



The Complaint was served on September 2, 2005. When the Defendant and Relief Defendant failed to answer the Complaint, a certificate of default was entered on December 30, 2005. On March 30, 2006, the Commission filed a motion for entry of default judgment. On November 9, 2006, Magistrate Judge Joan M. Azrack issued a Report and Recommendation finding that a default judgment should be entered and set an objection date of November 23, 2006. On November 22, 2006, the day before the objection date, Defendant and Relief Defendant filed a motion seeking to set aside the default and attached their Answer to the Complaint. The Court set aside the default on July 19, 2007.

After the completion of discovery, the Commission filed a motion for summary judgment on September 2, 2008. On May 19, 2009, the Court entered an order deeming the Commission's pending summary judgment motion withdrawn, subject to reinstatement, if the anticipated settlement is not consummated.

## II. CONSENTS AND AGREEMENTS

To settle this action without a trial on the merits or any further judicial proceedings, the Defendant and Relief Defendant:

1. Consent to the entry of this Order of Permanent Injunction, Civil Monetary Penalty, and Other Equitable Relief ("Order").
2. Affirm that they have agreed to this Order voluntarily, and that no threat, or promise other than as specifically contained herein has been made by the Commission or any member, officer, agent, or representative thereof, or by any other person to induce Defendant and Relief Defendant's consent to this Order.
3. Acknowledge service of the Summons and Complaint.

4. Admit that this Court has personal and subject matter jurisdiction over them and this action pursuant to Section 6c of the CEA, 7 U.S.C. § 13a-1 (2006).
5. Admit that venue properly lies with this Court pursuant to Section 6c of the CEA, 7 U.S.C. § 13a-1 (2006).
6. Waive:
  - a. any and all claims that they may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2006) and 28 U.S.C. § 2412 (2006), and/or Part 148 of the Commission's Regulations, 17 C.F.R. §§ 148.1, et seq. (2009), relating to, or arising from, this action;
  - b. any and all claims that they may possess under the Small Business Regulatory Enforcement Fairness Act, Pub. L. 104-121, §§ 231-232, 110 Stat. 862-63 (1996), as amended by Pub. L. No. 110-28, 121 Stat. 112 (2007), relating to, or arising from, this action;
  - c. any claim of double jeopardy based upon the institution of this proceeding or the entry in this action of any order imposing a civil monetary penalty or any other relief; and
  - d. any and all rights of appeal in this action.
7. Neither admit nor deny the allegations of the Complaint or the Findings of Fact and Conclusions of Law contained in this Order, except as to jurisdiction and venue, which they admit.
8. Do not consent to the use of this Order, or the findings of fact or conclusions of law in this Order, as the sole basis for any other proceeding brought by the Commission, other than a proceeding in bankruptcy relating to Defendant and/or Relief Defendant, a Commission

registration proceeding relating to Defendant, or a proceeding to enforce the terms of this Order. Solely with respect to any bankruptcy proceeding relating to Defendant and/or Relief Defendant, a Commission registration proceeding related to Defendant and any proceeding to enforce this Order, Defendant and Relief Defendant agree that the allegations of the Complaint and all of the findings of fact and conclusions of law in this Order shall be taken as true and correct and be given preclusive effect, without further proof. Furthermore, Defendant and Relief Defendant agree to provide immediate notice to this Court and the Commission by certified mail, in the manner required by Part V of this Order, of any bankruptcy proceeding filed by, on behalf of, or against either or both of them.

9. No provision of this Order shall in any way limit or impair the ability of any other person or entity to seek any legal or equitable remedy against Defendant or Relief Defendant in any other proceeding.

10. Agree that neither they nor any of their agents, employees, or representatives acting under either of their authority or control shall take any action or make any public statement denying, directly or indirectly, any allegation of the Complaint or findings of fact or conclusions of law 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 the Defendant's and/or Relief Defendant's (i) testimonial obligations; or (ii) rights to take legal positions in other proceedings to which the Commission is not a party. The Defendant and Relief Defendant shall take all necessary steps to ensure that all of their agents, employees, and representatives understand and comply with this agreement.

