

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED
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CLERK, U.S. DISTRICT COURT
By _____ Deputy

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

U.S. COMMODITY FUTURES TRADING)
COMMISSION and SECURITIES AND)
EXCHANGE COMMISSION,)

Plaintiffs,)

v.)

CRW MANAGEMENT LP)
and RAY M. WHITE,)

Defendants,)

CHRISTOPHER R. WHITE)
and HURRICANE MOTORSPORTS, LLC,)

Relief Defendants.)

CASE NO. 3:09-CV-0407-K

**CONSENT ORDER OF DISGORGEMENT, CIVIL MONETARY PENALTY, AND
POST-JUDGMENT INTEREST AGAINST DEFENDANTS
CRW MANAGEMENT LP AND RAY M. WHITE**

I. INTRODUCTION

On March 4, 2009, plaintiff U.S. Commodity Futures Trading Commission (CFTC) filed a Complaint for Injunctive Relief, Civil Monetary Penalties, and Other Equitable Relief (Complaint) against defendants CRW Management LP (CRW) and Ray M. White (Ray White) (collectively, defendants) and relief defendants Hurricane Motorsports, LLC (Hurricane) and Christopher R. White (Christopher White) (collectively, relief defendants) that sought injunctive and other equitable relief for violations of the Commodity Exchange Act (Act), 7 U.S.C. §§ 1 *et seq.* (2006), as amended by the Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, Title XIII (the CFTC Reauthorization Act of 2008 (CRA)), §§ 13101-13204, 122 Stat. 1651 (enacted June 18, 2008), and certain CFTC Regulations (Regulations), 17 C.F.R. §§ 1.1 *et seq.*

(2008). The Court entered an *Ex Parte* Statutory Restraining Order pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2006), on March 4, 2009. The Court entered Consent Orders of Preliminary Injunction and Other Equitable Relief against defendants on March 11, 2009. The Court entered a Consent Order of Permanent Injunction and Other Equitable Relief against defendants on October 1, 2009 (Consent Order of Permanent Injunction).

II. CONSENTS AND AGREEMENTS

To resolve the remaining issues of disgorgement, civil monetary penalty, and post-judgment interest (as provided in Section V. of the Consent Order of Permanent Injunction), without any further judicial proceedings, defendants:

1. Consent to the entry of this Consent Order of Disgorgement, Civil Monetary Penalty, and Post-Judgment Interest (Consent Order);
2. Affirm that they have agreed to this Consent Order voluntarily, and that no threat, or promise, other than as specifically contained herein, has been made by the CFTC or any member, officer, agent, or representative thereof, or by any other person, to induce consent to this Consent Order;
3. Waive:
 - a) any and all claims that they may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2006) and 28 U.S.C. § 2412 (2006), and/or Part 148 of the Regulations, 17 C.F.R. §§ 148.1 *et seq.* (2010), relating to or arising from this action;
 - b) any and all claims that they may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. 104-121, §§ 201-253, 110 Stat. 847, 857-868 (1996), as amended by Pub. L. No. 110-28, § 8302, 121 Stat. 112, 204-205 (2007), relating to or arising from this action;

c) 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

d) any and all rights of appeal from this action;

4. Agree that neither they nor any of their agents or employees under their authority or control shall take any action or make any public statement denying, directly or indirectly, any allegations in the Complaint, or findings in this Consent Order, or creating or tending to create the impression that the Complaint and/or this Consent Order are without a factual basis; provided, however, that nothing in this provision shall affect their: (a) testimonial obligations, or (b) rights to take legal positions in other proceedings to which the CFTC is not a party.

Christopher White and Hurricane shall undertake all steps necessary to ensure that all of their agents and/or employees under their authority or control understand and comply with this agreement.

5. Consent to the continued jurisdiction of this Court for the purpose of enforcing the terms and conditions of this Consent Order and for any other purpose relevant to this case, even if they now or in the future reside or operate outside the jurisdiction;

6. Agree that no provision in this Consent Order shall in any way affect defendants' obligation to comply with or otherwise modify the Consent Order of Permanent Injunction; and

7. Agree that no provision of this Consent Order shall in any way limit or impair the ability of any other person or entity to seek any legal or equitable remedy against either of them in any other proceeding.

