

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

v.

MAD FINANCIAL, INC., AKA
MEYERS, ARNOLD, AND
DAVIDSON, FINANCIAL, INC.,
CTU, INC., AKA
COOPER, THOMAS, AND
UNGAR, INC., AND
MICHAEL A. DIPPOLITO,

Defendants.

CIVIL ACTION NO. 02-60239

Hon. Daniel T.K. Hurley

CLOSED CASE

FILED by *[Signature]* D.C.
MAY - 7 2002
CLARENCE MADDOX
CLERK U.S. DIST. CT.
S.D. OF FLA. - W.P.B.

**ORDER OF DEFAULT JUDGMENT FOR PERMANENT INJUNCTION
AND OTHER ANCILLARY RELIEF AGAINST DEFENDANTS**

The Commission commenced this action on February 19, 2002, to enjoin Defendants MAD, CTU, and Michael A. Dippolito ("Defendants") from further violations of Section 4b(c) of the Commodity Exchange Act ("Act"), 7 U.S.C. §§ 6c(b) (1994), and Commission Regulations 32.5, 32.9, 32.11, and 33.3(a), 17 C.F.R. §§ 32.5, 32.9, 32.11, and 33.3(a) (2000). Defendants did not plead or otherwise defend as to the complaint within the time permitted by the Federal Rules of Civil Procedure, and the entry of the Clerk's default was made on March 19, 2002.

On April 8, 2002, an Order of Preliminary Injunction was entered against all Defendants. The Court now enters this Order of Permanent Injunction and Other Ancillary Relief against Defendants.

1. This Court has jurisdiction over this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (1994), which authorizes the Commission to seek injunctive relief against any person whenever it shall appear to the Commission 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. Section 2(c)(2)(B) of the Act, 7 U.S.C. § 2(c)(2)(B), grants the Commission jurisdiction over certain retail currency options.

3. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e), because 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.

4. Commodity Futures Trading Commission (the "Commission") is an independent federal regulatory agency charged by Congress with the administration and enforcement of the Act, 7 U.S.C. §§ 1 et seq., and the regulations promulgated thereunder, 17 C.F.R. §§ 1 et seq. (2001).

FINDINGS OF FACT

5. Defendant MAD Financial, Inc., a.k.a. Meyers, Arnold and Davidson, Inc. ("MAD") is a Florida corporation with its principal place of business at 630 North West 13th St. Apt. 13, Boca Raton, Florida 33486. MAD was administratively dissolved on September 21, 2001. MAD has never been registered with the Commission in any capacity, nor has it been

designated by the Commission as a contract market or a derivatives transaction execution facility for the trading of options on foreign currency or options on foreign currency futures contracts.

6. Defendant CTU, Inc., a.k.a. Cooper, Thomas and Ungar, Inc. ("CTU") is a Florida corporation with its principal place of business at 3032 East Commercial Boulevard, Suite 52, Fort Lauderdale, Florida 33308. CTU has never been registered with the Commission in any capacity nor has it been designated by the Commission as a contract market or a derivatives transaction execution facility for the trading of options on foreign currency or options on foreign currency futures contracts.

7. Defendant Michael Anthony Dippolito ("Dippolito") is the president and registered agent for both MAD and CTU. His last known address is in Boca Raton, Florida. Dippolito is not registered with the Commission in any capacity.

8. Unbeknownst to MAD and CTU customers, Defendants utilized various postal drop boxes and unidentified Federal Express pick up stations, and unidentified copying service centers for fax transmissions, in lieu of real offices. The address listed in the articles of incorporation as the registered office of CTU is a postal mail drop and serves as the mailing address of MAD. The address listed in the articles of incorporation as the registered office of MAD is the address of a condominium formerly owned by Defendant Dippolito.

9. The corporate Defendants share the same officer and director, solicitation materials, and facsimile number, among other things. Michael Dippolito is listed as an officer and director of both firms on their incorporation documents. Persons representing that they are either "partners" or "brokers" from either MAD or CTU solicited customers through telemarketing calls. Without physical office space, the corporate Defendants conducted their business via cell phone and facsimile machine.

10. Account documentation sent to MAD and CTU customers are virtually identical and include the same facsimile number, which is actually a fax number of a Kinko's Copy Center in Ft. Lauderdale, Florida. Both firms also provided customers with the same solicitation brochure entitled "Introduction to the New Global Marketplace."

11. The corporate Defendants cold called customers claiming that they will realize extraordinary profits immediately by investing in pre-purchased foreign currency option contracts, specifically in the Yen, the Pound or the Euro. These claims generally fell within two categories: 1) the options contracts have already appreciated in value, but Defendants will sell them to the customers at the original purchase price and 2) the contracts are poised to move dramatically in value due to known market conditions.

