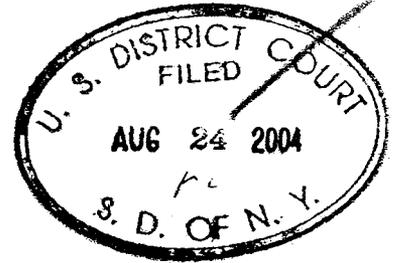


8/24/04

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

Doc # 27



Commodity Futures Trading  
Commission,

Plaintiff,

v.

Sun Platinum Group LLC, Eduard  
Dmanskiy aka Edward Dumansky

Defendants

and

Ocaline Int'l Corp., Hesar Alliance  
Inc., Klondike Int'l Inc., Pymont  
Alliance Corp., and Total Trading  
Services Ltd.

Relief  
Defendants.

CIVIL ACTION  
03 CIV 7112 (LCS)

(Proposed) Order For Entry of  
Judgment By Default, Permanent  
Injunction, And Ancillary Relief  
Against Defendants Sun Platinum  
Group LLC and Eduard Dmanskiy aka  
Edward Dumansky and Relief  
Defendants Ocaline Int'l Corp., Hesar  
Alliance Inc., Klondike Int'l Inc.,  
Pymont Alliance Corp., and Total  
Trading Services Ltd.

#04, 1566

MICROFILM  
AUG 25 2004  
-9:00AM

On September 12, 2003, the Commodity Futures Trading Commission ("Commission") filed a Complaint charging defendants Sun Platinum Group LLC ("Sun Platinum") and Eduard Dmanskiy aka Edward Dumansky ("Dmanskiy") (collectively "Defendants") with fraudulent misappropriation of investor funds in violation of Sections 4b(a)(2)(i) and 4b(a)(2)(iii) of the Commodity Exchange Act ("Act"), 7 U.S.C. §§ 6b(a)(2)(i) and 6b(a)(2)(iii) (2002), and Commission Regulation 1.1(b)(1) and (3), 17 C.F.R. § 1.1(b)(1) and (3) (2004) ("Complaint"). The Complaint also charged defendant Sun Platinum with soliciting, or accepting any order for, or otherwise dealing in, illegal off-exchange futures contracts in violation of Section 4(a) of the

Act, 7 U.S.C. § 6(a). In addition the Commission asserted that relief defendants Ocaline Int'l Corp. ("Ocaline"), Hessar Alliance Inc. ("Hessar"), Klondike Int'l Inc. ("Klondike"), Pymont Alliance Corp. ("Pymont"), and Total Trading Services Ltd. ("TTS") (collectively "Relief Defendants") are gratuitous beneficiaries and custodians of proceeds from the Defendants' fraud and should not be permitted to retain these funds.

On September 16, 2003, the Court issued a Statutory Restraining Order with Asset Freeze ("SRO"), which, among other things, froze the Defendants' and Relief Defendants' assets, granted the Commission immediate access to all books and records related to the Defendants' business, and ordered that the Defendants and Relief Defendants provide to the Commission a full accounting of their assets and funds.

The Commission has now submitted its Application for Entry of Default Judgment, Permanent Injunction and Ancillary Relief ("Application") pursuant to F.R.C.P. 55(b)(2) and Local Rule 55.2(b). The Court has carefully considered the Complaint, the allegations of which are well-pleaded and hereby taken as true, the Application and other written submissions of the Commission filed with the Court, and being fully advised in the premises, hereby:

**GRANTS** the Commission's Application For Entry of Judgment by Default, Permanent Injunction, and Ancillary Relief and enters 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 ("Order") against Defendants and Relief Defendants on issues of liability and the appropriate civil monetary penalties and restitution amounts.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

### A. Jurisdiction and Venue

This Court has jurisdiction over the subject matter of this action and the Defendants and Relief 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.

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

### B. Findings of Fact

From February 2003 until September 2003, Defendant Sun Platinum solicited \$15,653,556.00 from at least 427 customers for the purchase of illegal foreign currency futures contracts. None of the customer investments were traded as promised. Instead, customer checks were deposited into a bank account in Sun Platinum's name at a Brooklyn, NY branch of JP Morgan Chase Bank ("operating account") by Defendant Dmanskiy, the sole signatory on the account. The only deposits into the SP operating account were customer funds. Of the more than fifteen million in customer funds solicited, \$989,280.97 was returned to customers as supposed payments on their investments, and \$4,355,500 was transferred to overseas accounts for the benefit of relief defendants Ocaline, Hessar, Pymont, TTS, and Klondike. No funds were transferred back into the Sun Platinum operating account from any relief defendant, bank, clearinghouse, or other designated contract facility that would indicate the existence of actual trading.