III. FINDINGS AND CONCLUSIONS

A. Jurisdiction and Venue

8. Section 6c of the Act, 7 U.S.C. § 13a-1 (2006), authorizes the CFTC to seek injunctive and other equitable relief and to seek civil penalties against any person whenever it shall appear to the CFTC that such person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of the Act or any rule, regulation, or order thereunder.

9. The CFTC has jurisdiction over the off-exchange foreign currency (forex) transactions at issue in this case pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2006), and Section 2(c)(2) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 2(c)(2).

10. Venue properly lies with the Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2006), because defendants transacted business in the Northern District of Texas and certain of the transactions, acts, practices, and courses of business in violation of the Act, as amended by the CRA, occurred within this District.

B. Parties to this Consent Order

11. Plaintiff U.S. Commodity Futures Trading Commission is an independent federal regulatory agency that is charged by Congress with responsibility for administering and enforcing the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 1 *et seq.*, and the Regulations promulgated thereunder, 17 C.F.R. §§ 1.1 *et seq.* (2010). The CFTC maintains its principal office at Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

12. Defendant Ray M. White has a last known address in Mansfield, Texas. Ray White was the president and general partner of CRW, and, at all times relevant to the Complaint, he held himself out to the public as such. He owned a sixty percent interest in CRW and contributed \$12,000 in initial capital. Ray White has never been registered with the CFTC in any capacity.

13. Defendant **CRW Management LP** was a Texas domestic limited partnership, with a principal place of business of 1102 Inglewood Drive, Mansfield, Texas 76063. The building at this location was jointly owned by Ray White and Christopher White. CRW has never been registered with the Commission in any capacity.

C. Findings of Fact

14. The facts as stated in Section III (Findings and Conclusions) of the Consent Order of Permanent Injunction are incorporated herein by reference and given preclusive effect as provided in Section V. (Restitution, Disgorgement, and Civil Monetary Penalties Reserved For Further Court Proceedings) of the Consent Order of Permanent Injunction.

**IV. DISGORGEMENT, CIVIL MONETARY PENALTY, AND
POST-JUDGMENT INTEREST**

IT IS HEREBY ORDERED THAT:

A. Return of Funds to Customers

15. On March 4, 2009, Timothy A. Mack was appointed Receiver, with full powers of an equity receiver over the assets of defendants and relief defendants. Consistent with these powers, the Receiver has taken possession of and/or liquidated numerous assets of defendants and relief defendants, including assets in the name of or otherwise attributable to defendants. The funds derived from the sale or liquidation of these assets, along with any interest earned on these funds, will be returned to defendants' customers (less any court-approved fees and expenses incurred or to be incurred by the Receiver), and shall satisfy, in full or in part, defendants' disgorgement obligations as set forth below in Part IV.B. of this Consent Order. The Court orders that these funds be distributed to defendants' customers pursuant to and consistent with the distribution plan ultimately approved by this Court, and that defendants' rights, if any, to these funds be extinguished.

B. Disgorgement

16. Defendants shall pay, jointly and severally, disgorgement in the amount of \$9,548,365, plus post-judgment interest, to the defrauded CRW customers.

17. Defendants' disgorgement obligation shall be satisfied first from defendants' assets, held now or in the future, by the Receiver. To the extent the sale or liquidation of defendants' assets by the Receiver is insufficient to satisfy defendants' disgorgement obligation, Ray White shall be responsible for any shortfall. All disgorgement payments are immediately due and owing.

18. Post-judgment interest shall accrue beginning on the date of entry of this Consent Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Consent Order Pursuant to 28 U.S.C. § 1961.

