

ORIGINAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. _____ -CIV- **03-22624**

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

FILED by	D.C.
OCT 20 2003	
CLERK	U.S. DISTRICT COURT
S. D. FLA.	

CIV - JORDAN

**MAGISTRATE JUDGE
BROWN**

ejpd
Statutory Restraining Order on Notice
Restraining Defendants from Continuing to Violate the Commodity Exchange Act, 7 U.S.C.
§§ 1 et seq., Commodity Futures Trading Commission Regulations, 17 C.F.R. §§ 1 et seq.,
and Ordering Other Equitable Relief

This matter came on for hearing on October 17, 2003 on the Motion of Plaintiff Commodity Futures Trading Commission (the "Commission" or "Plaintiff") for a Statutory Restraining Order on notice and other equitable relief. The Court, having considered the Commission's Complaint, Motion, Memorandum of Points and Authorities, Exhibits, other materials, all other evidence presented by all parties filed herein, and having heard the arguments of all parties, finds that:

1. This Court has jurisdiction over defendants and the subject matter of this action pursuant to Section 6c of the Commodity Exchange Act, as amended, (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

12/2/03

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(e), in that defendants are found, 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;

3. There is good cause to believe that defendants Bibas Levy Corp. ("Bibas Levy"), Zacarias Bibas ("Bibas"), and Hassan Sharam ("Sharam") (collectively "defendants") have engaged, are engaging, or are about to engage in, acts and practices constituting violations of the Act, 7 U.S.C. §§ 1, *et seq.* (2001) and Commission Regulations ("Regulations"), 17 C.F.R. § 1, *et seq.* (2003);

4. There is good cause to believe that immediate and irreparable damage to the Court's ability to grant effective final relief for investors in the form of monetary redress will occur from the sale, transfer, assignment, or other disposition by defendant Bibas Levy of assets or records unless defendant Bibas Levy is immediately restrained and enjoined by Order of this Court.

5. Good cause exists to permit discovery before the early meeting of counsel pursuant to Rule 26(d) of the Federal Rules of Civil Procedure.

6. Pursuant to Rule 30(a)(2) of the Federal Rules of Civil Procedure, immediate depositions are consistent with the principle of Rule 26(b)(2) of the Federal Rules of Civil Procedure.

7. Good cause exists for the freezing of defendant Bibas Levy's assets and for entry of an order prohibiting defendant Bibas Levy from destroying records and denying agents of the Commission access to inspect and copy records.

8. Weighing the equities and considering the Commission's likelihood of success in its claims for relief, the issuance of a Statutory Restraining Order is in the public interest.

DEFINITIONS

For the purposes of this Order, the following definitions apply:

9. The term "document" is synonymous in meaning and equal in scope to the usage of the term in Federal Rule of Civil Procedure 34(a), and includes, but is not limited to, writings, drawings, graphs, charts, photographs, audio and video recordings, computer records, and other data compilations from which information can be obtained and translated, if necessary, through detection devices into reasonably usable form. A draft or non-identical copy is a separate document within the meaning of the term;

10. "Assets" means any legal or equitable interest in, right to, or claim to, any real or personal property, including, but not limited to: chattels, goods, instruments, equipment, fixtures, general intangibles, effects, leaseholds, mail or other deliveries, inventory, checks, notes, accounts including bank accounts and accounts at financial institutions, credits, receivables, lines of credit, contracts including spot and futures contracts, insurance policies, and all cash, wherever located.

11. "Defendants" means Bibas Levy Corp., Zacarias Bibas, and Hassan Sharam. Bibas Levy Corp. is a Florida corporation with its principal place of business located at 200 South Biscayne Blvd., Suite 330, Miami, Florida 33131. Zacarias Bibas, the President of Bibas Levy Corp., resides at 525 Coral Way, No. 205, Coral Gables, Florida 33134. Hassan Sharam, the Vice President of Bibas Levy Corp., resides at 3040 Orange Street, Miami, Florida 33133.

RELIEF GRANTED

I.

