

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

U.S. COMMODITY FUTURES
TRADING COMMISSION,

Plaintiff,

v.

Case No: 2:15-cv-237-FtM-38CM

DORIAN GARCIA, DG WEALTH
MANAGEMENT, MACROQUANTUM
CAPITAL LLC and UKUSA
CURRENCY FUND LP,

Defendants.

ORDER¹

This matter comes before the Court on Plaintiff U.S. Commodity Futures Trading Commission's Motion Seeking Entry of An Order Imposing Damages in the Form of Restitution, Disgorgement, and a Civil Monetary Penalty for Defendants' Violations of the Commodity Exchange Act and Commission Regulations (Doc. #95) filed on March 4, 2016. Defendants Dorian Garcia, DG Wealth Management, Macroquantum Capital LLC, and UKUSA Currency Fund LP filed a Response in Opposition (Doc. #97) on March 18, 2016, to which Plaintiff filed a Reply (Doc. #103). This Court held a hearing on the matter and, thus, the matter is now ripe for review.

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Background

On April 14, 2015, Plaintiff U.S. Commodity Futures Trading Commission (the "Commission" or "CFTC") filed a Complaint against Dorian A. Garcia, individually and d/b/a DG Wealth Management, Commodity Projections, and PredSyst LLC ("Garcia"), DG Wealth Management ("DG Wealth"), Macroquantum Capital LLC ("Macroquantum"), UKUSA Currency Fund LP ("UKUSA") and another Garcia company that is the successor to DG Wealth, Quanttra, LP ("Quanttra") (collectively "Defendants"), for Permanent Injunction, Civil Penalties, and Other Equitable Relief, for violations of the Commodity Exchange Act ("Act"), 7 U.S.C. §§ 1-26 (2012), and the Commission's Regulations ("Regulations") promulgated thereunder, 17 C.F.R. § 1.1-190.10 (2015). The Complaint alleged that the Defendants had misled investors and prospective investors by various means of fraudulent solicitations, to invest in pooled retail off-exchange foreign currency contracts ("forex") on a leveraged or margined basis, commodity options, and a variety of other investment schemes. The Complaint further alleged that Garcia commingled investor funds with Garcia's personal and business-related funds and, instead of trading profitably in forex and options investments as he told investors was the case, Garcia misappropriated millions of dollars of investors' funds while running a Ponzi scheme for most of the past five years. The Complaint also alleged that Garcia and two of his companies, Macroquantum and DG Wealth, violated the Commission's registration

provisions. The Court entered an *ex parte* statutory restraining order against Defendants on April 15, 2015 (Doc. #11).

In a parallel criminal case, Garcia entered into a written plea agreement on a charge of wire fraud in *United States of America v. Dorian Garcia*, 2:15-cr-86-FtM-38-CM, United States District Court for the Middle District of Florida ("Criminal Action"). The scheme underlying this criminal wire fraud action is based on substantially the same facts as alleged in the Commission's enforcement action. On July 14, 2015, the Court accepted Garcia's plea agreement and on August 10, 2015, Garcia agreed to a criminal forfeiture.

On March 15, 2016, Garcia was sentenced to a term of 78 months imprisonment, 3 years supervised release and a forfeiture of \$3,108,734.52, plus \$10,000 to Arnold & Porter and various artwork. Garcia is currently imprisoned and serving his criminal sentence for this matter. A hearing on criminal restitution is presently set for June 28, 2016.

A Consent Order of Permanent Injunction and for Other Statutory and Equitable Relief against each of the Defendants was entered on November 16, 2015 ("Consent Permanent Injunction"). In entering the Consent Permanent Injunction, the Court found that the Defendants violated the anti-fraud provisions of the Commodity Exchange Act ("Act" or "CEA") in violation of Sections 4b(a)(2)(A)-(C), 4c(b), 4o(1) and 6(c)(1), of the Act, 7 U.S.C. §§ 6b(a)(2)(A)-(C), 6c(b), 6o(1) and 9(1) (2012), and Regulations 4.20(c), 5.2(b)(1)-(3), 33.10, and 180.1, 17 C.F.R. §§ 4.20(c), 5.2(b)(1)-(3), 33.10 and 180.1 (2014), and failed to register in various capacities, in violation of Sections 2(c)(2)(C)(iii)(I)(cc), 4k(2) and 4m(1) of the Act, 7 U.S.C. §§ 2(c)(2)(C)(iii)(I)(cc), 6k(2) and 6m(1), and Regulations 3.12 and 5.3(a)(2)(i),(ii), 17 C.F.R. §§ 3.12, 5.3 (a)(2)(i),

5.3(a)(2)(ii) (2014). In the Consent Permanent Injunction, the Court entered a permanent injunction against Defendants prohibiting further violations of the commodities laws, as charged, entered a permanent injunction and trading bans against Defendants, and reserved issues of restitution, disgorgement and civil monetary penalties for further determination by the Court.

