

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

**COMMODITY FUTURES
TRADING COMMISSION,**

Plaintiff,

v.

**DAVID SEIBERT, individually and d/b/a
SEI-EQUITY INVESTMENTS, a/k/a SEI
EQUITY INVESTMENTS, a/k/a SEIBERT
EQUITY INVESTMENTS, and d/b/a
GREAT AMERICA FUNDING, LLC, a/k/a
GREAT AMERICAN FUNDING, L.L.C.,
a/k/a GREAT AMERICAN FUNDING
LENDER SERVICES,**

Defendant.

Case No: 1:20-cv-00935

Hon. _____

**COMPLAINT FOR INJUNCTIVE RELIEF, CIVIL MONETARY
PENALTIES, AND OTHER EQUITABLE RELIEF**

The Commodity Futures Trading Commission (“CFTC” or “Commission”), an independent federal agency, by and through its attorneys hereby alleges as follows:

I. INTRODUCTION

1. Between at least March 2016 and April 2019 (“Relevant Period”), Defendant David Seibert (“Seibert”), individually and doing business as (“d/b/a”) SEI-Equity Investments, also known as (“a/k/a”) SEI Equity Investments, a/k/a Seibert Equity Investments (“SEI”), and d/b/a Great America Funding, LLC a/k/a Great American Funding, L.L.C., a/k/a Great American Funding Lender Services (“GAF”), fraudulently solicited, accepted and pooled approximately \$10 million from at least eight participants. From March 2017 to April 2019, Defendant used the majority of those pooled funds to trade commodity interests, without disclosing that use to the

participants, and lost \$8,336,148 in participant funds in the trading account. In addition, Defendant misappropriated participant funds for his personal use.

2. In soliciting participants, Defendant claimed that the funds he was soliciting would be used to provide short-term secured loans in return for the promise of high interest from third-party borrowers who purportedly would use the loaned funds to make repairs to property before permanent financing could be secured. Seibert represented that he would find the lending opportunities, complete due diligence to determine if their borrower was qualified and the offered collateral would fully secure the loan, and handle the closing and servicing of the loans.

3. In reality, however, Seibert did not use the funds for short term real estate improvement loans as he had represented; rather, he misappropriated his participants' funds for other purposes. Seibert used some pooled participant funds for his direct personal use and benefit. He also pooled and traded the participant funds in a commodity interest trading account opened under the name David Seibert. Seibert failed to disclose to his participants that he used and lost \$8,336,148 of their funds trading commodity interests in a commodity account during the Relevant Period. He also did not disclose that he used some of their funds for other personal expenses.

4. By engaging in this conduct and the conduct further described herein, Seibert has engaged in violations of the Commodity Exchange Act ("Act"), 7 U.S.C. §§ 1-26 (2018). Specifically, Seibert has engaged, in violations of Section 4o(1)(A) and (B) of the Act, 7 U.S.C. §6o(1)(A) and (B) (2018) (fraud by a commodity pool operator ("CPO")), and Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2018) (failure to register as a CPO).

5. Unless restrained and enjoined by this Court, Seibert is likely to continue engaging in the acts and practices alleged in this Complaint.

6. Accordingly, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2018), the CFTC brings this action to enjoin Defendant's unlawful acts and practices and to compel his compliance with the Act. The CFTC also seeks civil monetary penalties and remedial ancillary relief, including restitution to defrauded participants, disgorgement, pre- and post-judgment interest, and such other equitable relief as this Court may deem necessary and appropriate.

II. JURISDICTION AND VENUE

7. **Jurisdiction.** This Court has jurisdiction over this action under 28 U.S.C. § 1331 (2018) (codifying federal question jurisdiction) and 28 U.S.C. § 1345 (2018) (providing that U.S. district courts have original jurisdiction over civil actions commenced by the United States or by any agency expressly authorized to sue by Act of Congress). In addition, Section 6c(a) of the Act, 7 U.S.C. § 13a-1(a) (2018), provides that U.S. district courts have jurisdiction to hear actions brought by the Commission for injunctive and other relief or to enforce compliance with the Act whenever it shall appear to the Commission that any 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.

8. **Venue.** Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2018), because Seibert transacted business in this District, and certain of the acts and practices in violation of the Act have occurred, are occurring, or are about to occur within this District, among other places.

III. PARTIES

9. Plaintiff **Commodity Futures Trading Commission** is an independent federal regulatory agency charged by Congress with administering and enforcing the Act and CFTC Regulations ("Regulations"), 17 C.F.R. pts. 1-190 (2019).

10. Defendant **David Seibert** resides in Lakeway, Texas. Seibert has never been registered with the CFTC in any capacity. Seibert has done business under the following fictitious names: SEI-Equity Investments, a/k/a SEI Equity Investments, a/k/a Seibert Equity Investments, and d/b/a Great America Funding, LLC a/k/a Great American Funding, L.L.C., a/k/a Great American Funding Lender Services.

