

IN THE UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF MICHIGAN

COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

v.

MARQUIS FINANCIAL MANAGEMENT
SYSTEMS, INC.,
THE MARQUIS GROUP, INC.,
JOHN DANIEL LEE,
DAVID PAUL KELLY II and
JOEL SOFIA,

Defendants.

CIVIL ACTION NO. 03-74206

Judge Lawrence P. Zatkoff

Magistrate Judge Capel



FILED

JUN 08 2005

CLERK'S OFFICE
U.S. DISTRICT COURT
EASTERN MICHIGAN

**ORDER GRANTING DEFAULT JUDGMENT AGAINST DEFENDANTS
MARQUIS FMS, MARQUIS GROUP AND DAVID PAUL KELLY II**

This matter came before the Court on Plaintiff's Motion for Default Judgment Against Defendants Marquis Financial Management Systems, Inc. ("Marquis FMS"), The Marquis Group, Inc. ("Marquis Group") and David Paul Kelly II ("Kelly") (collectively referred to as "default defendants"). The Court has reviewed the Motion and the Memorandum submitted in support thereof, including the Joint Appendix of Exhibits thereto, as well as the entire record in the case. The Court finds that Plaintiff is entitled as a matter of law to the entry of a default judgment on liability against defendants Marquis FMS, Marquis Group and Kelly and an award of restitution against Marquis FMS and Marquis Group and disgorgement of ill-gotten gains against Kelly and imposition of civil monetary penalties against Marquis FMS, Marquis Group, and Kelly..

I.

PROCEDURAL HISTORY

On October 20, 2003, plaintiff CFTC filed an eight count Complaint alleging violations of the Commodity Exchange Act, as amended ("Act"), 7 U.S.C. §§ 1 *et seq.* (2002). A summons was issued to each of the default defendants. On October 21, 2003, defendants Marquis FMS, Marquis Group and Kelly were properly served with the Summons and Complaint. This Court entered a Statutory Restraining Order against all defendants on October 20, 2003. Pursuant to Fed. R. Civ. P. 6 and 12, an answer to the Complaint was due within 20 days after service of the Summons and Complaint. However, Marquis FMS and Marquis Group failed to file an appearance in this matter and each of them and Kelly have failed to answer or otherwise defend this action. This Court entered an Order of Preliminary Injunction and Other Ancillary Relief on November 12, 2003. At the hearing on the preliminary injunction on October 30, 2003, Marquis FMS and Marquis Group still did not appear and Kelly appeared *pro se*. The Marquis entities have never appeared in this action and, although Kelly submitted two accountings to the plaintiff and appeared at his deposition,¹ he has never filed any form of responsive pleading. On February 3, 2005, the Clerk of the Court, at the request of the plaintiff, and pursuant to Rule 55(a) of the FRCP, entered technical defaults against Marquis FMS, Marquis Group and Kelly.

¹ When Kelly appeared and gave sworn investigative testimony to representatives of the Commission on December 9, 2004, he asserted his Fifth Amendment rights in response to most questions posed. Thus, an adverse inference should be drawn from the defendant's assertions of his Fifth Amendment rights. *In re Citadel Trading Co. of Chicago*, [1986-1987 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 23,082 at 32,189 (CFTC May 12, 1986) citing *Baxter v. Palmigiano*, 425 U.S. 308, 317 (1976); *Lefkowitz v. Cunningham*, 431 U.S. 801, 808, n.5 (1977) and *In re Lincolnwood*, [1982-1984 Transfer Binder] Comm. Fut. L. Rep. ¶ 21,986 at 28,252 n.97 (CFTC Jan. 31, 1984) (finding an adverse inference from a respondent's assertion of the Fifth Amendment).

On March 9, 2005, plaintiff filed a Motion for Entry of Default Judgment against Marquis FMS, Marquis Group and Kelly. No responses to this Motion were filed by any of these defendants.

II.

