

FILED

2008 AUG 26 PM 1:41

CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

BY _____

1 William P. Janulis IL ARDC No. 1326449
2 Rosemary Hollinger IL ARDC No. 03123647
3 Commodity Futures Trading Commission
4 525 W. Monroe St, #1100
5 Chicago, IL 60661
6 Telephone: (312) 596-0545
7 Facsimile: (312) 596-0714

8 Kent Kawakami, CA Bar No. 149803
9 United States Attorney's Office
10 Central District of California - Civil Division
11 300 North Los Angeles Street Room 7516
12 Los Angeles, CA 90012
13 Telephone: (213) 894-4858
14 Facsimile: (213) 894-2380

15 Attorneys for Plaintiff
16 Commodity Futures Trading Commission

17 **UNITED STATES DISTRICT COURT**
18 **CENTRAL DISTRICT CALIFORNIA**
19 **WESTERN DIVISION**

20 _____)
21 **Commodity Futures**)
22 **Trading Commission,**)
23 **Plaintiff,**)
24 **vs.**)
25 **Robert D. Bame and**)
26 **Forward Investment Group,**)
LLC,)
Defendants.)

Case No: **CV08-05593**

RGK
PLA_x

**COMPLAINT FOR
INJUNCTIVE, OTHER
EQUITABLE RELIEF AND
FOR CIVIL PENALTIES
UNDER THE
COMMODITY EXCHANGE
ACT, AS AMENDED,
7 U.S.C. §§ 1 et seq.**

I. JURISDICTION AND VENUE

1
2 1. Plaintiff Commodity Futures Trading Commission (“CFTC” or
3 “Commission”) brings this action against Robert D. Bame (“Bame”) and Forward
4 Investment Group, LLC (“Forward”) (collectively “Defendants”) for engaging in
5 acts and practices that violate provisions of the Commodity Exchange Act, as
6 amended (the “Act”), 7 U.S.C. § 1 *et seq.* (2006).

8 2. This court has jurisdiction over this action pursuant to Section 6c(a)
9 of the Act, 7 U.S.C. § 13a-1, which authorizes the CFTC to seek injunctive relief
10 against any person whenever it shall appear to the CFTC that such person has
11 engaged, is engaging, or is about to engage in any act or practice constituting a
12 violation of the Act or any rule, regulation, or order thereunder.

13 3. Venue properly lies with this Court pursuant to Section 6c(e) of the
14 Act, 7 U.S.C. § 13a-1(e), in that Defendants are found in, inhabit, or transact
15 business in this District, and/or the acts and practices in violation of the Act have
16 occurred, are occurring, or are about to occur, within the District, among other
17 places.
18
19
20
21

II. SUMMARY

22 4. From at least February 2007 to the present (“relevant time period”),
23 Forward and Bame operated a commodity pool. Bame was the sole manager and
24 controlling person of Forward.
25
26

1 5. Defendants Bame and Forward have pooled and deposited via wire at
2 least \$605,000 in a commodity trading account in the name of Forward carried at
3 TransAct Futures (“TransAct”), a division of York Business Associates, LLC, a
4 registered futures commission merchant (“FCM”). These funds originated from
5 at least three other persons besides Bame.
6

7 6. Bame controls the commodity trading of the Forward account and
8 has consistently lost money doing so. Bame lost approximately \$595,000 trading
9 the account from February 2007 through November 2007. There has been no
10 further trading activity in the account from December 2007 through at least May
11 2008.
12

13 7. Bame and Forward also provided to one or more prospective or
14 actual pool participants a forged and false “daily” commodity trading statement
15 purportedly issued by TransAct (“forged daily statement”) that indicated that the
16 Forward account had a total net liquidating value of over \$77 million on
17 December 14, 2007. The actual net liquidating value of the account from
18 December 1, 2007 through May 2008 was only \$4,486.
19
20

21 8. Bame also provided to one or more pool participants or prospective
22 pool participants two other forged and false commodity trading statements
23 purportedly issued by TransAct.
24
25
26

