

Dances

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

U.S. Commodity Futures Trading Commission,

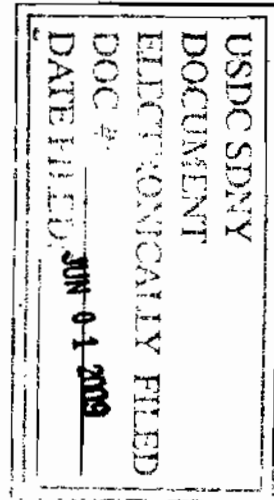
Plaintiff,

v.

Joseph Torre, et al.,

Defendant.

03 CV 9125 (GBD)



I.

JUDGMENT AND CONSENT ORDER OF PERMANENT INJUNCTION AND OTHER EQUITABLE RELIEF AGAINST DEFENDANT JOSEPH TORRE

On November 18, 2003, the Commodity Futures Trading Commission ("Commission" "CFTC") filed a Complaint charging defendant Joseph Torre ("Torre" or "Defendant") and others with willfully aiding and abetting the violation of the Commission's Regulations ("Regulations") 1.1(b)(1), (2) and (3), 17 C.F.R. § 1.1(b)(1), (2) and (3) (2003), pursuant to Section 13(a) of the Commodity Exchange Act (the "Act"), 7 U.S.C. § 13c(a) (2002). The Complaint sought injunctive and other equitable relief. The Court entered an *ex parte* statutory restraining order on November 18, 2003 that, among other things, froze all assets belonging to or related to Defendant and ordered the maintenance of, and access to, business records.

II.**CONSENTS AND AGREEMENTS**

To effect Settlement of the Actions alleged in the Complaint against Torre without a trial on the merits or any further judicial proceedings, Torre:

1. Consents to the entry of this Judgment and Consent Order of Permanent Injunction and Other Equitable Relief Against Defendant Joseph Torre ("Order").
2. Affirms that he has agreed to this Order voluntarily, and that no threat or promise other than as specifically contained herein been made by the Commission or any member, officer, agent, or representative thereof, or by any other person to induce Defendant's consent to this Order.
3. Acknowledges service of the Summons and the Complaint.
4. Admits 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.
5. Waives:
 - (a) any and all claims that he may possess under the Equal Access to Justice Act (EAJA), 5 U.S.C. § 504 (2000) and 28 U.S.C. § 2412 (2000), and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Regulations, 17 C.F.R. §§ 148.1-30 (2008), relating to or arising from this proceeding;
 - (b) any and all claims that he may possess under the Small Business Regulatory Enforcement Fairness Act, 1996 HR 3136, Pub. L. 104-121, §§ 231-232, 110 Stat. 862-63 (Mar. 29, 1996), as amended by Pub. L. No. 110-28, 121 Stat. 112 (2007), relating to or arising from this proceeding;

(c) any claim of double jeopardy based upon the institution of this proceeding or the entry in the Action of any order imposing a civil monetary penalty or any other relief; and

(d) any and all rights of appeal in this Action.

6. Defendant does 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, a Commission registration proceeding relating to Defendant, or to enforce the terms of this Order. Solely with respect to any bankruptcy proceeding relating to Defendant, a Commission registration proceeding related to Defendant and any proceeding to enforce this Order, Defendant agrees 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.

7. Agrees that 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 in any other proceeding.

8. Agrees that neither he nor any of his agents, employees, or representatives acting under his 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 is without a factual basis; provided, however, that nothing in this provision shall affect Torre's (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Torre shall take all necessary steps to ensure that all of his agents, employees, and representatives understand and comply with this agreement.

9. 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 the Action, even if Torre 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 and ancillary equitable relief pursuant to § 6c of the Act, 7 U.S.C. § 13 a-1, as set forth herein.

