

CIVIL ACTION COVER SHEET	TRIAL COURT OF MASSACHUSETTS SUPERIOR COURT DEPARTMENT COUNTY: SUFFOLK	DOCKET NO. <u>10-4378G</u>
PLAINTIFF(S) Commonwealth of Massachusetts		DEFENDANT(S) Tradition (North America) Inc.
ATTORNEY, FIRM NAME, ADDRESS AND TELEPHONE Aaron Lamb, AAG, Office of the Attorney General 1 Ashburton Place, 18th Floor, Boston MA 02108 617-963-2929 BBO# 661654		ATTORNEY (IF KNOWN) Robert Sherman, Esq., Greenberg Traurig One International Place Boston, MA 02110
		RECEIVED NOV 05 2010 SUPERIOR COURT - CIVIL MICHAEL JOSEPH DONOVAN CLERK / MAGISTRATE
Origin code and track designation		
Place an x in one box only: <input checked="" type="checkbox"/> 1. F01 Original Complaint <input type="checkbox"/> 4. F04 District Court Appeal c.231, s. 97 &104 (After trial) (X) <input type="checkbox"/> 2. F02 Removal to Sup.Ct. C.231,s.104 (Before trial) <input type="checkbox"/> 5. F05 Reactivated after rescript;relief from judgment/Order (Mass.R.Civ.P. 60) (X) <input type="checkbox"/> 3. F03 Retransfer to Sup.Ct. C.231,s.102C (X) <input type="checkbox"/> 6. E10 Summary Process Appeal (X)		
TYPE OF ACTION AND TRACK DESIGNATION (See reverse side)		IS THIS A JURY CASE?
CODE NO. TYPE OF ACTION (specify) TRACK		Yes/No No
E99 Misc Other (specify) - X track		
The following is a full, itemized and detailed statement of the facts on which plaintiff relies to determine money damages. For this form, disregard double or treble damage claims; indicate single damages only.		
TORT CLAIMS (Attach additional sheets as necessary)		
A. Documented medical expenses to date: 1. Total hospital expenses \$ _____ 2. Total Doctor expenses \$ _____ 3. Total chiropractic expenses \$ _____ 4. Total physical therapy expenses \$ _____ 5. Total other expenses (describe) \$ _____ B. Documented lost wages and compensation to date Subtotal \$ _____ C. Documented property damages to date \$ _____ D. Reasonably anticipated future medical and hospital expenses \$ _____ E. Reasonably anticipated lost wages \$ _____ F. Other documented items of damages (describe) \$ _____ G. Brief description of plaintiff's injury, including nature and extent of injury (describe) \$ _____		
Total \$ N/A		
CONTRACT CLAIMS (Attach additional sheets as necessary)		
Provide a detailed description of claim(s):		
N/A TOTAL \$.....		
PLEASE IDENTIFY, BY CASE NUMBER, NAME AND COUNTY, ANY RELATED ACTION PENDING IN THE SUPERIOR COURT DEPARTMENT		
I hereby certify that I have complied with the requirements of Rule 5 of the Supreme Judicial Court Uniform Rules on Dispute Resolution (SJC Rule 1:18) requiring that I provide my clients with information about court-connected dispute resolution services and discuss with them the advantages and disadvantages of the various methods. Signature of Attorney of Record <u>O. D. O.</u> Date: November 5, 2010 A.O.S.C. 3-2007		

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT

The COMMONWEALTH of MASSACHUSETTS,)
Plaintiff,)
v.)
TRADITION (North America) Inc.,)
Defendant.)

Civil Action No. 10-4378 G



I.

INTRODUCTION

1. The Commonwealth of Massachusetts, by and through its Attorney General, brings this enforcement action in the public interest pursuant to the Massachusetts Consumer Protection Act, Massachusetts G.L. c. 93A, § 4, and the Massachusetts False Claims Act, Massachusetts G.L. c. 12, § 5C against Tradition (North America) Inc. ("Tradition"). As set forth below, the Commonwealth alleges that Tradition engaged in bid rigging and other unfair or deceptive acts or practices and unfair methods of competition as a broker for Municipal Bond Derivatives transactions. Tradition's unfair or deceptive acts or practices include the fixing, controlling or maintaining of prices, rates, quotations, or fees and submitting false statements causing Massachusetts Government entities to be harmed, including but not limited to the

Massachusetts Water Pollution Abatement Trust, a public instrumentality of the Commonwealth established pursuant to Title VI of the Federal Clean Water Act and G.L. c. 29C, § 2. In addition, Tradition knowingly caused certain false claims to be presented for payment or approval to the Commonwealth of Massachusetts or political subdivisions thereof; and / or made, used, or caused to be made or used false records or statements to obtain payment or approval of certain claims by entities including but not limited to the Massachusetts Water Pollution Abatement Trust. The Commonwealth seeks civil penalties, damages and/or restitution, costs of litigation, (including investigative expenses and reasonable attorneys' fees), and injunctive relief to permanently enjoin the unlawful activities pursuant to G.L. c. 93A § 4 and G.L. c. 12, § 5B.