1 13. Forward Investment Group, LLC is a California limited liability
2 company established in January 2007. Its principal place of business is 901 26th
3 St., Santa Monica, California 90403. Forward has never been registered in any
4 capacity with the Commission.
5

6 IV. STATUTORY BACKGROUND

7 14. A “commodity pool” is defined in Commission Regulation
8 4.10(d)(1), 17 C.F.R. § 4.10(d)(1), as any investment trust, syndicate or similar
9 form of enterprise engaged in the business of investing its pooled funds in trading
10 commodity futures and/or commodity options.
11

12 15. A “commodity pool operator” (“CPO”) is defined in Section 1a(5) of
13 the Act, 7 U.S.C. § 1(a)(5), as any person engaged in a business that is of the
14 nature of an investment trust, syndicate, or similar form of enterprise, and who, in
15 connection therewith, solicits, accepts or receives from others, funds, securities,
16 or property, either directly or through capital contributions, the sale of stock or
17 other forms of securities or otherwise, for the purpose of trading in any
18 commodity for future delivery on or subject to the rules of any contract market.
19

20 16. An “associated person” (“AP”) is defined in Commission Regulation
21 1.3(aa)(3), 17 C.F.R. § 1.3(aa)(3), as a natural person associated with a CPO “as a
22 partner, officer, employee, consultant, or agent (or any natural person occupying
23 a similar status or performing similar functions), in any capacity which involves
24
25
26

1 (i) the solicitation of funds, securities, or property for a participation in a
2 commodity pool or (ii) the supervision of any person or persons so engaged.”

3 17. A “participant” is defined in Commission Regulation 4.10(c),
4 17 C.F.R. § 4.10(c), as any person who has any direct financial interest in a
5 commodity pool.
6

7 V. FACTS

8 A. The Pool Enterprise

9 18. From August 2005 through January 2007, Bame controlled and
10 traded a commodity trading account in the name of Stefan Homes, LLC
11 (“Stefan”) that included funds received from one or more persons besides Bame.
12 Bame traded the Stefan account first at Peregrine Financial Group, LLC, a
13 registered FCM, and later at TransAct.
14

15 19. In February 2007, Bame opened a new commodity futures trading
16 account in the name of Forward with TransAct through Cannon Trading Co., Inc.
17 (“Cannon”) of Beverly Hills, California. Cannon is registered with the
18 Commission as an introducing broker pursuant to Section 4d(a)(1) of the Act,
19 7 U.S.C. 6d(a)(1). In the account agreement with TransAct, Bame indicated that
20 no other person had a financial interest in the Forward trading account.
21
22
23
24
25
26

1 20. Bame initially deposited \$25,000 in the Forward trading account at
2 TransAct, and made additional deposits over time. By October 2007, total
3 deposits equaled \$605,000 and cumulative trading losses equaled \$595,514.
4

5 21. On or about December 22, 2007, Bame and Forward sent or caused
6 to be sent to one or more participants or prospective participants two forged
7 statements on TransAct letterhead for the Forward account, dated December 14,
8 2007. The first was the forged weekly statement described in paragraph 7. The
9 second was a forged and false commodity trading “weekly statement” that
10 showed 97 purported “sub-account” balances for the Forward account with a
11 cumulative balance of over \$61 million.
12

13 22. Some date after April 22, 2008, Bame and Forward sent or caused to
14 be sent to one or more pool participants or prospective participants a third forged
15 statement on TransAct letterhead for the Forward account. The third forged
16 account statement, dated April 22, 2008, showed a purported “ledger balance” of
17 \$1,056,000 for the Forward account.
18

19
20 **B. Certain Pool Participants Visit TransAct**
21

22 23. On or about May 19, 2008, a group of five people that included at
23 least three pool participants visited TransAct’s offices in Chicago, Illinois.
24 During the visit, at least one of the pool participants, Adam Telanoff
25
26

1 (“Telanoff”), indicated that he had invested with Bame and Forward and sought
2 information about the Forward account.