A. Findings of Fact

1. The Commission is an independent federal regulatory agency charged with the responsibility of administering and enforcing the provisions of the Act and Regulations.
2. Torre is a New Jersey resident. Torre is not registered with the Commission in any capacity.
3. From at least May to November 2003 (the "relevant period"), Torre was employed at a firm which offered brokerage services in the foreign currency market (the "Firm") to its customers.
4. During the relevant period, Torre worked as a broker on the Euro currency trading desk at the Firm.
5. While employed at the Firm during the relevant period, Torre received and accepted market orders to purchase and sell Euros and other foreign currency on behalf of certain customers. Instead of immediately executing these market orders, Torre, without the customers' or the Firm's permission or knowledge, held these orders to a later time in the trading day. This

resulted in exposing the Firm to the market risk of these orders since the Firm was ultimately responsible for guaranteeing that the customers received the correct market price for each of their orders.

6. When the market turned in a direction that would make the execution of these orders profitable for a counterparty to the customer, Torre diverted the profitable market positions to a retail foreign currency dealer. The retail foreign currency dealer was a pre-selected counterparty who was a co-conspirator in this scheme.

7. The retail foreign currency dealer, who was not a counterparty listed in Section 2(c)(2)(B)(ii)(I)-(VII) of the Act, then engaged in an illegal off-exchange foreign currency futures transaction in which it purposely lost money to a retail customer, who was not an eligible contract participant as defined in Section 1a(12) of the Act. The retail customer then split the illegal cash proceeds with Torre and the other co-conspirators in this scheme.

8. Torre knowingly aided and abetted this scheme by helping to move profits from foreign currency transactions to a pre-selected counterparty and knowingly then received a cash kickback from these transactions without the permission or knowledge of his employer or customer.

9. The retail foreign currency dealer was not a financial institution, a broker or dealer, an associated person of a broker or dealer, an insurance company, a financial holding company, or an investment bank holding company. In addition the retail foreign currency dealer was not a futures commission merchant ("FCM"), or an affiliate of a FCM. Further, the retail foreign currency dealer and the retail customer did not have any business or personal need for the foreign currency.

10. The contracts between the retail foreign currency dealer and the retail customer were for sale for future as opposed to immediate or deferred delivery. These contracts could remain open indefinitely since the contracts provided for the delivery of a specific type of foreign currency at an unspecified point in time in the future at a price or pricing formula that was determined at the time the contract was entered. All of these foreign currency contracts were liquidated by offsetting the position by entering into an equal and opposite transaction and thereby taking the profits in dollars. The size of these contracts traded was standardized. The parties did not intend to, and did not, take or make delivery of these foreign currencies as a consequence of these transactions. No accounts were maintained at any foreign financial institution to take or make delivery of foreign currency for any of the parties involved in these transactions.

B. Conclusions of Law

1. This Court has subject matter jurisdiction over this Action and the allegations in the Complaint 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 against such person to enjoin such practice or to enforce compliance with the Act.

2. In addition, Section 2(c)(2) of the Act, 7 U.S.C. § 2(c)(2) (2002), confers upon the Commission jurisdiction over certain retail transactions in forex for future delivery, including the transactions alleged in the Complaint.

3. This Court has personal jurisdiction over Torre pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, who acknowledges service of the Complaint and consents to the Court's jurisdiction over him.

4. Venue properly lies with this Court pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, because Torre transacted business in the district, and the acts and practices in violation of the Act and Regulations have occurred, among other places, within this district.

5. The foreign currency contracts offered and sold between the retail foreign currency dealer and the retail customer were futures contracts. Further, these foreign currency futures transactions were offered to or entered into with a retail customer who was not an eligible contract participant as defined in Section 1a(12) of the Act, 7 U.S.C. § 1a(12) (2002). Furthermore, the retail foreign currency dealer which acted as the counterparty to the transactions with the retail customer was not an enumerated regulated counterparty or an affiliate of an enumerated regulated counterparty set forth in Section 2(c)(2)(B) of the Act, 7 U.S.C. § 2(c)(2)(B) (2002). Accordingly, the Commission has jurisdiction over these transactions.

6. Torre violated Regulations 1.1(b)(1), (2) and (3), 17 C.F.R. § 1.1(b)(1), (2) and (3) (2003) pursuant to § 13(a) of the Act.

7. There is good cause for entry of an order permanently enjoining Torre from engaging in future violations of the Regulations and for the other equitable relief stated in this Order.

IV.

