

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

KAY and GEORGE SULLIVAN,
MICHAEL and KATHLEEN TIRELLI, and
STEVE BONNANO
individually, and on behalf of all others
similarly situated,

Plaintiffs,

v.

AGAPE WORLD, INC. NICHOLAS
COSMO, AGAPE MERCHANT ADVANCE
LLC, JOHN DOES 1-12,
BANK OF AMERICA, N.A., MF GLOBAL,
INC., TRANSACT FUTURES, ALARON
TRADING CORPORATION, Doing Business
As ALARON FUTURES AND OPTIONS,
and XYZ CORPS. 1-10,

Defendants.

Civil Action No:

CLASS ACTION COMPLAINT

- (1) SECURITIES FRAUD**
- (2) COMMON LAW FRAUD**
- (3) BREACH OF FIDUCIARY DUTY**
- (4) AIDING AND ABETTING
COMMON LAW FRAUD**
- (5) AIDING AND ABETTING
BREACH OF FIDUCIARY DUTY**
- (6) NEGLIGENCE**

DEMAND FOR JURY TRIAL

Plaintiffs, by and through their attorneys, file this Class Action Complaint against Agape World Inc., Nicholas Cosmo, Agape Merchant Advance LLC, and John Does 1-12 (collectively, "Agape"), Bank of America, N.A. ("Bank of America"), MF Global, Inc. ("MF Global"), Transact Futures ("Transact"), Alaron Trading Corporation doing business as Alaron Futures and Options ("Alaron") and XYZ Corps. 1-10, on behalf of themselves and other similarly situated individuals or businesses who invested into fraudulent schemes operated by Agape. Upon information and belief, as well as the investigation of counsel, Plaintiff alleges as follows:

INTRODUCTION

1. Starting in 2003, Nicholas Cosmo (“Cosmo”), a convicted felon who had just completed a 21 month sentence in Federal Prison in Allenwood, Pennsylvania commenced a fraudulent investment scheme through Agape, which was eventually comprised of two companies he controlled and approximately 12 brokers acting on Agape’s behalf. Agape obtained approximately \$400 million from investors using false pretenses. Thousands of blue collar investors, including police officers, post office employees, social security clerks, and widows investing life insurance proceeds, lost their entire life and retirement savings.
2. From the start, defendant Bank of America (“Bank of America”), played an integral role in that scheme providing Agape’s and Cosmo’s scheme with substantial assistance. Without Bank of America’s participation, the scheme would not have succeeded and grown to such an enormous size victimizing many life-long residents of Long Island, New York, and people of modest income and means.
3. Through Agape, Cosmo falsely convinced Plaintiffs and other investors that he was financing bridge loans for construction projects or other real estate developments. He would offer participation interests in the return on these loans, but failed to advise investors that he re-sold those same interests hundreds of times to other unknowing investors. For example, he would make a \$1 million dollar loan to a developer and collect \$60 million from investors. He used the excess or “extra” money raised to: (1) pay handsome returns to early investors and his confederates; (2), reward and incentivize “brokers” who brought in new investor money: and (3) ultimately conduct rampant and speculative commodities trading. Throughout the

scheme he used investor funds to spend excessively on his own lavish personal lifestyle.

4. Bank of America was at the epicenter of this scheme. The bank's brazen willingness to allow Cosmo and his cadre of brokers and sub-brokers, to have extraordinary access to its employees, infrastructure and banking services made the scheme work. In effect, Bank of America established, equipped and staffed a branch office at the heart of Agape's headquarters (the "Agape Branch" or the "Agape Branch of Bank of America"). With Bank of America's knowledge, this branch assisted, facilitated and furthered the fraudulent scheme as described more fully herein. This assistance included but was not limited to: (1) Bank of America assigning one or more representative to work directly out of Cosmo's office which was approximately 28 miles from the branch where Agape and Cosmo had their bank accounts; (2) Bank of America provided its onsite representatives at Agape with on site bank equipment and/or computer systems to enable direct access to Bank of America's accounts and systems; and (3) Bank of America's onsite representatives at Agape had the ability to monitor and check account balances, accept deposits and issue checks. Essentially, Bank of America established a fully functional bank branch manned by its own representatives within Agape's offices, which is contrary to normal banking practices.

