



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

U.S. COMMODITY FUTURES TRADING
COMMISSION

Plaintiff,

v.

James de Wet

Defendant.

05 Civ. 8401 (HB)

**Order for Entry of
Judgment by Default With
Ancillary Equitable Relief**

On September 30, 2005, the plaintiff, the U.S. Commodity Futures Trading Commission (the "Commission") filed a Complaint charging the defendant, James de Wet ("de Wet") with fraudulently soliciting managed account clients by making material misrepresentations about his prior trading performance under the name Team Forex International ("Team Forex") through the website, www.teamforex.com. The Complaint charges that actual trading results of de Wet's managed accounts were, in certain instances, materially different from the performance record published on the Team Forex website. The Complaint also charges the website falsely claimed that the purported trading results were "audited." The Complaint alleges that de Wet's conduct violated Sections 4b(2)(a)(i) and (iii) of the Commodity Exchange Act (the "Act").

On October 21, 2005, the Court issued a Statutory Restraining Order ("SRO"), which among other things, froze de Wet's assets, and granted the Commission immediate access to all books and records related to de Wet's business, Team Forex. This Order remained in full force and effect until January 5, 2006 at which time the Court, by order, extended the provisions of the SRO until April 5, 2006.

De Wet was properly served with Commission's Complaint. He has failed to appear, plead, file an answer or otherwise defend this action; and is not an infant, in the military, or an incompetent person. On February 27, 2006, the Clerk of the Court entered default against de Wet pursuant to Local Rule 55.1 and Rule 55(a) of the Federal Rules of Civil Procedure.

The Commission has now submitted its Application for Entry of Default Judgment, Permanent Injunction and Ancillary Relief ("Application") against de Wet pursuant to Federal Rule of Civil Procedure 55(b)(2) and Local Rule 55.2(b). The Court has carefully considered the Complaint, the allegations of which are well-pleaded and hereby taken as true, the Application, and other written submissions of the Commission filed with the Court, and being fully advised, hereby:

GRANTS the Commission's Application for Entry of Judgment by Default and enters findings of fact and conclusions of law finding de Wet liable as to all violations as alleged in the Complaint. The Court further grants the Commission's request to assess monetary damages, including disgorgement, restitution, civil monetary penalties, and costs and fees. Accordingly, the Court now issues the following Order for Default Judgment, Permanent Injunction and Ancillary Equitable Relief ("Order") against de Wet.

I. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Jurisdiction and Venue

This Court has jurisdiction over the subject matter of this action and the defendant pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, which authorizes the Commission to seek injunctive relief against any person whenever it shall appear that such person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of any provision of the Act or any rule, regulation, or order thereunder.

The Commission has jurisdiction over the foreign currency transactions at issue because most, if not all, of the foreign currency futures transactions which were offered, or entered into, involved members of the retail investing public who were not eligible contract participants.¹ De Wet marketed his managed foreign currency trading accounts to individuals who had assets totaling less than \$5 million and had no business, personal, or other need to take or make delivery of foreign currency or to hedge against movements in the foreign currency markets. Instead, customers entered into these transactions to speculate and profit from anticipated price fluctuations in the markets for these currencies. In short, they were unsophisticated retail customers who intended to profit by speculating on the changing relative values of foreign currencies and the United States dollar through their accounts managed by de Wet.

Section 2(c)(2)(B)(ii)(I-IV) of the Act,² identifies those regulated entities that are proper counterparties to foreign currency transactions with retail customers, which include registered futures commission merchants ("FCMs") and certain statutorily defined affiliates of registered FCMs. Forex Capital Markets, LLC ("FXCM"), the counterparty to de Wet's customers' foreign currency transactions, is registered with the Commission as a FCM and thus constitutes a proper counterparty under Section 2(c)(2)(B) of the Act. Section 2(c)(2)(C) of the Act³ however, provides that the Commission retains jurisdiction over agreements, contracts or transactions in foreign currency that are sales of a commodity for future delivery where one of the counterparties is a FCM, for purposes of enforcing the anti-fraud provisions of Section 4b of the

¹ See 7 U.S.C. § 2(c)(2)(B)(i) and (ii).

