

**In The United States District Court
For The District Of Utah, Central Division**

Commodity Futures Trading Commission,

Plaintiff,

vs.

Stanley E. Varner,

Defendant.

No: 2:02 CV 1373

Complaint For Injunctive And
Other Equitable Relief and
Civil Monetary Penalties Under
The Commodity Exchange Act

I. Summary

1. From at least August 1999 to the present (“relevant time period”), Stanley E. Varner (“Defendant”) has solicited and accepted in excess of \$1.5 million from individual investor clients through the use of false statements and omissions of material facts. He has used some of those funds to trade commodity futures and he has misappropriated some of those funds. Based upon the facts alleged herein, Defendant has engaged, is engaging, or is about to engage in acts and practices that violate the Commodity Exchange Act (“Act”), 7 U.S.C. §§ 1 *et seq.* (2000), and the Commission’s Regulations, 17 C.F.R. §§ 1 *et seq.* (2002).

2. Specifically, Defendant has engaged, is engaging, or is about to engage in acts or practices which violate anti-fraud sections of the Act. Defendant has violated Sections 4b(a)(2)(i)-(iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i)-(iii), by misappropriating client funds, by making false reports or statements to at least one client, and by misrepresenting and failing to disclose material facts; and Section 4c(1) of the Act, 7 U.S.C. § 6c(1), by misappropriating client funds, making false reports or statements to at least one client, by misrepresenting and failing to

disclose material facts, and by engaging in acts and practices which operate as a fraud upon clients while acting in the capacity of a commodity trading advisor (“CTA”).

3. Defendant has also violated Commission Regulation 4.30, 17 C.F.R. § 4.30 (2002), by soliciting and accepting client funds in his own name, in his capacity as a CTA, to purchase, margin, guarantee or secure commodity interests of the clients.

4. Unless restrained and enjoined by this Court, Defendant is 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.

5. Accordingly, pursuant to Section 6c(a) of the Act, 7 U.S.C. § 13a-1(a), the Commission brings this action to enjoin such acts and practices, prevent the dissipation of assets, and compel compliance with the provisions of the Act. In addition, the Commission seeks civil monetary penalties, an accounting, restitution, disgorgement and such other equitable relief as the Court may deem necessary or appropriate under the circumstances.

II. Jurisdiction And Venue

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

7. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e), in that the Defendant is found in, inhabits, or transacts 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

8. Plaintiff Commission is an independent federal regulatory agency that is charged with responsibility for administering and enforcing the provisions of the Act, and the regulations promulgated thereunder.

9. Defendant Stanley E. Varner resides in Salt Lake City, Utah. He has never been registered with the Commission in any capacity.

IV. Facts

A. Statutory Background

10. “Commodity interest” is defined in Commission Regulation 4.10(a)(1), 17 C.F.R. § 4.10(a)(1), as any contract for the purchase or sale of a commodity for future delivery.

11. “Commodity trading advisor” is defined in Section 1a(6) of the Act, 7 U.S.C. § 1(a)(6), in part, as any person who, for compensation or profit, engages in the business of advising others, either directly or through publications, writings, or electronic media, as to the value or advisability of trading in any contract of sale of a commodity for future delivery made or to be made on or subject to the rules of a contract market or derivatives transaction execution facility.

B. Defendant’s Misrepresentations Regarding The Profitability Of His Trading

12. During the relevant time period, Defendant misrepresented to at least four prospective clients that, in exchange for their investment with him, he could guarantee them a profit of 20 percent per year. Defendant told the prospective clients that he had developed a program for trading stocks and Standard & Poor 500 Stock Price Index futures (“S&P 500

futures”) and that the program was performing so well that he could guarantee them a 20 percent profit with enough profit remaining to compensate him for his role in the enterprise.

13. Defendant solicited and accepted at least \$1.5 million from at least four clients to whom he had misrepresented the profitability of his trading. Defendant did not give the clients all of the promised returns and, in fact, has not returned their principal. Defendant currently owes nearly \$1 million to at least four clients.