5. Bank of America, additionally, through its onsite Agape Branch, as well as its other branches which dealt with Agape, further provided substantial assistance to Agape's schemes by: (1) allowing a convicted felon to open, direct, control and have extraordinary access to at least two dozen accounts under different names; (2)

aggregating and approving the transfer of funds among Agape accounts on a regular basis (perhaps as often as once an evening) totaling several millions of dollars; (3) failing to detect that Agape and Cosmo failed to engage in legitimate business loans and instead were selling securities without required licenses or registration; (4) approving and effecting, on a regular basis, transfers of up to \$100 million dollars in wires from Agape's accounts to commodities and futures trading firms for speculative transactions which looted Agape's assets; (5) failing to investigate the source of hundreds of millions of dollars of funds going into Agape's and Cosmo's accounts.

6. Bank of America's onsite representatives had actual knowledge that Cosmo was commingling investor money, diverting investor money to his own accounts, engaging in virtually no legitimate business whatsoever and speculatively trading investor money in the commodities and futures markets.

7. From November 2007 to January 2009, MF Global, Transact, and Alaron which are futures and commodities trading firms or merchants, and XYZ Corps. 1-10 (collectively, the "FCMs"), which represent other futures and commodities merchants, also had knowledge of, and provided substantial assistance to, Cosmo's fraudulent schemes. The FCMs established trading accounts for Cosmo and Agape despite the fact that Cosmo was barred for life by the Financial Industry Regulatory Authority ("FINRA") from association with any investment broker-dealer. Indeed, based on such facts, other similar firms refused Cosmo's business. As speculating in the futures markets became Agape's only business activity, the FCMs assisted Cosmo in running an illegal unregistered commodities pool. As a result, the Commodity

Futures Trading Commission (“CFTC”) commenced a proceeding against Agape and Cosmo.

8. Cosmo’s and Agape’s speculative commodities futures trading resulted in losses of \$80 million of funds belonging to Plaintiffs who invested in Agape. Cosmo looted Agape with his trading through the FCMs which never should have accepted this business. The FCMs have “know your customer duties” which require these firms to make sure that customers like Cosmo and Agape are not trading with investor money. Cosmo also assigned an uneducated and inexperienced “administrative assistant” to execute most of the trades. This “assistant” had no training, licenses or knowledge about futures trading, particularly in executing trades on behalf of a commodities pool. The FCMs should have refused Agape’s business, given their strict regulatory requirements. In sum, the FCMs substantially assisted Agape’s and Cosmo’s fraud, and played a substantial role in the loss of Plaintiff and investor funds.

9. Plaintiffs bring this action seeking monetary damages for the injury to its and the Class members’ business or property caused by Defendants’ fraud, breaches of fiduciary duty, aiding and abetting fraud, aiding and abetting a breach of fiduciary duty, and negligence, and they seek an accounting for the losses suffered. Plaintiffs also bring this action seeking monetary damages for the injury to Plaintiffs and Class Members caused by Defendants’ negligence and violations of common law.

JURISDICTION AND VENUE

10. This Court has original jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §1331 and jurisdiction over the state law claims, and any

parties against whom no federal claim is asserted, pursuant to 28 U.S.C. § 1367, as all such claims are part of the same case or controversy. In addition, this Court has original jurisdiction pursuant to 28 U.S.C. § 1332(d) as the aggregate amount in controversy exceeds \$5,000,000 and at least one class member is a citizen of a State different from a defendant, and more than one third of all Class members may reside outside of the State of New York. This Court has personal jurisdiction over Defendants pursuant to 18 U.S.C. §1965(b) and (d).

11. Venue is proper in this District pursuant to 28 U.S.C. §1391(a) and (b).

Venue is also proper under 18 U.S.C. §1965(a) because all Defendants transact or have transacted business in this District at times material to this action.

12. This action involves common issues of fact and grows out of the same events and transactions as *United States of America v. Nicholas Cosmo*, 09-MJ-0066 (E.D.N.Y.); *Triton Capital Partners, LLC, et al. v. Nicholas Cosmo, et al.*, 09-CV-0827 (E.D.N.Y. filed February 26, 2009); and *Heany, et al. v. Nicholas Cosmo, et al.*, 09-CV-0757 (E.D.N.Y. filed February 24, 2009)

PARTIES

13. Plaintiffs Kay and George Sullivan reside in Rockaway Park, New York. Kay is a schoolteacher and George is a policeman and together they suffered a loss of approximately \$180,000 from Agape's scheme.