Prohibition From Violations of the Act and Regulations

IT IS HEREBY ORDERED that:

12. Defendants, 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 prohibited and restrained from directly or indirectly, in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery, made, or to be made, for or on behalf of any other persons, where such contract for future delivery was or could be used for (1) hedging any transaction in interstate commerce in such commodity or the products or byproducts thereof, or (2) determining the price basis of any transaction in interstate commerce in such commodity, or (3) delivering any such commodity sold, shipped, or received in interstate commerce for the fulfillment thereof,

i. cheating or defrauding or attempting to cheat or

defraud other persons; or

iii. willfully deceiving or attempting to deceive other persons;

in violation of Section 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i) and (iii);

13. That defendants, 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 prohibited and restrained from directly or

indirectly in or in connection with an offer to enter into, the entry into, the confirmation of the execution of, or the maintenance of, commodity option transactions,

1. cheating or defrauding or attempting to cheat or defraud other persons; and
2. willfully deceiving or attempting to deceive other persons;

in violation of Section 4c(b) of the Act, 7 U.S.C. § 6c(b), and Regulation 33.10, 17 C.F.R. § 33.10.

II.

ORDER AGAINST TRANSFER, DISSIPATION, AND DISPOSAL OF ASSETS

IT IS FURTHER ORDERED that:

14. Defendant Bibas Levy is restrained and enjoined from directly or indirectly transferring, selling, alienating, liquidating, encumbering, pledging, leasing, loaning, assigning, concealing, dissipating, converting, withdrawing, or otherwise disposing of any assets, wherever located, including assets held outside the United States, except as provided in Paragraph V of this Order, or as otherwise ordered by the Court. The assets affected by this paragraph shall include both existing assets and assets acquired after the effective date of this Order.

15. Defendant Bibas Levy, and its agents, servants, employees, attorneys, and persons in active concert or participation with him who receive actual notice of this Order by personal service except as otherwise ordered by this Court, are restrained and enjoined from directly or indirectly transferring, selling, alienating, liquidating, encumbering, pledging, leasing, loaning, assigning, concealing, dissipating, converting, withdrawing, or otherwise disposing of any assets, wherever located, including assets held outside the United States, except as provided in Paragraph V of this Order, or as otherwise ordered by the Court. The assets affected by this paragraph shall include both existing assets and assets acquired after the effective date of this Order;

16. Defendant Bibas Levy is restrained and enjoined from directly or indirectly opening or causing to be opened any safe deposit boxes titled in the name or subject to access by defendant Bibas Levy.

III.

Directives to Futures Commissions Merchant

IT IS FURTHER ORDERED, pending further Order of this Court that:

17. Representatives of DirectFX, Gain Capital, Inc., or any other Futures Commission Merchant ("FCM") which guarantees defendant Bibas Levy, contact customers with open accounts introduced by defendant Bibas Levy to the FCM to (A) provide notice of the Complaint and Statutory Restraining Order against defendants; (B) provide notice of the customers' rights and responsibilities with respect to their accounts; and (C) maintain an orderly administration of their accounts;

IV.

Directives to Financial Institutions and Others

IT IS FURTHER ORDERED, pending further Order of this Court that any financial or brokerage institution, business entity, or person, that holds, controls, or maintains custody of any account or asset, or at any time since December 30, 2002, has held, controlled, or maintained custody of any account or asset of the defendant Bibas Levy shall:

18. prohibit defendant Bibas Levy and all other persons from withdrawing, removing, signing, transferring, pledging, encumbering, disbursing, dissipating, converting, selling or otherwise disposing of any such account or asset except as directed by further order of the Court;

19. deny defendant Bibas Levy and all other persons access to any safe deposit box that is (a) titled in the name of defendant Bibas Levy either individually or jointly; or (b) otherwise subject to access by defendant Bibas Levy;

20. provide counsel for the Commission, within five (5) business days of receiving a copy of this Order, a statement setting forth (a) the identification number of each and every account or asset titled in the name, individually or jointly, of, or held on behalf of, or for the benefit of, defendant Bibas Levy; (b) the balance of each such account, or a description of the nature and value of such asset as of the close of business on the day on which this Order is served, and, if the account or other asset has been closed or removed, the date closed or removed, the total funds removed in order to close the account, and the name of the person or entity to whom such account or other asset was remitted; and (c) the identification of any safe deposit box that is either titled in the name, individually or jointly, of defendant Bibas Levy or is otherwise subject to access by defendant Bibas Levy; and

21. Upon request by the Commission, promptly provide the Commission with copies of all records or other documentation pertaining to such account or asset, including, but not limited to, originals or copies of account applications, account statements, signature cards, checks, drafts, deposit tickets, transfers to and from the accounts, all other debit and credit instruments or slips, currency transaction reports, 1099 forms, and safe deposit box logs.

V.

