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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CIV - JORDAN

Case No. _____ -CIV- _____

COMMODITY FUTURES TRADING)
COMMISSION,)
)
Plaintiff,)
)
v.)
)
BIBAS LEVY CORP.,)
ZACARIAS BIBAS, AND)
HASSAN SHARAM,)
)
Defendants.)

MAGISTRATE JUDGE
BROWN

**Complaint For Injunctive And Other Equitable Relief And For Civil Penalties
Under The Commodity Exchange Act, As Amended, 7 U.S.C. §§ 1-25**

I. SUMMARY

1. Since at least February 2003, Defendants Bibas Levy Corp. ("Bibas Levy"), Hassan Sharam ("Sharam") and Zacarias Bibas ("Bibas") (collectively, "Defendants") have fraudulently solicited nearly \$350,000 from at least twenty retail customers nationwide to invest in foreign currency ("forex") futures contracts.

2. During the course of their solicitations, Defendants knowingly misrepresented, and failed to disclose, material facts concerning, among other things,

(i) the likelihood that a customer would realize large profits; (ii) the risk involved in trading; and (iii) the performance record of Bibas Levy.

3. By making such material misrepresentations and omissions, Defendants have engaged, are engaging, or are about to engage in acts and practices which violate the anti-fraud provisions of Section 4b(a)(2)(i) and (iii) of the Commodity Exchange Act, as amended (the "Act"), 7 U.S.C. § 6b(a)(2)(i) and (iii) (2001), and Section 1.1(b)(1) and (3) of the Commission Regulations ("Regulations"), 17 C.F.R. § 1.1(b)(1) and (3) (2003).

4. Defendant Bibas Levy is liable for the acts, omissions, and failures of its employees, officials, and agents pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B).

5. Defendant Bibas is a controlling person of Bibas Levy and therefore, is liable for its violations of Section 4b(a)(2)(i) and (iii) of the Act and Section 1.1(b)(1) and (3) of the Regulations, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2001).

6. Accordingly, pursuant to Section 6c of the Act, Plaintiff Commission brings this action to enjoin the unlawful acts and practices of Defendants and to bar them from engaging in any commodity-related activity, including soliciting new customers or customers' funds. In addition, the Commission seeks civil monetary penalties in the amount of not more than the higher of \$120,000 or triple the monetary gain to Defendants for each violation of the Act, disgorgement of Defendants' ill-gotten gains, restitution to customers, prejudgment interest and such other relief as this Court may deem necessary or appropriate.

7. Unless enjoined by this Court, Defendants are likely to continue to engage in the acts and practices alleged in this Complaint and similar acts and practices, as more fully described below.

II. JURISDICTION AND VENUE

8. Section 2(c)(2)(B) of the Act, as amended, 7 U.S.C. § 2, expressly grants the Commission jurisdiction over certain transactions in foreign currency that are contracts for the sale of a commodity for future delivery, including the transactions alleged in this Complaint. This Court has jurisdiction over this action pursuant to Section 6c of the Act, 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.

9. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1, in that Defendants are found in, inhabit, or transact business in this District, and the acts and practices in violation of the Act have occurred, are occurring, or are about to occur, within this District, among other places.

III. THE PARTIES

The Plaintiff

10. **Commodity Futures Trading Commission** is an independent federal regulatory agency that is charged with responsibility for administering and enforcing the provisions of the Act, as amended, 7 U.S.C. §§ 1 et seq. (2001), and the regulations

promulgated thereunder, 17 C.F.R. §§ 1 *et seq.* (2003). The Commission maintains its principal office at Three Lafayette Centre, 1155 21st Street, NW, Washington, DC, 20581.

The Defendants

11. **Bibas Levy Corp.** is a Florida corporation incorporated on December 31, 2002, with its principal place of business at 200 South Biscayne Boulevard, Suite 330, Miami, Florida 33131. Bibas Levy operates a website at www.bibaslevy.com wherein it describes itself as “the premier Foreign Exchange Trading provider.” Bibas Levy has never been registered with the Commission in any capacity.

