

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

PARKERSBURG DIVISION

COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

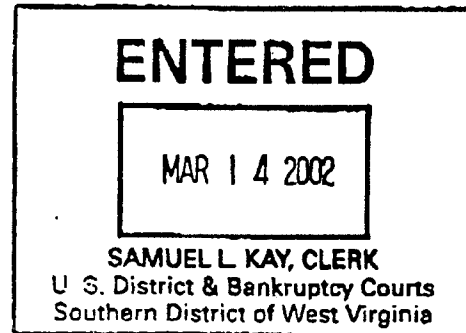
v.

ROBERT L. DORMAGEN, an individual
and DELTA FINANCIAL CORPORATION,
a West Virginia Corporation,

Defendants.

Civil Action No. 6:00-0567

Hon. Joseph R. Goodwin



CONSENT ORDER OF PERMANENT INJUNCTION
AGAINST DEFENDANTS ROBERT L. DORMAGEN
AND DELTA FINANCIAL CORPORATION

On July 3, 2000, plaintiff Commodity Futures Trading Commission ("Commission") filed a six-count Complaint against Robert L. Dormagen ("Dormagen"), and Delta Financial Corporation ("DFC") (collectively the "defendants") seeking injunctive and other equitable relief for violations of the Commodity Exchange Act, as amended ("Act"), 7 U.S.C. §§ 1 *et seq.* (2001), and Regulations promulgated thereunder, 17 C.F.R. §§ 1 *et seq.* (2001). The Court entered a preliminary injunction against the defendants by consent on August 18, 2000.

I.

CONSENTS AND AGREEMENTS

To effect settlement of the matters alleged in the Complaint against Dormagen and DFC without a trial on the merits or any further judicial proceedings, defendants Dormagen and DFC:

1. Consent to the entry of this Consent Order of Permanent Injunction Against Defendants Dormagen and DFC ("Order").
2. Affirm that Dormagen and DFC have agreed to this Order voluntarily, and that no promise or threat has been made by the Commission 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.
3. Acknowledge service of the Summons and Complaint.
4. Admit jurisdiction of this Court over them and the subject matter of this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2001).
5. Admit that venue properly lies with this Court pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2001).
6. Waive:
 - a. all claims which they may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (1994) and 28 U.S.C. § 2412 (1994), as amended by Pub. L. No. 104-121, §§ 231-32, 110 Stat. 862-63, and Part 148 of the Regulations, 17 C.F.R. § 148.1, *et seq.* (2001), 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. Dormagen and DFC consent 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.

8. Neither admit nor deny the findings and conclusions in this Order except as to jurisdiction and venue.

II.

FINDINGS AND CONCLUSIONS

It further appearing to this Court that there is no just reason for delay, the Court being fully advised in the premises and the Court finding that there is just cause for entry of this Order that fully disposes of all issues in this matter,

THE COURT FINDS THAT:

1. This Court has jurisdiction over the subject matter of this action and all parties hereto pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2001), which authorizes the Commission to seek injunctive relief against any person whenever it shall appear that such 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 thereunder.

2. Venue properly lies with this Court pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2001), in that the defendants are found in, inhabit, or transact business in this district, and the acts and practices in violation of the Act have occurred, are occurring, or are about to occur within this district, among other places.

THE PARTIES

3. Plaintiff **Commodity Futures Trading Commission** is an independent federal regulatory agency that is charged with responsibility for administering and enforcing the

provisions of the Act, 7 U.S.C. §§ 1 *et seq.* (2001), and the Regulations promulgated thereunder, 17 C.F.R. §§ 1 *et seq.* (2001).

4. Defendant **Robert L. Dormagen** currently resides at 345 Southgate Drive, Crossville, Tennessee 38555. During the relevant period in the Complaint, Dormagen resided at 712 Crooks Avenue, Ravenswood, West Virginia. Dormagen was the exempt Commodity Pool Operator of Capital Group III, L.P. ("CGIII"), a West Virginia limited partnership. Dormagen has never been registered with the Commission in any capacity.

