

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
ALBANY DIVISION**

COMMODITY FUTURES TRADING COMMISSION,	:	Civil Action No. 1:00-CV-0184-4
Plaintiff,	:	
v.	:	COMPLAINT FOR A
	:	PERMANENT INJUNCTION,
	:	OTHER EQUITABLE RELIEF
JAMES E. STEPHENS III and	:	AND CIVIL MONETARY
TRENDSYSTEMS, INC.,	:	PENALTIES
Defendants.	:	

I.

SUMMARY

1. Since at least February 2000 (the "relevant time"), Defendants Trendsystems, Inc. ("Trendsystems") and James E. Stephens III ("Stephens") (collectively, the "Defendants") solicited at least three members of the general public to open accounts to be managed by Trendsystems for the purpose of trading commodity futures and options on commodity futures. During the relevant time, the Defendants committed fraud by misappropriating client funds; making misrepresentations of, and failing to disclose, material facts to clients and prospective clients; and issuing false commodity statements to clients representing that profitable trading had occurred on behalf of the clients when, in fact, no such profits had been made, and, in at least two cases, no trading had occurred. Defendants also solicited and received funds directly from clients rather than having the funds sent to the futures commission merchant ("FCM") at which the client accounts were to be opened and traded.

2. Thus, Defendants have engaged in and are currently engaging in acts and practices which constitute violations of Sections 4b(a)(i)-(iii), 4c(b), and 4q(1) of the Commodity Exchange Act, as amended (“Act”), 7 U.S.C. §§ 6b(a)(i)-(iii), 6c(b), and 6q(1) (1994), and Sections 4.30 and 33.10 of the Regulations promulgated thereunder (“Regulations”), 17 C.F.R. §§ 4.30 and 33.10 (2000).

3. Accordingly, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (1994), the plaintiff Commodity Futures Trading Commission (“Commission”) brings this action to enjoin such acts and practices, and to compel compliance with the provisions of the Act and Regulations. In addition, the Commission seeks an accounting, disgorgement, restitution, civil monetary penalties, the appointment of an equity receiver and such other equitable relief as the Court may deem necessary or appropriate under the circumstances.

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

II.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, 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.

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

7. Plaintiff 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. (1994), and the Regulations promulgated thereunder, 17 C.F.R. §§ 1 et seq. (2000).

8. Defendant James E. Stephens III resides at 103 Burke St. in Americus, GA 31709. Stephens has been registered with the Commission as an associated person (“AP”) of Trendsystems since January 28, 1999 and is also listed as a principal of Trendsystems. In addition, Stephens was an AP of Refco, Inc. (“Refco”), an FCM, and the branch office manager of Refco’s branch office located at 205 W. Forsyth St., Americus, GA 31709 from July 14, 2000 until October 3, 2000.

9. Defendant Trendsystems, Inc. a Georgia corporation, has its main office at 205 W. Forsyth St., Americus, GA 31709. Trendsystems has been registered with the Commission as a commodity trading advisor (“CTA”) since January 28, 1999.

IV.

FACTS

Trendsystem’s Business

10. Since at least February 2000, Stephens and Trendsystems solicited members of the general public to open accounts to be managed by Trendsystems for the purpose of trading commodity futures and options on commodity futures.

11. Following these solicitations, at least three clients, Richard Ritter, George Hanna and E.J. Flynt, gave Trendsystems power of attorney to trade on their behalf.

The Ritter Account

12. On or about October 1999, Richard Ritter (“Ritter”) saw an advertisement for Trendsystems software in a nationally published newspaper and responded to the advertisement by calling Stephens on the telephone.

13. By phone, Stephens solicited Ritter to allow Trendsystems to manage a trading account for him.

14. On or about February 2000, pursuant to Stephens’ instructions, Ritter opened a managed account in Ritter’s wife’s name (“the Ritter Account”) at Linco Futures Group (“LFG”), an FCM, and his wife signed a power of attorney authorizing Trendsystems to trade the account.

15. On or about February 2000, Ritter caused \$13,500.00 to be sent to LFG for the purpose of funding the account. Ritter never deposited additional funds in the account.

16. Beginning around February 2000 and continuing until approximately August 2000, Stephens told Ritter on almost a daily basis that his account was making a profit. Stephens never informed Ritter that the account was unprofitable.

