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RICHARD W. STORY
U.S.D.C. Atlanta

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

APR 02 2003

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LUTHER D. THOMAS, Clerk
By: *[Signature]*
Deputy Clerk

MAR 20 2003
COMMODITY FUTURES TRADING
COMMISSION,
LUTHER D. THOMAS, Clerk
By: *[Signature]*
Deputy Clerk

Plaintiff,

Vs.

Advent Capital Partners, Ltd.
and Samuel Daley

Defendants.

Civil Case No.
1:02-CV-1381 (RWS)

(~~RECEIVED~~)
ORDER FOR ENTRY OF DEFAULT
JUDGMENT, PERMANENT
INJUNCTION AND ANCILLARY
EQUITABLE RELIEF AGAINST
DEFENDANTS

On May 21, 2002, Plaintiff, Commodity Futures Trading Commission ("Commission") filed a complaint in this matter to enjoin Advent Capital Partners, Ltd. ("Advent") and Samuel Daley ("Daley") (collectively, "Defendants") from further violations of Section 4(a) of the Commodity Exchange Act, as amended ("Act"), 7 U.S.C. § 13a-1 (1994) et. seq. On May 22, 2002, this Court issued a statutory restraining order against the Defendants, among other things, freezing the Defendants' assets and prohibiting the Defendants from destroying any documents. The Defendants were served and/or given adequate notice of this action. On June 4, 2002, this Court issued a Preliminary Injunction against the Defendants prohibiting each from further violations of the Act. The Defendants did not plead or otherwise defend

as to the Complaint within the time permitted by the Federal Rules of Civil Procedure.

The Commission has now submitted its Application for Entry of Default Judgment, Permanent Injunction and Ancillary Relief ("Application") pursuant to Federal Rules of Civil Procedure 55(b)(2). The Court has carefully considered the complaint, the aforementioned Application and other written submissions of the Commission filed with the Court, and all oppositions thereto, and being fully advised in the premises, hereby

GRANTS the Commission's Application For Entry of Default Judgment, Permanent Injunction, and Ancillary Relief and enters findings of fact and conclusions of law finding the Defendants liable as to all violations as alleged in the complaint. Accordingly, the Court now issues the following Order for Default Judgment, Permanent Injunction and Ancillary Equitable Relief against Defendants on issues of liability and the appropriate civil monetary penalties and restitution amounts.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

THE COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:

1. This Court has jurisdiction over the subject matter of this action and the Defendants pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, which authorizes the Commission to seek injunctive relief against any person whenever it shall appear that such 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.

2. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1, in that the Defendants inhabited and transacted business in the Northern District of Georgia, and the acts and practices in violation of the Act occurred within this district, among other places.

3. On May 21, 2002, the Commission filed the complaint in this matter to enjoin the Defendants from further violations of Section 4(a) of the Act. The Commission served a copy of the summons and complaint upon Corporate Makers, Inc., the registered agent of Advent on

May 31, 2002, and on the Secretary of State for the State of Georgia on June 13, 2002.

4. Commission staff also made diligent efforts to locate Daley, including attempting to serve Daley at his last known address, contacting Daley's former counsel, speaking with Daley's ex-wife, and conducting several relevant computer searches.

5. On July 24, 2002, this Court issued an order allowing the Commission to serve notice to Daley by publication in the Atlanta Journal-Constitution. Pursuant to this Court's Order and the representations of the clerk, Commission staff arranged for a notice to be published in the Atlanta Journal-Constitution on the following dates: September 12, 2002, September 23, 2002, October 7, 2002, and October 21, 2002. The notice was published in the Atlanta Journal-Constitution on each of these four days.

6. On August 7, 2002 and November 21, 2002 the Clerk of the Court entered defaults against Advent and Daley respectively, for their failure to plead or otherwise defend as provided by the Federal Rules of Civil Procedure. As of the date of this order, the Defendants have failed to plead or otherwise defend as provided by the Federal Rules of Civil Procedure.