II.

JURISDICTION AND VENUE

2. The Attorney General is authorized to bring this action pursuant to G. L. c. 93A, § 4, and G.L. c. 12, § 5C. This Court has jurisdiction over the subject matter of this action pursuant to G.L. c. 93A, § 4 and G.L. c. 12, § 5C.

3. This Court has jurisdiction over Defendants pursuant to G.L. c. 223A, § 3(a) and (b).

4. Venue is proper in Suffolk County pursuant to G. L. c. 223, § 5 and G. L. c. 93A, § 4.

III.

PARTIES

5. The Plaintiff is the Commonwealth of Massachusetts which brings this action in the public interest.

6. Defendant, Tradition (North America) Inc., is incorporated under the laws of Delaware, with a principal place of business of New York, New York. It is a wholly-owned subsidiary of Compagnie Financière Tradition. Tradition conducted substantial business in the Commonwealth of Massachusetts, including activities involved in the effectuation of each of the schemes described below. Tradition contracted with CFP Inc., also known as China Financial Partners, Inc., which later changed its name to Capital Financial Partners, Inc., (collectively “CFP”) to serve as Tradition’s agent in acting as a broker for Municipal Bond Derivatives transactions. Through this relationship, at least in part, Tradition employed Adrian Scott-Jones (“Scott-Jones”) and Ron Jampel (“Jampel”) as its agents in acting as a broker for Municipal Bond Derivatives transactions. Tradition held Scott-Jones and Jampel out to third parties as agents of Tradition.

IV.

TERMINOLOGY

7. Whenever in this Complaint reference is made to any act, deed, or transaction of any corporation, the reference means that the corporation engaged in such act, deed, or transaction by or through its officers, directors, agents, employees, or other representatives while they were actively engaged in the management, direction, control, or transaction of its business affairs.

8. As used in this complaint, “Issuer” means government entities such as states, counties and cities or quasi-governmental entities, including public authorities and public school, utility or water districts, which issue municipal bonds.

9. As used in this complaint, "Municipal Bond Derivatives" means: (i) securities and other instruments used to reinvest the proceeds of a tax-exempt municipal bond issue including but not limited to investment agreements (whether collateralized or uncollateralized) paying a stated rate of return for such reinvested proceeds; which investment agreements are sometimes known as "Guaranteed Investment Contracts" or "GICs" and (ii) instruments used to hedge interest rate risk relating to a tax-exempt municipal bond issue.

10. As used in this complaint, "Municipal Bond Derivative Bidding Process" means the procedure involved in soliciting bids for Municipal Bond Derivatives.

11. As used in this complaint, "Broker" means an entity that conducts the Municipal Bond Derivative Bidding Process for the Issuer.

12. As used in this complaint, "Provider" means entities that bid or engage in Municipal Bond Derivatives transactions with Issuers.

V.

BACKGROUND

13. Municipal bonds are issued by government entities, such as states, counties and cities or quasi-governmental entities, such as public authorities and school, utility or water districts, to raise money for operation funds or for specific projects, such as the construction of public facilities, and to refinance outstanding municipal debt.

14. When an Issuer raises money through a tax-exempt bond offering, it typically chooses to spend the proceeds over a period of time rather than all at once. In order to earn interest on the unspent bond proceeds, the Issuer frequently chooses to invest in Municipal Bond

Derivatives. In many instances, Issuers select a Provider for the Municipal Bond Derivative through a Municipal Bond Derivative Bidding Process.

15. In order to ensure that the process complies with all regulations and laws, the Issuers often hire Brokers to act as their agents during the Municipal Bond Derivative Bidding Process. Brokers provide many services to Issuers including identifying potential Providers and structuring and running the Municipal Bond Derivative Bidding Process. The legitimate role of the Broker is to obtain the best possible price for the Municipal Bond Derivatives. Typically, for reinvestment instruments, this is done by arranging competitively bid auctions among multiple potential Providers.

