

WOOD, S.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Commodity Futures Trading
Commission,

Plaintiff,

v.

Lexington Royce & Associates,

Artour Arakelian,

Defendants

and

65J, Inc., United Factoring, LLC,
Productions Torre Fuerte Int'l,
Morrish Alliance Ltd. and Sergey U.
Kyznetsov,

Relief
Defendants.

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) 03 CIV **JUDGE WOOD**
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04 CV 02768
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) *EX PARTE* STATUTORY
) RESTRAINING ORDER WITH
) ASSET FREEZE
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Plaintiff, the Commodity Futures Trading Commission ("Commission"), has filed a complaint for permanent injunction and other relief, and moved *ex parte*, pursuant to Section 6c of the Commodity Exchange Act (the "Act"), 7 U.S.C. § 13a-1 (2002), for a Statutory Restraining Order freezing the assets of the defendants and relief defendants, prohibiting the defendants from destroying any business records, books or documents and granting leave to take expedited discovery. The Court has considered the pleadings, declarations, exhibits, and memorandum filed in support of the Commission's motion. As it appears to the Court that the Court has jurisdiction over the subject matter of this case, that Section 6c of the Act, 7 U.S.C. §

13a-1, authorizes *ex parte* relief, that there is good cause to believe that the defendants have engaged in, are engaging in or are about to engage in violations of the Act, and that this is a proper case for granting an *ex parte* statutory restraining Order to preserve the status quo, protect public customers from loss and damage, and enable the Commission to fulfill its statutory duties, the Court orders as follows:

DEFINITIONS

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

1. 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.

2. "Defendants" means Lexington Royce & Associates ("LRA"), Artour Arakelian ("Arakelian"), and any person insofar as he or she is acting in the capacity of an officer, agent, servant, employee, or attorney of LRA or Arakelian, and any person who receives actual notice of this Order by personal service or otherwise insofar as he or she is acting in concert or participation with LRA or Arakelian.

3. "Relief Defendants" means 65J, Inc, United Factoring, LLC, Morrish Alliance Ltd., Sergey U. Kyznetsov, Productions Torre Fuerte Int'l and any person insofar as he or she is acting in the capacity of an officer, agent, servant, employee, or attorney of 65J, Inc, United Factoring, LLC, Morrish Alliance Ltd., Sergey U. Kyznetsov, or Productions Torre Fuerte Int'l, and any person who receives actual notice of this Order by personal services or otherwise insofar

as he or she is acting in concert or participation with 65J, Inc, United Factoring, LLC, Morrish Alliance Ltd., Sergey U. Kyznetsov, or Productions Torre Fuerte Int'l.

I.

Asset Freeze

IT IS HEREBY ORDERED that the defendants and relief defendants, except as otherwise ordered by this Court, are restrained and enjoined from directly or indirectly:

- A. transferring, selling, alienating, liquidating, encumbering, pledging, leasing, loaning, assigning, concealing, dissipating, converting, withdrawing, or otherwise disposing of any assets, wherever located, including assets held in corporate or partnership accounts in which defendants and relief defendants have an interest, except as provided in Paragraphs III of this Order or as otherwise ordered by the Court;
- B. opening or causing to be opened any safe deposit boxes titled in the name of, or subject to access by any defendant or relief defendant.

II.

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 January 2003, has held, controlled, or maintained custody of any account or asset of any defendant or relief defendant shall:

- A. Prohibit the defendants and relief defendants and all other persons from withdrawing, removing, assigning, transferring, pledging, encumbering, disbursing, dissipating, converting, selling or otherwise disposing of any such asset except as directed by further order of the Court;

- B. Deny the defendants and relief defendants and all other persons access to any safe deposit box that is:
1. titled in the name of any defendant or relief defendant either individually or jointly; or
 2. otherwise subject to access by any defendant or relief defendant.
- C. Provide the counsel for the Commission, within five (5) business days of receiving a copy of this Order, a statement setting forth:
1. 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, any defendant or relief defendant;
 2. 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
 3. the identification of any safe deposit box that is either titled in the name, individually or jointly, of any defendant or relief defendant or is otherwise subject to access by any defendant or relief defendant;
- D. 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.

III.

