

MF Global Brass Must Face Some Customer Claims

By **Max Stendahl**

Law360, New York (April 16, 2014, 5:25 PM ET) -- An [MF Global Inc.](#) customer seeking at least \$100 million in damages over the brokerage firm's collapse may pursue some claims against Jon Corzine and five other top executives, a New York federal judge ruled Wednesday.

U.S. District Judge Victor Marrero refused to dismiss Sapere CTA Fund LP's negligence and aiding and abetting claims against former CEO Corzine, former operations chief Bradley Abelow, former finance chief Henri Steenkamp and three others who worked in the company's treasury department.

Sapere is one of many MF Global customers whose funds were allegedly used to prop up the company before it collapsed in October 2011. About \$1.6 billion in customer money vanished, sparking an investigation by the U.S. [Commodity Futures Trading Commission](#) and other federal regulators.

On Wednesday, Judge Marrero said Sapere could pursue punitive damages in the case. The most recent complaint, filed in December 2012, sought at least \$100 million.

"The intentional transfer of funds that the [Commodity Exchange Act] and CFTC regulations required to be segregated and secured represents a substantial breach of trust that, if proved with sufficient evidence, would warrant punishment 'to protect society against similar acts,'" Judge Marrero wrote, citing prior precedent.

At the same time, Judge Marrero agreed to dismiss all of Sapere's claims against former MF Global independent directors. The judge also tossed fraud claims against all of the defendants, finding that Sapere had failed to show they knowingly defrauded customers.

"In sum, the facts pled in the complaint do not permit a reasonable inference that the individual defendants made statements with the intent to defraud Sapere," the judge wrote. "The complaint neither adequately identifies who made particular statements nor explains why those statements give rise to a strong inference of fraudulent intent."

Judge Marrero issued a similar [ruling](#) in February in a larger class action suit against former MF Global executives, dismissing some — but not all — of the claims.

Plaintiff attorney Edward Pinter said he was pleased with Wednesday's decision, in that it kept alive Sapere's "core" claims against Corzine and other top officials.

"In particular, we are extremely encouraged by Judge Marrero's holding that the defendants' participation in what has been referred to as a 'shell game' represented 'a substantial breach of

trust’ and that the defendants’ acts, if proven, would constitute ‘wanton and reckless or malicious acts’ warranting the imposition of punitive damages,” Pinter said.

“We remain confident that Corzine and the other defendants will ultimately be held accountable in this action for their role in MF Global’s collapse and this unprecedented breach of customer trust,” Pinter added.

He said he was evaluating whether to replead the claims that were dismissed.

An attorney for Corzine could not be immediately reached for comment.

The plaintiffs are represented by Edward M. Pinter, Joseph D’Ambrosio and Jon R. Grabowski of [Ford Marrin Esposito Witmeyer & Gleser LLP](#) and Joseph H. Stallings of [Howard Stallings From & Hutson PA](#).

Corzine is represented by Andrew J. Levander, Benjamin E. Rosenberg, Matthew L. Mazur, Rebecca S. Kahan and Jonathan Streeter of [Dechert LLP](#).

The independent MF Global directors are represented by Ted Polubinski of [Davis Polk & Wardwell LLP](#).

The case is DeAngelis et al. v. Corzine et al., case number [1:11-cv-07866](#) in the U.S. District Court for the Southern District of New York.

--Additional reporting by Stewart Bishop. Editing by Chris Yates.

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