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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

U.S. COMMODITY FUTURES TRADING COMMISSION, Plaintiff, v. CRE CAPITAL CORPORATION, a Georgia corporation, and JAMES G. OSSIE, an individual, Defendants.	CASE NO. 1 09-CV-0115

COMPLAINT FOR PERMANENT INJUNCTION, CIVIL MONETARY PENALTIES, AND OTHER EQUITABLE RELIEF

Plaintiff, the United States Commodity Futures Trading Commission ("Commission" or CFTC"), by its attorneys, alleges as follows:

I. SUMMARY

1. From at least June 2007 to the present, CRE Capital Corporation ("CRE Capital"), through its principal and control person, James G. Ossie ("Ossie") (collectively, "Defendants"), solicited approximately $25 million from more than 120 members of the general public for the purported purpose of trading

off-exchange foreign currency contracts. Defendants offered "30 Day Currency Trading Contracts," which guaranteed 10 percent return (the "ROI") in 30 days, the equivalent of an annual percentage rate of more than 120 percent. The purported minimum investment is $100,000; however, Defendants permitted prospective customers to pool their funds with other prospective customers in order to reach the minimum.

2. Defendants claimed that the ten percent monthly guaranteed ROI was produced by their successful trading of United States and Japanese currency contracts. In fact, Defendants' futures trading resulted in substantial losses and any purported ROI or other "profits" paid to customers came from existing customers' original principal and/or from money invested by subsequent customers.

3. Prospective customers were told that the program involved very little risk because Defendants had established a large reserve fund. The reserve funds were purportedly not traded or exposed to any risk and were available to pay the 10 percent ROI, plus redeemed principal, if Defendants' trading activities were less profitable than expected in any particular month.

4. By virtue of this conduct and the further conduct described herein, Defendants have engaged, are engaging, or are about to engage in acts and practices in violation of provisions of the Commodity Exchange Act (the "Act"), 7

U.S.C. §§ 1 *et seq.* (2006), as amended by the Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, Title XIII (the CFTC Reauthorization Act ("CRA"), §§ 13101-13204, 122 Stat. 1651 (effective June 18, 2008).

5. Ossie committed the acts and omissions described herein within the course and scope of his employment at CRE Capital. Therefore, CRE Capital is liable under Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006), and Commission Regulation ("Regulation") 1.2, 17 C.F.R. § 1.2 (2008), as principal for CRE Capital's violations of the Act.

6. Ossie is liable under Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006), as a controlling person of CRE Capital for its violations of the Act, because he did not act in good faith or knowingly induced, directly or indirectly, the acts constituting the violations.

7. Accordingly, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2006), and Section 2(c)(2) of the Act as amended by the CRA, to be codified at 7 U.S.C. § 2(c)(2), the Commission brings this action to enjoin Defendants' unlawful acts and practices and to compel their compliance with the Act and to further enjoin Defendants from engaging in any commodity-related activity. In addition, the Commission seeks civil monetary penalties and remedial ancillary relief, including, but not limited to, trading and registration bans, restitution,

disgorgement, rescission, pre- and post-judgment interest, and such other relief as the Court may deem necessary and appropriate.

8. 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

9. Section 6c(a) of the Act, 7 U.S.C. § 13a-1 (2006), 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 the Act or any rule, regulation, or order thereunder.

10. The Commission has jurisdiction over the transactions at issue in this case pursuant to Section 2(c)(2) of the Act as amended by the CRA, to be codified at 7 U.S.C. § 2(c)(2), for conduct that occurred after June 18, 2008, the relevant effective date of the CRA. The CRA, among other things, clarified the Commission's anti-fraud jurisdiction over off-exchange foreign currency transactions of the type offered by Defendants. Section 2(c)(2) of the Act as amended by the CRA, to be codified at 7 U.S.C. § 2(c)(2). Defendants' foreign

currency transactions and conduct that occurred on or after June 18, 2008 are therefore subject to the Commission's jurisdiction.

11. Venue properly lies with the Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2008), because Defendants transacted business in the Northern District of Georgia and certain of the transactions, acts, practices, and courses of business alleged occurred, are occurring, and/or are about to occur within this District.

III. PARTIES

12. **Commodity Futures Trading Commission** is an independent federal regulatory agency that is charged with the administration and enforcement of the Act, 7 U.S.C. §§ 1 *et seq.*, and the Regulations promulgated thereunder, 17 C.F.R. §§ 1.1 *et seq.* The CFTC maintains its principal office at Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

13. **CRE Capital Corporation** is a Georgia corporation formed on March 26, 2007, with its principal place of business at 3700 Mansell Road, Suite 220, Alpharetta, Georgia 30022. CRE Capital has never been registered with the CFTC.

