

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA**

U.S. COMMODITY FUTURES TRADING COMMISSION,)	
)	
Plaintiff,)	CIVIL ACTION NO.
)	
v.)	
GOLD DISTRIBUTORS INC. and JORDAN CAIN,)	Complaint for Injunctive and Other Equitable Relief and Civil Monetary Penalties Under the Commodity Exchange Act
Defendants.)	
)	JURY TRIAL DEMANDED
)	

Plaintiff, U.S. Commodity Futures Trading Commission (“Commission” or “CFTC”), by its attorneys, alleges as follows:

I. SUMMARY

1. Between January 2012 and February 2013 (“the Relevant Period”), defendants Gold Distributors, Inc. (“GDI”) and Jordan Cain (“Cain”) (collectively “Defendants”) offered to enter into, and conducted an office or business in the United States, for the purpose of soliciting or accepting any order for the purchase or sale of precious metals from retail customers on a financed basis. These transactions were illegal, off-exchange retail commodity transactions.

2. By this conduct, Defendants have engaged, are engaging, or are about to engage in conduct in violation Section 4(a) of the Commodity Exchange Act (the “Act”), as amended, 7 U.S.C. § 6(a) (Supp. IV 2011) and are directly liable for this conduct. Cain committed the acts and omissions alleged herein within the course and scope of his employment, agency or office with GDI. Therefore, GDI is liable pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. §

2(a)(1)(B) (2012), and Regulation 1.2, 17 C.F.R. § 1.2 (2012), as principal for the actions and omissions of Cain in violation of the Act.

3. Cain controlled GDI throughout the Relevant Period and knowingly induced GDI's violations of the Act. Therefore, Cain is also liable for GDI's violations pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2012).

4. Accordingly, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2012), the CFTC brings this action to enjoin the Defendants' unlawful acts and practices, to compel their compliance with the Act, and to further enjoin them from engaging in any commodity-related activity.

5. In addition, the CFTC 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.

6. Unless restrained and enjoined by this Court, Defendants likely will 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 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, 7 U.S.C. §13a-1.

8. The Commission has jurisdiction over the conduct and transactions at issue in this case pursuant to Sections 2(c)(2)(D) of the Act, as amended by the Dodd-Frank Act, 7 U.S.C. §§ 2(c)(2)(D) (Supp. IV 2011).

9. Venue properly lies with the Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2012), because Defendants reside in this District, transacted business in this District, and certain transactions, acts and practices alleged in this Complaint occurred, are occurring, and/or are about to occur within this District.

III. THE PARTIES

10. Plaintiff U.S. Commodity Futures Trading Commission is an independent federal regulatory agency charged by Congress with the administration and enforcement of the Act, as amended, 7 U.S.C. §§ 1 et seq. (2012), and the Regulations promulgated thereunder, 17 C.F.R. §§ 1.1 et seq. (2012).

11. Defendant Gold Distributors, Inc. is a Florida corporation with its principal place of business in Hallandale Beach, Florida. GDI is a firm that claimed to be a gold and silver distributor selling gold and silver bullion to the public. GDI solicited retail customers to execute financed precious metals transactions. GDI ceased doing business in March, 2013. GDI has never been registered with the Commission in any capacity.

12. Defendant Jordan Cain is an individual whose last known residential address is in Miami, Florida. Cain was the owner, operator and controlling person of GDI. Cain has never been registered with the Commission in any capacity.

IV. OTHER RELEVANT ENTITY

13. GDI introduced customers to AmeriFirst Management, LLC (“AmeriFirst”), a precious metals wholesaler and clearing firm that purported to confirm the execution of customer precious metal transactions.

14. AmeriFirst held itself out on its website as a precious metals clearing and financing firm for precious metals dealers and claimed to provide dealers with “tangible assets in a growing physical market” and guarantee[s] that every ounce of metal in [the dealer’s] customers [sic] account exists and is ready for delivery at any point and time.” On its website, AmeriFirst’s product offering was gold, silver, and platinum in bar and coin form. On its website, AmeriFirst also claimed to provide customer financing options for precious metal dealers. It operated throughout the United States using a network of over 30 solicitation firms such as GDI that it refers to as “dealers.”

