UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

Commodity Futures Trading Commission, Plaintiff, v. Mark Weinberg, Defendant.	)	Case No.: 02-02084 RSWL (RNBx) **COMPLAINT FOR A PERMANENT INJUNCTION, OTHER EQUITABLE RELIEF AND CIVIL MONETARY PENALTIES** **Hearing Date: ______________** **Hearing Time: ______________**

I. JURISDICTION AND VENUE

1. The Commodity Exchange Act, as amended, 7 U.S.C § 1 *et. seq*. (1994) (the "Act"), establishes a comprehensive system for regulating the purchase and sale of commodity futures contracts and options on commodity futures contracts. This Court has jurisdiction over this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (1994), which authorizes the Commodity Futures Trading Commission ("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.

2. Venue properly lies with the Court pursuant to Section 6c of the Act, in that the Defendant is found in, inhabits, or transacts 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.

II. SUMMARY

3. On September 21, 1989, the Commission filed a six (6) count administrative Complaint ("Complaint") against Mark Weinberg ("Weinberg" or "Defendant"), alleging,

among other things, that Weinberg had engaged in fraud and had embezzled and converted to his own use customer funds designated for trading, in violation of the Act and Commission regulations promulgated thereunder ("Regulations").

4. On January 5, 1994, an Administrative Law Judge ("ALJ") issued an order which found, after a hearing, that Weinberg violated Sections 4b(a), 4c(b), 4d(1), 4o(1) and 9(a) of the Act, 7 U.S.C. §§ 6b, 6c(b), 6d(1), 6o(1) and 13(a) (1988), and Sections 4.30 and 32.9 of the Regulations, 17 C.F.R.§ 4.30 and 32.9 (1989). The ALJ's order became the final Order ("Commission Order") of the Commission on February 8, 1994, pursuant to Section 10.84 of the Regulations, 17 C.F.R. Section 10.84 (1994), and required Weinberg to cease and desist from violating the provisions of the Act and Regulations he was found to have violated, assessed a $320,000 civil monetary penalty, permanently revoked his registration, and suspended him from trading on or subject to the rules of any contract market for a period of 12 months.

5. Since in or about summer 1998, Weinberg has solicited at least seven investors to invest in excess of $500,000, purportedly to be used in connection with commodity futures trades made in a particular account at a futures commission merchant ("FCM"), on markets regulated by the Commission. Although Weinberg consistently told the investors that the futures trades were profitable, no such trading ever took place in the account in issue. Weinberg has consistently refused to return the investors' original investments and purported profits to them. In addition, although Weinberg represented to three of the investors that he had pooled their original investment and purported profits and had made additional futures trades in the particular FCM account, which had generated millions of dollars in profits, no such additional trading ever took place in the account in issue. Weinberg has refused to return the three investors' original investment and purported profits to them.

6. By virtue of such conduct, Weinberg has engaged, is engaging, or is about to engage in acts and practices which violate the anti-fraud provisions of Sections 4b(a)(i) and 4b(a)(iii), and 4o(1) of the Act, 7 U.S.C. §§ 6b(a)(i) and 6b(a)(iii), and 6o(1) (1994), as well as various provisions of the Commission Order. By having violated the Commission Order, Weinberg has also violated Section 6c of the Act, 7 U.S.C. § 13a-1 (1994).

7. Accordingly, pursuant to Section 6c of the Act, the Commission brings this action to enjoin such acts and practices, and to compel compliance with the provisions of the Act, the Regulations, and the Commission Order. In addition, the Commission seeks an accounting, disgorgement, restitution, civil penalties, and such other equitable relief as the Court may deem necessary and appropriate. Given Weinberg's pattern of fraudulent activity, unless restrained and enjoined by this Court, Defendant is likely to continue to engage in the acts and practices alleged in this Complaint, as more fully described below.

III. THE PARTIES

8. Plaintiff 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.* (1994), and the Regulations promulgated under it, 17 C.F.R. §§ 1 *et seq.* (2002).