² 7 U.S.C. § 2(c)(2)(B) (ii)(I-VI).

³ 7 U.S.C. § 2(c)(2)(C).

Act.⁴ Accordingly, the Commission has jurisdiction over de Wet's fraudulent solicitations of retail customers' accounts.

Venue properly lies with this Court in that de Wet transacted business within the Southern District of New York, and the acts and practices in violation of the Act occurred within this district, among other places.

B. Findings of Fact

De Wet, through the Team Forex website, has fraudulently solicited clients to open managed forex futures accounts, by materially overstating certain trading results. Enticed by the "audited" trading results published on the Team Forex website, at least two hundred clients opened accounts at FXCM.

James de Wet established Team Forex in 2000. Neither Team Forex nor de Wet has ever been registered with the Commission in any capacity.

Beginning in October 2002, De Wet managed forex futures trading accounts on behalf of at least two hundred retail customers at FXCM. Clients established individual accounts with FXCM in their own name and granted Team Forex a limited power of attorney to trade their accounts. Trades for the managed accounts are temporarily placed in a master trading account entitled "James De Wet Managed Accounts," before being distributed to each individual customer account controlled by de Wet pursuant to a predetermined allocation method. FXCM provided de Wet with online access to the master trading account statements which detail the results of transactions for the managed accounts, including the beginning balance, ending balance and equity for each of the accounts.

De Wet, through the Team Forex website, has fraudulently solicited clients to open managed forex futures accounts, by materially overstating certain trading results. An analysis of

⁴ 7 U.S.C. § 6b.

the master trading account for each month of 2003 demonstrates that the trading results published on the website for two months during 2003 were materially overstated, yielding a significantly overstated rate of return purportedly achieved by Team Forex for the entire year. The Team Forex website claimed that in January 2003, its managed forex accounts had a profit of 15.2%, whereas those accounts actually had a loss of 1.2% in that month. Similarly, for May 2003, the Team Forex website claimed that the managed accounts lost only 3.20%, whereas the actual trading loss for that month was 39.8%. The Team Forex website also falsely claimed that its managed accounts had overall trading profits of 55.2% for the year 2003, whereas those accounts actually lost 10.18% for the year.

De Wet also materially overstated the rate of return purportedly achieved by Team Forex for the entire year 2004. The Team Forex website falsely claimed that its managed accounts had overall trading profits of 7.1% for the year 2004, whereas those accounts actually lost .37% during 2004.

In addition to materially overstating trading results, de Wet falsely claimed on the Team Forex website that trading results had been audited. In fact, no such audit was ever performed.

C. Conclusions of Law

1. Violations of Section 4b(a)(2)(i) and (iii) of the Act

Beginning in October 2002, de Wet fraudulently solicited clients to open managed foreign currency accounts through Team Forex. De Wet posted trading results on the Team Forex website which were materially different from the actual trading results for de Wet's managed accounts. In addition, de Wet falsely claimed on the website that the published trading

results had been audited, when no such audit had occurred. De Wet's material misrepresentations violate Sections 4b(a)(2)(i) and (iii) of the Act.⁵

2. **Appropriate Relief**

Permanent injunctive relief is warranted in light of the egregious nature of de Wet's fraudulent conduct which resulted in net trading losses of over \$820,000 to his managed account customers as well as de Wet's high level of scienter in conducting a well-planned scheme to systematically defraud the public. These facts demonstrate a reasonable likelihood of future violations.

Imposition of a civil monetary penalty is appropriate in this case as de Wet's violations of the Act were intentional and directly impacted the numerous victims of this fraud. Likewise, the remedies of disgorgement and restitution are appropriate to compensate the victims of de Wet's wrongful acts and to deprive him of the use of ill-gotten gains.