16. During the Municipal Bond Derivative Bidding Process, the Broker usually receives Providers' bids by telephone followed by a confirming facsimile. For instruments where funds are invested with the goal of receiving interest payments, the bids are often expressed as interest rates with the highest rate generally winning. Once all the bids are received, the Broker ensures that the bids conform with the Issuer's predetermined specifications and evaluates any conditions, added by the Provider, that deviate from the specifications. The investment is then awarded to the winning Provider. The winning Provider is notified that it won. After the award, the Broker must submit a signed Certificate to the Issuer. Among other things, such certificates typically state: “[a]ll potential providers had an equal opportunity to bid. For example, no potential provider was given the opportunity to review other bids (i.e. a last look) before providing a bid.” They also typically state that “[t]he winning bid[s] [is/are] the highest yielding bona fide bid (determined net of any broker’s fees).”

VI.

FACTUAL ALLEGATIONS

17. Tradition was hired as a Broker by Massachusetts entities including but not limited to the Massachusetts Water Pollution Abatement Trust (“MWPAT”), an Issuer, on numerous occasions to conduct a Municipal Bond Derivative Bidding Process.

18. The MWPAT is a public instrumentality of the Commonwealth established pursuant to Title VI of the Federal Clean Water Act and G.L. c. 29C, § 2.

19. Tradition acted as the MWPAT’s Broker throughout the bidding process for numerous Municipal Bond Derivatives transactions by the MWPAT.

20. Generally, Scott-Jones and Jampel were the MWPAT’s contacts at Tradition, and the MWPAT understood, based in part on certifications by the CEO of Tradition, Emil Assentato, that Scott-Jones was acting as Tradition and was conducting the Municipal Bond Derivative Bidding Processes.

21. Tradition owed the MWPAT a fiduciary duty in connection with the Municipal Bond Derivative Bidding Processes in order to ensure a fair and competitive result on behalf of its client, the MWPAT.

22. Instead of acting for the MWPAT’s benefit, however, Tradition engaged in a pattern and practice of collusive, deceptive and/or fraudulent behavior that caused its client, the MWPAT, to enter into numerous Municipal Bond Derivatives with artificially suppressed yields, which caused the MWPAT to receive less income from its Municipal Bond Derivative investments.

23. In connection with MWPAT’s Municipal Bond Derivatives transactions, from earlier than 2000 until at least November 2004, instead of running a legitimate and bona fide Municipal Bond Derivative Bidding Process, Tradition knowingly:

- (a) conducted rigged and/or fraudulent bidding processes with the purpose,

intent, and effect to rig prices and reduce the return or yield on Municipal Bond Derivatives transactions for MWPAT by deliberately and intentionally supplying favored Providers with information concerning the bids of competing Providers, deliberately and intentionally setting the winning price in Municipal Bond Derivative auctions, and deliberately and intentionally instructing Providers to lower bids and reduce the yield or return to the MWPAT; and

- (b) certified and submitted false information in certificates provided to the MWPAT stating that all potential providers had an equal opportunity to bid (for example, no potential provider was given the opportunity to review other bids (i.e. a last look) before providing a bid); and the winning bid was the highest yielding bona fide bid (determined net of any broker's fees).

24. Tradition knowingly engaged in these improper practices on numerous occasions, including, but not limited to, the following examples of Municipal Bond Derivatives transactions:

- (a) In connection with an Investment Agreement involving the Issuer MWPAT, dated November 8, 2000, Scott-Jones of Tradition told Steve Goldberg of Trinity Plus Funding Company LLC ("Trinity") the exact interest rate that Trinity needed to submit to win. This number was 50 basis points less than the number originally given by Trinity. Trinity submitted the lowered bid. The lowered bid still remained the winning bid, resulting in a 50 basis point reduction in yield for the MWPAT. As a result, MWPAT received less money than it otherwise would have received from its investment.

(b) In another Investment Agreement, also involving the MWPAT, Tradition told Provider, FSA Capital Management Services, LLC (“FSA”), to lower its bid on a MWPAT Investment Agreement dated November 23, 2004. Scott-Jones, broker for MWPAT in his role as Tradition’s agent, told Steve Goldberg, then at FSA, to decrease his bid on a portion of a Municipal Bond Derivative. FSA then submitted the altered bid, with its artificially lowered interest rate. As orchestrated by Tradition, FSA won the rigged bidding for the Municipal Bond Derivative transaction using its artificially low bid. This resulted in a loss of 10 basis points of yield for the MWPAT. As a result of this bid-rigging and price fixing, MWPAT received lower payments than it otherwise would have received in connection with this GIC.