7. The allegations of the complaint are well-pleaded and hereby taken as true.

8. The Defendants are not infants, incompetent, or serving in the military of the United States.

The Plaintiff

9. Commodity Futures Trading Commission is an independent federal regulatory agency that is charged with responsibility for administering and enforcing the provisions of the Act, 7 U.S.C. §§ 1 et seq. (1994), and the regulations promulgated thereunder.

The Defendants

10. Advent Capital Partners, Ltd. is a both a Georgia and Nevada corporation. Advent was incorporated in Georgia on June 20, 2001. From at least December 21, 2000 to February 13, 2002, Advent's principal place of business has been located at 3620 DeKalb Technology Parkway, Suite 1106, Atlanta, Georgia, 30340. Since February 13, 2002, Advent's principal place of business has been located at Buckhead Piedmont Center, 3525 Piedmont Road, 7 Piedmont Center Suite 300, Atlanta, Georgia 30305. Advent has never been registered with the Commission in any capacity.

11. Samuel Daley resides at 1046 Palmer Road, Lithonia, Georgia. Daley is the Chief Executive Officer and Head Trader for Advent. Daley is in charge of the day-

to-day operations of Advent. Daley has never been registered with the Commission in any capacity.

Solicitation of Customers

12. Since at least December 21, 2000, the Defendants have solicited prospective customers to purportedly trade foreign currencies in the "spot" or "forex" markets. Although the investments are marketed to prospective customers as "spot" or "forex" trades, as described more fully below, Advent is actually engaged in the trading of illegal, off-exchange futures contracts.

13. Defendants reach prospective customers through nationwide telephone solicitations, an Internet website located at www.advent-capital.com, and by sending out promotional literature.

14. Advent brokers, including Daley, tell prospective customers that their accounts will be "managed" accounts and that Advent makes all of the trading decisions for its customer accounts. Customers sign power of attorney authorizations granting discretion over their account to their account broker or "such other persons as the broker may deem fit" to manage the account.

15. Advent brokers tell prospective customers that Daley is a very experienced and successful trader. As

least one Advent customer was told that Daley has been a trader for over twenty years.

16. Daley is in charge of the day-to-day operations of Advent, oversees all of its business operations, and is Advent's head trader.

17. Advent brokers tell prospective customers that only 50% of customer funds will be used to trade. In addition, prospective customers are told that Advent limits customer losses to 15% per trade by placing stop-loss limits.

18. Advent brokers also tell customers that each currency contract generally costs \$1000 and leverages approximately \$100,000 worth of foreign currency.

19. Once prospective customers decide to invest with Advent, they are sent a package of material, including, a brochure regarding the foreign exchange market entitled "An Introduction to Forex 24 Hour Foreign Exchange Dealing At Interbank Rates," a "Customer Information" page, a "Customer Financial Questionnaire," a "Foreign Exchange Trading Agreement," and a "Notice of Appointment and Power of Attorney."

20. To open an account with Advent, customers are instructed to complete and sign the account opening documents, including, the "Foreign Exchange Trading

Agreement," and the "Notice of Appointment and Power of Attorney." Customers are also instructed to send their checks payable to "Advent Capital Partners Limited Customer Segregated Account." Customers who wish to send their funds via wire transfer are told to send the funds for credit to an "Advent Capital Partners Customer Segregated Account." Each customer is told that his or her funds are placed in segregated customer accounts in his or her name at First Union Bank.

Trading in Customer Accounts

21. After a customer opens an account with Advent, he or she receives account statements from Advent that purport to show the status of their account. The account statements are printed on Advent letterhead, show the name of the customer along the top of the page as well as the customer's Advent trading account number. Some customers also received copies of order tickets from Advent.

22. Initially, Advent's customer trades remained as open positions for only two to three days before they were closed out. On or about early March 2001, Advent began to keep its customer positions open for longer periods of time, sometimes as long as one to two months. Advent's customer account statements show that Advent never charged rollover fees to its customers, nor did it ever account for

daily fluctuations of the interest rates for any of its open positions.

