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20 **UNITED STATES DISTRICT COURT**
21 **CENTRAL DISTRICT OF CALIFORNIA**
22 **WESTERN DIVISION**

23 **U.S. COMMODITY FUTURES**
24 **TRADING COMMISSION,**
25 **Plaintiff,**
26 **vs.**
27 **BRETT E. LOVETT, individually and**
28 **d/b/a/ NORTHWEST ASSET FUND,**
Defendant.

Case No. **CV05-5074 GHK (MANx)**
COMPLAINT FOR
INJUNCTIVE AND OTHER
EQUITABLE RELIEF AND
FOR CIVIL PENALTIES
UNDER THE COMMODITY
EXCHANGE ACT, AS
AMENDED, 7 U.S.C. §§ 1-25
JUDGE:
TIME:
DATE:
PLACE

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DUPLICATE

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3 **I. JURISDICTION AND VENUE**

4 1. Plaintiff United States Commodity Futures Trading Commission
5 (“CFTC” or “Commission”) brings this action against the defendant for engaging
6 in acts and practices that violate provisions of the Commodity Exchange Act,
7 7 U.S.C. § 1 *et seq.* (2002) (the “Act”) and Commission Regulations promulgated
8 thereunder (“Regulations”) 17 C.F.R. § 1.1 *et seq.* (2005).

9 2. This Court has jurisdiction over this action pursuant to Section 6c of
10 the Act, 7 U.S.C. § 13a-1 (2002), which authorizes the Commission to seek
11 injunctive relief against any person whenever it shall appear that such person has
12 engaged, is engaging, or is about to engage in any act or practice constituting a
13 violation of any provision of the Act or any rule, regulation or order thereunder.

14 3. Venue properly lies with this Court pursuant to Section 6c(e) of the
15 Act, 7 U.S.C. § 13a-1(e) (2002), in that Defendant is found in, inhabits, or transacts
16 business in this District, and the acts and practices in violation of the Act have
17 occurred, are occurring, or are about to occur within this district, among other
18 places. Specifically, Defendant Brett E. Lovett d/b/a Northwest Asset Fund
19 (“Lovett” or “Defendant”) resides in this district and transacts the majority of his
20 business in this district.

21 **II. SUMMARY**

22 4. From at least September 2004 to the present (“relevant time period”),
23 Lovett has fraudulently solicited and accepted at least \$120,000 in customer funds
24 for use in trading commodity futures. Among other things, Defendant made
25 misrepresentations of material facts when soliciting at least one customer,
26 misappropriated at least \$4,000 of customer funds, and created false account
27 statements for at least one customer that misrepresented that the customer, instead
28 of Lovett, was actually the owner of the account.

1 7 U.S.C. §§ 1 *et seq.* (2002), and the Regulations promulgated thereunder, 17
2 C.F.R. §§ 1 *et seq.* (2005).

3 **B. Defendant**

4 9. Defendant Brett E. Lovett is 34 years old and resides in Oxnard,
5 California. He has never been registered with the Commission in any capacity.
6 Lovett has been doing business as Northwest Asset Fund, 19510 Strathern Street,
7 Reseda, California, since June 2002. Lovett is a self-proclaimed financial advisor
8 and fund manager.

9 **IV. FACTS**

10 **A. Defendant Made Misrepresentations of Material Fact in the Solicitation**
11 **of Customers**

12 10. From at least September 2004 to the present, Lovett persuaded at least
13 one individual, whom he knew from his church (“customer”), to invest \$55,000
14 with him and falsely informed the customer that he would invest his funds in a low
15 risk investment, similar to a certificate of deposit, that would provide \$1,000 in
16 interest per month with no risk of losing his principal investment.

17 11. From at least September 2004 to the present, Lovett solicited and
18 accepted at least \$120,000 from at least one customer for the purpose of trading
19 commodity futures.

20 12. As discussed more fully below, Defendant falsely informed that
21 customer that he had deposited his funds into two accounts in the customer’s name.
22 However, Defendant actually deposited the customer’s funds into a commodity
23 trading account and a money market account in Defendant’s own name.

24 **B. Defendant Misappropriated Customer Funds.**

25 13. Lovett has misappropriated at least one customer’s funds. For
26 example, on October 20, 2004, at Lovett’s instruction, the customer provided
27 Lovett with two cashier’s checks, one made out to Northwest Asset Fund, which
28 Lovett explained was the name of his company, for \$55,000 and one made out to

1 Vision Limited Partnership ("Vision"), a registered futures commission merchant
2 ("FCM"), for \$120,000. At Lovett's request, the customer had both checks made
3 out showing Lovett as the remitter.