C. Defendant’s Misrepresentations Regarding The Risk Of Loss Involved With His Trading

14. During the relevant time period, Defendant misrepresented to the prospective clients he solicited beginning in August 1999 that there was virtually no risk involved with his trading system and that any funds lost during the course of a given trading day would be recovered by the end of that trading day. In fact, Defendant had incurred cumulative net futures trading losses exceeding \$830,000 during the two-year period from July 1997 to July 1999. Defendant made the same misrepresentations to prospective clients in 2000 when, in fact, he had incurred cumulative net trading losses exceeding \$1,000,000 by December 31, 1999. Defendant incurred net trading losses exceeding \$726,662 during 2000, and he continued to solicit new clients throughout that year. Defendant’s losses were in the S&P 500 futures markets.

15. On March 10, 2000, Defendant incurred a trading loss of approximately \$690,000 in the S&P 500 futures markets, and he did not tell his clients that he had incurred that loss. Two months later Defendant solicited and accepted \$100,000 from a new client to whom Defendant represented that there was virtually no risk of financial loss involved with his trading system, which Defendant described as “fool proof.”

D. Defendant Provided Trading Advice To Clients

16. During the relevant time period, Defendant deposited at least \$1.5 million he had solicited and accepted from his clients into his personal checking account. Defendant subsequently transferred approximately \$925,000 of the client funds from his personal checking account into a futures trading account he had previously opened in the name of “Stanley E. Varner” at Refco, a registered futures commission merchant. He used the funds in the Refco account to trade S & P 500 futures.

17. Defendant made the decisions regarding the nature and timing of each of the trades executed in the Refco account. He personally placed, or caused to be placed, each of the orders to buy or sell S&P 500 futures contracts. The orders were placed from Salt Lake City, both by telephone and via computer, with brokers in Chicago. Defendant received confirmations of his orders by telephone, facsimile and by e-mail.

18. Defendant provided at least one investor with two documents purporting to be statements reflecting Defendant’s trading activity in that investor’s account; however, Defendant never opened a trading account for that investor. One of the documents purported to show that the investor’s \$100,000 investment had increased in value to \$107,125 in less than 30 days. The other document represented that the investor’s account balance was expected to increase by 352.65% by the end of twelve months. To date, over three years after the date of the investment, Defendant has returned only \$25,000 of the investor’s \$100,000.

E. Defendant Misappropriated Client Funds

19. During the relevant time period, Defendant used at least \$575,000 of the clients’ funds to pay various personal expenses unrelated to his futures trading activities. None of the

clients gave Defendant permission to use their funds for anything other than trading in stocks and S&P 500 futures.

V. Violations Of The Commodity Exchange Act

Count I

Violations Of Sections 4b(a)(2)(i) and (iii) Of The Act: Fraud By Misappropriation Of Customer Funds And Misrepresentation By False Statements And Omissions

20. Paragraphs 1 through 19 are realleged and incorporated herein.

21. From at least August 1999 to the present, Defendant violated Sections 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i) and (iii), in that he cheated or defrauded or attempted to cheat or defraud and willfully deceived or attempted to deceive other persons by misappropriating funds he received from his clients.

22. From at least August 1999, to the present, Defendant violated Sections 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i) and (iii), in that he cheated or defrauded or attempted to cheat or defraud and willfully deceived or attempted to deceive other persons by misrepresenting or failing to disclose material facts to prospective and current clients.

23. Defendant 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.

24. Each act of misappropriating client funds or misrepresenting or omitting material facts that occurred during the relevant time period, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Sections 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i) and (iii).

Count II

Violations Of Section 4b(a)(2)(ii) Of The Act: Fraud By Making False Reports or Statements

25. Paragraphs 1 through 19 are realleged and incorporated herein.

26. From at least August 1999 to the present, Defendant violated Section 4b(a)(2)(ii) of the Act, 7 U.S.C. § 6b(a)(2)(ii), in that he willfully made or caused to be made at least one false report or statement to at least one investor.

27. Defendant 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.

28. Each act of making false reports or statements that occurred 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)(2)(ii) of the Act, 7 U.S.C. § 6b(a)(2)(ii).

Count III

Violations Of Section 4o(1) Of The Act:
Fraud By A Commodity Trading Advisor

29. Paragraphs 1 through 19 are realleged and incorporated herein.

30. From at least August 1999 through the present, Defendant acted as a CTA in that he, for compensation or profit, engaged in the business of advising others, either directly or through publications, writings, or electronic media, as to the value or advisability of trading in any contract of sale of a commodity for future delivery made or to be made on or subject to the rules of a contract market or derivatives transaction execution facility.