11. Consent to the continued jurisdiction of this Court for the purpose of enforcing the terms and conditions of this Order and for any other purpose relevant to this action, even if the Defendant or Relief Defendant now or in the future resides outside the jurisdiction.

### III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court, being fully advised of the facts, finds that there is good cause for the entry of this Order and that there is no just reason for delay. The Court therefore directs the entry of findings of fact, conclusions of law, a permanent injunction, a civil monetary penalty and ancillary equitable relief pursuant to Section 6c of the CEA, 7 U.S.C. § 13 a-1, as set forth herein.

#### A. Findings of Fact

12. The Commission is an independent federal regulatory agency charged by Congress with the responsibility of administering and enforcing the provisions of the CEA and the regulations adopted pursuant to the CEA.

13. Defendant resides in Brooklyn, New York. Defendant has never been registered with the Commission in any capacity.

14. Relief Defendant resides in Brooklyn, New York. The Relief Defendant has never been registered with the Commission in any capacity.

15. Beginning in July 2003 and continuing through September 2004, the Defendant solicited six acquaintances (collectively the "Customers") from her neighborhood in Brooklyn, New York, to purchase interests in supposedly profitable NYMEX contracts she claimed to own.

16. Defendant falsely told the Customers she was a NYMEX broker and that their investment would be profitable with no risk of loss. The Defendant was never a NYMEX broker and has never owned a commodity contract.

17. Defendant received funds from the Customers for the purchase of commodity futures contracts. Because Defendant did not have a bank account at the time, she asked her mother, the Relief Defendant, to clear the checks received from the Customers by depositing them into her checking account. Relief Defendant deposited \$71,300 of funds received from the Customers into her checking account, as follows:

- a. \$60,000 from Customers 1 and 2;
- b. \$7,000 from Customer 3; and
- c. \$4,300 from Customer 4, who is now deceased.

18. Customers have also claimed that they paid the Defendant cash to purchase commodity futures contracts. The Defendant disputes receiving these funds and these funds were not deposited into the Relief Defendant's checking account.

19. The Defendant gave letters, which she knew were fraudulent or with reckless disregard for its truth or falsity, to certain of the Customers purporting to confirm their purchase of commodity contracts. The false letters the Defendant provided the Customers contained the name of the commodity, the price at which it was supposedly purchased, the amount of the investment, the expiration date of the commodity contract, and references to the NYMEX.

20. Relief Defendant knew the Customers' funds deposited into her checking account belonged to the Customers and that she was not entitled to keep any portion of those funds.

21. Customer funds were withdrawn from the Relief Defendant's checking account and used by the Defendant and the Relief Defendant to pay for personal expenses.

22. The Defendant and Relief Defendant repaid Customers \$4,400, as follows:

- a. \$2,600 to Customers 1 and 2, and
- b. \$1,800 to Customer 3.

23. The Defendant and the Relief Defendant retained \$66,900 received from the Customers into her checking account, as follows:

- a. Customers 1 and 2 are owed \$57,400,
- b. Customer 3 is owed \$5,200, and
- c. Customer 4 is owed \$4,300.<sup>1</sup>

#### **B. Conclusions of Law**

24. This Court has subject matter jurisdiction over this action pursuant to Section 6c of the CEA, 7 U.S.C. § 13a-1 (2006), which provides that whenever it shall appear to the Commission that any person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of any provision of the CEA or any rule, regulation, or order promulgated thereunder, the Commission may bring an action against such person in the proper District Court of the United States to enjoin such practice or to enforce compliance with the CEA, and said court shall have jurisdiction to entertain such action.

25. This Court has personal jurisdiction over the Defendant and Relief Defendant pursuant to Section 6c of the CEA, who acknowledge service of the Complaint and consent to the Court's jurisdiction over them.

26. Venue properly lies with this Court pursuant to Section 6c of the CEA, 7 U.S.C. §13a-1 (2006), because the Defendant and Relief Defendant reside in this district, transacted business in this district, and the acts and practices in violation of the CEA occurred, , within this district.

27. By the aforementioned practices, the Defendant violated Sections 4(a), 4b(a)(2)(i) - (iii) and 4h of the CEA, 7 U.S.C. §§ 6(a), 6b(a)(i) - (iii) and 6h (2006).

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<sup>1</sup> As to the \$4,300 the Defendant received from Customer 4, he passed away in 2006, his Estate (if any) has never asserted a claim to any of these funds, and Plaintiff has not located any claimant to these funds.

28. The Relief Defendant was unjustly enriched by the funds she retained from the Defendant's violations of the CEA.

29. There is good cause for entry of an order: permanently enjoining the Defendant from engaging in future violations of the CEA and from engaging in certain activity related to commodity trading; requiring the Defendant to pay a civil monetary penalty and restitution; and imposing other equitable relief as stated in this Order.

#### **IV. ORDER FOR PERMANENT INJUNCTION**

##### **IT IS THEREFORE ORDERED THAT:**

30. Defendant is permanently restrained, enjoined and prohibited from directly or indirectly:
- a. cheating or defrauding or attempting to cheat or defraud other persons in or in connection with any order to make, or the making of any contract of sale of any commodity for future delivery, made or to be made, for or on behalf of any other person in violation of Section 4b(a)(1)(A) of the CEA as amended by the Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, Title XIII (the CFTC Reauthorization Act of 2008 ("CRA")), § 13102, 122 Stat. 1651 (enacted June 18, 2008), to be codified at 7U.S.C. § 6b(a)(1)(A);
  - b. willfully making or causing to be made to such other person any false report or statement thereof, or willfully entering or causing to be entered for such other person any false record thereof, in violation of Section 4b(a)(1)(B) of the CEA as amended by the CRA, to be codified at 7 U.S.C. § 6b(a)(1)(B);
  - c. willfully deceiving or attempting to deceive other persons in or in connection with any order to make, or the making of any contract of sale of any commodity for future



delivery, made, or to be made, for or on behalf of any other person, in violation of Section 4b(a)(1)(C) of the CEA as amended by the CRA, to be codified at 7 U.S.C. § 6b(a)(1)(C);

d. Offering to enter into, entering into, executing, confirming the execution of, soliciting or accepting any order for, or otherwise dealing in, any transaction in, or in connection with, a contract for the purchase or sale of a commodity for future delivery in violation of Section 4(a) of the CEA, 7 U.S.C. § 6(a) (2006); and

31. Falsely representing or claiming to be a member of a registered entity or the representative or agent of such member, or to be a registrant under the CEA while soliciting or handling any order or contract for the purchase or sale of any commodity in interstate commerce or for future delivery, or falsely representing in connection with the handling of any such order or contract that the same is to be or has been executed on, or through a member of, any registered entity in violation of Section 4h of the CEA, 7 U.S.C. § 6h (2006).

32. Defendant is further permanently restrained, enjoined and prohibited from engaging, directly or indirectly, in:

a. trading on or subject to the rules of any registered entity (as that term is defined in Section 1a(29) of the CEA, 7 U.S.C. § 1a(29) (2006));

b. entering into any transactions involving commodity futures, options on commodity futures, commodity options (as that term is defined in Commission Regulation 32.1(b)(1), 17 C.F.R. § 32.1(b)(1) (2009)) ("commodity options"), and/or foreign currency (as described in Section 2(c)(2)(C)(i) of the CEA as amended by the CRA) ("forex contracts") for her own personal account or for any account in which she have a direct or indirect interest;

c. having any commodity futures, options on commodity futures, commodity options, and/or forex contracts traded on her behalf;

d. controlling or directing the trading for or on behalf of any other person or entity, whether by power of attorney or otherwise, in any account involving commodity futures, options on commodity futures, commodity options, and/or forex contracts;

e. soliciting, receiving or accepting any funds from any person for the purpose of purchasing or selling any commodity futures, options on commodity futures, commodity options, and/or forex contracts;

f. 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 Commission Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2009); and

g. acting as a principal (as that term is defined in Commission Regulation 3.1(a), 17 C.F.R. § 3.1(a)), 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 Commission Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2009).

33. Defendant is further permanently restrained, enjoined and prohibited from filing a petition in bankruptcy without providing the Commission with prompt notice by Certified Mail of such filing, as required by Part V of this Order.

34. The injunctive provisions of this Order shall be binding upon the Defendant, her agents, servants, employees and attorneys and upon any person who receives actual notice of this

Order, by personal service, email or facsimile, insofar as he or she is acting in active concert or participation with the Defendant.

V. **ORDER FOR CIVIL MONETARY PENALTY, RESTITUTION AND OTHER  
EQUITABLE RELIEF**

**IT IS FURTHER ORDERED THAT:**

**Civil Monetary Penalty**

35. The Defendant shall pay a civil monetary penalty in the amount of \$20,000, plus post-judgment interest, within thirty days from the date of entry of this Order (the "CMP Obligation").

36. The Defendant shall pay the 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, 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

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

37. The Defendant shall simultaneously transmit copies of the cover letter and the form of payment to: (a) the Director, Division of Enforcement, U.S. Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581; (b) Chief,

Office of Cooperative Enforcement, Division of Enforcement, U.S. Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581; and (c) Regional Counsel, U.S. Commodity Futures Trading Commission, Eastern Regional Office, 140 Broadway, 19th Floor, New York, NY 10005.

#### Restitution

38. The Defendant shall pay restitution to Customers 1 and 2 in the amount of \$57,400, plus post-judgment interest, and restitution to Customer 3 in the amount of \$5,200, plus post-judgment interest, within thirty days of the date of entry of this Order (the "Restitution Obligation"). Defendant shall pay the Restitution Obligation 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. The Defendant shall simultaneously transmit copies of the cover letter and the form of payment to: (a) the Director, Division of Enforcement, U.S. Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581; (b) Chief, Office of Cooperative Enforcement, Division of Enforcement, U.S. Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581; and (c) Regional Counsel, U.S. Commodity Futures Trading Commission, Eastern Regional Office, 140 Broadway, 19th Floor, New York, NY 10005.

#### Disgorgement

39. The Relief Defendant shall disgorge \$62,600, which represents benefits received, directly or indirectly from the Defendant's violations of the CEA. Relief Defendant shall pay, within thirty days from the date of this Order, disgorgement to Customers 1 and 2 in the amount of \$57,400, plus post-judgment interest, and to Customer 3 in the amount of \$5,200, plus post-

judgment interest (the "Disgorgement Obligation"). The Relief Defendant shall pay the Disgorgement Obligation 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. The Relief Defendant shall simultaneously transmit copies of the cover letter and the form of payment to: (a) the Director, Division of Enforcement, U.S. Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581; (b) Chief, Office of Cooperative Enforcement, Division of Enforcement, U.S. Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581; and (c) Regional Counsel, U.S. Commodity Futures Trading Commission, Eastern Regional Office, 140 Broadway, 19th Floor, New York, NY 10005.

Provisions Regarding Monetary Penalties

40. Post-judgment interest on the CMP Obligation, Restitution Obligation and Disgorgement Obligation shall accrue commencing on the thirty-first day after this Order is entered and shall be determined by using the Treasury Bill rate prevailing on the date this Order is entered, pursuant to 28 U.S.C. § 1961.

