

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

COMMODITY FUTURES TRADING :
COMMISSION, :

Plaintiff, :

v. :

JOSEPH S. FORTE, :

Defendant. :

CIVIL NO. 09-64

FILED

SEP 30 2009

MICHAEL E. KUNZ, Clerk
By _____ Dep. Clerk

**CONSENT ORDER OF PERMANENT INJUNCTION AND OTHER
EQUITABLE RELIEF AGAINST DEFENDANT JOSEPH S. FORTE**

On January 7, 2009, Plaintiff Commodity Futures Trading Commission (“Commission or CFTC”) filed an enforcement action against Defendant Joseph S. Forte (“Forte”), seeking injunctive and other equitable relief, and the imposition of restitution and civil monetary penalties, for violations of the Commodity Exchange Act, as amended (“Act”), 7 U.S.C. §§ 1 *et seq.* (2006), and the Commission Regulations promulgated thereunder (“Regulations”), 17 C.F.R. §§ 1 *et seq.* (2008). (See, Complaint for Permanent Injunction, Civil Monetary Penalties and Other Equitable Relief (“Complaint”)(09-64, Doc. No. 1))

On January 7, 2009, this Court entered a Consent Order of Preliminary Injunction and Other Equitable Relief, prohibiting further violations of the Act by Defendant Forte, freezing assets under his control, ordering an accounting of all assets, prohibiting the transfer, dissipation or disposal of assets, permitting the Commission access to all books and records, prohibiting the destruction of documents, and authorizing expedited discovery. (09-64, Doc. No. 4)

On March 30, 2009, this Court entered an order appointing a Receiver and taking exclusive jurisdiction over all of Defendant's assets ("Receivership Assets"). (09-64, Doc. Nos. 21, 22)

I.

CONSENTS AND AGREEMENTS

1. To effect settlement of the matters alleged in the Complaint ("this action"), without a trial on the merits or any further judicial proceedings, Defendant Forte consents to the entry of this *Consent Order of Permanent Injunction and Other Relief Against Defendant Joseph S. Forte* ("Order").

2. Defendant Forte admits that this Court has jurisdiction over him and the subject matter of this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2006), 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.

3. Defendant Forte admits that venue properly lies with this Court pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2006), in that certain of the acts and practices alleged in the Complaint occurred in this District.

4. In addition, Defendant Forte waives: (a) any and all claims that they may possess under the Equal Access to Justice Act (EAJA), 5 U.S.C. § 504 (2006) and 28 U.S.C. § 2412 (2006), and/or Part 148 of the Regulations, 17 C.F.R. §§ 148.1 *et seq.* (2009), relating to or arising from this action; (b) any and all claims that they may possess under the Small Business Regulatory Enforcement Fairness Act, 1996 HR 3136, Pub. L. 104-121, §§ 201-253, 110 Stat.

847 (1996), as amended by 2007 HR 2206, Pub. L. No. 110-28, § 8302, 121 Stat. 112 (2007), relating to or arising from this action; (c) any claim of Double Jeopardy based upon the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief; and (d) all rights of appeal from this Order.

5. By consenting to the entry of this Order, Defendant Forte admits to all of the findings made in this order and all the allegations contained in the Complaint. Further, Forte agrees that the allegations of the Complaint and all of the Findings of Fact made by this Court and contained in Part II of this Order shall be taken as true and correct and be given preclusive effect, without further proof, for the purpose of any bankruptcy proceeding filed by, on behalf of, or against Forte, whether inside or outside of the United States, or to enforce the terms of this Order. Forte also shall provide immediate notice of any bankruptcy filed by, on behalf of, or against him in the manner required by Part V, paragraph 4 of this Order.

6. Defendant Forte agrees that neither he nor any of his agents or employees under his authority or control shall take any action or make any public statement denying, directly or indirectly, any allegation in the Complaint or findings or conclusions in this Order or creating, or tending to create, the impression that the Complaint or this Order is without a factual basis; provided, however, that nothing in this provision shall affect Forte's (a) testimonial obligations; or (b) right to take legal positions in other proceedings to which the Commission is not a party. Forte shall take all necessary steps to ensure that all of his agents and employees under his authority or control understand and comply with this agreement.

7. Defendant Forte agrees that he has read this Order and agrees to this Order voluntarily and that no promise or threat has been made by the Commission or any member, officer, agent or representative thereof, or by any other person, to induce consent to this Order,

other than as set forth specifically herein.

8. Defendant Forte consents to the continued jurisdiction of this Court in order to implement and carry out the terms of all orders and decrees that may be entered herein, to entertain any suitable application or motion for additional relief within the jurisdiction of this Court, and to assure compliance with the Order.