LEGAL STANDARDS FOR DEFAULT JUDGMENT

The CFTC is entitled to a default judgment because Marquis FMS, Marquis Group and Kelly have failed to plead or otherwise defend this action.² Because the Complaint in this case seeks injunctive and other equitable relief, in addition to a sum certain, the Plaintiff seeks entry of judgment by the Court pursuant to FRCP 55(b)(2). The well-pleaded allegations of the Complaint should be deemed true and the Commission is therefore entitled to default judgment in its favor and against the default defendants. *Thompson v. Wooster*, 114 U.S. 104, 5 S.Ct. 789, 29 L.Ed. 105 (1885). See *Clark v. Andover Securities*, 44 Fed. App. 228, 230 (9th Cir. 2002) (“the defendants’ willful failure to answer or otherwise properly defend this action after having actual notice of it counsels the denial of defendants’ request to set aside default”); *National Satellite Sports, Inc. v. Mosley Entertainment, Inc.*, 2002 WL 1303039 (E.D. Mich. 2002) (“well-pleaded factual allegations are sufficient to establish a defendant’s liability” in connection with a default judgment motion).

In the context of a default judgment, the district court is obliged to accept as true all facts alleged by the plaintiff and all reasonable inferences contained therein. *Thompson*, 114 U.S. 104. As a general rule, a default judgment establishes, as a matter of law, that a defendant is liable to a plaintiff as to each cause of action alleged in the complaint. *Thompson*, 114 U.S. 104; see also, *Bender Shipbuilding & Repair Co., Inc. v. The Vessel Drive Ocean V*, 123 F. Supp. 2d

² Kelly is a United States citizen and is not in the military service of the United States. Thus, the Soldiers’ and Sailors’ Relief Act of 1940, 50 U.S.C. §§ 501 *et seq.*, is not applicable.

1201 (S.D. Ca. 1998) and *Dundee Cement Co. v. Howard Pipe Prods.*, 722 F.2d 1319, 1323 (7th Cir. 1983). Marquis FMS, Marquis Group and Kelly have, by law, admitted the allegations of the complaint.³

Rule 55 does not require that testimony be presented as a prerequisite to the entry of default. If the court determines that the defendant is in default, the well-pleaded factual allegations of the complaint, except those relating to the amount of damages, will be taken as true. *Geddes v. United Financial Group*, 559 F.2d 557, 560 (9th Cir. 1977), citing *Pope v. U.S.*, 323 U.S. 1, 65 S.Ct. 16, 89 L.Ed. 3 (1944). Further, a judgment by default may be entered without a hearing on damages when, as here, the amount claimed is liquidated or capable of ascertainment from the definite figures contained in the documentary evidence or in detailed affidavits. *United Artists Corp. v. Freeman*, 605 F.2d 854, 857 (5th Cir. 1979); *Eizler v. Stritzler*, 535 F.2d 148 (1st Cir. 1976); *Sardo Corporation v. DeMaria Building Co., Inc.* 1995 WL 871168 (E. D. Mich. 1995).

III.

FINDINGS

THE COURT FINDS THAT:

JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action and all parties hereto pursuant to Section 6c of the Commodity Exchange Act, as amended ("Act"), 7 U.S.C. § 13a-1 (2001), which authorizes the Commission to seek injunctive relief against any person whenever it shall appear that such person has engaged, is engaging or is about to engage in any

³ Although not separately discussed herein, plaintiff is also entitled to judgment on Counts 7 and 8 of the Complaint that Marquis FMS and Marquis Group violated Section 4n(4) of the Act and Regulations 4.22 and 4.21.

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. § 13a-1 (2001), in that the Defendants are found in, inhabit, or transact business in this district, and the acts and practices in violation of the Act have occurred, are occurring, or are about to occur within this district, among other places.

3. Defendants, directly and indirectly, have made use of the means and instrumentalities of interstate commerce, including the mail, in connection with the acts, practices and courses of business complained of herein.

