

FILED
CHARLOTTE, NC

MAR 17 2009

U.S. DISTRICT COURT
WESTERN DISTRICT OF NC

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

U.S. COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

v.

BARKI, LLC, a North Carolina limited
liability company, and
BRUCE C. KRAMER, an individual,

Defendants, and

RHONDA A. KRAMER, an individual, and
FOREST GLEN FARM, LLC, a North
Carolina limited liability company,

Relief Defendants.

CASE NO. 3:09cv106

**COMPLAINT FOR INJUNCTIVE RELIEF, CIVIL MONETARY
PENALTIES, AND OTHER EQUITABLE RELIEF**

Plaintiff U.S. Commodity Futures Trading Commission ("Commission" or "CFTC")
alleges as follows:

I. SUMMARY

1. Since at least June 2004 through February 2009 ("relevant period"), defendants Barki LLC ("Barki") and Bruce C. Kramer ("Kramer") (collectively "Defendants") fraudulently solicited at least \$40 million from at least 79 individuals or entities for the purported purpose of trading off-exchange foreign currency ("forex" or "foreign currency") on their behalf. As

alleged below, Defendants sustained massive trading losses, operated a “Ponzi” scheme and misappropriated millions of dollars.

2. In their solicitations, Defendants claimed success in trading forex, represented that there would be little risk by trading using a proprietary trading system designed by Kramer, and lured prospective customers with promises of monthly returns of at least 3 to 4 percent. Throughout the relevant period, Defendants provided monthly account statements, including most recently a January 31, 2009 statement, and annual statements to Barki customers representing that Defendants were profitably trading forex on their behalf and reflecting that Kramer was earning fees on the purported profits.

3. In reality, however, Defendants deposited only approximately \$17.6 million of customer funds into forex trading accounts, sustained trading losses of approximately \$10 million, and misappropriated the remaining funds for personal uses or to make purported profit payments or return principal to existing customers, in the manner akin to a “Ponzi” scheme. Upon information and belief, Defendants used customer funds to finance such personal expenses, as the purchase of a 48 acre horse farm, a 6,000 square foot home, a Maserati sports car and other luxury cars, artwork, a race horse and extravagant parties.

4. Through the issuance of the monthly and annual statements, Defendants concealed their on-going fraud and misappropriation from customers. Recently, as customers began to ask questions in the wake of the multi-billion dollar Ponzi scheme by Bernie Madoff, Defendants went to extreme lengths to reassure customers that their funds were safe, including creating at times fictitious trading statements purportedly from FXCM, LLC (“FXCM”), a Futures Commission

Merchant (“FCM”) registered with the Commission where Defendants maintained their trading accounts.

5. The falsified FXCM statements falsely reflected that Defendants had approximately \$59 million in assets and were profitably trading. In fact, by the end of February 2009, the Barki trading accounts held only approximately \$600,000. With the sudden death of Kramer in February 25, 2009, Defendants’ fraud became known.

6. By virtue of this conduct and the further conduct described herein, Defendants have engaged, are engaging, or are about to engage in acts and practices in violation of anti-fraud provisions of the Commodity Exchange Act (the “Act”), 7 U.S.C. §§ 1 *et seq.* (2006), as amended by the Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, Title XIII (the CFTC Reauthorization Act of 2008 (“CRA”), §§ 13101-13204, 122 Stat. 1651 (enacted June 18, 2008), and the Commission’s Regulations (“Regulations”), 17 C.F.R. §§ 1.1 *et seq.* (2008).

7. Kramer, as an agent of Barki, committed the acts and omissions described herein within the course and scope of his employment at or agency with Barki; therefore, Barki is liable under Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006), and Regulation 1.2, 17 C.F.R. § 1.2 (2008), for violations of the Act and Regulations committed by Kramer.

8. Kramer is a controlling person of Barki and failed to act in good faith or knowingly induced, directly or indirectly, the acts constituting the violations. Kramer is therefore liable for Barki’s violations of the Act and Regulations, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006).

9. Relief defendants Rhonda A. Kramer (“R. Kramer”) and Forest Glen Farm, LLC (“Forest Glen”) (collectively, the “Relief Defendants”), who are not charged with violations of

the Act and/or Regulations, each received funds and assets from Defendants to which they hold no legitimate interest or entitlement and which were derived from Defendants' fraudulent and violative acts. The Relief Defendants therefore, must return and repay these funds.