25. Mr. Goldberg has since been indicted in connection with similar conduct.

26. On September 8, 2010, Scott-Jones pled guilty to participating in two fraud conspiracies and to a count of wire fraud involving conduct in the nature of the conduct described above.

27. In each of the above instances, Tradition, through its CEO, Emil Assentato, certified and submitted a signed broker’s certificate that stated: (i) “[a]ll potential providers had an equal opportunity to bid. For example, no potential provider was given the opportunity to review other bids (i.e. a last look) before providing a bid”; and (ii) “[t]he winning bid[s] [is/are] the highest yielding bona fide bid (determined net of any broker’s fees).” These statements were false. Moreover, the certificates included additional statements suggesting that Tradition had conducted the bidding in a fair and competitive manner.

28. Mr. Assentato’s certifications were made as Tradition without reference to any role by CFP.

29. The certificates also stated that Bond Counsel could rely on Tradition's certifications for the purposes of providing certain opinions relating to the underlying bonds.

30. By submitting these certificates, Tradition induced the MWPAT to provide funds to the identified Providers under less favorable terms than otherwise would have applied. The MWPAT would not have entered into these transactions if it had known of Tradition's actions. Without this knowledge, the MWPAT did in fact enter into the investments and provide such funds and, relative to the position the MWPAT would have been in absent Tradition's bid-rigging scheme, lost money as a result.

31. Tradition intended its conduct of the Municipal Bond Derivative Bidding Processes and submission of the certifications to be material to the MWPAT's decision to enter into the Municipal Bond Derivatives transactions under the terms that ultimately applied.

32. Tradition breached its fiduciary duty to the MWPAT, and engaged in and failed to inform the MWPAT of its bid-rigging, price-fixing schemes described above.

33. Tradition engaged in a pattern and practice of concealing its bid-rigging, price-fixing schemes. First, Tradition regularly submitted false certificates stating that it had not conducted such a scheme. The MWPAT reasonably relied upon these certificates. Second, Tradition's agent, Scott-Jones, often used false names for the individuals he spoke to when he provided such individuals improper bidding information. In addition to using false names, Scott-Jones and those with whom he schemed also attempted to conceal the communication of confidential bidding information by using code words or phrases, which were intended to disguise the true content of the conversation. This took place in connection with MWPAT transactions. Indeed, Scott-Jones even discussed with participants in the scheme how they would conceal the improper conduct.

34. The MWPAT exercised reasonable diligence, and could not have discovered Tradition's bid-rigging, price-fixing scheme due to the false and/or fraudulent statements made by Tradition and the concealment activities engaged in by Tradition.

35. Potential issues surrounding bidding practices in the municipal derivatives industry became public in 2007 in connection with a leniency agreement between the United States Department of Justice and Bank of America Corporation. Given Tradition's concealment activities, the Attorney General's Office did not have reason to suspect Tradition's involvement, or that the injury it caused extended to Massachusetts Issuers, until after that.

36. The running of statutes of limitations and other time-related defenses as to the Commonwealth's claims against Tradition has been tolled since June 2009.

37. On October 28, 2010, the Attorney General's Office sent Tradition a letter in accordance with the provisions of G.L. c. 93A, § 4, paragraph 2.

VII.

CAUSES OF ACTION

Count One

Violation of G.L. c. 93A, § 2.

38. The Commonwealth incorporates and adopts by reference the allegations contained in every paragraph of this complaint.

39. Tradition's unfair or deceptive acts or practices and unfair methods of competition include a) the fixing, controlling or maintaining prices, rates, quotations, or fees for Municipal Bond Derivatives; b) the deliberate reduction of the yield or return to MWPAT by its practice of causing favored Providers to lower their bids for Municipal Bond Derivatives as part of its bid-rigging scheme; and c) damaging its client, the MWPAT, by submitting false

certificates to the MWPAT that the MWPAT relied on in deciding to enter into the Municipal Bond Derivatives transactions identified above and/or to pay rigged prices on such transactions.