14. Plaintiffs Michael and Kathleen Tirelli reside in Patchogue, New York. Michael, who suffers from stomach cancer, is a musician and works in a clothing store, and Kathleen is a massage therapist and new mother. Together, they suffered a loss of approximately \$125,000 from Agape's scheme.

15. Plaintiff Steve Bonnano resides in Wantagh, New York. He is a retired Captain with the New York Police Department who suffers from heart and back problems. He suffered a loss of approximately \$100,000 from Agape's scheme.

16. Defendant Agape World, Inc. ("Agape World") is a New York corporation that was organized in August 2000. Nicholas Cosmo was the President and controlling owner of this company. At all relevant times, its headquarters were located at 150 Motor Parkway, Hauppauge, New York, within the District.

17. Defendant Nicholas Cosmo ("Cosmo") was the President and controlling owner of Agape World and AMA. He resided in Lake Grove, New York. Cosmo is a prior felon who, on January 15, 1999, pled guilty to mail fraud relating to an investment scheme and served 21 months in prison and was ordered to pay restitution of \$177,000. As a result of the guilty plea, in 2000, FINRA revoked his stockbroker's license, fined him \$68,209 and barred him from association with any investment or securities broker-dealer.

18. Defendant Agape Merchants Advance LLC ("AMA") is a New York limited liability company that was organized in November 2007. Cosmo was the Managing Member and controlling member of AMA. It shared headquarters with Agape. John Does 1-12 are individuals whose identities are not known but who were "brokers" who acted as employees or agents of Agape by soliciting investors. The John Does 1-12 held accounts or subaccounts in the respective names on behalf of Agape, and received lucrative commissions and fees for bringing in new investor money. (together, Agape World, Cosmo, AMA and John Does 1-12 shall be referred to as "Agape").

19. Defendant Bank of America, National Association (“Bank of America”) is a subsidiary of Bank of America Corporation, a Delaware corporation headquartered in Charlotte, North Carolina. Bank of America provides a diverse range of banking services in 32 states including New York State. At relevant times, Bank of America had branches located at 190 Vanderbilt Motor Parkway, Hauppauge, New York and at 60 Hempstead Avenue, West Hempstead, New York. Bank of America also established a functioning branch office onsite at Agape’s headquarters at 150 Motor Parkway in Hauppauge, New York.

20. Defendant MF Global Inc. (“MF Global”) is a futures and commodities firm with a principal place of business at 440 South LaSalle Street, 20th Floor, Chicago Illinois. At relevant times, Agape and/or Cosmo had a commodities and futures trading account with MF Global.

21. Defendant Transact Futures (“Transact”) is a futures and commodities firm with a principal place of business at 14 West Jackson Blvd., 24th Floor, Chicago, Illinois. At relevant times, Agape and/or Cosmo had a commodities and futures trading account with Transact.

22. Defendant Alaron Trading Corporation (“Alaron”) is a futures and commodities firm with a principal place of business at 822 W. Washington, Chicago, Illinois. At relevant times, Alaron was doing business as Alaron Futures and Options. Agape and/or Cosmo had a commodities and futures trading account with Alaron.

23. Defendants XYZ Corps. 1-10 (the “FCMs”) are futures and commodities firms or merchants whose identities are unknown at this time. Upon information and belief, Agape had commodities and futures trading accounts with these firms. These

accounts were identified in the CFTC proceeding against Agape, and the names of these firms will be ascertained during discovery.

FACTS

The Cosmo/Agape Ponzi Scheme

24. Commencing in 2003, and through to his arrest on January 19, 2009, Cosmo operated an elaborate Ponzi scheme. Initially through Agape World, and later AMA, Cosmo purportedly provided secured bridge loans and merchant advances to businesses or individuals who could not obtain financing through commercial banks. The bridge loans offered were short-term and supposedly secured by the underlying real estate or other assets. Cosmo and Agape sought investor money as capital for its bridge loans and promised investors returns of 12 to 15% of their money. Later, Cosmo supplemented his scheme by claiming to provide an investment vehicle into bridge loans for merchants carrying credit card accounts payable from month to month.

