

In The United States District Court
For The Northern District Of Illinois
Eastern Division

05 3130

Commodity Futures Trading Commission,
Plaintiff,

v.

Kevin Steele,

Defendant.

Civil Action No.:

JUDGE SHADUR
MAGISTRATE JUDGE SCHENKIER

RECEIVED

MAY 25 2005

MICHAEL J. ...
CLERK, U.S. DISTRICT COURT

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

The United States Commodity Futures Trading Commission, by and through its attorneys, hereby alleges as follows:

I. Summary

1. From at least January 2003 to the present (the "relevant period"), Kevin J. Steele ("Steele" or "Defendant"), with the assistance of other individuals, solicited and accepted at least \$7.5 million from at least 200 customers worldwide for purposes of operating a pool to trade commodity futures contracts. Steele has misrepresented the value of the pool, failed to disclose trading losses, caused false statements to be issued to pool participants that misrepresented the balance of the pool participants' respective interests in the pool, and made false statements to the FCM that maintained his commodity trading accounts in an effort to lull the FCM's suspicions and thereby further mislead customers. In addition, Steele acted as a commodity pool operator ("CPO") without the benefit of registration with the Commodity Futures Trading Commission ("Commission" or "CFTC").

2. Specifically, Steele has engaged, is engaging, or is about to engage in acts or practices which violate the anti-fraud and registration sections of the Commodity Exchange Act, as amended (“Act”), 7 U.S.C. §§ 1 *et seq.* (2002).

3. Unless restrained and enjoined by this Court, the 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.

4. Accordingly, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, the CFTC 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 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

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 Defendant transacted 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 and Other Relevant Entities

7. Plaintiff Commission is an independent federal regulatory agency that is charged with responsibility for administering and enforcing the provisions of the Act, 7 U.S.C. §§ 1 *et seq.*, and the regulations promulgated thereunder, 17 C.F.R. §§ 1 *et seq.*

8. Defendant Steele is believed to be a 33-year-old Canadian citizen who resides in San Luis Potosi, Mexico and maintains a mailing address in Vancouver, British Columbia. He has never been registered in any capacity with the CFTC, nor has he applied for any exemption from registration.

IV. Facts

A. Statutory Background

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

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

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

B. The Fraudulent Misrepresentation of Profits and Making of False Reports

12. Since the Defendant began operating a commodity pool in at least January 2003, he has attracted at least 200 pool participants, including United States residents, to entrust their money to him to be pooled with the funds of others and used to trade commodity futures contracts. The pool participants expected a pro rata share of the pool's profits and losses.

13. During the relevant period, Steele made oral misrepresentations and failed to disclose material facts to pool participants regarding the profitability of the pool that contained the pool participants' money. Specifically, Steele represented that the pool was generating a monthly profit of approximately 8-10 percent. At no time did Steele tell pool participants that the pool had incurred heavy losses.

14. During the relevant period, at least two persons became associated with Steele for purposes of soliciting prospective pool participants and assisting administration of the pool. Steele caused at least one of these persons, David Fulkco ("Fulkco"), to make misrepresentations of material fact in soliciting potential pool participants and to issue false statements to pool participants. Among other things, Steele provided Fulkco with statements that purported to be original monthly commodity trading account statements from a registered futures commission merchant ("FCM"). The monthly FCM account statements Steele gave to Fulkco typically showed that the pool had earned a monthly profit. Fulkco used this information to solicit prospective pool participants. Fulkco also retained a bookkeeper, who used the FCM account statements provided by Steele to prepare individual monthly trading account statements for pool participants.

15. Fulkco and his family were also investors in the commodity pool. During the relevant period, Steele also issued false statements to Fulkco that purported to be original

monthly commodity trading account statements for an account that Steele represented contained the Fulkco family's personal investment. The monthly account statements Steele gave to Fulkco were false.

16. As recently as May 2005, Steele gave Fulkco an account statement which falsely valued the pool's assets. Specifically, Steele gave Fulkco an account statement purportedly issued by a registered FCM, which showed that as of April 30, 2005, the pool had a current value of over \$17 million. The FCM account, however, never contained more than approximately \$4 million at any given time during the life of the pool.

C. Steele Lost Money Trading Commodity Futures

17. Despite Steele's representations to pool participants that he was pooling their funds to trade commodity futures contracts on their behalf, Steele opened two commodity trading accounts at a registered FCM in his own name and represented to the FCM that he owned all of the funds in those accounts. The FCM maintains an office in Chicago, Illinois. Steele's commodity accounts typically traded E Mini S&P contracts, Euro FX contracts and 30 Year Treasury Bond contracts on futures exchanges located in Chicago, Illinois, and the transactions were cleared by a derivatives clearing organization in Chicago, Illinois.

