

JUDGE KRAM

05 CV 8401

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

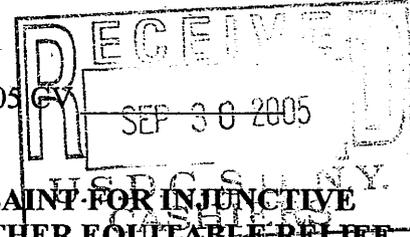
U.S. Commodity Futures Trading Commission,

Plaintiff,

v.

James de Wet,

Defendant.



COMPLAINT FOR INJUNCTIVE
AND OTHER EQUITABLE RELIEF,
AND CIVIL MONETARY
PENALTIES, UNDER THE
COMMODITY EXCHANGE ACT,
AS AMENDED, 7 U.S.C. §§ 1-25

I. SUMMARY

1. Since October 2000, defendant James de Wet (“de Wet” or “defendant”) has fraudulently solicited clients to open managed foreign currency (“forex”) accounts under the name Team Forex International (“Team Forex”), through a website, www.teamforex.com.

2. Specifically, de Wet posted trading results on the Team Forex website which were materially different from the actual trading results for de Wet’s managed accounts. In addition, de Wet falsely claimed on the website that the published trading results had been audited, when no such audit had occurred.

3. De Wet’s material misrepresentations violate Sections 4b(a)(2)(i) and (iii) of the Commodity Exchange Act, as amended (the “Act”), 7 U.S.C. § 6b(a)(2)(i) and (iii) (2002).

4. Accordingly, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2002), plaintiff U.S. Commodity Futures Trading Commission (the “Commission”) brings this action to enjoin defendant’s unlawful acts and practices, to bar defendant from engaging in any commodity-related activity, including soliciting new clients or client funds, and to compel defendant’s compliance with the Act. In addition, the Commission seeks a preliminary injunction, an asset

freeze, civil monetary penalties and remedial ancillary relief including, but not limited to, restitution to clients, disgorgement of defendant's ill-gotten gains, pre-judgment and post-judgment interest, a trading ban, and such other relief as this Court may deem necessary or appropriate.

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

II. JURISDICTION AND VENUE

6. This Court has jurisdiction over this action 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.

7. Sections 2(c)(2)(B) and 2(c)(2)(C) of the Act, 7 U.S.C. §§ 2(c)(2)(B) and 2(c)(2)(C), grant the Commission jurisdiction over certain retail transactions in foreign currency that are contracts for the sale of a commodity for future delivery, including the forex transactions alleged in this complaint.

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

III. THE PARTIES

9. Plaintiff Commission is an independent federal regulatory agency that is charged with administering and enforcing the provisions of the Act, as amended, 7 U.S.C. §§ 1 *et seq.* (2002), and the regulations promulgated thereunder, 17 C.F.R. §§ 1 *et seq.* (2003).

10. Defendant, James de Wet, is an individual whose last known address is 2 Folkestone Road, Summerstrand, Port Elizabeth, Eastern Cape 6001 South Africa. Neither Team Forex nor de Wet has ever been registered with the Commission in any capacity.

IV. FACTS

11. Since October 2002 at least two hundred clients (thirty-five of whom reside in the United States) opened forex futures trading accounts, to be managed by de Wet, at Forex Capital Markets, Inc. ("FXCM"), a registered futures commission merchant ("FCM") and forex dealer located in New York, New York.

12. De Wet has actively managed the forex futures trading accounts at FXCM on behalf of his retail clients.

13. FXCM provided de Wet with online access to trading account statements which detailed the results of transactions for the managed accounts, including the beginning balance, ending balance and equity for each of the managed accounts.

14. De Wet, through the Team Forex website, has fraudulently solicited clients to open managed forex futures accounts by materially overstating certain trading results.

15. For example, trading results published on the Team Forex website on various days through January 13, 2005 materially overstated the trading results for certain months in 2003 and materially overstated the rate of return purportedly achieved by defendant's managed accounts for the entire year 2003, as follows:

a. the Team Forex website claimed that for January 2003, de Wet's managed forex accounts had a profit of 15.2%, whereas those accounts actually had a loss of 1.2% in that month;

b. the Team Forex website claimed that for May 2003 de Wet's managed accounts lost only 3.20%, whereas the actual trading loss for that month was 39.8%; and

c. the Team Forex website claimed that de Wet's managed accounts had overall trading profits of 55.2% for the year 2003, whereas those accounts actually lost 10.18% for the year.

16. De Wet materially overstated the rate of return purportedly achieved by Team Forex for the entire year 2004. The Team Forex website falsely claimed that its managed accounts had overall trading profits of 7.1% for the year 2004, whereas those accounts actually lost .37% during 2004.

17. De Wet, through the Team Forex website, has fraudulently solicited clients to open managed forex futures accounts by falsely claiming that the trading results published on the Team Forex website had been "audited," when, in fact, no such audit was ever performed.

18. The misrepresentations and omissions made by defendant were made with the intent to defraud or with reckless disregard for the truth.

V. THE COMMISSION'S JURISDICTION OVER THE TRANSACTIONS AT ISSUE

19. Section 2(c)(2)(B)(i) and (ii) of the Act, 7 U.S.C. § 2(c)(2)(B)(i) and (ii) (2002), provides that the Commission shall have jurisdiction over an agreement, contract or transaction in foreign currency that is a sale of a commodity for future delivery, and is "offered to, or entered into with, a person that is *not* an eligible contract participant," and the counterparty, or the person

offering to be the counterparty, is not one of the regulated entities enumerated in Section 2(c)(2)(B)(ii)(I-VI), 7 U.S.C. § 2(c)(2)(B)(i) and (ii).

