

NATIONAL FUTURES ASSOCIATION  
BEFORE THE  
BUSINESS CONDUCT COMMITTEE

FILED

JUN - 4 2007

NATIONAL FUTURES ASSOCIATION  
LEGAL DOCKETING

In the Matter of: )  
)  
FORWARD FOREX, INC. )  
(NFA ID #362887), )  
)  
and ) NFA Case No. 07-BCC-018  
)  
MARSHALL D. WERTHEIM )  
(NFA ID #94354), )  
)  
Respondents. )

**COMPLAINT**

Having reviewed the investigative report submitted by the Compliance Department of National Futures Association ("NFA"), and having found reason to believe that NFA Compliance Rules ("NFA Requirements") are being, have been, or are about to be violated and that the matter should be adjudicated, NFA's Business Conduct Committee ("Committee") issues this Complaint against Forward Forex, Inc. ("Forward Forex") and Marshall D. Wertheim ("Wertheim").

**ALLEGATIONS**

**JURISDICTION**

1. At all times relevant to this Complaint, Forward Forex was a futures commission merchant ("FCM") Forex Dealer Member ("FDM") of NFA. As such, Forward Forex was and is required to comply with NFA Requirements and is subject to disciplinary proceedings for violations thereof.
2. At all times relevant to this Complaint, Wertheim was an associated person ("AP") and principal of Forward Forex and an NFA Associate. As such, Wertheim

was and is required to comply with NFA Requirements and is subject to disciplinary proceedings for violations thereof. Forward Forex is liable for violations of NFA Requirements committed by Wertheim during the course of his activities on behalf of Forward Forex.

### **BACKGROUND**

3. Forward Forex is located in Hollywood, Florida. It has been an NFA Member since January 2006 and began conducting customer business the following month. Wertheim is Forward Forex's president and its only AP.
4. Forward Forex employed an unregistered entity named F8 Real Estate, Inc. ("F8") to purportedly manage its finances and pay expenses. Forward Forex's association with F8 is, at the very least, suspicious.
5. F8 appears to be owned by Silvia Stambler, who has no registration history in the industry. However, her husband, Andrew Stern ("Stern"), has been for many years affiliated with a number of South Florida brokerage firms and has been named in three disciplinary Complaints issued by this Committee and two Commodity Futures Trading Commission ("CFTC") enforcement actions.
6. On November 2, 2004, in settlement of NFA's most recent case against Stern, he agreed, among other things, that he could only be a passive financial principal of an NFA Member and he is expressly prohibited from exercising controlling influence over any Member's operations and regulated activities. In addition, Stern is prohibited from hiring, firing, or supervising APs, from being present at a firm on a regular basis and from acting as a director of a firm. Further, any firm of which Stern is a principal is required to record all AP conversations with existing and prospective customers for six months.

7. At the time of NFA's examination of Forward Forex in June 2006, the firm's business consisted primarily of offering options on forex to retail customers. The firm obtained customers through the efforts of unregistered solicitors. Forward Forex had a total of 162 customer accounts during its first six months of operation. Approximately 94% of those customers lost money, suffering overall losses of more than \$3.5 million. The average loss was more than \$21,000 and ten customers each lost more than \$100,000. Only nine of Forward Forex's customers showed any profit at all in their accounts, with \$8,088 being the largest gain.
8. In stark contrast to its customers, Forward Forex generated gross revenues of more than \$3.6 million during its first six months. The firm's revenues are derived from commissions, from the bid/ask spread on forex option transactions and from trading gains that it experiences as the counterparty to customer forex option positions. Approximately \$2 million of the \$3.6 million was attributable to commissions that were, for the most part, passed on to the unregistered solicitors and were generally assessed at the rate of \$380 per option spread.
9. At times relevant to this Complaint, most Forward Forex customers were placed in options with premiums of under \$1,000 – usually entering into out-of-the-money options with a premium of somewhere around \$600. The impact of the combination of high commissions, the bid/ask spread and the purchase of significantly out-of-the-money options resulted in a situation in which Forward Forex's customers had to overcome a very high hurdle just to break even. Yet, in many situations, customers were never informed in a meaningful way of how remote their chances of profiting were.

10. Information gathered by NFA during its examination of Forward Forex and follow-up initiatives with customers uncovered evidence of a substantial number of highly deceptive and high-pressure sales solicitations by individuals from the unregistered firms which solicited customers on behalf of Forward Forex. In addition, NFA auditors found that the firm used misleading promotional material and failed to maintain required records. The results of NFA's examination provide ample evidence that Forward Forex and Wertheim failed to supervise the firm's employees and agents.