9. The Court, being fully advised in the premises, finds that there is good cause for the entry of this Consent Order and that there is no just reason for delay. The Court therefore directs the entry of findings of fact, conclusions of law and a permanent injunction and ancillary equitable relief pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2006), as set forth herein.

II.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

FINDINGS OF FACT

A. Defendant Forte Fraudulently Operated a Commodity Pool (Forte LP)

1. Commencing in February 1995, and continuing through December 2008 (“relevant period”), Forte fraudulently operated a commodity pool, ran a Ponzi scheme, and otherwise misappropriated pool participant funds.

2. In February 1995, Forte and three other individuals decided to form a limited partnership to pool funds for the purpose of trading commodity futures. Forte was the general partner, and three other individuals were the first limited partners - or the pool participants - of Joseph Forte LP (the “pool” or “Forte LP”). The other three individuals decided to form Forte LP and participated in the commodity pool after Forte represented that since 1988, he had been successfully trading commodity futures.

3. Accordingly, on February 28, 1995, Forte and the initial three limited partners created the limited partnership, Forte LP. The four partners pooled together approximately \$200,000 to fund the limited partnership, thereby creating a commodity pool to trade commodity futures. According to the Limited Partnership Agreement (“LP Agreement”) for the Forte LP, Forte LP’s purpose was to “form a fund to invest in securities futures.” In setting forth the authority of Forte as the general partner, the LP Agreement authorizes him “[t]o manage the fund in order to leverage bond, currency, stock index and commodity futures markets with the aim of providing access to both the long and short portions of such markets.” An offering memorandum provided to at least one subsequent pool participant identifies the following commodity futures contracts the pool might trade: “S&P 500 stock index futures, foreign currency futures, U.S. 30-year Treasury bond futures, foreign bond futures and metal futures.”

4. The LP Agreement called for Forte to be paid a quarterly management fee of 2% of the value of the fund and an “incentive fee,” which is a sliding scale percentage of all of the pool’s earnings above 3%.

5. Forte was the unregistered Commodity Pool Operator (“CPO”) of Forte LP. Forte received, accepted and pooled funds from individuals and entities to trade commodity futures contracts. According to the LP Agreement, as general partner, Forte had sole and exclusive control of the Forte LP. Forte made day to day decisions concerning the operation of the partnership, including the opening and maintenance of any trading accounts, the trading of pool participant funds, and the handling and disposition of pool participant funds.

B. Defendant Forte Fraudulently Solicited Participants, Misrepresented Pool Returns And Failed To Disclose Trading Losses

6. Pool participants executed the LP Agreement as new limited partners in the Forte LP. Forte accepted and deposited funds from new and existing pool participants into bank

accounts held in the name of the pool. Forte directly and indirectly successfully solicited at least \$50 million from at least 76 individuals and entities to participate in the pool.

7. Forte solicited prospective pool participants directly and through others. Forte's solicitations relied on his numerous material misrepresentations and omissions concerning his trading, the operations of Forte LP, and his use of pool participants' funds.

8. In soliciting prospective and existing participants, Forte directly and through others, represented that he would use pool participant funds to trade commodity futures on their behalf, specifically, S&P 500 futures contracts. The S&P 500 futures contract trades on the Chicago Mercantile Exchange, a designated commodity futures contract market regulated by the CFTC.

9. Forte falsely represented, directly and indirectly, that he was a successful trader, that the pool was consistently profitable, achieving positive returns of approximately 20% to more than 36% annually, and that, over time, the pool had increased in value to more than \$154 million.

10. Forte intended that prospective pool participants would rely upon his purported trading record when making investment decisions.

11. Contrary to his claims of successful trading, Forte was never a successful trader either for himself or for the pool.

12. Before, during and after the formation of the pool, Forte sustained overall net losses from trading commodity futures in his personal trading accounts.

13. Throughout the relevant period, Forte transferred at least \$25.8 million of pool participant funds into the Forte LP trading account. In that account, Forte traded almost exclusively S&P 500 futures contracts.

14. From inception, Forte sustained overall losses trading in the pool's trading account. Based on available Futures Commission Merchant ("FCM") records, over a ten-year period, from 1998 through 2008, Forte had net trading losses of more than \$3 million. In his personal trading account, Forte conducted minimal trading and sustained overall losses of \$68,000.

15. During certain periods throughout the relevant period, Forte engaged in no trading in the pool's trading account. For example, from October 2004 through July 2007, Forte conducted minimal to no trading in the account. During that period, he deposited \$2.2 million and withdrew \$15.7 million from the pool's trading account. Throughout the relevant period, Forte withdrew at least \$23 million from the pool's trading account.

