

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 14-62244-CIV-ZLOCH

U.S. COMMODITY FUTURES TRADING  
COMMISSION,

Plaintiff,

vs.

DEFAULT FINAL JUDGMENT

INTERNATIONAL MONETARY METALS,  
INC., and MARTIN SOMMERS,

Defendants.

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THIS MATTER is before the Court upon Plaintiff U.S. Commodity Futures Trading Commission's Motion For Entry Of Final Default Judgment (DE 61). The Court has carefully reviewed said Motion, the entire court file and is otherwise fully advised in the premises.

Plaintiff U.S. Commodity Futures Trading Commission's (hereinafter "Plaintiff" or "CFTC"), initiated the above-styled cause with the filing of its Complaint (DE 1). Defendant Martin Sommers (hereinafter "Sommers") was duly served with process. See DE 4. Defendant International Monetary Metals, Inc. (hereinafter "IMM") was also duly served with process. See DE 5. Defendants filed an Answer (DE 36), but they later withdrew said Answer. See DE 51. Defendants filed no amended answer and expressed no intent to do so. Thus, the Court entered Default in favor of Plaintiff. See DE 57. By the instant Motion (DE 61), Plaintiff now moves for Final Default Judgment against Defendants.

The well-pleaded allegations made in the Complaint (DE 1) are deemed to have been admitted by Defendant by virtue of their default. Cotton v. Mass. Mut. Life Ins. Co., 402 F.3d 1267, 1277-78 (11th Cir. 2005) (citations omitted).

The Court makes the following findings of fact:

Plaintiff U.S. Commodity Futures Trading Commission is an independent federal regulatory agency charged by Congress with the administration and enforcement of the Commodity Exchange Act ("CEA"), as amended, 7 U.S.C. §§ 1 et seq., and the Regulations promulgated thereunder, 17 C.F.R. §§ 1.1 et seq.

IMM (which also sometimes referred to itself as IM Metals) is a Florida corporation, incorporated on April 21, 2008, with its principal place of business in Hollywood, Florida. In its solicitation materials, IMM characterized itself as "a full service precious metals dealer." IMM, using websites and telemarketers, solicited retail customers to invest in leveraged, margined, or financed precious metals transactions. IMM ceased doing business in or about March 2013. IMM has never been registered with the Commission in any capacity.

Sommers is an individual whose last known address was in Cooper City, Florida. From July 16, 2011 to March 31, 2013 ("Relevant Period"), Sommers was the President and controlling person of IMM.

IMM conducted its customers' financed precious metals transactions through either Worth Group Inc. ("Worth") or AmeriFirst Management, LLC ("AmeriFirst").

Worth is a Florida corporation formed in June 2002 that has previously gone by the names of Wilshire Capital Management Corp. and Worth Bullion Group Inc. Worth describes itself as "a Florida-based precious metals wholesaler [that] might also be described as a dealer or broker of precious metals." Worth's business office is located at 3900 Military Trail, Ste. 500, Jupiter, Florida, 33458. Worth has never been registered with the Commission in any capacity.

On August 13, 2013, Plaintiff CFTC brought an action in this District against Worth and its principals, captioned CFTC v. Worth Group, Inc., et al., Case No. 13-cv-80796-KLR, alleging, among other things, that Worth defrauded retail precious metals customers and engaged in illegal, off-exchange leveraged commodity transactions with retail customers. On January 23, 2014, the Court entered a Consent Order of Preliminary Injunction and Other Ancillary Relief (Docket No. 61, Case No. 13-cv-80796-KLR) that, among other relief, appointed a corporate monitor for Worth, and enjoined Worth from violating certain provisions of the CEA. On July 29, 2015, the Court denied the CFTC and Worth's cross-motions for summary judgment. (Docket No. 181, Case No. 13-cv-80796-KLR). On January 29, 2016, the Court issued a Consent Order of Permanent Injunction and Other Statutory and Equitable Relief Against Worth Group Inc., Andrew Wilshire, and Eugenia Mildner.

