

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

U.S. COMMODITY FUTURES)	
TRADING COMMISSION)	
)	
Plaintiff,)	Civil No. _____
)	
vs.)	Complaint for Injunctive and Other
)	Equitable Relief and Civil Monetary
WILLIAM H. POWDERLY IV)	Penalties under the Commodity Exchange
)	Act
Defendant.)	

**COMPLAINT FOR INJUNCTIVE AND OTHER EQUITABLE RELIEF AND CIVIL
MONETARY PENALTIES UNDER THE COMMODITY EXCHANGE ACT**

The United States Commodity Futures Trading Commission (“CFTC” or “Commission”),
by and through its attorneys, hereby alleges as follows:

I. SUMMARY

1. From at least January 2016 through October 2016 (the “relevant period”), William H. Powderly IV (“Powderly” or “Defendant”) fraudulently solicited and accepted at least \$825,000 from at least four customers for purposes of trading commodity futures on their behalf in an account in Powderly’s and his wife’s name (“Powderly’s trading account”) at a registered futures commission merchant (“FCM”).

2. In soliciting customers and prospective customers, Powderly falsely claimed that he and a purported partner, described as a university professor, had developed a commodity futures trading program that generated exceptional hypothetical trading results and consistent trading profits.

3. Powderly, however, failed to tell customers and prospective customers that the actual commodity trading he conducted for his FCM account was consistently unprofitable, sustaining losses every month during the relevant period.

4. After customers invested funds with Powderly, he falsely represented that their investments had grown and claimed that the balance in his trading account was approximately \$2 million by September 2016, when in fact the balance in his trading account was actually only \$513 at the end of September 2016.

5. When customers subsequently sought returns of funds, Powderly lied to them, falsely claiming that he could not transfer the requested funds because he had incurred large losses over a period of a few days. To support his story, Powderly created and delivered false FCM account statements for his account.

6. By virtue of this conduct and the conduct further described herein, Defendant Powderly has engaged, is engaging in, or is about to engage in fraud in violation of Sections 4b(a)(1)(A)-(C) and 6(c)(1) of the Commodity Exchange Act ("Act"), 7 U.S.C. §§ 6b(a)(1)(A)-(C), 9(1) (2012) and Commission Regulation ("Regulation") 180.1(a), 17 C.F.R. § 180.1(a) (2016).

7. Accordingly, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2012), the Commission brings this action to enjoin such acts and practices, prevent the dissipation of assets, and compel compliance with the provisions of the Act. In addition, the Commission seeks civil penalties, an accounting, restitution, disgorgement, rescission and such other statutory and equitable relief as the Court may deem necessary or appropriate under the circumstances.

II. JURISDICTION AND VENUE

8. This Court has jurisdiction over this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2012), 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 any provision of the Act or any rule, regulation or order thereunder.

9. Venue properly lies with this Court pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1(e) (2012), in that Defendant transacted 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.

III. THE PARTIES

PLAINTIFF

10. **Commodity Futures Trading Commission** is an independent federal regulatory agency that is charged by Congress with the responsibility for administering and enforcing the provisions of the Act and the Regulations promulgated thereunder, 17 C.F.R. §§ 1.1 *et seq.* (2016).

DEFENDANT

11. **William H. Powderly IV** is 61 years old and resides in New Hope, Pennsylvania. Powderly has never been registered with the Commission in any capacity.

IV. FACTS

Powderly Fraudulently Solicited Customers

12. Beginning in late December 2015, Powderly began soliciting prospective customers from his circle of friends and acquaintances. Powderly represented to prospective customers that he and a claimed partner, who Powderly described as a professor at a Pittsburgh, Pennsylvania university, had developed a proprietary, multi-algorithmic commodity futures trading program that generated exceptional “beta” testing results. In promotional literature Powderly created to solicit customers, he represented that over the 7 months of beta testing in the

futures market, he and his partner had “generated consistent daily gains without a single day of daily loss.” In reality, Powderly did not have a partner who helped develop the program.