31. From at least August 1999 through the present, Defendant has violated Section 4o(1) of the Act, 7 U.S.C. § 6o(1), in that he directly or indirectly employed or is employing a device, scheme, or artifice to defraud clients or prospective clients, or has engaged or is engaging in transactions, practices or a course of business which operated or operates as a fraud or deceit upon clients or prospective clients by means of the acts and practices described in paragraphs 1 through 19.

32. In connection with such conduct, Defendant used or is using the mails and other means or instrumentalities of interstate commerce, directly or indirectly, to engage in business as a CTA.

33. Each act of directly or indirectly employing a device, scheme or artifice to defraud clients or prospective clients, or engaging in a transaction, practice or a course of business which operated as a fraud or deceit upon clients or prospective clients during the relevant time period, including but not limited to the acts and practices specifically alleged herein, is alleged as a separate and distinct violation of Section 4o(1) of the Act, 7 U.S.C. § 6o(1).

Count IV

Violations Of Commission Regulation 4.30: Improperly Receiving Funds As A Commodity Trading Advisor

34. Paragraphs 1 through 19 are re-alleged and incorporated herein.

35. From at least August 1999 through the present, Defendant violated Commission Regulation 4.30, 17 C.F.R. § 4.30, in that he, while acting as a CTA, solicited, accepted, or received client funds, securities, or other property in his name to purchase, margin, guarantee, or secure commodity interests of his clients.

36. Each act of receiving client funds in violation of Commission Regulation 4.30, 17 C.F.R. § 4.30, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Commission Regulation 4.30, 17 C.F.R. § 4.30.

VI. Relief Requested

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

A. Find Defendant liable for violating Sections 4b(a)(2)(i)-(iii) and 4q(1) of the Act, 7 U.S.C. §§ 6b(a)(2)(i)-(iii) and 6q(1); and Commission Regulation 4.30, 17 C.F.R. § 4.30;

B. Enter an order of permanent injunction enjoining Defendant and all persons insofar as they are acting in the capacity of his agents, servants, employees, successors, assigns, and attorneys, and all persons insofar as they are acting in active concert or participation with Defendant who receive actual notice of such order by personal service or otherwise, from directly or indirectly:

1. Cheating or defrauding or attempting to cheat or defraud other persons in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery, made, or to be made, for or on behalf of any other person if such contract for future delivery is or may be

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, in violation of Section 4b(a)(2)(i) of the Act, 7 U.S.C. § 6b(a)(2)(i);

2. Willfully making or causing to be made to another person any false report or statement in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery, made, or to be made, for or on behalf of any other person if such contract for future delivery is or may be 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, in violation of Section 4b(a)(2)(ii) of the Act, 7 U.S.C. § 6b(a)(2)(ii);
3. Willfully deceiving or attempting to deceive other persons by any means whatsoever in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery, made, or to be made, for or on behalf of any other person if such contract for future delivery is or may be 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, in violation of Section 4b(a)(2)(iii) of the Act, 7 U.S.C. § 6b(a)(2)(iii);
4. Employing any device, scheme, or artifice to defraud any client or prospective client, or engaging in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client, by use of the mails or any means or instrumentality of interstate commerce, in violation of Section 4o(1) of the Act, 7 U.S.C. § 6o(1); and
5. Soliciting, accepting or receiving client funds, securities, or other property in their name(s) while acting as a CTA, in violation of Regulation 4.30, 17 C.F.R. § 4.30;

C. Enter an order pursuant to Section 6c(a) of the Act restraining Defendant and all persons insofar as they are acting in the capacity of his agents, servants, successors, employees, assigns, and attorneys, and all persons insofar as they are acting in active concert or participation

with them who receive actual notice of such order by personal service or otherwise, from directly or indirectly:

1. Destroying, mutilating, concealing, altering or disposing of any books and records, documents, correspondence, brochures, manuals, electronically stored data, tape records or other property of Defendant, wherever located, including all such records concerning Defendant's business operations;
2. Refusing to permit authorized representatives of the Commission to inspect, when and as requested by those representatives, any books and records, documents, correspondence, brochures, manuals, electronically stored data, tape records or other property of Defendant, wherever located, including all such records concerning Defendant's business operations; and
3. Withdrawing, transferring, removing, dissipating, concealing or disposing of, in any manner, any funds, assets, or other property, wherever situated, including but not limited to, all funds, personal property, money or securities held in safes, safe deposit boxes and all funds on deposit in any financial institution, FCM, bank or savings and loan account held by, under the control of, or in the name of the Defendant, whether jointly or otherwise;

D. Enter an order directing that Defendant provide the Plaintiff immediate and continuing access to his books and records, and that Defendant make an accounting to the Court of all of Defendant's assets and liabilities, together with all funds he received from and paid to clients and other persons in connection with commodity futures transactions or purported commodity futures transactions, including the names, addresses and telephone numbers of any such persons from whom he received such funds from August 1999 to the date of such accounting, and all disbursements for any purpose whatsoever of funds received from clients, including salaries, commissions, fees, loans and other disbursements of money and property of any kind, from August 1999 to and including the date of such accounting;

E. Enter an order requiring Defendant immediately to identify and provide an accounting for all assets and property that he currently maintains outside the United States, including but not limited to all funds on deposit in any financial institution, FCM, bank or

savings and loan account held by, under the control of, or in the name of the Defendant, whether jointly or otherwise, and requiring Defendant to repatriate all funds held in such accounts by paying them to the Clerk of Court or as otherwise ordered by the Court, for further disposition in this case;

F. Enter an order of permanent injunction prohibiting Defendant and all persons insofar as they are acting in the capacity of agents, servants, employees, successors, assigns, or attorneys of Defendant, and all persons insofar as they are acting in active concert or participation with Defendant who receive actual notice of the Order by personal service or otherwise, from:

1. Directly or indirectly soliciting or accepting any funds from any person in connection with the purchase or sale of any commodity futures and options contract;
2. Engaging in, controlling, or directing the trading of any commodity futures or options accounts, on his own behalf or for or on behalf of any other person or entity, whether by power of attorney or otherwise;
3. Placing orders, giving advice or price quotations or other information in connection with the purchase or sale of commodity futures and options contracts for themselves and others;
4. Introducing customers to any other person engaged in the business of commodity futures and options trading;
5. Issuing statements or reports to others concerning commodity futures and options trading; and
6. Otherwise engaging in any business activities related to commodity futures and options trading;

G. Enter an order requiring Defendant to disgorge to any officer appointed or directed by the Court or directly to the clients all benefits received including, but not limited to, salaries, commissions, loans, fees, revenues and trading profits derived, directly or indirectly,

from acts or practices which constitute violations of the Act as described herein, including pre-judgment interest;

H. Enter an order requiring Defendant to make restitution by making whole each and every client whose funds were received or utilized by him in violation of the provisions of the Act as described herein, including pre-judgment interest;

I. Enter an order requiring Defendant to pay civil monetary penalties under the Act, to be assessed by the Court in amounts of not more than the higher of \$110,000 for each violation of the Act and Regulations committed before October 23, 2000, and not more than \$120,000 for each violation of the Act and Regulations committed on or after October 23, 2000, or triple the monetary gain to him for each violation of the Act and Regulations;

J. Enter an order requiring Defendant to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2412(a)(2) (1994); and

K. Enter an Order granting such other and further relief as this Court may deem necessary and appropriate under the circumstances.

Date: December 11, 2002

Respectfully submitted,

Clifford Histed
Senior Trial Attorney

Rosemary Hollinger
Associate Director/Chicago Regional Counsel

Commodity Futures Trading Commission
525 West Monroe Street, Suite 1100
Chicago, Illinois 60661
(312) 596-0532 (Histed)
(312) 596-0520 (Hollinger)
(312) 596-0700 (office number)
(312) 596-0714 (facsimile)

Clifford Histed
Attorney for Plaintiff Commodity Futures Trading Commission
525 W. Monroe St., Suite 1100
Chicago, IL 60661
312-596-0532

Carlie Christensen
(Bar # 0633)
Civil Division Chief
Office of the United States Attorney
185 South State Street, Suite 400
Salt Lake City, Utah 84111
801-524-5682