5. Defendant **Delta Financial Corporation** is a West Virginia corporation that was located at 200 Walnut Street, Suite 101, Ravenswood, West Virginia and later at Dormagen's home at 712 Crooks Avenue, Ravenswood, West Virginia. Dormagen was the President of DFC. DFC has never been registered with the Commission in any capacity.

6. Dormagen violated Sections 4b(a)(i)-(iii), 4c(b), 4d(1)-(2), 4o(1) of the Act, 7 U.S.C. §§ 6b(a)(i)-(iii), 6c(b), 6d(1)-(2), and 6o(1) (2001) and Commission Regulations 4.13(b)(2)(i)(A)-(B), 4.20(c), and 33.10, 17 C.F.R. §§ 4.13(b)(2)(i)(A)-(B), 4.20(c), and 33.10 (2001).

7. DFC violated Sections 4b(a)(i)-(iii), 4c(b), and 4d(1)-(2), of the Act, 7 U.S.C. §§ 6b(a)(i)-(iii), 6c(b), and 6d(1)-(2) (2001) and Commission Regulation 33.10, 17 C.F.R. § 33.10 (2001) pursuant to Section 2(a)(1)(A)(iii) of the Act, 7 U.S.C. § 4 and Section 1.2 of the Regulations, 17 C.F.R. § 1.2.

III.

ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. Defendants Dormagen and DFC are permanently restrained, enjoined and prohibited from directly or indirectly:

- A. violating Section 4b(a)(i)-(iii) of the Act, 7 U.S.C. § 6b(a)(i)-(iii) (2001), by, in or in connection with any order to make, or the making of any contract or 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 by products 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—
- i) cheating or defrauding or attempting to cheat or defraud other persons;
 - ii) willfully making or causing to be made to other persons any false report or statement, or willfully entering or causing to be entered for such persons any false records; or
 - iii) willfully deceiving or attempting to deceive other persons 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.
- B. violating Section 4c(b) of the Act, 7 U.S.C. § 6c(b) (2001), and Regulation 33.10, 17 C.F.R. § 33.10, by directly or indirectly: (a) cheating or defrauding or attempting to cheat or defraud any other person; (b) making or causing to be made to any other person any false report or statement thereof or causing to be entered for any person any false record thereof; and (c) deceiving or attempting to deceive any other person by any means whatsoever, in or in connection with an offer to enter into, the entry into, the confirmation of the execution of, or the maintenance of, any commodity option transaction;
- C. violating Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (2001), by, while acting as a CPO or a CTA, employing devices, schemes or artifices to defraud commodity pool participants or prospective participants, and engaging in transactions, practices or courses of business that operate as a fraud or deceit upon commodity pool participants or prospective participants;
- D. violating Section 4.13(b)(2)(i)(A)-(B) of the Regulations, 17 C.F.R. § 4.13(b)(2)(i)(A)-(B) (2001), by failing to deliver to each participant in a commodity pool, that either defendant operates or intends to operate, a copy of the monthly statement for the pool received from a futures commission merchant pursuant to Section 1.33 of the Regulations;
- E. violating Section 4.20(c) of the Regulations, 17 C.F.R. § 4.20(c) (2001), by commingling the property of any pool that either defendant operates intends to operate with the property of any other person; and
- F. violating Section 4d(1)-(2) of the Act, 7 U.S.C. § 6d(1)-(2) (2001), by acting as an unregistered futures commission merchant and commingling customer funds;

2. Defendants Dormagen and DFC are further 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(29) of the Act, as amended, 7 U.S.C. § 1a(29) (2001);
- B Engaging in, controlling, or directing the trading of any futures or options accounts for or on behalf of any other person or entity, whether by power of attorney or otherwise; and
- C 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)(2001), or acting as a principal, agent, officer or employee of any person registered, required to be registered, or exempted from registration, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9)(2001).