10. Accordingly, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2006), and Section 2(c)(2) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 2(c)(2), the Commission brings this action to enjoin Defendants' unlawful acts and practices and to compel their compliance with the Act and Regulations and to further enjoin Defendants from engaging in any commodity-related activity. In addition, the Commission seeks civil monetary penalties and remedial ancillary relief, including, but not limited to, trading and registration bans, restitution, disgorgement, rescission, pre- and post-judgment interest, and such other relief as the Court may deem necessary and appropriate.

11. Unless restrained and enjoined by this Court, Defendants are 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

12. Section 6c(a) of the Act, 7 U.S.C. § 13a-1 (2006), 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 the Act or any rule, regulation, or order thereunder.

13. The Commission has jurisdiction over this matter as alleged herein pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2006), and Section 2(c)(2) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 2(c)(2).

14. Venue properly lies with the Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2006), because Defendants transacted business in the Western District of North Carolina and certain of the transactions, acts, practices, and courses of business alleged occurred, are occurring, and/or are about to occur within this District.

III. PARTIES

15. Plaintiff **Commodity Futures Trading Commission** is an independent federal regulatory agency that is charged with the administration and enforcement of the Act, 7 U.S.C. §§ 1 *et seq.* (2006), as amended by the CRA, and the Regulations promulgated thereunder, 17 C.F.R. §§ 1.1 *et seq.* (2008). The Commission maintains its principal office at Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

16. **Barki, LLC** is a North Carolina limited liability company formed on June 14, 1999, with its principal place of business at 5917 Foxcrest Drive, Mint Hill, North Carolina, 28227 for the time period of August 2002 through April 2007 and at 9939 Troutman Road, Midland, North Carolina, 28107 for the time period of April 2007 until present. Barki has never been registered with the CFTC in any capacity. Barki is not a financial institution, registered broker dealer (or their associated person), insurance company, bank holding company, or investment bank holding company.

17. **Bruce C. Kramer** resided in Midland, North Carolina and was a member-manager of Barki since 1999. Kramer had never been registered with the CFTC. On February 25, 2009, Kramer died. Upon information and belief, a death certificate has not been issued and an administrator or executor of the Estate of Kramer has not been appointed. The Commission will amend the complaint to name the administrator of the Estate of Kramer once appointed.

18. Relief Defendant **Rhonda A. Kramer** resides in Midland, North Carolina. R. Kramer has been a member-manager of Barki since June 1999 and has never been registered with the CFTC. She is the widow of Kramer.

19. Relief Defendant **Forest Glen Farm, LLC** is a North Carolina Limited Liability Company, with the same principal place of business as the present principal place of business of Barki. Kramer is Forest Glen's registered agent; Forest Glen's two managers are Kramer and R. Kramer. Forest Glen has never been registered with the Commission in any capacity.

IV. FACTS

Defendants' Solicitation of \$40 Million from Customers to Trade Forex

20. In June 1999, Kramer formed Barki to engage in financial and management consulting and trading. Barki has two members, Kramer and his wife, R. Kramer, each holding a 50% ownership interest in Barki. Upon information and belief, at least during the relevant period, Kramer and R. Kramer had no other employment or significant source of income.

21. Throughout the relevant period, Defendants solicited, directly or indirectly, at least 79 individuals and entities to trade foreign currency through the Defendants.

22. At least certain of Defendants' customers, if not all, were individuals who each had total assets of less than \$5 million.

23. In their oral solicitations, Defendants, directly and through others, represented that they would trade foreign currency using a proprietary trading system developed by Kramer. Kramer, who claimed to be an expert mathematician, told customers and prospective customers that his trading system was a software program that allowed him to evaluate market trends and situations, aiding him in making successful trades.

24. Defendants claimed great success trading foreign currency, boasting to customers and prospective customers that Defendants never had a month wherein they lost money. Kramer touted his years as a successful trader for himself and for Barki, claiming to one customer that he “never lost a dollar of principal.”