40. Tradition's unfair or deceptive acts or practices and unfair methods of competition caused financial harm to certain Massachusetts Government Issuers, including the MWPAT, by depriving the entities of returns they would otherwise have received in the absence of Tradition's bid-rigging scheme and depriving the entities of the benefits of the Municipal Bond Derivative Bidding Process. The unfair methods of competition eviscerated the competitive process, and created a market environment which would disadvantage GIC bidders which did not engage in unlawful bid rigging.

41. The Attorney General brings this action pursuant to G.L. c. 93A, § 4.

42. Tradition knew it was committing actions that were unfair and deceptive and that constituted unfair methods of competition in violation of G.L. c. 93A, § 2(a), and such actions were willful.

Count Two

Violation of G.L. c. 12, § 5B.

43. The Commonwealth incorporates and adopts by reference the allegations contained in every paragraph of this complaint.

44. Tradition caused false claims to be presented for payment or approval to the Commonwealth of Massachusetts or political subdivisions thereof; and / or made, used, or caused to be made or used false records or statements to obtain payment or approval of certain claims by the Commonwealth of Massachusetts or an instrumentality, authority, or political subdivision thereof by making or causing to be made materially false certifications, signed by

Tradition and submitted to the Issuer. For instance, Tradition submitted certificates to the MWPAT that stated that: (i) “[a]ll potential providers had an equal opportunity to bid. For example, no potential provider was given the opportunity to review other bids (i.e. a last look) before providing a bid”; and (ii) “[t]he winning bid[s] [is/are] the highest yielding bona fide bid (determined net of any broker’s fees).”; and by engaging in a bid-rigging, price-fixing scheme in connection with its conduct of the Municipal Bond Derivative Bidding Process for MWPAT’s Municipal Bond Derivatives transactions.

45. As part of the Municipal Bond Derivatives transactions, Massachusetts Government Issuer funds were paid to Providers. All claims for payment of such funds relating to the transactions tainted by Tradition’s bid-rigging, price-fixing scheme were inherently false. Tradition caused the false claims to be submitted through its false and misleading actions.

46. Tradition knew that statements such as those referenced in paragraph 44 above were false and therefore that its certifications were false. Moreover, Tradition knew that the claims in connection with the Municipal Bond Derivatives transactions were inherently false due to its bid-rigging, price fixing scheme.

47. Tradition’s agents, including but not limited to Scott-Jones, had actual and/or apparent authority for their actions on behalf of Tradition within the meaning of G.L. c. 12, § 5B(11).

48. Tradition’s actions were material because, for example, absent the certifications, the MWPAT would not have entered into the Municipal Bond Derivative transactions and tendered funds to the relevant Providers for an artificially suppressed return. Similarly, and for example, if the MWPAT had known that the contracts for the Municipal Bond Derivative transactions were infected by Tradition’s bid-rigging, price-fixing schemes, it would not have

entered into the Municipal Bond Derivatives transactions.

49. Tradition intended and/or knew the false statements to be material to Massachusetts Government Issuers' decisions and decisional process (such as and including the MWPAT's decisions and decisional process) to enter into the Municipal Bond Derivatives transactions.

50. Tradition knowingly: a) caused false claims to be presented for payment or approval to the Commonwealth of Massachusetts or political subdivisions thereof in violation of M.G.L. c. 12, § 5B(1); and / or b) made, used, or caused to be made or used false records or statements to obtain payment or approval of certain claims by the Commonwealth of Massachusetts or a political subdivision thereof in violation of M.G.L. c. 12, § 5B(2).

VIII.

PRAYER FOR RELIEF

WHEREFORE, the Commonwealth requests judgment against Tradition as follows:

- a) Adjudging and decreeing that Tradition engaged in conduct in violation of G.L. c. 93A and G.L. c. 12, § 5B;
- b) Awarding the Commonwealth of Massachusetts all penalties and other monetary relief provided by applicable law;
- c) Awarding the Commonwealth of Massachusetts injunctive relief to prevent Tradition in the future from engaging in conduct similar to the improper conduct alleged in this complaint;
- d) Awarding the Commonwealth of Massachusetts such other equitable relief as the Court finds necessary to redress Tradition's violation of Massachusetts law;

- e) Awarding the Commonwealth of Massachusetts its costs of this action, including reasonable investigative costs, attorneys' fees and costs, and, where applicable, expert fees;
- f) Require Tradition to pay damages and/or restitution to any Issuer harmed by its conduct; and
- g) Directing such other and further relief as the Court deems just and proper.

COMMONWEALTH OF MASSACHUSETTS

MARTHA COAKLEY

ATTORNEY GENERAL



Date: 11/5/10

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