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

IV.

OTHER EQUITABLE RELIEF

1. **RESTITUTION:** The Court finds that an award of restitution in the amount of \$391,129.26 would be appropriate in other circumstances. Dormagen, however, has already been ordered to pay restitution in a criminal action captioned *United States v. Robert L. Dormagen, Cr. Action No. 2:01-00093* (S.D.W.V. Dec. 3, 2001) on behalf of a group of customers that includes all the customers addressed by this action, and in an amount that encompasses the entirety of the losses suffered by customers in this action. In recognition of the overlap of the existing restitution

obligation imposed in *U.S. v. Dormagen, supra* with any this Court might impose, this Court therefore does **not** order that Dormagen and DFC pay restitution in this action.

V.

MISCELLANEOUS PROVISIONS

A. **ENTIRE AGREEMENT, AMENDMENTS and SEVERABILITY.** This Order incorporates all of the terms and conditions of the settlement among the parties. Nothing shall serve to amend or modify this Order in any respect whatsoever, unless: (1) reduced to writing, (2) signed by all parties, and (3) approved by order of the Court. If any provision of this Order or the application of any provision or circumstance is held invalid, the remainder of this Order shall not be affected by the holding.

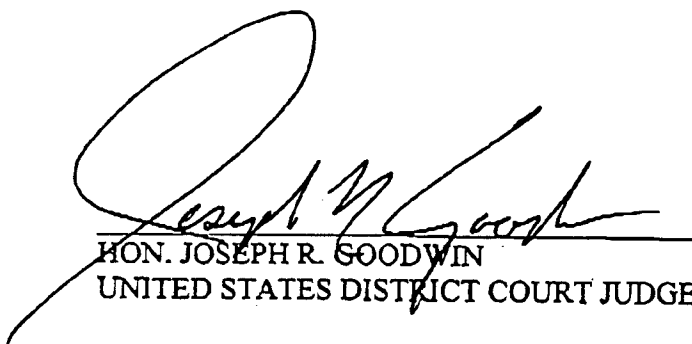
B. **PUBLIC STATEMENTS.** By consenting to the entry of the Order attached hereto, Dormagen and DFC agree that neither they nor any of their agents or employees under their authority and control shall take any action or make any public statement denying, directly or indirectly, any allegation in the Complaint or finding in the Order or creating, or tending to create the impression that the Complaint or the Order is without a factual basis; provided, however, that nothing in this provision shall affect their: (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Dormagen and DFC shall take all steps necessary to ensure that their agents and employees comply with this provision.

C. **SUCCESSORS AND ASSIGNS.** This Order shall inure to the benefit of and be binding on the parties' successors, assigns, heirs, beneficiaries and administrators.

D. **JURISDICTION.** This Court shall retain jurisdiction of this cause to assure compliance with this Order and for all other purposes related to this action.

There being no just reason for delay, the Clerk of the Court is hereby directed to enter this Consent Order of Permanent Injunction Against Dormagen and Delta Financial Corporation.

Done and ordered on this 13 day of March, 2002.



HON. JOSEPH R. GOODWIN
UNITED STATES DISTRICT COURT JUDGE

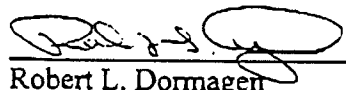
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SAMUEL L. KAY, CLERK
U.S. District & Bankruptcy Courts
Southern District of West Virginia

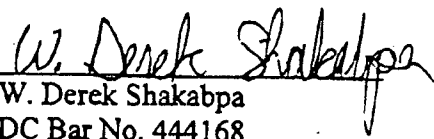
Samuel L. Kay Deputy

Consented to and approved for entry by:

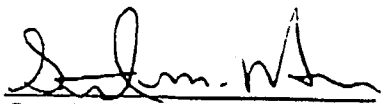

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