25. Defendants, directly and through others, also represented to prospective customers that Kramer’s trading program involved very little risk because it prevented big losses, thereby limiting investors’ exposure to risk, and that trading foreign currency with Barki was safer than investments in stocks.

26. Defendants also informed prospective customers that Kramer would earn a fee that would be a set percentage based on customers’ supposed earnings.

27. Defendants provided prospective customers with a Barki trading agreement for them to execute (the “Trading Agreement”).

28. The Trading Agreement provided that all funds would be traded through Barki and customers would receive monthly statements and year-end “K-1” showing any profits or losses allocated to the customers. The Trading Agreement also provided that Kramer’s fee would vary depending upon the amount of customers’ supposed earning. For yearly customer profits up to 100%, Kramer’s percentage of profits would be 20%; Kramer was further entitled to half of customer profits over 100% for any year.

29. The Trading Agreement also reinforced Defendants’ claims concerning Kramer’s proprietary system and indicators, stating that Kramer’s system “works equally well in both up and down markets.”

30. Defendants further failed to disclose customers and prospective customers that they were operating a Ponzi scheme and misappropriating Barki customer funds.

31. Customers and prospective customers relied on Defendants' representations in making their decisions to invest with Defendants.

32. Defendants instructed Barki customers to write checks or send money directly to a bank account in the name of Barki. Upon information and belief, Kramer and/or R. Kramer are signatories on the Barki bank account(s).

Defendants Sustained Net Losses of \$10 Million Trading Forex

33. Between January 2003 and September 2008, Defendants opened four trading accounts at FXCM in the name of Barki. Defendants opened these accounts as corporate proprietary trading accounts.

34. The Defendants traded foreign currency on a margined or leverage basis in those accounts. The foreign currency transactions conducted by Defendants at FXCM neither resulted in delivery within two days nor created an enforceable obligation to deliver between a seller and a buyer that had the ability to deliver and accept delivery, respectively, in connection with their lines of business. Rather, these foreign currency contracts remained open from day to day and ultimately were offset without anyone making or taking delivery of actual currency (or facing an obligation to do so).

35. Of the at least \$40 million solicited by Defendants, Defendants deposited approximately \$17.6 million into the Barki trading accounts at FXCM.

36. Contrary to their representations, Defendants were not successful foreign currency traders. In the Barki trading accounts at FXCM, Defendants sustained trading losses of

approximately \$10.6 million and withdrew approximately \$6 million. In fact, Defendants sustained trading losses almost every single month for almost a 6 year period.

Defendants Used Remaining Funds to Pay Customers and For Personal Expenses

37. Defendants misappropriated customer funds not lost in trading to pay purported profits or return principal to Barki customers or, upon information and belief, to finance the personal expenses of Kramer and R. Kramer, such as a 48-acre horse farm and 6,000 square foot residence, luxury automobiles, including a Maserati, artwork, a race horse, and extravagant parties.

38. Relief Defendants received funds from Defendants that were derived from Defendants' fraudulent and violative acts. Upon information and belief, relief Defendants did not provide any legitimate services or have any legitimate entitlement to the funds they received from Defendants.

39. The location and accounting of the remaining customer funds is not completely known at this time.

Defendants Concealed Losses and Misappropriation With False Statements

40. Defendants, through false representations and statements by Kramer, concealed their unsuccessful trading and misappropriation by providing oral and written reassurances that Defendants were actually and profitably trading forex on behalf of customers. Defendants sent false monthly account statements to Barki customers showing consistent returns at least three to four percent, and at times higher percentages.

41. Defendants never reported a losing month to customers even though Defendants' actual trading resulted in net losses in almost every month.

42. Defendants also reported on the monthly statements debits from the individual customer's accounts for purported 20% management fees for Kramer earned on the purported profitable trading.

43. Relying on the consistently profitable monthly and annual account statements, existing customers invested additional funds with Defendants, and prospective customers made the decision to invest with Defendants after hearing of the consistently monthly returns existing customers were achieving.

44. To further conceal and perpetuate their fraud, Defendants recently told at least certain customers that Barki held approximately \$59 million in the Barki trading accounts at FXCM when in fact Barki held only \$1 million or less in those accounts. Defendants documented that claim of \$59 million to certain customers by creating fictitious FXCM trading records.