THE PARTIES

4. Plaintiff, Commodity Futures Trading Commission is an independent federal regulatory agency that is charged with responsibility for administering and enforcing the provisions of the Act, 7 U.S.C. §§ 1 *et seq.* (2002), and the Regulations promulgated thereunder, 17 C.F.R. §§ 1 *et seq.* (2004).

5. Defendant Marquis Financial Management Systems, Inc. ("Marquis FMS") is a company incorporated in the Republic of Panama with a mailing address in Flint, Michigan, and another address in Bermuda.

6. Marquis FMS has never been registered with the Commission in any capacity.

7. Defendant The Marquis Group, Inc. ("Marquis Group") is a company incorporated in the Republic of Panama with a mailing address in Flint, Michigan, and another address in Ancon, Panama.

8. Marquis Group has never been registered with the Commission in any capacity
 9. Defendant John Daniel Lee resides in Flushing, Michigan, and has sometimes used the alias, "Jhon Leigh."
 10. Lee has never been registered with the Commission in any capacity.
 11. Defendant David Paul Kelly II ("Kelly") resides in Flint, Michigan, and sometimes used the alias "Dhavid Khelly".
 12. Kelly has never been registered with the Commission in any capacity.
- OVERVIEW OF MARQUIS FMS AND MARQUIS GROUP
14. Lee was an agent with a general power of attorney to act on behalf of Marquis FMS.
 15. Lee was an agent with a general power of attorney to act on behalf of the Marquis Group.
 16. Lee sometimes conducted business under the names "JDL & Associates," "Justice, Divinity and Liberty Association," "JDL Association," "JDLA" or "EMI."
 17. Lee is a "minister" and "agent" for a purported "church" in Flint, Michigan called "United Believers."
 18. United Believers was an unincorporated church ministry with an address in Flint, Michigan 48532.
 19. Lee had a power of attorney to act on behalf of United Believers.
 20. During the latter part of 1999, Lee met Andrew Duncan ("Duncan") who convinced Lee to give him the "chance" to engage in "trading on commodities" for Marquis FMS and Marquis Group participants.

21. On August 30, 2001, the Commission filed an injunctive complaint against Duncan and his firm, the Aurum Society, *CFTC v. Andrew Duncan and The Aurum Society, Inc.*, Northern Dist. of Illinois, No. 01-C-6802. The complaint alleged, *inter alia*, that Duncan had acted as an unregistered commodity pool operator and an unregistered commodity trading advisor and had engaged in commodity pool fraud. A default judgment was entered on April 3, 2002 against both defendants, and the court entered a permanent injunction and granted other ancillary relief, including payment of \$3,456,555 in restitution and a civil monetary penalty of \$360,000.

SOLICITATIONS TO PARTICIPANTS

22. Beginning in at least January 2000, Lee, Kelly and others met with potential Marquis participants in various cities throughout the United States.

23. Marquis hosted seminars for the public with workshops on various asset management and privacy protection topics, including the use of international business corporations ("IBCs") and trusts as means for individuals to protect their assets.

24. At these seminars, attendees were also invited to private consultations if they were "serious entrepreneurs."

25. At the Marquis seminars, Lee, Kelly and others solicited individuals to invest in Marquis.

26. Lee, Kelly and others also met prospective Marquis participants at various privately arranged meeting places, including a restaurant and church in New Jersey.

27. Lee and Kelly made vague presentations in which they told potential participants that they could work with Marquis to realize their "wealth building opportunities" by becoming

"members" of the "JDL Association." As far as participants were concerned, "wealth building" meant the same thing as "investing."

28. Lee gave prospective participants a JDLA brochure that he had prepared that, in part, outlined so-called "Rules of Membership." The JDLA brochure included a listing of anticipated yields for Marquis participants ranging from 150% to 580% for each 410-day investment period.

29. Lee wrote and distributed an "Annual Membership Analysis" to participants in 2002 which states that the "value" [of a Marquis investment] "has grown at a good clip over the years, and our membership has risen correspondingly."

30. Lee never told potential participants that he planned to pool their investments to trade commodity futures with Duncan's assistance.