12. **Zacarias Bibas (“Bibas”)** resides at 525 Coral Way, Apartment 205, Coral Gables, Florida 33134. Bibas Levy’s incorporation documents identify Bibas as the company’s registered agent and only Officer and Director. Bibas is Bibas Levy’s President and Chief Executive Officer. Intermittently between December 24, 2001 and July 12, 2002, Bibas held a temporary license with the Commission as an Associated Person of Silver Commodities Corp., an Introducing Broker formerly registered with the Commission. After July 30, 2002, Bibas was registered with the Commission as an Associated Person of Silver Commodities Corp. until his registration was withdrawn on May 1, 2003. In addition, from November 21, 2002 until November 27, 2002, Bibas was registered as an Associated Person at Commtrade Corp., a registered Introducing Broker. With regard to his activities at Bibas Levy, Bibas has not been registered with the Commission in any capacity.

13. **Hassan Sharam (“Sharam”)** resides at 3040 Orange Street, Miami, Florida 33133. Sharam is the Vice President of Bibas Levy and provided the initial

capital to start the company. Sharam solicited prospective customers and traded customer accounts. Sharam has never been registered with the Commission in any capacity.

IV. STATEMENT OF FACTS

A. The Bibas Levy Investment

14. Since on or about February 1, 2003 through at least July 21, 2003 (“the relevant period”), Bibas Levy, through its employees, including Bibas and Sharam, solicited prospective customers to open forex futures trading accounts at two firms, DirectFX and Gain Capital, Inc. (“Gain Capital”), where the accounts were traded and managed by Bibas Levy. During the relevant period, DirectFX was a wholly owned subsidiary of Direct Trading Group, formerly registered with the Commission as a futures commission merchant (“FCM”). Gain Capital was, and continues to operate as, a registered FCM.

15. During the relevant period, Defendants and other Bibas Levy employees solicited prospective customers through nationwide telephone solicitations and promotional literature. Bibas Levy continues to solicit prospective customers at Bibas Levy’s Internet website located at www.bibaslevy.com.

16. Defendants solicited approximately \$350,000.00 from at least twenty customers.

17. Defendants told prospective customers that they would be charged commissions ranging from ten to fifty dollars (\$10.00-\$50.00) per round turn (i.e, buy/sell) contract.

18. Defendants provided customers account opening documents via the mail, including Federal Express, and through its website. They continue to do so through the internet at www.bibaslevy.com.

19. Customers executed the account opening documents, including a Customer Agreement and a Limited Power of Attorney, which authorized Bibas Levy to trade on their behalf, and returned them to the Defendants.

20. According to Defendants' instructions, customers sent their investment funds directly to their respective trading accounts at Gain Capital and Direct FX.

21. Defendants informed customers that they could access their DirectFX and Gain Capital account statements online.

22. At least two customers notified the Defendants before they opened an account that they did not own a computer or have access to the internet and therefore, relied on Defendants to inform them of their account status. Defendants knowingly misrepresented to these customers that they would be in regular telephone contact with the customers to inform them of their trading account status. After the customers opened their accounts and transferred their funds to their trading accounts, however, Defendants refused contact with the customers to inform them orally or in writing of their accounts' status.

23. Bibas Levy ceased trading its customer accounts at Gain Capital on July 21, 2003. As of October 1, 2003, Bibas Levy's accounts at Gain Capital remained open and accessible by Bibas Levy for continued trading.

B. Defendants' Fraudulent Solicitation of Prospective Customers

1. Defendants' Misrepresentations Concerning the Likelihood of Profit

24. Throughout the relevant period, Defendants knowingly misrepresented to prospective customers, both orally and in writing, that they could earn very large profits in a short period of time. For example, they represented:

- a. Customers would easily make 12% per month profit;
- b. Customers should expect to double an investment in a single month as other customers had;
- c. A typical investment in forex trading provides investors a return of \$80,000 on a \$50,000 investment, with the risk of loss kept minimal through the use of stop loss orders;
- d. An investment could earn hundreds of thousands of dollars within a few months;
- e. Bibas Levy has a "magic formula" for earning profits in foreign currency trading;
- f. It is very easy to make money trading in foreign currency;
- g. An investment with Bibas Levy would make substantial profits.
- h. Customers would earn profit, which could be 20%; and
- i. Customers could expect a 20% annual return.

25. Sometime in February through early March, 2003, Sharam told at least one customer that Bibas Levy would double the customer's investment in "no time."

2. Defendants' Misrepresentations Concerning Past Performance

26. Defendants told at least one customer that Bibas Levy's President and primary trader, Zacarias Bibas, had twenty years experience making 15% profit every month in foreign currency trading.