19. Any disgorgement payments made by defendants to the Securities and Exchange Commission (SEC) to satisfy the SEC's disgorgement claims against defendants in this case shall offset (dollar for dollar) defendants' joint and several disgorgement obligation identified in paragraph 16. Likewise, any disgorgement payments made by relief defendants Christopher White and Hurricane, pursuant to paragraphs 26 and 27 of the Consent Order for Equitable Relief Against Relief Defendants Christopher White and Hurricane (DE # ___), shall offset (dollar for dollar) defendants' joint and several disgorgement obligation identified in paragraph 16.

20. Within thirty (30) days of receiving a copy of this Consent Order, any financial institution holding funds of the receivership estate is specifically directed to liquidate and release all funds, whether the funds are held in a single or joint account, or in any other capacity, and to convey by wire transfer to an account designated by the Receiver, all funds in these accounts,

less any amounts required to cover the financial institutions' outstanding administrative or wire transfer fees. At no time during the liquidation, release, and/or wire transfer of these funds pursuant to this Consent Order shall Ray White be afforded any access to, or be provided with, any funds from these accounts. Ray White and all banks and financial institutions subject to this order, shall cooperate fully and expeditiously with the CFTC, the SEC, and Receiver in the liquidation, release, and wire of these funds.

21. To effect payment of Ray White's remaining disgorgement obligation after the termination of the receivership (to the extent such disgorgement obligation has not already been satisfied) and to effectuate the distribution of any disgorgement paid by Ray White after the termination of the Receiver's duties, the Court appoints the National Futures Association (NFA) as Monitor, to be effective immediately upon any order entered by this Court terminating the Receiver's duties. The Monitor shall collect disgorgement payments from Ray White and make distributions as set forth below. Because the Monitor is acting as an officer of the Court in performing these services, the NFA shall not be liable for any action or inaction arising from NFA's appointment as Monitor, other than actions involving fraud.

22. Ray White shall make any required disgorgement payments to the Monitor in the name of "CRW Disgorgement Fund" and shall send such disgorgement 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 of a letter that identifies Ray White as the payer, the case name, docket number, and the name of this Court. Ray White shall simultaneously transmit copies of the cover letter and form of payment to: (a) the Director, Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st

Street, NW, Washington, D.C. 20581; and (b) the Chief, Office of Cooperative Enforcement, Division of Enforcement, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

23. The Monitor shall distribute funds to the customers identified by the Receiver in an equitable manner as determined by the Monitor. The Monitor shall oversee the distribution of funds of the disgorgement obligation and shall have the discretion to defer distribution until such time as it may deem appropriate. In the event that the amount of disgorgement payments made to the Monitor are of a de minimis nature, such that the Monitor determines that the administrative costs of the making a distribution to 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 CFTC following the instructions for the civil monetary penalty obligation as set forth below.

24. To the extent that any funds accrue to the U.S. Treasury as a result of defendants' disgorgement obligation, such funds shall be transferred to the Monitor for disbursement in accordance with the procedures set forth in the preceding paragraph.

C. Civil Monetary Penalty

25. Ray White shall pay a civil monetary penalty (CMP), plus post-judgment interest, of \$9,548,365.

26. Post-judgment interest shall accrue commencing on the date this Consent Order is entered. The post-judgment interest rate shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Consent Order pursuant to 28 U.S.C. § 1961.

27. Ray White's CMP obligation is immediately due and owing. Ray White shall pay his 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, the payment shall be made payable to the U.S. Commodity Futures Trading

Commission and sent to the address below:

**U.S. Commodity Futures Trading Commission
Division of Enforcement
ATTN: Marie Bateman – AMZ-300
DOT/FAA/MMAC
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
Telephone: (405) 954-6569**

28. If payment by electronic transfer is chosen, Ray White shall contact

Marie Bateman or her successor at the address above to receive payment instructions and shall fully comply with those instructions. Ray White shall accompany payment of the CMP with a cover letter that identifies himself, the case name, docket number, and the name of this Court.

Ray White shall simultaneously transmit copies of the cover letter and the form of payment to (a) the Director, Division of Enforcement, Commodity Futures Trading Commission, 1155 21st Street, NW, Washington, D.C. 20581, and (b) the Chief, Office of Cooperative Enforcement, Division of Enforcement, at the same address.

