

FILED
U.S. DISTRICT COURT
SAVANNAH DIV.

2010 SEP 21 AM 10: 50

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF GEORGIA

CLERK Abner
SO. DIST. OF GA.

U.S. COMMODITY FUTURES TRADING)
COMMISSION,)
)
Plaintiff,)
)
v.)
)
JOSEPH L. AUTRY, JR. and)
AUTRY CAPITAL MANAGEMENT LLC)
f/k/a JOEY AUTRY LLC,)
)
Defendants.)
)
)
)
)
)

CV 610 084

Civil Action No. _____

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

Plaintiff, U.S. Commodity Futures Trading Commission (the "Commission" or "CFTC"),
alleges as follows:

I. SUMMARY

1. From at least May 2008 until in or about January 2010 (the "Relevant Period"),
Defendants Joseph L. Autry, Jr. ("Autry") and Autry Capital Management LLC f/k/a Joey Autry
LLC ("ACM") (collectively, "Defendants"), a company of which Autry was the sole principal,
manager and employee, solicited and received approximately \$265,200 from seven customers in
Georgia to open accounts with ACM for trading commodity futures contracts.

2. The customer funds were pooled, deposited into a bank account under the names
of Autry and ACM for which Autry had sole signatory authority, and transferred to a futures
trading account for which Autry had sole trading authority.

3. Autry misappropriated the pooled customer funds by using the funds to pay Autry's personal debts and expenses, and by paying supposed returns to customers using the customer's own funds or the funds of other customers. As such, Defendants operated a Ponzi scheme.

4. Autry also misappropriated customer funds by paying himself fees and commissions calculated based on fabricated trading profits.

5. In total, Autry misappropriated more than \$176,000 of customers' funds.

6. To conceal the misappropriation, Autry sent false statements with bogus trading profits to ACM's customers knowing there were no such profits.

7. By virtue of the fraudulent conduct and further conduct described herein, Autry has engaged, is engaging, or is about to engage in acts and practices in violation of Sections 4b(a)(1)(A), (B), and (C) of the Commodity Exchange Act (the "Act"), as amended by the Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, Title XIII (subtitled "CFTC Reauthorization Act of 2008" ("CRA")), §§ 13101-13204, 122 Stat. 1651 (enacted June 18, 2008), to be codified at 7 U.S.C. §§ 6b(a)(1)(A), (B), (C); and Section 40(1) of the Act, 7 U.S.C. § 60(1) (2006).

8. Autry committed the acts alleged herein within the course and scope of his employment, office or agency at ACM. Therefore, ACM is liable pursuant to 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 (2010), as principal for Autry's acts, omissions and failures in violation of the Act.

9. Accordingly, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2006), the Commission brings this action to enjoin such acts and practices, and compel compliance with the

Act. In addition, the Commission seeks civil monetary penalties and such other equitable and ancillary relief as the Court deems necessary or appropriate under the circumstances.

10. Unless restrained and enjoined by this Court, the Defendants are likely to continue to engage in the acts and practices alleged in this Complaint or similar acts and practices, as is more fully described below.

II. JURISDICTION AND VENUE

11. This 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.

12. The Commission has jurisdiction over this matter as alleged herein pursuant to Section 6c of the Act, 7 U.S.C. §13a-1 (2006).

13. Venue of this action lies properly with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e), in that Defendants reside in and transacted business within this District, and acts and practices in violation of the Act occurred within this District.

III. THE PARTIES

14. **Plaintiff U.S. Commodity Futures Trading Commission** is an independent federal regulatory agency that is charged by Congress with responsibility for administering and enforcing the provisions of the Act, as amended, 7 U.S.C. §§ 1 *et seq.*, and the Regulations promulgated thereunder, 17 C.F.R. §§ 1.1 *et seq.* (2010). The Commission maintains its principal office at Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

15. **Defendant Joseph L. Autry, Jr.** is an individual who, during the Relevant Period, resided at 427 Coley Boyd Road, Statesboro, GA 30458, which was also the office

address of ACM. Autry is the president and the sole officer, manager and employee of ACM. He has never been registered with the Commission.

