

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

**U. S. COMMODITY FUTURES
TRADING COMMISSION,**

Plaintiff,

v.

**PEREGRINE FINANCIAL GROUP, INC.
and
RUSSELL R. WASENDORF, SR.,**

Defendants.

Civil Action No: 1:12-cv-5383

Honorable Rebecca R. Pallmeyer

Magistrate Judge Young B. Kim

**DEFAULT JUDGMENT ORDER OF PERMANENT INJUNCTION AND OTHER
ANCILLARY RELIEF AGAINST DEFENDANTS PEREGRINE FINANCIAL GROUP,
INC. AND RUSSELL R. WASENDORF, SR.**

INTRODUCTION

On July 10, 2012, Plaintiff Commodity Futures Trading Commission (“CFTC” or “Commission”) filed a Complaint for Injunctive and Other Equitable Relief and for Civil Monetary Penalties under the Commodity Exchange Act (“Complaint”) against Defendants Peregrine Financial Group, Inc. (“PFG”), and Russell R. Wasendorf, Sr. (“Wasendorf”) seeking injunctive and other equitable relief for violations of the Commodity Exchange Act (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”)), §§ 13101-13204, 122 Stat. 1651 (enacted June 18, 2008), and the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Pub. L. No. 111-203 (“Dodd-Frank Act”), Title VII (the Wall Street Transparency and Accountability Act of 2010), §§ 701-774, 124 Stat. 1376 (enacted July 21, 2010), 7 U.S.C. §§ 1

et seq. (2006, Supp. II 2009 and Supp. IV 2011), and the Commission Regulations (“Regulations”) promulgated thereunder, 17 C.F.R. §§ 1.1 *et seq.* (2012).

More specifically, the Complaint alleges that Defendants misappropriated more than \$200 million of customer funds and filed false reports with the Commission regarding the amount of PFG’s customer segregated accounts, and in doing so violated Sections 4d(a) of the Act, as amended, 7 U.S.C. § 6d(a) (2006) (with respect to conduct prior to June 16, 2011) and 7 U.S.C. § 6d(a) (Supp. IV 2011) (with respect to conduct on or after June 16, 2011), Section 4b(a)(2)(i), (iii) of the Act, 7 U.S.C. § 6b(a)(2)(i), (iii) (2006) (with respect to conduct prior to June 18, 2008), Section 4b(a)(1)(A), (C), of the Act, as amended, 7 U.S.C. § 6b(a)(1)(A), (C) (Supp. II 2009) (with respect to conduct from on or after June 18, 2008 to June 15, 2011), and Section 4b(a)(1)(A), (C) of the Act, as amended, 7 U.S.C. § 6b(a)(1)(A), (C) (Supp. IV 2011) (with respect to conduct on or after June 16, 2011), and Section 6(c)(2) of the Act, as amended, 7 U.S.C. § 9(2) (Supp. IV 2011), and Regulation 1.20(a), 17 C.F.R. § 1.20(a) (2012).

On July 10, 2012, upon good cause shown, this Court entered a Statutory Restraining Order (“SRO”) prohibiting the withdrawal, transfer, removal, dissipation, concealment, or disposition of Defendants’ assets, prohibiting the destruction of, or prevention of CFTC access to, Defendants’ books and records, and providing for other relief. On August 8, 2012, the Court entered an Order of Preliminary Injunction (“Preliminary Injunction”), which preliminarily enjoins Defendants from committing further violations of the Act, as amended, continued the freeze over Defendants’ assets, prevents the destruction of, and allows Commission to inspect, Defendants’ books and records, and grants other equitable relief.

On July 17, 2012, the Court entered an Amended Order Appointing a Temporary Receiver (the “Amended Receivership Order”). The Amended Receivership Order in Section IV

stayed all persons from taking any action to establish any claim, right or interest for, against, on behalf of, or in the name of Defendant Wasendorf and/or the Wasendorf Entities. The stay in Section IV did not apply to the commencement or continuation of any action or proceeding by a governmental or regulatory body.

On December 17, 2012, an Order of Default was entered against both Defendants.