17. On or about March or April 2000, Stephens sent Ritter written account statements which purported to show that the Ritter account had grown from an initial investment of \$13,500.00 to approximately \$115,000.00.

18. On or about May 19, 2000, Stephens sent Ritter a written account statement via electronic mail which purported to show that the Ritter account had an account balance of \$153,286.87.

19. On or about August 9, 2000, Stephens sent Ritter a written account statement which purported to show that the Ritter account had an account balance of \$365,386.48.

20. Between February and August 2000, Stephens also provided Ritter with oral updates concerning the balance in the Ritter account. In each of these updates, Stephens stated that the Ritter account was consistently earning money.

21. In fact, the Ritter account suffered trading losses under Trendsystems' management, and, contrary to Stephens' written and oral representations, at the time that Stephens informed Ritter that the Ritter account balance was approximately \$365,386.48, the actual balance for the Ritter account was approximately \$180.00.

The Hanna Account

22. On or about June 2000, Stephens solicited George Hanna ("Hanna") to allow Trendsystems to manage a trading account for him.

23. On or about June 14, 2000, Stephens instructed Hanna to fill out and send his LFG account opening documents directly to him at Trendsystems. Stephens further instructed Hanna to send his initial investment to a Trendsystems bank account in Americus, Georgia.

24. On or about June 14, 2000, Hanna sent \$5,000.00 to a Trendsystems bank account in Americus, Georgia and sent Stephens his completed LFG account opening documents which authorized Trendsystems to trade on his behalf. Subsequently, Hanna sent an additional \$2,000.00 to the same Trendsystems bank account in Americus, Georgia.

25. On or about June 15, 2000, Stephens told Hanna that he had received his account opening documents and initial investment and that Trendsystems had begun trading Hanna's account.

26. On or between June 17, 2000 and early September 2000, Stephens provided Hanna, via facsimile and hand delivery, with at least three written account statements showing that he had made a profit every day that the account was traded.

27. On or between June 17, 2000 and early September 2000, Stephens orally updated Hanna as to the status of his account and consistently informed Hanna that his account was profitable.

28. On or about August 31, 2000, Stephens provided Hanna with a trading account statement which purported to show that Hanna's account had grown from a total investment of \$7,000.00 to approximately \$35,000.00 by August 31, 2000.

29. In fact, neither Stephens nor Trendsystems ever forwarded Hanna's initial investment to LFG and although the account was opened in Hanna's name, it was never actually traded.

30. After Hanna repeatedly asked him to do so, Stephens returned Hanna's initial investment to him, but Stephens never gave Hanna the profits he was supposed to have earned in his account.

The Flynt Account

31. On or about August 2000, Stephens solicited E.J. Flynt ("Flynt") to allow Trendsystems to manage a trading account for him.

32. On or about August 2000, Stephens instructed Flynt to fill out and send LFG account opening documents to open an account in his name directly to Stephens at Trendsystems. Stephens further instructed Flynt to send his initial investment of approximately \$10,000.00 to a Trendsystems bank account in Americus, Georgia.

33. On or about August 16, 2000, Flynt sent approximately \$10,000.00 to a Trendsystems bank account in Americus, Georgia. Subsequently, Flynt sent another investment of \$3,800.00 to the same Trendsystems bank account.

34. On or about August 16, 2000 Stephens informed Flynt that Trendsystems had opened and begun trading an account in his name at LFG.

35. Stephens provided Flynt with an account number for his purported trading account at LFG.

36. On or between August 17, 2000 and early September 2000, Stephens and Trendsystems provided Flynt with at least two written account statements, one of which was printed on Trendsystems letterhead, which purported to show that his account at LFG had been consistently profitable every day of trading.

37. On or between August 17, 2000 and early September 2000, Stephens had numerous conversations with Flynt in which he informed Flynt that his LFG account had been consistently profitable every day of trading.

38. On or about August 31, 2000, Trendsystems provided Flynt with a written statement, on Trendsystems letterhead which purported to show that Flynt's account balance was \$22,189.77.

39. In fact, neither Stephens nor Trendsystems ever opened a trading account for Flynt at LFG and the account number given to Flynt by Stephens belongs to another unrelated client at LFG.

V.

