

*11-27-05*  
**Judge Hellerstein**

WAYNE M. CARLIN (WC-2114)  
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DOC # 1

**01 CV 11282**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

YEHUDA SHIV, SAGAM CAPITAL  
MANAGEMENT CORP. and SAGAM  
CAPITAL LLC,

Defendants.

01 Civ.

**COMPLAINT**

*FILED*  
*2001 DEC 11 AM 11:07*  
*S.D. OF N.Y.*  
*KKC*

Plaintiff Securities and Exchange Commission (the "Commission"), for its Complaint against defendants Yehuda Shiv ("Shiv"), Sagam Capital Management Corp. ("Sagam Corp.") and Sagam Capital LLC ("Sagam LLC") alleges as follows:

***SUMMARY***

1. From approximately 1995 through 2001, Shiv, and two investment advisers that he controls, Sagam Corp. and Sagam LLC, perpetrated a massive fraud on at least ten of their investment advisory clients.

2. Until late 1994, Shiv, who made all investment decisions for clients' accounts, was engaged in a high-risk investment strategy that produced substantial profits for the clients. In late 1994, there was a dramatic shift in the derivatives market that resulted in tremendous losses for the clients. Because Shiv did not want to admit these losses to the clients, he began to falsify client account statements. Over the next six years, Shiv created and sent false account statements to Sagam Corp.'s and Sagam LLC's clients, which failed to show trading losses, and instead showed that his trading in the clients' accounts had generated, and was continuing to generate, profits of approximately 10% per year. By October 31, 2001, Shiv had overstated the net value of assets in these clients' accounts by at least \$139 million. In addition, Shiv, Sagam Corp. and Sagam LLC profited by paying themselves management and performance fees based on the inflated asset values.

3. Through this conduct, Shiv, Sagam Corp. and Sagam LLC violated Section 17(a) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. § 77q(a), Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5, and Sections 206(1) and 206(2) of the Investment Advisers Act ("Advisers Act"), 15 U.S.C. §§ 80b-6(1) and 80b-6(2).

### ***JURISDICTION***

4. The Commission brings this action pursuant to the authority conferred upon it by Section 20(b) of the Securities Act, 15 U.S.C. § 77t(b), Section 21(d) of the Exchange Act, 15 U.S.C. § 78u(d), and Section 209(d) of the Advisers Act, 15 U.S.C. § 80b-9(d). In this action, the Commission is seeking: a) preliminary injunctive relief; b) permanent injunctive relief;

c) disgorgement and prejudgment interest; d) civil penalties; e) expedited emergency relief including an asset freeze, an accounting, the appointment of a receiver, a repatriation order, an order expediting discovery, and an order requiring the preservation of documents; and f) such further relief as the Court may deem appropriate.

5. This Court has subject matter jurisdiction over this action pursuant to Sections 20(d) and 22(a) of the Securities Act, 15 U.S.C. §§ 77t(d) and 77v(a), Sections 21(e) and 27 of the Exchange Act, 15 U.S.C. §§ 78u(e) and 78aa, and Sections 209(d) and 214 of the Advisers Act, 15 U.S.C. §§ 80b-9(d) and 80b-14. Venue lies in this district because, among other things, Shiv resided in New York, New York, and defendants Sagam Corp. and Sagam LLC maintained their principal places of business in New York, New York. Additionally, Shiv purchased and sold securities in this district.

6. Shiv, Sagam Corp. and Sagam LLC have engaged and, unless enjoined will continue to engage, directly or indirectly, in transactions, acts, practices, and courses of business which constitute violations of Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a), Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5, and Sections 206(1) and 206(2) of the Advisers Act, 15 U.S.C. §§ 80b-6(1) and 80b-6(2).

7. Shiv, Sagam Corp. and Sagam LLC directly and indirectly, made use of the means or instruments of transportation or communication in interstate commerce, or of the mails, or the facilities of a national securities exchange, in connection with the transactions, acts, practices, and courses of business alleged herein.

### ***THE DEFENDANTS***

8. **Shiv**, age 71, is an Israeli citizen and a resident of New York, New York. Shiv founded Sagam Corp. and Sagam LLC. At all times relevant to this Complaint, Shiv was the president of Sagam Corp. and Sagam LLC. On April 21, 1993, the Commission found that Shiv caused Sagam Corp.'s violations of Sections 204 and 206(4) of the Advisers Act and Rules 204-2, 204-3 and 206(4)-2 thereunder. *In the Matter of Sagam Management Corp. and Yehuda Shiv*, Admin. Proc. File No. 3-8023 (April 21, 1993).

9. **Sagam Corp.** has been registered with the Commission as an investment adviser since August 10, 1989. Sagam Corp. is a Delaware corporation with its principal place of business in New York, New York. Shiv is the president of Sagam Corp. On April 21, 1993, the Commission found that Sagam Corp. violated Sections 204 and 206(4) of the Advisers Act and Rules 204-2, 204-3 and 206(4)-2 thereunder. *In the Matter of Sagam Management Corp. and Yehuda Shiv*, Admin. Proc. File No. 3-8023 (April 21, 1993).

