

Plaintiff
U.S. COMMODITY FUTURES TRADING COMMISSION
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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA
PHOENIX DIVISION

U. S. COMMODITY FUTURES	:	
TRADING COMMISSION,	:	
Plaintiff	:	CIVIL ACTION NO.
	:	
v.	:	
	:	
HELMUT H. WEBER	:	
d/b/a	:	Complaint for Permanent Injunction,
WEBER CAPITAL MANAGEMENT	:	Civil Monetary Penalties, and Other
	:	Statutory and Equitable Relief
	:	
Defendant.	:	
	:	

I.

SUMMARY

1. Beginning on June 18, 2008 and continuing to at least January 31, 2009 (the “relevant period”), Helmut H. Weber (“Weber” or “Defendant”) d/b/a Weber Capital management (“WCM”), fraudulently solicited and accepted at least \$280,000 from clients located in Arizona, California and elsewhere for the purported trading of off-exchange foreign currency (“forex”) transactions. Weber solicited clients directly and through three different websites he created for that purpose: *www.weberfx.com*, *www.webercapitalmanagement.com* and

www.newtempstite.com. Through written, in-person and website solicitations, Weber represented to clients that he would open segregated, individually-managed trading accounts in their name; promised clients a 3 to 10 percent monthly return on their investment; and represented that these “profits” were produced by his successful monthly trading of client’s accounts.

2. In reality, Weber did not open any segregated, individually-traded accounts in the names of clients, and did not earn the monthly “profits” represented to clients. Instead, Weber misappropriated client funds and used the funds for his personal use. Weber did use some client funds to open forex accounts in his own name, but what little trading that took place in these accounts resulted in substantial losses. Any purported “profits” Weber paid to clients came from existing clients’ original principal and/or from funds invested by subsequent clients. In other words, Weber operated a Ponzi scheme.

3. Moreover, Weber caused periodic account statements to be sent to clients that misrepresented that Weber had opened individual accounts for clients, that he was trading the accounts on their behalf, and that their accounts were achieving substantial profits. These statements were false.

4. The Defendant’s fraudulent conduct violated Sections 4b(a)(2)(A)-(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 (the CFTC Reauthorization Act of 2008 (“CRA”)) § 13102, 122 Stat. 1651 (enacted June 18, 2008), to be codified at 7 U.S.C. §§ 6b(a)(2)(A)-(C).

5. 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 U.S. Commodity Futures Trading Commission (“Commission” or “CFTC”) brings this action to enjoin Defendant’s unlawful acts and practices and to compel his compliance with the Act, as

amended by the CRA, and to further enjoin Defendant from engaging in any commodity-related activity. In addition, the Commission seeks civil monetary penalties and remedial ancillary relief, including, but not limited to, a trading and registration ban, restitution, disgorgement, rescission, pre- and post-judgment interest, and such other relief as the Court may deem necessary and appropriate.

6. Unless enjoined by this Court, Defendant is 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. 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.

8. The Commission has jurisdiction over this matter as alleged herein 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).

9. Venue properly lies with the Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2006), because the Defendant transacted business in the District of Arizona 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

10. The United States **Commodity Futures Trading Commission** is an independent federal regulatory agency that is charged by Congress 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.

11. **Helmut H. Weber** is an individual whose last known address is 10904 East Acoma Drive, Scottsdale, Arizona 85255, from which he conducted business both individually and as WCM, among other locations. Weber has never been registered with the Commission in any capacity.

IV.

FACTS

A. Introduction

12. Weber, a German citizen who is a legal resident in the United States, operated WCM out of a series of homes he rented in the Scottsdale, Arizona area. In his solicitations to clients personally and through the Internet at his websites *www.weberfx.com*, *www.webercapitalmanagement.com* and *www.newtempstite.com*, Weber promised large returns on small investments in the “Foreign Currency Market,” and touted his successful experience as a forex trader.

13. Weber initially used contacts gained through his websites and personal referrals to reach out to prospective clients about his trading services. Once Weber convinced clients to sign up for his purported trading services, he heavily pressured these existing clients to introduce him to their friends and family and thereby gained additional clients. In September of 2008, the Arizona Corporation Commission, Securities Division, served a “cease and desist” order upon

Weber that required him to stop his illegal business activities and take down his websites *www.weberfx.com* and *www.webercapitalmanagement.com*. Almost immediately thereafter, Weber was criminally indicted by the Arizona Office of the Attorney General in *State of Arizona v. Helmut H. Weber*, Superior Court of the State of Arizona, Maricopa County, Case Number 63 SGJ 50 (2008), for fraud and misappropriation of client funds.