20. Section 1a(12)(A)(xi) of the Act, 7 U.S.C. § 1a(12)(A)(xi) (2002), defines an “eligible contract participant” as, *inter alia*, an individual who has total assets exceeding: (a) \$10 million; or (b) \$5 million and who enters into the agreement, contract, or transaction to manage the risk associated with an asset owned or liability incurred, or reasonably likely to be owned or incurred by the individual. Most, if not all, of the foreign currency transactions alleged herein were offered into or entered into with persons who did not qualify as eligible contract participants, meaning that the clients of the defendant are retail customers whose transactions are contemplated by Section 2c(2)(B)(ii) of the Act to be within the Commission’s jurisdiction.

21. Section 2(c)(2)(B)(ii)(I-VI) of the Act, 7 U.S.C. § 2(c)(2)(B) (ii)(I-VI), identifies regulated entities that are proper counterparties to foreign currency transactions with retail customers, which include registered futures commission merchants (“FCMs”) and certain statutorily defined affiliates of registered FCMs.

22. FXCM is registered with the Commission as a futures commission merchant and thus constitutes a proper counterparty under Section 2(c)(2)(B) to the alleged forex transactions with defendant’s clients, who are not eligible contract participants.

23. Section 2(c)(2)(C) of the Act, 7 U.S.C. § 2(c)(2)(C) (2002), however, provides that the Commission retains jurisdiction over agreements, contracts or transactions in foreign currency that are sales of a commodity for future delivery where one of the counterparties is a FCM, for purposes of enforcing the anti-fraud provisions of Section 4b of the Act, 7 U.S.C. §6b (2002).

VI. VIOLATIONS OF THE COMMODITY EXCHANGE ACT

COUNT I

Violations of Section 4b(a)(2)(i) and (iii) of the Act: Fraud in Connection with Commodity Futures Contracts

24. Paragraphs 1 through 23 are realleged and incorporated herein by reference.
25. Defendant cheated, defrauded, or deceived other persons or attempted to cheat, defraud or deceive other persons, by making false, deceptive, or misleading representations of material facts and by failing to disclose necessary material facts, including, but not limited to, those statements and omissions identified in the foregoing paragraphs of this Complaint, all in violation of Section 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. § 6b(a)(2)(i) and (iii).
26. Each false, deceptive, or misleading representation or omission of material facts made by the defendant, 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, 7 U.S.C. § 6b(a)(2)(i) and (iii).

VII. RELIEF REQUESTED

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

- a. an order finding that defendant violated Section 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. § 6b(a)(2)(i) and (iii) (2002);
- b. a preliminary injunction restraining and enjoining defendant and all persons insofar as they are acting in the capacity of defendant's agents, servants, successors, assigns, and attorneys, and all persons insofar as they are acting in

active concert or participation with them who receive actual notice of such order by personal service or otherwise, from directly or indirectly:

1. engaging in conduct in violation of Section 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. § 6b(a)(2)(i) and (iii), and from engaging in any commodity-related activity, including soliciting new clients or trading commodity-related accounts on behalf of any client;
2. Destroying, mutilating, concealing, altering or disposing of any books and records, documents, correspondence, brochures, manuals, electronically stored data, tape records or other property of defendant, wherever located, including all such records concerning defendant's business operations;
3. Refusing to permit authorized representatives of the Commission to inspect, when and as requested, any books and records, documents, correspondence, brochures, manuals, electronically stored data, tape records or other property of defendant, wherever located, including all such records concerning defendant's business operations; and
4. Withdrawing, transferring, removing, dissipating, concealing or disposing of, in any manner, any funds, assets, or other property, wherever situated, including but not limited to, all funds, personal property, money or securities held in safes, safety deposit boxes and all funds on deposit in any financial institution, bank or savings and loan account held by, under the control of, or in the name of, the defendant.

- c. permanent injunctions prohibiting defendant from:
1. engaging in conduct in violation of Section 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. § 6b(a)(2)(i) and (iii), and from engaging in any commodity-related activity, including soliciting new clients or trading commodity-related accounts on behalf of any client;
 2. trading on or subject to the rules of any entity registered with the U.S. Commodity Futures Trading Commission, whether for an account in which he has a direct or indirect interest, or for others;
- d. an order directing defendant to disgorge, pursuant to such procedure as the Court may order, all benefits received from the acts or practices which constitute violations of the Act, as described herein, and interest thereon from the date of such violations;
- e. an order directing defendant to make full restitution, pursuant to such procedure as the Court may order, to every client whose funds were received by him as a result of acts and practices which constituted violations of the Act, as described herein, and interest thereon from the date of such violations;
- f. an order directing the defendant to pay a civil monetary penalty in the amount of not more than the higher of \$120,000 (\$130,000 for violations occurring after October 24, 2004) or triple the monetary gain to defendant for each violation of the Act committed by the defendant; and

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

Dated: New York, NY
September 30, 2005

Respectfully submitted,

ATTORNEYS FOR PLAINTIFF
COMMODITY FUTURES TRADING
COMMISSION

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