11. A group of Seibert's participants filed a private suit against him in a Texas state court claiming fraud in connection with these transactions. The lawsuit, captioned *Estate of Donald W. Clayton, et al. v. David Seibert, et al.*, No. D-1-GN-19-001701 (Travis County, Texas, 419th Judicial District) (March 28, 2019), is pending.

IV. SEIBERT'S FRAUDULENT SCHEME

Seibert's Representations About his Fraudulent "Bridge Loan" Deals

12. Beginning in at least March 2016, Seibert asked prospective participants, many of whom reside in Texas, to participate with him as lenders in short-term secured loans that Seibert would originate and arrange.

13. Seibert represented to prospective participants that he and his purported company, GAF, were engaged in the business of making short-term, high-interest "bridge loans" to commercial borrowers in order for the borrowers to make additions or repairs to property or to otherwise meet cash needs before permanent financing could be secured.

14. Seibert told prospective participants that he would advise them of lending opportunities, complete the due diligence to determine if the borrower was well-qualified and that the offered collateral would fully secure the loan, handle the preparation of the loan documents and the closing of the transaction through a qualified attorney and title company, and that GAF would service the loan.

15. Seibert described the loans as interest-only loans paying interest on a monthly basis with a balloon payment of all principal after a term of approximately one year.

16. The offered loans were to be secured by a first lien deed of trust on real property, a security interest on the assets of the debtor and a personal guarantee.

The Closing of Seibert's Deals

17. When an individual decided to participate in one of Seibert's deals, Seibert would tell them to write a check made payable to him personally or, more frequently, to wire the funds to a bank account which he said was held in the name of GAF. In reality, the account was Seibert's personal bank account. The funds were pooled in Seibert's bank account and commingled there with funds from other participants and with Seibert's personal funds.

18. After the deals "closed," Seibert sent binders of documents to participants purporting to show that the loan transaction had been documented and closed by a law firm through a title company as escrow agent. Among the documents enclosed in these binders were the loan agreement, the personal guarantee of a principal of the borrowing company, a first lien deed of trust and a promissory note in the original principal sum that was purportedly executed by the borrower.

19. After the closing, Seibert paid his participants monthly "interest" payments on the loans, with participants presuming them to be paid by the borrower in the loan deal. In reality, the payments derived from funds of other participants, which Seibert paid out in the manner of a Ponzi scheme.

Seibert's Misappropriation and Fraud

20. Seibert received approximately \$10 million in funds from at least eight participants that was deposited into his personal bank account. Seibert used the majority of his

pooled participants' funds to trade commodity interests in his trading account. Seibert used additional participants' funds for various personal expenses..

21. Seibert never disclosed to his participants that instead of using their funds to make bridge loans, he was actually pooling their funds with those of other participants and using them to trade commodity interests. Nor did he disclose that he was using additional participants' funds for personal expenses described above.

22. On March 9, 2017, Seibert opened a commodity trading account in the name of David Seibert at a futures commission merchant ("FCM") ("FCM A"). His account application stated that he was employed as a financial advisor for "Seibert Equity Investments" earning an income of \$300,000 annually and that all the funds in the account belonged to him.

23. From March 2017 through April 2019, Seibert deposited \$8,645,198 into his personal commodity trading account at FCM A. The vast majority, if not all, of the deposited funds were participants' funds.

24. Seibert lost \$8,336,148 trading commodity interests in his personal account at FCM A from March 2017 through April 2019.

V. VIOLATIONS OF THE COMMODITY EXCHANGE ACT

COUNT I

Violations of Section 4o of the Act, 7 U.S.C. § 6o (2018): Fraud by a Commodity Pool Operator

25. The allegations in the foregoing paragraphs are re-alleged and incorporated herein by reference.

26. A commodity pool is defined in Section 1a(10) of the Act, 7 U.S.C. § 1a(10) (2018), in part, as:

[A]ny investment trust, syndicate, or similar form of enterprise operated for the purpose of trading in commodity interests, including any –

(i) commodity for future delivery, security futures product, or swap; (ii) agreement, contract, or transaction described in section 2(c)(2)(C)(i) of this title or section 2(c)(2)(D)(i) of this title; (iii) commodity option authorized under section 6c of this title; or (iv) leverage transaction authorized under section 23 of this title.

27. A commodity pool operator (“CPO”) is defined in Section 1a(11) of the Act, 7 U.S.C. § 1a(11) (2018), in part, as any person:

[E]ngaged in a business that is of the nature of a commodity pool, investment trust, syndicate, or similar form of enterprise, and who, in connection therewith, solicits, accepts, or receives from others, funds, securities or property, either directly or through capital contributions, the sale of stock or other forms of securities, or otherwise for the purpose of trading in commodity interests, including any—(I) commodity for future delivery

28. From at least March 2016 to April 2019, Seibert has been acting as a CPO, in that he engaged in a business that is of the nature of a commodity pool, investment trust, syndicate or similar form of enterprise, and in connection therewith, solicited, accepted, or received funds, securities, or property from others for the purpose of trading commodity interests.