3 24. While still at the TransAct office, Telanoff forwarded to a TransAct
4 employee an email that had attached copies of the two forged account statements
5 dated December 14, 2007 that he had received from Forward. Tellanoff also
6 forwarded to the same TransAct employee the third forged account statement,
7 dated April 22, 2008.
8
9

10 25. TransAct employees advised the pool participants that confidentiality
11 obligations prevented them from disclosing specific information about the
12 Forward account, but did state that there were significant discrepancies between
13 the forged statements and the actual liquidating balance in the Forward account.
14

15 **C. Regulatory Follow-up As A Consequence Of The Visit**

16 26. On May 19, 2008, a TransAct employee notified the National
17 Futures Association (“NFA”) of the developments described in paragraphs 23-25.
18

19 27. On May 21, 2008, an NFA staff member spoke to Telanoff. Telanoff
20 told the NFA staff member that he and some of his family members had given
21 Bame and Forward approximately \$1 million to invest with Forward and that he
22 understood that Forward traded e-mini futures contracts. Telanoff further stated
23 that until recently, he had also successfully requested and received withdrawals
24
25
26

1 of his cash contributions, but that Bame had failed to honor the most recent
2 request for a withdrawal.

3 28. In furtherance of NFA's duties as registered futures association for
4 the commodity futures industry, a NFA staff member also contacted Bame on
5 May 22, 2008, regarding the Forward account. Bame admitted that he had
6 received funds from others and invested those funds in what he described as a
7 Forward "investment club". More specifically, he claimed that besides using his
8 own funds, he had received funds only from his father and two other
9 acquaintances who were brothers, namely, Chito and Benny Espiritu, for trading
10 the Forward commodity account. Bame further claimed that the total amount
11 invested in the Forward enterprise was \$400,000.

12 29. Bame further admitted to the NFA staff member that he was aware of
13 the May 19, 2008 visit of certain persons to TransAct and their inquiries about
14 the Forward account, but denied that any of the visitors were participants in the
15 Forward pool enterprise.

16 30. On May 25, 2008, another one of the pool participant visitors to the
17 TransAct offices, Derek Difani, acknowledged to Commission staff that he had
18 invested not more than \$25,000 in the Forward pool enterprise, but had received
19 an amount equal to all his cash contributions back from Bame and Forward.
20
21
22
23
24
25
26

1 **VI. VIOLATIONS OF THE COMMODITY EXCHANGE ACT**

2 **COUNT I**

3 **Violations Of Section 4b(a)(2)(ii) Of The Act:**
4 **Fraud By False Statements**

5 31. The allegations set forth in paragraphs 1 through 30 are re-alleged
6 and incorporated herein.

7 32. Section 4b(a)(2)(ii) of the Act, 7 U.S.C. §§ 6b(a)(2)(ii), makes it
8 unlawful for any person, in or in connection with any order to make, or the
9 making of, any contract of sale of any commodity for future delivery made, or to
10 be made, for or on behalf of any other person if such contract for future delivery
11 is or may be used for (A) hedging any transaction in interstate commerce in such
12 commodity or the products or byproducts thereof, or (B) determining the price
13 basis of any transaction in interstate commerce in such commodity, or
14 (C) delivering any such commodity sold, shipped, or received in interstate
15 commerce for the fulfillment thereof; (ii) willfully to make or cause to be made
16 to such other person any false report or statement thereof, or willfully to enter or
17 cause to be entered for such person any false record thereof.

18 33. From at least December 2007 to the present, Bame and Forward
19 willfully made or caused to be made false reports or statements to another person
20 by sending the forged Forward account statements to one or more pool
21 participants or prospective participants.
22
23
24
25
26

1 received funds, securities or property from others for the purpose of trading in
2 commodities for future delivery on or subject to the rules of contract markets or
3 derivatives transaction execution facilities.

