

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**CASE NO. 05-80592-CIV-HURLEY**

**COMMODITY FUTURES  
TRADING COMMISSION,  
Plaintiff,**

**vs.  
CHRISTOPHER SMITHERS,  
PROSPERITY CONSULTANTS, INC.,  
and JACK SMITHERS,  
Defendants.**

---

**ORDER ADOPTING MAGISTRATE'S REPORT AND RECOMMENDATION &  
FINAL JUDGMENT OF DISGORGEMENT AND  
ASSESSMENT OF CIVIL MONETARY PENALTIES**

**THIS CAUSE** is before the court upon Plaintiff's Motion for Disgorgement and Civil Monetary Penalties [DE # 52]. This matter was previously referred to United States Magistrate Judge James Hopkins pursuant to 28 U.S.C. §§ 636-39 and Rule 72 of the Federal Rules of Civil Procedure, for a recommended disposition. On July 23, 2009, Magistrate Judge Hopkins filed a Report and Recommendation upon the motion. [DE# 52]. No party has filed any objection to the Report.


Having carefully reviewed the Report and Recommendation of the Magistrate Judge, the court finds the resolution of the issues as recommended by Magistrate Judge Hopkins to be sound and well-reasoned, and shall accordingly adopt those recommendations here.

It is therefore **ORDERED** and **ADJUDGED**:

1. Magistrate Judge James Hopkins Report and Recommendation on plaintiff's motion for disgorgement and assessment of civil monetary penalties [DE # 52] is hereby **ADOPTED** and **INCORPORATED** in full.

2. The Commission's motion for disgorgement and civil penalties [DE# 42] is **GRANTED IN PART and DENIED IN PART** as follows:
  - a. The defendants **Christopher Smithers, Jack Smithers and Prosperity Consultants, Inc.** shall be liable, jointly and severally, for **DISGORGEMENT** of ill-gotten gains totaling \$96,263.61.
  - b. The defendant **Christopher Smithers** is further liable, individually, for an additional \$109,783.00 in ill -gotten gains, bringing the total amount of disgorgement for defendant Christopher Smithers to **\$206,046.61**, representing all ill- gotten gains received by him as a result of the conduct alleged in the Commission's Complaint, payable by U.S. postal money order, certified check, bank cashier check or bank money order made payable to the Commodity Futures Trading Commission within **THIRTY (30) DAYS** from the date of this order.
  - c. The defendant **Christopher Smithers** is further liable for monetary penalties in the additional total sum of **\$206,046.61**.
  - d. The defendant **Jack Smithers** shall not be held liable for additional civil monetary penalties.
3. The court shall retain jurisdiction for purposes of enforcing this final order of disgorgement and assessment of civil monetary penalties and all prior orders and judgments for permanent injunction.
4. There being nothing further for the court to do in this matter, the Clerk of Court is directed to **CLOSE** this case and terminate any pending motions as **MOOT**.

**DONE and SIGNED** in Chambers at West Palm Beach, Florida this 17<sup>th</sup> day of August, 2009.

  
Daniel T. K. Hurley  
United States District Judge

cc. All parties