

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 04-22549-CIV-SEITZ/MCALILEY

COMMODITY FUTURES TRADING COMMISSION,

Plaintiff,

v.

BRICKELL KEY FINANCIAL, LLC,
EDUARDO BARALE,
MICHAEL MESA, and
MALINI NERSIAN,

Defendants.

**CONSENT ORDER OF PERMANENT INJUNCTION AND
OTHER EQUITABLE RELIEF AGAINST DEFENDANT MALINI NERSIAN**

I. PRIOR PROCEEDINGS

1. Plaintiff Commodity Futures Trading Commission ("Commission" or "CFTC") filed its Complaint in the above-captioned action on October 8, 2004, seeking injunctive and other equitable relief for violations of the Commodity Exchange Act, as amended ("Act"), 7 U.S.C. §§ 1 *et seq.* (2002), and Regulations promulgated thereunder ("Regulation"), 17 C.F.R. §§ 1 *et seq.* (2006). The Court entered a Consent Order of Preliminary Injunction and Other Ancillary Relief against defendant Malini Nersian ("Nersian") on October 15, 2004.

II. CONSENT AND AGREEMENT

2. To effect settlement of the matters alleged in the Complaint against defendant Nersian, without a trial on the merits or any further judicial proceedings, and without admitting or denying the allegations of the complaint, or the findings in this Consent Order of Permanent Injunction and Other Equitable Relief ("Order"), except as to jurisdiction and venue, Nersian

consents to the entry of this Order. Nersian does not consent to the use of this Order, or the findings of fact or conclusions of law, as the sole basis for any other proceeding brought by, or involving, the CFTC, other than a CFTC registration proceeding relating to Nersian, a proceeding in bankruptcy relating to Nersian, or to enforce the terms of this Order. Solely with respect to a CFTC registration proceeding, any bankruptcy proceeding relating to Nersian or any proceeding to enforce this Order, Nersian agrees that the allegations of the Complaint and the findings in this Order shall be taken as true and correct and be given preclusive effect, without further proof. Furthermore, Nersian agrees to provide immediate notice to this Court and the CFTC by certified mail of any bankruptcy proceeding filed by, on behalf of, or against her.

3. Nersian affirms that she has agreed to this Order voluntarily, and that no threat or promise other than as contained herein, has been made by the CFTC 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.

4. Nersian acknowledges service of the Summons and Complaint.

5. Nersian admits the jurisdiction of this Court over her and admits that this Court has subject matter jurisdiction over this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2002).

6. Nersian admits that venue properly lies with this Court pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2002).

7. Nersian waives:

a. all claims that she may possess under the Equal Access to Justice Act (EAJA), 5 U.S.C. § 504 (2000) and 28 U.S.C. § 2412 (2000), relating to, or arising from, this action and

any right under EAJA to seek costs, fees and other expenses relating to, or arising from this action;

b. 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

c. all rights of appeal from this Order.

8. No provision of this Order shall in any way limit or impair the ability of any person to seek any legal or equitable remedy against Nersian or any other person in any other proceeding, including any current or subsequent bankruptcy.

9. Nersian consents 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, even if she now or in the future resides outside the jurisdiction.

10. Nersian agrees that neither she nor any of her agents or employees under her authority or control, shall take any action or make any public statement denying, directly or indirectly, any allegations in the Complaint or findings or conclusions in this Order, or creating or tending to create, the impression that the Complaint or this Order are without a factual basis; provided, however, that nothing in this provision shall affect Nersian's (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Nersian will undertake all steps necessary to assure that her agents, employees and representatives understand and comply with this agreement.

11. Nersian further agrees to cooperate fully with the staff of the Commission in the continuing litigation of this matter concerning the remaining defendants. As part of such cooperation, Nersian agrees to be available for trial testimony and, subject to all applicable privileges, to comply fully, promptly, and truthfully to any inquiries or requests for information,

including but not limited to: (1) requests for authentication of documents; (2) requests for any documents relevant to this matter within Nersian's possession, custody, or control, including inspection and copying of documents; (3) requests for assistance in locating and contacting any prior (as of the time of the request) officer, director, or employee of Brickell Key Financial, LLC; and (4) requests to testify completely and truthfully.

III. FINDINGS OF FACT

The Court makes the following findings of fact:

12. This Court has jurisdiction over this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2002).

13. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e), because defendant Nersian is found in, inhabits, or transacts business, among other places, in this district, and the acts and practices in violation of the Act have occurred, are occurring, or are about to occur, among other places, within this district.