9. Defendant Mark Weinberg is an individual who resides in the City of Los Angeles, California.

IV. FACTS

A. The Prior Commission Litigation

10. On September 21, 1989, the Commission filed an administrative Complaint against Weinberg and others alleging that during periods in 1984 and 1985 Weinberg, in violation of the Act: (1) provided materially false, deceptive and misleading information concerning commodity

futures contracts and options on physical commodities in order to solicit funds from prospective and existing clients for trading; (2) embezzled and converted to his own use customer funds designated for trading; (3) improperly solicited or accepted orders for trading futures contracts and improperly received money, securities or property to margin or secure these trades while not registered as a FCM; and (4) improperly solicited or accepted funds in his own name, as a Commodity Trading Advisor, from existing or prospective customers to purchase, guarantee, margin or secure commodity interests for his customers, all in violation of Sections 4b(a), 4c(b), 4d(1), 4o(1) and 9(a) of the Act, 7 U.S.C. §§ 6b, 6c(b), 6d(1), 6o(1) and 13(a) (1988), and Sections 4.30 and 32.9 of the Regulations, 17 C.F.R.§ 4.30 and 32.9 (1989).

11. On January 5, 1994, a Commission ALJ issued an order which found that Weinberg violated the Act as alleged by the Commission in its Complaint and Ordered that: 1) Weinberg's registration under the Act be revoked; 2) Weinberg cease and desist from engaging in violations of the provisions of the Act and Regulations charged in the Complaint; 3) Weinberg be prohibited from trading on, or subject to, the rules of any contract market for a period of 12 months from the date the Order became final; and 4) Weinberg pay a civil monetary penalty of $320,000. Since Weinberg did not appeal the ALJ Order and the Commission declined to review it on its own initiative, on February 8, 1994, pursuant to Regulations Section 10.84, the ALJ Order became the final Commission Order.

B. Weinberg's Activities Since the Commission Order

Weinberg has Defrauded Investors

12. Since in or about summer 1998, Weinberg has solicited at least seven investors to invest in excess of $500,000, purportedly to be used in connection with commodity futures trades on markets regulated by the Commission. Weinberg told investors that he was involved in commodity futures trades with Edwards Metcalf ("Metcalf"). Metcalf, who passed away in

April 2001, was an heir to the Henry Huntington estate and, at one time, a wealthy man. Weinberg generally told these investors that he was offering a "no lose" investment opportunity. He represented that he and/or Metcalf had entered into a commodity futures trade, usually related to Japanese yen or other foreign currencies, in Metcalf's trading account at Merrill Lynch Futures, Inc. ("Merrill Lynch"), an FCM, that had appreciated in value. Weinberg claimed he and/or Metcalf did not have the funds to complete the successful trade, and that he purportedly needed investor money to complete the trade and to reap the guaranteed profits. Weinberg promised that the investor would share in the profits from the trade. In fact, no futures or other trading ever occurred in Metcalf's account at Merrill Lynch. Metcalf did not even have a commodity futures trading account at Merrill Lynch. Rather, Metcalf only had a cash management account at Merrill Lynch, with minimal activity and a balance that never exceeded approximately $900.

13. The first investor solicited by Weinberg had previously traded with Weinberg in the early 1980s, knew Metcalf from a prior business dealing in approximately 1995 and thought that Metcalf was still wealthy. In 1998, Weinberg falsely represented to the investor that he needed money to complete an already profitable commodity futures trade made in Metcalf's Merrill Lynch trading account, and that the transaction was a good way of making money without the investor having to trade commodity futures himself. The investor agreed to give Weinberg money so that Weinberg could consummate the trade. Three to five days later Weinberg gave the investor funds that Weinberg claimed represented the investor's share of the purported profit. Over a period of several weeks, the investor gave Weinberg additional funds to trade in connection with a number of purported commodity futures trades. After some of the purported trades, the investor received back a small amount of purported profits, but not the principal.