16. For approximately five years, between October 2002 and February 2007, no funds were deposited into the pool's trading account.

C. Defendant Forte Issued False Statements

17. Throughout the relevant period, Forte issued or caused to be issued false quarterly account statements to the pool participants. Those false statements reflect that the pool was steadily and consistently increasing in value by achieving profitable returns of approximately 20% to more than 36% annually from Forte's trading. Forte represented that the value of the pool had grown to over \$154 million.

18. The false account statements Forte issued or caused to be issued also reflected that Forte purportedly never had a losing quarter trading commodity futures for the pool.

19. Forte also issued or caused to be issued federal tax forms to pool participants setting out each participant's purported taxable profits from the pool.

20. Prospective pool participants decided to participate in the commodity pool, and existing pool participants decided to increase their participation, based on the purported consistently profitable returns. For example, one participant received a statement reflecting that, as of September 2008, his interest in the pool was valued at more than \$16 million. Based on that statement, between September and December 2008, the pool participant invested an additional \$570,000 in the pool.

D. Defendant Forte Misappropriated Pool Participants' Funds

21. Throughout the relevant period, Forte used pool participant funds to pay back principal or purported profits to existing pool participants, a classic Ponzi scheme. Forte also used pool participant's funds for business expenses and for personal use. By his estimation, Forte used approximately \$15 to \$20 million of pool funds to pay back pool participants.

22. Throughout the relevant period, despite sustaining trading losses, Forte paid himself management and incentive fees based on the artificial values of the pool. Forte estimates that he took \$10 to \$12 million of pool participant funds as his purported fees based on the fraudulently inflated value of the pool and its earnings. Based on the false account statements, the management and incentive fees totaled more than \$28 million.

23. On December 22, 2008, Forte admitted in a written confession to a United States Postal Inspector that he had lost pool participants' funds trading commodity futures, that he used pool participant funds to pay other participants and for business expenses, and that he paid himself over \$10 million based on false earnings.

24. Since at least 1995, and throughout the relevant period, Forte controlled a commodity futures trading account in the name of Forte LP at MF Global, formerly known as Man Financial. MF Global is a FCM registered with the CFTC. This account is the only known

trading account under the control of Forte LP. All activity related to this account, including, *inter alia*, all transfers, deposits, and withdrawals from at least 1995 involved funds raised for, derived from, or related to the Ponzi scheme operated by Forte.

25. Since at least September 2001, Forte also has held a personal commodity futures trading account at MF Global or its predecessors. All activity related to this account, including, *inter alia*, all transfers, deposits, and withdrawals from at least 2001 involved funds raised for, derived from, or related to the Ponzi scheme operated by Forte.

26. From as early as 1995, and throughout the relevant period, Forte controlled an account for Forte LP at Citizens Bank, N.A. or its predecessors. All activities related to this account, including, *inter alia*, all transfers, deposits, and withdrawals from at least 2001 involved funds raised for, derived from, or related to the Ponzi scheme operated by Forte.

27. All pool participants' funds have not been accounted for or located.

CONCLUSIONS OF LAW

1. This Court has jurisdiction over the subject matter of this action pursuant to Section 6c of the Act, which authorizes the Commission to seek injunctive relief against any person whenever it shall appear 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.

2. Venue properly lies with this Court pursuant to Section 6c of the Act.

3. This Court has personal jurisdiction over Defendant Forte, who has acknowledged service of the Complaint and consented to the Court's jurisdiction.

4. The Commission and Defendant Forte have agreed to this Court's retention of continuing jurisdiction over the Defendant for the purpose of enforcing the terms of this Order.

5. Commencing in at least February 1995, and continuing throughout the relevant period, Defendant Forte knowingly, willfully or recklessly: (1) cheated or defrauded or attempted to cheat or defraud other persons; (2) made or caused to be made false reports or statements to such other persons; and/or (3) deceived or attempted to deceive such other persons, in or in connection with orders to make, or the making of, any commodity for future delivery, for or on behalf of such persons, in violation of the anti-fraud provisions of Sections 4b(a)(2)(i)-(iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i)-(iii) (2006), with respect to acts occurring before June 18, 2008, and in violation of Sections 4b(a)(1)(A)-(C) of the Act 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”)), to be codified at 7 U.S.C. §§ 6b(a)(1)(A)-(C), with respect to acts occurring on or after June 18, 2008, the enacted date of the CRA, by, among other things:

- (1) using pool participant funds to pay principal and purported returns to other pool participants;
- (2) misappropriating pool participant funds to pay business expenses and for personal use;
- (3) falsely claiming to be a successful commodity futures trader;
- (4) falsely representing that he was profitably trading on behalf of the pool and pool participants; and
- (5) issuing or causing to be issued false account statements and reports reflecting positive returns for the pool and increases in the value of individual pool participants’ interests.