14. Nersian was registered with the Commission as an associated person and worked at Brickell Key Financial, LLC ("BKF"), a registered introducing broker, in Miami, Florida, soliciting members of the general public to open accounts to trade futures contracts and options on futures contracts through BKF and to make trades based upon recommendations of BKF.

15. To induce customers to trade, Nersian misrepresented the risks and rewards of trading futures and options through BKF. In telephone calls, Nersian engaged in fraudulent sales solicitations by misrepresenting and/or failing to disclose material facts concerning, among other things: (i) the profit potential of futures and options; (ii) the risk involved in trading futures and options; and (iii) the poor performance record of BKF customers trading futures and options.

16. Nersian represented that BKF customers could reap substantial profits in the commodity futures markets by trading upon publicly known information about certain world events that purportedly would influence the price of futures contracts. For example, Nersian told customers events such as the crisis in the Middle East would cause an increase in the price of oil and virtually guaranteed them a profit. In fact, because efficient markets quickly factor publicly known information into the price of contracts, one can not normally earn substantial profits based upon such publicly known information. Therefore, Nersian's statements were false or misleading.

17. Nersian also told customers that they could expect to make large returns on their investments quickly. These statements were false because the vast majority of BKF customers lost money trading through BKF and, overall, BKF customers lost over \$1.5 million. Further, Nersian failed to disclose the fact that an overwhelming majority of BKF customers sustained losses trading through BKF.

18. Nersian knew or recklessly disregarded the fact that the vast majority of BKF customers sustained losses trading through the firm. Given the firm's losing trading record, Nersian knew or recklessly disregarded the fact that customers' earning enormous profits on futures and options was highly unlikely. She also knew or recklessly disregarded the fact that publicly known information would not lead to substantial profits as few, if any, of her customers had profited from this type of well-known information.

19. Nersian's statements described in paragraphs 16 and 17 were material, and Nersian's customers relied upon the misrepresentations and omissions made by her in making a decision to trade futures and options through BKF. Nersian knew that such statements were false or misleading or made them in reckless disregard for the truth.

20. Nersian routinely failed to disclose adequately the risk of loss inherent in trading futures and options in her customer solicitations. Among other things, Nersian fraudulently led customers and potential customers to believe that risk of loss was, or could be limited, and her disclosures of risk, to the extent made, were vitiated by the unbalanced sales presentations described in paragraphs 16 and 17, which falsely conveyed that trading futures and options with BKF was highly profitable and virtually risk free. Nersian's failure to adequately disclose the risk of loss was either intentional or reckless.

IV. CONCLUSIONS OF LAW

A. Nersian Violated Section 4b(a)(2)(i) and (iii) of the Act by Making Misrepresentations of Material Facts and by Omitting Material Information Regarding Profit Potential and Risks of Trading Futures

21. Nersian cheated and defrauded or attempted to cheat or defraud other persons, and willfully deceived or attempted to deceive other persons, in violation of Section 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i) and (iii), by intentionally or recklessly making material misrepresentations or misleading statements to her customers in or in connection with commodity futures transactions and by intentionally or recklessly omitting material information that a reasonable person would consider important in making the decision to invest with BKF.

B. Nersian Violated Section 4c(b) of the Act and Regulation 33.10(a) and (c) by Making Misrepresentations of Material Facts and by Omitting Material Information Regarding Profit Potential and Risks of Trading Options on Futures

22. Nersian cheated or defrauded, or attempted to cheat or defraud other persons, and willfully deceived or attempted to deceive other persons, in violation of Section 4c(b) of the Act, 7 U.S.C. § 6c(b), and Regulation 33.10(a) and (c), 17 C.F.R. 33.10(a) and (c) by intentionally or recklessly making material misrepresentations or misleading statements to her customers in or in connection with commodity option transactions and by intentionally or

recklessly omitting material information that a reasonable person would consider important in making the decision to invest with BKF.

