

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA**

**UNITED STATES COMMODITY FUTURES
TRADING COMMISSION,**

Plaintiff,

v.

**THE TULVING COMPANY, INC. and
HANNES TULVING, JR.,**

Defendants.

Civil Action No. 3:15-cv-424

**COMPLAINT FOR INJUNCTIVE AND
OTHER EQUITABLE RELIEF AND FOR
CIVIL MONETARY PENALTIES UNDER
THE COMMODITY EXCHANGE ACT
AND COMMISSION REGULATIONS**

I.

INTRODUCTION

1. From in or about August 2013 through in or about January 2014 (“Relevant Period”), Hannes Tulving, Jr. (“Tulving”), through his company, The Tulving Company, Inc. (“Tulving Company”) engaged in a fraudulent scheme to obtain funds from the public and misappropriate those funds. As part of their scheme, Tulving and Tulving Company fraudulently offered contracts of sale of commodities in interstate commerce; namely, contracts for the sale of gold, silver, platinum, and palladium bullion and coin (“precious metals”).

2. During the Relevant Period, Defendants obtained at least \$17.8 million from at least 381 customers located throughout the United States for the purchase and sale of precious metals. Defendants purchased and sold little or no precious metals with the funds they collected from customers. Instead, Defendants defrauded investors by lying to them and misappropriating their funds.

3. Defendants attempted to conceal their fraud by making false and/or deceptive statements. Defendants falsely represented that: (1) investors owned specific amounts of precious metals when, in fact, they did not; (2) investors holdings in precious metals had significant value when, in fact, the non-existent holdings had no value whatsoever; and (3) investors were realizing profits from their investments when, in fact, no profit whatsoever had been realized.

4. Defendants have engaged, are engaging, or are about to engage in fraudulent acts and practices in violation of the Commodity Exchange Act (“Act”), 7 U.S.C. §§ 1 *et seq.* (2012), and the Regulations (“Regulations”) promulgated thereunder, 17 C.F.R. § 1.1 *et seq.* (2013). Specifically, Defendants have violated the antifraud provisions of Section 6(c)(1) of the Act, 7 U.S.C. §§ 9, 15 (2012), and Regulation 180.1(a), 17 C.F.R. § 180.1(a) (2013).

5. Accordingly, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2012), the U.S. Commodity Futures Trading Commission (“CFTC”) brings this action to enjoin such acts and practices and compel compliance with the Act. In addition, the CFTC seeks civil monetary penalties and remedial ancillary relief, including, but not limited to, trading and registration bans, restitution, disgorgement, rescission, post-judgment interest, and such other relief as the Court may deem necessary and appropriate.

6. Unless restrained and 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 described below.

II.

JURISDICTION AND VENUE

7. Jurisdiction. This Court possesses jurisdiction over this action pursuant to Section 6c of the Act, as amended, 7 U.S.C. § 13a-1 (2012), which authorizes the CFTC to seek injunctive and other relief against any person whenever it shall appear to the CFTC 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.

8. Venue. Venue properly lies with the Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2012), because Defendants are found in, inhabit, or transact business in the Western District of North Carolina, and the acts and practices in violation of the Act occurred, are occurring, or are about to occur, within this District.

III.

THE PARTIES

9. Plaintiff **U.S. Commodity Futures Trading Commission** is an independent federal regulatory agency that is charged by Congress with the administration and enforcement of the Act, as amended by the Dodd-Frank Act, and the Regulations. The CFTC maintains its principal office at Three Lafayette Centre, 1155 21st Street, N.W. Washington, D.C. 20581.

11. Defendant **The Tulving Company, Inc.** is a California corporation that is in the business of buying and selling precious metals, including gold, silver, platinum, and palladium in coin and bullion form. Tulving Company has never been registered with the CFTC.

12. Defendant **Hannes Tulving, Jr.** is a resident of Newport Beach, California. Tulving is the sole owner, president, and shareholder of Tulving Company. Tulving has never been registered with the CFTC.

IV.