4 14. Lovett deposited the \$55,000 made out to Northwest Asset Fund into an
5 E-trade Financial ("E-Trade") money market account in his own name on
6 October 22, 2004 and obtained a debit card attached to the account. Lovett spent
7 approximately \$4,000 on personal expenses and transferred \$51,000 into a bank
8 account in his name at Citibank on November 9, 2004.

9 15. The \$120,000 cashiers check was deposited into a pre-existing
10 commodity futures trading account at Vision in Lovett's name. Lovett primarily
11 trades commodity options in this account. The account was opened on July 28,
12 2003.

13 **C. Defendant Made False Reports or Statements**

14 16. Lovett made false reports or statements to at least one customer. For
15 example, Lovett told the customer who had provided Lovett with the \$55,000
16 cashiers check made out to Northwest Asset Fund that Lovett had opened an
17 E-Trade account on the customer's behalf in the customer's name. Lovett also
18 gave the customer a falsified account statement purporting to affirm that the
19 account was in the customer's name. When the customer called E-Trade to inquire
20 about his account, E-Trade informed him that it did not have any accounts in his
21 name and the account number listed on the statement he had was for an account in
22 the name of Brett Edward Lovett doing business as Northwest Asset Fund.

23 17. Lovett also told the customer who had provided Lovett with the
24 \$120,000 cashiers check made out to Vision that Lovett had opened a Vision
25 account on the customer's behalf in the customer's name. Lovett also gave the
26 customer a falsified account statement with the customer's name on it. When the
27 customer called Vision to inquire about his account, Vision informed him that
28

1 there was no account in his name and the number listed on the account statement
2 he received from Lovett was in the name of Brett Edward Lovett.

3 18. When the customer asked Lovett why his name was not on the
4 accounts at Vision and E-Trade, Lovett responded only that "it didn't work that
5 way."

6 **D. Lovett refused to return customer funds**

7 19. Lovett refused to return at least one customer's funds. The church
8 member who had provided Lovett with the two cashiers checks totaling \$175,000
9 called Lovett repeatedly requesting return of his funds and Lovett ignored his calls.
10 On February 23, 2005, the customer filed a police report against Lovett alleging
11 "grand theft." Lovett finally called the customer back and claimed that he would
12 return the customer's funds.

13 20. However, Lovett attempted to discourage the customer from
14 requesting return of his funds by informing him that it would take at least a month
15 to unwind his positions, close out his account and withdraw the balance.

16 21. Additionally, Lovett told the customer that he would be assessed a
17 \$35,000 to \$40,000 early withdrawal penalty for closing out the account and
18 withdrawing the balance prior to a year's time. Although the customer informed
19 Lovett that he never agreed to keep his funds in any account for a year, Lovett
20 advised him that that was the rule.

21 22. Although the customer informed Lovett that he wanted his funds
22 returned regardless of the waiting period and the monetary penalty, to date, the
23 customer has not received any of his money back.

24 **E. Current Status of Customer Funds**

25 23. According to Vision, Lovett's current account balance is \$170,000.
26 On or about April 5, 2005, Lovett attempted to withdraw at least some of the funds
27 in the account. Upon obtaining falsified account statements from Lovett's
28 customer, Vision has placed a "hold" on Lovett's account and refuses to allow any

1 withdrawals, although they are still allowing Lovett to trade, thereby placing the
2 account funds at risk.

3 **V. VIOLATIONS OF THE COMMODITY EXCHANGE ACT**
4 **AND COMMISSION REGULATIONS**
5 **COUNT I**

6 **VIOLATIONS OF SECTIONS 4b(a)(2)(i) AND (iii) OF THE ACT: FRAUD**
7 **BY MISREPRESENTATIONS AND FALSE STATEMENTS AND**
8 **MISAPPROPRIATION OF CUSTOMER FUNDS**

9 24. The allegations set forth in paragraphs 1 through 23 are re-alleged and
10 incorporated herein.

11 25. Sections 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i) and
12 (iii), make it unlawful for any person to cheat or defraud or attempt to cheat or
13 defraud; or willfully deceive or attempt to deceive by any means whatsoever other
14 persons in or in connection with orders to make, or the making of, contracts of sale
15 of commodities, for future delivery, made, or to be made, for or on behalf of such
16 other persons where such contracts for future delivery were or may have been used
17 for (a) hedging any transaction in interstate commerce in such commodity, or the
18 products or byproducts thereof, or (b) determining the price basis of any
19 transaction in interstate commerce in such commodity, or (c) delivering any such
20 commodity sold, shipped or received in interstate commerce for the fulfillment
21 thereof.