31. Lee never disclosed to participants that a significant portion of their funds would be used to trade commodity futures and options contracts and never gave any indication of the risks of such trading.

32. Lee made a variety of fraudulent statements to participants, including that:

- (a) Marquis had been accepting investor funds for 14-15 years;
- (b) Marquis had experienced "remarkable" returns for participants, having consistently outperformed the U.S. stock market;
- (c) An investment with Marquis was very low risk with only 25% of the investment placed at risk and the remaining 75% of the investment placed in a non-risk account;
- (d) Marquis had consistently achieved 300% annual returns; and
- (e) A \$100,000 investment would return amounts from \$100,000 to \$350,000 in the prescribed 410-day investment period.

33. Lee testified that Marquis was set up in approximately 1999; thus, it clearly had not been accepting funds from participants for a period of 14-15 years as Lee told participants.

34. Marquis has never earned a profit for any of their participants.

35. A portion of participant funds was invested in commodity futures and options trading.

36. The defendants told individual members of the public that in order to become Marquis participants they would have to pay a fee to Marquis in order to set up their own international business corporation ("IBC").

37. Marquis charged fees between \$7,500 and \$10,300 for this service. Marquis also charged participants an additional administrative fee of 10% of their total investment amount.

38. After their purported IBC was set up, participants were instructed to wire their investment funds to one of the two following bank accounts, although at least one investor gave cash to Sofia to fund his Marquis FMS and Marquis Group investment: Gold and Silver Reserve at AmSouth Bank in Birmingham, Alabama, and Marq-E-Gold International, Inc. at Citizens Bank in Flint, Michigan.

SUMMARY OF INDIVIDUAL PARTICIPANT TOTALS

39. From January 2000 through the present, deposits of \$2,025,242 were solicited from 45 participants by Marquis or its agents.

40. The individual investment amounts ranged from \$1,000 to \$370,000.

41. An additional sum of \$430,697 was solicited by Marquis from unidentified participants. A total of \$592,029 was distributed back to Marquis participants. The participants are still owed a total of \$1,863,910 by Marquis.

COMMODITY FUTURES AND OPTIONS TRADING BY MARQUIS FMS AND MARQUIS GROUP

42. From July 2000 through the present, Marquis invested in commodity futures and options through trading accounts at several FCMs under the names of Marquis FMS and Marquis

Group, and funded those accounts with over \$717,000 of participant funds funneled through AmSouth Bank.

43. Marquis gave Duncan written authorization to trade two of its accounts at the FCMs.

44. Marquis lost money every month that it traded, losing over \$625,818 trading commodity futures and options in its accounts. Those trading accounts currently have a balance of just \$3,912.

MISAPPROPRIATION OF MARQUIS PARTICIPANT FUNDS

45. Of the approximate \$2,831,081 that was deposited into the Marquis accounts, the following is a summary of how most of those funds were disbursed:

- a) \$592,029 was distributed back to the identified Marquis participants;
- b) \$625,818 was lost trading commodity futures and options;
- c) \$293,406 was used to make payments to Marquis Certified Information Coordinators ("CIC") (individuals who solicited investments for Marquis);
- d) \$72,893 was taken out in cash withdrawals;
- e) \$294,580 was paid to credit card companies;
- f) \$104,500 was paid to United Believers; and
- g) \$182,658 was used for personal (\$136,708) and miscellaneous expenses (\$45,950).

46. A total of 45 participants in the Pool were identified, and they deposited \$2,025,242 in Marquis. There was an additional \$430,697 in deposits from a bank in the Republic of Panama from unidentified participants. Therefore, Marquis received a total of

\$2,455,939 from participants. Marquis made \$592,029 in disbursements to participants. As a result, Marquis owes \$1,863,910⁴ in restitution to participants.

47. The plaintiff has been able to locate 14 of the 45 identified Marquis participants. They are owed restitution in the amount of \$920,151 and comprise the restitution distribution list attached hereto as Exhibit A.