FACTS ESTABLISHING DEFENDANTS' VIOLATIONS OF THE COMMODITY EXCHANGE ACT

A. Defendants Offered Contracts of Sale of Commodities in Interstate Commerce

13. During the Relevant Period, Tulving, by and through Tulving Company, obtained at least \$17.8 million from customers for the purpose of entering into contracts of sale of gold, silver, platinum, and palladium in interstate commerce.

14. Under Section 1(a)(9) of the Act, 7 U.S.C. § 1(a)(9) (2012), gold, silver, platinum, and palladium are statutorily-defined commodities.

15. As part of their fraud, Defendants used the mails or other instrumentalities of interstate commerce to: (1) receive funds from and send funds to customers; (2) disseminate false account documents to customers; and (3) send fictitious purchase and sale documents to customers.

B. Defendants Fraudulently Solicited Customers by Making False and Misleading Representations and/or Omitting Material Facts

16. During the Relevant Period, Defendants represented to members of the public that Tulving Company was a highly reputable precious metals firm that delivered precious metals to customers. Tulving Company held itself out as a stable, established dealer in precious metals through its website, www.tulving.com ("website"). The website stated that, from 1999 through March 30, 2013, Tulving Company bought and sold in excess of \$2.1 billion in precious metals. The website also represented that Tulving Company sold more than \$350 million in precious metals during 2012.

17. During the Relevant Period, the website represented Tulving Company purchased and sold precious metals at particular prices. The website also stated that precious metals were shipped quickly to customers after placement of orders and receipt of customer funds. Specifically, the website represented: “Gold, Platinum, and Palladium are typically shipped within 72 working hours of receipt of your wire;” “[s]ilver is typically shipped within about 5 working days after receipt of your wire;” and items paid by check would be shipped within 14 working days. These representations were false.

18. The website provided instructions for customers to purchase metals by sending funds to Tulving Company. Customers were instructed to send a check by mail to the address of Tulving Company or wire funds to bank accounts in the name of Tulving Company. During the Relevant Period, Defendants received at least \$17.8 million for the purpose of purchasing and selling precious metals.

19. During the Relevant Period, at least 381 persons from locations throughout the United States, including North Carolina, submitted orders with Tulving Company for the purchase of precious metals. During this time, Tulving, by and through Tulving Company, received approximately \$17.8 million from mail and wire transfers from these persons to purchase precious metals from Tulving Company.

20. During the Relevant Period, Defendants misrepresented confirmation of purchase and sale transactions with Tulving Company customers. Defendants falsely represented to customers that precious metals had been purchased after receipt of customer funds and that precious metals had been shipped to customers. Defendants knew that their representations regarding the purchase of precious metals were false because they did not purchase precious metals on behalf of customers and misappropriated most, if not all, of the customer funds.

21. During the Relevant Period, Defendants failed to disclose, and omitted, that they never purchased any precious metals on behalf of Tulving customers. Defendants also failed to disclose, and omitted, that the Tulving customer funds would be misappropriated by Defendants for purposes unrelated to the purchase and sale of precious metals including, but not limited to, paying the personal expenses of Defendants.

C. Defendants Misrepresented Account Values and Profits

22. During the Relevant Period, Defendants issued false financial statements to customers. These statements: (1) misrepresented that Tulving Company customers owned specific amounts of precious metals; (2) misstated the value of Tulving customer precious metals purchases; (3) and falsely represented the profitability of Tulving customer purchases.

23. Contrary to Defendants' false financial statements, none of the Tulving customers actually owned any precious metals, let alone realized any profits from their precious metals purchases because Defendants never actually purchased precious metals. Further, Defendants financial statements failed to disclose, and omitted, that the funds from the Tulving Customers would be misappropriated by Defendants.

D. Defendants Misappropriated Customer Funds

24. During the Relevant Period, Defendants misappropriated approximately \$17.8 million of customer funds for improper and unauthorized uses.

25. During the Relevant Period, Defendants misappropriated customer funds for Defendants' own financial benefit and for purposes unrelated to the purchase and sale of precious metals.