29. Section 4o(1)(A) of the Act, 7 U.S.C. § 6o(1)(A) (2018), provides, in relevant part, that it shall be unlawful for a CPO, by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly “to employ any device, scheme or artifice to defraud any client . . . or prospective client. . . .”

30. Section 4o(1)(B) of the Act, 7 U.S.C. § 6o(1)(B)(2018), provides, in relevant part, that it shall be unlawful for a CPO, by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly “to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client . . . or prospective client. . . .”

31. From at least March 2016 to April 2019, Seibert, through use of the mails or other means or instrumentalities of interstate commerce (including through the use of telephone calls and electronic mail with prospective and existing participants and through the use of interstate

wire transfers), violated 7 U.S.C. §§ 6o(1)(A) and (B), by, among other things:

(1) misappropriating pooled participant funds for his personal benefit; (2) falsely promising that participants' funds were protected as loans collateralized by real property; and (3) not disclosing to participants that their funds were being used for, and lost by, trading of commodity interests.

32. Seibert engaged in the acts and practices described herein willfully, knowingly, or with reckless disregard for the truth.

33. Each act of misappropriation, misrepresentation or omission of material facts, including but not limited to, those specifically alleged herein constitutes a separate and distinct violation of 7 U.S.C. §§ 6o(1)(A) and (B).

COUNT II

Violations of Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2018): Failure to Register as a CPO

34. The allegations set forth in the preceding paragraphs are re-alleged and incorporated herein by reference.

35. Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2018), makes it unlawful for any CPO, unless registered with the CFTC, to make use of the mails or any means or instrumentality of interstate commerce in connection with its business as a CPO.

36. Seibert has never been registered as a CPO nor does he qualify for a CPO registration exemption under either the Act or the CFTC Regulations.

37. From approximately March 2016 to April 2019, Seibert used the mails, wires, or other instrumentalities of interstate commerce in or in connection with his business as a CPO while failing to register as a CPO and thereby violated 7 U.S.C. § 6m(1).

38. Each instance of soliciting, accepting, or receiving funds, securities or property from others, either directly or indirectly through capital contributions, the sale of stock or other

forms of securities, or otherwise for the purpose of trading in commodity interests, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of 7 U.S.C. § 6m(1).

VI. RELIEF REQUESTED

WHEREFORE, the Commission respectfully requests that this Court, as authorized by Section 6c of the Act, 7 U.S.C. § 13a-1 (2018), and pursuant to its own equitable powers:

A. Find that Seibert violated Sections 4m(1) and 4o(1)(A) and (B) of the Act, 7 U.S.C. §§ 6m(1) and 6o(1)(A), (B) (2018);

B. Enter an order of permanent injunction enjoining Seibert, and his affiliates, agents, servants, employees, successors, assigns, attorneys, and all persons or entities in active concert with him, who receive actual notice of such order by personal service or otherwise, from directly or indirectly engaging in the conduct described above, in violation of 7 U.S.C. §§ 6o(1)(A) and (C) and 6m;.

C. Enter an order of permanent injunction enjoining Seibert, and his affiliates, agents, servants, employees, successors, assigns, attorneys, and all persons or entities in active concert with him, who receive actual notice of such order by personal service or otherwise, from directly or indirectly:

1. Trading on or subject to the rules of any registered entity (as that term is defined by Section 1a(40) of the Act, 7 U.S.C. § 1a(40) (2018));
2. Entering into any transactions involving “commodity interests” (as that term is defined in Regulation 1.3, 17 C.F.R. § 1.3 (2018)) for accounts held in the name of Seibert or for accounts in which Seibert has a direct or indirect interest;
3. Having any commodity interests traded on Seibert’s 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 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) (2019); and
7. Acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2019)), 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 17 C.F.R. § 4.14(a)(9).

D. Enter an order directing Seibert, as well as any third-party transferee and/or successors thereof, 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 which constitute violations of the Act as described herein, including pre-judgment and post-judgment interest;

E. Enter an order requiring Seibert, as well as any successors thereof, to make full restitution to every person who has sustained losses proximately caused by the violations described herein, including pre-judgment and post-judgment interest;

F. Enter an order directing Seibert, as well as 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, with, or among Seibert and any of the participants whose funds were received by Seibert as a result of the acts and practices that constituted violations of the Act, as described herein;

G. Enter an order directing Seibert to pay a civil monetary penalty assessed by the Court, in an amount not to exceed the penalty prescribed by Section 6c(d)(1) of the Act, 7 U.S.C. § 13a-1(d)(1) (2018), as adjusted for inflation pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Pub. L. 114-74, tit. VII, § 701, 129 Stat. 584, 599–600, *see* Regulation 143.8, 17 C.F.R. § 143.8 (2019), for each violation of the Act, as described herein;

H. Enter an order requiring Seibert to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2413(a)(2) (2018); and

I. Enter an order providing such other and further relief as this Court may deem necessary and appropriate under the circumstances.

Dated: September 10, 2020

Respectfully submitted,

COMMODITY FUTURES
TRADING COMMISSION

/s/Susan B. Padove

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