Weinberg Has Engaged in Commodity Pool Fraud

14. Due to his perceived trading success, the investor recommended Weinberg to two additional investors. In or around October 1998, the three investors together gave Weinberg a total of approximately $440,000 as an investment. The two additional investors each invested $80,000, and the first investor re-invested approximately $280,000 in a pool to invest with Weinberg in commodity futures trades. The three investors were told that their investment was "no-risk" and that the trades in connection with which their money would be used were in Metcalf's Merrill Lynch trading account. In fact, no such trading ever occurred in Metcalf's Merrill Lynch account.

15. The investors have made repeated efforts to obtain their original investments and any purported profits from Weinberg, but Weinberg has not repaid any of the investors. Instead, Weinberg has made false and misleading representations as to the location of the investors' money and his ability to access the funds. Weinberg has provided one or more investors with purported "settlement drafts" drawn on various financial institutions, including Merrill Lynch, as purported payment of money to the investor or as collateral against the return of the money to the investor. In fact, however, the "settlement drafts" were phony documents, and there were never sufficient funds in the account referenced in the "settlement draft" to cover the amount of such drafts.

16. After Weinberg solicited money from the three investors, he later represented to them that he had used their original pooled investment and their purported profits from the purported commodity futures trade in the Merrill Lynch to make additional commodity futures trades in that account. During the first two months of 1999, Weinberg falsely told the three investors that the value of the trading account had increased from a few hundred thousand dollars to

approximately $6.5 million. In fact, no such trading ever occurred in the Merrill Lynch account and no such profits were ever generated in that account.

17. The three investors have sought to recover their original investments and their purported profits Weinberg represented he had generated for them since March 1999, but Weinberg has continually failed to pay the money to them, consistently representing that some external factor prevented him from accessing the money. For example, at various times, Weinberg claimed that "regulatory problems" related to his lack of a trading license denied him the ability to distribute the profits. At other times, Weinberg claimed either that Merrill Lynch had suspended trading in one or more of his accounts, and that that suspension acted as a bar to his obtaining access to the Metcalf trading account, or that other investors had competing interests in the Metcalf account.

18. Weinberg eventually claimed to the investors that he had moved the money out of the Merrill Lynch account and that the money was in a Canadian account or in a Swiss bank account.

V. VIOLATIONS OF THE COMMODITY EXCHANGE ACT

COUNT ONE

VIOLATIONS OF SECTION 4b(a)(i) and (iii) OF THE ACT:
FRAUD BYMISREPRESENTATIONS, OMISSIONS
AND MISAPPROPRIATION

19. The allegations set forth in paragraphs 1 through 18 are realleged and incorporated herein by reference.

20. Since at least summer 1998, Defendant has (a) cheated or defrauded or attempted to cheat or defraud other persons; and (b) willfully deceived or attempted to deceive 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 any other persons, where such contracts

for future delivery were or could be used for the purposes set forth in Section 4b of the Act, all in violation of Section 4b(a)(i) and (iii) of the Act.

21. In particular, Defendant has knowingly made material misrepresentations and omitted material facts to investors, including but not limited to the misrepresentations set forth in paragraphs 5, and 12 through 18, in violation of Section 4b(a)(i) and (iii) of the Act. Defendant also knowingly misappropriated customer funds, as set forth in paragraphs 14 through 18, in violation of Section 4b(a)(i) and (iii) of the Act.

22. Each material misrepresentation or omission, and each act of misappropriation made since the summer of 1998, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4b(a)(i) and (iii) of the Act.

COUNT TWO

VIOLATIONS OF SECTION 4o(1) OF THE ACT: FRAUD BY A COMMODITY POOL OPERATOR

23. The allegations set forth in paragraphs 1 through 22 are realleged and incorporated herein by reference.

24. Since October 1998, Defendant acted as a CPO by soliciting, accepting or receiving funds from the three investors and engaging in a business that is of the nature of an investment trust, syndicate, or similar form of enterprise, for the purpose of trading in commodities for future delivery on or subject to the rules of a contract market.

