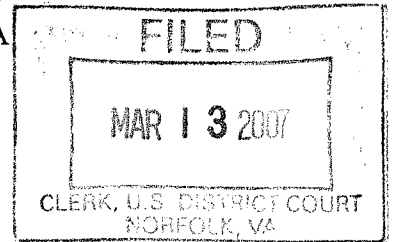


IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NEWPORT NEWS DIVISION



COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

vs.

No. 4:06cv130

MICHAEL HAYES, a.k.a.
FRANK RICHARDS,

and

COLDWELL PUBLISHING, INC.,
Defendants.

**ORDER FOR PERMANENT INJUNCTION,
ANCILLARY EQUITABLE RELIEF AND DEFAULT JUDGMENT**

On September 29, 2006, Plaintiff Commodity Futures Trading Commission ("Commission" or "CFTC") filed a two count Complaint against Defendants Michael Hayes a/k/a Frank Richards and Coldwell Publishing, Inc. ("Coldwell") alleging violations of the Commodity Exchange Act, as amended ("Act"), 7 U.S.C. §1 *et seq.* (2002), and the Regulations promulgated thereunder, 17 C.F.R. §§ 1 *et seq.* (2006). On October 24, 2006, Hayes was served with Plaintiff's Complaint and on October 25, 2006, Coldwell was served with Plaintiff's Complaint. On December 12, 2006, the Clerk entered a Default against Hayes and Coldwell. Hayes and Coldwell have failed to appear or otherwise defend against the Complaint within the time permitted by the Federal Rules of Civil Procedure and the Commission has now moved for a default judgment of a permanent injunction and other ancillary relief against them.

The Commission has now submitted its Application for Entry of Default Judgment pursuant to Federal Rule of Civil Procedure 55(b)(2). The Court has considered the Complaint, the allegations of which are well-pleaded and hereby taken as true, the Application, declarations,

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exhibits and other papers filed herein, and being fully advised in the premises hereby:

GRANTS the Commission's Application for Entry of Default Judgment and enters findings of fact and conclusions of law finding Hayes and Coldwell liable as to all violations as alleged in the Complaint. The Court further grants the Commission's request to assess monetary damages, including disgorgement and civil monetary penalties against Hayes and Coldwell.

I. Findings of Facts

A. Jurisdiction and Venue

1. This Court has subject matter 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.

2. Venue properly lies with this Court pursuant to Section 6c of the Act, 7 U.S.C. § 13-a-(e), because the defendants are found in, inhabit, or transact business in this District, and the acts and practices conducted in violation of the Act have occurred, are occurring, or are about to occur within this district, among other places.

B. The Parties

Plaintiff

1. The Commission is an independent federal regulatory agency that is charged with responsibility for administering and enforcing the provisions of the Act and the Regulations promulgated thereunder.

Defendants

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2. Michael Hayes currently resides in Poquoson, Virginia. Hayes uses the pseudonym “Frank Richards” to conduct his CTA activities, which include offering a commodity futures and options trading system in the form of a trading manual called “Insider’s Profit Martix” (“IPM”). Hayes has never been registered in any capacity with the Commission.

3. Coldwell Publishing, Inc. is a California corporation using the business address 12400 Ventura Boulevard, Studio City, California 91604. Hayes is Coldwell’s president and Coldwell’s sole employee. Hayes uses Coldwell to publish and distribute the IPM trading system, as well as IPM promotional material. Coldwell’s business address was used by Hayes as a “mail drop.” All of Coldwell’s mail was forwarded to Hayes in Virginia so that Hayes could operate Coldwell from his home in Virginia. Coldwell has never been registered with the Commission in any capacity.

C. Hayes’ IPM Trading System

1. As set forth in the well-pleaded allegations of the Complaint, from at least January 2001 through December 2004 (the relevant time period), Hayes, using the pseudonym “Frank Richards” sold approximately 15,000 copies of IPM, a trading system for trading commodity futures and options on futures. Hayes used Coldwell, a corporation of which he was president and sole employee to publish and distribute the IPM trading system, as well as promotional material for the IPM trading system. However, IPM’s promotional material, which Hayes authored, was replete with fraudulent misrepresentations of material fact, including, misrepresenting the IPM trading system’s profit potential, misrepresenting IPM’s hypothetical trading results as actual trading results, and misrepresenting Hayes’ trading experience.

2. Hayes’ misrepresentation of IPM’s potential profits in IPM’s promotional material

included, but were not limited to the following statements:

- Market Expert Reveals – How you can make over \$1,000,000 a year trading commodities.
- \$200 to \$2,136,000 in 2 years. Actual secrets revealed. . .
- The Sure Thing Trades-the most advanced sure-fire winning system ever created.
- How would you like to make \$50,000 in a single month? All you have to do is learn these secrets.
- If a few key indicators line up at the critical time, it is actually possible to predict where the market is going.
- If you know with near certainty that the market is going to skyrocket, you can achieve unlimited wealth with virtually no effort.
- It's as close to a sure thing as you're going to see.

