

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

**COMMODITY FUTURES TRADING
COMMISSION,**

Plaintiff,

v.

**MAD FINANCIAL, INC., AKA
MEYERS, ARNOLD, AND
DAVIDSON, FINANCIAL, INC.,
CTU, INC., AKA
COOPER, THOMAS, AND
UNGAR, INC., AND
MICHAEL A. DIPPOLITO,**

Defendants.

CIVIL ACTION NO. 02-60239

CIV-HURLEY

FILED UNDER SEAL

**COMPLAINT FOR PERMANENT INJUNCTION
AND OTHER EQUITABLE RELIEF**

I. SUMMARY

1. Since at least April 2001 and as recently as January 2002, MAD Financial, Inc., a.k.a., Myers, Arnold, and Davidson Financial, Inc. (“MAD”) and CTU Inc., a.k.a., Cooper, Thomas and Ungar, Inc. (“CTU”) (collectively, the “corporate defendants”) have fraudulently sold foreign currency option contracts to customers nationwide from various locations in Florida. Defendant Michael Dippolito (“Dippolito”) is the director of both corporate defendants. Defendants MAD and CTU appear to be interrelated corporations that do not have a fixed business location. The corporate defendants solicited and received more than \$200,000 from customers by promising extraordinary profits while minimizing the risk of loss. Despite the

corporate defendants' claims, no option contracts are purchased; instead the investments are diverted by defendants for personal expenditures. Unless the Court issues a Restraining Order, defendants will continue their fraudulent sales practices and continue to misappropriate customer funds.

2. The corporate defendants cold call customers and boast of tremendous risk free profits that can be made immediately through investing in foreign currency options on the Eurodollar ("Euro"), Japanese Yen ("Yen") or British Pound ("Pound"). Customers are told that the firm previously had pre-purchased blocks of specified foreign currency option contracts that already have increased in value. The corporate defendants claim that by offering the option contracts at the firm's purported purchase price, customers earn an immediate profit.

3. The corporate defendants further claim that the market conditions for the particular foreign currency options offered by their firm are excellent, and if they invest immediately they can, for example, expect to triple their money. While touting the virtual success of the contracts, the corporate defendants fail to adequately disclose the risks involved in trading foreign currency options.

4. Despite the corporate defendants' representations, no option contracts are ever purchased by defendants. Customers do not earn any profits and never see their money again. Instead, defendants spend customer funds on personal expenses such as clothing, jewelry, hotels, and 1-900 calls. Once a customer has invested, his or her contact with the firm is typically limited to solicitations for further investment. Customer inquires concerning the status of funds already invested are deflected or ignored. The corporate defendants do not operate out of a fixed business location, but instead use cell phones, postal drop boxes, Kinko's fax machines, and other tools to create the appearance of an on going business.

5. The corporate defendants have violated Section 4c(b) of the Commodity Exchange Act (the “Act”), 7 U.S.C. § 6c(b) (1994) (“Section 4c(b)”), and Commission Regulation 32.9, 17 C.F.R. §32.9 (2000), by making materially false representations concerning the likelihood that customers will profit from purchasing foreign currency options from the corporate defendants, and by making false representations and material omissions concerning the risk of loss.

6. Additionally, the corporate defendants and defendant Michael Dippolito violated Section 4c(b) of the Commodity Exchange Act (the “Act”), 7 U.S.C. § 6c(b) (1994) (“Section 4c(b)”), and Commission Regulation 32.9, 17 C.F.R. §32.9 (2001), by misappropriating customer funds for personal expenses.

7. Furthermore, because the options sold by the corporate defendants are not consummated on or subject to the rules of a contract market or a derivatives transaction execution facility designated by the Commodity Futures Trading Commission (the “Commission”), the corporate defendants have violated Section 4c(b) of the Act and Commission Regulations 32.11 and 33.3(a) thereunder, 17 C.F.R. §§32.11 and 33.3(a)(2001).

8. The corporate defendants have also violated Section 4c(b) of the Act and Commission Regulation 32.5, 17 C.F.R. §32.5 (2001), by failing to provide prospective customers with a disclosure document containing such key required information as the duration of the option, a list of elements comprising the purchase price, a description of all costs that may be incurred if the option is exercised, and an explanation concerning the necessary fall or rise in the price of the contract underlying the option in order for the customer to profit.

9. Accordingly, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (1994), the Commission brings this action to enjoin the unlawful acts and practices of defendants and to compel their compliance with the Act. In addition, the Commission seeks civil monetary

penalties, a freeze of defendants' assets, disgorgement of defendants' ill-gotten gains, restitution to customers, and such other relief as this Court may deem necessary or appropriate.