Discussion

The Court, being fully advised in the premises, finds there is good cause for entry of this Order Assessing Restitution, Disgorgement and a Civil Monetary Penalty ("Supplemental Order"), and that there is no just reason for delay.

Accordingly, it is now

ORDERED:

1. Plaintiff U.S. Commodity Futures Trading Commission's Motion Seeking Entry of An Order Imposing Damages in the Form of Restitution, Disgorgement, and a Civil Monetary Penalty for Defendants' Violations of the Commodity Exchange Act and Commission Regulations (Doc. #95) is **GRANTED**.
2. The Findings of Fact and Conclusions of Law contained in the Consent Permanent Injunction are incorporated herein by reference and given preclusive effect as provided in the Consent Permanent Injunction. (Doc. #87).
3. Defendants shall comply fully with the following terms, conditions, and obligations relating to the payment of restitution, disgorgement and civil monetary penalty set forth below.

4. Restitution:

- a. Defendants' violations of the Act and Regulations merit the award of restitution. Defendants shall pay, jointly and severally, restitution in the amount of Five Million Fifty-One Thousand and Fifty-Two Dollars (\$5,051,052) ("Restitution Obligation"), plus post-judgment interest. Post-judgment interest shall accrue on the Restitution Obligation beginning on the date of entry of this Consent Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Consent Order pursuant to 28 U.S.C. § 1961 (2012).
- b. Defendant Garcia is currently the defendant in the above-referenced Criminal Action charging him, in part, for the misconduct that is at issue in this matter. For amounts disbursed to Defendant's investors as a result of satisfaction of any restitution ordered in the Criminal Action, the Defendants shall receive a dollar-for-dollar credit against the Restitution Obligation. Within ten (10) days of disbursement in the Criminal Action to Defendants' investors, Defendant shall, under a cover letter that identifies the name and docket number of this proceeding, transmit to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581, and the Office of Administration, National Futures Association, 300 South Riverside Plaza, Suite 1800, Chicago, Illinois 60606, copies of the form of payment to those investors.

- c. To effect payment of any portion of the Restitution Obligation remaining owed after restitution payments by Garcia in the Criminal Action, the Court appoints the National Futures Association (“NFA”) as Monitor (“Monitor”). The Monitor shall collect restitution payments from Defendants and make distributions as set forth below. Because the Monitor is acting as an officer of this Court in performing these services, the NFA shall not be liable for any action or inaction arising from NFA’s appointment as Monitor, other than actions involving fraud.
- d. Defendants shall make Restitution Obligation payments under this Consent Order to the Monitor in the name “GARCIA RESTITUTION Fund” and shall send such Restitution Obligation payments by electronic funds transfer, or by U.S. postal money order, certified check, bank cashier’s, or bank money order, to the Office of Administration, National Futures Association, 300 South Riverside Plaza, Suite 1800, Chicago, Illinois 60606 under cover letter that identifies the paying Defendants and the name and docket number of this proceeding. Defendants shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.
- e. The Monitor shall oversee the Restitution Obligation and shall have the discretion to determine the manner of distribution of such funds

in an equitable fashion to Defendants' investors as identified in the list attached hereto as Exhibit A, called Restitution Summary, and may defer distribution until such time as the Monitor deems appropriate. In the event that the amount of Restitution Obligation payments to the Monitor are of a *de minimis* nature such that the Monitor determines that the administrative cost of making a distribution to eligible investors is impractical, the Monitor may, in its discretion, treat such restitution payments as civil monetary penalty payments, which the Monitor shall forward to the Commission following the instructions for civil monetary penalty payments set forth in Part III., paragraph 21, below.

- f. Defendants shall cooperate with the Monitor as appropriate to provide such information as the Monitor deems necessary and appropriate to identify Defendant's investors to whom the Monitor, in its sole discretion, may determine to include in any plan for distribution of any Restitution Obligation payments. Defendants shall execute any documents necessary to release funds that they have in any repository, bank, investment or other financial institution, wherever located, in order to make partial or total payment toward the Restitution Obligation.
- g. The Monitor shall provide the Commission at the beginning of each calendar year with a report detailing the disbursement of funds to Defendants' investors during the previous year. The Monitor shall

transmit this report under a cover letter that identifies the name and docket number of this proceeding to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

- h. The amounts payable to each investor shall not limit the ability of any investor from proving that a greater amount is owed from Defendants or any other person or entity, and nothing herein shall be construed in any way to limit or abridge the rights of any investor that exist under state or common law.
- i. Pursuant to Rule 71 of the Federal Rules of Civil Procedure, each investor of Defendants who suffered a loss is explicitly made an intended third-party beneficiary of this Consent Order and may seek to enforce obedience of this Consent Order to obtain satisfaction of any portion of the restitution that has not been paid by Defendants to ensure continued compliance with any provision of this Consent Order and to hold Defendants in contempt for any violations of any provision of this Consent Order.
- j. To the extent that any funds accrue to the U.S. Treasury for satisfaction of Defendants' Restitution Obligation, such funds shall be transferred to the Monitor for disbursement in accordance with the procedures set forth above.