16. **Autry Capital Management LLC f/k/a Joey Autry LLC** is a limited liability company established under the laws of the State of Georgia with its last known place of business located at 427 Coley Boyd Road, Statesboro, GA 30458. On February 5, 2009, Joey Autry LLC registered a name change to “Autry Capital Management LLC.” ACM has never been registered with the Commission.

IV. FACTS

Background

17. In or about May 2008, Autry commenced soliciting customers to trade commodity futures contracts through ACM, a limited liability company he had set up.

18. Autry told prospective customers that he had developed a trading system called “Fuel Matrix,” which would trade energy futures contracts via Globex, the electronic trading platform of the CME Group.

19. In May 2008, Autry also opened a commodity futures trading account in ACM’s name with MF Global, Inc. (“MF Global”), a registered clearing futures commission merchant (“FCM”). Autry had sole trading authority over the ACM trading account.

20. During the Relevant Period, by his solicitation efforts, Autry garnered seven customers who invested a total of about \$265,200.00 with ACM to trade commodity futures contracts on their behalf.

21. ACM’s customers signed a Management Agreement, according to which ACM charged a “management fee” of 1.2% on each customer’s funds and an annual “performance fee” of 10% of each customer’s net trading profits for the calendar year.

22. Autry deposited the ACM customer funds into a bank account that he maintained, under the name of "Joseph L. Autry, Jr. d/b/a Joey Autry LCC" (the former name of ACM), with Farmers and Merchant Bank ("F&M Bank") in Statesboro, Georgia.

23. Autry was the sole signatory on the F&M Bank account and had exclusive control over the ACM customers' funds.

24. ACM customer funds were transferred from the F&M Bank account to ACM's trading account at MF Global for trading.

25. From time to time, Autry transferred customer funds from the ACM trading account back to the F&M Bank account, from which he issued checks to pay himself performance fees and to pay his personal debts and expenses.

Autry Misappropriated Customer Funds and Provided False Statements to Customers

26. Throughout the Relevant Period, the ACM trading account suffered consistent trading losses.

27. Autry nevertheless misappropriated ACM customer funds by paying himself approximately \$50,466 in performance fees from ACM customer funds based on fabricated profits in the ACM trading account.

28. Autry further misappropriated approximately \$126,503 of the funds of ACM's customers, as follows:

- a. \$16,000 in ACM customer funds was used to pay an individual who was not a customer of ACM, to whom Autry owed money;
- b. \$108,715 was paid to two ACM customers, using funds of other ACM customers; and
- c. \$1,788 in ACM customer funds were used to pay Autry's personal credit card bills.

29. To conceal his misappropriation, Autry prepared and sent false statements to ACM's customers misrepresenting that they were earning profits each month, when in fact Autry's actual trading resulted in net losses every month.

30. The account statements Autry prepared were sent to ACM customers via email. The statements contained the customer's purported month-end balance and the amount of profit supposedly earned, but did not show any buy or sell transactions.

31. The false account statements Autry prepared and sent to ACM customers included statements in July, August, September, and October 2009.

32. At the end of July 2009, Autry issued false statements to two ACM customers, one who had invested \$30,000 in June 2009 and another who had invested \$25,000 in July 2009, stating that they had made profits with month-end balances of \$31,880 and \$25,825, for a total of \$57,705. In fact, at the end of July the ACM trading account had a balance of only \$16,670.

33. At the end of August 2009, Autry issued more false statements to these two customers stating that they had made profits with month-end balances of \$32,820 and \$26,720, for a total of \$58,540. In fact, the ACM trading account had an August month-end balance of only \$21.93.

34. At the end of September 2009, Autry sent false statements to another ACM customer who invested \$60,000 in that month and to two other customers stating that they had made profits with month-end balances of \$61,700, \$33,800, and \$27,700, for a total of \$123,200. In fact, the ACM trading account had a September month-end balance of only \$21,605.