13. In soliciting prospective customers, Powderly represented that he needed investment capital in order to begin placing actual trades in the commodity futures markets, utilizing his trading program. Powderly sought investment capital from customers who would transfer funds to him directly, which Powderly would then transfer to fund and trade in his own trading account at the FCM. Powderly also sought customers who would loan him money in the form of an interest bearing note paying a specified rate of monthly interest and a specified percentage of the net gain in assets in Powderly’s trading account carried at the FCM on the maturity date of the loan.

14. During the relevant period, Powderly met with customers and prospective customers, in order to provide them with an opportunity to view his computerized trading program and show them the hypothetical trading results that the program generated. During these meetings, Powderly claimed that his hypothetical trading results using the trading program were exceptional and that he never had a losing day. During these meetings, Powderly failed to tell customers and prospective customers that the actual trading he conducted in his trading account at the FCM was consistently unprofitable, and that he never had a profitable month trading commodity futures for his account during the relevant time period.

15. Similarly, Powderly sent prospective customers and customers email correspondence showing consistent profits generated by his hypothetical trading utilizing his trading program. For example, in one email that Powderly sent to prospective customers on December 12, 2015, he touted the success of his trading program and stated, “Total for the week \$8,246,225.00 . . .” in hypothetical trading results.

16. Based on Powderly's representations detailed in Paragraphs 12 through 15 above, at least 4 customers transferred at least \$825,000 to Powderly in the form of either (i) direct transfers, or (ii) loan proceeds to Powderly, in all cases with the understanding that their funds would be used to fund Powderly's account for purposes of commodity trading, and which Powderly, in fact, primarily used to fund his commodity trading at the FCM.

Powderly's Actual Commodity Trading Performance during the Relevant Period

17. From January 2016, when Powderly began soliciting investors, through October 2016, Powderly funded his trading account with a total of \$1,003,000. During that same period, Powderly's trading account sustained net trading losses of approximately \$997,527. Indeed, Powderly never had a profitable month trading commodity futures for his account during the foregoing time period, and Powderly failed to inform his customers and prospective customers about his actual trading results.

After Customers Invested Funds with Powderly, He Falsely Represented that His Commodity Trading Was Generating Profits and Falsified Account Statements

18. After customers transferred funds to Powderly for purposes of commodity trading, Powderly falsely represented to them that his trading was very profitable. In particular, Powderly represented to some customers that his commodity trading was so successful that his trading account balance at the FCM had grown to approximately \$2 million by September 2016.

19. When learning that the trading account balance had increased significantly, some customers requested that Powderly transfer a total of approximately \$570,000 to them in order to set aside funds to pay income taxes that they estimated would be due as a result of the trading profits Powderly had purportedly generated in the trading account.

20. After these customers requested withdrawals, Powderly made excuses to them about why he could not immediately transfer the funds to them. When Powderly could no longer

forestall transferring the requested funds, Powderly falsely told customers that he incurred large losses over a period of a few days in September 2016, when he allegedly had become ill and couldn't monitor his trading system.

21. To support his false story that he had initially been successful, but then incurred massive trading losses in September 2016, solely due to his poor health and his inability to monitor his trading during that period, Powderly created false FCM account statements for the months of August and September 2016 and sent them to his customers. The false FCM account statements Powderly created for August 2016 and sent to his customers, showed net trading profits of \$517,537 for that month and an account balance on August 31, 2016 of \$1,377,844. The false FCM account statements that Powderly created for September 2016 and sent to his customers, showed net trading losses of \$1,263,427 for that month and an account balance on September 30, 2016 of \$74,216.

22. In fact, Powderly's trading account incurred net realized losses of \$121,848 in August 2016 and had an account balance on August 31, 2016 of \$18,478. Powderly's trading account incurred net realized losses of \$12,808 in September 2016 and had an account balance on September 30, 2016 of \$513.

23. When Powderly refused to give his customers an accurate accounting of their investments or the return of their monies, one investor notified the FCM that carried Powderly's account by letter dated October 2, 2016, informing the FCM that Powderly had defrauded them. To date, four customers who invested funds with Powderly have incurred total net losses of at least \$669,000.