23. The Advent customer account statements generally show the customer accounts to be steadily increasing in value. In addition, Advent brokers, including Daley, almost always informed customers orally that their accounts were increasing in value.

Customers Have Been Unable To Close Their
Accounts or Obtain Their Funds

24. In spite of the fact that their accounts have purportedly increased in value, since on or about March 2002, one or more Advent customers have been unable to withdraw funds from their accounts and/or close their accounts with Advent.

25. Since on or about May 3, 2002, customers have experienced difficulty contacting Advent brokers or traders to determine the status of their account. In addition, since on or about May 14, 2002, customers have been informed by a representative of the company that leased office space to Advent that Advent has closed its business without any forwarding information.

26. On or about May 3, 2002, Advent sent to at least two customers checks in the amount of \$20,000 each. The checks were postdated for May 8, 2002 and appeared to be

written on bank "starter" checks. Both customers were unable to deposit these checks. One check was returned for insufficient funds and another check was returned as invalid. First Union Bank informed the customer who received the invalid check that Advent had insufficient funds in its account to cover the amount of the check.

Defendants' Foreign Currency Transactions Are Illegal Futures

27. Defendants purport to offer contracts in "spot" foreign currency to retail investors that operate as follows: on a given trade date, an investor acquires a position in a foreign currency at a stated price. A long position is recorded as "bought" on the customer's account statement and a short position is recorded as "sold" on the statement. At a date subsequent to the "trade date," the position in the currency is offset by the investor entering into an equal but opposite position. The Defendants are the counter parties to these transactions with the retail customers.

28. Investors are led to believe that contracts stay open indefinitely until offset. The positions are not marked to market each day based on changes in currency rates, nor are the customers charged rollover fees.

29. The foreign currency contracts that Defendants offer and sell are futures contracts. The contracts are for future delivery of foreign currencies that are cash settled in US dollars. The prices or pricing formulas are established at the time the contracts are initiated, and may be settled through offset, cancellation, cash settlement or other means to avoid delivery.

30. The Defendants market these contracts to the general public. The customers who purchase these futures contracts have no commercial need for the foreign currency. Instead, customers enter into these transactions to speculate and profit from anticipated price fluctuations in the markets for these currencies.

31. Customers do not anticipate taking -- and do not take -- delivery of the foreign currencies they purchase as a consequence of these investments.

32. Defendants do not conduct their foreign currency futures transactions on or subject to the rules of a board of trade which has been designated or registered by the Commission as a contract market or derivatives transaction execution facility for such commodity.

33. Defendants do not execute or consummate their futures contracts by or through a contract market.

34. Defendants have not evidenced any futures contract by a record in writing which shows the date, the property covered and its price, and the terms of delivery.

35. Section 2(c)(2)(B)(i) and (ii) of the Act provides that the Commission shall have jurisdiction over an agreement, contract or transaction in foreign currency that is a sale of a commodity for future delivery, so long as the contract is "offered to, or entered into with, a person that is not an eligible contract participant" unless the counter-party, or the person offering to be the counter-party, is a regulated entity, as defined in the Commodity Futures Modernization Act.

36. Section 1a(12)(A)(xi) of the Act, 7 U.S.C. § 1 (1994), defines an eligible contract participant as an individual who has total assets in excess of: a) \$10 million; or b) \$5 million and who enters the transaction to manage the risk associated with an asset owned or a liability incurred, or reasonably likely to be owned or incurred. At least some, if not all, of the foreign currency futures transactions alleged herein were offered to or entered into with persons who were not eligible contract participants.

37. No Defendant is a proper counter-party for retail foreign currency transactions, and therefore the Commission

has jurisdiction over the transactions in retail foreign currency alleged herein.