12. The corporate Defendants attempted to create a sense of urgency to pressure customers into investing immediately. Customers were urged to send money quickly before this allegedly promising, but fleeting, opportunity passed them by. Customers were told that the value of the contracts had increased dramatically in value and they could lock in a profit if they invested immediately. Customers who initially declined to invest were subsequently informed in follow-up calls of the huge profits missed and were "pitched" again to invest. Underscoring the time sensitivity of the investment, customers were faxed detailed wiring instructions and told to wire their funds to the firm's bank account. After making a purchase, customers were encouraged to hold the option contracts open because the value was guaranteed to increase.

13. The corporate Defendants significantly downplayed the risk of loss in trading foreign currency options through claims that market conditions would have a positive effect on prices, statements about trading techniques as a way to limit loss, and claims that they have insider knowledge. The corporate Defendants failed to explain to customers verbally or in the

printed material that the greatest risk involved with trading foreign currency options is that the customers could lose their entire investment. The corporate Defendants emphasized that the investment was risk free and that the customer would make a guaranteed profit immediately on the initial investment since the value of the pre-purchased block of options had already increased. If any warning of risk was given, it was only mentioned in passing and coupled with misleading statements about profitability.

14. The corporate Defendants failed to send initial or periodic account statements. Instead, customers received only the "Account Summary" or "Preliminary Confirmation" documents and wiring instructions that were faxed to customers within minutes of deciding to invest, or prior to investing. The "Account Summary" and "Preliminary Confirmation" documents do not show from whom the foreign currency options were supposedly being purchased. While some customers were verbally informed that the option contracts were traded in the "foreign exchange market," written confirmation of their activity was provided. In fact, some customers never received any account documentation at all from MAD or CTU.

15. Investing customers were instructed to and did wire their funds to the corporate Defendants' bank account at a Jacksonville branch of the First Union National Bank of Florida. No purchases of options on futures contracts for foreign currency were made; rather Defendants misappropriated the funds of unsuspecting customers. The only disbursements of funds from the accounts were used by Defendant Dippolito to purchase cars, furniture, chat room time and other personal expenses. For example, Defendant Dippolito, the only authorized signatory on the corporate accounts, paid out approximately \$108,000 in checks to himself from the corporate accounts. Defendant Dippolito also used ATM machines to withdraw over \$19,900 from the corporate accounts.

16. Two customers, who were unable to wire money, were instructed to send a check via Federal Express to a "special payment address." The customers subsequently discovered that their checks, which were payable to CTU, were signed by Defendant Dippolito and cashed at "Budmart," a local check-cashing agency in Florida.

17. The corporate Defendants called the customers to confirm receipt of their funds and to tell them that they allegedly made a profit. When the customer instructed the corporate Defendants to wire back the profits, invariably Defendants claimed that there was a problem with the bank wire. Customers were told to wait and promised that the funds are on their way. Other times the corporate Defendants refused to wire back the profits unless the customer invested additional funds. Ultimately, the customers never received their purported profits or their initial investments and are never contacted by the firm again. At this point, customers' attempts to contact the corporate Defendants went unanswered.

CONCLUSIONS OF LAW

18. Defendants violated Section 4c(b) of the Commodity Exchange Act (the "Act"), 7 U.S.C. § 6c(b) (1994) ("Section 4c(b)"), and Commission Regulation 32.9, 17 C.F.R. §32.9 (2000), by making materially false representations concerning the likelihood that customers will profit from purchasing foreign currency options from the corporate Defendants, and by making false representations and material omissions concerning the risk of loss.

19. Defendants violated Section 4c(b) of the Commodity Exchange Act (the "Act"), 7 U.S.C. § 6c(b) (1994) ("Section 4c(b)"), and Commission Regulation 32.9, 17 C.F.R. §32.9 (2001), by misappropriating customer funds for personal expenses.

20. Defendants violated Section 4c(b) of the Act and Commission Regulations 32.11 and 33.3(a) thereunder, 17 C.F.R. §§32.11 and 33.3(a)(2001), since the options sold by the

corporate Defendants are not consummated on or subject to the rules of a contract market or a derivatives transaction execution facility designated by the Commodity Futures Trading Commission.

21. Defendants have also violated Section 4c(b) of the Act and Commission Regulation 32.5, 17 C.F.R. §32.5 (2001), by failing to provide prospective customers with a disclosure document containing such key required information as the duration of the option, a list of elements comprising the purchase price, a description of all costs that may be incurred if the option is exercised, and an explanation concerning the necessary fall or rise in the price of the contract underlying the option in order for the customer to profit.

RELIEF GRANTED

Injunctive Relief

I.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Defendants MAD, CTU, and Michael Dippolito; any person insofar as he or she is acting the capacity of officer, servant, agent, employee, and attorney of MAD, CTU, or Michael Dippolito; and any person insofar as he or she is acting in active concert or participation with MAD, CTU, or Michael Dippolito who receives actual notice of such order by personal service or otherwise, is permanently enjoined from directly or indirectly:

- A. Violating Section 4c(b) of the Act, 7 U.S.C. § 6c(b) (1994), by offering to enter into, entering into or confirming the execution of, any transaction involving any commodity regulated under this Act which is of the character of, or is commonly known to the trade as, an "option", "privilege", "indemnity", "bid", "offer", "put", "call", "advance guaranty", or "decline guaranty", contrary to any rule, regulation, or order of the Commission prohibiting any such transaction or allowing any such transaction under such terms and conditions as the Commission shall prescribe.