25. By virtue of the conduct described in paragraphs 5, and 14 through 18 above, Defendant, while acting as a CPO, employed a device, scheme or artifice to defraud Pool participants, in violation of Section 4o(1)(A) of the Act.

26. By virtue of the conduct described in paragraphs 5, and 14 through 18 above, Defendant, while acting as a CPO, engaged in a transaction, practice or course of business which

has operated as a fraud or deceit upon Pool participants, in violation of Section 4o(1)(B) of the Act.

27. Each device, scheme or artifice to defraud Pool participants, and each transaction, practice or course of business which has operated as a fraud or deceit upon Pool participants made during the relevant time period, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Sections 4o(1) of the Act.

COUNT THREE

VIOLATION OF THE COMMISSION ORDER AND
SECTION 6c OF THE ACT

28. Paragraphs 1 through 27 are realleged and incorporated herein.

29. On February 8, 1994, the Commission Order required Defendant to cease and desist from violating Sections 4b(a), 4c(b), 4d(1), 4o(1) and 9(a), 7 U.S.C. §§ 6b, 6c(b), 6d(1), 6o(1) and 13(a) (1988), and Sections 4.30 and 32.9 of the Regulations, 17 C.F.R. § 4.30 and 32.9 (1989), was issued.

30. By virtue of the conduct described in paragraphs 12 through 18, Weinberg has violated the Commission Order by: 1) cheating, defrauding or deceiving, or attempting to cheat, defraud or deceive, any person by any means whatsoever, in connection with any order to make or execute, the making or executing, or the confirmation or the execution of contracts of sale of commodities for future delivery in violation of Section 4b(a)(i) and 4b(a)(iii) of the Act; and (2) by using the mails or any other means or instrumentalities of interstate commerce, directly or indirectly, to employ a device, scheme or artifice to defraud any person or to engage in a transaction, practice or course of business which operates as a fraud or deceit upon any person in connection with any commodities transactions in violation of Section 4o of the Act.

31. Weinberg's activities that constitute violations of the Commission Order also violate Section 6c of the Act, in that Weinberg has engaged, is engaging, or is about to engage in an act or practice constituting a violation of an order issued under the Act and Regulations.

32. Each violation of the Commission Order and Section 6c of the Act, including but not limited to those specifically alleged herein, constitutes a separate and distinct violation of the Commission Order and of Section 6c of the Act.

VI. RELIEF REQUESTED

WHEREFORE, Plaintiff 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, enter:

a) a permanent injunction enjoining Weinberg from violating Sections 4b(a)(i) and 4b(a)(iii), 4o(1) and 6c of the Act, 7 U.S.C. §§ 6b(a)(i) and 6b(a)(iii), 6o(1) and 13a-1 (1994), and from violating any Commission Order;

b) a permanent injunction enjoining Weinberg from engaging in any commodity-related activity, including soliciting investors or investor funds or pool participants or pool funds;

c) an order directing that Weinberg make an accounting to the court of all his assets and liabilities, together with all the funds received from persons in connection with the trading of commodity futures or options on commodity futures;

d) an order directing 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 interest thereon from the date of such violations;

e) an order directing Weinberg to make full restitution to every client whose funds were lost as a result of acts and practices which constituted violations of the Act and Regulations, described herein, and interest thereon from the date of such violations;

f) a civil penalty against Defendant in the amount of not more than the higher of $110,000 or triple the monetary gain to Defendant for each violation by the Defendant of the Act or Regulations prior to October 23, 2000, and not more than the higher of $120,000 or triple the monetary gain to the Defendant for each violation by the Defendant of the Act or Regulations after October 23, 2000; and

g) such other and further remedial ancillary relief as the Court may deem appropriate.

Dated: March 12, 2002

Respectfully submitted by,

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