AmeriFirst is a Florida limited liability company that described itself on its website as a clearing and financing firm for precious metals dealers and claimed to provide dealers with

"tangible assets in a growing physical market." On its website, AmeriFirst offered gold, silver, and platinum in bar and coin form and provided customer financing options for precious metals dealers such as IMM that solicited and introduced retail customers to AmeriFirst. AmeriFirst ceased doing business in or about February 2013. AmeriFirst has never been registered with the Commission in any capacity.

The Commission brought an action against AmeriFirst in this District, CFTC v. AmeriFirst Management, LLC, et al., No. 13-cv-61637-WPD (S.D. Fla. Complaint filed July 27, 2013). On September 17, 2013, the Court entered a Consent Order of Permanent Injunction and Other Statutory and Equitable Relief finding that AmeriFirst violated Section 4(a) of the CEA, 7 U.S.C. § 6(a), by engaging in illegal off-exchange commodity transactions with retail customers and that the Commission had jurisdiction over those transactions. AmeriFirst agreed to pay restitution and a civil monetary penalty, with the amounts to be determined by the Court. On July 24, 2014, the Court entered a Supplemental Consent Order assessing restitution in the amount of \$25,515,732.85 and a civil monetary penalty of \$10 million against the AmeriFirst defendants.

As to the leveraged, margined, or financed precious metals transactions on behalf of IMM's customers that were introduced to AmeriFirst, although IMM solicited the customers and the customers paid their funds to IMM, the customers' orders to AmeriFirst were placed by International Bullion Trading Inc. ("IBT").

During the Relevant Period, Defendants offered to enter into, entered into, executed, confirmed the execution of, or conducted an office or business in the United States for the purpose of soliciting, or accepting orders for, or otherwise dealing in transactions in, or in connection with, the purchase or sale of precious metals to or from retail customers on a leveraged, margined, or financed basis. During the Relevant Period, IMM's principal place of business was located in Broward County, Florida.

IMM, by and through its employees and agents, including Sommers, solicited customers by telemarketing and IMM's websites, [www.internationalmonetarymetals.com](http://www.internationalmonetarymetals.com) and [www.immetals.com](http://www.immetals.com), to engage in leveraged, margined, or financed precious metals transactions. Sommers directly solicited retail customers to enter into leveraged, margined, or financed precious metals transactions.

In the leveraged, margined, or financed precious metals (including gold and silver) transactions, IMM's customers invested only a percentage of the total metal value, as little as 20%, and received a loan from IMM for the remainder of the metal's value. According to IMM's Customer Account Application and Agreement, IMM's customers were charged a finance charge on the loan (up to 7% above the prime rate), as well as administrative charges and service/storage charges on these transactions.

IMM's customers also paid IMM a commission in the amount of 15% of the total metal value per transaction. Thus, due to the



high fees, finance charges and commissions, IMM's customers rarely broke even on their investments, let alone earned a profit, because much of their principal investment was consumed by these charges.

After a customer was persuaded to invest, IMM, through its employees and agents including Sommers, collected funds from the customer for the transaction and, after deducting IMM's commissions and/or fees, sent the funds and submitted the customer's order to either Worth or AmeriFirst.

During the Relevant Period, IMM transferred funds to Worth on behalf of 170 of IMM's customers (none of whom were ECPs or ECEs) in connection with leveraged, margined, or financed precious metals transactions. IMM received commissions totaling \$2,291,307 in connection with leveraged, margined, or financed precious metals transactions conducted through Worth on behalf of IMM's customers.

During the Relevant Period, IMM (through IBT) transferred funds to AmeriFirst on behalf of 15 IMM customers (none of whom were ECPs or ECEs) for leveraged, margined, or financed precious metals transactions.

IMM received commissions totaling \$178,476 in connection with leveraged, margined, or financed precious metals transactions conducted through AmeriFirst on behalf of IMM's customers.

IMM received, in aggregate, commissions from 185 customers totaling \$2,469,783 in connection with leveraged, margined, or financed precious metals transactions during the Relevant Period

that were conducted through AmeriFirst or Worth on behalf of IMM's customers. Triple that amount is \$7,409,349.