6. Each misrepresentation or omission of material fact, issuance of a false statement or report, and misappropriation, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Sections 4b(a)(2)(i)-(iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i)-(iii) (2006), with respect to acts occurring before June 18, 2008, and 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), with respect to acts occurring on or after June 18, 2008.

7. Commencing in at least February 1995, Defendant Forte acted as a CPO for the pool by soliciting, accepting or receiving funds from others and engaging in a business that is of the nature of an investment trust, syndicate, or similar form of enterprise, for the purpose of trading in commodities for future delivery on or subject to the rules of a contract market. As such, and based on the conduct described herein, Defendant Forte employed a device, scheme or artifice to defraud prospective and existing pool participants, or engaged in a transaction, practice or course of business that operated as a fraud or deceit upon prospective and existing pool participants in violation of Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (2006).

8. Each misrepresentation or omission of material fact, issuance of a false statement or report, and misappropriation, including but not limited to those specifically alleged herein, is a separate and distinct violation of Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (2006).

9. Defendant Forte acted as a CPO within the meaning of Section 1a(5) of the Act, 7 U.S.C. § 1a(5) (2006), and has used the mails or instrumentalities of interstate commerce in or in connection with a commodity pool as a CPO while failing to register as a CPO, in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2006).

10. Under the totality of the circumstances, there is a reasonable likelihood of future violations of the Act by Defendant Forte. Therefore, a permanent injunction should be issued in this action.

10. Based upon the foregoing facts and principles of equity, there is good cause for entry of an order directing Defendant Forte to make restitution to the defrauded investors in an amount to be determined by the parties and agreed to in a subsequent consent order, or as ordered by the

Court, pursuant to hearing or otherwise, together with prejudgment interest, plus post-judgment interest at the statutory rate, for distribution to investors in a manner approved by the Court.

11. There is good cause for entry of an order requiring Defendant Forte to pay a civil monetary penalty to be determined by the parties and agreed to in a subsequent consent order or as otherwise ordered by the Court.

III.

ORDER FOR PERMANENT INJUNCTION

NOW, THEREFORE, IT IS ORDERED THAT:

1. Defendant Forte shall be permanently restrained, enjoined, and prohibited from directly or indirectly engaging in conduct which violates: Sections 4b(a)(2)(i)-(iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i)-(iii) (2006), with respect to acts occurring before June 18, 2008; Sections 4b(a)(1)(A)-(C) of the Act as amended by the CRA, with respect to acts occurring on or after June 18, 2008; Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (2006); and Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2006), including, but not limited to, the conduct described in the Findings of Fact and Conclusions of Law, above.

2. Forte is permanently restrained, enjoined, and prohibited from engaging, directly or indirectly, in:

- a. 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));
- b. entering into any transactions involving commodity futures, options on commodity futures, commodity options (as that term is defined in Regulation 32.1(b)(1), 17 C.F.R. § 32.1(b)(1) (2009)) (“commodity options”), and/or foreign currency (as described in Sections 2(c)(2)(B) and/or 2(c)(2)(C)(i) of the Act as amended by the by the CRA, to be codified in 7 U.S.C. §§ 2(c)(2)(B) and/or 2(c)(2)(C)(i)) (“forex contracts”) for their own personal account or for any account in which they have a direct or indirect interest;
- c. having any commodity futures, options on commodity futures, commodity options, and/or forex contracts traded on their behalf;

- d. controlling or directing the trading for or on behalf of any other person or entity, whether by power of attorney or otherwise, in any account involving commodity futures, options on commodity futures, commodity options, and/or forex contracts;
 - e. soliciting, receiving or accepting any funds from any person for the purpose of purchasing or selling any commodity futures, options on commodity futures, commodity options, and/or forex contracts;
 - f. applying for registration or claiming exemption from registration with the CFTC 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) (2009); and
 - g. acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2009)), 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), 17 C.F.R. § 4.14(a)(9) (2009).
3. The injunctive provisions of this Order shall be binding on Forte, upon any person who acts in the capacity of an officer, agent, servant, employee, attorney, successor and/or assign of Forte, and upon any person who receives actual notice of this Order by personal service or otherwise insofar as he or she is acting in active concert or participation with Forte.

IV.

