

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

U.S. Commodity Futures Trading Commission,

Plaintiff,

v.

Stuart Pippin, individually and doing business
as Pippin Investments,

Defendant.

CV 05 41 20

**Complaint for Injunctive and Other
Equitable Relief and for Civil Penalties
Under the Commodity Exchange Act,
as Amended, 7 U.S.C. §§ 1-25**

GLEESON, J.

FILED

**IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.**

★ AUG 29 2005 ★

LEVY, M.J.

**SUMMARY
BROOKLYN OFFICE**

1. Beginning in or about June 2004 and continuing through the present (the "Relevant Period"), Stuart Pippin, doing business as Pippin Investments ("Pippin" or "Defendant"), and while acting as a Commodity Pool Operator ("CPO"), solicited and accepted approximately \$1.9 million from at least 35 members of the general public to participate in a commodity pool to trade commodity futures contracts ("futures"). Defendant returned approximately \$300,000 of that amount to certain pool participants.
2. After receiving funds from the pool participants, Defendant issued false account statements to the pool participants, indicating that he was trading futures on their behalf, and that the value of the pool participants' accounts had increased to more than \$4 million dollars. Those statements were untrue.
3. In fact, as Defendant has now admitted, he made only one futures trade, which lost money.

4. The Defendant has engaged, is engaging, or is about to engage in acts and practices that violate provisions of the Commodity Exchange Act, as amended (“Act”), 7 U.S.C. § 1 *et seq.*, and the Regulations promulgated thereunder (the “Regulations”), 17 C.F.R. § 1.1 *et seq.* Specifically, Defendant has violated Sections 4b(a)(2)(i)-(iii), 4m(1) and 4o(1)(A) and (B) of the Act, 7 U.S.C. §§ 6b(a)(2)(i) - (iii), 6m(1) and 6o(1) (2002), and Sections 4.20 of the Regulations, 17 C.F.R. §§ 4.20 (2004).

5. Accordingly, the U.S. Commodity Futures Trading Commission (“Commission”) brings this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2002), to enjoin the Defendant’s unlawful acts and practices and to compel his compliance with the Act and the Regulations. In addition, the Commission seeks an *ex parte* statutory restraining order, disgorgement of the Defendant’s ill-gotten gains, restitution to pool participants, civil monetary penalties, a trading ban, and such other relief as this Court may deem necessary or appropriate.

6. Unless restrained and enjoined by this Court, the 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.

II.

JURISDICTION AND VENUE

7. 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 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.

8. Venue properly lies with the Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2002) in that the Defendant is found in, inhabits, or transacts business in this District, and 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 United States Commodity Futures Trading Commission is an independent federal regulatory agency charged with the responsibility for administering and enforcing the provisions of the Act, 7 U.S.C. §§ 1 *et seq.* (2002), and the Commission's Regulations promulgated thereunder, 17 C.F.R. §§ 1 *et seq.* (2004).

10. Defendant Stuart Pippin, doing business as Pippin Investments, is an individual who resides in San Antonio, Texas. Pippin has never been registered with the Commission.

IV.

FACTS

The Defendant, Acting as a Commodity Pool Operator, Solicited Pool Participants and Issued False Account Statements to Them

11. During the Relevant Period, Pippin operated a commodity pool.

12. During the Relevant Period, Defendant solicited money from at least thirty-five known pool participants for a commodity pool that would trade futures on their behalf through a registered Futures Commission Merchant ("FCM"), Man Financial.

13. During the Relevant Period, the pool participants invested approximately \$1.9 million with the Defendant, having been told by Defendant that he would trade futures on their behalf.

14. Pippin Investments does not have an account at Man Financial, or, in fact, at any other FCM.

15. Instead, Pippin holds an individual futures account at Man Financial. No other person or entity is named on that account.

16. During the Relevant Period, the Defendant directed pool participants to send their investment money to one or more bank accounts in the name of Pippin Investments.

17. During the Relevant Period, pool participants invested a total of approximately \$1.9 million in the pool.

18. Pippin then transferred the money wired by the pool participants from the Pippin Investment accounts to his personal bank account or to Pippin's individual futures trading account at Man Financial.

19. Defendant sent the pool participants false monthly account statements which purported to show that the pool was trading futures and that the value of the pool had increased to over \$4 million from that trading.

20. In sworn testimony, Pippin admitted that the account statements he sent to pool participants were false and that, during the Relevant Period, he only made one crude oil futures trade in his individual Man Financial account, which lost \$90. To date, of the approximately \$1.9 million invested by the pool participants, Pippin has returned approximately \$300,000 to the pool participants, some of which he misrepresented as profits from trading.

21. The misrepresentations and omissions and the false statements provided by Defendant to participants, were material, and were made willfully, with an intent to defraud or deceive, or with reckless disregard for the truth.

V.

COUNT I

Violations of Sections 4b(a)(2)(C)(i)-(iii) of the Act:
Fraud in the Sale of Futures Contracts

22. The allegations set forth in paragraphs 1 through 21 are realleged and incorporated herein by reference.

23. Beginning in or about June 2004 and continuing through the present, the Defendant has: (1) cheated or defrauded or attempted to cheat or defraud other persons; (2) willfully made or caused to be made false reports or statements to other persons; and/or (3) willfully deceived or attempted to deceive other persons, in or 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, where such contracts for future delivery were or could be used for the purposes set forth in Section 4b(a) of the Act, 7 U.S.C. § 6b(a), all in violation of Section 4b(a)(2)(i) - (iii) of the Act, 7 U.S.C. § 6b(a)(2)(i) - (iii).

