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U.S. DISTRICT COURT E.D.N.Y.

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK

★ JAN 27 2009 ★

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**BROOKLYN OFFICE**

United States Commodity Futures Trading  
Commission,

Plaintiff,

vs.

Nicholas Cosmo, Agape World, Inc., and Agape  
Merchant Advance LLC,

Defendants.

Case No.:

COMPLAINT FOR INJUNCTIVE AND  
OTHER EQUITABLE RELIEF AND FOR  
CIVIL MONETARY PENALITIES  
PURSUANT TO THE COMMODITY  
EXCHANGE ACT

**WEXLER, J**

**LINDSAY, M.J.**

## I. SUMMARY

1. From at least January 2004 through December 2008 ("Relevant Period"), defendants Nicholas Cosmo ("Cosmo") and Agape World, Inc. ("Agape World"), and from at least November 2007 defendant Agape Merchant Advance LLC ("Agape Merchant") (collectively, "Defendants") engaged in a fraudulent scheme in which they solicited tens of millions of dollars from dozens of investors for the stated purpose of investing in bridge loans and merchant advances but instead, engaged in unauthorized commodity futures trading which resulted in millions of dollars in losses. None of this trading activity or these trading losses were disclosed to investors.

2. By virtue of this conduct and the further conduct described herein, Defendants have engaged, are engaging, and/or about to engage in fraudulent acts and practices that violate the anti-fraud provisions of Sections 4b(a)(2)(i) and (iii) of the Commodity Exchange Act (the "Act"), 7 U.S.C. §§ 6b(a)(2)(i) and (ii), and Sections 4b(a)(1)(A) and (C) of the Act as amended by the Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, Title XIII (the CFTC

Reauthorization Act ("CRA")), § 13102, 122 Stat. 1651 (effective June 18, 2008), to be codified at 7 U.S.C. §§ 6b(a)(1)(A) and (C).

3. Cosmo committed the acts and omissions described herein within the course and scope of his employment at both Agape World and Agape Merchant. Therefore, both Agape World and Agape Merchant are liable under Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006), as principals for Cosmo's violations of the Act.

4. Cosmo is liable under Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006), as a controlling person of Agape World and Agape Merchant for their violations of the Act, because he did not act in good faith or knowingly induced, directly or indirectly, the acts constituting their violations.

5. Accordingly, the United States Commodity Futures Trading Commission ("Commission" or "CFTC") brings this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2006), to enjoin Defendants' unlawful acts and practices and to compel Defendants' compliance with the Act and the Commission's Regulations. In addition, the Commission seeks civil monetary penalties and remedial ancillary relief, including, but not limited to, preliminary and permanent injunctions, trading and registration bans, a civil monetary penalty, restitution, pre-judgment and post-judgment interest, and such other relief as the Court may deem necessary and appropriate.

6. Unless restrained and enjoined by the Court, Defendants are 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.

## II. JURISDICTION AND VENUE

7. The Court has jurisdiction over this action pursuant to Section 6c(a) of the Act, 7 U.S.C. § 13a-1(2006), 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 the Act or any rule, regulation, or order thereunder.

8. Venue properly lies with the Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2006), in that Defendants transact business in this District, and acts and practices in violation of the Act have occurred, are occurring, or are about to occur within this District.

## III. THE PARTIES

9. Plaintiff United States Commodity Futures Trading Commission is an independent federal regulatory agency charged with the responsibility for administering and enforcing the provisions of the Act, 7 U.S.C. §§ 1 *et seq.* (2006).

10. Defendant Nicholas Cosmo resides in Lake Grove, New York. Cosmo has never been registered with the CFTC in any capacity.

11. Defendant Cosmo is the owner of both Defendants Agape World and Agape Merchant. Cosmo's criminal history includes a federal conviction for mail fraud. The Defendant Cosmo pleaded guilty and was sentenced on January 15, 1999 to a prison term of 21 months followed by three years of supervised release and ordered to pay restitution of \$1778,000 plus interest.

12. Furthermore, according to the National Association of Securities Dealers ("NASD"), Defendant Cosmo's broker's license was revoked in 2000 due to his 1999 conviction. According

to the NASD, Cosmo was censured, fined \$68,209 and barred from association with any NASD members in any capacity.

13. Defendant Agape World, Inc. is a New York corporation with its main offices located at 150 Motor Parkway, Hauppauge, New York 11788. Agape World has never been registered with the Commission in any capacity.

14. Defendant Agape Merchant Advance LLC is a New York limited liability company with its main offices located at 150 Motor Parkway, Hauppauge, New York 11788. Agape Merchant has never been registered with the Commission in any capacity.

#### IV. FACTS

15. During the Relevant Period, Cosmo and Agape World have been operating an investment scheme in which they solicit investors to supply funds for short-term loans, known as bridge loans, paying a high interest rate to those who invest.

16. Since at least November 2007 to December 2008, Cosmo and Agape Merchant have been operating an investment scheme in which they solicit investors to supply funds to commercial merchants in exchange for proceeds from future credit cards sales.

