

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

FILED  
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U.S. DISTRICT COURT E.D.N.Y.  
AUG 16 2005

U.S. Commodity Futures Trading Commission

Plaintiff,

v.

Dawn Musorofiti,

and

Geraldine Musorofiti,

Defendant,

Relief Defendant.

05 CIV

COMPLAINT FOR  
INJUNCTIVE AND OTHER  
EQUITABLE RELIEF AND  
FOR PENALTIES UNDER  
THE COMMODITY  
EXCHANGE ACT, AS  
AMENDED, 7 U.S.C. §§ 1-27f

ROCKLYN OFFICE \*

ROSS, J.

I.

SUMMARY

The United States Commodity Futures Trading Commission ("Commission" or "CFTC"), by its attorneys, alleges as follows:

1. Beginning in approximately July 2003 and continuing through September 2004 ("Relevant Period"), Dawn Musorofiti ("Defendant") defrauded at least five friends and acquaintances by falsely representing that she was a broker on the floor of the New York Mercantile Exchange ("NYMEX"). Defendant, claiming she was a NYMEX broker, convinced her victims to buy interests in NYMEX commodities contracts she claimed to own. Defendant was not a NYMEX broker nor did she own any NYMEX commodity contracts. In the course of soliciting her victims to invest in NYMEX commodity contracts she claimed to own, Defendant defrauded her victims by making exaggerated claims of profits, minimizing the risk of loss, and misappropriating customer funds.

AZRACK, J.

2. Through her fraudulent scheme, Defendant solicited and accepted approximately \$90,000 from her victims. In return for their payments, the victims received phony letters purportedly outlining their interest in the particular NYMEX commodity contract. Of the money Defendant accepted, she returned only approximately \$2,500 to her victims.

3. Defendant has engaged, is engaging, or is about to engage in acts and practices which violate Sections 4(a), 4b(a)(2), and 4h of the Commodity Exchange Act, as amended ("Act"), 7 U.S.C. §§ 6(a), 6b(a)(2), and 6h (2002).

4. Unless enjoined by this Court, Defendant is likely to continue to engage in the acts and practices alleged in this Complaint and similar acts and practices as more fully described below.

5. Accordingly, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2002), Plaintiff CFTC brings this action to enjoin the unlawful acts and practices of Defendant and to compel her compliance with the provisions of the Act and Regulations thereunder, as well as for civil penalties, permanent injunctive relief and other relief, including restitution, disgorgement, and civil monetary penalties.

6. During the Relevant Period, the Relief Defendant received fraudulently obtained funds of Defendant's victims. On Defendant's instructions, the victims paid a significant portion of the money she solicited to her mother, Geraldine Musorofiti ("Relief Defendant").

## II.

### JURISDICTION AND VENUE

7. The Act prohibits fraud in connection with the trading of commodity futures contracts and establishes a comprehensive system for regulating the purchase and sale of commodity futures contracts. This Court has jurisdiction over this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2002), 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.

8. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2002), in that the acts and practices in violation of the Act have occurred, are occurring, or are about to occur within this district.

## III.

### THE PARTIES

9. Plaintiff U.S. 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.* (2002), and the Regulations promulgated thereunder, 17 C.F.R. §§ 1 *et seq.* (2002).

10. Defendant Dawn Musorofiti resided in Brooklyn, New York at the time of the events described herein. Her current residence is unknown. Dawn Musorofiti has never been registered with the Commission in any capacity. She is not a NYMEX floor broker nor has she ever been a member.

11. Relief Defendant Geraldine Musorofiti resided in Brooklyn, New York at the time of the events described herein. Her current residence is unknown. Geraldine Musorofiti received money fraudulently solicited by her daughter Dawn Musorofiti. Geraldine Musorofiti has never been registered with the Commission.

#### IV.

#### FACTUAL BACKGROUND

12. Defendant carried out a scheme to defraud her victims by befriendng them, creating a false identity as a successful NYMEX broker, and convincing them to purchase interests in supposedly profitable NYMEX commodity contracts she claimed to own, with no risk of loss to their investment.

