodity futures account on its behalf. Prairie Garden’s registered address in Alsip, Illinois 60803. It has never been registered with the Commission in any capacity.

14. Relief Defendant Javette L. King resides in Chicago, Illinois. King has never been registered with the Commission in any capacity.

15. Relief Defendant Loren Hayes resides in Hazelcrest, Illinois. Hayes is Defendant Thompson's sister. Hayes has never been registered with the Commission in any capacity.

16. Relief Defendant Bernadette Thomas resides in Chicago, Illinois. Thomas has never been registered with the Commission in any capacity.

#### **IV. OTHER ENTITIES**

17. F.C. Stone, LLC is registered with the Commission as an FCM and is a member firm of the Chicago Board of Trade, the Chicago Mercantile Exchange and the National Futures Association. It is located at Suite 2600, 141 West Jackson Blvd., Chicago, Illinois 60604. As of July 1, 2000, it succeeded Saul Stone & Company LLC and assumed the rights and responsibilities of Saul Stone under all relevant customer account agreements. The term "Stone" shall refer to both Saul Stone & Company, LLC and F.C. Stone, LLC, as its successor and assignee.

#### **V. FACTS**

##### **A. Statutory Background**

18. A futures commission merchant ("FCM") is defined in Section 1a(12) of the Act, 7 U.S.C. §1a(12), as an individual, association, partnership, corporation, or trust that: (i) is engaged in soliciting or in accepting orders for the purchase or sale of any commodity for future delivery or on or subject to the rules of any contract market; and (ii) in or in connection with such solicitation or acceptance of orders, accepts any money, securities, or property (or extends credit in lieu thereof) to margin, guarantee, or secure any trades or contracts.

19. An associated person ("AP") is defined in Section 4k(1) of the Act, 7 U.S.C. § 6 k (1), as a person associated with an FCM as a partner, officer, employee, consultant or agent (or any person occupying a similar status or performing similar functions), in any capacity that

involves: (i) the solicitation or acceptance of customers' orders (other than in a clerical capacity); or (ii) the supervision of any person or persons so engaged.

**B. The Allocation Scheme**

20. During the relevant time, Brown, Thompson and Howard were employed in Stone's Futures Direct unit. Thompson was Stone's Risk Manager, had overall supervisory responsibility for the Futures Direct unit and directly supervised Brown and Howard. Futures Direct accountholders are generally large, experienced traders and are permitted to place orders for commodity interest trades directly to the floor of the exchange using, at least in some instances, execution brokers.

21. At the direction of or by agreement with the Defendants, the Relief Defendants and others opened the favored accounts between February 2000 and July 2000 as Futures Direct accounts at Stone. Those included the names and account numbers Javette L. King, No. 18809; Prairie Garden Condos, No. 18799; Loren Hayes, No. 18766; Bernadette Thomas, No. 18281; and Michael Clemenson, No. 18765. The Defendants placed commodity interest trades for the favored accounts through execution brokers.

22. The scheme worked as follows: Brown or Thompson placed a trade for the benefit of one of the favored accounts. By the end of the trading day, if the trade appeared profitable based upon subsequent market movements, Brown or one of the co-defendants kept the trade in the favored account to which it had been entered. If a trade appeared unprofitable, Brown or one of the co-defendants requested that the trade be transferred to one of several customer accounts victimized in the scheme. This transfer would be made by either a) calling the execution broker and instructing the execution broker to transfer the trade from the favored account to one of the victim accounts, or b) if the trade had already been accepted from the

execution broker by Stone, by asking someone at Stone to move the trade from a favored account to a victim account.

23. While performing his account opening duties at Stone, Howard learned that Brown and Thompson were engaging in unauthorized trading and fraudulently allocating commodity interest trades into customer accounts. At no time after Howard learned of Brown and Thompson's unauthorized trading and fraudulent trade allocation did he inform his employer that customers were being defrauded. Instead, Howard caused his friend, Clemenson, to open an account at Stone so that Howard too could benefit at the expense of victim accounts.