14. However, even after his criminal indictment and the issuance of the “cease and desist” order, Weber continued to solicit new clients and claimed he was trading profitably via a new website he created after his indictment: *www.newtempsite.com*. In this third website, Weber continued to solicit clients using the same type of misrepresentations he utilized previously, completely undeterred by either his criminal indictment or the “cease and desist” order. This third website was active until approximately the end of January of 2009.

B. Weber’s Misrepresentations and Omission in Solicitations to Clients

15. Weber solicited clients through the use of his three websites, personal solicitations, and the use of emails and other written material. Under the heading “Weber Capital Management, where service never stops,” Weber represented to clients via his third website:

How to get started with a Forex Managed Account:
I charge 25% of net new profits per month. Also my personal money is in all of the accounts. It is held in the broker accounts and I never have access to your account. I can manage an unlimited number of clients. I currently have many clients worldwide. You sign a limited power of attorney that allows me to trade your account. The Minimum (sic) is \$20,000. It takes about 5 business days to start trading. I average 3-10% per month.

16. Weber’s other representations to clients included, but were not limited to, the following:

- a. He was a successful and experienced forex trader;

- b. “Weber Capital Management certifies that 100% of funds invested will be used to trade in the FOREX market and not used for any other purpose;”
- c. He managed client funds;
- d. “Weber Capital Management is a licensed and NFA registered broker;” and
- e. He averaged profits of “3-10%” per month on the clients’ funds he traded.

17. All of these representations by Weber were false. Weber was not an experienced forex trader and did not have a record of successful trading on his own behalf or for others. As discussed in more detail *infra*, Weber used little if any of the funds clients gave him to trade forex; most of the funds were used for Weber’s personal living expenses. Weber has never been “licensed” or “registered” with the National Futures Association (“NFA”) or the Commission in any capacity. Weber never traded forex for third parties, never traded his own accounts at a profit, and never realized profits of three (3) to ten (10) percent per month trading forex.

18. Weber used email communications extensively with clients to solicit them to invest more money with him to purportedly trade forex, and to refer their friends and family to Weber so that he could make them a part of his scheme. When clients began to suspect the legitimacy of Weber’s operations or asked for the return of their funds, Weber’s prior claims of great profits changed dramatically and all such client requests were met by a series of evasions, delays and additional misrepresentations by Weber. When Weber received emails from clients complaining that Weber had ignored their emails and telephone calls for months, and noted other concerns about their “investments” with Weber, Weber responded with additional misrepresentations and evasions.

19. Weber omitted a number of material facts in his solicitations, not least of which was that he was misappropriating client funds for his own use. Weber also failed to advise clients that on September 12, 2008, the State of Arizona’s Corporation Commission issued a cease and desist order upon Weber for violations of the Arizona Securities Act resulting from Weber’s acts of fraud and failure to register with the Arizona Corporation Commission.

Similarly, Weber also failed to advise clients that on October 22, 2008, Weber was criminally indicted in *State of Arizona v. Helmut L. Weber*, Superior Court of the State of Arizona, Maricopa County, Case Number 63 SGJ 50 (2008), for a total of 29 counts of Fraud, Theft, and Securities Fraud, among other charges.

20. By failing to disclose that his entire enterprise was simply a scheme designed to cheat and defraud clients, that he was not engaged in trading on behalf of clients, that he was not an experienced or successful trader, that he was never licensed or registered with the NFA, that he never made any profits from trading forex, that he had been ordered to cease his business activities in Arizona, and that he was criminally indicted for theft of clients' funds, Weber omitted material facts in his solicitations to actual and prospective clients.

C. Weber's False Reports to Clients

21. After he obtained client funds, Weber prepared and transmitted to clients what appear to be self-generated efforts at replicating some form of a client account statement. These "statements" consisted of emails to clients to which were attached a spreadsheet showing the initial deposit by a client, and the purported gain/loss for each day of the stated month. Each "statement" sent to a client represented that Weber was trading a segregated, individually-traded account for the respective client. The purported gains displayed on Weber's spreadsheets typically showed "profits" on each client's initial investment of 3% to 10% per month, with some months showing "profits" as high as 12%.

22. Weber's monthly reports to clients were false, as there were no client accounts, no trading took place, and no profits were ever generated from trading forex.

23. Notwithstanding Weber's monthly statements to clients describing monthly profits from trading on behalf of clients via individual client accounts, Weber did not open a

single account with a U.S. futures commission merchant (“FCM”) in the name of a client.

Weber did not transfer any funds to accounts in the name of, or for the benefit of, any client to any bank, clearinghouse, or other designated contract facility that might have indicated the existence of client accounts and trading activity on behalf of clients.

24. Weber also routinely emailed clients false descriptions of his purported trading successes and trading strategies in an attempt to conceal his fraudulent conduct.