48. Of the \$60,000 that Marquis wire-transferred to United Believers in April 2001, at least \$43,402.51 was used for Lee's purchase of his residence located at 1470 Flushing Road, Flushing, Michigan, in the name of United Believers.

FALSE STATEMENTS WERE ISSUED TO PARTICIPANTS

49. In October 2001, Lee sent an e-mail to participants stating that, due to the September 11 tragedies, Pool participants would not receive their payouts in November 2001 as promised. The letter did not state that any of the Pool participant's funds had been lost; rather, it stated that the Pool intended to reach its expected yields.

50. In January 2002, Lee, sent a statement to participants entitled "Membership Overview for the Year 2001" ("Membership Overview"). This statement made no mention of any losses in the trading accounts nor, for that matter, of the basic fact that commodity futures or options trading was even being done with their funds.

51. The January 2002 statement sent by Lee to participants reported each investor's initial investment amount and "anticipated yield" for the period just ended, showing a profit of 250% for the completed time period. For instance, Lee sent a false statement to two participants

⁴ \$2,025,242 + \$430,697 - \$592,029 = \$1,863,910

and expressly told them that they could expect to receive a disbursement of approximately \$350,000 on their \$100,000 investment.

KELLY

52. Kelly opened up a postal mail drop-box for Marquis FMS in Flint, Michigan.

53. Kelly was given authority by Marquis Group to open up commodity trading accounts on its behalf at a futures commission merchant ("FCM") called PMB.

54. Kelly received funds intended for investment purposes from Marquis participants in the form of cash, namely: \$10,300 from Jerry Clendenen, \$9,000 from Joseph Miduski and \$30,000 from Stephen Farnelli, Jr., the latter of whom gave the cash to Joel Sofia who then delivered the cash to Kelly.

VIOLATIONS OF THE ACT AND REGULATIONS

55. Defendants Marquis FMS and Marquis Group violated Sections 4b(a)(2)(i) and (iii), 4b(a)(2)(ii), 4c(b), 4k(2), 4m(1), 4o(1) and 4n(4) of the Act, 7 U.S.C. §§ 6b(a)(2)(i) and (iii), 6b(a)(2)(ii), 6c(b), 6k(2), 6m(1), 6o(1) and 6n(4) (2001), and Commission Regulations 4.22 and 4.21 thereunder, 17 C.F.R. §§ 4.22 and 4.21 (2002);

56. Defendant Lee's actions and omissions were done individually and as an agent on behalf of Marquis FMS and Marquis Group. Therefore, Marquis FMS and Marquis Group are also liable for Lee's violations of Sections 4b(a)(2)(i) and (iii), 4b(a)(2)(ii), 4c(b), 4k(2) and 4o(1) of the Act, 7 U.S.C. §§ 6b(a)(2)(i) and (iii), 6b(a)(2)(ii), 6c(b), 6k(2) and 6o(1) (2001).

57. Defendant Kelly was involved in the solicitation of funds from participants whose funds were pooled and, in part, used to fund commodity futures and options trading, while he was not properly registered as an AP of a CPO and, Kelly, thereby, violated Section 4k(2) of the Act, 7 U.S.C. § 6k(2) (2001).

IV.

IMPOSITION OF A PERMANENT INJUNCTION AND OTHER RELIEF

Unlike private actions, which are grounded in equity, the CFTC's request for injunctive relief has its basis in Section 6c of the Act, 7 U.S.C. § 13a-1. Under 6c, the CFTC must show only two things to obtain permanent injunctive relief: first, that a violation of the Act has occurred (see discussion above) and second, that there is a reasonable likelihood of future violations. *CFTC v. Muller*, 570 F.2d 1296, 1300 (5th Cir. 1978). *See also Kelly v. Carr*, 442 F.Supp. 346 (W.D. Mich. 1977) *aff'd in part, rev'd in part*, 691 F.2d 800 (6th Cir. 1980) (granting default judgment for permanent injunction).

