

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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U.S. DISTRICT COURT E.D.N.Y.
★ MAY 26 2005 ★

Commodity Futures Trading Commission,

05 Civ

BROOKLYN OFFICE

Plaintiff,

05 2547

v.

Anthony Michael Frisone,
Windsor Forex Trading Corp.,
and COES FX Clearing, Inc.

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

PLATT, J.

Defendants.

ORENSTEIN, M.J.

I. SUMMARY

1. Since at least December 2002 and continuing through March 2004, if not later (“the relevant time period”), Anthony Michael Frisone (“Frisone”) and Windsor Forex Trading Corp. (“WFTC”) have fraudulently solicited at least 20 retail customers to open accounts for the speculative trading of foreign currency futures contracts by promising steady profits and limited risks therein.

2. Since at least March 2003 and continuing through March 2004, if not later, WFTC has acted as an agent exclusively for COES FX Clearing, Inc. (“COESfx”), a registered futures commission merchant, in introducing foreign currency futures trading accounts to COESfx.

3. Frisone and WFTC have engaged, are engaging, or are about to engage in acts and practices that violate Section 4b(a)(2) of the Commodity Exchange Act, as amended (“Act”), 7 U.S.C. § 6b(a)(2) (2002).

4. During the relevant time period, Frisone was WFTC's president and owner, as well as its sole trader, and controlled the operations of WFTC and its account executives ("AEs"). Frisone knowingly induced or did not act in good faith respecting the acts of WFTC and its AEs, and is therefore liable as a controlling person for their acts and practices pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2002).

5. WFTC performed its actions and omissions described in the Complaint as agent of and within the scope of its business of soliciting and introducing accounts to COESfx. Therefore, COESfx is liable as a principal for WFTC's violations pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2002), and Commission Regulation 1.2, 17 C.F.R § 1.2 (2004).

6. Unless enjoined by this Court, Defendants are likely to continue to engage in the acts and practices alleged in this Complaint, as more fully described below.

7. Accordingly, pursuant to Section 6c(a) of the Act, 7 U.S.C. § 13a-1(a) (2002), the Commodity Futures Trading Commission ("Commission") brings this action to enjoin the unlawful acts and practices of the Defendants, and to compel their compliance with the provisions of the Act and regulations thereunder. In addition, the Commission seeks civil penalties, an accounting, disgorgement, restitution and such other equitable relief as the Court may deem necessary or appropriate under the circumstances.

II. JURISDICTION AND VENUE

8. 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.

9. Section 2(c)(2)(B) of the Act, 7 U.S.C. § 2(c)(2)(B) (2002), expressly grants the Commission jurisdiction over certain transactions in foreign currency that are contracts for the sale of a commodity for future delivery, including the transactions alleged in this Complaint.

10. Venue properly lies with the Court pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1(e) (2002), in that 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.

III. THE PARTIES

A. The Plaintiff

11. The 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 Regulations promulgated under it, 17 C.F.R. §§ 1 *et seq.* (2004). The Commission maintains its principal office at Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

B. The Defendants

12. Anthony Michael Frisone, age 36, is the President and owner of WFTC. Frisone controls the day-to-day operations of WFTC and is the only individual at WFTC directing trading in customer accounts. Frisone currently resides at 7612 Old Thyme Court, Parkland, Florida 33076. Frisone applied for registration as an associated person on March 15, 2004, and as a principal on April 22, 2004, with the National Futures Association (“NFA”). On June 14, 2004, Frisone requested that his application for registration with the NFA be withdrawn. On April 21, 2005, the NFA approved Frisone’s application for registration as a principal of COESFX Managed Services, Inc.

13. Windsor Forex Trading Corp. is a Florida corporation organized on March 11, 1999. WFTC's registered office is located at 7612 Old Thyme Court, Parkland, Florida 33076. WFTC applied for registration as a commodity trading advisor ("CTA") with the NFA on March 15, 2004, and as a NFA member on April 22, 2004. On June 14, 2004, WFTC requested that its application for registration with the NFA be withdrawn.

14. COES FX Clearing, Inc. is a New York corporation whose principal place of business is 255 Executive Drive, Plainview, NY 11803. COESfx was originally incorporated on July 18, 2001 as Qtech Derivatives, Inc., and changed its name to COES FX Clearing, Inc. on September 27, 2002. COESfx has been registered with the Commission as a futures commission merchant ("FCM") since February 12, 2002.