II. **ORDER FOR PERMANENT INJUNCTION**

IT IS HEREBY ORDERED that de Wet 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 such other persons by any means whatsoever in regard to any order or contract in or in connection with any sale of any futures contract of any commodity that is or may be used for hedging or determining the price basis of any transaction or for delivering any commodity in interstate commerce for or on behalf of any other persons in violation of Section 4(b)(a)(2)(C)(i) and (iii) of the Act, 7 U.S.C. § 6b(a)(2)(C)(i) and (iii);

B. trading on or subject to the rules of any entity registered with the Commission;

⁵ 7 U.S.C. §§ 6b(a)(2)(i) and (iii).

C. soliciting funds for, engaging in, controlling, or directing the trading of any commodity futures or options accounts for or on behalf of any other person or entity, whether by power of attorney or otherwise; and

IT IS FURTHER ORDERED that de Wet is permanently restrained, enjoined and prohibited from directly or indirectly:

A. destroying, mutilating, concealing, altering or disposing of any books and records, documents, correspondence, brochures, manuals, electronically stored data, tape records or other property of Team Forex, wherever located, including all such records concerning Team Forex's business operations;

B. refusing to permit authorized representatives of the Commission to inspect, when and as requested, any books and records, documents, correspondence, brochures, manuals, electronically stored data, tape records or other property of de Wet wherever located, including all such records concerning Team Forex's business operations;

C. withdrawing, transferring, removing, dissipating, concealing, or disposing of, in any manner, any funds, assets, or other property, wherever situated, including but not limited to, all funds, personal property, money or securities held in safes, safety deposit boxes and all funds on deposit in any financial institution, bank or savings and loan account held by, under the control, or in the name of de Wet or Team Forex for the amounts indicated in this Order.

IT IS FURTHER ORDERED that de Wet shall:

A. provide the Commission with continuing access to any books and records, documents, correspondence, brochures, manuals, electronically stored data, tape records or other property of Team Forex, wherever located, including all such records concerning Team Forex's business operations;

B. provide an accounting to the court of all of de Wet's assets and liabilities, together with all funds he received from and paid to clients and other persons in connection with commodity futures transactions or purported commodity futures transactions, and all disbursements for any purpose whatsoever of funds received from commodity futures transactions, including salaries, commissions, interest, fees, loans and other disbursements of money and property of any kind, from October 2002 through and including the date of such accounting.

The injunctive provisions of this Order shall be binding upon de Wet, upon any person insofar as he or she is acting in the capacity of officer, agent, servant or employee of Team Forex, and upon any person who receives actual notice of this Order, by personal service or otherwise, insofar as he or she is acting in active concert or participation with de Wet and/or Team Forex.

III. ORDER FOR CIVIL MONETARY PENALTY

IT IS FURTHER ORDERED that:

De Wet shall pay a civil monetary penalty in the amount of \$120,000 for the charges of violations of the Act set forth in the Complaint. De Wet shall pay the 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 U.S. Commodity Futures Trading Commission, and sent to Dennese Posey, or her successor, Division of Enforcement, U.S. Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581, under cover of a letter that identifies Defendants and the name and docket number of the proceeding. De Wet shall simultaneously transmit a copy of the cover letter and the form of payment to the Director, Division of Enforcement, U.S. Commodity Futures Trading Commission, at the

following address: Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581, and to the Regional Counsel, U.S. Commodity Futures Trading Commission, Eastern Regional Office, at the following address: 140 Broadway, 19th floor, New York, NY 10005.