15. On February 25, 2013, AmeriFirst ceased operations.

V. STATUTORY BACKGROUND

16. Section 2(c)(2)(D) of the Act, as amended by the Dodd-Frank Act, 7 U.S.C. § 2(c)(2)(D), gives the Commission jurisdiction over “any agreement, contract, or transaction in any commodity” that is entered into with, or offered to, a person who is not an eligible contract participant (“ECP”) or eligible commercial entity (“ECE”) “on a leveraged or margined basis, or financed by the offeror, the counterparty, or a person acting in concert with the offeror or counterparty on a similar basis” (“retail commodity transactions”) with respect to conduct occurring on or after July 16, 2011, subject to certain exceptions not applicable here. In relevant part, Section 2(c)(2)(D) of the Act makes Section 4(a) of the Act, 7 U.S.C. § 6(a), applicable to

retail commodity transactions “as if” such transactions are contracts for the sale of a commodity for future delivery.

17. The Act defines an ECP, in relevant part, as an individual who has amounts invested on a discretionary basis, the aggregate of which exceeds \$10 million, or \$5 million if the individual enters into 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. 7 U.S.C. § 1a(18)(xi). An ECE is defined by the Act as an ECP that meets certain additional requirements, both financially and in their business.

18. Section 4(a) of the Act, 7 U.S.C. § 6(a), in relevant part, makes it unlawful for any person to offer to enter into, execute, confirm the execution of, or conduct any office or business anywhere in the United States for the purpose of soliciting, accepting any order for, or otherwise dealing in any transaction in, or in connection with, a contract for the purchase or sale of a commodity for future delivery unless the transaction is conducted on or subject to the rules of a board of trade that has been designated or registered by the Commission as a contract market.

VI. FACTS

19. Between January 2012 and February 2013, Defendants offered to enter into, executed, and confirmed the execution of financed precious metals (gold and silver) transactions with persons who were not eligible contract participants. The precious metal transactions were financed by AmeriFirst. It is only the financed precious metal transactions through AmeriFirst that are at issue here.

20. Plaintiff U.S. Commodity Futures Trading Commission has a pending action against AmeriFirst in this District, *CFTC v. AmeriFirst Management, LLC, et al.*, No. 0:13-cv-61637-WPD (SD FL 2013).

21. During the Relevant Period, Cain was the President of GDI, sole shareholder of GDI, the sole signatory on GDI bank accounts and made all hiring and firing decisions of GDI employees and agents.

22. In the financed precious metals transactions, the customers invested only a percentage of the total metal value, typically 25%, and would receive a loan for the remaining 75% of the metal's value by AmeriFirst, who was the offeror. The customers were charged a finance charge on the loan, as well as a service charge.

23. The customers also paid a commission on the total metal value, with a maximum commission of 15%, and a mark-up on the spot price of the metal, typically 3%. Thus, due to the high fees, finance charges and commissions, Defendants' customers never even broke even on their investments, let alone earn a profit, because much of their principal investment was consumed by these charges.

24. After a customer invested, Defendants contacted AmeriFirst to effectuate the transaction. Defendants collected the funds needed for the transaction and after deducting its commission, sent the funds to AmeriFirst. AmeriFirst provided back office support services to GDI, including confirmation of the transaction to the customer.

25. Defendants introduced 27 customers to AmeriFirst and transferred at least \$797,577.60 to AmeriFirst for the purchase of precious metals. Defendants received commissions and fees totaling at least \$337,266.98 for the retail financed precious metals transactions executed through AmeriFirst.

26. Defendants and AmeriFirst never actually delivered any precious metals to any of Defendants' customers.

VII. VIOLATIONS OF THE COMMODITY EXCHANGE ACT

COUNT ONE:

(Violations of Section 4(a) of the Act, Illegal Off-exchange Trading)

27. Paragraphs 1 through 26 of this Complaint are realleged and incorporated herein by reference.

28. Between January 2012 and the present, the retail commodity transactions described in this Complaint were offered by Defendants and AmeriFirst and entered into (a) on a leveraged or margined basis, or financed by the offeror, the counterparty, or a person acting in concert with the offeror or counterparty on a similar basis, (b) with persons who are not ECPs or eligible commercial entities as defined by the Commodity Exchange Act, and (c) not made or conducted on, or subject to, the rules of any board of trade, exchange or contract market.