10. Unless 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 set forth below.

II. JURISDICTION AND VENUE

11. Section 2(c)(2)(B) of the Act, as amended by the Commodity Futures Modernization Act of 2000 ("CFMA"), Appendix E, to Public L. No. 106-554, 114 Stat. 2763 (2000), clarifies the Commission jurisdiction over certain retail currency options. This Court has jurisdiction over this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (1994), 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.

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

III. THE PARTIES

A. The Plaintiff

13. **Commodity Futures Trading Commission** (the "Commission") is an independent federal regulatory agency charged by Congress with the administration and enforcement of the Act, 7 U.S.C. §§ 1, et seq., and the regulations promulgated thereunder, 17 C.F.R. §§ 1, et seq. (2001).

B. The Defendants

14. **MAD Financial, Inc., a.k.a. Meyers, Arnold and Davidson, Inc.** (“MAD”) is a Florida corporation which designates its principal place of business as 630 North West 13th St. Apt. 13, Boca Raton, Florida, 33486. MAD was administratively dissolved on September 21, 2001. MAD has never been registered with the Commission in any capacity, nor has it been designated by the Commission as a contract market or a derivatives transaction execution facility for the trading of options on foreign currency or options on foreign currency futures contracts.

15. **CTU, Inc., a.k.a. Cooper, Thomas and Ungar, Inc.** (“CTU”) is a Florida corporation which designates its principal place of business as 3032 East Commercial Boulevard, Suite 52, Fort Lauderdale, Florida, 33308. CTU has never been registered with the Commission in any capacity nor has it been designated by the Commission as a contract market for the trading of options on foreign currency or options on foreign currency futures contracts.

16. **Michael Anthony Dippolito** (“Dippolito”) is an individual whose last known address, as of May 2001, is 630 North West 13 Street, Apt. 13, Boca Raton, Florida, 33486. The Commission is informed and believes, based upon an analysis of the corporate defendants’ bank records, that Dippolito sold the above address on May 30, 2001, and is currently living out of various hotels in Florida. By so doing Dippolito is concealing his whereabouts. Dippolito is not registered with the Commission in any capacity.

IV. FACTUAL BACKGROUND

A. The Operation of MAD and CTU

17. Defendants MAD and CTU appear to be interrelated corporations that do not have a fixed business location. MAD and CTU utilize the same sales pitches, in that both defendants

solicit customers to purchase blocks of pre-purchased foreign currency options to experience guaranteed profits.

18. Unbeknownst to the customers, the corporate defendants utilize various postal drop boxes and unidentified Federal Express pick up stations, and unidentified copying service centers for fax transmissions, in lieu of real offices. The postal drop boxes are located in two different areas of Florida: Ft. Lauderdale and Wilton Manners. The address listed in the articles of incorporation as the registered office of CTU is a postal mail drop and serves as the mailing address of MAD. The address listed in the articles of incorporation as the registered office of MAD is the address of a condominium formerly owned by defendant Dippolito.

19. The corporate defendants share the same officer and director, solicitation materials, and facsimile number, among other things. Michael Dippolito is the only officer and director listed on the incorporation documents for both firms. Persons who represent that they are either “partners” or “brokers” from either MAD or CTU solicit customers through telemarketing calls. Without physical office space, the corporate defendants conduct their business via cell phone and facsimile machine.

20. Account documentation sent to MAD and CTU customers are virtually identical and include the same facsimile number, (954) 351-7017, which is actually a fax number of a Kinko’s Copy Center in Ft. Lauderdale, Florida. Both firms also provide customers with the same solicitation brochure entitled “Introduction to the New Global Marketplace.”

21. MAD and CTU also have separate corporate accounts at same bank in Jacksonville, Florida, which Dippolito set up.

B. The Corporate Defendants Misrepresent the Profitability Associated with Their Foreign Currency Options Contracts, Fail to Disclose Risk of Loss, Fail to Provide Customers With Adequate Account Information and Defendants Misappropriate Customer Funds

22. The corporate defendants cold call customers claiming that they will realize extraordinary profits immediately by investing in pre-purchased foreign currency option contracts, specifically in the Yen, the Pound or the Euro. These claims generally fall within two categories: 1) the options contracts have already appreciated in value, and 2) the contracts are poised to move dramatically in value due to known market conditions.

23. The corporate defendants attempt to create a sense of urgency to pressure customers into investing immediately. Customers are urged to send money quickly before this allegedly promising, but fleeting, opportunity passes them by. Customers are told that the value of the contracts has increased dramatically in value and they can lock in a profit if they invest immediately. Customers who initially decline to invest are subsequently informed in follow-up calls of the huge profits missed and are “pitched” again to invest. Underscoring the time sensitivity of the investment, customers are faxed detailed wiring instructions and are told to wire their funds to the firm’s bank account. After making a purchase, customers are encouraged to hold the option contracts open because the value is guaranteed to increase.

24. The corporate defendants significantly downplay the risk of loss in trading foreign currency options through emphasis on claims that market conditions will have a positive effect on prices, statements about trading techniques as a way to limit loss, and insider knowledge. The corporate defendants fail to explain to customers verbally or in the printed material that the greatest risk involved with trading foreign currency options is that the customers could lose their entire investment. Generally, the corporate defendants emphasize that the investment is risk free and that the customer will make a guaranteed profit immediately on the initial investment since the value of the pre-purchased block of options has already increased. If any warning of risk is

given, it is only mentioned in passing and is coupled with misleading statements about profitability.

25. As a further disguise of their false and misleading statements about trading and their misappropriation of customer funds, the corporate defendants fail to send initial or periodic account statements. Instead, customers receive only the “Account Summary” or “Preliminary Confirmation” documents and wiring instructions that are faxed to customers within minutes of deciding to invest, or prior to investing. The “Account Summary” and “Preliminary Confirmation” documents do not show from whom the foreign currency options are supposedly being purchased. However, some customers are verbally informed that the option contracts are traded in the “foreign exchange market” through Coin Bank, a foreign bank located in Yugoslavia. No written confirmation of their activity has been provided. In fact, some customers never receive any account documentation at all from MAD or CTU.

26. Investing customers are instructed to wire their funds to the corporate defendants’ bank account at a Jacksonville branch of the First Union National Bank of Florida. These funds are then deposited in a corporate bank account. The corporate financial records do not show any purchases of options on futures contracts for foreign currency and confirm that the defendants are misappropriating the funds of unsuspecting customers. The only disbursements of funds from the accounts are used to purchase cars, furniture, chat room time and other personal expenses. Indeed, the records show that Dippolito, the only authorized signatory on the corporate accounts, paid out approximately \$108,000 in checks to himself from the corporate accounts. The records also show that Dippolito used ATM machines to withdraw over \$19,900 from the corporate accounts. Dippolito spent over \$6,000 of customer funds on psychic and sex

hotlines and made other numerous charges for hotels, clothing stores, and jewelry. There are no transfers to any Yugoslavian banks.

27. Two customers, who were unable to wire money, were instructed to send a check via Federal Express to a “special payment address.” The customers subsequently discovered that their checks, which were payable to CTU, were signed by Dippolito and cashed at “Budmart,” a local check-cashing agency in Florida.

28. Generally, the corporate defendants call the customers to confirm receipt of their funds and to tell them that they have allegedly made a profit. When the customer instructs the corporate defendants to wire back the profits, invariably there is problem with defendants’ bank wire. Customers are told to wait and promised that the funds are on their way. Other times the corporate defendants refuse to wire back the profits unless the customer invests additional funds. Ultimately, the customers never receive their purported profits and are never contacted by the firm again. At this point, when customers attempt to contact the corporate defendants, the customers’ calls and messages go unanswered.

V. VIOLATIONS OF THE COMMODITY EXCHANGE ACT AND COMMISSION REGULATIONS

COUNT I

VIOLATION OF SECTION 4c(b) OF THE ACT, 7 U.S.C. §6c(b), AND COMMISSION REGULATION 32.9, 17 C.F.R. § 32.9 (2001): FRAUD

29. Paragraphs 1 through 28 are re-alleged and incorporated herein.

30. Since at least April 2001, MAD and CTU in or in connection with an offer to enter into, the entry into, or the confirmation of the execution of, commodity option transactions, have cheated, defrauded or deceived, or attempted to cheat, defraud, or deceive other persons by making false, deceptive, or misleading representations of material facts and by failing to disclose material facts, in soliciting customers or potential customers, including, but not limited to:

- (a) failure to disclose that no option contracts have or will be purchased;
- (b) false representations that customers will reap substantial profits in a short period;
- (c) false representations that MAD or CTU's investment scheme involves little or no risk; and
- (d) failure to disclose the substantial risks associated with the purchase of the corporate defendants' options.

31. From, at least April 2001, and continuing through the present, MAD, CTU and Michael Dippolito have misappropriated customer funds in violation of Section 4c(b) of the Act, 7 U.S.C. § 6c(b), and Commission Regulation 32.9, 17 C.F.R. § 32.9. MAD and CTU have failed to apply customer funds for the purchase of foreign currency options, in the manner represented, and defendants have misappropriated and used the funds for personal expenses.

32. Each misrepresentation, omission, willful deception and misappropriation made since April, 2001, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4c(b) and Commission Regulation 32.9.

COUNT II
VIOLATIONS OF SECTION 4c(b) OF THE ACT, 7 U.S.C. § 6c(b), AND COMMISSION
REGULATIONS 32.11 AND 33.3(a), 17 C.F.R. §§32.11 and 33.3(a)(2001): OFFER AND
SALE OF COMMODITY OPTIONS NOT CONDUCTED ON A BOARD OF TRADE
WHICH HAS BEEN DESIGNATED BY THE COMMISSION AS A CONTRACT
MARKET

33. Paragraphs 1 through 32 are re-alleged and incorporated herein.

34. Section 2(c)(2)(B)(ii) of the CFMA, Appendix E, to Public L. No. 106-554, 114 Stat. 2763 (2000), provides that the Commission shall have jurisdiction over options contracts on foreign currency, so long as the option is "offered to, or entered into with, a person that is not an eligible contract participant" and the counter-party to the option, or the person offering to be the counter-party, is not a regulated entity, as defined in the CFMA.

35. In the case of an individual, Section 1a(12)(A)(xi) of the CFMA defines an eligible contract participant as an individual who has total assets in excess of: (a) \$10 million or (b) in excess of \$5 million if hedging a risk associated with an asset or liability. Most, if not, all of the customers solicited by MAD and CTU were not eligible contract participants.

36. Neither MAD nor CTU are regulated entities that are permitted under the Act to act as counter-parties for retail foreign currency transaction absent Commission jurisdiction.

37. Sections 32.11 and 33.3 of the Regulations, 17 C.F.R. §§32.11, 33.3, together provide that it shall be unlawful for any person to solicit, accept orders for, or accept funds in connection with, the purchase or sale of any commodity option, or supervise any person or persons so engaged, unless the commodity option is conducted (1) on or subject to the rules of a contract market which has been designated by the Commission to trade options and (2) by or through a member thereof in accordance with the Act and Regulations.

38. Since April 2001, and continuing to the present, MAD and CTU have offered to enter into, entered into, executed, confirmed the execution of, or conducted business for the purpose of soliciting, accepting any order for, or otherwise dealing in any transaction in, or in connection with, a commodity option when: (a) such transactions have not been executed, (b) such transactions, if executed, have not been conducted on or subject to the rules of a board of trade which has been designated by the Commission as a “contract market” for such commodity, and (c) such contracts, if executed, have not been executed or consummated by or through a member of such contract market, in violation of Section 4c(b) of the Act, 7 U.S.C. § 6c(b), and the Commission Regulations 32.11 and 33.3(a), 17 C.F.R. §§ 32.11, 33.3(a).

39. Each foreign exchange commodity option transaction not conducted on a designated contract market made since at least April 2001, including but not limited to those specifically

alleged herein, is alleged as a separate and distinct violation of Section 4c(b) and Commission Regulations 32.11 and 33.3(a).

COUNT III

VIOLATIONS OF SECTION 4c(b) OF THE ACT, 7 U.S.C. § 6c(b), and COMMISSION REGULATION 32.5, 17 C.F.R. § 32.5 (2001): FAILURE TO MAKE PROPER DISCLOSURES

40. Paragraphs 1 through 39 are re-alleged and incorporated herein.

41. Commission Regulation 32.5 requires that a person soliciting or accepting an order for an options transaction shall deliver to the customer or prospective customer a disclosure statement. That statement must include a brief description of the transaction (including the duration of the options offered and a list of elements comprising the purchase price), a description of all costs that may be incurred by the customer if the option is exercised, an explanation concerning the necessary rise or fall in the price of the contract underlying the option in order for the customer to profit and the effect of commissions and fees on potential profit, and a specific, boldfaced statement concerning the risk of loss. This information does not appear in the documentation that the corporate defendants furnish to customers in connection with the sale of foreign currency options.

42. MAD and CTU failed to furnish customers with the disclosure statement, in violation of Section 4c(b) of the Act and Commission Regulation 32.5, 17 C.F.R. § 32.5.

43. Each failure to provide a required disclosure statement since at least April 2001, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4c(b) of the Act and Commission Regulation 32.5.

VI. RELIEF

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 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;
- b. 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;
- c. 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;
- d. 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; and
- e. such other and further remedial ancillary relief as the Court may deem appropriate.

Date: February 15, 2002

Respectfully submitted by,

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