27. In at least two instances, Bibas Levy provided promotional materials indicating that an investor's account increased from \$77,000.00 to approximately \$110,000.00 during the period of March 11, 2003 through April 3, 2003 as a result of Bibas Levy's trades, and knowingly misrepresented this result as typical of Bibas Levy's customers' accounts.

28. Between March through July 2003, Bibas Levy's forex trading was unprofitable each and every month. During those months, Bibas Levy customers realized total monthly net losses of approximately \$3,600, \$72,400, \$184,400, \$17,400, and \$70,000, respectively, including fees and commissions.

29. Only in February 2003, did Bibas Levy have a profitable month. During that month, Bibas Levy traded and managed only one customer account, with a net profit of approximately \$1,200 (on a \$9,500 investment) overall for the month. By the end of June 2003, however, the customer's account netted a loss of over \$20,000.

30. For the relevant period, February through July 2003, Defendants lost a total of approximately \$246,500 trading on behalf of their customers. During the same period, customers were charged approximately \$100,000 in commissions and fees. The sum of the total net losses to customer accounts was approximately \$346,500,

representing about 98.5% of the total sum—approximately \$351,700—customers deposited in their accounts.

31. Defendants knew that they were suffering trading losses and continued to misrepresent to prospective and current customers that they were profitable traders.

3. Defendants' Misrepresentations Concerning the Risk of Loss

32. During the relevant period, Defendants knowingly misrepresented to prospective and current customers that Bibas Levy would place stop loss orders on every trade to limit any losses to two and a half to three percent (2.5 -3%).

33. Defendants provided a written script to its employees to use when talking to prospective customers. Through the script, Defendants knowingly misrepresented to prospective customers that Bibas Levy placed a stop loss order on “every trade” to protect the investment equity when the market eventually moved in the opposite direction. The script falsely noted that Bibas, the “chief trader,” employed a “wide range of other risk management tools.”

34. Bibas knowingly misrepresented to at least one customer that the risk involved with forex trading was not “incredibly great,” and that the company used stop loss orders to greatly reduce the risk involved.

35. In fact, Bibas Levy consistently lost money for its customers and used stop loss orders infrequently, if at all.

C. Defendants' Fraudulent Misrepresentations to Existing Customers

1. Defendants' Misrepresentations Concerning the Status of Customer Accounts

36. Defendants consistently reassured customers who did not have online access to their accounts that their trading accounts were profitable and doing well, when, in fact, the accounts were losing money.

37. For example, in June 2003, a customer opened an account at Gain Capital, invested \$2,500, and informed the Defendants that he did not own a computer or have online access to his account. Defendants promised the customer that they would call him on the telephone and keep him informed of his account status. After the customer opened his account, however, the Defendants refused to call the customer as promised. The Customer reached the Defendants by telephone on two separate occasions during June through July 2003, and was told that his account was "increasing," when, in fact, the account lost \$364 in June and \$2,060 in July 2003.

2. Defendants' Misrepresentations Made to Retain Customer Accounts

38. Defendants knowingly made misrepresentations concerning profit potential and Bibas Levy's trading performance to persuade customers to transfer their remaining funds at DirectFX to another clearinghouse, Gain Capital, so that Bibas Levy could continue trading the customers' accounts after Defendants' relationship with DirectFX ended.

39. For instance, sometime in mid-April, 2003, at least one customer could no longer access her trading account statement online with DirectFX allegedly due to a

business dispute between DirectFX and Bibas Levy.

40. Later, during April through May, 2003, Sharam knowingly misrepresented to the customer that Bibas Levy's trading performance was doing great, when, in fact, Bibas Levy was generating overall losses for the months of March, April, and May, 2003.

41. Based on Sharam's misrepresentations regarding the success of Bibas Levy's trading, the customer opened a forex futures trading account at Gain Capital on May 7, 2003, and invested One Hundred Thousand Dollars (\$100,000) to be traded and managed by Bibas Levy.

42. As of July 21, 2003, Bibas Levy had depleted the customer's initial combined account balance of \$177,000 by approximately \$168,000 in trading losses, commissions and fees.

43. In May 2003, after Bibas Levy had generated substantial trading losses in its customers' accounts, Defendants promised customers that Bibas Levy would bring their account balances back to their original investment levels.