V. VIOLATIONS OF THE COMMODITY EXCHANGE ACT

COUNT I

**Violations of Section 4b(a)(1)(A),(C) the Act: Fraud by
Material Misrepresentations and Omissions**

24. The allegations set forth in paragraphs 1 through 23 are re-alleged and incorporated herein.

25. Sections 4b(a)(1)(A),(C) of the Act, 7 U.S.C. §§ 6b(a)(1)(A),(C) (2012), 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.

26. During the relevant period, Defendant violated Sections 4b(a)(1)(A),(C) of the Act, 7 U.S.C. §§ 6b(a)(1)(A),(C) (2012), in that he cheated or defrauded or attempted to cheat or defraud and willfully deceived or attempted to deceive his customers or prospective customers by: i) failing to inform them that the actual trading he conducted for his trading account during the relevant period was unprofitable; ii) falsely representing that his commodity trading had positive rates of return during the relevant period, when, in fact, the commodity futures trading he conducted in his trading account had a negative return, losing virtually all of the funds Defendant committed to trading; and iii) falsely representing that the trading system he utilized was developed with the assistance of a university professor, when he had no such partner and had developed the program himself.

27. Defendant engaged in this violative conduct 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, on or subject to the rules of a designated contract market, for or on behalf of such other persons.

28. Each material misrepresentation or omission and each misappropriation 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 4b(a)(1)(A),(C) of the Act, 7 U.S.C. §§ 6b(a)(1)(A),(C) (2012).

COUNT II

Violations of Section 4b(a)(1)(B) of the Act: Fraud by the Creation of False Statements

29. The allegations set forth in paragraphs 1 through 23 are re-alleged and incorporated herein.

30. Section 4b(a)(1)(B) of the Act, 7 U.S.C. § 6b(a)(1)(B) (2012), makes 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 – ... (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.

31. Defendant violated Section 4b(a)(1)(B) of the Act, 7 U.S.C. § 6b(a)(1)(B), in that Defendant willfully made or caused to be made false FCM statements that he sent to customers that misrepresented the balances in Defendant's trading account and concealed Defendant's actual trading losses.

32. Defendant engaged in this violative conduct 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, on or subject to the rules of a designated contract market, for or on behalf of such other persons.

33. Each false report or statement made during the relevant time period, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4b(a)(1)(B) of the Act, 7 U.S.C. § 6b(a)(1)(B).

COUNT III

Violations of Section 6(c)(1) of the Act and Regulation 180.1(a): Fraud by Manipulative or Deceptive Devices or Contrivances

34. The allegations set forth in Paragraphs 1 through 23 are realleged and incorporated herein.

35. Section 6(c)(1) of the Act, 7 U.S.C. § 9(1) (2012), makes it unlawful for any person, directly or indirectly, to use or employ, or attempt to use or employ, in connection with any swap, or a contract of sale of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity, any manipulative or deceptive device or contrivance in contravention of any Commission rule or regulation.

36. Regulation 180.1(a), 17 C.F.R. § 180.1(a) (2016), makes it unlawful, *inter alia*, for any person, directly or indirectly, in connection with any swap, or a contract of sale of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity, to intentionally or recklessly use or employ, or attempt to use or employ, any manipulative device, scheme, or artifice to defraud; make, or attempt to make, any untrue or misleading statement of a material fact or to omit to state a material fact necessary in order to make the statements made not untrue or misleading; or engage, or attempt to engage, in any act,

practice, or course of business, which operates or would operate as a fraud or deceit on any person.

37. During the relevant period, Defendant violated Section 6(c)(1) of the Act, 7 U.S.C. § 9(1), and Regulation 180.1(a), 17 C.F.R. § 180.1(a), by knowingly employing manipulative or deceptive devices or contrivances in connection with commodities for future delivery on or subject to the rules of a registered entity, including: i) failing to tell prospective customers and customers that the actual trading he conducted for his trading account during the relevant period was unprofitable; ii) falsely representing that his commodity trading had positive rates of return during the relevant period, when, in fact, the commodity futures trading he conducted in his trading account had a negative return, losing virtually all of the funds Defendant committed to trading; iii) falsely representing that the trading system he utilized was developed with the assistance of a university professor, when he had no such partner and had developed the program himself; and iv) willfully making or causing to be made false FCM statements that misrepresented the balances in Defendant's trading account and concealed Defendant's trading losses.