35. At the end of October 2009, Autry issued false statement to four ACM customers stating that they had made profits with month-end balances of \$34,440, \$28,400, \$62,780 and

\$30,200, for a total of \$155,820. In fact, the ACM trading account had an October month-end balance of only \$10,100.

36. When Autry stopped providing account statements to customers in or about January 2010, Defendants' Ponzi scheme quickly unraveled as ACM's customers demanded the return of their money and Autry did not respond.

37. By January 2010, the balance in ACM's trading account was approximately \$4,220.

V. VIOLATIONS OF THE COMMODITY EXCHANGE ACT

COUNT I

**Violations of Sections 4b(a)(1)(A), (B) and (C) of the Act, as amended by the CRA,
to be codified at 7 U.S.C. §§ 6b(a)(1)(A), (B), (C)
(Fraud by Misappropriation and Issuance of False Reports to Customers)**

38. Paragraphs 1 through 37 are re-alleged and incorporated herein by reference.

39. Sections 4b(a)(1)(A), (B), and (C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(1)(A), (B), (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; (B) willfully to make or cause to be made to the other person any false report or statement or willfully to enter or cause to be entered for the other person any false record; [and] (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...

40. As set forth above, from June 18, 2008 until in or about January 2010, Autry, in or in connection with commodity futures contracts, made, or to be made, for or on behalf of or with other persons, cheated, defrauded or deceived customers and willfully made or caused to be

made false reports or statements to customers by, among other things, knowingly: (i) misappropriating customer funds by paying Autry bogus performance fees based on fabricated returns, by using ACM customer funds to pay Autry's personal debts and expenses, by paying ACM customers using other ACM customers' funds, in the manner of a Ponzi scheme; and (ii) issuing false statements to ACM customers to conceal the theft, all in violation of Sections 4b(a)(1)(A), (B) and (C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(1)(A), (B), (C).

41. The foregoing fraudulent acts, omissions and failures of Autry occurred within the scope of his office or employment with ACM; therefore, ACM is liable for those fraudulent acts, omissions, and failures 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 (2010).

42. Each instance of misappropriation, issuance of a false account statement, fraudulent act or omission, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Sections 4b(a)(1)(A), (B) and (C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(1)(A), (B), (C).

COUNT II

Violation of Section 4g(1) of the Act, 7 U.S.C. § 6g(1) (2006) (Fraud by a Commodity Pool Operator)

43. Paragraphs 1 through 42 are re-alleged and incorporated herein by reference.

44. Section 4g(1) of the Act, 7 U.S.C. § 6g(1) (2006), makes it unlawful:

for a ... commodity pool operator, or associated person of a commodity pool operator by use of mails or any means of instrumentality of interstate commerce, directly or indirectly—

(A) to employ any device, scheme, or artifice to defraud any client or participant or prospective client or participant; or

(B) to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or participant or prospective client or participant.

45. Section 1a(5) of the Act, 7 U.S.C. §1a(5) (2006), defines a commodity pool operator (“CPO”) as:

any person engaged in a business which 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 or commodity option on or subject to the rules of any contract market.

46. Autry, as the president and sole manager and employee of ACM, acted as a CPO by soliciting, accepting and receiving ACM customer funds that were pooled for the purpose of trading on-exchange commodity futures contracts.

47. By the misconduct set forth above, Autry, acting as a CPO, employed a device, scheme or artifice to defraud clients, participants or prospective participants, and engaged in transactions, practices, or courses of business that operated as a fraud or deceit upon clients or participants or prospective clients or participants, in violation of Section 4q(1) of the Act, 7 U.S.C. §6q(1) (2006).

48. The foregoing fraudulent acts, omissions and failures of Autry occurred within the scope of his office or employment with ACM; therefore, ACM is liable for those fraudulent acts, omissions, and failures 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 (2010).

