

IN THE UNITED STATES DISTRICT COURT  
FOR THE  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

COMMODITY FUTURES TRADING  
COMMISSION,

Plaintiff,

v.

KENNETH J. LEE, individually,  
and d/b/a/ KJL Investment Group;

and

KJL FINANCIAL GROUP, INC.,

Defendants.

CIVIL ACTION NO.

4:02 - CV - 1477 CAS

**CONSENT ORDER OF PERMANENT INJUNCTION AND OTHER EQUITABLE  
RELIEF AND A CIVIL MONETARY PENALTY AGAINST DEFENDANTS  
KENNETH J. LEE AND KJL FINANCIAL GROUP, INC.**

I.

Plaintiff, Commodity Futures Trading Commission ("Commission"), filed a Complaint against Defendants Kenneth J. Lee, individually and d/b/a KJL Financial Group, and KJL Financial Group, Inc., seeking injunctive and other equitable relief for violations of the Commodity Exchange Act, as amended ("Act"), 7 U.S.C. §§ 1 et seq. (2001), and Regulations promulgated thereunder, 17 C.F.R. §§ 1 et seq. (2002). The Complaint alleged that Defendants solicited and accepted at least \$239,000, and as much as \$1 million, from investors to trade commodity futures. The Complaint further alleged that Defendants made misrepresentations of material facts when soliciting investors,

misappropriated investor funds, and issued false account statements that misrepresented investors' profits, account balances and trades executed.

To effect settlement of the matters alleged in the Complaint against Defendants without a trial on the merits or any further judicial proceedings, Defendants:

1. Consent to the entry of this Consent Order of Permanent Injunction and Other Equitable Relief and a Civil Monetary Penalty Against Defendants ("Order").

2. Affirm that they have agreed to this Order voluntarily, and that no promise or threat has been made by the Commission or any member, officer, agent or representative thereof, or by any other person, to induce consent to this Order, other than as set forth specifically herein.

3. Acknowledge service of the Summons and Complaint.

4. Admit jurisdiction of this Court over them, admit that the Court has subject matter jurisdiction over this action, and admit that venue properly lies with this Court pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1.

5. Waive:

(a) the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure;

(b) all claims which they may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2000) and 28 U.S.C. § 2412 (2000) and Part 148 of the Regulations, 17 C.F.R. § 148.1, *et seq.* (2003), relating to, or arising from, this action;

(c) any claim of double jeopardy based upon the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief; and

(d) all rights of appeal from this Order.

6. Neither admit nor deny any findings of facts or conclusions of law, except as set forth herein. Defendants do not consent to the use of this Order in any other proceedings other than those in which the Commission is a party. However, no provision of this Order shall in any way

limit or impair the ability of any person, including those third-party beneficiaries designated in Section III. -2 herein, to seek any legal or equitable remedy against Defendants or any other person in any other proceeding, including any current or subsequent bankruptcy. Furthermore, the allegations of the Complaint shall be taken as true and be given preclusive effect without further proof only for the purpose of any current or subsequent bankruptcy proceeding filed by, or on behalf of, Defendants for the purpose of determining whether their restitution obligation and/or civil monetary penalty ordered herein are excepted from discharge. Defendants shall also provide immediate notice of any bankruptcy filed by, on behalf of, or against them in the manner required by paragraph 8 of Section III of this Order.

7. Agree that neither they nor any of their agents or employees acting under their authority or control shall take any action or make any public statement denying, directly or indirectly, any allegation of the Complaint or findings or conclusions of law in this Order, or creating, or tending to create, the impression that the Complaint or this Order is without a factual basis; provided, however, that nothing in this provision shall affect Defendants': i) testimonial obligations, or ii) rights to take legal, factual or equitable positions in other proceedings to which the Commission is not a party. Defendants shall take all necessary steps to ensure that all of their agents and employees understand and comply with this agreement.

8. Consent to the continued jurisdiction of this Court for the purpose of enforcing the terms and conditions of this Order and for any other purposes relevant to this case.