IV. ORDER FOR ANCILLARY EQUITABLE RELIEF

IT IS FURTHER ORDERED that:

A. Restitution: De Wet shall pay restitution to defrauded managed account customers in the amount of \$ 828,390 (eight hundred twenty-eight thousand three hundred ninety dollars) plus pre-judgment interest and post-judgment interest. Post-judgment 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. De Wet is ordered to make such payments to the Registry of this Court by cashier's check, certified check or postal money order, under cover of a letter that identifies the name and docket number of this action and the name of this Court, with a copy to Stephen J. Obie, Regional Counsel for the Commission. Funds frozen pursuant to the SRO shall be paid into the Registry of this Court by the financial institution holding such funds by cashier's check, certified check or postal money order, under cover of a letter that identifies the name and docket number of this action and the name of this Court, with a copy to Stephen J. Obie, Regional Counsel for the Commission and may be used as partial or full discharge of de Wet's restitution obligations under this section of this Order. All payments made pursuant to this section of this Order by de Wet shall first be made to the defrauded customers for restitution, pursuant to a payment plan that will be determined by the Court, until those amounts (including interest) are fully satisfied. All payments after satisfaction of the restitution shall be applied to the civil monetary penalty described herein;

B. Disgorgement: De Wet shall disgorge all benefits received, directly or indirectly, from acts or practices which constitute violations of the Act as described herein and deposit into the Registry of this Court \$63,070 (sixty-three thousand and seventy dollars), plus pre-judgment and post-judgment interest and provide the Commission and the Court with a written description of the funds and assets so disgorged. De Wet is ordered to make such payments to the Registry of this Court by cashier's check, certified check or postal money order, under cover of a letter that identifies the name and docket number of this action and the name of this Court, with a copy to Stephen J. Obie, Regional Counsel for the Commission. All disgorgement payments made pursuant to this Order by De Wet shall first be used to pay restitution to the defrauded customers, pursuant to a payment plan that will be determined by the Court, until those amounts (including interest) are fully satisfied. De Wet's disgorgement obligations under this paragraph are co-terminus with de Wet's restitution obligations, such that partial or full satisfaction or discharge of disgorgement obligations shall simultaneously result in identical partial discharge of de Wet's restitution obligations;

C. Prohibition on Transfer of Funds: De Wet 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;

D. Third-Party Beneficiaries: Pursuant to Rule 71 of the Federal Rules of Civil Procedure, each of the defrauded customers of de Wet is explicitly made an intended third-party beneficiary of this Order and may seek to enforce this Order to obtain satisfaction of any portion of the restitution amount which has not been paid by de Wet;

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

Notice to Commission: Stephen J. Obie, Regional Counsel
U.S. Commodity Futures Trading Commission
Division of Enforcement - Eastern Regional Office
140 Broadway, 19th floor
New York, New York 10005; and

F. This Court shall retain jurisdiction of this case to assure compliance with this Order and for all other purposes related to this action.

SO ORDERED, at New York, New York on this _____ day of _____, 2006.

Honorable Harold Baer, Jr.
UNITED STATES DISTRICT JUDGE

4/10/06

I exclude from the monetary relief,

While I am signing this Order I am not completely satisfied that the monetary relief both the \$120,000 fine + the \$826,390 restitution and the \$63,070 disagreement does not require in whole or in part a hearing prior to the entry of judgment. Rather than put the 11 to its proof at this time, I am herewith, forwarding proof of service being forwarded to this Court + received, giving the 30 additional days 12:30 days from the date service is made + receipt received by this Court to make to vacate or otherwise contest the monetary aspects of this default + will order entry of judgment at the discretion of that period - assessment. No response from the 11. A response will prompt a re-assessment of the need for a hearing. SO ORDERED
Harold Baer Jr.
VSDJ

April 10, 2006

Endorsement:

While I am signing this Order, I exclude from it the monetary relief. I am not satisfied that the monetary relief i.e. the \$120,000 fine, the \$828,390 in restitution, and the \$63,070 disgorgement is so clear as not to require in whole or in part a hearing. Rather than put the plaintiff to its proof now, the plaintiff will serve defendant again and provide the Court with a copy of the receipt and defendant will have 30 days from the date of receipt to contest and if no word, the defendant will resubmit and I will reconsider dispensing with any inquest.