None of the leveraged, margined, or financed transactions at issue in the Complaint - the transactions for which IMM received \$2,469,783 in commissions - were conducted on or subject to the rules of any board of trade, exchange, contract market, or derivatives transaction execution facility; and none of those transactions resulted in actual delivery of precious metals to IMM's customers.

During the Relevant Period, Sommers was the President and sole shareholder of IMM, and the signatory on IMM bank accounts. Sommers had authority to hire and fire IMM employees, signed contracts on behalf of IMM, participated in creating IMM's marketing strategy, and placed and confirmed customer orders for precious metals.

During the Relevant Period, Sommers also himself solicited customers for IMM, and offered or accepted IMM customer orders in connection with leveraged, margined, or financed precious metals transactions.

The Court makes the following conclusions of law:

This Court has jurisdiction over this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, 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 Act or any rule, regulation, or order promulgated thereunder, the Commission may bring an action in the proper district court of

the United States against such person to enjoin such act or practice, or to enforce compliance with the Act, or any rule, regulation or order thereunder.

The Commission has jurisdiction over the conduct and transactions at issue in this case pursuant to Section 2(c)(2)(D) of the CEA, 7 U.S.C. § 2(c)(2)(D).

Venue properly lies with this Court pursuant to Section 6c(e) of the CEA, 7 U.S.C. § 13a-1(e), because Defendants reside in this District, Defendants transacted business in this District, and certain transactions, acts, and practices alleged in the Complaint and described herein, occurred, are occurring, and/or are about to occur within this District.

During the Relevant Period, the retail commodity transactions described in this Order were offered by Defendants and entered into (a) on a leveraged or margined basis, or financed by the offeror, the counterparty, or a person acting in concert with the offeror or counterparty on a similar basis, (b) with persons who are not ECPs or ECEs as defined by the CEA, and (c) were not made or conducted on, or subject to, the rules of any board of trade, exchange or contract market, or derivatives transaction execution facility.

The precious metals, including gold and silver, described herein are commodities as defined by Section 1a(9) of the CEA, 7 U.S.C. § 1a(9).

Section 2(c)(2)(D) provides that agreements, contracts, or transactions in any commodity that are entered into with, or offered to (even if not entered into with), a non-ECP and non-



ECE on a leveraged or margined basis, or financed by the offeror, the counterparty, or a person acting in concert with the offeror or counterparty on a similar basis, shall be subject to, among other provisions, Section 4(a) of the CEA, 7 U.S.C. § 6(a), "as if the agreement, contract, or transaction was a contract of sale of a commodity for future delivery." 7 U.S.C. § 2(c)(2)(D)(iii).

During the Relevant Period, Defendants each violated Section 4(a) of the CEA, 7 U.S.C. § 6(a), by offering to enter into, entering into, executing, confirming the execution of, or conducting an office or business in the United States for the purpose of soliciting or accepting orders for, or otherwise dealing in any transactions in, or in connection with, retail commodity transactions which were not conducted on or subject to the rules of a board of trade designated or registered by the Commission as a contract market or derivatives transaction execution facility for such commodity.

Each offer to enter into, entrance into, execution, confirmation, solicitation, or acceptance of an order in any transaction in, or in connection with, an off-exchange retail commodity transaction, made during the Relevant Period, is a separate and distinct violation of Section 4(a) of the CEA, 7 U.S.C. § 6(a).

In addition to his own violations of Section 4(a) of the CEA, 7 U.S.C. § 6(a), Sommers directly or indirectly controlled IMM and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting IMM's violations of Section

4(a) of the CEA, 7 U.S.C. § 6(a), described herein. Therefore, pursuant to Section 13(b) of the CEA, 7 U.S.C. § 13(b), Sommers is also liable for each of IMM's violations of Section 4(a) of the CEA, 7 U.S.C. § 6(a).

The acts and omissions of IMM's employees and agents, including Sommers, described herein were done within the scope of the individuals' employment or office with IMM. Therefore, pursuant to Section 2(a)(1)(B) of the CEA, 7 U.S.C. § 2(a)(1)(B), IMM is liable as a principal for each of the acts, omissions or failures by its employees and agents, including Sommers, constituting violations of Section 4(a) of the CEA, 7 U.S.C. § 6(a).