## II.

### **IT IS THEREFORE ORDERED THAT:**

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

- A. Cheating, defrauding, or deceiving or attempting to cheat, defraud or deceive other persons in or in connection with an offer to enter into, the entry into, the confirmation of the execution of, or the maintenance of, any commodity futures transaction, in violation of Section 4b(a)(i) of the Act, 7 U.S.C. § 6b(a)(i);
- B. Making or causing to be made to any other person any false report or statement thereof or causing to be entered for any person any false record thereof, in violation of Section 4b(a)(ii) of the Act, 7 U.S.C. § 6b(a)(ii);
- C. Willfully deceiving or attempting to deceive by any means whatsoever other persons by any means whatsoever in regard to any order or contract, or in regard to any act of agency performed with respect to any order or contract, in violation of Section 4b(a)(iii) of the Act, 7 U.S.C. § 6b(a)(iii);
- D. In the capacity of commodity trading advisors ("CTAs"), employing any device, scheme or artifice to defraud any client or participant or prospective client or participant or engaging 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 by use of the mails or any means or instrumentality of interstate commerce, in violation of Section 4g(1) of the Act, 7 U.S.C. § 6g(1);
- E. In the capacity of CTAs, using the mails or any means or instrumentality of interstate commerce, unless registered under the Act, in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1);
- F. In the capacity of CTAs, soliciting, accepting, or receiving client funds, securities, or other property in their name (or extended credit in lieu thereof) to purchase, margin, guarantee, or secure any commodity interest of the client, in violation of Regulation 4.30, 17 C.F.R. § 4.30;
- G. In the capacity of CTAs, failing to deliver a true and accurate Disclosure Document to clients or prospective clients containing the information set forth in Regulations 4.34 and 4.35, 17 C.F.R. §§ 4.34 and 4.35, in violation of Regulation 4.31, 17 C.F.R. § 4.31; and

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

- A. Engaging in, controlling or directing the trading for any commodity futures or options accounts for or on behalf of any other person or entity, whether by power of attorney or otherwise;
- B. Entering into any commodity futures or options transactions for their own accounts, for any accounts in which they have a direct or indirect interest, and/or having any commodity futures or options traded on their behalf; and

C. 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, except as provided for in Section 4.14(a)(9) of the Commission's Regulations, 17 C.F.R. § 4.14(a)(9), or acting, directly or indirectly, as a principal, agent, or any other officer, agent or employee of any person registered, required to be registered, or exempted from registration with the Commission, unless such exemption is pursuant to Section 4.14(a)(9) of the Commission's Regulations, 17 C.F.R. §4.14(a)(9).

III.

**IT IS FURTHER ORDERED THAT:**

1. Restitution: Defendants shall pay and be jointly and severally liable for restitution to investors/creditors in the amount of \$ 567,550.74 plus post-judgment interest. Interest after the date of this Order until the restitution is paid in full shall be paid at the post-judgment interest rate set forth in 28 U.S.C. § 1961. Attachment A to this Order includes the names of the investors/creditors to whom restitution shall be made pursuant to this paragraph, together with the amount of restitution payable by Defendants to each of them (not including required interest) and the pro rata distribution percentage by which each investor/creditor shall be paid. For the privacy protection of the investors/creditors, Attachment A is to be filed and kept under seal indefinitely. Defendants' obligations to make restitution under this paragraph shall be reduced by any amounts paid to the investors/creditors listed in Attachment A pursuant to any restitution ordered in any other legal proceeding. All payments made pursuant to this Order by Defendant Lee shall first be made to the investor/creditors for restitution on a pro rata basis until those amounts (including interest) are fully satisfied. All payments after satisfaction of the restitution shall be applied to the civil monetary penalty described below.

2. Civil Monetary Penalty: Defendant Lee shall pay a civil monetary penalty of \$ 300,000 plus post-judgment interest. Interest after the date of this Order until the civil monetary

penalty is paid in full shall be paid at the post-judgment interest rate set forth in 28 U.S.C. § 1961. Defendant Lee shall pay such civil monetary penalty by electronic funds transfer, or by 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 Dennese Posey, or her successor, Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21<sup>st</sup> Street, N.W., Washington, D.C. 20581, under cover of a letter that identifies Defendant and the name and docket number of the proceeding; Defendant Lee shall simultaneously transmit a copy of the cover letter and the form of payment to the Director, Division of Enforcement, Commodity Futures Trading Commission, at the following address: 1155 21<sup>st</sup> Street, NW, Washington, D.C. 20581.

3. Third-Party Beneficiaries: Pursuant to Rule 71 of the Federal Rules of Civil Procedure, each of the investors/creditors identified in Attachment A is explicitly made an intended third-party beneficiary of this Order and may seek to enforce obedience of this Order to obtain satisfaction of any portion of the restitution amount which has not been paid by Defendants.