IV. FACTUAL BACKGROUND

A. **WFTC's Fraudulent Solicitations, Lulling and Unauthorized Trading**

1. **Fraudulent Solicitation of Prospective Customers**

15. During the relevant time period, WFTC, through its AEs and under the control of Frisone, has fraudulently solicited at least 20 retail customers to commit funds totaling approximately \$336,000 to the speculative trading of foreign currency futures contracts by promising steady profits and limited risks therein.

16. WFTC marketed its services to the public through cold-calls, promotional materials, the www.windsorforex.com ("Windsorforex.com") website and, on at least one occasion, an investment seminar.

(a) **Cold Calls**

17. WFTC AEs made cold calls to prospective customers to promote its "managed forex trading program." In these telephone solicitations, WFTC AEs made numerous fraudulent

and misleading representations to prospective customers concerning the likely returns from and the risks involved in trading foreign currency futures, as well as the customers' ability to access to their account information via the Internet.

18. WFTC AEs provided prospective customers with a spectrum of anticipated returns from trading, while always emphasizing the consistent nature of those returns. For example, some customers were told to expect returns of between two to three percent per month, while others were advised to anticipate annual returns of between eight to twelve percent. Yet another customer was told that she would double her money within six months. In addition, prospective customers were told variously by WFTC AEs that Frisone was very profitable in his trading, that he had a very good track record and rarely lost money in his trading, and also that he had just had "a great run up." In fact, Frisone was not a successful trader and most WFTC customers lost money.

19. WFTC AEs downplayed the risk of loss, telling prospective customers that the trading of foreign currency futures involved relatively low risk because: (a) their accounts would be traded with leverage of no more than two to three times the value of their account; and (b) a stop-loss order was in place so that trading in their account would automatically be halted if their account balance ever fell by more than 25 percent of its opening balance. One prospective customer was even told that he could accept or decline each proposed trade in his account. None of these claims were true. Customers' accounts were traded with leverage of considerably more than three to one, no stop-loss order was ever put in place, and customers were never asked to approve the trades in their respective accounts.

20. One of the principal services touted by WFTC AEs was 24-hour access via the Internet for customers to access their account information, including the account balance and the

trading activity in those accounts. Customers were informed that they would receive daily and monthly account statements through the COESfx website. In fact, many customers were never able to access their accounts or obtain account statements through the COESfx website. As a result, customers were often forced to rely on the representations of WFTC's AEs as to their account balance and to receive account statements. WFTC's AEs misrepresented the profits and losses in customer accounts, as well as belatedly, if at all, fulfilling customer requests for account statements. In many instances, customers finally received account statements only after having made repeated requests by telephone, email and/or fax to COESfx.

(b) Promotional Materials

21. Once a prospective customer showed initial interest in trading foreign currency futures, WFTC's AEs would send them a package containing WFTC promotional materials. The package contained a WFTC promotional brochure, which was sometimes accompanied by a cover letter from the AE, in addition to FCM account opening documents.

22. The statements in the WFTC promotional materials were fraudulent, and were designed to reinforce the prospective customer's belief that opening a WFTC "managed forex trading" account would yield consistent profits with minimal risk.

23. Among the statements that falsely and materially misrepresented the likely profits from and risks associated with foreign currency trading in the WFTC promotional materials were the following:

- a. Frisone had developed a "conservative philosophy" to foreign exchange trading.
- b. WFTC "is classified as a conservative investment. Being as such, [WFTC] will trade accounts at 3:1 leverage unless otherwise agreed upon by both [WFTC] and the Client."

- c. "WFTC implements the "WFTC currency Strategy Plan", systems devised to provide an effective trading module that enhances profit potential and reduce (*sic*) risk."
- d. "The preservation and protection of client equity is of the utmost importance at WFTC and this detail is factored into the trade plan via a monthly stop loss program."
- e. "[WFTC] also will automatically halt trading if a 25% loss were to occur in any account until the permission of the client is granted for further trading. WFTC believes that with a conservative investment approach to trading that losses should be minimal therefore providing a safe investment for all clients."
- f. "Forex is a 24-hour market. A trader may take advantage of all profitable conditions at anytime. There is always an opportunity to make money, especially when compared to (*sic*) the stock market, which is restricted by opening and closing bells."