13. The NYMEX is a designated contract market authorized by the Commission to trade commodity futures contracts and options contracts including energy products and metals. Market participants use the NYMEX for both hedging and speculative purposes.

14. During the Relevant Period, Defendant became friendly with fellow residents of her neighborhood in Brooklyn, New York.

15. Defendant introduced herself as a successful NYMEX floor broker with seats in the oil and gold markets on the Exchange.

16. As part of her false claim to be a NYMEX broker. Defendant stated that she owned a company called J/D/Geraldine Musorofiti Commodities with her mother Geraldine Musorofiti, the Relief Defendant.

17. Neither Defendant, Relief Defendant, nor J/D/Geraldine Musorofiti Commodities has ever owned a seat on the NYMEX.

18. The different NYMEX commodity contracts Defendant purported to "sell" interests in included heating oil, soybeans, lumber, corn, wheat and orange juice contracts. Of these commodities, only heating oil futures are actually traded on the NYMEX.

19. Defendant told her victims that she owned these NYMEX commodity contracts and that once she liquidated the contracts, the profits would be in the millions of dollars.

20. Defendant also told certain of her victims that there was no risk of losing the investment money they paid for the interests in her NYMEX commodity contracts.

21. Defendant's victims paid at least \$90,000 to Defendant and Relief Defendant as payment for their purported interests in the phony NYMEX commodities contracts.

22. After several months, certain victims became concerned about their money and insisted on receiving a contract as evidence of their purchases. In August 2004, Defendant, in an effort to allay the victims' concerns, created and provided letters that purported to confirm their purchases of interests in her NYMEX commodity contracts. The letters were a fabrication by the Defendant.

23. The letters contained the name of the commodity, the price at which Defendant supposedly bought the commodity, the amount of the victim's investment, the expiration date of the underlying commodity contract, and references to the New York Mercantile Exchange.

24. After they received the fictitious letters and were told by Defendant about the supposed profitability of their investments, the victims in approximately September 2004 asked Defendant for their original purchase money and their profits. Defendant promised

to pay the victims but continuously stalled in fulfilling that promise, citing a number of reasons why she supposedly could not pay the money.

25. In or about October and November 2004, Defendant returned a total of approximately \$2,500 to several of her victims.

26. In or about December 2004, Defendant and Relief Defendant left their previous residences in Brooklyn, New York. Their current addresses are unknown.

V.

**VIOLATIONS OF THE COMMODITY EXCHANGE ACT  
AND COMMISSION REGULATIONS**

**COUNT I**

**Violations by Defendant of Sections 4b(a)(2)(i) and (iii) of the Act: Fraud in the  
Sale of Futures Contracts**

27. The allegations set forth in paragraphs 1 through 26 are re-alleged and incorporated herein.

28. Section 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. § 6b(a) (2002), provides in pertinent part that it is unlawful for any person in or in connection with any futures contract of sale of any commodity that is or may be used for hedging or determining the price basis of any transaction or for delivering any commodity in interstate commerce for or on behalf of any other person (i) to cheat or defraud or attempt to cheat or defraud such other person or (iii) willfully to deceive or attempt to deceive such other person by any means whatsoever in regard to any such order or contract.”

29. During the Relevant Period, Defendant cheated or defrauded or attempted to cheat or defraud investors or prospective investors, and willfully deceived or attempted to deceive investors or prospective investors by, among other things: making false

statements regarding her status as a broker, owning profitable NYMEX commodities contracts, the risk of loss to her victims' investments and by issuing fictitious letters in connection with the sale of interests in NYMEX commodity contracts, all in violation of Sections 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. § 6b(a)(2)(i) and (iii) (2002).

30. Defendant's conduct was in connection with the orders to make, or the making of, contracts of sale of commodities for future delivery, made or to be made, for or on behalf of any other persons, and such contracts for future delivery were or could be used for the purposes set forth in Section 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. § 6b(a)(i) and (iii) (2002).