ORDER FOR PERMANENT INJUNCTION**IT IS THEREFORE ORDERED THAT:**

1. Torre is permanently restrained, enjoined and prohibited from directly or indirectly cheating or defrauding or attempting to cheat or defraud any person or willfully making or causing to be made to any person any false report or statement or causing to be entered for any person any false record or willfully deceiving or attempting to deceive any person by any means whatsoever for any foreign currency transaction within the Commission's jurisdiction in violation of Regulations 1.1(b)(1), (2) and (3), 17 C.F.R. § 1.1(b);

2. Torre is further permanently restrained, enjoined and prohibited from engaging directly or indirectly in any activity related to trading in any commodity, as that term is defined in Section 1a(4) of the Act, 7 U.S.C. § 1a(4), ("commodity interest"), including but not limited to the following:

- A. Trading on or subject to the rules of any registered entity, at that term is defined in Section 1a(29) of the Act, 7 U.S.C. § 1a(29) (2006);
- B. Engaging in, controlling or directing the trading for any commodity interest account for or on behalf of any other person or entity, whether by power of attorney or otherwise;
- C. Soliciting, receiving, or accepting any funds from any person in connection with the purchase or sale of any commodity interest contract;
- D. 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) (2008), or acting as a principal, 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 Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2008);

- E. Entering into any commodity interest transactions for his own personal account, for any account in which he has a direct or indirect interest and/or having any commodity interests traded on his behalf; and/or
- F. Engaging in any business activities related to commodity interest trading.

3. The injunctive provisions of this Order shall be binding on Torre, upon any person insofar as he or she is acting in the capacity of officer, agent, servant, employee or attorney of Torre, 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 Torre.

V.

ORDER FOR OTHER EQUITABLE RELIEF

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

2. **Notices** - All notices related to any provision in this Order shall be sent by certified mail, return receipt requested, as follows:

Notice to Commission: Regional Counsel
 U.S. Commodity Futures Trading Commission
 Division of Enforcement - Eastern Regional Office
 140 Broadway, 19th Floor
 New York, New York 10005
 Phone: (646) 746-9700
 Fax: (646) 746-9740

All such notices to the Commission shall reference the name and docket number of the Action.

3. Entire Agreement and Amendments - 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.

4. Invalidation - 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.

5. Waiver - 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.

6. Counterparts and Facsimile Execution - 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.

7. Continuing Jurisdiction of this Court - This Court shall retain jurisdiction of the Action to assure compliance with this Order and for all other purposes related to this Action, including but not limited to considering any suitable application or motion for additional relief within the jurisdiction of the Court.

IT IS SO ORDERED.

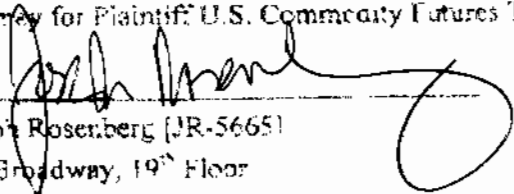
Dated: JUN 01 2009

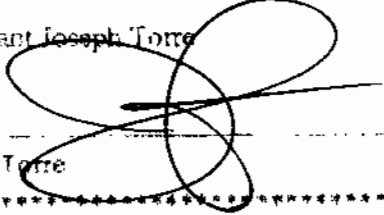
George B. Daniels
UNITED STATES DISTRICT COURT JUDGE
HON. GEORGE B. DANIELS

NY 11 2009 21138 58

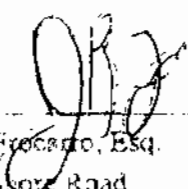
CONSENTED TO AND APPROVED BY:

U.S. COMMODITY FUTURES TRADING COMMISSION
Attorney for Plaintiff U.S. Commodity Futures Trading Commission

By: 
Joseph Rosenberg (JR-56651)
140 Broadway, 19th Floor
New York, New York 10005

Defendant Joseph Torre
By: 
Joseph Torre

James Procarro
Attorney for Defendant Joseph Torre

By: 
James Procarro, Esq.
7 Old Stone Road
Port Washington, NY 11050

U.S. COMMODITY FUTURES TRADING COMMISSION