3. Hayes misrepresentation of IPM's hypothetical trading as actual trading included but

were not limited to the following statements:

- \$200 to \$2,136,000 in 2 years. Actual secrets revealed . . .
- Take a look at this track record. Start out with \$200, my system has shown historical profits of \$18,389,000, over \$2 million of that was generated in the first 2 years.
- The Insider's Profit Matrix has been historically proven year in and year out.
- At one point, my system was pinpointing trades worth over \$38,000 per week and you'll be trading with the exact same system that showed these phenomenal profits.

4. Hayes' misrepresentation of his trading experience in IPM's promotional material

included, but were not limited to statements referring to himself as a "market expert," when in fact he had almost no trading experience.

5. Hayes' misrepresentations were material, made in IPM's promotional material which

was mass-mailed to thousands of members of the general public, and made with scienter. Hayes and Coldwell, the corporation he used to distribute IPM and to publish and distribute IPM's promotional material, made at least \$2,908,620.69 during the relevant time period.

II. Conclusions of Law

A. From at least January 2001, Hayes has acted as a CTA in that, for compensation or profit, he engaged in the business of advising others as to the value or the advisability of trading in commodity futures and commodity options by among other things, offering for a fee, the IPM trading system for trading commodity futures and options on commodity futures.

B. In the course of his operations as a CTA, Hayes violated Sections 4o(1)(A) and (B) of the Act, 7 U.S.C. § 6o(1)(A) and (B) (2002) and Commission Regulation 4.41(a), 17 C.F.R. § 4.41(a), by, among other things, with scienter: (1) using false and misleading promotional material which misrepresented the profit potential for his IPM trading systems; (2) misrepresenting hypothetical or simulated trading results as actual trading results; (3) misrepresenting his trading experience. Each material misrepresentation or omission made during the relevant time period constitutes a separate and distinct violation of Sections 4o(1)(A) and 4o(1)(B) of the Act. Additionally, during the relevant time period, Hayes presented the performance of simulated and hypothetical commodity interest accounts without including the required disclosure, in violation of Section 4.41(b) of the Regulations, 17 C.F.R. § 4.41(b) (2006). * ~~HB~~

C. Because Hayes' CTA activities were done within the scope of his employment at Coldwell or as Coldwell's agent, Coldwell is liable for Hayes' violations of the Act under Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B).

~~HB~~ * For the reasons set forth in the Commission's Memorandum in Support of Plaintiff's Application for Permanent Injunction, Ancillary Equitable Relief and Default Judgment, the court FINDS that there is a reasonable likelihood of future violations. See Pl.'s Mem. of Law at 22-24. ~~HB~~

III. Permanent Injunction

IT IS HEREBY ORDERED THAT Hayes and Coldwell, and all persons insofar as they are acting in the capacity of their agents, servants, employees, 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, are permanently restrained, enjoined and prohibited from directly or indirectly:

A. While acting as CTAs, or principals thereof, employing any device, scheme, or artifice to defraud any client or prospective client; or engaging in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client, by use of the mails or any means or instrumentality of interstate commerce, in violation of Section 40(1) of the Act, 7 U.S.C. § 60(1);

B. While acting as CTAs, or principals thereof, advertising in a manner which employs any device, scheme or artifice to defraud any client or prospective client; or advertising in a manner which involves any transaction, practice or course of business which operates as a fraud or deceit upon any client or prospective client, in violation of Regulation 4.41(a), 17 C.F.R. § 4.41(a);

C. Presenting the performance of any simulated or hypothetical commodity interest account, transaction in a commodity interest or series of transactions in a commodity interest unless such performance is accompanied by the following statement, prominently disclosed, as required by Regulation 4.41(b), 17 C.F.R. § 4.41(b):

Hypothetical or simulated performance results have certain inherent limitations. Unlike an actual performance record, simulated results do not represent actual trading. Also, since the trades have not actually been executed, the results may have under- or over-compensated for the impact, if any, of certain market factors,

such as lack of liquidity. Simulated trading programs in general are also subject to the fact that they are designed with the benefit of hindsight. No representation is being made that any account will or is likely to achieve profits or losses similar to those shown.

In doing so, Defendants shall clearly identify those hypothetical or simulated performance results that were based, in whole or in part, on hypothetical trading results.