44. For example, sometime during April through June 2003, Bibas promised a customer that he would generate \$50,000 to \$70,000 in profit for the customer if the customer opened an account with Gain Capital and re-invested the \$3,000 balance from his original trading account at DirectFX. By the end of July 2003, Defendants had lost all but \$200 of the customer's entire investment in forex trading, commissions and fees.

D. Controlling Person Liability

45. Bibas is identified on the Bibas Levy website as the company's President and Chief Executive Officer.

46. Bibas is the corporation's registered agent and the website's registered agent.

47. Bibas is the primary trader for Bibas Levy. He created and implemented the forex trading software used by Bibas Levy in its forex trading.

48. Bibas makes management decisions for Bibas Levy, including hiring and firing employees and the development of the Bibas Levy website.

49. Bibas is the signatory on agreements between Bibas Levy and Gain Capital and Direct FX.

V. VIOLATIONS OF THE COMMODITY EXCHANGE ACT AND COMMISSION REGULATIONS

COUNT ONE

A. **Section 4b(a)(2)(i) and (iii) of the Act and Section 1.1(b)(1) and (3) of the Regulations: Fraud and Deceit in the Sale of Futures Contracts**

50. Paragraphs 1 through 48 above are realleged and incorporated by reference.

51. From at least February 2003 and continuing through at least July 21, 2003, Defendants, in or in connection with orders to make, or the making of, contracts of sale of commodities for future delivery, made or to be made, for or on behalf of any other persons, where such contracts for future delivery were or could be used for the purposes set forth in Section 4b(a)(2) of the Act, have: (a) cheated or defrauded or attempted to defraud other persons; and (b) willfully deceived or attempted to deceive other persons, all in violation of Section 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. § 6b(a)(2)(i) and (iii) (2001) and Commission Regulation § 1.1(b)(1) and (3), 17 C.F.R. § 1.1(b)(1) and (3)

(2002), by virtue of the false and misleading representations set forth in paragraphs 14 through 48 above.

52. The foregoing acts, omissions, and failure of Bibas, Sharam, and the Bibas Levy employees, officials and agents occurred within the scope of each person's employment or office within Bibas Levy. Bibas Levy is liable, therefore, for these acts pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B).

53. Bibas, directly or indirectly, controlled Bibas Levy and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting the foregoing violations of Section 4b(a)(2)(i) and (iii) of the Act, and Commission Regulation § 1.1(b)(1) and (3). Bibas is therefore liable for these violations pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b).

54. Each fraudulent misrepresentation and omission made by Defendants, including those specifically alleged herein, is alleged as a separate and distinct violation of Section 4b(a)(2)(i) and (iii) of the Act and Section 1.1(b)(1) and (3) of the Commission Regulations.

VI. RELIEF REQUESTED

WHEREFORE, Plaintiff Commodity Futures Trading Commission respectfully requests that this Court, as authorized by Section 6c of the Act, and pursuant to the Court's equitable powers, enter:

55. An order of permanent injunction prohibiting Defendants Bibas Levy, Bibas and Sharam and any other person or entity associated with them, including any

successor thereof, from engaging in conduct violative of Section 4b(a)(2)(i) and (iii) of the Act and Section 1.1(b)(1) and (3) of the Commission Regulations;

56. An order directing the Defendants and any successors thereof, to disgorge pursuant to such procedure as the Court may order all benefits received from the acts or practices which constituted violations of the Act, as described herein, and interest thereon from the date of such violations;

57. An order directing the Defendants to make full restitution to every Bibas Levy customer as a result of acts and practices which constituted violations of the Act, as described herein, and interest thereon from the date of such violations;

58. An order directing the Defendants to pay a civil penalty in the amount of not more than the higher of \$120,000.00 or triple the monetary gain to Defendants for each violation of the Act;

59. An order enjoining defendants from engaging in any commodity-related activity, including soliciting new customers or customer funds;

60. An order requiring Defendants to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2412(a)(2); and

61. Such other and further relief as the Court deems proper.

Dated this 1st day of October 2003.

Respectfully submitted,

ATTORNEYS FOR PLAINTIFF

A handwritten signature in cursive script that reads "Elizabeth Chandler". The signature is written in black ink and is positioned above the typed name and contact information.

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