VIOLATION OF SECTION 4(a) OF THE ACT

38. Since at least December 21, 2000, and continuing to the present, Defendants have offered to enter into, entered into, executed, confirmed the execution of, or conducted an office or business in the United States for the purpose of soliciting, accepting any order for, or otherwise dealing in transactions in, or in connection with, a contract for the purchase or sale of a commodity for future delivery when: (a) such transactions have not been conducted on or subject to the rules of a board of trade which has been designated by the Commission as a contract market or derivatives transaction execution facility for such commodity, and (b) such contracts have not been executed or consummated by or through a member of such contract market, in violation of Section 4(a) of the Act, 7 U.S.C. § 6(a) (1994).

39. Each foreign currency futures transaction not conducted on a designated contract market or derivatives transaction execution facility for such commodity made during the relevant time period, including but not limited to those conducted by the Defendants as specifically alleged herein, is alleged as a separate and distinct

violation of Section 4(a) of the Act, 7 U.S.C. § 6(a) (1994).

40. Daley, directly or indirectly, controlled Advent and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting Advents' violations alleged in this count, and thereby is also liable for Advents' violations of Section 4(a) of the Act, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (1994).

**Need for Permanent Injunctive and
Other Ancillary Equitable Relief**

41. The Commission has made a showing that the Defendants have engaged in acts and practices which violate Section 4(a) of the Act. The totality of the circumstances establish that, unless restrained and enjoined by this Court, there is a reasonable likelihood that the Defendants will continue to engage in the acts and practices alleged in the Complaint and in similar acts and practices in violation of the Act. The imposition of other ancillary equitable relief is required to comply with the basic objectives of the Act.

NOW THEREFORE, IT IS ORDERED THAT:

1. Defendants, and all persons insofar as they are acting in the capacity of agents, servants, employees, successors, assigns, or attorneys of Defendants, and all persons insofar as they are acting in active concert or participation with Defendants, who receive actual notice of this Order by personal service or otherwise, shall be permanently restrained, enjoined and prohibited from directly or indirectly, offering to enter into, entering into, executing, confirming the execution of, or conducting an office or business in the United States for the purpose of soliciting, accepting any order for, or otherwise dealing in transactions in, or in connection with, a contract for the purchase or sale of a commodity for future delivery when such transactions have not been: (a) conducted on or subject to the rules of a board of trade which has been designated by the Commission as a contract market or derivatives transaction execution facility for such commodity; (b) executed or consummated by or through a contract market; and (c) evidenced by a record in writing which shows the date, the parties to the contract and their addresses, the property covered and its price, and the terms of delivery, in violation of Section 4(a) of the Commodity Exchange Act, as amended by the Commodity Futures

Modernization Act of 2000 ("CFMA"), Appendix E of Pub. L. No. 106-554, 114 Stat. 2763, 7 U.S.C. § 6(a) (2000).

2. Defendants and all persons insofar as they are acting in the capacity of agents, servants, employees, successors, assigns, or attorneys of Defendants, and all persons insofar as they are acting in active concert or participation with Defendants, who receive actual notice of this Order by personal service or otherwise, are further permanently restrained, enjoined and prohibited from directly or indirectly:

- A. trading on or subject to the rules of any registered entity;
- B. engaging in, controlling or directing the trading of any futures or options accounts for or on behalf of any other person or entity, whether by power of attorney or otherwise; and
- C. applying for registration or claiming exemption from registration with the Commission in any capacity, and engaging in any activity requiring such registration or exemption from registration with the Commission, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. §4.14(a)(9) (2001), or acting as a principal agent, officer or employee of any person registered, required to be registered, or exempted from registration, except as provided for in Regulation 4.14(a)(9).

IT IS FURTHER ORDERED THAT:

1. Defendants are ordered to pay restitution in the amount of \$662,954.79 ("Restitution Obligation"), which includes a principal amount of \$573,697.95 plus prejudgment interest in the amount of \$89,256.84 as of March 7, 2003. Post-judgment interest shall accrue on the Restitution Obligation at the rate of 1.46%, pursuant to 28 U.S.C. § 1961. Defendants Advent Capital Partners, Ltd. and Samuel Daley are jointly and severally liable for the Restitution Obligation.