4
5 40. From at least February 2007 to the present, Bame acted as an AP of a
6 CPO by associating with a CPO as a partner, officer, employee, consultant, or
7 agent (or as a person occupying a similar status or performing similar functions),
8 in a capacity that involves (i) the solicitation of funds, securities, or property for a
9 participation in a commodity pool or (ii) the supervision of any person or persons
10 so engaged.
11

12
13 41. Sections 4o(1)(A) and (B) of the Act, 7 U.S.C. § 6o(1)(A) and (B),
14 prohibit any CPO and any AP of a CPO from directly or indirectly employing
15 any device, scheme or artifice to defraud participants or prospective participants,
16 or engaging in transactions, practices or a course of business which operate as a
17 fraud or deceit upon participants or prospective participants by using the mails or
18 other means or instrumentalities of interstate commerce.
19

20
21 42. From at least December 2007 to the present, Forward and Bame
22 violated Sections 4o(1)(A) and (B) of the Act, 7 U.S.C. §§ 6o(1)(A) and (B), by
23 sending or causing to be sent the forged Forward account statements to one or
24 more pool participants or prospective participants.
25
26

1 43. In connection with such conduct, Forward and Bame used or are
2 using the mails and other means or instrumentalities of interstate commerce,
3 directly or indirectly, to engage in business as a CPO.
4

5 44. Each use of the mails or any means or instrumentality of interstate
6 commerce in connection with each act that constituted a device, scheme, or
7 artifice to defraud commodity pool participants or prospective participants or
8 each practice or course of business that operated as a fraud or deceit upon
9 commodity pool participants or prospective participants during the relevant time
10 period, including but not limited to those specifically alleged herein, is alleged as
11 separate and distinct violations of Sections 4o(1)(A) and (B) of the Act.
12
13

14 45. During the relevant time, Bame, as sole manager and trader at
15 Forward, controlled Forward and did not act in good faith or knowingly induced,
16 directly or indirectly, the acts constituting the violations described in this Count.
17

18 46. Pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b), Bame is a
19 controlling person liable for the violations described in this Count to the same
20 extent as Forward.
21

22 47. Bame engaged in the conduct described herein as an agent of
23 Forward, and consequently, Forward is liable for Bame's violations described in
24 this Count pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B).
25
26

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Count III

**Violations Of Section 9(a)(4) Of The Act:
Making Fraudulent Statements To A Registered Futures Association**

48. Paragraphs 1 through 30 are re-alleged and incorporated herein.

49. Section 9(a)(4), 7 U.S.C. § 13(a)(4), makes it a violation of the Act for any person willfully to falsify, conceal, or cover up by any trick, scheme, or artifice a material fact, make any false, fictitious, or fraudulent statements or representations, or make or use any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry to a registered entity, board of trade, or futures association designated or registered under this chapter acting in furtherance of its official duties under this chapter.

50. Bame willfully and fraudulently misrepresented to a NFA staff member the number and identities of the participants in the Forward pool enterprise and that the enterprise only had \$400,000 in cash contributions. Each of these misrepresentations by Bame is alleged as a separate and distinct violation of Section 9(a)(4) of the Act, 7 U.S.C. § 13(a)(4).

51. Bame engaged in the conduct described herein as an agent of Forward, and consequently, Forward is liable for Bame's violations described in this Count pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B).

VII. RELIEF REQUESTED

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

A. Find Defendants liable for violating Sections 4b(a)(2)(ii), 4o(1)(A) and (B), and 9(a)(4) of the Act of the Act, 7 U.S.C. §§ 6b(a)(2)(ii), 6o(1)(A) and (B), and 13(a)(4);

B. Enter an order pursuant to Section 6c(a) of the Act restraining Defendants and all persons insofar as they are acting in the capacity of Defendants' 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 Defendants, wherever located, including all such records concerning Defendants' business operations;

2. Refusing to permit authorized representatives of the Commission to inspect, when and as requested, any books and records, documents,

1 correspondence, brochures, manuals, electronically stored data, tape records or
2 other property of Defendants, wherever located, including all such records
3 concerning Defendants' business operations;

4
5 3. Withdrawing, transferring, removing, dissipating, concealing or
6 disposing of, in any manner, any funds, assets, or other property belonging to
7 or within the custody, control or actual or constructive possession of the
8 Defendants, wherever situated, including but not limited to, all funds, personal
9 property, money or securities held in safes, safety deposit boxes and all funds
10 on deposit in any financial institution, bank or savings and loan;