During the Relevant Period, IMM violated Section 4d(a)(1) of the CEA, 7 U.S.C. § 6d(a)(1), by soliciting or accepting orders for the retail commodity transactions described above, and in connection with such orders, accepting money, securities, or property (or extending credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that resulted or may have resulted therefrom, when it was not registered with the Commission as an FCM.

Each solicitation or acceptance of an order for the retail commodity transactions described above, and each acceptance of money, securities, or property (or extension of credit) to margin, guarantee, or secure such trades, during the Relevant Period, is a separate and distinct violation of Section 4d(a)(1) of the CEA, 7 U.S.C. § 6d(a)(1).

Sommers directly or indirectly controlled IMM and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting IMM's violations of Section 4d(a)(1) of the CEA, 7 U.S.C. § 6d(a)(1), described herein. Therefore, pursuant to Section 13(b) of the CEA, 7 U.S.C. § 13(b), Sommers is also liable for each of IMM's violations of Section 4d(a)(1) of the CEA, 7 U.S.C. § 6d(a)(1).

Accordingly, after due consideration, it is

**ORDERED AND ADJUDGED** as follows:

1. Plaintiff U.S. Commodity Futures Trading Commission's Motion for Entry of Final Default Judgment (DE 61) be and the same is hereby **GRANTED**;

2. Pursuant to Federal Rules of Civil Procedure 55 and 58, Default Final Judgment be and the same is hereby **ENTERED** in favor of Plaintiff and against Defendants IMM and Sommers, as follows:

3. Pursuant to Section 6c of the CEA, as amended, 7 U.S.C. § 13a-1, Defendants are permanently restrained, enjoined and prohibited from directly or indirectly:

- a. Offering to enter into, entering into, executing, confirming the execution of, or conducting an office in the United States, for the purpose of soliciting, or accepting orders for, or otherwise dealing in retail commodity transactions, in violation of Section 4(a) of the CEA, 7 U.S.C. § 6(a); and/or

b. Soliciting or accepting orders for retail commodity transactions, and in connection with such orders, accepting money, securities, or property (or extended credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that resulted or may have resulted therefrom, without being registered with the Commission as a futures commission merchant, in violation of Section 4d(a)(1) of the CEA, 7 U.S.C. § 6d(a)(1).

4. Defendants are also permanently restrained, enjoined and prohibited from directly or indirectly:

- a. Trading on or subject to the rules of any registered entity (as that term is defined in Section 1a(40) of the CEA, as amended, 7 U.S.C. § 1a(40));
- b. Entering into any transactions involving "commodity interests" (as that term is defined in Regulation 1.3(yy), 17 C.F.R. § 1.3(yy)) for their own personal account or for any account in which they have a direct or indirect interest;
- c. Having any commodity interests traded on their 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 interests;



- e. Soliciting, receiving or accepting any funds from any person for the purpose of purchasing or selling any commodity interests;
- 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 Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9); and/or
- g. Acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a)), agent or any other officer or employee of any person (as that term is defined in Section 1a(38) of the CEA, as amended, 7 U.S.C. § 1a(38)) registered, exempted from registration or required to be registered with the Commission except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9).

5. IMM and Sommers shall pay, jointly and severally, disgorgement in the amount of two million four hundred sixty-nine thousand seven hundred eighty-three dollars (\$2,469,783), plus post-judgment interest, within ten (10) days of the date of the entry of this Order (the "Disgorgement Obligation"). Post-judgment interest shall accrue on the Disgorgement Obligation beginning on the date of entry of this Order and shall be

determined by using the Treasury Bill rate prevailing on the date of entry of this Order pursuant to 28 U.S.C. § 1961.

6. To effect payment of the Disgorgement Obligation and the distribution of any disgorgement payments to Defendants' customers, the Court appoints the National Futures Association ("NFA") as Monitor ("Monitor"). The Monitor shall collect disgorgement 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, NFA shall not be liable for any action or inaction arising from NFA's appointment as Monitor, other than actions involving fraud.