5. Disgorgement:

- a. Defendants' violations of the Act and Regulations also merit assessing disgorgement against Defendants. Defendants are ordered to pay, jointly and severally, disgorgement in the amount of Four Million Nine Hundred and Forty-Eight Thousand Five Hundred and Seventy-One Dollars (\$4,948,571), plus post-judgment interest. Post-judgment interest shall accrue on the Disgorgement Obligation beginning on the date of entry of this Consent Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Consent Order pursuant to 28 U.S.C. § 1961 (2012).
- b. For amounts disbursed to Defendant's investors as a result of satisfaction of any restitution ordered in the Criminal Action or in this action to satisfy the Restitution Obligation, the Defendants shall receive a dollar-for-dollar credit against the Disgorgement Obligation.

6. Civil Monetary Penalty:

- a. Defendants' violations of the Act and Regulations also merit assessing a civil monetary penalty. Defendants, therefore, shall pay, jointly and severally, a civil monetary penalty in the amount of Seven-Million Five Hundred Thousand (\$7,500,000) ("CMP Obligation"), plus post-judgment interest. Post-judgment interest shall accrue on the CMP Obligation beginning on the date of entry of this Consent Order and shall be determined by using the Treasury Bill rate

prevailing on the date of entry of this Consent Order pursuant to 28 U.S.C. § 1961 (2012).

- b. Defendants shall pay their CMP Obligation 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, then 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: Accounts Receivables
DOT/FAA/MMAC/AMZ-341CFTC/CPSC/SEC
500 S. MacArthur Blvd. Oklahoma City, OK
73169
(405) 954-7262 office
(405) 954-1620 fax
nikki.gibson@faa.gov

- c. If payment by electronic funds transfer is chosen, Defendants shall contact Nikki Gibson or her successor at the address above to receive payment instructions and shall fully comply with those instructions. Defendants shall accompany payment of the CMP Obligation with a cover letter that identifies Defendants and the name and docket number of this proceeding. Defendants shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

- d. Any acceptance by the Commission of any partial payment of Defendants' CMP Obligation shall not be deemed a waiver of their obligation to make further payments pursuant to this Order, or a waiver of the Commission's right to seek to compel payment of any remaining balance.

7. Miscellaneous Provisions:

- a. On April 15, 2015, the Court entered an asset freeze order prohibiting the transfer, removal, dissipation and disposal of Defendants' assets ("Asset Freeze Order"). The Court hereby lifts the Asset Freeze Order.
- b. If any provision of this Order or if the application of any provision or circumstance is held invalid, then the remainder of this Order and the application of the provision to any other person or circumstance shall not be affected by the holding.
- c. Defendants shall not transfer, or cause others to transfer, funds or other property to the custody, possession or control of any member of their family or any other person or entity for the purposes of concealing such funds from this Court or the Commission, until the CMP Obligation set forth above has been satisfied in full.
- d. All notices required by this Order shall be sent certified mail, return receipt requested. Notices to the Commission shall be sent to the Regional Counsel, Division of Enforcement, U.S. Commodity Futures Trading Commission, 525 West Monroe Street, Suite 1100,

Chicago, Illinois 60661. All such notices to the Commission shall reference the name and docket number of this action. Further, until such time as Defendants satisfy in full their Restitution Obligation, Disgorgement Obligation, and CMP Obligation as set forth in this Consent Order, Defendants shall provide written notice to the Commission by certified mail of any change to their telephone number and mailing address within ten (10) calendar days of the change(s).

e. This Court shall retain jurisdiction of this action to ensure compliance with this Consent Order and for all other purposes related to this action. This Order shall be interpreted and enforced according to the Federal Rules of Civil Procedure, the Local Rules of the United States Court for the Middle District of Florida, and all provisions of the Act and Commission Regulations relating to or referring to the obligations hereunder.

8. The Clerk is **DIRECTED** to enter judgment accordingly, terminate any pending motions and deadlines, and close this action.

DONE and **ORDERED** in Fort Myers, Florida, this 17th day of June, 2016.


SHERI POLSTER CHAPPEL
UNITED STATES DISTRICT JUDGE

Copies: All Parties of Record