10. **Sagam LLC** is a Delaware limited liability company with its principal place of business in New York, New York. Sagam LLC has been registered with the Commission as an investment adviser since April 21, 1998. Shiv is the president of Sagam LLC.

### ***FACTS***

11. From 1994 to the present, Shiv, through Sagam Corp. and Sagam LLC, has provided investment advisory services to approximately 35 clients.

12. At the outset of the investment advisory relationship, each of Shiv's, Sagam Corp.'s and Sagam LLC's clients opened an account at Bank Julius Baer New York ("Julius Baer

NY”). Shiv had discretionary authority to make trading and investment decisions in these clients’ accounts.

13. In 1994, Shiv’s investment strategy involved, among other things, borrowing foreign currencies and using the proceeds to purchase mortgage-backed securities such as Federal Home Loan Mortgage Corporation securities (“Freddie Macs”). Specifically, Shiv, through the clients’ accounts, borrowed foreign currency (e.g., Japanese Yen) at very low interest rates. Shiv converted the foreign currency to United States dollars. Shiv then used the loan proceeds to purchase Freddie Macs, which generated interest payments that were significantly higher than the interest rates at which Shiv had borrowed the foreign funds. Shiv’s clients profited from the spread (i.e., the difference between the lower interest rate on the loan and the higher interest rate on the Freddie Macs). Additionally, Shiv’s trading strategy relied on margin trading, and the clients’ accounts were highly leveraged.

14. At the end of 1994, there was a dramatic shift in the derivatives market which affected the market for Freddie Macs. Shiv had difficulty selling his clients’ positions in Freddie Macs, and ultimately the clients’ trading positions experienced losses. Moreover, because the clients’ positions were highly leveraged, each account suffered substantial losses.

15. Because Shiv wanted to conceal the significant and mounting losses in Sagam Corp.’s clients’ accounts, especially from the clients who were his largest investors, Shiv created false monthly account statements for approximately ten of Sagam Corp.’s clients.

16. After April 1998, Shiv formed Sagam LLC and transferred Sagam Corp. clients’ accounts to Sagam LLC.

17. Shiv continued to create and send false monthly account statements to Sagam

Corp.'s and Sagam LLC's clients until approximately October 2001. In addition to hiding the losses that the clients suffered, Shiv generally showed that the trading in the clients' accounts was generating a profit of approximately 10% per year.

18. By October 31, 2001, Shiv had overstated the net value of assets in the clients' accounts by at least \$139 million.

19. Specifically, in October 2001, Shiv provided a false monthly account statement to Client A that represented the net assets in the client's account were valued at \$17,600,343 when, in fact, their true value was \$1,808,154 (a difference of \$15,792,189).

20. In October 2001, Shiv provided a false monthly account statement to Client B that represented the net assets in the client's account were valued at \$52,636,547 when, in fact, their true value was \$3,059,805 (a difference of \$49,576,742).

21. In October 2001, Shiv provided a false monthly account statement to Client C that represented the net assets in the client's account were valued at \$23,198,486 when, in fact, their true value was \$10,010,588 (a difference of \$13,187,898).

22. In October 2001, Shiv provided a false monthly account statement to Client D that represented the net assets in the client's account were valued at \$2,276,548 when, in fact, their true value was \$209,739 (a difference of \$2,066,809).

23. In October 2001, Shiv provided a false monthly account statement to Client E that represented the net assets in the client's account were valued at \$1,636,995 when, in fact, their true value was \$1,304,133 (a difference of \$331,863).

24. In October 2001, Shiv provided a false monthly account statement to Client F that represented the net assets in the client's account were valued at \$5,917,678 when, in fact, their

true value was \$2,437,002 (a difference of \$3,480,676).

25. In October 2001, Shiv provided a false monthly account statement to Client G that represented the net assets in the client's account were valued at \$55,875,383 when, in fact, their true value was \$1,760,694 (a difference of \$54,114,689).

26. In October 2001, Shiv provided a false monthly account statement to Client H that represented the net assets in the client's account were valued at \$1,158,549 when, in fact, their true value was \$198,199 (a difference of \$960,350).

27. Shiv, Sagam Corp. and Sagam LLC directly profited from their misrepresentations of the investment activity in the clients' accounts. Shiv, Sagam Corp. and Sagam LLC charged their clients two types of fees: a quarterly management fee of two percent of the clients' assets under management and an annual performance fee of 20 percent of all clients' profits over 10 percent. Shiv calculated these fees based on the inflated account values that he falsely represented to his clients.

28. On at least 10 occasions during the course of the fraud, Shiv made unauthorized transfers of assets between clients' accounts to conceal his fraud. For example, Shiv had misrepresented to one client that his account had assets in excess of \$17.6 million. In fact, the client's account had less than \$2 million. The client requested that Shiv withdraw \$2 million from his account. Because there were insufficient assets in the account, Shiv withdrew \$2 million from the account of another client, without her authorization, and transferred the funds to the client who had requested the withdrawal so that the client would not become suspicious of Shiv's conduct.