7. Defendants shall make Disgorgement Obligation payments under this Order to the Monitor in the name "International Monetary Metals, Inc. and Martin Sommers - DISGORGEMENT Fund" and shall send such Disgorgement 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.

8. The Monitor shall oversee the Disgorgement Obligation and shall have the discretion to determine the manner of

distribution of such funds in an equitable fashion to Defendants' customers identified by the Commission or may defer distribution until such time as the Monitor deems appropriate. In the event that the amount of Disgorgement 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 customers is impractical, the Monitor may, in its discretion, treat such disgorgement 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 B below.

9. Defendants shall cooperate with the Monitor as appropriate to provide such information as the Monitor deems necessary and appropriate to identify Defendants' customers to whom the Monitor, in its sole discretion, may determine to include in any plan for distribution of any Disgorgement 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 Disgorgement Obligation.

10. The Monitor shall provide the Commission at the beginning of each calendar year with a report detailing the disbursement of funds to Defendants' customers 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.

11. The amounts payable to each customer shall not limit the ability of any customer 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 customer that exist under state or common law.

12. Pursuant to Rule 71 of the Federal Rules of Civil Procedure, each customer of Defendants who suffered a loss 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 disgorgement that has not been paid by Defendants to ensure continued compliance with any provision of this Order and to hold Defendants in contempt for any violations of any provision of this Order.

13. To the extent that any funds accrue to the U.S. Treasury for satisfaction of Defendants' Disgorgement Obligation, such funds shall be transferred to the Monitor for disbursement in accordance with the procedures set forth above.

14. Pursuant to Section 6c(d)(1)(A) of the CEA, 7 U.S.C. § 13a-1(d)(1)(A), IMM and Sommers shall, jointly and severally, pay a civil monetary penalty in the amount of seven million four hundred nine thousand three hundred forty-nine dollars (\$7,409,349), which is triple the commissions paid to IMM by its customers in connection with the illegal transactions set forth herein, within ten (10) days of the date of the entry of this Order (the "CMP Obligation"). If the CMP Obligation is not paid



in full within ten (10) days of the date of entry of this Order, then post-judgment interest shall accrue on the CMP Obligation beginning on the date of entry of this Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Order pursuant to 28 U.S.C. § 1961. 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-341  
CFTC/CPSC/SEC  
6500 S. MacArthur Blvd.  
Oklahoma City, OK 73169  
Telephone: (405) 954-7262  
nikki.gibson@faa.gov

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.

15. Partial Satisfaction: Acceptance by the Commission or the Monitor of any partial payment of Defendants' Disgorgement Obligation or 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.

16. Injunctive and Equitable Relief Provisions: The injunctive and equitable relief provisions of this Order shall be binding upon Defendants, upon any person under the authority or control of any of the Defendants, and upon any person who receives actual notice of this Order, by personal service, email, facsimile or otherwise insofar as he or she is acting in active concert or participation with Defendants.

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

Notice to Commission:

Manal M. Sultan  
Deputy Director  
Division of Enforcement  
Commodity Futures Trading Commission  
140 Broadway, 19th Floor  
New York, NY 10005

Notice to Monitor:

Daniel Driscoll  
Executive Vice President, COO  
National Futures Association  
300 South Riverside Plaza, Suite 1800  
Chicago, Illinois 60606-3447

All such notices to the Commission or the Monitor shall reference the name and docket number of this action.

18. Change of Address/Phone: Until such time as Defendants satisfy in full their Disgorgement Obligation and CMP Obligation as set forth in this 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.

19. Invalidation: 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.

20. Continuing Jurisdiction of this Court: This Court shall retain jurisdiction of this action to ensure compliance with this Order and for all other purposes related to this action, including any motion by the Defendants to modify, or for relief from, the terms of this Order.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, this 1<sup>st</sup> day of August, 2016.

  
WILLIAM J. ZLOCH  
UNITED STATES DISTRICT JUDGE

Copies Furnished:

All Counsel and Parties of Record