Marquis FMS and Marquis Group's fraudulent conduct extended over a period of more than three years and injured many members of the public. Unless they are enjoined, the default defendants will certainly be in a position to commit future violations by soliciting and accepting funds from the public, and the Marquis entities will be in position to lie to the public about potential profits and risk of loss and may be inclined to misappropriate funds. Such an injunction would effectuate the manifest objectives of the antifraud provisions of the Act.

Marquis FMS and Marquis Group are jointly and severally liable to pay restitution of \$1,863,910 which represents net losses to Marquis participants, plus pre-judgment and post judgment interest thereon. *See United States v. Beatrice Foods Co.*, 493 F.2d 1259, 1272 (8th Cir. 1974) (District Court's inherent equitable powers can be used to sustain a restitution order). However, customer reliance must also be considered in this context to the extent that it tends to prove or disprove a causal nexus between the respondent's fraudulent conduct and the injury suffered by his victim. *Indosuez Carr Futures, Inc. v. CFTC*, 27 F.3d 1260, 1264-65 (7th Cir. 1994). In a case based on omission of material facts, reliance is presumed. *Affiliated Ute*

Citizens v. United States, 406 U.S. 128, 92 S.Ct. 1456, 31 L.Ed.2d 741 (1972). Here, the default defendants solicited funds from participants but never disclosed to them that their funds would be used to trade commodity futures and options. Also, once they began futures trading, the default defendants failed to alert prospective participants about the significant losses they had sustained. Further, Marquis' misrepresentations were material and resulted in injury to the pool participants. "Misrepresentations regarding profit potential and risk go to the heart of a customer's investment decision and are therefore material as a matter of law." *CFTC v. Noble Wealth Data Information Services, Inc.*, 90 F.Supp.2d. 676, 686 (D. Md. 2000), *aff'd sub nom.*, 278 F. 3d 319 (4th Cir. 2002). Kelly shall also pay disgorgement of \$49,300 which represents funds that he received as a result of his connection with this fraudulent enterprise.

Finally, Section 6c(d)(1) of the Act, 7 U.S.C. § 9(d)(1), provides that a civil penalty may be assessed against a defendant for each violation of the Act.⁵ In light of the egregiousness and continuing nature of the fraud in this case, such an assessment is appropriate and each of the default defendants shall pay a civil monetary penalty of \$110,000 per count, which is substantially less than \$110,000 per violation allowed by the Act.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that a default judgment shall be and hereby is entered in favor of Plaintiff Commission and against defendants Marquis FMS, Marquis Group and Kelly as follows:

A. Defendants Marquis FMS and Marquis Group are permanently restrained, enjoined and prohibited from, directly or indirectly:

1. Cheating, defrauding or deceiving investors in or in connection with orders to make, or the making of, contracts of sale of commodities for future delivery, made, or

⁵ That section allows assessing a civil monetary penalty of not more than \$110,000, for violations occurring before October 23, 2002 (\$120,000 for violations occurring after that date) or triple the monetary gain to the defendants, whichever is greater, for each violation of the Act and regulations.

to be made, for or on behalf of other persons where such contracts for future delivery were or may 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, in violation of Section 4b(a)(i) and (iii) of the Act, 7 U.S.C. §§ 6b(a)(i) and (iii);

2. Directly or indirectly employing one or more devices, schemes, or artifices to defraud pool participants or prospective pool participants, or engaging in transactions, practices or courses of business which operate as a fraud or deceit upon pool participants or prospective pool participants, or engaging in transactions, practices or courses of business which operate as a fraud or deceit upon pool participants or prospective pool participants, in violation of Section 4o(1)(A) and (B) of the Act, 7 U.S.C. § 6o(1)(A) and (B); and

3. Cheating or defrauding or attempting to cheat or defraud any other person, or deceiving or attempting to deceive any other person by any means whatsoever in connection with an offer to enter into, the entry of or confirmation of the execution of, any commodity option contract, in violation of Section 4c(b) of the Act and Regulation 33.10, 17 C.F.R. § 33.10.

B. Defendants Marquis FMS and Marquis Group and all persons insofar as they are or have been acting in the capacity of agents, servants, employees, successors, assigns, or attorneys of and all persons insofar as they are or have been acting in active concert or participation with Marquis FMS and Marquis Group, who receive actual notice of this Order by

personal service or otherwise, are permanently restrained, enjoined and prohibited from, directly or indirectly, willfully making or causing to be made to such other person any false report or statement thereof, in violation of Section 4b(a)(ii) of the Act, 7 U.S.C. § 6b(a)(ii).

C. Defendants Marquis FMS and Marquis Group are permanently restrained, enjoined and prohibited from soliciting, accepting, or receiving from others, funds, securities, or property, for the purpose of trading in any commodity for future delivery on or subject to the rules of any contract market without being registered with the Commission as a CPO, in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1).

D. Defendants Marquis FMS and Marquis Group are permanently restrained, enjoined and prohibited from soliciting, accepting, or receiving from others, funds, securities, or property, for the purpose of trading in any commodity for future delivery on or subject to the rules of any contract market while employing persons who are not registered with the Commission as an AP of a CPO, in violation of Section 4k(2) of the Act, 7 U.S.C. § 6k(2).

E. Defendant Kelly is permanently restrained, enjoined and prohibited from soliciting, accepting, or receiving from others, funds, securities, or property, for the purpose of trading in any commodity for future delivery on or subject to the rules of any contract market without being registered with the Commission as an AP of a CPO, in violation of Section 4k(2) of the Act, 7 U.S.C. § 6k(2)

F. Defendants Marquis FMS, Marquis Group and Kelly are permanently restrained, enjoined and prohibited from directly or indirectly engaging in any commodity futures or options related activity, including but not limited to:

1. Soliciting investors and accepting any funds from any person for the purpose of trading commodity futures, security futures, options, options on futures, or foreign currency futures contracts;

2. Soliciting, accepting or placing orders, giving advice or price quotations or other information in connection with the purchase or sale of commodity futures contracts for themselves or others, introducing customers to any other person engaged in the business of commodity futures trading, issuing statements or reports to others concerning commodity futures trading, security futures, options, options on futures, or foreign currency futures trading for or on behalf of any other person or entity whether by power of attorney or otherwise and otherwise engaging in any business activities related to commodity futures trading;

3. Controlling or directing the trading for any commodity futures, security futures, options, options on futures, or foreign currency futures for or on behalf of any other person or entity, whether by power of attorney or otherwise;

4. Applying for registration with the Commission in any capacity, and engaging in any activity requiring such registration with the Commission, or acting as a principal, agent or officer or employee of any person registered or required to be registered with the Commission under the Act.

G. The injunctive provisions of this Order shall be binding on defendants Marquis FMS, Marquis Group and Kelly, and any person insofar as he or she is acting in the capacity of an agent, servant, employee, successor, or assign or attorney of defendants Marquis FMS, Marquis Group and Kelly, and upon any person who receives actual notice of this Order by

personal service or otherwise insofar as he or she is acting in concert or participation with Marquis FMS, Marquis Group and Kelly.

IT IS FURTHER ORDERED THAT:

1. Restitution. Within thirty (30) days of the date of this Order, defendant Marquis FMS and Marquis Group shall jointly and severally pay restitution in the amount of \$1,863,910 ("Restitution Amount"). In addition, Marquis FMS and Marquis Group shall pay pre-judgment interest thereon from October 20, 2003 to the date of this Order calculated at the underpayment rate established by the Internal Revenue Service, pursuant to 26 U.S.C. § 662(a)(2). Marquis FMS and Marquis Group shall also pay post-judgment interest at the Treasury Bill rate prevailing on the date this Order is entered, pursuant to 28 U.S.C. § 1961(a), from the date this Order is entered until the date full payment of restitution is made, or such other amount that the Plaintiff may prove is equitable and justly owed. The persons to whom the restitution amounts shall be paid, and pro rata distribution percentages by which each participant shall be paid from the Restitution Amount are set forth in Attachment A hereto. Omission from Attachment A shall in no way limit the ability of any participant from seeking recovery from Marquis FMS or Marquis Group or any other person or entity. Within thirty days of the date of this Order, Marquis FMS and Marquis Group shall provide the Restitution Amount to the National Futures Association ("NFA") c/o Daniel A. Driscoll, Esq., Executive Vice President, Chief Compliance Officer, or his successor, at the following address: National Futures Association, 200 West Madison Street, Chicago, IL 60606 under cover of a letter that identifies the defendant making payment and the name and docket number of the proceeding. Upon the receipt of funds for the payment of the Restitution Amount, The

