

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	John A. Nordberg	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	03 C 6592	DATE	12/6/2006
CASE TITLE	Commodity Futures Trading vs. Cameron Ownbey		

DOCKET ENTRY TEXT

Enter order of permanent injunction and other ancillary relief against defendant Cameron Ownbey. Status set for 12/14/2006 is stricken.

■ [For further detail see separate order(s).]

Docketing to mail notices.

U.S. DISTRICT COURT NORTHERN DISTRICT OF ILLINOIS	Courtroom Deputy Initials:	TF
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2006 DEC -7 AM 9:55

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF ILLINOIS

COMMODITY FUTURES TRADING

COMMISSION,

Plaintiff,

v.

CAMERON OWNBEY, individually
and d/b/a/ Ultimus and First National
Investments, .

Defendant.

CIVIL ACTION NO. 03-CV- 6592

Judge John A. Nordberg

Magistrate Sidney I. Schenkier

**██████████ CONSENT ORDER OF PERMANENT INJUNCTION AND OTHER
ANCILLARY RELIEF AGAINST DEFENDANT CAMERON OWNBEY**

Plaintiff Commodity Futures Trading Commission ("Commission" or "CFTC") filed a Complaint against Defendant Cameron Ownbey ("Ownbey") on September 17, 2003, 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, 17 C.F.R. §§ 1. et seq. (2005). The Court entered a Consent Order of Preliminary Injunction and Other Ancillary Relief against Defendant on September 18, 2003.

I. Consent And Agreement

1. To effect settlement of the matters alleged in the Complaint against Defendant Ownbey, without a trial on the merits or any further judicial proceedings, Ownbey consents to the entry of this Consent Order of Permanent Injunction and Other Ancillary Relief ("Order"). By consenting to the entry of the order, Ownbey neither admits nor denies the allegations of the

Complaint or the Findings of Fact contained in this order, except as to jurisdiction and venue.

2. Ownbey 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 Ownbey, a proceeding in bankruptcy relating to Ownbey, or to enforce the terms of this Order. Solely with respect to a CFTC registration proceeding, any bankruptcy proceeding relating to Ownbey or any proceeding to enforce this Order, Ownbey 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, Ownbey 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 him.

3. Ownbey affirms that he has agreed to this Order voluntarily, and that no promise or threat 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. Ownbey acknowledges service of the Summons and Complaint.

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

6. Ownbey waives:

- (a) all claims which he may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2000), and 28 U.S.C. § 2412 (2000), 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.

7. 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 Ownbey or any other person in any other proceeding, including any current or subsequent bankruptcy.

8. Ownbey agrees that neither he nor any of his agents or employees acting under his authority or control shall take any action or make any public statement denying, directly or indirectly, any allegation in the Complaint or findings or conclusions in this Order, or creating, or tending to create, the impression that the Complaint or this Order is without a factual basis; provided, however, that nothing in this provision shall affect Ownbey's: i) testimonial obligations; or ii) rights to take legal positions in other proceedings to which the CFTC is not a party. Ownbey shall take all necessary steps to ensure that all of his agents and employees understand and comply with this agreement.

9. Ownbey 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.

II. Findings

The Court makes the following findings of fact:

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

2. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e), because Defendant Ownbey 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.

A. Ownbey Engaged in Fraud While Operating Ultimus and First National Investments (“FNI”)

1. Ownbey represented to the public that Ultimus was a firm that provided trading advice and signals for the S&P 500 and E-mini futures contracts for a fee of \$5,500 a year and referred clients to various registered futures commission merchants (“FCMs”) to open individual trading accounts. Ownbey offered to provide trading advice directly to his clients, or to his clients’ FCMs who would then trade his clients’ accounts pursuant to Ownbey’s advice.

2. Ownbey promoted his trading advice through weekly e-mails he issued to customers and prospective customers called the “S&P 500 Newsletter.” Ownbey made false claims of profit, such as: (a) “Wow, you would have made over one million dollars in the last 5 years;” (b) “On average we make about 300% return a year;” (c) “Year after year we have returns of over 250% to 350%,” (d) “Please note that during any 12 month period our profitability is well over 200%,” and (e) “Did you know that we have averaged \$4,477.08 in profits per month for the last five and a half years.” Ownbey falsely told customers that the claimed trading results were real and not hypothetical.

3. Ownbey’s claims of profit were not true, and Ownbey knew they were not true.

4. Ownbey made oral misrepresentations of material fact to individual customers or prospective customers, including the following: (a) Customers could earn \$20,000 per month if they traded pursuant to “FNI’s” trading recommendations; (b) Ownbey traded his own account pursuant to “FNI’s” trading recommendations and had made a lot of money; and (c) The track record of trading presented in e-mails and newsletters sent by Ownbey reflected actual trading. These were all false statements, and Ownbey knew they were false.

5. Ownbey made use of the mails or other means of interstate commerce to make fraudulent misrepresentations and omissions of material facts to his customers and clients.

6. Each one of Ownbey's clients and customers relied upon the misrepresentations and omissions, cited above, that were made by Ownbey in making a decision to purchase Ownbey's trading advice.