Plaintiff now has filed a Motion for a Default Judgment Order of Permanent Injunction and Other Ancillary Relief against the Defendants (“Motion for a Default Judgment”). The Court enters this Default Judgment Order of Permanent Injunction and Other Ancillary Relief against Defendants (“Default Judgment Order”), having considered the Plaintiff’s Memorandum of Points and Authorities in Support of Its Motion for a SRO, the Appendix to Plaintiff’s Motion for a SRO, the attachments to the Motion for a Default Judgment and the Memorandum in Support of the Motion For a Default Judgment.

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

The Court, being fully advised in the premises, finds that there is good cause for the entry of this Order and that there is no just reason for delay. The Court therefore directs the entry of the following Findings of Fact, Conclusions of Law, and Permanent Injunction and Equitable Relief pursuant to Section 6c of the Act, as amended, 7 U.S.C. § 13a-1 (Supp. IV 2011), as set forth herein.

THIS COURT HEREBY FINDS:

Parties

1. The **U.S. Commodity Futures Trading Commission** is an independent federal regulatory agency charged by Congress with the responsibility for administering and enforcing the provisions of the Act, as amended, 7 U.S.C. §§ 1 *et seq.* (2006, Supp. II 2009 and Supp. IV 2011), and the Regulations promulgated thereunder, 17 C.F.R. §§ 1.1 *et seq.* (2012).

2. **Peregrine Financial Group Inc.** is and was at all relevant times a registered FCM located at 311 South Monroe St., Suite 1300, Chicago, Illinois.

3. Defendant **Russell R. Wasendorf, Sr.** is currently incarcerated in Cedar Rapids, Iowa. At times relevant to this matter, he was the CEO and sole owner of PFG. He has been registered with the Commission as an associated person (“AP”) of PFG since 1992.

Other Relevant Party

4. The **National Futures Association** (“NFA”) is a not-for-profit industry membership corporation formed as a registered futures association authorized under Section 17 of the Act, as amended, 7 U.S.C. § 21 (2006), that operates under the supervision of the CFTC. Its membership is comprised of FCMs and other futures professionals registered with the CFTC. The NFA is responsible, under CFTC oversight, for certain aspects of the regulation of these futures entities and their APs. It focuses primarily on the qualifications and proficiency, financial condition, retail sales practices, and business conduct of its members. At all relevant times to this Complaint, the NFA was PFG’s designated self-regulatory organization (“DSRO”) responsible for monitoring and auditing PFG for compliance with the minimum financial and related reporting requirements of the domestic exchanges of which PFG was a member.

Statutory Background

5. A futures commission merchant or “FCM” is defined in Section 1a(28) of the Act, as amended, 7 U.S.C. § 1a(28) (Supp. IV 2011), as any individual, association, partnership, corporation or trust that is engaged in soliciting or accepting orders for the purchase or sale of any commodity for future delivery and, “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 that result or may result therefrom.”

6. Customer funds are defined in Regulation 1.3(gg), 17 C.F.R. § 1.3(gg) (2012), as “all money, securities, and property received by a futures commission merchant or by a clearing organization from, for, or on behalf of customers or options customers.”

7. Under Regulation 1.10(b), 17 C.F.R. § 1.10(b) (2012), with limited exception, FCMs must file monthly financial reports with the Commission through CFTC Form 1-FR-FCM, commonly known as a “1-FR” or “financial report.” Pursuant to Regulation 1.32, 17 C.F.R. § 1.32 (2012), FCMs must also monitor and compute their segregation requirements and customer funds on deposit in segregated accounts on a daily basis and maintain copies of these reports, commonly known as a “daily segregation computation.”

PFG and Wasendorf Failed to Segregate Customer Funds and Misappropriated those Funds

8. At all relevant times to this Complaint, PFG kept portions of its segregated customer funds in account XXXX1845 (“1845 customer seg account”) at a U.S. Bank branch in Cedar Falls, Iowa. Wasendorf controlled that account.

9. In July 2012, NFA conducted an audit of PFG. In connection with the audit, PFG represented to NFA that it held in excess of \$220 million in the 1845 customer seg account, when, in fact, that account held approximately only \$5.1 million.

10. Since at least February 2010, PFG and Wasendorf have failed to maintain adequate customer funds in segregated accounts and have misappropriated those customer funds for purposes other than intended by its customers. In particular,

A. On or about February 28, 2010, PFG records showed a balance of approximately \$207 million in the 1845 customer seg account. PFG had received at least that amount from customers. However, the actual balance in the account was less than \$10 million.