18. Steele opened his first account at the FCM, which was identified as account no. U 82666, on December 17, 2002. Steele incurred large losses in account U 82666 through heavy day trading of 30 Year Treasury Bond futures contracts using an electronic trading platform. In particular, Steele deposited a total of approximately \$4 million into his commodity account during the relevant period and incurred losses totaling over \$3 million.

19. Over a two-day period in May 2005, Steele's account no. U 82666 incurred losses of over \$2 million.

20. Steele opened his second commodity trading account at the FCM, identified as account no. U 99311, on April 29, 2003. Steele did not trade account no. U 99311 on a daily basis. That account sustained losses of approximately \$3,000 in 2003 and \$4,000 in 2004.

21. Steele's commodity accounts at the FCM were funded with monies from pool participants. Many of the deposits into Steele's account no. U 82666 consisted of wire transfers from bank accounts not in Steele's name, but in the name of other individuals or entities. In particular, Fulkco instructed the participants he solicited for the pool to wire funds to a bank account in the name of Abriel Asset Management ("Abriel"), and Fulkco subsequently wired those funds to the FCM for credit to Steele's account no. U 82666.

22. When Steele prepared account opening documents for account no. U 82666, he stated that his liquid net worth was \$175,000. In or around March 2004, the FCM's compliance officer became concerned because Steele's account no. U 82666 incurred a loss of at least \$240,000 over a twelve month period.

23. When personnel at the FCM contacted Steele, Steele told them that he was trying to make a living by day trading his account. At that time, Steele falsely represented to the FCM's personnel that he owned all of the funds in his account and falsely stated that his net worth had increased. Steele also falsely represented to the FCM's personnel that the deposits into his account no. U 82666 were the proceeds from real estate transactions. The numerous deposits into Steele's account no. U 82666 were, in fact, funds he received from pool participants.

24. On or about May 19, 2005, the FCM received an inquiry from a pool participant concerning an account statement he received from Steele in May 2005, which purported to be an account statement issued by the FCM. After personnel at the FCM reviewed the pool

participant's account statement, which purported to be for the period ending April 30, 2005 and which identified the pool participant's account as account no. U 101217 and Steele as the trader, FCM personnel concluded that the statement was a false account statement. Specifically, the FCM determined that account no. 101217 was an account which had never been funded and was a closed account, and that the firm had never opened an account in the name of the pool participant.

25. Some pool participants have tried to contact Steele to determine the status of their accounts. These pool participants have been unable to contact Steele and have been unable to get the funds they entrusted to Steele returned to them.

26. On information and belief, on or about May 20, 2005, Steele admitted to Fulco that the account statement he gave him in May 2005 falsely represented that the value of the pool was over \$17 million; at that time, Steele told Fulco that he had lost almost all of the pool's funds.

V. Violations of the Commodity Exchange Act and Commission Regulations

Count I

Violations of Section 4b(a)(2) of the Act Fraud by Misrepresentation

27. The allegations set forth in paragraphs 1 through 26 are re-alleged and incorporated herein.

28. Sections 4b(a)(2)(i)-(iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i)-(iii), make it unlawful for any person to cheat or defraud or attempt to cheat or defraud; or willfully make or cause to be made to other persons false reports or statements, or willfully enter or cause to be entered for other persons false records; or willfully deceive or attempt to deceive by any means whatsoever

other persons 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 such 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 produce 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.

29. During the relevant period, Steele cheated or defrauded or attempted to cheat or defraud and willfully deceived or attempted to deceive pool participants by misrepresenting the value of the commodity pool, failing to disclose trading losses, misrepresenting the balance of the pool participants' respective interests in the pool, and making false statements to the FCM that maintained his trading accounts to lull the FCM's suspicions and thereby further mislead customers.

30. Steele also cheated or defrauded or attempted to cheat or defraud pool participants by willfully making or causing to be made false reports to the pool participants who invested money with Defendant to trade commodity futures contracts.

31. 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)(2)(i)-(iii) of the Act.

COUNT II

Violations of Section 4o(1) of the Act: Fraud By a Commodity Pool Operator

32. Paragraphs 1 through 26 are realleged and incorporated herein.

33. During the relevant time period, Steele acted as a CPO, as defined by Section 1a(4) of the Act, 7 U.S.C. § 1a(4), in that he engaged in a business that is of the nature of an investment trust, syndicate, or similar form of enterprise and in connection therewith, has solicited, accepted or received funds, securities or property from others for the purpose of trading in any commodity for future delivery on or subject to the rules of any contract market or derivatives transaction execution facility.

34. During the relevant period, Steele 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 commodity pool participants, or has engaged or is engaging in transactions, practices or a course of business which operated as a fraud or deceit upon commodity pool participants by means of the acts and practices described in paragraphs 12 through 26.