7. At least 31 of Ownbey's customers lost money trading pursuant to Ownbey's trading instructions.

III. CONCLUSIONS OF LAW

A. Ownbey Violated Sections 4b(a)(2)(i) and (iii) of the Act By Making Misrepresentations of Material Facts And By Omitting To Disclose Others

1. Ownbey cheated and defrauded or attempted to cheat or defraud other persons, and willfully deceived or attempted to deceive other persons, in violation of Sections 4b(a)(2)(i) and (iii) of the Act by making material misrepresentations or misleading statements to his clients that he knew were false and that a reasonable person would consider important in making the decision to invest with Ownbey. These material misrepresentations and misleading statements included claims that: (1) his trading directions generated large profits; (2) clients would receive trading directions from a third party's computerized trading system; (3) Ownbey was earning large profits for his own account using these same trading instructions; and (4) the performance record Ownbey provided to them reflected actual trading results.

2. Ownbey also violated Sections 4b(a)(2)(i) and (iii) of the Act by failing to disclose to clients and potential clients that an administrative enforcement action had been brought against him in July 2001 in connection with the promotion and sales of another commodity futures trading system.

3. Ownbey acted with scienter, because the representations that he made regarding his past performance, profit potential and source of his trading advice, among other things, were false, and he knew they were false or recklessly disregarded the fact that he had no reasonable

factual basis to make them. Similarly, Ownbey intentionally failed to disclose the filing of the CFTC's administrative action for fraud.

4. Each one of Ownbey's clients and customers relied upon the misrepresentations and omissions made by Ownbey in making a decision to purchase Ownbey's trading advice.

B. Ownbey Violated Section 4o(1)(A) and (B) of the Act By Making Misrepresentations of Material Facts and By Omitting To Disclose Others

5. Ownbey employed devices, schemes or artifices to defraud clients or prospective clients, and engaged in transactions, practices or courses of business which operated as a fraud or deceit upon clients or prospective clients, in violation of Section 4o(1) of the Act, 7 U.S.C. § 6o(1), by making material misrepresentations or misleading statements to his clients that he knew were false and that a reasonable person would consider important in making the decision to invest with Ownbey. These material misrepresentations and misleading statements included claims that: (1) his trading directions generated large profits; (2) clients would receive trading directions from a third party's computerized trading system; (3) Ownbey was earning large profits for his own account using these same trading instructions; and (4) the performance record Ownbey provided to them reflected actual trading results.

6. Ownbey also violated Sections 4o(1) of the Act, 7 U.S.C. § 6o(1), by failing to disclose to clients and potential clients that an administrative enforcement action had been brought against him in July 2001 in connection with the promotion and sales of another commodity futures trading system.

IV. ORDER FOR PERMANENT INJUNCTION

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. Ownbey and all persons insofar as they are acting in the capacity of his agents, servants, employees and attorneys, and all persons insofar as they are acting in concert or participation with him, are permanently restrained, enjoined and prohibited from directly or indirectly:

A. 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 if such contract for future delivery is or may be used for (A) hedging any transaction in interstate commerce in such commodity or the products or byproducts thereof, or (B) determining the price basis of any transaction in interstate commerce in such commodity, or (C) delivering any such commodity sold, shipped, or received in interstate commerce for the fulfillment thereof; cheating or defrauding or attempting to cheat or defraud such other person; 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 person any false record thereof; willfully deceiving or attempting to deceive such other person by any means whatsoever in regard to any such order or contract or the disposition or execution of any such order or contract, or in regard to any act of agency performed with respect to such order or contract for such person in violation of Section 4b(a)(2)(i)-(iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i)-(iii), by, among other things, engaging in any of the conduct set forth in Paragraphs II. A. 2 and 4, above.

B. By use of the mails or other instrumentalities of interstate commerce, directly or indirectly employing a device, scheme, or artifice to defraud any client or prospective client, or engaging in transactions, practices or a course of business which operate as a fraud or deceit

upon any client or prospective client in violation of Sections 4o(1)(A) and (B) of the Act, 7 U.S.C. §§ 6o(1)(A) and (B), by, among other things, engaging in any of the conduct set forth in Paragraphs II. A. 2 and 4, above.

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

D. Entering into any commodity futures or options transactions for his own accounts, for any accounts in which he has a direct or indirect interest, and/or having any commodity futures or options traded on his behalf; and

E. 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, except as provided for in Section 4.14(a)(9) of the Commission's Regulations, 17 C.F.R. § 4.14(a)(9), or acting, directly or indirectly, as a principal, agent, or any other officer, agent or employee of any person registered, required to be registered, or exempted from registration with the Commission, unless such exemption is pursuant to Section 4.14(a)(9) of the Commission's Regulations, 17 C.F.R. § 4.14(a)(9).