**VIOLATIONS OF THE COMMODITY EXCHANGE
ACT AND REGULATIONS THEREUNDER**

COUNT ONE

VIOLATIONS OF SECTION 4b(a)(i) - (iii) OF THE ACT:
FRAUD BY MISAPPROPRIATION;
MISREPRESENTATIONS AND OMISSIONS;
AND FALSE STATEMENTS

40. Paragraphs 1 through 39 are realleged and incorporated herein.

41. During the relevant time, the Defendants violated Section 4b(a)(i) - (iii) of the Act, 7 U.S.C. §§ 6b(a)(i) - (iii) (1994), in that they: (i) cheated or defrauded or attempted to cheat or defraud other persons; (ii) willfully made or caused to be made to other persons false reports or statements, or willfully entered or caused to be entered for other persons false records; and (iii) willfully deceived or attempted to deceive other persons by misappropriating client funds and making misrepresentations and omissions of material facts, including, but not limited to, the misrepresentations and omissions set forth at paragraphs 16, 20-21, 25, 27, 29, 34-35, 37, and 39 and by willfully issuing written statements which falsely represented the profits and the value of the clients' accounts, and, in one instance, the account status of a non-existent account as set forth at paragraphs 17-19, 26, 28, 36, and 38.

42. The Defendants engaged in this conduct 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 other persons where such contracts for future delivery were or may have been used for (a) hedging any transaction in interstate commerce in such commodity, or the products or byproducts thereof, or (b) determining the price basis of any transaction in interstate commerce in

such commodity, or (c) delivering any such commodity sold, shipped, or received in interstate commerce for the fulfillment thereof.

43. The actions and omissions of Stephens described in this count were done within the scope of his employment with Trendsystems and, therefore, Trendsystems is also liable for his violations of Section 4b(a)(i) - (iii) of the Act, 7 U.S.C. §§ 6b(a)(i) - (iii) (1994), pursuant to Section 2a(1)(A)(iii) of the Act, 7 U.S.C. § 4 (1994).

44. Stephens, directly or indirectly, controlled Trendsystems and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting Trendsystems' violations alleged in this count, and thereby is also liable for Trendsystems' violations of Section 4b(a)(i) - (iii) of the Act, 7 U.S.C. §§ 6b(a)(i) - (iii) (1994), pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (1994).

45. Each act of misappropriation, each material misrepresentation or omission, and each false report or statement made during the relevant time period, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4b(a)(i) - (iii) of the Act, 7 U.S.C. §§ 6b(a)(i) - (iii) (1994).

COUNT TWO

VIOLATIONS OF SECTION 4c(b) OF THE ACT AND REGULATION 33.10: OPTIONS FRAUD

46. Paragraphs 1 through paragraph 39 are realleged and incorporated herein.

47. During the relevant time, Defendants violated Section 4c(b) of the Act, 7 U.S.C. § 6c(b) and Regulation 33.10, 17 C.F.R. §33.10 in that they: (i) cheated or defrauded or attempted to cheat or defraud other persons; (ii) made or caused to be made to other persons any false report or statements or caused to be entered for other persons any false record; and (iii) deceived or

attempted to deceive other persons by: misappropriating client funds, making material misrepresentations and omissions of material facts to clients and prospective clients including, but not limited to, the misrepresentations set forth at paragraphs 16, 20-21, 25, 27, 29, 34-35, 37, and 39, and by providing clients with false statements as set forth at paragraphs 17-19, 26, 28, 36, and 38. The Defendants' actions and omissions described in this count were made in connection with an offer to enter into, the entry into, the confirmation of the execution of, or the maintenance of, commodity options transactions.

48. The actions and omissions of Stephens described in this Count were done within the scope of his employment with Trendsystems and therefore Trendsystems is also liable for his violations of Section 4c(b) of the Act, 7 U.S.C. § 6c(b) and Regulation 33.10, 17 C.F.R. §33.10, pursuant to Section 2a(1)(A)(iii) of the Act, 7 U.S.C. § 4 (1994).

49. Stephens, directly or indirectly, controlled Trendsystems and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting the violations of Trendsystems alleged in this count, and thereby is also liable for Trendsystems' violations of Section 4c(b) of the Act, 7 U.S.C. § 6c(b) and Regulation 33.10, 17 C.F.R. §33.10, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (1994).

50. Each act of misappropriation, each material misrepresentation or omission, and each false report or statement made during the relevant time period, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4c(b) of the Act, 7 U.S.C. § 6c(b) and Regulation 33.10, 17 C.F.R. §33.10.

COUNT THREE

VIOLATIONS OF SECTION 4o(1) OF THE ACT:
FRAUD BY A CTA

51. Paragraphs 1 through 39 are alleged and incorporated herein.

52. During the relevant time, Trendsystems, a registered CTA, and Stephens, an AP of Trendsystems, violated Section 4o(1), 7 U.S.C. § 6o(1) by directly or indirectly employing one or more devices, schemes, or artifices to defraud clients or prospective clients and by engaging in transactions, practices or courses of business which operated as a fraud or deceit upon clients or prospective clients in that they misappropriated client funds; made misrepresentations and omissions of material facts including, but not limited to, the misrepresentations and omissions set forth at paragraphs 16, 20-21, 25, 27, 29, 34-35, 37, and 39; and they sent false statements to clients as set forth at paragraphs 17-19, 26, 28, 36, and 38. These acts were effected by use of the mails or other means or instrumentalities of interstate commerce.

53. Stephens, directly or indirectly, controlled Trendsystems and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting Trendsystems' violations alleged in this count, and thereby Stephens is also liable for Trendsystems' violations of Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (1994), pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (1994).

54. Each act of misappropriation, each material misrepresentation or omission, and each false report or statement made during the relevant time period, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Sections 4o(1) and of the Act, 7 U.S.C. § 6o(1).

COUNT FOUR

VIOLATIONS OF REGULATION 4.30: PROHIBITED ACTIVITIES BY CTAs

55. Paragraphs 1 through 39 are alleged and incorporated herein.

56. During the relevant time, Trendsystems violated Regulation 4.30 of the Act, 17 C.F.R. § 4.30 (2000), in that it solicited, accepted or received from an existing or prospective client funds, securities or other property in its own name to purchase, margin, guarantee or secure any commodity interest of the client by causing at least two clients to send their initial deposits to a bank account controlled by, and in the name of, Trendsystems.

57. Stephens, directly or indirectly, controlled Trendsystems and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting Trendsystems' violations alleged in this count, and thereby Stephens is also liable for Trendsystems' violations of Regulation 4.30 of the Act, 17 C.F.R. § 4.30 (2000), pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (1994).

58. Each act of solicitation, acceptance or receipt of funds, securities or other property in Trendsystem's name to purchase, margin, guarantee or secure any commodity interest of a client is alleged as a separate and distinct violation of Regulation 4.30 of the Act, 17 C.F.R. § 4.30 (2000).

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 (1994), and pursuant to its own equitable powers enter:

- a) a permanent injunction prohibiting the Defendants from engaging in conduct violative of Sections 4b(a)(i) - (iii), 4c(b), and 4o(1) of the Act, 7 U.S.C.

§§ 6b(a)(i) - (iii), 6c(b), and 6o(1) (1994), and Regulations 4.30 and 33.10, 17 C.F.R. §§ 4.30 and 33.10 (2000);

- b) an order directing the Defendants 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;
- c) an order directing the Defendants to make full restitution to every client whose funds were received by him as a result of acts and practices which constituted violations of the Act and Regulations, described herein, and interest thereon from the date of such violations;
- d) an order directing the Defendants to pay a civil monetary penalty in the amount of not more than the higher of \$110,000 (or \$120,000 for violations committed on or after October 23, 2000) or triple the monetary gain to each Defendant for each violation of the Act or Regulations; and
- e) such other and further remedial ancillary relief as the Court may deem appropriate.

Date: October 24, 2000

ATTORNEYS FOR PLAINTIFF

Local Counsel:

Bill Gifford
Attorney Registration No. 293239
Assistant United States Attorney
433 Cherry Street
Macon, GA 31202
Telephone (478) 752-8178
Facsimile (478) 752-3445

Karen Kenmotsu
Jason Gizzarelli
Richard B. Wagner
Commodity Futures Trading Commission
1155 21st St. N.W.
Washington, D.C. 20581
Telephone: (202) 418-5383
Facsimile: (202) 418-5531