NFA will subsequently distribute the funds to investors in accordance with Attachment A and only after the NFA verifies each participant's claim to a portion of the Restitution Amount. Further, any money paid to the NFA above and beyond the amount sufficient to pay full restitution to the participants identified on the distribution list, Attachment A, shall be converted to disgorgement and shall be sent by the NFA to the Commission to the attention of Dennese Posey, or her successor, Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, DC 20581, under cover of a letter that identifies defendant making payment and the name and docket number of the proceeding, as payment of disgorgement.

2. Disgorgement. Within thirty (30) days of the date of this Order, Kelly shall pay disgorgement of \$49,300 to the Commission sent to Dennese Posey, or her successor, Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, DC 20581, under cover of a letter that identifies defendant making payment and the name and docket number of the proceeding. The defendant making payment shall simultaneously transmit a copy of the cover letter and the form of payment to Gregory G. Mocek, Director, Division of Enforcement, Commodity Futures Trading Commission, at the following address: 1155 21st Street, NW, Washington, DC 20581.

3. Civil Monetary Penalty. Within thirty (30) days of the date of this Order, Marquis FMS and Marquis Group shall each pay a civil penalty of \$880,000 and Kelly shall pay a civil penalty of \$110,000 to the Commission sent to Dennese Posey, or her successor, Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, DC 20581, under cover of a letter that

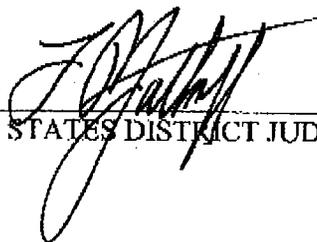
identifies defendant making payment and the name and docket number of the proceeding. The defendant making payment shall simultaneously transmit a copy of the cover letter and the form of payment to Gregory G. Moeck, Director, Division of Enforcement, Commodity Futures Trading Commission, at the following address: 1155 21st Street, NW, Washington, DC 20581.

4. Marquis FMS, Marquis Group and Kelly 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.

5. IT IS FURTHER ORDERED AND ADJUDGED that this Court shall retain jurisdiction of this action for all purposes, including the implementation and enforcement of this Default Judgment.

IT IS SO ORDERED.

DATED: JUN 08 2005 , 2005


UNITED STATES DISTRICT JUDGE

	Investor	Investment	Return	Net Investment	Pro Rata Share
1	Frank Clemens	24,240	0	-24,240	2.6%
2	Gary Offenbacher	9,455	0	-9,455	1.0%
3	Gloucester County Community Church	297,930	115,000	-182,930	19.9%
4	Jerry Clendenen	120,300	15,000	-105,300	11.4%
5	Joanna Clendenen	5,320	0	-5,320	0.6%
6	Joe Miduski	40,900	0	-40,900	4.4%
7	Joseph Burton	29,920	0	-29,920	3.3%
8	Joseph Silverberg	9,120	0	-9,120	1.0%
9	Kathleen & Richard Lansberry	117,745	75,000	-42,745	4.6%
10	Peter Schrader	7,710	0	-7,710	0.8%
11	Shannon Miduski	7,980	0	-7,980	0.9%
12	Stephen Farnelli Jr.	30,000	22,000	-8,000	0.9%
13	Stephen Farnelli Sr.	117,710	15,000	-102,710	11.2%
14	Sam Epstein	370,000	26,178	-343,822	37.4%
	OVERALL TOTAL	1,188,329	268,178	-920,151	100%