2. Defendants shall pay the Restitution Obligation set forth above in Paragraph 2 to the National Futures Association ("NFA"), which shall be designated as Monitor for the purpose of distributing any funds paid as restitution, for the period beginning with the date of entry of this Order and continuing until distribution of the complete Restitution Obligation called for by this Order. The Commission will provide the Monitor with a list of persons, identified in Attachment A, to whom restitution shall be made ("Investors"). Omission from Attachment A shall in no way limit the ability of any investor from seeking recovery from Defendants or any other person or entity. Further, the amounts contained in Attachment A shall not limit the ability of any investor from proving

that a greater amount is owed from Defendants or any other person or entity, and nothing herein shall be construed in any way to limit or abridge the rights of any investor that exist under state or common law. Upon the receipt by the NFA of any funds paid as restitution pursuant to this Order, the NFA shall notify the Commission of the receipt of any such funds. Within 30 days of any such written notice, the Commission shall submit to the Court a proposed plan for the distribution of such funds.

4. Plaintiff Commission is further awarded judgment against the Defendants for a civil monetary penalty in the amount of \$1,721,093.85. Further, Defendants shall pay post-judgment interest on the civil monetary penalty amount thereon from the date of this Order until the civil monetary penalty amount is paid in full at the rate of 1.46%, pursuant to 28 U.S.C. § 1961.

5. Defendants shall submit payment of the civil monetary penalty to the Commodity Futures Trading Commission, Division of Enforcement, 1155 21st Street, N.W., Washington, D.C. 20581 to the attention of Ms. Dennese Posey. Payment must be made by electronic funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money order, made payable to the Commodity Futures Trading Commission. The payment(s) shall include

a cover letter that identifies the Defendant and the name and docket number of this proceeding. The paying Defendants shall simultaneously transmit a copy of the cover letter and the form of payment to the Director, Division of Enforcement, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington, D.C. 20581.

6. If any provision of this Order, or the application of any provision or circumstance, is held invalid, the remainder of the Order, and the application of the provision to any other person or circumstance, shall not be affected by the holding.

7. Copies of this Order may be served by any means, including facsimile transmission, upon any financial institution, or any other entity or person that may have possession, custody or control of any documents or assets of any Defendant that may be subject to any provision of this Order.

8. Within seven (7) days after the entry of this Order of the Court, the Defendants shall serve upon the Commission a signed acknowledgement that he or it has been served with the Order.

9. Defendants shall serve any notices or materials required by this Order, and any applicable notices required by the Federal Rules of Civil Procedure, upon the

Commission by delivering a copy to Eugene Smith, Trial Attorney, Division of Enforcement, Commodity Futures Trading Commission, 1155 21st Street, NW, Washington D.C. 20581.

10. Defendants shall submit restitution payments to the Monitor at the following address, The National Futures Association, Attention: Daniel A. Driscoll, 200 W. Madison Street, Chicago, IL 60606.

11. Defendants shall prepare and file with the Court, within thirty (30) days of the date of this Order, an accounting for the period December 21, 2000 to the date of such accounting. The accounting shall include the following: (1) all of Defendants' assets and liabilities, identifying their value, nature and location, including but not limited to all real and personal property, and all bank, credit union, checking, commodity or security accounts, either directly or indirectly under the possession or control of Defendants, wherever situated; (2) transfers of real and personal property; and (3) all salaries, commissions, fees, loans, and customer funds received and disbursed by or on behalf of Defendants in connection with all commodity forex transactions, purported forex transactions. The accounting shall include a detailed explanation of the circumstances under which any

documentary evidence (including computer data) which would support the foregoing accounting has been destroyed, lost, misplaced or otherwise become unavailable. The accounting shall be made under oath attesting to a full and complete accounting and shall be signed by Defendants. A copy of the accounting shall be provided to the plaintiff.