V. ORDER FOR OTHER EQUITABLE RELIEF

IT IS FURTHER ORDERED THAT:

A. Restitution

1. Upon entry of this Order, Ownbey is liable for, and a judgment is entered against him, in the amount of, \$269,852.21 as restitution to his customers ("Restitution Amount"). Upon entry of this Order, Ownbey shall pay this restitution amount to his customers, identified in Attachment A hereto. No prejudgment interest is ordered. However, post-judgment interest

shall accrue commencing on the date this Order is signed and continue until the Restitution Amount is paid in full. Post-judgment interest shall be paid at the post-judgment interest rate set forth in 28 U.S.C. § 1961. Restitution payments made by Ownbey pursuant to this Order shall be dispersed on a pro rata basis to customers as set forth on Attachment A until those amounts (including interest) are fully satisfied. All payments after satisfaction of the Restitution Amount and interest shall be applied to the civil monetary penalty described below. Attachment A hereto identifies the customers to whom Ownbey shall make restitution pursuant to this paragraph, the amount of restitution, not including interest, and the pro rata distribution percentage by which each customer shall be paid.

2. Pursuant to Rule 71 of the Federal Rules of Civil Procedure, each customer of Ownbey is explicitly made an intended third-party beneficiary of this Order and may seek to enforce obedience of this Order to obtain satisfaction of any portion of the restitution which has not been paid by Ownbey, to ensure continued compliance with any provision of this Order and to hold Ownbey in contempt for any violations of any provision of this Order.

B. Civil Monetary Penalty

1. Upon entry of this Order, Ownbey is liable for and a judgment is entered against him for a civil monetary penalty of \$345,000, plus post-judgment interest. Payments to satisfy the civil monetary penalty shall commence only after Ownbey has satisfied his Restitution obligation, as set forth above. Post-judgment interest shall accrue commencing on the date this Order is signed and continue until the civil monetary penalty is paid in full. Post-judgment interest shall be paid at the post-judgment interest rate set forth in 28 U.S.C. § 1961. Ownbey shall pay such civil monetary penalty and interest 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

Commodity Futures Trading Commission, and sent to Dennese Posey, or her successor, Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581, under cover of a letter that identifies Ownbey and the name and docket number of the proceeding; Ownbey shall simultaneously transmit a copy of the cover letter and the form of payment to the Director, Division of Enforcement, Commodity Futures Trading Commission, at the following address: 1155 21st Street, NW, Washington, D.C. 20581.

2. Any acceptance by the CFTC of partial payment from Ownbey of his restitution and/or civil monetary obligations shall not be deemed a waiver of Ownbey's obligation to make further payments pursuant to this Order, or a waiver of the CFTC's right to seek to compel payment from Ownbey of any remaining balance.

3. Ownbey shall immediately notify the CFTC if he makes or has previously made any agreement with any customer obligating him to make payments outside of this Order. He shall also provide immediate evidence to the CFTC of any payments made pursuant to such agreement. Ownbey shall also notify the CFTC of any federal or state civil or criminal action related to the same activities that are the subject of this action.

4. All notices required by this Order shall identify this matter by caption and shall be sent by certified mail, return receipt requested, as follows:

Notice to CFTC:
Director, Division of Enforcement
Commodity Futures Trading Commission
1155 21st St. NW
Washington, DC 20581

Notice to Ownbey:

Cameron Ownbey
801 Spring St. #2-202
Seattle, WA 98104

5. In the event that Ownbey changes his residential or business telephone number(s) and/or address(es) at any time, he shall provide written notice of the new number(s) and/or address(es) to the CFTC within twenty (20) calendar days thereof.

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

7. 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.

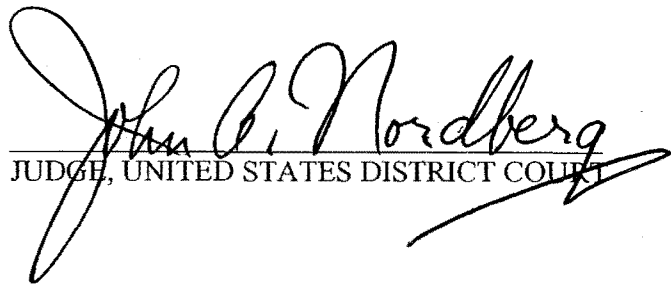
8. The failure of any party to this Order to require performance of any provision of this Order shall in no manner affect the right of such party at a later time to enforce the same or any other provision of this Order. No waiver in one or more instances of the breach of any provision contained in this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

9. Defendant shall pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2412(a)(2).

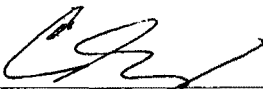
10. This Court shall retain jurisdiction of this cause to assure compliance with this Consent Order and for all purposes related to this action, including securing additional funds or property from third parties for satisfaction of Ownbey's obligations for restitution and payment of his civil monetary penalty.


IT IS SO ORDERED.

Dated: December 5, 2006


JUDGE, UNITED STATES DISTRICT COURT

CONSENTED TO AND APPROVED BY:


Cameron Ownbey


Louis V. Traeger
Attorney for Plaintiff
Commodity Futures Trading Commission

9-16-06
Dated:

Dec. 4, 2006
Dated: