

**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS
PEORIA DIVISION**

**U.S. COMMODITY FUTURES
TRADING COMMISSION,**

Plaintiff,

v.

**SUMMIT TRADING & CAPITAL LLC, a
dissolved Illinois Limited Liability Company,
BRANT L. RUSHTON, an individual, and
MELISSA C. RUSHTON, an individual,**

Defendants.

Case No. 1:11-cv-01436-JES-JAG

**ORDER OF FINAL
JUDGMENT**

Before the Court is Plaintiff's Motion for Entry of Final Judgment pursuant to Fed. R. Civ. P. 54(b) against Defendants Brant L. Rushton ("Rushton") and Summit Trading & Capital LLC ("Summit"). The Court, having considered Plaintiff's Motion, any response thereto, and the record in this matter, finds that there is no just reason for delaying entry of final judgment against Rushton and Summit because the claims against them are fully disposed of and separable from the claims against Defendant Melissa Rushton ("Melissa"), the entry of final judgment as to Rushton and Summit will promote judicial economy by narrowing the issues for trial and facilitate a more timely distribution of frozen funds to aggrieved investors as restitution for their losses, and the determination of appropriate damages against Rushton and Summit is mechanical in nature and fully supported by the record. Therefore, in accordance with the Court's Opinion granting Plaintiff's Motion for Summary Judgment [30] finding that Rushton and Summit violated Sections 4b(a)(1)(A)-(C), 4o, 4m(1), and 4k(2) of the Commodity Exchange Act (the "Act"), 7 U.S.C. §§ 6b(a)(1)(A)-(C) (Supp. III 2009), 6(o) (2006), 6m(1) (2006), 6k(2) (2006),

as well as Commission Regulations 4.20 and 3.12, 17 C.F.R. §§ 4.20, 3.12 (2011), the Court now enters final judgment on all claims against Rushton and Summit as follows:

I. JUDGMENT

1. IT IS ORDERED AND ADJUDGED that judgment is hereby entered for Plaintiff U.S. Commodity Futures Trading Commission (“CFTC” or “Commission”) against Rushton and Summit on all Counts alleged in the CFTC’s Complaint [1].

II. PERMANENT INJUNCTION

IT IS FURTHER HEREBY ORDERED AND ADJUDGED that:

1. Summit and Rushton are enjoined from directly or indirectly violating Sections 4b(a)(1)(A)-(C), 4k(2), 4m(1), and 4o of the Act, as amended, 7 U.S.C. §§ 6b(a)(1)(A)-(C), 6k(2), 6(m)1, and 6o, and Regulations 3.12 and 4.20, 17 C.F.R. §§ 3.12 and 4.20 (2012).

2. Summit and Rushton are enjoined from directly or indirectly:

- a. trading on or subject to the rules of any registered entity, as that term is defined in Section 1a of the Act, 7 U.S.C. § 1a (Supp. IV 2011);
- b. entering into any transactions involving futures, options, commodity options (as that term is defined in Regulation 1.3(hh), 17 C.F.R. § 1.3(hh) (2012)), security futures products, swaps (as that term is defined in Section 1a(47) of the Act, 7 U.S.C. § 1a(47) (Supp. IV 2011), and as further defined by Commission regulation 1.3(xxx), 17 C.F.R. § 1.3(xxx) (2012)) and/or foreign currency (“forex contracts”) (as described in Sections 2(c)(2)(B) and 2(c)(2)(C)(i) of the Act, 7 U.S.C. §§2(c)(2)(B) and 2(c)(2)(C)(i) (Supp. IV 2011)), for their own personal or proprietary account or for any account in which they have a direct or indirect interest;

- c. having any futures, options, commodity options, security futures products, swaps, and/or forex contracts 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 futures, options, commodity options, security futures products, swaps, and/or forex contracts;
- e. soliciting, receiving, or accepting any funds from any person for the purpose of purchasing or selling any futures, options, commodity options, security futures products, swaps, 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 Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2012); and
- g. acting as a principal, as that term is defined in Regulation 3.1(a), 17 C.F.R. §3.1(a) (2012), agent, or any other officer or employee of any person, as that term is defined in Section 1a of the Act, 7 U.S.C. § 1a (Supp. IV 2011), 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) (2012).

III. RESTITUTION AND CIVIL MONETARY PENALTIES

IT IS FURTHER HEREBY ORDERED AND ADJUDGED that:

3. Summit and Rushton shall, jointly and severally, immediately pay restitution in the amount of one million, five hundred eighty-six thousand, nine hundred thirty-three dollars (\$1,586,933) (“Restitution Obligation”), plus prejudgment interest on this amount, based on the

Internal Revenue Service (“IRS”) underpayment rate as prescribed by 26 U.S.C. § 6621(a)(2) (2006), accruing from June 2005, which is the date that Rushton began soliciting members of the general public to invest with Summit.

4. To effect payment of the Restitution Obligation and the distribution of any restitution payments to Summit’s investors, the Court appoints the NFA as Monitor (“Monitor”). The Monitor shall collect restitution payments from Rushton and Summit and make distributions as set forth below. Because the Monitor is acting as an officer of this Court in performing these services, the NFA shall not be liable for any action or inaction arising from the NFA’s appointment as Monitor, other than actions involving fraud.

5. Rushton and Summit shall make Restitution Obligation payments pursuant to this Order to the Monitor in the name “Brant Rushton/Summit–RESTITUTION Fund” and shall send such Restitution 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 Rushton and/or Summit as the paying Defendant and the name and docket number of this proceeding. Rushton and Summit 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.

6. The Monitor shall oversee the Restitution Obligation and shall have the discretion to determine the manner of distribution of such funds in an equitable fashion to Summit’s investors identified by the Commission or may defer distribution until such time as the Monitor deems appropriate. In the event that the amount of Restitution 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 victims is impractical, the Monitor may, in its discretion, treat such restitution payments as civil monetary penalty payments, which the Monitor shall forward to the Commission following the instructions for civil monetary penalty payments set forth below.

7. Rushton and Summit shall cooperate with the Monitor as appropriate to provide such information as the Monitor deems necessary and appropriate to identify Summit's investors to whom the Monitor, in its sole discretion, may determine to include in any plan for distribution of any Restitution Obligation payments. Rushton and Summit shall execute any documents necessary to release funds that he or it has in any repository, bank, investment or other financial institution, wherever located, in order to make partial or total payment toward the Restitution Obligation.

8. The Monitor shall provide the Commission at the beginning of each calendar year with a report detailing the disbursement of funds to Summit's investors 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.

9. The amounts payable to Summit's investors shall not limit the ability of any such person from proving that a greater amount is owed from Rushton or Summit or any other person or entity, and nothing herein shall be construed in any way to limit or abridge the rights of any investor that exist under state or common law.

10. Pursuant to Rule 71 of the Federal Rules of Civil Procedure, each Summit investor 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 restitution that has not been paid by Rushton or Summit to ensure continued compliance with any provision of this Order and to hold Rushton or Summit in contempt for any violations of any provision of this Order.

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

12. Summit and Rushton shall, jointly and severally, immediately pay a civil monetary penalty in the amount of three million, two hundred thirty-nine thousand, one hundred eighteen dollars (\$3,239,118) ("CMP Obligation"), which is equivalent to triple the ill-gotten gain that accrued to Rushton and Summit.

13. Summit and Rushton 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 – AMZ 340
E-Mail Box: 9-AMC-AMZ-AR-CFTC
DOT/FAA/MMAC
6500 S. MacArthur Boulevard
Oklahoma City, Oklahoma 73169
Telephone: (405) 954-5644

If payment by electronic funds transfer is chosen, Summit and/or Rushton shall contact Linda Zurhorst or her successor at the address above to receive payment instructions and shall fully comply with those instructions. Summit and/or Rushton shall accompany payment of the CMP Obligation with a cover letter that identifies Summit and/or Rushton and the name and docket number of this proceeding. Summit and/or Rushton shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer, Commodity Trading Futures Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.

IT IS SO ORDERED.

s/James E. Shadid

Dated: 4-3-13

HON. JAMES E. SHADID
CHIEF U.S. DISTRICT JUDGE