45. Despite the trading losses and the unaccounted for funds, Defendants, through Kramer, still claimed to Barki customers, through at least February 2009, that their funds would be returned if so requested. These statements were and continue to be false. Defendants did not sufficient funds to return all customers' principal and purported returns on investment.

46. On February 25, 2009, Kramer committed suicide in Barki's offices.

V. VIOLATIONS OF THE COMMODITY EXCHANGE ACT AND COMMISSION REGULATIONS

Violations of Sections 4b(a)(2)(A)-(C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(2)(A)-(C), and Regulations 1.1(b)(1)-(3), 17 C.F.R. §§ 1.1(b)(1)-(3) (2008) (Fraudulent Solicitation, Misappropriation and False Statements)

47. The allegations set forth in paragraphs 1 through 46 are realleged and incorporated herein by reference.

48. Sections 4b(a)(2)(A)-(C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(2)(A)-(C), make it unlawful

for any person, in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery, or other agreement, contract, or transaction subject to paragraphs (1) and (2) of section 5a(g), that is made, or to be made, for or on behalf of, or with, any other person, other than on or subject to the rules of a designated contract market – (A) to cheat or defraud or attempt to cheat or defraud the other person; (B) willfully to make or cause to be made to the other person any false report or statement or willfully to enter or cause to be entered for the other person any false record; [or] (C) willfully to deceive or attempt to deceive the other person by any means whatsoever in regard to any order or contract or the disposition or execution of any order or contract, or in regard to any act of agency performed, with respect to any order or contract for or, in the case of paragraph (2), with the other person.

Sections 4b(a)(2)(A)-(C) of the Act, as amended by the CRA, apply to Defendants' foreign currency transactions "as if" they were a contract of sale of a commodity for future delivery.

Section 2(c)(2)(C)(iv) of the Act, as amended by the CRA, to be codified at 7 U.S.C.

§ 2(c)(2)(C)(iv).

49. Regulations 1.1(b)(1)-(3), 17 C.F.R. §§ 1.1(b)(1)-(3) (2008), similarly make it unlawful for any person, in connection with foreign currency transactions subject to the Act

- (1) To cheat or defraud or attempt to cheat or defraud any person;
- (2) Willfully to make or cause to be made to any person any false report or statement or cause to be entered for any person any false record; or
- (3) Willfully to deceive or attempt to deceive any person by any means whatsoever.

50. As set forth above, from at least June 18, 2008 through the present, in or in connection with foreign currency contracts, made, or to be made, for or on behalf of, or with, other persons, Defendants cheated or defrauded or attempted to cheat or defraud customers or prospective customers; willfully made or caused to be made false reports or statements to another person; willfully deceived or attempted to deceive customers or prospective customers by, among other things, knowingly (i) misappropriating customer funds that purportedly were to be used to trade forex; (ii) misrepresenting forex trading activity that purportedly occurred on behalf of Barki customers, as well as purported returns Barki customers would and did receive on their forex investments; (iii) failing to disclose that Defendants were operating a Ponzi scheme and misappropriating customer funds; (iv) making, causing to be made, and distributing reports and statements to Barki customers that contained false account values, false returns on investment, and other misinformation; and (iv) misrepresenting that Barki had sufficient funds on hand to return all customers' principal, all in violation of Sections 4b(a)(2)(A)-(C) of the Act as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(2)(A)-(C), and Regulations 1.1(b)(1)-(3), 17 C.F.R. §§ 1.1(b)(1)-(3) (2008).

51. Barki, by and through its agent, and Kramer engaged in the acts and practices described above knowingly or with reckless disregard for the truth.

52. Kramer controlled Barki, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, Barki's conduct alleged in this Complaint; therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006), Kramer is liable for Barki's violations of Sections 4b(a)(2)(A)-(C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(2)(A)-(C), and Regulations 1.1(b)(1)-(3), 17 C.F.R. §§ 1.1(b)(1)-(3) (2008).

53. The foregoing acts, misrepresentations, omissions, and failures of Kramer occurred within the scope of his employment, office or agency with Barki; therefore, Barki is liable for these acts, misrepresentations, omissions, and failures pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006), and Regulation 1.2, 17 C.F.R. § 1.2 (2008).