D. Priority of Monetary Sanctions and Partial Payments

29. All payments by defendants pursuant to this Consent Order shall first be applied to satisfaction of their disgorgement obligation. After satisfaction of their disgorgement obligation, payments by Ray White pursuant to this Consent Order shall be applied to satisfy his CMP obligation.

30. Any acceptance by the CFTC and/or the Receiver of partial payment of defendants' disgorgement obligation and/or Ray White's CMP obligation shall not be deemed a waiver of the respective requirement to make further payments pursuant to this Consent Order,

or a waiver of the CFTC's right to compel payment of any remaining balance.

V. MISCELLANEOUS PROVISIONS

31. Any amount paid to one of defendants' customers pursuant to this Consent Order shall not limit the ability of that customer to independently prove in a separate action that a greater amount is owed from any person or entity, and nothing herein shall be construed in any way to limit or abridge the rights of any customer that exist under federal, state, or common law to assert a claim for recovery against defendants subject to any offset or credit that defendants may be entitled to claim under the law governing that customer's claim. Pursuant to Rule 71 of the Federal Rules of Civil Procedure, each customer is explicitly made an intended third-party beneficiary of this Consent Order and may seek to enforce obedience of this Consent Order to obtain satisfaction of any portion of the disgorgement amount that has not been paid, to ensure compliance with any provision of this Consent Order, and to hold defendants in contempt for any violations of any provision of this Consent Order.

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

Notice to CFTC:

**Division of Enforcement
U.S. Commodity Futures Trading Commission
4900 Main Street, Suite 500
Kansas City, MO 64112**

Notice to Receiver:

**Timothy A Mack, Receiver
Mack and Matheson PLLC
4925 Greenville Avenue, Suite 880
Dallas, TX 75206**

All such notices to the CFTC shall reference the name and docket number of this action.

33. Change of Address/Phone: In the event that Ray White changes his telephone

number(s) and/or address(es) at any time, he shall provide written notice of the new number(s) and/or address(es) to the CFTC within ten (10) calendar days thereof.

34. **Entire Agreement and Amendments:** This Consent Order in combination with the Consent Order of Permanent Injunction incorporate all of the terms and conditions of the settlement among the parties hereto to date. Nothing shall serve to amend or modify these orders in any respect whatsoever, unless: (a) reduced to writing; (b) signed by all parties hereto; and (c) approved by order of this Court.

35. **Invalidation:** If any provision of this Consent Order or if the application of any provisions or circumstances is held invalid, the remainder of the Consent Order and the application of the provisions to any other person or circumstance shall not be affected by the holding.

36. **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 Consent Order. No waiver in one or more instances of the breach of any provision contained in this Consent 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 Consent Order.

37. **Continuing Jurisdiction of this Court:** This Court shall retain jurisdiction of this cause to assure compliance with this Consent Order and for all other purposes related to this action, including any motion by a defendant or relief defendant to modify or for relief from the terms of this Consent Order.

38. **Authority:** Timothy A Mack as Receiver appointed pursuant to this Court's Order dated March 4, 2009 is hereby authorized, empowered, and directed to sign and submit this

Order on behalf of CRW.

39. Counterparts and Facsimile Execution: This Consent Order 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 or otherwise shall be deemed for all purposes as constituting good and valid execution and delivery by such party of this Consent Order.

SO ORDERED, this 5th day of October, 2011, at Dallas, Texas

ED Kinkeade
ED KINKEADE
UNITED STATES DISTRICT JUDGE
NORTHERN DISTRICT OF TEXAS

Ray M. White
Defendant Ray M. White, *pro se*

Date: 5-19, 2011

Tim A. Mack
Tim A. Mack
Receiver for defendant CRW
Management LP

Date: 5/24, 2011

Kevin McCullough
Kevin McCullough
Rochelle McCullough, LLP
325 North Saint Paul Street, Suite 4500
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Attorney for Receiver

Date: 5/19, 2011

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Date: Sept. 12, 2011