Accounting and Transfer of Funds and Documents

IT IS FURTHER ORDERED that within five (5) business days following the service of this Order, defendant Bibas Levy shall:

* If the total accounts or assets held by Bibas Levy and frozen by their order add up to more than \$400,000, the Commission shall immediately notify the Court.

22. Provide the Commission with a full accounting of all funds and assets both within and outside of the United States which are held by defendant Bibas Levy, on its behalf, or under its direct or indirect control, whether jointly or singly, or in which it has an interest;

23. Transfer to the territory of the United States all funds, documents, and assets located in foreign countries which are held by defendant Bibas Levy, for its benefit, or under its direct or indirect control, whether jointly or singly; ~~and~~, upon order of this Court; and *and*

24. Provide the Commission access to all records of defendant Bibas Levy held by financial institutions located both within and outside the territorial United States by signing a Consent to Release of Financial Records;

VI.

Maintenance of Books and Records

IT IS FURTHER ORDERED that:

25. Defendants and all persons or entities who receive notice of this Order by personal service or otherwise, are restrained and enjoined from directly or indirectly destroying, mutilating, erasing, altering, concealing or disposing of, in any manner, directly or indirectly, any documents that relate to the business practices or business or finances of defendants.

VII.

Inspection and Copying of Books and Records

IT IS FURTHER ORDERED that:

26. Representatives of the Commission be immediately allowed to inspect the books, records, and other documents of defendants and their agents including, but not limited to, electronically stored data, tape recordings, and computer discs, wherever they may be situated

and whether they are in the possession of defendants or others, and to copy said documents, data and records, either on or off the premises where they may be situated; and

27. Defendants and their agents, servants, employees, attorneys, and persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, including facsimile transmission, shall cooperate fully with the Commission to locate and provide to representatives of the Commission all books and records of defendants, wherever such books and records may be situated;

VIII.

BOND NOT REQUIRED OF PLAINTIFF

IT IS FURTHER ORDERED that:

28. The Plaintiff Commission is an agency of the United States of America and, accordingly, no bond need be posted by the Commission

IX.

Order to Show Cause

IT IS FURTHER ORDERED that:

29. Defendants shall appear before this Court on the 3rd day of November, 2003, at 9:30 a.m./p.m., before the Honorable Adalberto Jordan at the United States Courthouse for the Southern District of Florida, located at 301 North Miami Avenue, Miami, Florida 33128 to show cause, if there be any, why an order of preliminary injunction should not be granted to prohibit further violations of the Act and why the other relief requested should not be granted pending trial on the merits of this action;

30. Should any party wish to file a memorandum of law or other papers in opposition to the Commission's Motion for a Preliminary Injunction, all papers shall be filed on or before October 28, 2003 and served no later than the same date.

X.

Order Permitting Expedited Discovery

IT IS FURTHER ORDERED that:

31. The prohibition upon discovery before the early meeting of counsel is removed pursuant to Rule 26(d) of the Federal Rules of Civil Procedure.

32. The prohibition upon the immediate commencement of depositions is removed pursuant to Rule 30(a)(2)(C) of the Federal Rules of Civil Procedure.

33. The parties may proceed to take the oral deposition of any person upon ~~three~~ ^{five} calendar days actual notice if the notice is served upon the parties personally or by telecopier to the party's last known business telecopier number.

34. The parties may also commence discovering documents from third parties under normal discovery procedures.

XI.

Service of Order

IT IS FURTHER ORDERED that

35. Copies of this Order may be served by any means, including facsimile transmission, upon any entity or person that may have possession, custody, or control of any documents or assets of defendants or that may be subject to any provision of this Order, and, additionally, that Elizabeth Chandler, Lawrence Green, Karen Kenmotsu, and Lenora Kay Majors-Guy are specially appointed by the Court to effect service. Service of the summons, Complaint or other process may be effected by Commission investigator Lenora Kay Majors-Guy, any other investigator for the Commission, any U.S. Marshal or deputy U.S. Marshal, or in accordance with Rule 4 of the Federal Rules of Civil Procedure.

XII.

Full Force and Effect

IT IS FURTHER ORDERED that

36. This Order shall remain in full force and effect until further order of this Court, and that this Court retains jurisdiction of this matter for all purposes.

IT IS SO ORDERED, at Miami, Florida on this 20th day of October, 2003 at

9:15 a.m./p.m.

Adrianna Price
UNITED STATES DISTRICT JUDGE