24. The Defendant violated Section 4b(a)(2)(i) - (iii) of the Act, 7 U.S.C. § 6b(a)(2)(i) - (iii) by, among other things: (a) representing to pool participants that Defendant would engage in futures trading on behalf of pool participants, when in fact, he did not; (b) issuing false account statements to pool participants showing futures trading that never occurred and trading profits that were never achieved; and (c) paying

purported trading profits to certain pool participants, despite the lack of any genuine trading profits.

25. Each misrepresentation or omission of material fact and each act of issuing false reports 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) - (iii) of the Act.

COUNT TWO

Violations of Section 4m(1) of the Act: Failure to Register as a Commodity Pool Operator

26. The allegations set forth in paragraphs 1 through 25 are re-alleged and incorporated herein by reference.

27. Defendant has used the mails or instrumentalities of interstate commerce in or in connection with his business as a Commodity Pool Operator ("CPO") while failing to register with the Commission as such, in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1).

COUNT THREE

Violations of Section 4o(1) of the Act: Fraud by a Commodity Pool Operator and a Principal of a Commodity Pool Operator

28. The allegations set forth in paragraphs 1 through 27 are realleged and incorporated herein by reference.

29. During the Relevant Period, Defendant, while acting as a CPO, employed a device, scheme or artifice to defraud pool participants, in violation of Section 4o(1)(A) of the Act, 7 U.S.C. § 6o(1)(A).

30. During the Relevant Period, Defendant, while acting as a CPO, engaged in a transaction, practice, or course of business which operates as a fraud or deceit upon pool participants, in violation of Section 40(1)(B) of the Act, 7 U.S.C. § 60(1)(B).

31. The Defendant violated Sections 40(1)(A) and (B) of the Act by, among other things: (a) representing to pool participants that Defendant would engage in futures trading on behalf of pool participants, when in fact, he did not; (b) issuing false account statements to pool participants showing futures trading that never occurred and trading profits that were never achieved; and (c) paying purported trading profits to certain pool participants, despite the lack of any genuine trading profits.

32. Each act of misrepresentation of material facts, each failure to disclose material facts, and each act of issuing false reports by the Defendant, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Sections 40(1)(A) and (B) of the Act.

COUNT FOUR

Violations of Regulation 4.20:

CPO's Accepting Pool Funds Other Than in the Name of the Pool, Commingling of Pool Funds with Defendant's Own Funds, and Failure to Treat the Pool as a Separate Entity

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

34. Defendant never established a separate pool entity and never established any accounts in the name of the pool, and thereby failed to operate the pool as a legal entity separate from himself, in violation of Commission Regulation 4.20(a), 17 C.F.R. § 4.20(a).

35. Defendant, while operating as a CPO, accepted pool funds into accounts in his own name, rather than accounts in the name of the pool, in violation of Commission Regulation 4.20(b), 17 C.F.R. § 4.20(b).

36. Defendant commingled the pool funds with his own property, in violation of Commission Regulation 4.20(c), 17 C.F.R. § 4.20(c).

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, and pursuant to its own equitable powers, enter:

- a) an order finding that the Defendant violated Sections 4b(a)(2)(i)-(iii), 4m(1), and 4o(1) of the Act, and Section 4.20 of the Regulations;
- b) an *ex parte* statutory restraining order restraining and enjoining Defendant and all persons insofar as they are acting in the capacity of their 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. 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, safety deposit boxes and all funds on deposit in any financial institution, bank or savings and

loan account held by, under the control, or in the name of the Defendant for the amounts indicated in this complaint;

- c) an order of preliminary injunction incorporating the provisions of the statutory restraining order and prohibiting the Defendant from engaging in conduct violative of Section 4b(a)(2)(i) – (iii) of the Act and Section 4.20 of the Regulations and from engaging in any commodity-related activity, including soliciting new customers, giving advice or other information in connection with the purchase or sale of commodity interest contracts for others, and introducing customers to any other persons engaged in the business of commodity interest trading; and directing Defendant to take such steps as are necessary to transfer possession of all assets including the repatriation to the territory of the United States all funds and assets of pool participants described herein which are held by Defendant or are under their direct or indirect control, jointly or singly, and deposit such funds into the Registry of this Court or otherwise as the Court may order, and provide the Commission and the Court with a written description of the funds and assets so repatriated;
- d) an order of permanent injunction prohibiting the Defendant from engaging in conduct violative of Sections 4b(a)(2)(i)-(iii), 4m(1) and 4o(1) of the Act and Section 4.20 of the Regulations and from engaging in any commodity-related activity, including soliciting new customers, giving advice or other information in connection with the purchase or sale of commodity interest contracts for others, and introducing customers to any other persons engaged in the business of commodity interest trading, and from trading any account in which Defendant has a direct or indirect interest, or trading any account for or on behalf of others;
- e) an order directing the 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 or Regulations, as described herein, and interest thereon from the date of such violations;
- f) an order directing the Defendant to make full restitution, pursuant to such procedure as the Court may order, to every customer whose funds were received by them 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;
- g) an order directing the Defendant to pay a civil monetary penalty in the amount of not more than the higher of \$120,000 for each violation before October 24, 2004 and \$130,000 for violations on or after October

24, 2004, or triple the monetary gain to Defendant for each violation of the Act and Regulations described herein;

- h) an order requiring Defendant to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2412(a)(2) (2002);
- i) such other and further remedial ancillary relief as the Court may deem appropriate.

Dated: New York, NY
August 29, 2005

U.S. COMMODITY FUTURES
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