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FILED
CLERK, U.S. DISTRICT COURT
AUG 27 2004
CENTRAL DISTRICT OF CALIFORNIA
BY DEPUTY

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

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COMMODITY FUTURES TRADING
COMMISSION,
Plaintiff,
v.
CHASE COMMODITIES CORP., LEE
LAGORIO, EXCEL OBANDO and
UNIVERSAL FINANCIAL HOLDING
CORP.,
Defendants.

No. CV 04-6463 PA (CWx)
PRELIMINARY INJUNCTION

ENTERED
CLERK, U S DISTRICT COURT
AUG 30 2004
CENTRAL DISTRICT OF CALIFORNIA
BY DEPUTY

Plaintiff, the Commodity Futures Trading Commission ("CFTC") seeks to preliminary enjoin defendants Chase Commodities Corporation ("Chase"); its President and Treasurer, Lee La Gorio; and its Chief Compliance Officer, Excel Obando ("Obando"). Plaintiff alleges that the Company's sales persons made deliberate oral misrepresentations on the telephone to customers and potential customers with a view toward inducing the purchase of commodity futures options. Plaintiff alleges that Chase, with the knowledge or at the direction of Gorio and Obando, failed to disclose to Chase's customers material information concerning their accounts and options trading, solicited trades without a discussion of the true nature of the option, including its risk, downplayed the risks, and misled investors concerning the likelihood of immediate returns from trading options.

1 On August 5, 2004, this Court issued a temporary restraining order freezing the
2 defendants' assets, prohibiting the destruction or altering of the company's books and
3 records and making the books and records immediately available for inspection. The Court
4 also ordered the defendants to show cause why the temporary restraining order should not
5 remain in effect pending trial and why the defendants should not be preliminary enjoined
6 from any further violations of the Commodity Exchange Act ("CEA"), 7 U.S.C. §§ 1, et seq.
7

8 La Gorio and Obando deny that any fraud occurred at Chase, but that even if it did,
9 neither had actual or constructive knowledge of any fraudulent activities. The court finds
10 the defendants' arguments unconvincing. La Gorio and Obando created and controlled
11 Chase and its sales staff. They hired and fired persons and instructed these sales persons on
12 what to say to customers. They were both involved in Chase's day-to-day operations. They
13 supervised sales persons and monitored their telephone solicitations. They reviewed,
14 discussed and responded to client's complaints. It is difficult to conceive how La Gorio and
15 Obando, the principals, could lack actual knowledge of the sales tactics employed by
16 Chase's small sales staff. Nevertheless, defendants insist that there is no direct evidence that
17 the individual defendants were aware of the alleged violations of the Commodity Exchange
18 Act. But, this is exactly what the imputation of constructive knowledge is designed to do:

19 For these purposes, a person has constructive knowledge when
20 he lacks actual knowledge only because he consciously avoids it,
21 such as when the evidence supports an inference that he had
22 deduced the truth and is simply trying to avoid giving the
23 appearance (and incurring the consequences) of knowledge.

24 JCC, 63 F.3d at 1569; "To support a finding of constructive knowledge, the Division must
25 show that [defendant] 'lacked actual knowledge only because he consciously avoided it'" In
26 re Spiegel, [1987-1990 Transfer Binder] Comm. Fut.L.Rep. (CCH) ¶ 24, 103 at 34,767 n.11,
27 1988 WL 232212, *7 (C.F.T.C. Jan. 12, 1988) (citing United States v. Jewell, 532 F.2d 697,
28

1 703 (9th Cir. 1976)). If La Gorio and Obando lacked actual knowledge of the fraud, the
2 court finds it was only through conscious avoidance.

3 The Court finds defendants' remaining arguments unconvincing as well. Defendants
4 point to an audit by the National Futures Association that failed to uncover any wrongdoing,
5 mention any customer complaints, or find that La Gorio or Obando had not properly
6 discharged their duties as principals and officers of Chase. Defendants also argue that since
7 its inception, Chase has received only a very limited number of complaints from customers,
8 and in fact, of the eleven customers that submitted declarations in support of plaintiff's
9 motion, only one had previously complained to Chase. However, the fact that an audit failed
10 to uncover some of Chase's sales tactics, and the fact that few customers complained to
11 Chase, does little to overcome the strong showing made by plaintiff that Chase's
12 salespersons were misrepresenting the return and stability of options, and the unavoidable
13 inference that La Gorio and Obando were, or should have been, aware of their AP's sales
14 tactics.