31. Each material misrepresentation or omission, false statement, misappropriation of investor funds, and willful deception made during the relevant period, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4b(a)(2)(i) and (iii) of the Act.

## COUNT II

### Violations by Defendant of Section 4b(a)(2)(ii) of the Act: Fraud by Making False Statements

32. The allegations set forth in paragraphs 1 through 31 are re-alleged and incorporated herein.

33. Section 4b(a)(2)(ii) of the Act, 7 U.S.C. § 6b(a) (2002), provides in pertinent part that it is unlawful for any person in or in connection with any futures contract of sale of any commodity that is or may be used for hedging or determining the price basis of any transaction or for delivering any commodity in interstate commerce for or on behalf of any other person willfully to make or cause to be made any false report or statement thereof, or to enter or cause to be entered any false record, to or for such other person.

34. During the Relevant Period, Defendant made or caused to be made false reports and false statements issued or communicated to at least one investor in connection with orders to make, or the making of, contracts of sale of commodities for future delivery, made or to be made, for or on behalf of any other persons, and such contracts for future delivery were or could be used for the purposes set forth in Section 4b(a)(2)(ii) of the Act, 7 U.S.C. § 6b(a)(ii) (2002).

35. Each false report or statement made during the Relevant Period, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4b(a)(2)(ii) of the Act, 7 U.S.C. § 6b(a)(ii) (2002).

### COUNT III

#### Violations by Defendant of Section 4(a) of the Act: Sale of Illegal Off-Exchange Futures Contracts

36. Paragraphs 1 through 35 are re-alleged and incorporated herein.

37. Section 4(a) of the Act, 7 U.S.C. § 6(a) (2002), provides that unless exempted by the Commission, “it shall be unlawful for any person to offer to enter into, execute, confirm the execution of, or conduct an office or business in the United States for the purpose of soliciting, accepting any order for, or otherwise dealing in transactions in, or in connection with, a contract for the purchase or sale of a commodity for future delivery...” when: (1) such transactions have not been conducted on or subject to the rules of a board of trade which has been designated or registered by the Commission as a contract market or derivatives transaction execution facility for such commodity; (2) such contracts have not been executed or consummated by or through such contract market; and (3) such contract is not evidenced by a written record showing the date, parties, property covered, price, and terms of delivery.

38. During the Relevant Period. Defendant offered to enter into, executed, confirmed the execution of, or conducted an office or business in the United States for the purpose of soliciting, accepting any order for, or otherwise dealing in transactions in, or in connection with, a contract for the purchase or sale of a commodity for future delivery when: (a) such transactions were not conducted on or subject to the rules of a board of trade which was designated or registered by the CFTC as a contract market or derivatives transaction execution facility for such commodity, and (b) such contracts were not executed or consummated by or through such contract market, in violation of Section 4(a) of the Act, 7 U.S.C. § 6(a) (2002).

39. Each offer to enter into futures transaction not conducted on a designated contract market or registered derivatives transaction execution facility made during the Relevant Period, including but not limited to those offered by Defendant as specifically alleged herein, is alleged as a separate and distinct violation of Section 4(a) of the Act.

#### COUNT IV

##### Violations by Defendant of Section 4h of the Act – False Representation

40. Paragraphs 1 through 39 are re-alleged and incorporated herein.

41. Section 4h of the Act, 7 U.S.C. §6h (2002), provides that it shall be unlawful for any person falsely to represent such person to be a member of a registered entity or the representative or agent of such member, or to be a registrant under the Act in soliciting or handling any order or contract for the purchase or sale of any commodity in interstate commerce or for future delivery, or falsely to represent in connection with the handling of any such order or contract that the same is to be or has been executed on, or by or through a member of, any registered entity.