14. **James G. Ossie** resides in Dawsonville, Georgia, and is President, CEO, and sole owner and director of CRE Capital. At all material times, CRE

Capital was wholly owned by Ossie, who held himself out to the public as the owner and operator of CRE Capital and who solicited members of the public to invest with CRE Capital by, as described below, holding periodic conference calls with potential customers in which Ossie described the purported investments to them and made various misrepresentations. Ossie has never been registered with the CFTC.

IV. FACTS

15. On or about June 2007, CRE Capital, through its principal and control person, Ossie, began to solicit members of the general public to trade foreign currency through "30 Day Currency Trading Contracts." These contracts guaranteed 10 percent ROI in 30 days. To date, Defendants have raised more than $25 million from over 120 customers, only some of which was used to trade foreign currency. Approximately $20 million of customer funds was received by Defendants after June 18, 2008.

16. Defendants allowed customers to enter into contracts of $100,000, $300,000, $500,000, $1 million, $5 million, and $10 million, and permitted customers with less than $100,000 to join their funds with those of other customers in order to reach the $100,000 minimum level.

17. At the end of each 30 day period, all customers received their 10 percent ROI by wire transfer. Customers could chose to obtain a refund of their principal at this time, roll over their principal into a new 30 Day Currency Trading Contract, or invest additional funds to open a new 30 Day Currency Trading Contract in a higher amount.

18. Defendants recruited most, and possibly all, of its customers through its "correspondents," which are located throughout the United States. Each "correspondent" has its own internet website, requiring a password and user identification to access.

19. Ossie held periodic conference calls with the correspondents and potential customers in which he described the program to them. On these conference calls, CRE Capital, through Ossie, made various misrepresentations, as described below.

20. Defendants represented to customers that the monthly 10 percent ROI paid to customers was produced by profits from their foreign currency trading. This representation was false. Defendants' foreign currency trading resulted in substantial losses, and the purported 10 percent ROI or other "profits" were paid to customers from existing customers' original principal and/or from money invested by subsequent customers.

21. In April 2008, Defendants opened a trading account in the name of CRE Capital at Gain Capital Group, LLC ("Gain Capital"), a registered Futures Commission Merchant ("FCM"). Of the approximately $25 million received by Defendants from customers, $5.35 million was deposited into this trading account. Since June 18, 2008, Defendants, for the benefit of their customers, traded foreign currency futures in this account and incurred total trading losses, including commissions and fees, of more than $4 million. Furthermore, during this same period, Defendants withdrew more than $1 million of customer funds from this trading account.

22. On or about December 2, 2008, Defendants represented to Gain Capital that all of the funds deposited by Defendants in its Gain Capital trading account were contributed solely by Defendants and that Defendants did not accept or receive customer funds. These statements were false. Defendants solicited and used customer fund to trade futures at Gain Capital.

23. Defendants also represented to customers that the 30 Day Currency Trading program was audited by the Robert Half firm. That statement was false.

24. Defendants told customers repeatedly that Defendants had sufficient funds on hand to return all customers' principal and ROI within a 30 day period of

time as the contracts matured. This statement was false. In fact, Defendants could not repay all of their customers if they requested return of their principal and ROI.

25. Upon information and belief, on or about January 9, 2009, Defendants represented to customers on a conference call that Defendants could no longer make ROI payments to customers because the United States Securities and Exchange Commission ("SEC") purportedly had frozen CRE Capital's accounts. This statement was false since the SEC had not frozen Defendants' accounts or other assets.

26. Neither Defendants nor the FCM that was the counterparty to the foreign currency transactions were financial institutions, registered broker dealers, insurance companies, bank holding companies, or investment bank holding companies or the associated persons of financial institutions, registered broker dealers, insurance companies, bank holding companies, or investment bank holding companies.

27. Some or all of Defendants' customers were not "eligible contract participants" as that term is defined in the Act. *See* Section 1a(12)(A)(xi) of the Act, 7 U.S.C. § 1a(12) (2006) (an "eligible contract participant," as relevant here, is an individual with total assets in excess of (i) $10 million, or (ii) $5 million and

who enters the transaction "to manage the risk associated with an asset owned or liability incurred, or reasonably likely to be owned or incurred, by the individual").

28. The foreign currency transactions conducted by Defendants at Gain Capital on behalf of their customers were entered into on a leveraged or margined basis. Defendants were required to provide only a percentage of the value of the foreign currency contracts that they purchased.

29. The foreign currency transactions conducted by Defendants neither resulted in delivery within two days nor created an enforceable obligation to deliver between a seller and a buyer that had the ability to deliver and accept delivery, respectively, in connection with their lines of business. Rather, these foreign currency contracts remained open from day to day and ultimately were offset without anyone making or taking delivery of actual currency (or facing an obligation to do so).

30. By virtue of their actions, Defendants have engaged, are engaging, or are about to engage in acts and practices that violate Sections 4b(a)(2)(A) and (C) of the Act as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(2)(A) and (C).

