

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

## CIVIL MINUTES - GENERAL

Case No. CV 08-05593-RGK (PLAx) Date February 8, 2011

Title COMMODITY FUTURES TRADING COMMISSION v. BAME, et al.

Present: The Honorable R. GARY KLAUSNER, UNITED STATES DISTRICT JUDGE

Sharon L. Williams

Not Reported

N/A

Deputy Clerk

Court Reporter / Recorder

Tape No.

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

Not Present

Not Present

**Proceedings: (IN CHAMBERS) Order Re: Plaintiff's Motion for Restitution and a Civil Monetary Penalty (DE 143)****I. FACTUAL BACKGROUND**

Plaintiff Commodity Futures Trading Commission ("CFTC") is the independent federal regulatory agency of the United States responsible for administering and enforcing the Commodity Exchange Act ("CEA"), 7 U.S.C. § 1 *et seq.* Defendant Robert D. Bame ("Bame") is the sole manager and operator of Defendant Forward Investment Group ("Forward") (collectively, "Defendants"). On May 29, 2009, Bame pled guilty to one violation of 18 U.S.C. § 1343 (fraud by wire, radio, or television) and two violations of 18 U.S.C. § 1957 (engaging in monetary transactions in property derived from specified unlawful activity). The convictions arose out of conduct involving Forward. On October 6, 2009, Bame was sentenced to 97 months in prison for each conviction count, to be served concurrently. He was also ordered to pay restitution in the amount of \$16,038,568.68.

The present civil action was filed before Bame pled guilty to the violations listed above. However, the Court stayed the proceedings in this case pending the outcome of the criminal trial. After Bame pled guilty to the above-mentioned crimes, civil proceedings resumed. In its March 5, 2010 order, the Court granted summary judgment to CFTC on its claims against both Bame and Forward under 7 U.S.C. §§ 6b(a)(2)(B), 6o(1)(A), and 6o(1)(B). Following this finding of liability, the Court entered a permanent injunction against Defendants on March 18, 2010. That order reserved the issues of restitution and civil penalties for later determination upon motion of the CFTC. On December 27, 2010, CFTC filed the Motion for Restitution and a Civil Monetary Penalty ("Motion") that is presently before the Court.

**II. DISCUSSION**

Plaintiff asserts that restitution in the amount of \$16,038,568.68 and a civil penalty of \$30,887,006 are proper remedies for Defendants’ violations of the CEA. The Court agrees, so CFTC’s Motion is **GRANTED**.

**A. Restitution is Warranted to Make Defendants’ Victims Whole**

Unless a statute specifically or by inescapable inference commands the contrary, a court may use its equitable powers to afford complete relief. *CFTC v. Co Petro Mktg. Grp., Inc.*, 680 F.2d 573, 584 (9th Cir. 1982). Under the CEA, 7 U.S.C. § 13a-1, a district court is empowered to “take such action as is necessary to remove the danger of violation.” *Id.* at 583. As the Supreme Court has noted with respect to restitution, “[f]uture compliance may be more definitely assured if one is compelled to restore one’s illegal gains.” *Porter v. Warner Holding Co.*, 238 U.S. 395, 400 (1946). Thus, “a district court possesses the authority to order restitution pursuant to the Commodity Exchange Act.” *CFTC v. Hunt*, 591 F.2d 1211, 1223 (7th Cir. 1979).

Restitution is meant to “restore the status quo.” *Porter*, 238 U.S. at 402. The Court accomplishes this by “ordering the return of that which rightfully belongs to the [victims].” *Id.* In this case, the victims were wrongfully deprived of \$16,038,568.68, so restitution is **GRANTED** in that amount.

**B. Defendants’ Flagrant Conduct Necessitates Substantial Civil Penalties**

To redress violations of the CEA, 7 U.S.C. § 13a-1(d)(1)(A) provides for “a civil penalty in the amount of not more than . . . triple the monetary gain to the [violation] for each violation.” In cases where violators of the CEA have defrauded their customers, federal courts have assessed civil penalties of two or three times the violators’ gains. *See, e.g., CFTC v. Carnegie Trading*, 450 F. Supp. 2d 788, 807-08 (N.D. Ohio 2006) (ordering a civil penalty of three times the monetary gain); *CFTC v. Equity Fin. Grp., LLC*, 537 F. Supp. 2d 677, 700 (D.N.J. 2008) (ordering a civil penalty of twice the monetary gain), *aff’d* 572 F.3d 150 (3rd Cir. 2009), *cert. denied*, 130 S.Ct. 1737 (2010).

In light of the Defendants’ flagrant and fraudulent conduct, the Court exercises its discretion to **GRANT** a civil penalty of twice Defendants’ monetary gain, or \$30,887,006.

**III. CONCLUSION**

For the foregoing reasons, Plaintiff’s Motion for Restitution and a Civil Monetary Penalty is **GRANTED**. The Court awards restitution in the amount of \$16,038,568.68 and a civil penalty of \$30,887,006.

**IT IS SO ORDERED.**

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