***FIRST CLAIM FOR RELIEF***

**Violations of Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a),  
and Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b),  
and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5**

*(Fraud in the Purchase and Sale of Securities)*

29. The Commission repeats and realleges each and every allegation contained in paragraphs 1 through 28, as if fully set forth herein.

30. Shiv, Sagam Corp. and Sagam LLC, directly or indirectly, singly or in concert, by use of the means or instruments of transportation or communication in interstate commerce, or of the mails, in the offer or sale, and in connection with the purchase or sale, of securities, has knowingly or recklessly: (a) employed devices, schemes and artifices to defraud; (b) obtained money or property by means of, and otherwise has made, untrue statements of material fact, and omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (c) engaged in acts, practices, transactions or courses of business which operated or would operate as a fraud or deceit upon the purchasers of securities and upon other persons.

31. As part of, and in furtherance of, the violative conduct, Shiv, Sagam Corp. and Sagam LLC knowingly or recklessly made the false and misleading statements and omissions described above.

32. Shiv's, Sagam Corp.'s and Sagam LLC's misrepresentations and omissions were material.

33. By reason of the foregoing, Shiv, Sagam Corp. and Sagam LLC violated, and unless enjoined will continue to violate, Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a),

Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5, promulgated thereunder, 17 C.F.R. § 240.10b-5.

***SECOND CLAIM FOR RELIEF***

**Violations of Sections 206(1) and 206(2) of the Advisers Act, 15 U.S.C. §§ 80b-6(1) and 80b-6(2)**

***(Fraud Against Advisory Clients)***

34. The Commission repeats and realleges each and every allegation contained in paragraphs 1 through 28, as if fully set forth herein.

35. Sagam Corp. has been registered with the Commission as an investment adviser since August 10, 1989. Sagam Corp. directly and indirectly, engaged, for compensation, in the business of advising clients as to the advisability of investing in, purchasing, or selling securities.

36. Sagam LLC has been registered with the Commission as an investment adviser since April 21, 1998. Sagam LLC, directly and indirectly, engaged, for compensation, in the business of advising clients as to the advisability of investing in, purchasing, or selling securities.

37. Shiv directly and indirectly, engaged, for compensation, in the business of advising clients as to the advisability of investing in, purchasing, or selling securities.

38. Shiv, Sagam Corp. and Sagam LLC, while acting as investment advisers, by use of the means or instruments of transportation or communication in interstate commerce, or of the mails, directly and indirectly, employed devices, schemes or artifices to defraud clients and/or prospective clients, and engaged in transactions, practices or courses of business which operated as a fraud or deceit upon clients.

39. As part of and in furtherance of the violative conduct, Shiv, Sagam Corp. and Sagam LLC knowingly or recklessly made the false and misleading statements and omissions described above.

40. Shiv's, Sagam Corp.'s and Sagam LLC's misleading statements and omissions were material.

41. By reason of the foregoing, Sagam Corp., Sagam LLC and Shiv, directly or indirectly, violated and, unless enjoined, will continue to violate, Sections 206(1) and (2) of the Advisers Act, 15 U.S.C. §§ 80b-6(1) and 80b-6(2).

***PRAYER FOR RELIEF***

**WHEREFORE**, the Commission respectfully requests that this Court grant relief against the defendants as follows:

**I.**

Enter an order preliminarily restraining and enjoining Shiv, Sagam Corp. and Sagam LLC from, directly or indirectly, singly or in concert, violating Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a), Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5, and Sections 206(1) and 206(2) of the Advisers Act, 15 U.S.C. §§ 80b-6(1) and 80b-6(2).

## **II.**

Enter a final judgment permanently restraining and enjoining Shiv, Sagam Corp. and Sagam LLC from, directly or indirectly, singly or in concert, violating Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a), Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5, and Sections 206(1) and 206(2) of the Advisers Act, 15 U.S.C. §§ 80b-6(1) and 80b-6(2).

## **III.**

Issue an Order directing Shiv, Sagam Corp. and Sagam LLC to disgorge an amount equal to all funds and benefits they obtained as a result of the violations alleged herein, and to pay prejudgment interest thereon.

## **IV.**

Issue an Order imposing civil money penalties against Shiv, Sagam Corp. and Sagam LLC pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), Section 21(d)(3) of the Exchange Act, 15 U.S.C. § 78u(d)(3), and Section 209(e) of the Advisers Act, 15 U.S.C. § 80b-9(e).

## **V.**

Issue an order for the following emergency relief against Shiv, Sagam Corp. and Sagam LLC: 1) a freeze of Shiv's, Sagam Corp.'s and Sagam LLC's assets, and accounts over which they exercise discretionary control; 2) an accounting; 3) the appointment of a temporary receiver for Sagam Corp. and Sagam LLC; 4) a repatriation order; 5) expedited discovery; 6) and an order requiring Shiv, Sagam Corp. and Sagam LLC to preserve documents.

VI.

Grant such other and further relief as the Court may deem just and proper.

Dated: December 10, 2001  
New York, New York

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Wayne M. Carlin". The signature is fluid and cursive, with a long horizontal stroke at the end.

WAYNE M. CARLIN (WC-2114)

Regional Director

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