24. The statements referred to in paragraph 23 are false and/or misleading for the following reasons:

- a. The trading strategies employed by Frisone were not "conservative" because Frisone did not employ stop loss orders nor did he trade with leverage ratios of 3:1 or less.
- b. Frisone and WFTC traded accounts, without customer authorization, at a leverage ratio far greater than 3:1. In fact, some accounts were traded at a 40:1 ratio without customer authorization.
- c. The trading strategies employed by Frisone for WFTC customers did not "enhance[] profit potential and reduce[] risk." because Frisone did not employ stop loss orders nor did he trade with leverage ratios of 3:1 or less.
- d. Frisone and WFTC did not employ stop loss orders in their trading program.
- e. Frisone and WFTC continued trading of customer accounts after losses of 25% or more occurred even though they lacked customer authorization to continue trading.

25. WFTC promotional materials also stated that customers would have "24 hour complete account access including all activities and current account balances" via the Internet.

However, WFTC customers often did not have any access, let alone 24 hour access, to their account information via the Internet.

(c) Windsorforex.com Website

26. During the relevant time period, the Windsorforex.com website materially misrepresented the likely profits from and risks associated with foreign currency trading.

27. Among the statements that materially misrepresented the likely profits from and risks associated with foreign currency trading on the Windsorforex.com website were the following:

- a. "We have a 15 year track record of successful trading in the Forex market. (Anthony M. Frisone) *"President and Head Trader"*"
- b. "Clients that started with us in 1998 have enjoyed over an 18% annual net return for the five-year period through the 1st quarter of 2003."
- c. "We take the most conservative approach to this market of any firm in our industry. Our standard leverage for trading is 3:1, Positions are taken with stops programmed to maximize down-side risk at 1.05%."

28. While the material misrepresentations referred to in paragraph 27 were subsequently removed from the Windsorforex.com website, it continued materially to misrepresent the risks involved in foreign currency trading during the relevant time period by stating that "[a]ll FOREX trading is regulated by the CFTC."

(d) Frisone's Fraudulent Solicitations

29. In addition to the misleading statements made by WFTC AEs and the fraudulent claims contained in the promotional materials, Frisone also made false and misleading statements to prospective customers and customers. For example, Frisone told one customer that his funds would be leveraged at a ratio of no more than 3:1, and that all trading in his account

would be halted if losses exceeded 25% of his initial deposit. Frisone told another customer that he would double her investment in approximately six months.

30. Frisone knew that these statements were false and misleading because he employed leverage far exceeding a three to one ratio in trading customer accounts, and he continued to trade customer funds well past the 25% loss limit, trading many customers' accounts until almost all of their deposit had been consumed by commissions and losses.

2. WFTC's Lulling of Customers

31. On at least two occasions, WFTC—through Frisone—fraudulently lulled customers into continued trading in their accounts by guaranteeing that WFTC would recoup the losses incurred therein through further trading in foreign currency futures. For example, in an email to a customer that had incurred significant losses in its account, Frisone wrote, "I know I can get it [*i.e.*, the losses in the account] back but it would take a while" and went on to state, "I will make this better."

3. WFTC's Unauthorized Trading of Customer Accounts

32. On at least two occasions, WFTC—through Frisone—caused transactions to be effected in a customer's account after the customer had sent WFTC written instructions to cease all trading activity in the account. In one instance, the customer sent a fax to WFTC on June 26, 2003 instructing WFTC to close and liquidate his account. WFTC, however, continued to effect trades in the account until July 9, 2003. The trades effected during that period caused the account balance to decline from \$5,387.42 to \$587.58.

B. Frisone is the Controlling Person of WFTC

33. At all relevant times, Frisone was the president and owner of WFTC, as well as its sole trader. He controlled and was responsible for WFTC's overall operations.

34. Frisone personally placed all the trades effected in WFTC customer accounts with COESfx.

35. On a number of occasions, Frisone assisted WFTC AEs in soliciting prospective customers. Frisone also dealt with complaints by customers who had lost money as a result of trading in their accounts at COESfx.

C. WFTC acted as COESfx's Agent

36. Since at least late March 2003, WFTC acted as COESfx's agent in soliciting customers to open accounts with COESfx for the purpose of speculating in foreign currency futures.

37. On March 28, 2003, Frisone and Michael Wiener on behalf of WFTC and COESfx, respectively, jointly presented an investment seminar on the trading of foreign currencies to members of the public in Boca Raton, Florida.