Accounting

IT IS FURTHER ORDERED that within three (3) business days following the service of this Order, each defendant and relief defendant shall:

- A. Provide the Commission with a full accounting of all funds and assets both within and outside of the United States which are held by the defendant or relief defendant, on their behalf, or under their direct or indirect control, whether jointly or singly, or in which they have an interest, and a full accounting of all funds and assets that each defendants and relief defendant received from its clients and the ultimate use or current location of those funds or assets;
- B. Provide the Commission with full access to and permit copying of all documents both within and outside of the United States that are held by them, on their behalf, or under their direct or indirect control, or relate to a corporate or partnership entity in which they have an interest;
- C. Transfer to the territory of the United States all funds, documents, and assets located in foreign countries that are held by them, for their benefit, or under their direct or indirect control, whether jointly or singly;
- D. Provide the Commission access to all records of the defendant or relief defendant held by financial institutions located both within and outside the territorial United States by signing a Consent to Release of Financial Records; and
- E. Provide the Commission with a complete customer list, including, without limitation, the names, addresses and telephone numbers of all persons who transferred funds to the defendant or relief defendant from January 1, 2003 to the present.

IV.

Maintenance of and Access to Business Records

IT IS HEREBY ORDERED that the defendants, relief 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 personal finances of any defendant or relief defendant.

V.

Inspection and Copying of Books and Records

IT IS FURTHER ORDERED that representatives of the Commission be immediately allowed to inspect the books, records, and other documents of the defendants and relief defendants and their agents including, but not limited to, paper documents, electronically stored data, tape recordings, and computer discs, wherever they may be situated and whether they are in the possession of the defendants, relief defendants or others, and to copy said documents, data and records, either on or off the premises where they may be situated.

VI.

Expedited Discovery

IT IS FURTHER ORDERED that the Commission is granted leave, at any time after service of this Order, to take the deposition of and demand the production of documents from any person or entity for the purpose of discovering the nature, location, status, and extent of assets of the defendants and relief defendants, and the location of documents reflecting the

business transactions of the defendants; forty-eight (48) hours notice shall be deemed sufficient for any such deposition and five (5) days notice shall be deemed sufficient for the production of any such documents. The limitations and conditions set forth in Federal Rule of Civil Procedure 30(a)(2)(B) regarding subsequent depositions of an individual shall not apply to depositions taken pursuant to this Paragraph. Nor shall any depositions taken pursuant to this Paragraph count towards the ten deposition limit set forth in Federal Rule of Civil Procedure 30(a)(2)(A).

VII.

Examination of Confined Parties

IT IS FURTHER ORDERED that pursuant to Federal Rule of Civil Procedure 30(a)(2), the parties are granted leave to take the depositions of defendants confined in prison.

VIII.

Service on the Commission

IT IS FURTHER ORDERED that the defendants and relief defendants shall serve all pleadings, correspondence, notices required by this Order, and other materials on the Commission by delivering a copy to Jamie Brown, Trial Attorney, Division of Enforcement, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington, D.C. 20581.

IX.

Service of Order

IT IS FURTHER ORDERED that 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 the defendants or relief defendants, or that may be subject to any provision of this Order, and, additionally, that representatives of the Commission

are specially appointed by the Court to effect service. Service of the summons, Complaint or other process may be effected by U.S. Marshal or Deputy U.S. Marshal, or in accordance with Fed. R. Civ. P. 4.

X.

Order to Show Cause

IT IS FURTHER ORDERED that the defendants and relief defendants shall appear before this Court on the 20 day of April, 2004, at 10:15 a.m., before the Honorable Kimberly Wood at the United States Courthouse for the Southern District of New York at Courtroom 15-B, New York, New York to show cause why this Court should not enter a Preliminary Injunction enjoining the defendants from further violations of the Act, and ordering any additional relief this Court deems appropriate. Should any party wish to file a memorandum of law or other papers concerning the issuance of a Preliminary Injunction against the defendants and relief defendants, such materials shall be filed, served and received by all parties at least two (2) days before the hearing ordered above.

XI.

Force and Effect

IT IS FURTHER ORDERED that 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.

SO ORDERED, at NY, New York on this 12th day of April, 2004, at 12:35.

Kimberly M. Wood

UNITED STATES DISTRICT JUDGE

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