EQUITABLE RELIEF

IT IS FURTHER ORDERED THAT:

1. Defendant Forte shall pay full restitution to each participant in Forte LP, the amounts to be specified once the Receiver completes its determination as outlined in this Court's March 30, 2009 Order (09-64, Doc. No. 24). All payments made pursuant to this Order by Defendant Forte shall first be paid to the Receiver appointed by this Court in this action for distribution to pool participants and, after the termination of the Receivership, to the pool participants for restitution on a *pro rata* basis until those amounts are fully satisfied. All

payments after satisfaction of the restitution shall be applied to the civil monetary penalty amount set forth below.

2. Defendant Forte shall pay a civil monetary penalty in an amount to be specified at the time the parties specify the amount agreed to as full restitution as set forth in paragraph IV(1) above.

3. Defendant Forte shall cooperate fully and expeditiously with the Commission, including the Commission's Division of Enforcement, and the Receiver and its counsel, in any current or future investigation, civil litigation or administrative matter related to the subject matter of this action. As part of such cooperation, Defendant Forte shall comply, to the full extent of his ability, promptly and truthfully with any inquires or requests for information including but not limited to, requests for production and authentication of documents, shall provide assistance at any trial, proceeding, or investigation, including but not limited to, requests for testimony, depositions, and/or interviews, and shall testify completely and truthfully in any such proceeding, deposition, trial, or investigation. Defendant Forte shall also cooperate with the Receiver in the manner set forth above in the Receiver's administration of the Receivership estate, including, but not limited to, cooperating with the Receiver in tracing, locating and marshalling assets, and in any additional action(s) filed by the Receiver. Should the Commission or the Receiver file any additional action(s) related to the subject matter of this action, Defendant Forte is directed to appear in the judicial district in which such action(s) is pending, or in a suitable judicial district agreed to by the parties, to provide deposition testimony and trial testimony should a party to such action(s) determine that such testimony is necessary.

V.

MISCELLANEOUS PROVISIONS

1. If any provision of this Order or the application of any provision or circumstance is held invalid, the remainder of this Order, and the application of the provision to any other person or circumstance, shall not be affected by the holding.

2. Upon being served with copies of this Order after entry by the Court, Defendant Forte shall sign an acknowledgment of such service and serve such acknowledgment on the Commission within seven (7) calendar days.

3. This Court shall retain jurisdiction of this action in order to implement and carry out the terms of all orders and decrees, including orders setting the appropriate amounts of restitution and civil monetary penalty, that may be entered herein, to entertain any suitable application or motion for additional relief within the jurisdiction of this Court, and to assure compliance with this Order.

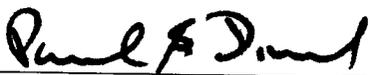
4. All notice required to be given by any provision in this Order shall be sent by overnight mail (e.g., Federal Express) or email, as follows:

Notice to the Commission: Luke B. Marsh, Esq.
Commodity Futures Trading Commission
1155 21st Street, NW
Washington, D.C. 20581
(202) 418-5322
lmarsh@cftc.gov

Notice to the Defendant: Joseph S. Forte
225 Fawnhill Road
Broomall, PA 19008
(610) 353-1486
jsf1226@aol.com

5. In the event that the Defendant changes his residential or business telephone number(s) and/or address(es) at any time, he shall provide written notice of the new number(s) and/or address(es) to the Commission within ten calendar days thereof.

AND IT IS SO ORDERED.



PAUL S. DIAMOND, J.
September 30, 2009

Consented to and approved for entry by:

Defendant:



Joseph S. Forte, *pro se*
225 Fawnhill Road
Broomall, PA 19008
Phone – (610) 353-1486
Facsimile – (610) 353-6650

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Division of Enforcement
Commodity Futures Trading Commission
1155 21st Street, N.W.
Washington, D.C. 20581
Phone – (202) 418-5000
Facsimile – (202) 418-5523

CERTIFICATE OF SERVICE

I do hereby certify that on this 29th day of September 2009, I caused a true and correct copy of the attached documents to be served by email and First Class Mail upon the following:

Joseph S. Forte

225 Fawnhill Road

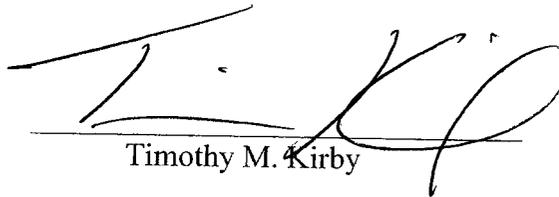
Broomall, PA 19008

email: Jsf1226@aol.com

FILED

SEP 30 2009

MICHAEL E. KUNZ, Clerk
By _____ Dep. Clerk



Timothy M. Kirby