D. Engaging in the business of advising customers, giving price quotations, or other information, either directly or through publications, writings, or electronic media, as to the value or the advisability of trading in any contract of sale of a commodity for future delivery or an option thereon;

E. Directly or indirectly soliciting or accepting any funds from any person in connection with the purchase or sale of any commodity futures or options contract;

F. Engaging in, controlling, or directing the trading of any commodity futures or options accounts, on Hayes or Coldwell's own behalf or for or on behalf of any other person or entity, whether by power of attorney or otherwise;

G. Applying for registration or claiming exemption from registration with the Commission in any capacity, and engaging in any activity requiring such registration or exemption from registration with the Commission, except as provided for in Commission Regulation 4.14(a)(9), 17 C.F.R. 4.14(a)(9), or acting as a principal, agent or officer or employee of any person registered, required to be registered or exempted from registration with the Commission unless such exemption is pursuant to Commission Regulation 4.14(a)(9), 17 C.F.R. 4.14(a)(9); and

H. Otherwise engaging in any business activities related to commodity futures or options trading.

IV. Disgorgement and Civil Monetary Penalty

IT IS HEREBY FURTHER ORDERED THAT:

A. Disgorgement

1. Defendants Hayes and Coldwell are jointly and severally liable to pay within 30 days of the date of this Order disgorgement in the amount of \$2,908,620.69, plus pre- and post-judgment interest. Prejudgment interest is calculated beginning from September 29, 2006 at the underpayment rate established by the Internal Revenue Service pursuant to 26 U.S.C.

~~108~~ ^{6621(a)(2)} § ~~662(a)(2)~~ Hayes and Coldwell shall pay post-judgment interest from the date of this Order until their disgorgement obligation is paid in full at the Treasury Bill rate prevailing on the date of this Order, pursuant to 28 U.S.C. § 1961(a). Hayes and Coldwell shall pay this amount by making electronic funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money order made payable to the Commodity Futures Trading Commission and sent to the address below:

Commodity Futures Trading Commission
Division of Enforcement
ATTN: Marie Bateman - AMZ-300
DOT/FAA/MMAC
6500 S. Macarthur Blvd.
Oklahoma City, OK 73169

2. If payment by electronic transfer is chosen, contact Marie Bateman at 405-954-6569 for instructions. Hayes and Coldwell shall accompany payment of their penalties with a cover letter that identifies the defendants, and the name and docket number of this proceeding. Hayes and Coldwell shall simultaneously transmit a copy of the cover letter and the form of payment to:

Office of Cooperative Enforcement
Division of Enforcement
Commodity Futures Trading Commission

Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

B. Civil Monetary Penalty

1. Coldwell shall pay a civil monetary penalty of \$8,725,862.07 within 30 days of the date of this Order. This is based upon the maximum penalty of triple the monetary gain authorized by Section 6c(d) of the Act, 7 U.S.C. § 13a-1(d).

2. Hayes shall pay a civil monetary penalty of \$240,000, which is based upon the statutorily authorized penalty of \$120,000 per violation, also authorized by Section 6c(d) of the Act, 7 U.S.C. § 13a-1(d).

3. Hayes and Coldwell shall pay their penalties by making electronic funds transfer, U.S. postal money order, certified checks, bank cashier's checks, or bank money orders made payable to the Commodity Futures Trading Commission and sent to the address below:

Commodity Futures Trading Commission
Division of Enforcement
ATTN: Marie Batement - AMZ-300
DOT/FAA/MMAC
6500 S. Macarthur Blvd.
Oklahoma City, OK 73169

4. If payment by electronic transfer is chosen, contact Marie Bateman at 405-954-6569 for instructions. Hayes and Coldwell shall accompany payment of their penalties with a cover letter that identifies the defendants, and the name and docket number of this proceeding. Hayes and Coldwell shall simultaneously transmit a copy of the cover letter and the form of payment to:

Office of Cooperative Enforcement
Division of Enforcement
Commodity Futures Trading Commission

FB

Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

C. Miscellaneous

1. Prohibition on Transfer of Funds: Hayes and Coldwell, as well as their officers, agents or employees, shall not transfer or cause others to transfer funds or other property to the custody, possession or control of any other person for the purpose of concealing such funds or property from the Court, the Commission, or any officer that may be appointed by the Court.

2. This Court shall retain jurisdiction of this action to assure compliance with this Order and for all purposes related to this action, including the implementation and enforcement of this final judgment.

IT IS SO ORDERED.



UNITED STATES DISTRICT JUDGE

March 13, 2007

at Norfolk, Virginia

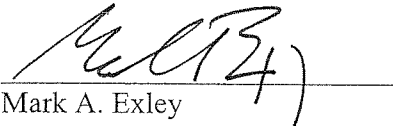
We ask for this:

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Plaintiff



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