54. Each act of misappropriation, misrepresentation or omission of material facts, and making or causing to be made a false report or statement, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Sections 4b(a)(2)(A)-(C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(2)(A)-(C), and Regulations 1.1(b)(1)-(3), 17 C.F.R. §§ 1.1(b)(1)-(3) (2008).

COUNT TWO

Disgorgement of Funds from the Relief Defendants

55. Paragraphs 1 through 54 are re-alleged and incorporated herein.

56. Defendants have defrauded Barki customers.

57. The Relief Defendants, R. Kramer and Forest Glenn, received funds as a result of the Defendants' fraudulent conduct and have been unjustly enriched thereby.

58. Relief Defendants have no legitimate entitlement to or interest in all of the funds received as a result of the Defendants' fraudulent conduct.

59. Relief Defendants should be required to disgorge funds up to the amount they received from Defendants' fraudulent conduct or the value of those funds that she may have subsequently transferred to third parties.

VI. RELIEF REQUESTED

WHEREFORE, the Commission respectfully requests that the Court, as authorized by Section 6c of the Act, 7 U.S.C. § 13a-1 (2006), and pursuant to its own equitable powers, enter:

a) An order finding that Defendants violated Sections 4b(a)(2)(A)-(C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(2)(A)-(C), and Regulations 1.1(b)(1)-(3), 17 C.F.R. §§ 1.1(b)(1)-(3) (2008);

b) An order of permanent injunction prohibiting Defendants and any of their agents, servants, employees, assigns, attorneys, and persons in active concert or participation with any defendant, including any successor thereof, from engaging, directly or indirectly:

(i) in conduct in violation of Sections 4b(a)(2)(A)-(C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(2)(A)-(C), and/or Regulations 1.1(b)(1)-(3), 17 C.F.R. §§ 1.1(b)(1)-(3) (2008); and

(ii) in any activity related to trading in any commodity, as that term is defined in Section 1a(4) of the Act, 7 U.S.C. § 1a(4) (2006) (commodity interest), including but not limited to, the following:

(aa) trading on or subject to the rules of any registered entity, as that term is defined in Section 1a(29) of the Act, 7 U.S.C. § 1a(29) (2006);

(bb) entering into any commodity interest transactions for his own personal account, for any account in which he has a direct or indirect interest and/or having any commodity interests traded on his behalf;

(cc) engaging in, controlling or directing the trading for any commodity interest account for or on behalf of any other person or entity, whether by power of attorney or otherwise;

(dd) soliciting, receiving, or accepting any funds in connection with the purchase or sale of any commodity interest contract;

(ee) applying for registration or claiming exemption from registration with the Commission in any capacity, and engaging in any activity requiring such registration or exemption from registration with the Commission, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2008), or acting as a principal, agent, or any other officer or employee of any person registered, exempted from registration or required to be registered with the Commission, except as provided for in Regulation 4.14(a)(9); and

(ff) engaging in any business activities related to commodity interest trading;

c) An order directing Defendants and rRelief Defendants, as well as any successors to any defendant or relief 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 pre- and post-judgment interest thereon from the date of such violations;

d) An order directing Defendants to make full restitution to every person or entity whose funds Defendants received or caused another person or entity to receive as a result of acts and practices that constituted violations of the Act, as described herein, and pre- and post-judgment interest thereon from the date of such violations;

e) An order directing Defendants and any successors thereof, to rescind, pursuant to such procedures as the Court may order, all contracts and agreements, whether implied or express, entered into between them and any of the customers whose funds were received by them as a result of the acts and practices which constituted violations of the Act, as described herein;

f) An order directing each defendant to pay a civil monetary penalty for each violation of the Act and Regulations described herein, plus post-judgment interest, in the amount of the higher of: \$140,000 for each violation of the Act and Regulations committed on or after October 23, 2008, \$130,000 for each violation of the Act committed on or between October 23, 2004; or triple the monetary gain to each defendant for each violation of the Act and Regulations described herein, plus post-judgment interest;

g) An order requiring Defendants to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2412(a)(2) (2006); and

h) Such other and further relief as the Court deems proper.

Dated: March 17, 2009.

Respectfully submitted by,



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