D. Weber Misappropriated Client Funds

25. Based upon the information set forth in Weber’s three websites, client complaints, records received from the Arizona Attorney General’s Office, client documents, and emails between Weber and his clients, a clear picture of Weber’s misappropriation has emerged. After Weber convinced clients to “invest” in forex with him, clients either wired funds directly into Weber’s personal bank account, or provided him checks, which he subsequently deposited into his personal bank account.

26. Client funds were then used by Weber for a variety of personal expenses, including without limitation: luxury rental homes in the Scottsdale, Arizona area; dining at Scottsdale, Arizona area restaurants; grocery shopping; ATM cash advances; weekends at resorts in Desert Palms, California and elsewhere; tickets for air travel; shopping sprees at Phoenix area stores; and Weber’s personal trading.

27. The Commission obtained trading records related to accounts opened by Weber from FCMs Forex Capital Markets and MG Trading and Futures through a request for documents issued to all U.S. FCMs pursuant to Section 4g(a) of the Act, 7 U.S.C. § 6g(a) (2006). All of the produced trading records related to proprietary accounts held solely in Weber’s name, in which he represented to the FCMs, via statements in the account opening documents, that all

trading in the subject accounts was solely for himself and not for the benefit of third parties.

These records revealed that Weber had four (4) forex accounts in his own name, that the deposits into these accounts totaled approximately \$280,000, and that Weber's personal trading resulted in overall losses of over \$47,764. Moreover, the majority of the \$280,000 deposited into these accounts by Weber was ultimately transferred by Weber back to his personal bank account, and used to support his personal lifestyle.

28. The Defendant conducted his business operations under the guise of WCM, when in fact, Weber acted as an individual and operated WCM from his home in Scottsdale, Arizona, as well as other locations. Each fraudulent act, misrepresentation and/or omission made by Weber during the relevant period was made with scienter because he knew he was spending client funds.

29. By virtue of his actions, Weber engaged in, is engaging, or is about to engage in acts and practices that violated Sections 4b(a)(2)(A)-(C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(2)(A)-(C).

V.

Violations of Sections 4b(a)(2)(A)-(C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(2)(A)-(C), FRAUD IN CONNECTION WITH FOREX

30. The allegations set forth in paragraphs 1 through 29 are realleged and incorporated herein by reference.

31. Sections 4b(a)(2)(A)-(C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(2)(A)-(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; (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; [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)-(C) of the Act, as amended by the CRA, apply to Defendant's forex 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, to be codified at 7 U.S.C.

§ 2(c)(2)(C)(iv).

32. As set forth above, from at least June 18, 2008 through January 31, 2009, in or in connection with forex contracts, made, or to be made, for or on behalf of, or with, other persons, the Defendant cheated or defrauded or attempted to cheat or defraud clients or prospective clients; made or caused to be made false reports or statements to another person; deceived or attempted to deceive clients or prospective clients by, among other things, knowingly:

(i) misappropriated client funds that purportedly were to be used to trade forex;

(ii) misrepresented forex trading activity that purportedly occurred on behalf of clients, as well as purported returns clients would and did receive on their forex investments; (iii) failed to disclose that Defendant was operating a Ponzi scheme and misappropriating client funds; and (iv) made, caused to be made, and distributed reports and statements to clients that contained false account values, false returns on investment, and other misinformation, all in violation of Sections 4b(a)(2)(A)-(C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(2)(A)-(C).

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

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

VI.

RELIEF REQUESTED

WHEREFORE, the Commission 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 Defendant violated Sections 4b(a)(2)(A)-(C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(2)(A)-(C).
- b) Orders of preliminary and permanent injunction prohibiting Defendant and any of his agents, servants, employees, assigns, attorneys, and persons in active concert or participation with the Defendant, including any successor thereof, from engaging, directly or indirectly:
 - (i) in conduct in violation of Sections 4b(a)(2)(A)-(C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(2)(A)-(C);
 - (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 Commission Regulation 32.1(b)(1), 17 C.F.R. § 32.1(b)(1) (2009)) (“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 his own personal 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 his 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 Commission Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2009); and

(viii) acting as a principal (as that term is defined in Commission Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2009)), agent or any other officer or employee of any person registered, exempted from registration or required to be registered with the Commission, except as provided for in Commission Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2009).

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

d) An order directing Defendant to make full restitution to every person or entity whose funds Defendant 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 Defendant and any successor 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 clients 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 Defendant to pay a civil monetary penalty 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 or (2) \$130,000 for each violation of the Act occurring from October 23, 2004 through October 22, 2008, and \$140,000 for each violation of the Act occurring on or after October 23, 2008;
- g) An order requiring Defendant 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 just and appropriate.

Dated: March 9, 2010

Respectfully submitted,

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