12. This Court shall retain jurisdiction of this action in order to implement and carry out the terms of all orders and decrees that may be entered or to entertain any suitable application or motion for additional relief within the jurisdiction of the Court.

13. All aspects of the Court's Order of Default Judgment, Permanent Injunction and Ancillary Relief in this matter remain in full force and effect, unless specifically lifted or altered in this Order or any subsequent Order of this Court.

There being no just reason for delay, the Clerk of the Court is hereby directed to enter this Order.

SO ORDERED, at Atlanta, Georgia on this 1st day of April, 2003, at 2:30 p.m.


UNITED STATES DISTRICT JUDGE

Attachment A

<u>Investor</u> <u>(Name and Address)</u>	<u>Investment</u>	<u>Withdrawal</u>	<u>Profit/Loss</u>
Mary Catherine Trimarchi 1502 Avenue O Galveston, TX 77850	\$3,000	\$0	(\$3,000)
Stephen Kutz 77 Buckhaven Hill Upper Saddle River, NJ 07458	\$13,000	\$0	(\$13,000)
Jim Hurd 724 Ramano Avenue Spring Valley, CA 91977	\$3,400	\$0	(\$3,400)
Louis Saselli 80 Mohawk Avenue Corte Madera, CA 94925	\$5,300	\$0	(5,300)
James Sharp 524 Monrovia Avenue Long Beach, CA 90814	\$80,000	\$0	(\$80,000)
Mariamamma Soman 25 Glenfield Road Bloomfield, NJ 07003	\$13,000	\$0	(\$13,000)
John Leiden 2761 Pangborn Rd Lynden, WA 98264	\$50,000	\$0	(\$50,000)
John Meyer 1515 South Lincoln Aberdeen, SD 57401	\$10,000	\$5,000	(\$5,000)
Dale Conrad 2165 State Highway 173N Devine, TX 78016	\$7,000	\$0	(\$7,000)
Gary Wierman 10204 117 th Place NE Kirkland, WA 98033	\$20,000	\$0	(\$20,000)
Roger Anderson 120 Diers Avenue Grand Island, NE 68803	\$133,000	\$0	(\$133,000)

Jack Carpenter 607 Enterprise Chicago, IL 60411	\$11,000	\$0	(\$11,000)
Bobbi Steininger RR1 Box 276B Selinsgrove, PA 17870	\$70,500	\$10,000	(\$60,500)
Michael DiGvonna 3448 East Cedarville Rd DeKota, IL 61018	\$25,000	\$3,900	(\$21,100)
Richard Wierman 11618 NE 102 nd Place Kirkland, WA 98033	\$15,000	\$0	(\$15,000)
Michael J. Wierman 2009 Wallace St Walla Walla, WA 99362	\$20,000	\$0	(\$20,000)
Dana L. Sneed 3615 Norris Rd Kilgore, TX 75662	\$10,000	\$0	(\$10,000)
Warren A. Kendrick 6604 Anemone Court Arlington, TX 76002	\$16,000	\$0	(\$16,000)
Phil J. Patz 1410 North 44 th Court Stone Park, IL 60165	\$3,000	\$0	(\$3,000)
Ken Ashlock 706 Calle Rivera St Española, NM 87532	\$20,338	\$10,000	(\$10,338)
Steve Jeffries 102 Eileen Lane Manahawkin, NJ 08050	\$14,000	\$0	(\$14,000)

Hugh Story 3327 Garrison St San Diego, CA 92106	\$7,700	\$0	(\$7,700)
Ron Charriere 136 Tennys Dr Benicia, CA 94510	\$31,000	\$0	(\$31,000)
Millard and Yvonne Fry 10218 Burman Street Houston, TX 77029	\$12,659.95	\$0	(\$12,659.95)
Scott Futas 932 Goleta Street Oceanside, CA 92057	\$10,000	\$1,300	(\$8,700)
Total Restitution :			\$513,697.95

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APR 10 2003
FEDERAL BUREAU OF INVESTIGATION
U.S. DEPARTMENT OF JUSTICE