42. During the Relevant Period, Defendant represented herself to be a member of a registered entity, or the representative or agent of such member, or to be a registrant under the Act in soliciting or handling any order or contract for the purchase or sale of any commodity in interstate commerce or for future delivery, or falsely represented in connection with the handling of any such order or contract that the same is to be or has been executed on, or by or through a member of, any registered entity when she falsely told her victims she was a NYMEX floor broker, that her company owned seats on the NYMEX, and she solicited orders for NYMEX commodity contracts, in violation of Section 4h of the Act, 7 U.S.C. §6h (2002).

43. Each false representation made during the Relevant Period, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4h of the Act, 7 U.S.C. § 6h (2002).

#### COUNT V

##### Unjust Enrichment: Disgorgement of the Funds Held by Relief Defendant

44. Paragraphs 1 through 43 are re-alleged and incorporated herein.

45. Defendant committed a fraud upon her customers in connection with the purchase and sale NYMEX futures contracts as alleged herein.

46. Relief Defendant received funds or otherwise benefited from funds that were fraudulently solicited by the Defendant.

47. Relief Defendant will be unjustly enriched if she is not required to disgorge the funds or the value of the benefit she received as a result of Defendant's fraud. Relief Defendant has no legitimate claim to these funds.

48. Relief Defendant should be required to disgorge the funds and assets, or the value of the benefit she received from those funds and assets, which are traceable to Defendant's fraud.

## VI.

### RELIEF REQUESTED

WHEREFORE, the Commission respectfully requests that this Court, as authorized by Section 6c of the Act, 7 U.S.C. § 13a-1 (2002), and pursuant to the Court's own equitable powers:

A. Find that Defendant violated Sections 4(a), 4b(a)(2), and 4h of the Act, 7 U.S.C. §§ 6(a), 6b(a)(2), and 6h (2002);

B. Enter an order of permanent injunction prohibiting Defendant and any other person or entity associated with Defendant including any successor thereof, from:

1. engaging in conduct in violation of Sections 4(a), 4b(a)(2), and 4h of the Act, 7 U.S.C. §§ 6(a), 6b(a)(2), and 6h (2002); and

2. soliciting funds for, engaging in, controlling, or directing the trading of any commodity futures or options accounts for or on behalf of any other person or entity, whether by power of attorney or otherwise;

C. Enter an order directing Defendant, and any successors thereof, to disgorge, pursuant to such procedure as the Court may order, all benefits received including but not limited to salaries, commissions, loans, fees, revenues and trading profits derived, directly or indirectly, from acts or practices which constitute violations of the Act as described herein, including pre-judgment interest thereon from the date of such violations;

D. Enter an order directing Defendant to make full restitution to every investor whose funds were received by her as a result of acts and practices which constituted violations of the Act and Regulations, as described herein, and interest thereon from the date of such violations:

E. Enter an order assessing a civil monetary penalty against Defendant in the amount of not more than the higher of \$120,000 or triple the monetary gain to the defendant for each violation by the Defendant of the Act:

F. Find that the Relief Defendant received or benefited from funds fraudulently obtained from Defendant's customers, has no legitimate claim to these funds, and was unjustly enriched by these funds;

G. Enter an order directing that Defendant and Relief Defendant make an accounting to the court of all their assets and liabilities, together with all funds they received from and paid to any persons in connection with commodity futures transactions or purported commodity futures transactions, and all disbursements for any purpose whatsoever of funds received from commodity transactions, including salaries, commissions, interest, fees, loans and other disbursements of money and property of any kind, from, but not limited to, July 2003 through and including the date of such accounting;

H. Enter an order requiring Defendant to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2412(a)(2) (2002);

I. Enter an order directing Relief Defendant, and any successors thereof, to disgorge, pursuant to such procedure as the Court may order, all funds and benefits received, directly or indirectly, from acts or practices which constitute violations of the

Act as described herein, including pre-judgment interest thereon from the date of such violations; and

J. Order such other and further remedial ancillary relief as the Court may deem appropriate.

Dated: New York, NY  
August 16, 2005

U.S. COMMODITY FUTURES  
TRADING COMMISSION

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