B. On or about March 30, 2011, PFG records showed a balance of approximately \$218 million in the 1845 customer seg account. PFG had received at least that amount from customers. However, the actual balance in the account was less than \$10 million.

C. On or about July 9, 2012, PFG records showed a balance of approximately \$225 million in the 1845 customer seg account. However, the actual balance in the account was approximately \$5 million.

PFG and Wasendorf Made False Statements in Documents Filed with the Commission

11. In its capacity as an FCM, PFG filed monthly 1-FR statements with the CFTC. One section of the 1-FR statements requires the reporting of “funds in segregation for customers trading on U.S. Commodity Exchanges.” Those statements are filed electronically.

12. Since August 15, 2011, Wasendorf filed and or caused to be filed at least three 1-FR statements on behalf of PFG which falsely reported the amount of funds in customer segregated accounts.

Wasendorf's Admissions of Misappropriation and Other Wrongdoing

13. On July 9, 2012, Wasendorf attempted to commit suicide at PFG offices in Cedar Falls, Iowa. In a suicide note that he authored, Wasendorf admitted that he committed fraud by embezzling “millions of dollars from customer accounts at PFG.” He further admitted that as part of his scheme to conceal his misappropriation of customer funds, he created forgeries of certain relevant bank statements and bank balance confirmations.

14. In the federal criminal action entitled, *United States v. Wasendorf*, 6:12 CR 2021 (N.D. Iowa), Wasendorf signed a plea agreement on September 7, 2012. In that plea agreement Wasendorf admitted, among other acts, that, beginning in the early 1990's and continuing until July 2012, he:

A. embezzled and otherwise misappropriated in excess of \$100 million of PFG customer funds;

B. created forgeries of certain relevant PFG bank statements and bank balance confirmations which he also knowingly and willfully submitted to the PFG accounting staff and NFA auditors; and

C. caused periodic false reports regarding customer funds to be sent to the NFA and CFTC, including causing a false 1-FR report for May 2012 to be submitted to the CFTC.

CONCLUSIONS OF LAW

Jurisdiction and Venue

15. Pursuant to Section 6c(a) of the Act, as amended, 7 U.S.C. § 13a-1(a) (Supp. IV 2011), this Court has jurisdiction over the parties and subject matter of this action and is authorized to issue permanent injunctive relief against Defendants.

16. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, as amended, 7 U.S.C. § 13a-1(e) (Supp. IV 2011).

PFG and Wasendorf Failed to Segregate Customer Funds

17. By the conduct and admissions described in paragraphs 8 through 10 and 13 through 14 above, PFG, by and through Wasendorf, failed to treat customer funds as belonging to its customers and failed to segregate and separately account for customer funds in violation of Section 4d(a) of the Act, as amended, 7 U.S.C. § 6d(a) (2006) (with respect to conduct prior to June 16, 2011), and 7 U.S.C. § 6d(a) (Supp. IV 2011) (with respect to conduct on or after June 16, 2011), and Regulation 1.20(a) (2012).

18. Wasendorf controlled PFG and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting PFG's violations described in paragraph 17. Wasendorf is therefore additionally liable for PFG's violations of Section 4d(a) of the Act, as amended, 7 U.S.C. § 6d(a) (2006), (with respect to conduct prior to June 16, 2011), and 7 U.S.C. § 6d(a) (Supp. IV 2011) (with respect to conduct on or after June 16, 2011), and Regulation 1.20(a), 17 C.F.R. 1.20(a) (2012), as a controlling person pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006).

PFG and Wasendorf Misappropriated Customer Funds

19. By the conduct and admissions described in paragraphs 8 through 10 and 13 through 14 above, PFG, by and through Wasendorf, and Wasendorf individually, cheated or defrauded or attempted to cheat or defraud and willfully deceived or attempted to deceive PFG customers in violation of Section 4b(a)(2)(i), (iii) of the Act, 7 U.S.C. § 6b(a)(2)(i), (iii) (2006) (with respect to conduct prior to June 18, 2008), Section 4b(a)(1)(A), (C) of the Act, as amended, 7 U.S.C. § 6b(a)(1)(A), (C) (Supp. II 2009) (with respect to conduct from on or after June 18, 2008 to June 16, 2011), and Section 4b(a)(1)(A), (C) of the Act, as amended, 7 U.S.C. § 6b(a)(1)(A), (C) (Supp. IV 2011) (with respect to conduct on or after June 16, 2011).