38. Defendant committed such acts intentionally or recklessly.

39. Each act of employing a manipulative or deceptive device or contrivance, including, but not limited to, those specifically alleged herein, is alleged as a separate and distinct violation of Section 6(c)(1) of the Act, 7 U.S.C. § 9(1), and Regulation 180.1(a), 17 C.F.R. § 180.1(a).

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 (2012), and pursuant to its own equitable powers, enter:

A. An order finding that Defendant violated Sections 4b(a)(1)(A)-(C) and 6(c)(1) of the Act, 7 U.S.C. §§ 6b(a)(1)(A)-(C), 9(1) (2012), and Regulation 180.1(a), 17 C.F.R. § 180.1(a) (2016);

B. An order of permanent injunction prohibiting Defendant and any other persons or entities in active concert with him from engaging in conduct in violation of Sections 4b(a)(1)(A)-(C) and 6(c)(1) of the Act, 7 U.S.C. §§ 6b(a)(1)(A)-(C), 9(1) (2012), and Regulation 180.1(a), 17 C.F.R. § 180.1(a) (2016);

C. An order of permanent injunction enjoining Defendant and all persons insofar as they are acting in the capacity of his agents, servants, employees, successors, assigns, and attorneys, and all persons insofar as they are acting in active concert or participation with Defendant who receive actual notice of such order by personal service or otherwise, from engaging, directly or indirectly, in:

1. Trading on or subject to the rules of any registered entity, as that term is defined in Section 1a(40) of the Act, 7 U.S.C. § 1a(40) (2012);
2. Entering into any transactions involving “commodity interests” (as that term is defined in Regulation 1.3(yy), 17 C.F.R. § 1.3(yy) (2016), for his own personal account or for any account in which he has a direct or indirect interest;
3. Having any commodity interests traded on his 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 interests
5. Soliciting, receiving or accepting any funds from any person for the purpose of purchasing or selling any commodity interests;
6. 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) (2016) and/or

7. Acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2016)), agent or any other officer or employee of any person (as that term is defined in Section 1a(38) of the Act, 7 U.S.C. § 1a(38) (2012)) 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) (2016).

D. An order requiring Defendant and any third party transferee and/or successors thereof, to disgorge to any officer appointed or directed by the Court all benefits received including, but not limited to, salaries, commissions, loans, fees, revenues and trading profits derived, directly or indirectly, from acts or practices which constitute violations of the Act as described herein, including pre-judgment and post-judgment interest;

E. An order directing Defendant 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 him and any of the customers whose funds were received by him as a result of the acts and practices that constituted violations of the Act, as described herein;

F. An order requiring Defendant to make restitution by making whole each and every customer whose funds were received or utilized by him in violation of the provisions of the Act or CFTC Regulations as described herein, including pre-judgment interest from the date of such violations, plus post-judgment interest;

G. An order requiring Defendant to pay civil penalties 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) \$154,734 for each violation of the Act;

H. An order requiring Defendant to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2412(a)(2) (2012); and

I. An Order providing such other and further relief as this Court may deem necessary and appropriate under the circumstances.

Dated: May 1, 2017

Respectfully submitted,

/s/ Diane M. Romaniuk

Diane M. Romaniuk

(Illinois ARDC No. 0341649)

Lindsey Evans

(Illinois ARDC No. 6286125)

Scott Williamson

(IL ARDC No. 6191293)

Rosemary Hollinger

(Illinois ARDC No. 3123647)

U.S. COMMODITY FUTURES

TRADING COMMISSION

525 West Monroe Street, Suite 1100

Chicago, IL 60661

(312) 596-0541 (Romaniuk)

(312) 596-0643 (Evans)

(312) 596-0714 (facsimile)

dromaniuk@cftc.gov

levans@cftc.gov