17. Cosmo exercised control over the bank accounts maintained by Agape World and Agape Merchant into which investors deposited funds.

18. During the Relevant Period, without the consent or knowledge of the Agape World and Agape Merchant investors, Cosmo caused Agape World investors' funds and Agape Merchant investors' funds to be transferred from the Agape World and Agape Merchant bank accounts to various commodity futures trading accounts maintained in the name of Cosmo, individually, Agape World, and/or Agape Merchant at various futures commission merchants

("FCMs"), all of whom are registered with the Commission, for the purpose of trading commodity futures.

19. For example, in account opening documents for a commodity futures trading account in the name of Agape World at MF Global Inc. ("MF Global"), Cosmo identified himself as President of Agape World and that he had sole control over trading in this trading account.

20. Cosmo further represented in his account paperwork at MF Global that no other persons or entities had a financial interest in this trading account. This statement is false since this account was funded with funds from investors.

21. Without the consent or knowledge of investors, Cosmo traded futures contracts in these various FCM trading accounts and lost tens of millions of dollars. This trading activity and these trading losses were never disclosed to investors.

## **V. VIOLATIONS OF THE COMMODITY EXCHANGE ACT**

### **COUNT I**

#### **Violations of Section 4b of the Act and the Act as Amended by the CRA (Fraud by Misrepresentations and Omissions)**

20. The allegations set forth in paragraphs 1 through 21 are re-alleged and incorporated herein by reference.

21. Sections 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i) and (iii) (2006), make it unlawful for any person to cheat or defraud or attempt to cheat or defraud; 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.

22. Sections 4b(a)(1)(A) and (C) of the Act as amended by the CRA, to be codified at , 7 U.S.C. §§ 6b (a)(1)(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 in interstate commerce or for future delivery that is made, or to be made, on or subject to the rules of a designated contract market, for or on behalf of any other person – (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 the other person.

23. As set forth above, in or in connection with futures contracts, made, or to be made, for or on behalf of other persons, Defendants cheated or defrauded or attempted to cheat or defraud clients or prospective clients, and willfully deceived or attempted to deceive clients or prospective clients by, among other things, soliciting funds from investors for the stated purpose of investing in bridge loans and merchant advances but, instead, engaging in unauthorized commodity futures trading which resulted in tens of millions of dollars in losses. None of these trading activities or these trading losses were disclosed to investors.

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

25. By this conduct, Defendants violated Sections 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i) and (iii) (2006), with respect to acts occurring before June 18, 2008, and violated Sections 4b(a)(1)(A) and (C) of the Act as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(1)(A) and (C), with respect to acts occurring on or after June 18, 2008,

26. Cosmo controlled Agape World and Agape Merchant, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, Agape World's and Agape Merchant's conduct alleged in this Count. Therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006), Cosmo is liable for Agape World's and Agape Merchant's violations of Sections 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. § 6b(a)(2)(i) and (iii) (2006), with respect to acts occurring before June 18, 2008, and for their violations of Sections 4b(a)(1)(A) and (C) of the Act as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(1)(A) and (C), with respect to acts occurring on or after June 18, 2008.

27. Cosmo is liable under Section 13(b) of the Act, 7 U.S.C. § 13c(b), as a controlling person of Agape World and Agape Advance 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.

28. 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)(i) and (iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i) and (iii) (2006), with respect to acts occurring before June 18, 2008, and Sections 4b(a)(1)(A) and (C) of the Act as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(1)(A) and (C), with respect to acts occurring on or after June 18, 2008.

## **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 (2006), and pursuant to its own equitable powers, enter:

a) An order finding that Defendants violated Sections 4b(a)(2)(i)-(iii) of the Act, 7 U.S.C. § 6b(a)(2)(i)-(iii) (2006), and Sections 4b(a)(1)(A)-(C) of the Act as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(1)(A)-(C).

b) An order of preliminary and 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 himself 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 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;

d) An order directing Defendants to disgorge, pursuant to such procedure as the Court may order, all ill-gotten gains or benefits received from the acts and practices which constitute violations of the Act, as described herein, and pre- and post-judgment interest thereon from the date of such violations;

e) An order directing each Defendant to pay a civil monetary penalty in the amount provided pursuant to Section 6c(d)(1) of the Act, 7 U.S.C. § 13a-1 (2006), and Commission Regulation 143.8, 17 C.F. R. § 143.8 (2008), or triple the monetary gain to each Defendant for each violation of the Act described herein, plus post-judgment interest;

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

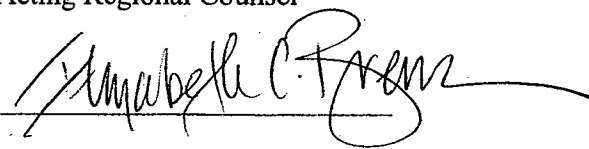
g) Such other and further relief as the Court deems proper.

Dated: New York, NY  
January 27, 2009

U.S. COMMODITY FUTURES  
TRADING COMMISSION

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