- B. Violating Regulation 32.9, 17 C.F.R. § 32.9 (2000), in or in connection with an offer to enter into, the entry into, or the confirmation of the execution of, any commodity option transaction by (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 cause to be entered for any person any false record thereof; (c) deceiving or attempting to deceive any other person by any means whatsoever; or (d) misappropriating or attempting to misappropriate the funds of any other person.
- C. Violating Regulation 32.11 and 33.3, 17 C.F.R. §§ 32.11 and 33.3 (2000), by (a) soliciting or accepting orders for, or to accept money, securities or property in connection with, the purchase or sale of any commodity option, or to supervise any person or persons so engaged, or (b) by offering to enter into, entering into or confirming the execution of, or maintain a position in, any commodity option transaction when: (1) such transactions have not been conducted on or subject to the rules of a contract market which has been designated by the Commission to trade options and (2) such contracts have not been executed through a member of such contract market.
- D. Violating Regulation 33.5, 17 C.F.R. § 33.5 (2000), by failing to furnish to customers and prospective customers a disclosure statement as specified by Regulation 33.5.

II.

IT IS FURTHER ORDERED that Defendants MAD, CTU, and Michael Dippolito are permanently restrained and enjoined from:

- 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 by the Commodity Futures Modernization Act of 2000, Appendix E, Pub. L. 106-554, 114 Stat. 2763 (2000), 7 U.S.C. § 1a(29);
- B. engaging in, controlling or directing the trading for any commodity futures or options on commodity futures or foreign currency, 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, except as provided for in Regulation § 4.14(a)(9) of

the Commissions Regulations, 17 C.F.R. § 4.14 (a)(9), and engaging in any activity requiring such registration or exemption from registration, except as provided for in Regulation § 4.14(a)(9), or acting as a principal, agent, or any other officer or employee of any person registered, exempted from registration, except as provided for in Regulation § 4.14(a)(9), or required to be registered with the Commission, except as provided for in Regulation § 4.14(a)(9).

III.

Monetary Judgment

IT IS FURTHER ORDERED that judgment for restitution, disgorgement, and civil monetary penalties shall be entered in favor of the Commission and against Defendants MAD, CTU, and Michael Dippolito, for which Defendants shall be joint and severally liable for the following:

- A. Restitution for injured investors in the amount \$229,615.51, which includes pre-judgment interest, plus any post-judgment interest which accrues following the entry of this Order. The judgment amount for restitution represents the monies received by Defendants from customers less any refunds or other payments received by customers from Defendants or customer funds that have been frozen pursuant to the asset freeze. Defendants shall pay restitution to the Commission or any other person appointed by this Court within fourteen (14) days of entry of this Order. The persons entitled to restitution includes those customers identified in Attachment 1 by name and total amount invested. It is further ordered that Attachment 1 shall be kept under seal to protect the customer's privacy.

B. Within fourteen (14) days of entry of this Order, Defendants shall disgorge to the Commission or any other person appointed by this Court, all benefits obtained directly or indirectly as a result of the illegal acts and practices found in this Order, including but not limited to salaries, commissions, fees, bonuses, loans, and payments in kind. Payments made by Defendants towards restitution obligations shall reduce the amount of disgorgement dollar for dollar.

C. Civil penalties in ~~the~~ ^{an} amount of ~~\$688,847.43, which reflects three times~~ ^{to be determined following an} ~~Defendants' monetary gain, plus any post judgment interest which accrues upon~~ ^{evidentiary hearing and upon due notice to the} ~~entry of this Order. Commission Regulation § 143.8(a)(1)(ii), 17 C.F.R. §~~ ^{defendants.} ~~143.8(a)(1)(ii).~~ The judgment amount for civil monetary penalties shall be payable only upon full satisfaction of judgments for restitution.

The Court will determine the appropriate distribution of Defendants' assets, which are subject to the asset freeze, after the Commission submits a proposed distribution plan.

IV.

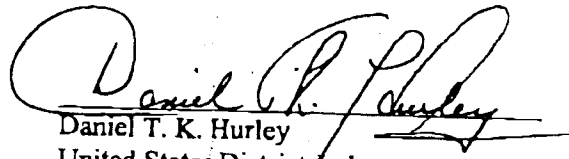
IT IS FURTHER ORDERED that Defendants shall not transfer or cause others to transfer funds or other property to the custody, possession or control of any other person for the purpose of concealing such funds or property from the Court, the Commission, or any officer that may be appointed by the Court.

v.

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this cause to assure compliance with this Order and for all other purposes related to this action. *This case is closed.*

IT IS SO ORDERED.

Date May 6th 2002


Daniel T. K. Hurley
United States District Judge