35. 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 his business as a CPO.

36. Each act of making false reports, false statements and material omissions 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 4o(1) of the Act, 7 U.S.C. § 6o(1) (2002).

COUNT III

VIOLATION OF SECTION 4m(1) OF THE ACT: FAILURE TO REGISTER AS A COMMODITY POOL OPERATOR

37. Paragraphs 1 through 26 are re-alleged and incorporated herein.

38. With certain specified exceptions and exemptions not applicable here, all CPOs are required to be registered with the Commission pursuant to Section 4m(1) of the Act, 7 U.S.C. § 6m(1).

39. Specifically, Steele, during the relevant period, was a CPO as defined by Section 1a(4) of the Act, 7 U.S.C. § 1a(4), by engaging in a business that is of the nature of an investment trust, syndicate, or similar form of enterprise and in connection therewith has solicited, accepted or received funds, securities or property from others for the purpose of trading in commodities for future delivery on or subject to the rules of contract markets or derivatives transaction execution facilities.

40. In connection with such conduct, Steele used the mails and other means or instrumentalities of interstate commerce, directly or indirectly, to engage in business as a CPO.

41. Steele engaged in these activities without the benefit of registration as a CPO, in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2002).

42. Each use of the mails or any means or instrumentality of interstate commerce in connection with his business as a CPO without proper registration during the relevant time period, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2002).

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, and pursuant to its own equitable powers:

A. Find Defendant liable for violating Sections 4b, 4m(1) and 4o(1) of the Act, 7 U.S.C. §§ 6b, 6m(1) and 6o(1) (2002);

B. Enter an order of permanent injunction enjoining Defendant and all persons

insofar as they are acting in the capacity of his agent, servant, employee, successor, assign, and attorney, 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. Engaging in conduct in violation of Sections 4b(a)(2), 4m(1), and 4o(1) of the Act, 7 U.S.C. §§ 6b, 6m(1) and 6o(1) (2002);
2. Directly or indirectly soliciting or accepting any funds from any person in connection with the purchase or sale of any commodity futures or options contracts;
3. 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;
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 or options trading;
6. Otherwise engaging in any business activities related to commodity futures or options trading; and
7. 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 from the Commission, except as provided for in Commission Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9), or acting as a principal, agent, officer or employee of any person registered, required to be registered, or exempted from registration with the Commission, except as provided for in Commission Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9).

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 Defendant's agent, servant, successor, employee, assign, and attorney, and all persons insofar as they are acting in active concert or participation with him 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, 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, safety deposit boxes and all funds on deposit in any financial institution, bank or savings and loan account, whether domestic or foreign, held by, under the control, or in the name of the Defendant;

D. Enter an order directing that Defendant provide the Plaintiff immediate and continuing access to his books and records, make an accounting to the Court of all of Defendant's assets and liabilities, together with all funds he received from and paid to investors 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 December 2002 to the date of such accounting, and all disbursements for any purpose whatsoever of funds received from commodity investors, including salaries, commissions, fees, loans and other disbursements of money and property of any kind, from December 2002 to and including the date of such accounting. At a minimum, the accounting should include a chronological schedule of all cash receipts and cash disbursements. In addition, each transaction shall be classified as business or personal. All business transactions shall disclose the business purpose of the transaction. The accounting shall be provided in an electronic format such as Quicken, Excel, or other accounting or electronic format spreadsheet. In addition, the Defendant shall supply true and accurate copies of any balance sheets, income

statements, statement of cash flow, or statement of ownership equity previously prepared for the Defendant's business(es);

E. Enter an order requiring Defendant to disgorge to any officer appointed or directed by the Court or directly to the pool participants 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;

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

G. Enter an order requiring Defendant to pay civil penalties under the Act, to be assessed by the Court, in amounts of not more than the higher of (1) triple the monetary gain to Defendant for each violation of the Act and Regulations or (2) \$120,000 for each violation of the Act before October 22, 2004 and \$130,000 for each violation of the Act after October 23, 2004;

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

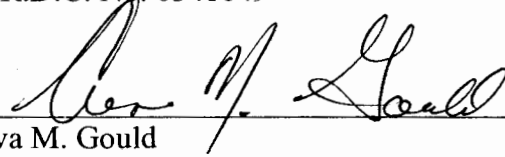
I. Enter an Order providing such other and further relief as this Court may deem necessary and appropriate under the circumstances.

Date: May ___ 2005

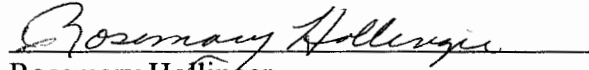
Respectfully submitted,


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