38. From April 2003 through March 2004, WFTC introduced at least 20 customers to COESfx. Of these customers, thirteen were newly solicited by WFTC to open accounts with COESfx while the remaining seven transferred existing accounts to COESfx that were held at Universal FX, Inc. over which WFTC had trading authority. Based upon WFTC's referrals COESfx accepted \$336,204.12 in customer funds.

39. WFTC used COESfx account opening documents, its power of attorney form and other documentation that customers needed to trade foreign currency futures contracts at COESfx. In addition, customers sent their funds to COESfx. COESfx was also supposed to provide customers with daily and monthly account statements on its website. Furthermore, customers often contacted COESfx to resolve complaints concerning WFTC's delay in providing them with account statements.

V. **VIOLATIONS OF THE COMMODITY EXCHANGE ACT**

COUNT I

**Violations of Section 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. § 6b(a)(2)(i) and (iii) (2002):
Fraud and Deceit in the Sale of Futures Contracts**

40. The allegations set forth in paragraphs 1 through 39 are realleged and incorporated herein by reference.

41. By engaging in the foregoing fraudulent acts and practices alleged in this Complaint, Defendants WFTC, by and through its employees and agents, and Frisone, 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)(2) of the Act, 7 U.S.C. § 6b(a)(2) (2002), have: (a) cheated or defrauded or attempted to cheat or defraud other persons; and (b) willfully deceived or attempted to deceive other persons, all in violation of Section 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. § 6b(a)(2)(i) and (iii) (2002).

42. Each misrepresentation, omission, actual or attempted act to cheat or defraud, 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) (2002).

43. Frisone directly or indirectly controlled WFTC and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting WFTC's violations alleged in this Complaint. Frisone is therefore liable for each of WFTC's violations of the Act pursuant to Section 13(b) of the Act, 7 U.S.C. §13c(b) (2004).

44. The acts constituting WFTC's violations alleged in this Complaint were performed in WFTC's capacity as an agent of COESfx. Therefore, COESfx is liable as a

principal for each of WFTC's violations pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2002), and Commission Regulation 1.2, 17 C.F.R. § 1.2 (2004).

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:

- A. Find that Defendants violated Section 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. § 6b(a)(2)(i) and (iii) (2002);
- B. Enter a permanent injunction prohibiting the Defendants and any other person or entity associated with them, or any successor thereof, from engaging in conduct violative of the provisions of the Act as alleged in this Complaint, and from engaging in any activity relating to commodity interest trading, including but not limited to, soliciting, accepting or receiving funds, revenue or other property from any person, giving advice for compensation, or soliciting prospective customers, related to the purchase and sale of any commodity futures or options on commodity futures contracts;
- C. Enter orders of permanent injunction restraining and enjoining Defendants 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 Defendants, wherever

located, including all such records concerning Defendants' business operations; and

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 Defendants, wherever located, including all such records concerning Defendants' business operations.

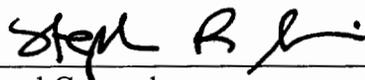
- D. Enter an order of permanent injunction restraining and enjoining Defendants Frisone and WFTC and all persons insofar as they are acting in the capacity of their agents, servants, successors, assigns, and attorneys, and all persons insofar as they are acting in active concert or participation with them who receive actual notice of such order by personal service or otherwise, from directly or indirectly, 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 Defendants Frisone and WFTC.
- E. Enter an order directing the Defendants and any successors thereof, to disgorge, pursuant to such procedure as the Court may order, all benefits received from the acts or practices which constituted violations of the Act, as described herein, and interest thereon from the date of such violations;

- F. Enter an order directing the Defendants to make full restitution to every customer whose funds were received by them 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;
- G. Enter an order directing the Defendants to pay a civil monetary penalty in the amount of not more than the higher of \$120,000 or triple the monetary gain to each Defendant for each violation of the Act or Regulations;
- H. Enter an order requiring Defendants to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2412(a)(2); and
- I. such other and further remedial ancillary relief as the Court may deem appropriate.

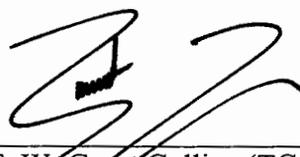
Dated: 5/26/05

Respectfully submitted,

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