20. Wasendorf controlled PFG and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting these PFG's violations described in paragraph 19. Wasendorf is therefore additionally liable for PFG's violations of Section 4b(a)(2)(i), (iii) of the Act, 7 U.S.C. § 6b(a)(2)(i), (iii) (2006) (with respect to conduct prior to June 18, 2008), Section 4b(a)(1)(A), (C) of the Act, as amended, 7 U.S.C. § 6b(a)(1)(A), (C) (Supp. II 2009) (with respect to conduct from on or after June 18, 2008 to June 16, 2011), and Section 4b(a)(1)(A), (C) of the Act, as amended, 7 U.S.C. § 6b(a)(1)(A), (C) (Supp. IV 2011) (with respect to conduct on

or after June 16, 2011), as a controlling person pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006).

PFG and Wasendorf Made False Statements in Documents Filed with the Commission

21. By the conduct and admissions described in paragraphs 11 through 14 above, PFG, by and through Wasendorf, and Wasendorf individually, filed false statements with the Commission in violation of Section 6(c)(2) of the Act, as amended, 7 U.S.C. §§ 9(2) (Supp. IV 2011).

22. Wasendorf controlled PFG and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting PFG's violations described in paragraph 21. Wasendorf is therefore additionally liable for PFG's violations of Section 6(c)(2) of the Act, as amended, 7 U.S.C. §§ 9(2) (Supp. IV 2011), as a controlling person pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006).

PERMANENT INJUNCTIVE RELIEF GRANTED

IT IS HEREBY ORDERED THAT:

23. Defendants PFG and Wasendorf are permanently enjoined and prohibited from directly or indirectly violating Sections 4d(a)(2), 4b(a)(1)(A), (C), and 6(c)(2) of the Act, as amended, 7 U.S.C. §§ 6d(a)(2), 6b(a)(1)(A), (C), and 9(2) (Supp. IV 2011), and Regulation 1.20(a) (2012).

24. Defendants are further permanently enjoined and prohibited from:

A. trading on or subject to the rules of any registered entity (as that term is defined in Section 1a(40) of the Act, 7 U.S.C. § 1a(40) (Supp. IV 2011));

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) (2012) ("commodity options"), security futures products, foreign currency (as described in Sections 2(c)(2)(B) and 2(c)(2)(C)(i)) of the Act as amended by the CRA,

7 U.S.C. §§ 2(c)(2)(B) and 2(c)(2)(C)(i) (Supp. IV 2011)) (“forex contracts”), and/or swaps (as that term is defined in Section 1a(47) of the Act, 7 U.S.C. 1a(47) (Supp. IV 2011), and as further defined by Regulation 1.3(xxx), 17 C.F.R. § 1.3(xxx) (2012)), for any personal or proprietary 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, forex contracts and/or swaps 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, forex contracts and/or swaps;

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, forex contracts and/or swaps;

F. 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 Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2012); and

G. acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2012)), 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) (2012).

**Interrelationship of this Default Judgment Order with the Asset Freeze and
Other Provisions of the Preliminary Injunction and the Amended
Receivership Order**

25. Until further order of this Court, Sections II through V and VII through X of the Order of Preliminary Injunction, entered on August 8, 2012, shall remain in effect pending resolution of the issues of restitution and civil monetary penalties. Moreover, nothing in this Default Judgment Order shall be deemed to be a violation of the stay provisions of Section IV of the Amended Receivership Order.

**Special Finding and Provision Regarding the Receiver and Bankruptcy
Trustee**

26. Nothing herein shall be construed or is intended to imply in any way that either:
1) Michael Eidelman (and his representatives) in his capacity as duly-appointed temporary

receiver in this case (“Receiver”); or 2) Ira Bodenstein (and his representatives) in his capacity as Trustee (“Trustee”) in *In re Peregrine Financial Group, Inc.*, No. 12-27488 (Bkrtcy. N.D. Ill., filed July 10, 2012) (“PFG Bankruptcy Case”), have engaged or are engaged in any improper or illegal conduct. Moreover, nothing in this Order shall be construed or is intended to enjoin or restrict in any way the authority, duties, and actions of the Receiver and/or the Trustee.

