

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

U.S. Commodity Futures Trading Commission, <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> John Capuano <p style="text-align: center;">Defendant.</p>))))))))))))))	03 CV 9125 (GBD) Order For Entry of Injunctive Relief, Damages and Ancillary Equitable Relief Against John Capuano
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On November 18, 2003, the Commission filed a Complaint charging Defendant John Capuano (“Capuano” or “Defendant”) and others with willfully aiding and abetting the commission of the violation of Regulation 1.1(b), 17 C.F.R. § 1.1(b) (2002), pursuant to Section 13(a) of the Commodity Exchange Act (the “Act”), 7 U.S.C. § 13c(a) (2001).

On November 19, 2003, Capuano was properly served pursuant to Rule 4(d)(1) of the Federal Rules of Civil Procedure (“Fed. R. Civ. P.”).¹ Capuano failed to answer or otherwise defend the Complaint within the time permitted by Rule 12(a)(1) of the Fed. R. Civ. P. Accordingly, on September 16, 2004, the Clerk of this Court entered a certificate of default against Capuano, and on January 13, 2005, this Court entered a default judgment against Capuano.

The Commission has now submitted its Application for Entry of Injunctive Relief, Damages and Ancillary Equitable Relief (“Application”) against Capuano pursuant to Fed. R.

¹ Rule 4(d)(1) provides, in pertinent part, that Service on an individual may be made by leaving copies of the summons and complaint “at his dwelling, house or usual place of abode with some person of suitable age and discretion then residing therein.”

Civ. P. 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 against Capuano and enters findings of fact and conclusions of law relevant to the allegations in the Complaint. The Court further grants the Commission's request for injunctive relief, damages and disgorgement. Accordingly, the Court now issues the following Order ("Order") against Capuano.

I. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Jurisdiction and Venue

This Court has jurisdiction over the subject matter of this action and Capuano 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.

Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1, in that Capuano was found in, inhabited, or transacted business in this district, and the acts and practices in violation of the Act occurred within this district, among other places.

B. Findings of Fact

Capuano is a New York State resident. Capuano has never been registered with the Commission.

From at least May to November 2003, Capuano, a former interbank broker, engaged in a scheme with other co-conspirators to defraud and deceive banks. This scheme was called the "knowledgeable trades" scheme. Through these knowledgeable trades, Capuano helped to

defraud and deceive banks by knowingly and willfully engaging in illegal foreign currency futures transactions to convert bank funds for his own use and the use of his co-conspirators and to conceal this conversion from the banks.

The knowledgeable trades scheme operated as follows. In Step 1, in order to convert money from his employer, a trader at a defrauded bank (Bank #1) initiates two foreign currency transactions, in which he buys and sells foreign currency, between Bank #1 and a co-conspirator at another bank ("Bank #2"). The transactions are arranged through a co-conspirator at an interbank broker. Bank #1, the defrauded bank, is on the losing side of these transactions. In Step 2, the interbank broker arranges for another set of foreign currency transactions between Bank #2 and a co-conspirator at a retail foreign currency dealer. Bank #2 is on the losing side of these transactions. In Step 3, the retail foreign currency dealer engages in illegal foreign currency futures transactions in which it loses money to a retail customer who maintains accounts at a futures commission merchant ("FCM") and at a retail foreign currency dealer. In Step 4, the retail customer who holds the account at either the FCM or at the retail foreign currency dealer splits the cash proceeds with his co-conspirators. The persons and entities involved in all of these transactions know from the outset that they are participating in illegal conversions of funds from the banks involved.

Capuano knowingly aided and abetted these fraudulent foreign currency trades by introducing interbank brokers to other co-conspirators and assisted in the transfer of cash from these illegal foreign currency futures transactions to other co-conspirators. Capuano also knowingly received \$12,700 from the knowledgeable trades scheme.

The illegal foreign currency futures transactions between the retail foreign currency dealer and the retail customer involved in the knowledgeable trades scheme were not conducted

on or subject to the rules of a board of trade that has been designated by the Commission as a contract market, nor were these transactions executed or consummated by or through a contract market or on a facility registered as a derivatives transaction execution facility. The parties involved in these foreign currency futures transactions were not eligible contract participants or enumerated regulated counterparties. The retail forex dealer was not a financial institution, a broker or dealer, an associated person of a broker or dealer, an insurance company, a financial holding company, or an investment bank holding company. In addition the retail forex dealer was not a FCM, or an affiliate of a FCM. Further, these parties did not have any business or personal need for the foreign currency. These parties did not intend to, and did not, take or make delivery of the foreign currencies as a consequence of these transactions. No accounts were maintained at any foreign financial institution to take or make delivery of foreign currency for any of the parties involved in these transactions. There was never any conversion from U.S. dollars to another currency. All trades were liquidated by offsetting the position by entering into an equal and opposite transaction and thereby taking the profits in dollars. The terms and conditions of these contracts were standardized.

C. Conclusions of Law

1. Aiding and Abetting the Violation of Commission Regulation 1.1(b)

From at least May 2003 to November 2003, Defendant Capuano cheated or defrauded or attempted to cheat or defraud banks and willfully deceived or attempted to deceive banks by, among other things, intentionally aiding and abetting in the conversion of funds that had been misappropriated from banks in violation of Regulation 1.1(b), 17 C.F.R. § 1.1(b) pursuant to pursuant to Section 13(a) of the Commodity Exchange Act (the "Act"), 7 U.S.C. § 13c(a) (2001).