RELIEF REQUESTED

WHEREFORE, the Commission respectfully request that this 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)(1)(A), (B), and (C) as amended by the CRA, to be codified at 7 U.S.C. §§6b(a)(1)(A), (B), (C); and Section 4o(1) of the Act, 7 U.S.C. § 6o(1)(2006).

b) An order of preliminary and permanent injunction prohibiting the 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)(1)(A), (B), and (C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§6b(a)(1)(A), (B), (C), and/or Section 4o(1) of the Act, 7 U.S.C. §6o(1) (2006);

ii. trading on or subject to the rules of any registered entity (as that term is defined in Section 1a(29) of the Act, 7 U.S.C. § 1a(29) (2006);

iii. entering into any transactions involving commodity futures, options on commodity futures, commodity options (as that term is defined in Regulation 32.1(b)(1), 17 C.F.R. § 32.1(b)(1) (2010) ("commodity options"), and/or foreign currency (as described in Sections 2(c)(2)(B) and 2(c)(2)(C)(i) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 2(c)(2)(B) and 2(c)(2)(C)(i) ("forex contracts") for any personal or proprietary account or for any account in which they have a direct or indirect interest;

iv. having any commodity futures, options on commodity futures, commodity options, and/or forex contracts traded on their behalf;

v. 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 futures, options on commodity futures, commodity options, and/or forex contracts;

vi. soliciting, receiving, or accepting any funds from any person for the purpose of purchasing or selling any commodity futures, options on commodity futures, commodity options, and/or forex contracts;

vii. 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) (2010); and

viii. acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a)(2010)), agent or any other officer or employee of any person (as that term is defined in Section 1a(28) of the Act, 7 U.S.C. § 1a(28) (2006)) 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) (2010);

c) An order directing the Defendants, as well as any successors, to disgorge, pursuant to such procedure as the Court may order, all benefits received from the acts or practices that constitute violations of the Act, as amended by the CRA, as described herein, and pre- and post-judgment interest thereon from the date of such violations;

d) An order directing the Defendants 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 by the CRA, as described herein, and pre- and post-judgment interest thereon from the date of such violations;

e) 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 by the CRA, as described herein;

f) An order directing the Defendants to pay a civil monetary penalty of not more than the higher of (1) triple the monetary gain to each Defendant for each violation the of the Act, as amended by the CRA, described herein or (2) \$140,000 for each violation of the Act committed on or after October 23, 2008 and \$130,000 for each violation committed before October 23, 2008, plus post-judgment interest;

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

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

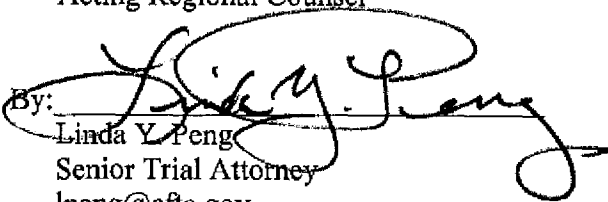
Dated: September 16, 2010

Respectfully submitted,

ATTORNEYS FOR PLAINTIFF
U.S. COMMODITY FUTURES
TRADING COMMISSION

Lenel Hickson, Jr.
Acting Regional Counsel

By:


Linda Y. Peng
Senior Trial Attorney
lpeng@cftc.gov

David W. MacGregor
Chief Trial Attorney
dmacgregor@cftc.gov

Division of Enforcement
U.S. Commodity Futures Trading Commission
Eastern Regional Office
140 Broadway, 19th Floor
New York, New York 10005
(646) 746-9733
(646) 746-9940 (facsimile)

EDWARD J. TARVER
UNITED STATES ATTORNEY



EDGAR D. BUENO
Assistant United States Attorney
Virginia Bar No. 41307
Post Office Box 8970
Savannah, Georgia 31412
Telephone: (912) 652-4422
E-mail: Edgar.Bueno@usdoj.gov


CERTIFICATE OF SERVICE

This is to certify that on September 21, 2010, I have caused to be served a copy of the foregoing pleading by addressing the same to:

Joseph L. Autry, Jr.
605 Moultrie Road
Camilla, Georgia 31701

Autry Capital Management, LLC
Joseph L. Autry, President
605 Moultrie Road
Camilla, Georgia 31701

and in accordance with the directive from the Court Notice of Electronic Filing ("NEF") which was generated as a result of electronic filing.



Edgar D. Bueno
Assistant United States Attorney