15 Defendants correctly point out that plaintiff has made no showing of irreparable
16 injury, and to the extent plaintiff seeks to recoup money invested by Chase's customers,
17 "[p]urely monetary injuries are not normally considered irreparable." Lydo Enterprises, Inc.
18 v. City of Las Vegas, 745 F.2d 1211, 1213 (9th Cir. 1984). However, see In re Estate of
19 Ferdinand Marcos, Human Rights Litigation, 25 F.3d 1467, 1478 (9th Cir. 1994) ("Our
20 decision thus implied that the traditional test for a preliminary injunction is applied in a case
21 seeking money damages, and that if the plaintiff had demonstrated that the defendant's
22 assets would be dissipated and no relief would otherwise be available, the preliminary
23 injunction would have been appropriate"). In any case, plaintiff seeks a statutory injunction,
24 and has introduced sufficient evidence to convince this Court that "the government is likely
25 to prevail on the merits." Navel Orange, 722 F.2d at 453. Irreparable injury is therefore
26 presumed.

27 Based on the foregoing, the Court dissolves the TRO, and in its place enters the
28 following Preliminary Injunction:

1 PRELIMINARY INJUNCTION

2 Defendants Chase, La Gorio and Obando, and their agents, servants, employees,
3 attorneys, and any persons in active concert or participation with them, including Citibank and
4 any other financial institutions, who receive actual notice of this Order by personal service,
5 except as otherwise ordered by this Court, are restrained and enjoined from directly or
6 indirectly transferring, selling, alienating, liquidating, encumbering, pledging, leasing,
7 loaning, assigning, concealing, dissipating, converting, withdrawing, or otherwise disposing
8 of any assets,^{1/} wherever located, including but not limited to any assets held outside the
9 United States, except as ordered by the Court. The assets affected by this paragraph shall
10 include both existing assets and assets acquired after the effective date of this Order.
11 Defendants are also restrained and enjoined from directly or indirectly opening or causing to
12 be opened any safe deposit boxes titled in their name or subject to access by them.

13 Defendants Chase, La Gorio and Obando are further restrained and enjoined from
14 directly or indirectly, in connection with an offer to enter into, the entry into, the confirmation
15 of the execution of, or the maintenance of, commodity option transactions, (a) cheating or
16 defrauding or attempting to cheat or defraud other persons; (b) making or causing to be made
17 to any other person any false report or statement thereof or causing to be entered for any
18 person any false record thereof; and (c) deceiving or attempting to deceive other persons; in
19 violation of Section 4c(b) of the Commodity Futures Act, 7 U.S.C. § 6c(b), and Regulation
20 33.10, 17 C.F.R. § 33.10.

21 To the extent La Gorio and Obando require access to their accounts for ordinary,
22 reasonable, and necessary living expenses, and Chase requires access to its accounts for
23 payment of specific business expenses, the Court will entertain a petition from defendants to
24

25 ^{1/} "Assets" means any legal or equitable interest in, right to, or claim to, any real or
26 personal property, including but not limited to: chattels, goods, instruments, equipment,
27 fixtures, general intangibles, effects, leaseholds, mail or other deliveries, inventory, checks,
28 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.

1 be allowed to do so. See Reebok Intern., Ltd. v. Marnatech Enterprises, Inc., 970 F.2d 552,
2 563 (9th Cir. 1992) (“The Court recognizes that the freezing of assets could work a hardship
3 on the defendants. However, this order makes provisions for withdrawal of living expenses,
4 and for the payment of expenses related to legitimate business operations. If defendants
5 comply with the order, and submit the necessary proof to the Court, no undue hardship need be
6 felt by defendants as a result of this order”).

7 IT IS SO ORDERED.

8 DATED: August 25, 2004

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12 Percy Anderson
13 UNITED STATES DISTRICT JUDGE
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