24. In the at least eight months that the Defendants perpetrated the scheme, the favored accounts amassed at least \$2.2 million in purported trading profits. The victim accounts suffered losses of at least \$1.3 million.

25. The Defendants did not have specific authorization to place the trades in the victim accounts or written authorization to place trades in those accounts without specific authorization.

26. Between February and October 2000, Defendants and the Relief Defendants caused transfers of the aggregate amounts of approximately \$2,010,092 from the favored accounts to bank accounts in the names of King, Prairie Garden Condos, Hayes, Thomas and Clemenson. King received approximately \$556,000; Prairie Garden Condos received approximately \$697,000; Hayes received approximately \$488,317; Thomas received approximately \$237,000 and Howard received at least \$33,500.

27. Since October 27, 2000, Stone demanded return of the illicitly obtained profits from Brown, Thompson, Prairie Garden and King. Stone had obtained approximately \$1.1

million from Defendant Brown and Relief Defendants Prairie Garden Condos and Javette King for the benefit of the customers whose accounts were victimized in the scheme.

28. However, neither the Defendants nor the Relief Defendants have returned the approximately \$200,000 still owed to customers victimized by the scheme or the approximately \$1.2 million in other ill-gotten gains obtained by the Defendants and Relief Defendants as a result of the fraudulent conduct.

## **VI. VIOLATIONS OF THE COMMODITY EXCHANGE ACT**

### **COUNT I**

#### **VIOLATIONS OF SECTION 4b(a)(i) and 4b(a)(iii) OF THE ACT: CHEATING, DEFRAUDING AND DECEIVING COMMODITY CUSTOMERS**

29. Paragraphs 1 through 29 are re-alleged and incorporated herein.

30. Since at least November 1999, and continuing through October 2000, the Defendants violated section 4b(a)(i) and 4b(a)(iii) of the Act, 7 U.S.C. § 6b(a)(i) and § 6b(a)(iii), in that they cheated, defrauded and deceived Stone customers by fraudulently allocating commodity interest contracts between favored accounts and other customer accounts without authorization.

31. Since at least July 2000 and continuing through October 2000, Defendant Howard knowingly participated in the acts constituting violations alleged in this count and therefore aided and abetted Brown's and Thompson's violations of the Act. Howard is thereby liable for the violations of section 4b(a)(i) and 4b(a)(iii) of the Act, pursuant to Section 13(a) of the Act, 7 U.S.C. § 13c(a).

32. The Defendants engaged in this conduct in or in connection with orders to make or the making of contracts of sale of commodities for future delivery, made or to be made for future delivery, made or to be made for or on behalf of other persons, where such contracts for

future delivery were or could have been 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.

33. Each trade that the Defendants fraudulently allocated is alleged as a separate and distinct violation of Sections 4b(a)(i) and (iii) of the Act.

## **COUNT II**

### **VIOLATIONS OF COMMISSION REGULATION 166.2: UNAUTHORIZED TRADING**

34. Paragraphs 1 through 34 are re-alleged and incorporated herein.

35. Since at least November 1999 and continuing through October 2000, the Defendants violated Commission Regulation 166.2, 17 C.F.R. § 166.2, in that they effected transactions in commodity interests for the accounts of customers before the customers, or persons designated by the customers to control the accounts, specifically authorized the transactions or authorized in writing the effecting of transactions for the accounts without the customers' specific authorization in violation of Regulation 166.2, 17 C.F.R. § 166.2.

36. Defendant Howard knowingly participated in the acts constituting violations alleged in this count and therefore aided and abetted Brown's and Thompson's violations of the Regulations. Howard is thereby liable for the violations of Regulation 166.2, 17 C.F.R. § 166.2, pursuant to Section 13(a) of the Act, 7 U.S.C. § 13c(a).

37. Each unauthorized trade which the Defendants made is alleged as separate and distinct violations of Commission Regulation 166.2.