V. INJUNCTIVE RELIEF

IT IS THEREFORE ORDERED THAT:

23. Nersian is permanently restrained, enjoined and prohibited from directly or indirectly:
- a. Cheating or defrauding, or attempting to cheat or defraud, other persons or willfully deceiving or attempting to deceive by any means whatsoever 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 or in regard to any act of agency performed with respect to any order or contract, in violation of Sections 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. § 6b(a)(2)(i) and (iii);
 - b. Confirming the execution of any transaction involving any option or cheating or defrauding, or attempting to cheat or defraud, other persons or willfully deceiving or attempting to deceive by any means whatsoever 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 options transaction or in regard to any act of agency performed with respect to any order or contract, in violation of Section 4c(b) of the Act, 7 U.S.C. § 6c(b) and Regulation 33.10 (a) and (c), 17 C.F.R. § 33.10(a) and (c).
24. Defendant Nersian is also permanently prohibited from engaging, directly or indirectly, in any activity related to trading in any commodity, as that term is defined in Section 1a(4) of the Act, 7 U.S.C. § 1a(4) (“commodity interest”), including but not limited to, the following:
- a. trading on or subject to the rules of any registered entity, as that term is defined in Section 1a(29) of the Act, 7 U.S.C. § 1a(29);
 - b. engaging in, controlling or directing the trading for any commodity interest account for or on behalf of any other person or entity, whether by power of attorney or otherwise;

- c. soliciting or accepting any funds from any person in connection with the purchase or sale of any commodity interest;
- d. 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), or acting as a principal, 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);
- e. entering into any commodity interest transactions for her own personal accounts, for any account in which she has a direct or indirect interest and/or having any commodity interests traded on her behalf; and
- f. engaging in any business activities related to commodity interest trading.

VI. A CIVIL MONETARY PENALTY

25. Nersian shall pay to the CFTC a civil monetary penalty in the amount of ten thousand dollars (\$10,000), plus post-judgment interest. The civil monetary penalty is due and shall be paid within ten days of entry of this Order. Post-judgment interest shall accrue beginning ten days after entry of this Order and shall be determined by using the Treasury Bill rate prevailing ten days after the entry of this Order pursuant to 28 U.S.C. § 1961.

26. Nersian shall pay this penalty by electronic funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money order. If payment is to be made other than by electronic funds transfer, the payment shall be 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
Telephone: 405-954-6569

27. If payment is to be made by electronic transfer, Nersian shall contact Marie Bateman at or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Nersian shall accompany payment of the penalty with a cover letter that identifies the defendant, and the name and docket number of this proceeding. Nersian 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.

28. Nersian shall execute any documents necessary to release funds that she has in any trust, repository, bank, investment or other financial institution in order to make partial or total payment toward her civil monetary penalty obligation.

VII. MISCELLANEOUS PROVISIONS

29. **Equitable Relief:** The equitable relief provisions of this Order shall be binding upon Nersian and any person who is acting in the capacity of officer, agent, employee, servant, or attorney of Nersian, and any person acting in active concert or participation with Nersian and those equitable relief provisions that relate to restitution shall be binding on anyone who receives actual notice of this Order by personal service or otherwise.

30. **Notices:** All notices required to be given by any provision in this Order shall be sent certified mail, return receipt requested, as follows: Notice to Commission: Attention - Director of Enforcement, Commodity Futures Trading Commission, Division of Enforcement, 1155 21st Street N.W., Washington, DC 20581.

31. **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

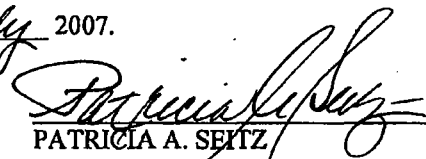
this Order in any respect whatsoever, unless: (1) reduced to writing; (2) signed by all parties hereto; and (3) approved by order of this Court.

32. Invalidation: If any provision of this Order, or if the application of any provisions or circumstances is held invalid, the remainder of the Order and the application of the provisions to any other person or circumstance shall not be affected by the holding.

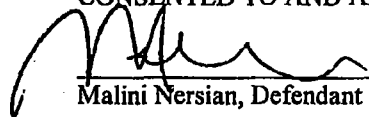
33. Waiver: The failure of any party hereto at any time or times to require performance of any provision hereof shall in no manner affect the right of such party at a later time to enforce the same or any other provision of this Order. No waiver in one or more instances of the breach of any provision contained in this Order shall be deemed to be or construed as a further or continuing waiver of such breach or waiver of the breach of any other provision of this Order.

34. Continuing Jurisdiction of this Court: Upon entry of this Order, this case shall be dismissed with prejudice as to Nersian, and the Court shall retain jurisdiction of this cause only to assure compliance with this Order.

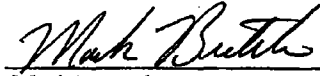
IT IS SO ORDERED this 26th day of July 2007.


PATRICIA A. SEITZ
UNITED STATES DISTRICT JUDGE

CONSENTED TO AND APPROVED BY:


Malini Nersian, Defendant

Date: JUNE 14, 2007


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Date: July 24, 2007