V. VIOLATIONS OF THE COMMODITY EXCHANGE ACT

COUNT I

Violations of Sections 4b(a)(2)(A) and (C) of the Act as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(2)(A) and (C) (Fraud by Misrepresentations and Omissions)

31. The allegations set forth in paragraphs 1 through 30 are realleged and incorporated herein by reference.

32. Sections 4b(a)(2)(A) and (C) of the Act as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(2)(A) and (C), make it unlawful

> for any person, in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery, or other agreement, contract, or transaction subject to paragraphs (1) and (2) of section 5a(g), that is made, or to be made, for or on behalf of, or with, any other person, other than on or subject to the rules of a designated contract market – (A) to cheat or defraud or attempt to cheat or defraud the other person; . . . [or] (C) willfully to deceive or attempt to deceive the other person by any means whatsoever in regard to any order or contract or the disposition or execution of any order or contract, or in regard to any act of agency performed, with respect to any order or contract for or, in the case of paragraph (2), with the other person.

Sections 4b(a)(2)(A) and (C) of the Act as amended by the CRA apply to Defendants' foreign currency transactions "as if" they were a contract of sale of a commodity for future delivery. Section 2(c)(2)(C)(iv) of the Act as amended by the CRA.

33. As set forth above, from at least June 18, 2008, through the present, in or in connection with foreign currency contracts, made, or to be made, for or on behalf of other persons, Defendants cheated or defrauded or attempted to cheat or defraud customers or prospective customers and willfully deceived or attempted to deceive customers or prospective customers by, among other things, knowingly (i) misrepresenting that the ten percent monthly ROI is produced by Defendants' futures trading, when, in fact, Defendants' foreign currency trading resulted in substantial losses, and these purported "profits" were paid to customers from existing customers' original principal and/or from money invested by subsequent customers; (ii) misrepresenting that Defendants had sufficient funds on hand to return all customers' principal and ROI within a 30 day period of time as the contracts matured; (iii) misrepresenting that the 30 Day Currency Trading program was audited by the Robert Half firm when, in fact, it was not; and (iv) falsely claiming to customers that Defendants could no longer make ROI payments to customers because the SEC had allegedly frozen its accounts, all in violation of Sections 4b(a)(2)(A) and (C) of the Act as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(2)(A) and (C).

34. Defendants engaged in the acts and practices described above knowingly or with reckless disregard for the truth.

35. Ossie controlled CRE Capital, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, CRE Capital's conduct alleged in this Count. Therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006), Ossie is liable for CRE Capital's violations of Sections 4b(a)(2)(A) and (C) of the Act as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(2)(A) and (C).

36. The foregoing acts, misrepresentations, omissions, and failures of Ossie occurred within the scope of his employment with CRE Capital; therefore, CRE Capital is liable for these acts pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006), and Regulation 1.2, 17 C.F.R. § 1.2 (2008).

37. Each misrepresentation or omission of material fact, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Sections 4b(a)(2)(A) and (C) of the Act as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(2)(A) and (C).

VI. RELIEF REQUESTED

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

a) An order finding that Defendants violated Sections 4b(a)(2)(A) and (C) of the Act as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(2)(A) and (C).

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:

(i) in conduct in violation of Sections 4b(a)(2)(A) and (C) of the Act as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(2)(A) and (C); and

(ii) in any activity related to trading in any commodity, as that term is defined in Section 1a(4) of the Act, 7 U.S.C. § 1a(4) (2006) ("commodity interest"), including but not limited to, the following:

(aa) from trading of any commodity interest account for themselves or on behalf of any other person or entity;

(bb) from soliciting, receiving, or accepting any funds in connection with the purchase or sale of any commodity interest contract;

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

(dd) from engaging in any business activities related to commodity interest trading.

c) An order directing Defendants, as well as any successors to any Defendant, 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 described herein, and pre- and post-judgment interest thereon from the date of such violations;

d) An order directing Defendants to make full restitution to every person or entity whose funds Defendants received or caused another person or entity to receive as a result of acts and practices that constituted violations of the Act, as

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

e) Enter 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 described herein;

f) An order directing Defendants to make an accounting to the Court of all their assets and liabilities, together with all funds they received from and paid to customers and other persons in connection with transactions or purported transactions alleged in the Complaint, and all disbursements for any purpose whatsoever of funds received from or relating to the transactions alleged in the Complaint, including salaries, commissions, interest, fees, loans, and other disbursements of money and property of any kind from January 1, 2007 to the date of such accounting;

g) An order directing each Defendant to pay a civil monetary penalty in the amount of the higher of $140,000 for each violation of the Act committed or triple the monetary gain to each Defendant for each violation of the Act described herein, plus post-judgment interest;

h) An order requiring Defendants to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2412(a)(2); and

i) Such other and further relief as the Court deems proper.

Dated: JANUARY 15, 2009

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