Defendant Capuano's conduct was in connection with accounts, agreements, contracts, or transactions that were contracts of sale of commodities for future delivery.

2. The Knowledgeable Trades Transactions Were Futures Contracts

The Commission has jurisdiction over the knowledgeable trades transactions between the retail forex dealer and the retail customer because these transactions were foreign currency futures contracts. These contracts involved the purchase and sale of foreign currency for future delivery at prices or using pricing formulas that were established at the time the contracts were initiated and were fulfilled through offset to avoid delivery. Further, these foreign currency futures transactions were offered to or entered into with a retail customer who was not an eligible contract participant pursuant to Section 1a(12) of the Act, 7 U.S.C. § 1a(12). Furthermore, the retail forex dealer acted as the counterparty to the transactions with the retail customer. The retail forex dealer was not a proper counterparty or an affiliate of a proper counterparty pursuant to Section 2(c)(2)(B) of the Act, 7 U.S.C. § 2(c)(2)(B). Accordingly, the Commission has jurisdiction over these knowledgeable trades transactions.

3. Appropriate Relief

Permanent injunctive relief is warranted in light of the egregious nature of Capuano's conduct in aiding and abetting the conversion of funds from banks through the sale of illegal foreign currency futures contracts from May to November 2003 as well as his high level of scienter in participating in this well-planned scheme to systematically defraud banks. These facts demonstrate a reasonable likelihood of futures violations.

Imposition of a civil monetary penalty is appropriate in this case as Capuano's violations of the Act were intentional. Likewise, disgorgement is appropriate to deprive Capuano of the use of ill-gotten gains.

II. ORDER FOR RELIEF

A. Permanent Injunction

IT IS HEREBY ORDERED that Defendant Capuano is permanently restrained, enjoined and prohibited from directly or indirectly:

1) cheating or defrauding or attempting to cheat or defraud any person or willfully deceiving or attempting to deceive any person by any means whatsoever for any foreign currency transaction within the Commission's jurisdiction in violation of Regulation 1.1(b), 17 C.F.R. § 1.1(b);

2) trading on or subject to the rules of any registered entity;

3) 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; and

4) applying for registration or seeking exemption from registration with the Commission in any capacity, and engaging in any activity requiring such registration or exemption from registration, except as provided in Regulation 4.14(a)(9) or acting as an agent or officer of any person registered, exempted from registration or required to be registered with the Commission, except as provided in Regulation 4.14(a)(9).

B. Civil Monetary Penalty

IT IS FURTHER ORDERED that as of the date of this Order, Defendant shall pay a civil monetary penalty in the amount of \$120,000 plus post judgment interest. Post-judgment interest shall be determined by using the Treasury Bill rate prevailing on the date of this Order pursuant to 28 U.S.C. § 1961.

All payments made by Defendant pursuant to this Order shall be applied first to satisfy Defendant's civil disgorgement obligations and, upon satisfaction of such obligations, shall

thereafter be applied to satisfy the civil monetary penalty. Post-judgment interest shall accrue beginning on the date of entry of this Order.

Defendant 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 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 Defendant and the name and docket number of the proceeding; Defendant shall simultaneously transmit a copy of the cover letter and the form of payment to (a) Director, Division of Enforcement, U.S. Commodity Futures Trading Commission, at Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581, and (b) Regional Counsel, U.S. Commodity Futures Trading Commission, Eastern Regional Office, at 140 Broadway, 19th floor, New York, NY 10005.

C. Disgorgement

IT IS FURTHER ORDERED that as of the date of this Order, Defendant shall disgorge all benefits received, directly or indirectly, from acts or practices which constitute violations of the Act and Regulations as described herein. Defendant is therefore liable to disgorge his ill-gotten gains in the amount of \$12,700 (twelve thousand seven hundred dollars), plus pre and post-judgment interest. Pre-judgment interest from May 1, 2003, to the date of this Order shall be determined by using the underpayment rate established quarterly by the Internal Revenue Service pursuant to 26 U.S.C. § 6621(a)(2). Post-judgment interest shall accrue beginning on the date of entry of this Order and shall be determined by using the Treasury Bill rate prevailing on the date of this Order pursuant to 28 U.S.C. § 1961.

Defendant 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 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 Defendant and the name and docket number of the proceeding; Defendant shall simultaneously transmit a copy of the cover letter and the form of payment to (a) Director, Division of Enforcement, U.S. Commodity Futures Trading Commission, at Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581, and (b) Regional Counsel, U.S. Commodity Futures Trading Commission, Eastern Regional Office, at 140 Broadway, 19th floor, New York, NY 10005.

D. Prohibition on Transfer of Funds

IT IS FURTHER ORDERED that Capuano 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 Plaintiff, or any officer that may be appointed by the Court.

E. Notices

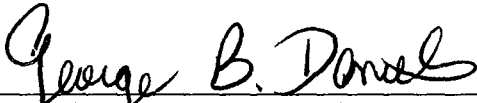
IT IS FURTHER ORDERED that all notices required to be given by any provision in this Order shall be sent by certified mail, return receipt requested, as follows:

Notice to Commission:	Regional Counsel U.S. Commodity Futures Trading Commission Division of Enforcement - Eastern Regional Office 140 Broadway, 19 th floor New York, New York 10005.
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F. Jurisdiction

IT IS FURTHER ORDERED that 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 NOV 07 2006, New York on this ___ day of _____, 2006.



Honorable George B. Daniels
UNITED STATES DISTRICT JUDGE
SON GEORGE B. DANIELS