**RESTITUTION, CIVIL MONETARY PENALTIES AND OTHER
ANCILLARY RELIEF RESERVED**

IT IS FURTHER ORDERED THAT:

27. In light of the pendency of the PFG Bankruptcy Case, in which defrauded customers may file claims against the Defendant PFG for amounts owed them, the Commission will not seek an order of restitution against Defendant PFG in this matter as part of any necessary relief sought by the Commission pursuant to Section 6c of the Act, as amended, 7 U.S.C. § 13a-1 (Supp. IV 2011).

28. The additional issues of necessary relief pursuant to Section 6c of the Act, as amended, 7 U.S.C. § 13a-1 (Supp. IV 2011), regarding a restitution order against Defendant Wasendorf and appropriate civil monetary penalties to be assessed against both Defendants are unresolved and are hereby reserved for further determination by this Court upon motion of the Commission. In its Motion for a Default Judgment, the Commission acknowledges that any order for payment of a civil monetary penalty by PFG subsequently entered by the Court shall constitute a fine or penalty under 11 U.S.C. § 726(a)(4) (Supp. IV 2011) and states its intention that any claim based upon any such civil monetary penalty that it may subsequently file in the PFG Bankruptcy Case be fully subrogated to any and all allowed claims by parties under 11 U.S.C. §§ 726(a)(1)-(3) in the PFG Bankruptcy Case, which includes any and all allowed claims by PFG customers.

29. In connection with any subsequent Commission motion for restitution and/or civil monetary penalties, and at any hearing held on such a motion: (a) Defendants will be precluded from arguing that they did not violate the federal laws as alleged in the Complaint; (b) Defendants may not challenge the validity of their consents and agreements herein or this Consent Order; (c) solely for the purposes of such motion, the allegations of the Complaint and the Findings of Fact and Conclusions of Law in this Consent Order shall be accepted as and deemed true by the Court; and (d) the Court may determine the issues raised in the motion on the basis of affidavits, declarations, excerpts of sworn deposition or investigative testimony, and documentary evidence, without regard to the standards for summary judgment contained in Rule 56(c) of the Federal Rules of Civil Procedure. In connection with the Commission's motion for restitution and/or civil monetary penalties, the Plaintiff may take discovery, including discovery from appropriate non-parties.

30. In order to facilitate the determination of appropriate amounts for restitution and/or civil monetary penalties, Defendant Wasendorf and agents of Defendant PFG are hereby ordered to cooperate fully with the Commission, Receiver, Trustee and any government agency in their investigation of: a) the amount of customer funds and proceeds received by Defendants, and losses to Defendants' customers; and b) the identification of Defendants' assets. The Defendant Wasendorf and agents of Defendant PFG cooperation obligations shall include, but not be limited to, the following:

A. fully and truthfully completing financial questionnaire forms and providing any available documentary verification required by the forms;

B. submitting to a financial deposition or interview should the Plaintiff deem it necessary regarding the subject matter of said form;

C. fully and truthfully answering all questions regarding Defendants' past and present financial condition in such interview or deposition; and

D. providing any additional documentation within their possession or control requested by the plaintiff regarding Defendants' financial condition or status, including, but not limited to, income and earnings, assets, financial statements, asset transfers, and tax returns.

For purposes of this paragraph, neither the Receiver nor the Trustee is deemed an agent of either Defendant.

MISCELLANEOUS PROVISIONS

IT IS FURTHER ORDERED THAT:

31. Injunctive and Equitable Relief Provisions: The injunctive and equitable relief provisions of this Default Judgment Order shall be binding upon Defendants, upon any person under their authority or control, and upon any person who receives actual notice of this Default Judgment Order, by personal service, e-mail, facsimile or otherwise insofar as he or she is acting in active concert or participation with Defendants.

32. Continuing Jurisdiction of this Court: This Court shall retain jurisdiction of this action in order to resolve reserved issues of restitution and civil monetary penalties, to implement and carry out the terms of this Default Judgment Order and any suitable application or motion for additional relief within the jurisdiction of the Court, and to assure compliance with this with this Default Judgment Order and for any other purpose relevant to this action.

DATED: February 13, 2013



UNITED STATES DISTRICT JUDGE