41. All payments by the Defendant pursuant to this Order shall first be applied to satisfaction of the Restitution Obligation. After satisfaction of the Restitution Obligation, further payments by the Defendant pursuant to this Order shall be applied to satisfy the CMP Obligation.

42. Defendant's Restitution Obligation coincides with the Relief Defendant's Disgorgement Obligation. Accordingly, satisfaction of any part of the Relief Defendant's Disgorgement Obligation shall result in satisfaction of the Defendant's Restitution Obligation to the same extent. Also, satisfaction of any part of Defendant's Restitution Obligation shall result in satisfaction of the Relief Defendant's Disgorgement Obligation to the same extent.

43. Any acceptance by the Commission and/or the Customers of partial payment the Restitution Obligation, CMP Obligation, and/or Disgorgement Obligation shall not be deemed a waiver of the respective requirement of the Defendant and/or Relief Defendant to make further payments pursuant to this Order, or a waiver of the Commission's and/or the Customers' right to seek to compel payment of any remaining balance.

Miscellaneous Provisions

44. The Defendant shall fully cooperate with the Commission in this proceeding and in any related inquiry, investigation, or legal proceeding. Such cooperation shall include, but not be limited to: (a) responding promptly, completely, and truthfully to any inquiries or requests for information; (b) authenticating documents; (c) testifying completely and truthfully; (d) not asserting privileges under the Fifth Amendment of the United States Constitution; (e) transferring or repatriating her funds without adequate consideration; and (f) producing any password required to access any electronic files in any medium under control of the Defendant.

45. The equitable relief provisions of this Order shall be binding upon the Defendant and any person who is acting in the capacity of officer, agent, employee, servant or attorney of the Defendant, and any person acting in active concert or participation with the Defendant who receives actual notice of this Order by personal service or otherwise.

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

Regional Counsel  
U.S. Commodity Futures Trading Commission  
Division of Enforcement - Eastern Regional Office  
140 Broadway, 19<sup>th</sup> Floor  
New York, New York 10005  
Phone: (646) 746-9733  
Fax: (646) 746-9740

47. All such notices to the Commission shall reference the name and docket number of this proceeding.

48. 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: (a) reduced to writing; (b) signed by all parties hereto; and (c) approved by order of this Court.

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

50. 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.

51. This Agreement may be executed in two or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties and delivered (by facsimile or otherwise) to the other party, it being understood that all parties need not sign the same counterpart. Any counterpart or other signature to this Agreement that is delivered by facsimile shall be deemed for all purposes as constituting good and valid execution and delivery by such party of this Agreement.

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

**IT IS SO ORDERED.**

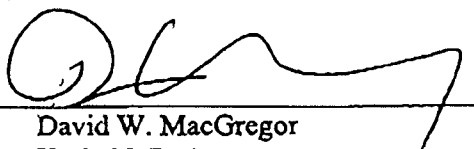
Dated: Nov. 12, 2009

s/ ARR


HONORABLE ALLYNE R. ROSS  
UNITED STATES DISTRICT COURT JUDGE

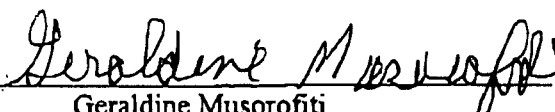
**CONSENTED TO AND APPROVED BY:**

The Plaintiff:

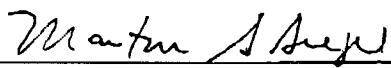
By:   
David W. MacGregor  
Karin N. Roth  
U.S. Commodity Futures Trading Commission  
Division of Enforcement  
140 Broadway, 19<sup>th</sup> Floor  
New York, New York 10005

The Defendant and Relief Defendant:

  
Dawn Musorofiti  
Defendant

  
Geraldine Musorofiti  
Relief Defendant

Accepted as to form:

By:   
Martin S. Siegel  
Brown Rudnick LLP  
Seven Times Square  
New York, NY 10036  
Attorney for the Defendant and the Relief Defendant