#### **APPLICABLE RULES**

11. NFA Compliance Rule 2-10 provides that each Member shall maintain adequate books and records necessary and appropriate to conduct its business including, without limitation, the records required to be kept under CFTC Regulations 1.18 and 1.32 through 1.37 for the period required under CFTC Regulation 1.31.
12. NFA Compliance Rule 2-36(b)(1) provides that no FDM or Associate of an FDM engaging in any foreign currency futures or options transaction shall cheat, defraud or deceive, or attempt to cheat, defraud or deceive any other person.
13. NFA Compliance Rule 2-36(c) provides that FDMs and their Associates shall observe high standards of commercial honor and just and equitable principles of trade in the conduct of their foreign currency futures and options business.
14. NFA Compliance Rule 2-36(e) provides that each FDM shall diligently supervise its employees and agents in the conduct of their foreign currency futures and options activities for or on behalf of the FDM. Each Associate of an FDM who has supervisory duties shall diligently exercise such duties in the conduct of that

Associate's foreign currency futures and options activities for or on behalf of the FDM.

**COUNT I**

**VIOLATION OF NFA COMPLIANCE RULE 2-36(b)(1): MAKING MISLEADING, AND DECEPTIVE SOLICITATIONS TO THE PUBLIC.**

15. The allegations contained in paragraphs 1, 3 through 10 and 12, are realleged as paragraph 15.
16. Under NFA Compliance Rule 2-36(d), Forward Forex is subject to discipline for conduct by non-Members of NFA that solicit for or introduce customers to Forward Forex that would violate NFA Compliance Rule 2-36(b)(1) when engaged in by an NFA Member.
17. In or about April of 2006, customer Bernard Herickoff ("Herickoff") was solicited to open an account at Forward Forex by Claire Blauch ("Blauch") a sales person at Hamlin Mercer Financial Group ("Hamlin Mercer"), a non-NFA Member solicitor.
18. Blauch and Hamlin Mercer cheated, defrauded or deceived Herickoff, or attempted to do so, in the following respects:
  - Blauch told Herickoff that he had access to information from the government about currency movement that only the biggest banks knew and that Herickoff had to act immediately if he wanted to have any chance of profiting from this information.
  - Blauch also told Herickoff that his account was far too small for Blauch to waste his time on. Blauch told Herickoff that if he did not add another \$25,000 to his account immediately, Blauch was not going to work with him.
  - Blauch falsely represented to Herickoff that his account was making a positive return.

19. In or about March of 2006, customer Mark Willingham ("Willingham") was also solicited to open an account at Forward Forex by Blauch and Hamlin Mercer.
20. Blauch and Hamlin Mercer cheated, defrauded or deceived Willingham, or attempted to do so, in the following respects:
  - Blauch never informed Willingham that he was not investing on a regulated exchange.
  - Blauch told Willingham that he never lost money and promised Willingham large profits. After Willingham invested, Blauch assured him that his account was doing well and had quickly turned a profit. At the account's peak, Blauch told him that it was worth \$800,000 and said that they would cash out as high as \$1.25 million, after which Blauch would just day trade the remaining profits. Contrary to Blauch's rosy reports, Willingham was actually suffering ruinous losses.
21. In or about March of 2006, customer Kurt Deruiter ("Deruiter") was solicited to open an account at Forward Forex by Blauch and Hamlin Mercer.
22. Blauch and Hamlin Mercer cheated, defrauded or deceived Deruiter, or attempted to do so, in the following respects:
  - When Blauch informed Deruiter that he earned a profit on his initial investment, Blauch told Deruiter that in order for Deruiter to capitalize on the extraordinary opportunities in the markets he needed to add additional funds quickly.
23. In or about April of 2006, customer Richard Williams ("Williams") was solicited to open an account at Forward Forex by Blauch and Hamlin Mercer.
24. Blauch and Hamlin Mercer cheated, defrauded or deceived Williams, or attempted to do so, in the following respects:
  - Blauch promised Williams huge returns and assured Williams that he would be able to double or triple his money and get the money back into his 401(k) in less than a month.

25. In or about April of 2006, customer Rod Wing ("Wing") was solicited to open an account at Forward Forex by Bob Canter ("Canter") another sales person at Hamlin Mercer.
26. Canter and Hamlin Mercer cheated, defrauded or deceived Wing, or attempted to do so, in the following respects:
- When Wing told Canter that his savings were tied up in retirement plans, Canter encouraged Wing to break into his IRA in order to invest, enticing him with profit projections of three to five times his original investment. Canter also told Wing that he had to invest immediately if he wanted to make money. When Wing brought up the penalties and taxes he would incur as a result of withdrawing money from his retirement plans, Canter told him that the returns he would earn in just one month would far outpace any costs associated with breaking his retirement accounts. In addition, Canter routinely told Wing that his account was enjoying significant profits. During an account update at the end of April 2006, Canter told Wing that his account was worth an amount that would have represented a profit of approximately \$20,000. In reality, Wing's account statement for the end of April reflected a net liquidating value of approximately \$20,000 less than his total deposits as of that date.
27. In or about April of 2006, customer Doug Eggers ("Eggers") was solicited to open an account at Forward Forex by Canter and Hamlin Mercer.
28. Canter and Hamlin Mercer cheated, defrauded or deceived Eggers, or attempted to do so, in the following respects:
- Canter told Eggers that it was a certainty that anyone investing in the Euro would see large returns on their investment. Canter told Eggers that he expected him to double his money in no more than ten days to two weeks. Canter insisted that Eggers invest as much as possible because he was sure that Eggers was going to profit. Canter strongly encouraged Eggers to use his retirement savings. Canter said that what he was offering was too good to pass up and was also such a short-term investment that the money Eggers took out of his retirement savings account would be back in the account in a very short time.

29. In or about April of 2006, customer Paul Hammersmith ("Hammersmith") was solicited to open an account at Forward Forex by Darren Winters ("Winters") another sales person at Hamlin Mercer.
30. Winters and Hamlin Mercer cheated, defrauded or deceived Hammersmith, or attempted to do so, in the following respects:
- In the spring of 2006, Winters told Hammersmith about a purported opportunity in forex that would allow him to double his money in no time. Winters said that Hammersmith could expect to turn a \$5,000 investment into \$50,000 in under six weeks time. Winters told Hammersmith that he could turn his investment into \$100,000 and have it right back in his bank account in very little time. Winters strongly stressed the importance of making a decision quickly, as Winters did not want Hammersmith to miss out on any opportunity in the Euro. Winters said there were impending announcements in the industry that were certain to cause huge movements in the Euro market very soon. Winters never discussed the level of risk inherent in the type of investment he was making. In fact, Winters told Hammersmith that he was going to see the word 'risk' in the account opening paperwork, but not to let it scare him. Winters told Hammersmith there really was not much risk in forex when a client followed the firm's strategy.
31. In or about April of 2006, customer Albert Fish ("Fish") was solicited to open an account at Forward Forex by an unknown sales person at Hamlin Mercer.
32. The unknown sales person and Hamlin Mercer cheated, defrauded or deceived Fish, or attempted to do so, in the following respects:
- The unknown Hamlin Mercer sales person told Fish that it was not unusual to see a \$15,000 investment turn into \$60,000 and promised Fish to put a Ferrari in his front yard.
33. In or about April of 2006, customer Dickie Stewart ("Stewart") was solicited to open and maintain an account at Forward Forex by Josef Suarez ("Suarez") and Aris Cohen ("Cohen") who were sales persons of International Monetary Forex ("IMF"), non-NFA Member solicitor.

34. Suarez, Cohen and IMF cheated, defrauded or deceived Stewart, or attempted to do so, in the following respects:

- Suarez told Stewart that the option positions he had purchased were worth \$10,000, and then \$15,000. When Stewart asked to withdraw some of the profit, Suarez told him that the profits did not work like that, and he could not make a withdrawal. Suarez also told Stewart that an option was only profitable if it expired with a profit and that options could not be redeemed prior to expiration.
- Cohen told Stewart on several occasions that Stewart was making money and that "everything was fine with the account," when, in fact, Stewart's account was never in a profitable position at the end of any month.

35. In or about April of 2006, customer Jim Colley ("Colley") was solicited to open an account at Forward Forex by Cohen and IMF.

36. Cohen and IMF cheated, defrauded or deceived Colley, or attempted to do so, in the following respects:

- Cohen told Colley that he had the opportunity to make four or five times a \$5,000 investment. Additionally, Cohen said that Colley could make a lot more money than what Colley was currently making in the stock market. Cohen also sent Colley a brochure regarding risk, but told Colley that the risk information was for another type of investment and was not relevant to forex. He added that the risks involved in the products that he was offering to Colley were minimal. In fact, Cohen told Colley that forex options were less risky than Colley's investments in the stock market.

37. Pursuant to NFA Compliance Rule 2-36(d), Forward Forex is subject to discipline for the foregoing acts and omissions by non-NFA Members Hamlin Mercer, IMF, Blauch, Canter, Winters, Suarez and Cohen. Accordingly, Forward Forex is charged with violating NFA Compliance Rule 2-36(b)(1).

## COUNT II

### **VIOLATION OF NFA COMPLIANCE RULE 2-36(c): FAILURE TO UPHOLD HIGH STANDARDS OF COMMERCIAL HONOR AND JUST AND EQUITABLE PRINCIPLES OF TRADE.**

---

38. The allegations contained in paragraphs 1, 3 through 10 and 13 are realleged as paragraph 38.
39. Under NFA Compliance Rule 2-36(d), Forward Forex is subject to discipline for conduct by non-Members of NFA that solicit for or introduce customers to Forward Forex that would violate NFA Compliance Rule 2-36(c) when engaged in by an NFA Member.
40. Adherence to high standards of commercial honor and just and equitable principles of trade in the conduct of foreign currency futures and options business, in part, prohibits the use of a high-pressure approach during solicitations to the public.
41. In or about April of 2006, Blauch and Hamlin Mercer – acting on behalf of Forward Forex – employed a high-pressure approach in soliciting customer Gordon Dye (“Dye”). Blauch and Hamlin Mercer urged Dye to add \$20,000 to his account at Forward Forex so that he would be able to make some real money, despite the fact that Dye had told Blauch that he did not want to invest anymore money and was content to see what happened with his initial investment before considering adding any more to his account. When Dye refused to add funds, Blauch became more aggressive, telling Dye that his excuses for not investing further were not good enough and that Dye was a “loser.”
42. Blauch, together with a Hamlin Mercer sales person named Tim (last name unknown) employed a high-pressure approach in soliciting customer Herickoff,