25. Agape's website provided the scheme with an air of legitimacy by, among other things, using background pictures of construction and infrastructure projects. A copy of Agape's website is annexed hereto as **Exhibit A**. The website states that "project developers and contractors have sealed our services thru 2008". This statement, like so many others made by Defendants, was false and fraudulent.

26. Agape's website also contained information for investors. Investors were advised that Agape did not decide to lend until it did "due diligence on the borrowers" and was "fully secure in [the] decision to take on the loan. Agape

represented that its “approved investors” would benefit from “99% security of [their] investment by first position UCC filing; “investors are in complete control of their funds and are able to access at any time”; “each loan is collateralized by 100% commercial asset lien”; “clients are consulted directly and personally with their executive every loan term”; and “loan terms range from 60 days to 18 months”.

27. These and similar false representations were made to investors who were attracted to Agape’s seemingly safe and professional business plan and model. Based largely upon the strength of its purported plan, and its burgeoning reputation, Agape successfully attracted funds from investors.

28. To further attract investor funds, Agape developed relationships with approximately 12 “brokers” and “sub-brokers”, John Does 1 to 12, who worked as employees or agents of Agape. These brokers were given handsome cash payments for bringing new investors to Agape, and raising new capital, estimated in some cases to be in excess of \$1 million dollars. These brokers also each had a bank account established in his or her name at Bank of America, which received investor funds. Bank of America, however, enabled Cosmo direct control over these funds, which would be “swept” into Agape’s operating accounts at Bank of America on a daily basis. This and many other practices performed by the Bank should not have been permitted under recognized banking compliance regulations and standard anti-money laundering procedures.

29. Agape, directly and through the brokers, was able to raise an estimated \$400 million of investor funds. There are Agape investors located nationwide but many are

life-long residents of Long Island such as police officers, post office employees, social security clerks and widows investing life insurance proceeds.

30. Agape was rapidly successful in drawing investment money. It soon could afford large office space at 150 Motor Parkway in Hauppauge, New York, and could hire numerous employees. Cosmo personally benefitted from this success with a lavish house and automobiles. His brokers also were well compensated and many received millions from the scheme for their recruitment of new, innocent investors. Agape's success, however, was not real, existed only for Cosmo and the other defendants, and was based entirely upon lies.

31. In truth, Agape and Cosmo made only a handful of loans using investor funds. In reality, Agape would sell and repeatedly re-sell the same interests in a loan. For example, he would make a \$1 million dollar loan to a developer and collect \$60 million from investors, effectively selling and re-selling the same loan over and over. Agape never actually transacted the level of legitimate loan work and business needed to substantiate (or repay) the hundreds of millions of investor dollars received.

32. Instead, Agape ran a fraudulent Ponzi scheme. Agape had all investors write their investment checks or wire their deposits into two primary operating accounts at Bank of America. Funds were also deposited directly into a series of accounts that were in the name of Agape brokers. Under Cosmo's direction, Bank of America commingled all of these funds into these two accounts. Funds were never segregated by investor or by underlying project. This commingling of investor money was contrary to standard and recognized banking practices.

33. Using investor money, Agape would issue returns to the early investors, pay interest to investors and pay its “brokers” handsome commissions and fees.

34. Agape also secretly engaged in highly speculative and risky commodities and futures trading with investor money, and reportedly lost \$80 million in such trading. Upon information and belief, Cosmo sought to earn enormous trading profits that would replace the lack of business revenue from legitimate loans which he was not making.

35. In short, Agape and Cosmo, with the substantial assistance of Bank of America, engaged in a massive fraud and deceit upon Plaintiffs and other investors to “steal” \$400 million in capital, and then covered up the scheme and lies for as long as possible until the cash ran out. On January 19, 2009, Cosmo was arrested and charged with bank and mail fraud and other related crimes. He awaits trial and faces up to 30 years in prison if convicted. A copy of the criminal complaint is annexed hereto as **Exhibit B**.

Bank of America’s Participation In The Fraud

36. Historically, Ponzi schemes have not had the benefit of an affiliation with a credible and recognizable financial institution like Bank of America, in part because financial institutions have a responsibility to avoid aiding and abetting illegal activities. The legal requirements and best practices that set the standard for banking institutions are well outlined in various government and industry publications, including the Federal Financial Institutions Examinations Council’s 2007 publication, “Bank Secrecy Act/Anti-Money Laundering Examination Manual.” In addition, all