4. Collateral Agreements: Defendants shall immediately notify the Commission if they make any agreement with any investor/creditor obligating them to make payments outside of this Order. Defendants shall also provide immediate evidence to the Court and to the Commission of any payments made pursuant to such agreement.

5. Restitution and Civil Monetary Penalty Provisions Contingent on Accurate Financial Disclosure: Based upon Defendant Lee's sworn representations in his Financial Disclosure Statement, dated February 4, 2004, and other evidence provided by Defendant Lee, the Court herein is not ordering immediate payment of the entire restitution obligation and civil monetary penalty. This determination is contingent upon the accuracy and completeness of Defendant Lee's Financial Disclosure Statement and other evidence provided by Defendant Lee regarding his

financial condition. If at any time following the entry of this Order, the Commission obtains information indicating that Defendant Lee's representations concerning his financial condition were fraudulent, misleading, inaccurate or incomplete in any material respect as of the time such representations were made, the Commission may, at its sole discretion and with prior notice to Defendant Lee, petition this Court for an order requiring him to make immediate payment of his entire restitution obligation and/or civil monetary penalty, or of any portion thereof, the amount of which shall be determined by the Commission. In connection with any such petition, the only issues shall be whether the financial information provided by Defendant Lee was fraudulent, misleading, inaccurate or incomplete in any material respect as of the time such representations were made. In its petition, the Commission may move this Court to consider all available remedies, including, but not limited to, ordering Defendant Lee to pay funds or assets, directing the forfeiture of any assets, or imposing sanctions for contempt of this Order, and the Commission may also request additional discovery. Defendant Lee may not, by way of defense to such petition, challenge the validity of this Order, contest the allegations in the Complaint filed by the Commission, or assert that payment of restitution or civil monetary penalty should not be ordered. If in such motion the Commission moves for, and the Court orders, payment of less than the full amount of the restitution obligation or the full amount of civil monetary penalty, such motion will not be deemed a waiver of the Commission's right to require Defendant Lee to make full payments as set forth herein.

6. Freeze Orders Dissolved: All prior freeze orders or orders limiting the amount that Defendants can spend on a monthly basis are dissolved.

7. Scope of Injunctive Relief: 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.

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

Notice to Commission:

Regional Counsel  
Division of Enforcement - Central Region  
Commodity Futures Trading Commission  
525 West Monroc Street, Suite 1100  
Chicago, Illinois 60661

Notice to Defendants:

Robert Adler  
Attorney at Law  
2726 Brentwood Blvd.  
St. Louis, Missouri 63144

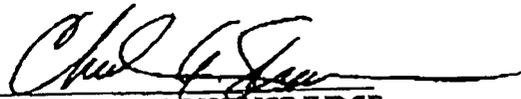
In the event that Defendant Lee changes his residential or business telephone number(s) and/or address(es) at any time, he shall provide written notice of his new number(s) and/or address(es) to the Commission within twenty (20) calendar days thereof.

9. Entire Agreement and Amendments: This Order incorporates all of the terms and conditions of the settlement among the parties hereto. Nothing shall serve to amend or modify this Consent Order in any respect whatsoever, unless: (1) reduced to writing; (2) signed by all parties hereto; and (3) approved by order of this Court.

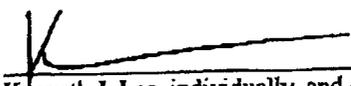
10. This Order shall remain in effect until further order of the Court and the Court shall retain jurisdiction over this action to ensure compliance with this Order and for all other purposes related to this action.

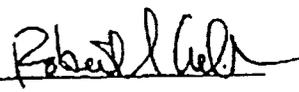
**IT IS SO ORDERED.**

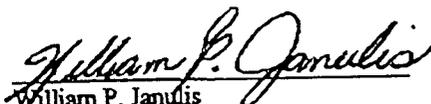
Dated: March 9, 2004

  
UNITED STATES DISTRICT JUDGE

CONSENTED TO AND APPROVED BY:

  
Kenneth J. Lee, individually, and on behalf of  
KJL Investment Group and  
KJL Financial Group, Inc.

  
Robert Adler  
Attorney for Defendant  
2726 S. Brentwood Ave.  
St. Louis, MO 63144  
(314) 918-8800

  
William P. Janulis  
One of the Attorneys for the Plaintiff  
Commodity Futures Trading Commission  
525 West Monroe Street, Suite 1100  
Chicago, Illinois 60606  
(312) 596-0545