11
12 C. Enter orders of preliminary and permanent injunction enjoining
13 Defendants and all persons insofar as they are acting in the capacity of their
14 agents, servants, employees, successors, assigns, and attorneys, and all persons
15 insofar as they are acting in active concert or participation with Defendants who
16 receive actual notice of such order by personal service or otherwise, from directly
17 or indirectly:

18
19 1. Engaging in conduct in violation of Sections 4b(a)(2)(ii), 4o(1)(A)
20 and (B), and 9(a)(4) of the Act of the Act, 7 U.S.C. §§ 6b(a)(2)(ii), 6o(1)(A)
21 and (B), and 13(a)(4);
22
23
24
25
26

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

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

6 b. engaging in, controlling or directing the trading for any
7 commodity interest account for or on behalf of any other person or
8 entity, whether by power of attorney or otherwise;

9 c. soliciting or accepting any funds from any person in
10 connection with the purchase or sale of any commodity interest;

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

19 e. entering into any commodity interest transactions for their own
20 personal accounts, for any account in which they have a direct or
21
22
23
24
25
26

1 indirect interest and/or having any commodity interests traded on their
2 behalf; and/or

3 f. engaging in any business activities related to commodity
4 interest trading;

5
6 D. Enter an order directing that Defendants provide the Plaintiff
7 immediate and continuing access to their books and records, make an accounting
8 to the Court of all of Defendants' assets and liabilities, together with all funds
9 they received from and paid to pool participants and other persons in connection
10 with commodity futures transactions or purported commodity futures transactions,
11 including the names, addresses and telephone numbers of any such persons from
12 whom they received such funds from August 2005 to the date of such accounting,
13 and all disbursements for any purpose whatsoever of funds received from
14 commodity pool participants, including salaries, commissions, fees, loans and
15 other disbursements of money and property of any kind, from August 2005 to and
16 including the date of such accounting;

17
18 E. Enter an order requiring Defendants to disgorge to any officer
19 appointed or directed by the Court or directly to the pool participants all benefits
20 received including, but not limited to, salaries, commissions, loans, fees, revenues
21 and trading profits derived, directly or indirectly, from acts or practices which
22
23
24
25
26

1 constitute violations of the Act as described herein, including pre-judgment
2 interest;

3 F. Enter an order requiring Defendants to make restitution by making
4 whole each and every pool participant whose funds were received or utilized by
5 them in violation of the provisions of the Act as described herein, including pre-
6 judgment interest;

7
8 G. Enter an order requiring Defendants to pay civil penalties under the
9 Act, to be assessed by the Court, in amounts of not more than the higher of
10 \$130,000 or triple the monetary gain to each Defendant for each violation of the
11 Act and Regulations;

12
13 H. Enter an order requiring Defendants to pay costs and fees as
14 permitted by 28 U.S.C. §§ 1920 and 2412(a)(2) (2000); and

15
16 I. Enter an Order providing such other and further relief, as this Court
17 may deem necessary and appropriate under the circumstances.
18

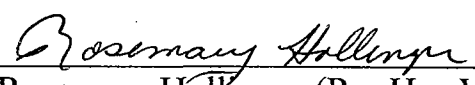
19
20 Dated: August 25, 2008

21 Respectfully submitted,
22 ATTORNEYS FOR PLAINTIFF
23 COMMODITY FUTURES TRADING
24 COMMISSION
25 525 West Monroe Street
26 Suite 1100
Chicago, Illinois 60661
(312) 596-0714 facsimile

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26



William P. Janulis (Pro Hac Vice)
Senior Trial Attorney
Illinois ARDC No. 1326449
(312) 596-0545
wjanulis@cftc.gov



Rosemary Hollinger (Pro Hac Vice)
Regional Counsel
IL ARDC No. 03123647
(312) 596-0520
rhollinger@cftc.gov

Kent Kawakami CA Bar No. 149803
United States Attorney's Office
Central District of California - Civil
Division
300 North Los Angeles Street Room 7516
Los Angeles, CA 90012
(213) 894-4858
kent.kawakami@usdoj.gov