### **COUNT III**

#### **DISGORGEMENT OF FUNDS FROM THE RELIEF DEFENDANTS**

38. Paragraphs 1 through 38 are re-alleged and incorporated herein.

39. The Defendants have engaged in a fraudulent trade allocation scheme that defrauded customers of Stone.

40. The Relief Defendants have received funds that were obtained as a result of the Defendants' fraudulent conduct.

41. The Relief Defendants have no legitimate entitlement to or interest in the funds received from the Defendants' fraudulent conduct.

42. The Relief Defendants 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.

43. By reason of the foregoing, the Relief Defendants hold funds in constructive trust for the benefit of Stone customers who were victimized by Defendants' fraudulent scheme.

#### **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, and pursuant to its own equitable powers:

A. Find the Defendants liable for violating Section 4b(a)(i) and (iii) of the Act, 7 U.S.C. § 6b(a)(i) and Commission Regulation 166.2, 17 C.F.R. § 166.2;

B. Enter orders of preliminary and permanent injunction restraining and enjoining the Defendants and all persons insofar as they are acting in the capacity of the Defendants' agents, servants, successors, assigns, and attorneys, and all persons insofar as they are acting in

active concert or participation with Defendants who receive actual notice of such order by personal service or otherwise, from directly or indirectly:

- a. Cheating or defrauding or attempting to cheat or defraud or deceiving or attempting to deceive any other 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, in violation of Sections 4b(a)(i) and (iii) of the Act, 7 U.S.C. §§ 6b(a)(i) and (iii); and
- b. Effecting transactions in a commodity interest for the account of any customer unless before the transaction the customer, or person designated by the customer to control the account, specifically authorizes the transaction or authorizes in writing the effecting of transactions in commodity interests for the account without the customer's specific authorization, in violation of Regulation 166.2, 17 C.F.R. § 166.2;

C. Enter orders of preliminary injunction restraining and enjoining the Defendants and all persons insofar as they are acting in the capacity of their agents, servants, successors, assigns, and attorneys, and all persons insofar as they are acting in active concert or participation with them who receive actual notice of such order by personal service or otherwise, from directly or indirectly;

1. Destroying, mutilating, concealing, altering or disposing of any books and records, documents, correspondence, brochures, manuals, electronically stored data, tape records or other property of Defendants and Relief Defendants, wherever located, including all such records concerning Defendants' and Relief Defendants' business operations;
2. Refusing to permit authorized representatives of the Commission to inspect, when and as requested, any books and records, documents, correspondence, brochures, manuals, electronically stored data, tape records or other property of Defendants and Relief Defendants, wherever located, including all such records concerning Defendants' and Relief Defendants' business operations; and

3. Withdrawing, transferring, removing, dissipating, concealing or disposing of, in any manner, any funds, assets, or other property, wherever situated, including but not limited to, all funds, personal property, money or securities held in safes, safety deposit boxes and all funds on deposit in any financial institution, bank or savings and loan account held by, under the control, or in the name of the Defendants and Relief Defendants.

D. Enter an order requiring the Defendants to pay civil penalties under the Act in amounts of not more than the higher of \$100,000 for each violation of the Act and Regulations committed prior to November 27, 1996, \$110,000 for each violation of the Act and Regulations committed between November 27, 1996 and October 22, 2000, \$120,000 for each violation of the Act and Regulations committed on or after October 23, 2000, or triple the monetary gain to Defendants, for each violation of the Act and Regulations;

E. Enter an order requiring the Defendants and Relief Defendants to disgorge all funds, including any funds transferred to third parties, obtained or received as a result of the Defendants' fraudulent conduct, including pre-judgment interest;

F. Enter an order directing the Defendants and Relief Defendants to provide the Plaintiff immediate and continuing access to the Defendants' and Relief Defendants' books and records, and make preliminary and final accountings to the Court of all of Defendants' and Relief Defendants' assets and liabilities;

G. Enter an order requiring the Defendants to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2412(a)(2) (1994); and

H. Order such other and further relief as this Court may deem necessary and appropriate under the circumstances.

Date: March 27, 2002

Respectfully submitted

ATTORNEYS FOR PLAINTIFF  
Commodity Futures Trading Commission

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