E. Tulving Acted as Controlling Person and Agent for Tulving Company

26. Tulving acted as the sole controlling person and agent of the Tulving Company. Tulving solicited investors on behalf of Tulving Company and handled all customer funds received by Tulving Company. Tulving was the sole shareholder and president of Tulving Company, and he acted solely on behalf of Tulving Company. Tulving was the sole person responsible for making all business decisions on behalf of Tulving Company and controlled all the operations of Tulving Company.

V.

**VIOLATIONS OF THE COMMODITY EXCHANGE ACT
COUNT I**

Violations of Section 6(c)(1) of the Act, 7 U.S.C. §§ 9, 15, and Regulation 180.1(a), 17 C.F.R. § 180.1(a): Fraud by Manipulative or Deceptive Devises or Contrivances

27. Paragraphs 1 through 26 are realleged and incorporated herein by reference.

28. Under Section 1a(9) of the Act, 7 U.S.C. § 1a(9) (2012), precious metals are statutorily defined commodities.

29. Section 6(c)(1) of the Act, 7 U.S.C. §§ 9, 15 (2012), provides, among other things, that it is unlawful for any person “to use or employ . . . in connection with . . . a contract of sale of any commodity in interstate commerce . . . any manipulative or deceptive device or contrivance, in contravention of [Commission rules and regulations].”

30. Regulation 180.1(a), 17 C.F.R. 180.1(a) (2013), provides, in relevant part, that it shall be unlawful for any person, directly or indirectly:

in connection with any . . . contract of sale of any commodity in interstate commerce . . . to intentionally or recklessly: (1) Use or employ, or attempt to use or employ, any manipulative device, scheme, or artifice to defraud; (2) Make, or attempt to make, any untrue or misleading statement of a material fact or to omit to state

a material fact necessary in order to make the statements made not untrue or misleading; (3) Engage, or attempt to engage, in any act, practice, or course of business, which operates or would operate as a fraud or deceit upon any person

31. Since in or about August 2013 through in or about January 2014, Tulving, through his company, Tulving Company, intentionally or recklessly used or employed manipulative or deceptive devices or contrivances, in connection with a contract of sale of any commodity in interstate commerce, including, but not limited to, making untrue and misleading statements of material facts, or omitting material facts necessary to make the statements not untrue or misleading, to the Tulving customers, including but not limited to:

- a. Failing to disclose, and omitting, that Tulving Company never used customer funds to purchase precious metals;
- b. Failing to disclose, and omitting, that Tulving Company did not own or did not have had possession of sufficient precious metals to deliver to customers;
- c. Misrepresenting that precious metals ordered by Tulving Company customers would be shipped and delivered;
- d. Issuing written statements misrepresenting the ownership of precious metals;
- e. Issuing written statements misrepresenting the value of customer purchases;
- f. Failing to disclose, and omitting, that precious metals ordered by Tulving Company customers would not be shipped or delivered; and
- g. Failing to disclose, and omitting, that the funds paid by Tulving Company customers would be misappropriated for Defendants' own financial benefit.

32. As part of the Defendants' fraudulent scheme concerning the purchase of precious metals, Defendants used the mails or other instrumentalities of interstate commerce, including, but not limited to:

- a. Using the Internet to send e-mails to customers relating to the purchase and sale of precious metals;

- b. Using the Internet, U.S. mail, and U.S. wire services to send invoices to Tulving Company customers;
- c. Using the Internet, U.S. mail, and U.S. wire services to send account statements to Tulving Company customers; and
- d. Using U.S. mail and U.S. wire services to receive funds from Tulving Company customers;

33. By this conduct, Defendants violated Section 6(c)(1) of the Act, 7 U.S.C. §§ 9, 15 (2012) and Regulation 180.1(a), 17 C.F.R. § 180.1(a) (2013).

34. Tulving directly engaged in these acts knowingly or with reckless disregard for the truth.

35. Tulving employed deceptive devices as described above, within the scope of his employment or office for Tulving Company. Therefore, Tulving Company is liable under Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2012), and Regulation 1.2, 17 C.F.R. § 1.2 (2013), as principal for its agent's acts, omissions or failures of the Act and Regulations.

36. Each misappropriation and misrepresentation or omission of material fact, including, but not limited to, those specifically alleged herein, is alleged as a separate and distinct violation by Defendants of Section 6(c)(1) of the Act, 7 U.S.C. §§ 9, 15 (2012), and Regulation 180.1(a), 17 C.F.R. § 180.1(a) (2013).