29. The gold and silver described herein are commodities as defined by Section 1a(9) of the Act, 7 U.S.C. § 1a(9) (2012).

30. During the Relevant Period, Defendants violated Section 4(a) of the Act by offering to enter into, entering into, executing, confirming the execution of, or conducting an office or business in the United States for the purpose of soliciting or accepting orders for, or otherwise dealing in, transactions in, or in connection with, retail commodity transactions.

31. Each offer to enter into, entrance into, execution, confirmation, solicitation or acceptance of an order for a retail commodity transaction made during the relevant time period is alleged as a separate and distinct violation of Section 4(a) of the Act.

32. Cain directly or indirectly controlled GDI and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting GDI's violations of Section 4(a) alleged in this Complaint. Therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13(b), Cain is liable for each of GDI's violations of Section 4(a) of the Act.

33. The acts and omissions of Cain described in this Complaint were done within the scope of his employment or office with GDI. Therefore GDI is liable as a principal for each of Cain's acts, omissions or failures constituting violations of Section 4(a) pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C § 2(a)(1)(B).

VIII. RELIEF REQUESTED

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

- A. An order finding that Defendants GDI and Cain violated Section 4(a) of the Act, as amended, 7 U.S.C. § 6(a);
- B. An order of permanent injunction prohibiting Defendants, and any other person or entity associated with them, from engaging in conduct in violation of Sections 4(a) of the Act, 7 U.S. C. § 6(a);
- C. An order of permanent injunction prohibiting Defendants and any of their successors from, directly or indirectly:
 - 1) Trading on or subject to the rules of any registered entity (as that term is defined in Section 1a of the Act, as amended), 7 U.S.C. § 1a;
 - 2) 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) (2012)) ("commodity options"), security futures products, swaps (as that term is defined in Section 1a(47) of the Act, as amended, and as further defined by Commission Regulation 1.3(xxx), 17 C.F.R. § 1.3(xxx) (2012)) ("swaps"),

- and/or foreign currency (as described in Sections 2(c)(2)(B) and 2(c)(2)(C)(i) of the Act, as amended, 7 U.S.C. §§ 2(c)(2)(B) and 2(c)(2)(C)(i)) (“forex contracts”), for their own personal accounts or for any accounts in or over which they have a direct or indirect interest;
- 3) Having any commodity futures, options on commodity futures, commodity options, security futures products, swaps, and/or forex contracts traded or executed on their behalf;
 - 4) 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, security futures products, swaps, and/or forex contracts;
 - 5) Soliciting, receiving or accepting any funds from any person for the purpose of purchasing or selling of any commodity futures, options on commodity futures, commodity options, security futures products, swaps, and/or forex contracts;
 - 6) 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) (2012); and
 - 7) Acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2011)), 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), 17 C.F.R. § 4.14(a)(9) (2012).

- D. Enter an order requiring Defendants, as well as any of their successors, to disgorge, pursuant to such procedure as the Court may order, all benefits received including, but not limited to, salaries, commissions, loans, fees, revenues and trading profits derived, directly or indirectly, from acts or practices that constitute violations of the Act as described herein, including pre and post-judgment interest;
- E. Enter an order requiring Defendants, as well as any of their successors, to make full restitution, pursuant to such procedure as the Court may order, to every person or entity whose funds were received or utilized by them in violation of the provisions of the Act and/or Commission Regulations, as described herein, plus pre-judgment interest thereon from the date of such violations, plus post-judgment interest;
- F. Enter an order directing Defendants and any of their successors 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, and the Regulations as described herein;
- G. Enter an order requiring Defendants to pay civil monetary penalties under the Act, to be assessed by the Court, in amounts of not more than the greater of: (1) triple their monetary gain for each violation of the Act, as amended, and the

Regulations or (2) \$140,000 for each violation committed on or after October 23, 2008;

- H. Enter an order requiring Defendants to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2412(a)(2) (2006); and
- I. Enter an order providing such other and further relief as this Court may deem necessary and appropriate under the circumstances.

IX. DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury as to all issues so triable.

Dated: March 19, 2014

Respectfully submitted,

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