22 26. Lovett willfully violated §§ 4b(a)(2)(i) and (iii) of the Act by, among
23 other things: (1) making material misrepresentations and omitting material facts,
24 including misrepresenting to at least one customer that he would invest his funds in
25 a low risk investment similar to a certificate of deposit when he actually invested
26 his funds in commodity futures; (2) misrepresenting to at least one customer that
27 he would earn \$1,000 per month with minimal or no risk of losing his investment;
28 and (3) misappropriating customer funds.

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V. 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:

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

- B. Enter a statutory restraining order on notice restraining and enjoining Defendant and all persons insofar as they are acting in the capacity of his agents, servants, successors, assigns, and attorneys, and all persons insofar as they are acting in active concert or participation with him who receive actual notice of such order by personal service or otherwise, from directly or indirectly:
 - 1. 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;
 - 2. 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
 - 3. 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,

1 safety deposit boxes and all funds on deposit in any financial
2 institution, bank or savings and loan account held by, under the
3 control, or in the name of defendant.
4

5 C. Enter orders of preliminary and permanent injunction prohibiting the
6 Defendant and any other person or entity associated with him,
7 including any successor thereof, from:

- 8 1. engaging in conduct, in violation of Sections 4b(a)(2)(i),(ii) and
9 (iii) of the Act, 7 U.S.C. § 6b(a)(2)(i), (ii) and (iii)(2002);
- 10 2. engaging in, controlling, or directing the trading of any
11 commodity futures or options accounts for or on behalf of any
12 other person or entity, whether by power of attorney or
13 otherwise; and
- 14 3. applying for registration or claiming exemption from
15 registration with the Commission in any capacity, and engaging
16 in any activity requiring such registration or exemption from
17 registration with the Commission, except as provided for in
18 Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2005), or acting
19 as a principal, agent, officer or employee of any person
20 registered, required to be registered, or exempted from
21 registration with the Commission, except as provided for in
22 Regulation 4.14(a)(9). This includes, but is not limited to,
23 soliciting, accepting, or receiving any funds, revenue or other
24 property from any other person, giving commodity trading
25 advice for compensation, except as provided in Regulation
26 4.14(a)(9), or soliciting prospective customers related to the
27 purchase or sale of commodity futures or options.
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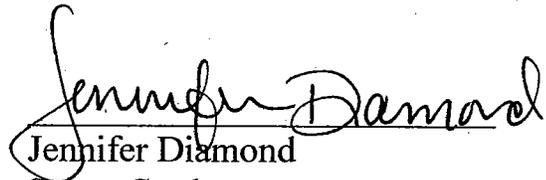
- 1 D. Enter an order directing the Defendant and any successor thereof, to
2 disgorge, pursuant to such procedure as the Court may order, all
3 benefits received from the acts or practices which constitute violations
4 of the Act, as described herein, and interest thereon from the date of
5 such violations;
6
- 7 E. Enter an order directing the Defendant to make full restitution to every
8 customer whose funds were received by him as a result of acts and
9 practices which constituted violations of the Act, as described herein,
10 including pre-judgment interest;
11
- 12 F. Enter an order assessing a civil monetary penalty against the
13 Defendant in the amount of not more than the higher of \$120,000 for
14 violations prior to October 24, 2004 and \$130,000 for violations
15 thereafter, or triple the monetary gain to the Defendant for each
16 violation by the Defendant of the Act;
17
- 18 G. Enter an order directing that the Defendant make an accounting to the
19 court of all his assets and liabilities, together with all funds he
20 received from and paid to customers and other persons in connection
21 with commodity futures transactions or purported commodity futures
22 transactions, and all disbursements for any purpose whatsoever of
23 funds received from commodity clients, including salaries,
24 commissions, fees, loans and other disbursements of money and
25 property of any kind, from, but not limited to, August 2003 to and
26 including the date of such accounting;
27
28

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

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4 I. Order such other and further remedial ancillary relief as the Court may
5 deem appropriate.
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10 Date: July 12, 2005

Respectfully Submitted:

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13 Jennifer Diamond

14 Susan Gradman
15 Rosemary Hollinger
16 Attorneys for the Commodity Futures
17 Trading Commission
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