37. Each manipulative or deceptive device or contrivance used or employed during the Relevant Period, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 6(c)(1) of the Act, 7 U.S.C. §§ 9, 15 (2012), and Regulation 180.1(a), 17 C.F.R. § 180.1(a) (2013).

VI.

RELIEF REQUESTED

38. **WHEREFORE**, the CFTC respectfully requests that the Court, as authorized by Section 6c of the Act, 7 U.S.C. § 13a-1 (2012), and pursuant to its own equitable powers, enter:

- a. An order finding that Defendants violated Sections 6(c)(1) of the Act, 7 U.S.C. §§ 9, 15 (2012), and Regulation 180.1(a), 17 C.F.R. § 180.1(a) (2013);
- b. An order of permanent injunction prohibiting Defendants and any of their agents, servants, employees, assigns, attorneys, and persons in active concert or participation with any Defendant, including any successor thereof, from engaging, directly or indirectly, in conduct in violation of Section 6(c)(1) of the Act, 7 U.S.C. §§ 9, 15 (2012), and Regulation 180.1(a), 17 C.F.R. § 180.1(a) (2013);
- c. An order of permanent injunction prohibiting Defendants and any of their agents, servants, employees, assigns, attorneys, and persons in active concert or participation with any Defendant, including any successor thereof from engaging, directly or indirectly, in:
 - 1) Trading on or subject to the rules of any registered entity (as that term is defined in Section 1a(40) of the Act, 7 U.S.C. § 1a(40) (2012));
 - 2) Entering into any transactions involving “commodity interests” (as that term is defined in Regulation 1.3(yy), 17 C.F.R. § 1.3(yy) (2013)) for their own personal or for any account in which they have a direct or indirect interest;
 - 3) Having any commodity interests traded on their behalf;

- 4) 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 interests;
 - 5) Soliciting, receiving, or accepting any funds from any person for the purpose of purchasing or selling any commodity interests;
 - 6) Applying for registration or claiming exemption from registration with the Commission 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) (2013); and/or
 - 7) Acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2013)), agent or any other officer or employee of any person (as that term is defined in Section 1a(38) of the Act, 7 U.S.C. § 1a(38) (2012), 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) (2013).
- d. An order directing Defendants, as well as any successors thereof, 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, as amended, as described herein, and post-judgment interest thereon from the date of such violations;
- e. An order directing Defendants and any successors thereof to make full restitution to every person or entity whose funds they received or caused another person or entity to receive as a result of acts and practices that constituted violations of the

Act, as amended, as described herein, and post-judgment interest thereon from the date of such violations;

- f. An order directing Defendants and any successors thereof, to rescind, pursuant to such procedures as the Court may order, all contracts and agreements, whether implied or express, entered into between them and any of the customers whose funds were received by them as a result of the acts and practices which constituted violations of the Act, as amended, as described herein;
- g. An order directing that Defendants and any successors thereof provide the Commission immediate and continuing access to their books and records, make an accounting to the Court of all of Defendants' assets and liabilities, together with all funds they received from and paid to customers, and other persons in connection with the precious metals transactions or purported precious metals transactions, including the names, addresses and telephone numbers of such customers from whom they received such funds from August 1, 2013, to the date of such accounting, and all disbursements for any purpose whatsoever of funds received from commodity pool participants, including salaries, commissions, fees, loans and other disbursements of money and property of any kind, from August 1, 2013, to and including the date of such accounting;
- h. An order directing Defendants and any successors thereof to pay a civil monetary penalty under the Act to be assessed by the Court, in the amount of not more than the higher of triple the monetary gain to Defendants for each violation of the Act, as amended, and/or Regulations or \$140,000 for each violation of the Act, as

amended, and/or Regulations on or after October 23, 2008, plus post-judgment interest;

- i. An order requiring Defendants and any successors thereof to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2412(a)(2) (2012); and
- j. Such other and further relief as the Court deems proper.

U.S. COMMODITY FUTURES TRADING COMMISSION

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