### **C. Conclusions Of Law**

Defendant Dmanskiy, the sole signatory on Sun Platinum's operating account, engaged in the fraudulent misappropriation of investor funds and, consequently, violated Sections 4b(a)(2)(i) and 4b(a)(2)(iii) of the Act, and Commission Regulation 1.1(b)(1) and (3). Dmanskiy engaged in the fraudulent misappropriation of investor funds while acting as Sun Platinum's agent, and therefore Sun Platinum is vicariously liable for violations of Section 4b(a)(2)(i) and (iii) of the Act, and Commission Regulation 1.1(b)(1) and (3), pursuant to Section 2a(1)(B) of the Act, 7 U.S.C. § 2a(1)(B) (2001). Furthermore, Sun Platinum violated Section 4(a) of the Act by soliciting or accepting an order for, or otherwise dealing in, illegal off-exchange futures contracts.

### **ORDER FOR PERMANENT INJUNCTION**

**IT IS HEREBY ORDERED** that:

Defendants Sun Platinum and Dmanskiy are permanently restrained, enjoined and prohibited from directly or indirectly:

- a. (1) cheating or defrauding or attempting to cheat or defraud any persons; and (2) deceiving or attempting to deceive any person: 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 other persons where such contracts for future delivery were or may have been 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

- b. Offering to enter into, entering into, executing, confirming the execution of, or conducting business for the purpose of soliciting, accepting any order for, or otherwise dealing in any transaction in, or in connection with, a contract for the purchase or sale of a commodity for future delivery when: (1) 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" for such commodity; and (2) such contracts have not been executed or consummated by or through a member of such contract market;
- c. Soliciting, receiving, or accepting any funds in connection with the purchase or sale of any commodity futures contract or any option on a futures contract;
- d. Controlling or directing the trading of any commodity futures or commodity options account for or on behalf of any person or entity, directly or indirectly, whether by power of attorney or otherwise;
- e. Acting in any capacity for which registration with the Commission is required under the Act;
- f. Violating Sections 4(a) and 4b(a)(2)(i) and (iii) of the Act, and Commission Regulations 1.1(b)(1) and (3).

The provisions of this Order shall be binding upon Sun Platinum and Dmanskiy, upon any person insofar as he or she is acting in the capacity of officer, agent, servant or employee of Sun Platinum or Dmanskiy, and upon any person who receives actual notice of this Consent Order, by personal service or otherwise, insofar as he or she is acting in active concert or participation with Sun Platinum or Dmanskiy.

## ORDER FOR ANCILLARY EQUITABLE RELIEF

**IT IS FURTHER ORDERED** that:

Dmanskiy, individually, and on behalf of Sun Platinum, is ordered to pay restitution in the amount of \$10,308,775.10 ("Restitution Obligation"). Post-judgment interest shall accrue on the Restitution Obligation at the rate of 1.46%, pursuant to 28 U.S.C. § 1961;

A portion of the restitution amount shall be comprised of the funds in account number 0032 7215 3729 at JP Morgan Chase Bank ("Bank"), an account in Sun Platinum's name for which Dmanskiy is the sole signatory. The funds in this account shall be immediately transferred to the Monitor. Defendants and/or the Bank shall provide full cooperation in ensuring that the Monitor receives these funds;

The Relief Defendants shall pay to the Monitor the following amounts, each of which represents the amount that the Relief Defendant received from the Sun Platinum fraud:

- 1) Ocaline - \$1,376,500
- 2) Hesar - \$2,185,000
- 3) Klondike - \$240,000
- 4) Pymont - \$289,000
- 5) TTS - \$265,000

The payments set forth above shall be made to the Monitor at the following address: The National Futures Association, Attention: Daniel A. Driscoll, 200 W. Madison Street, Chicago, IL 60606. The payment shall include a cover letter that identifies the Defendant and the name and docket number of this proceeding;

**IT IS FURTHER ORDERED** that:

The National Futures Association shall be designated as the Monitor for a period beginning with the date of entry of this Order and continuing until final distribution of the Restitution Amount to the customers listed on Attachment A. The Monitor shall calculate the specific amounts payable to each of the customers listed in Attachment A. The Monitor shall then disburse the Restitution Amount paid pursuant to this Order to the customers listed in Attachment A on a pro rata basis; however the Monitor shall not make any disbursements pursuant to this Order until at least 90 days after entry of this Order.

Attachment A of this Order is a list of Sun Platinum customers. The parties hereto acknowledge that Attachment A may be incomplete for various reasons including, without limitation, that records have not been provided to the Commission, records are missing, are illegible, or have been destroyed. The entry of this Order shall not limit the ability of any customer not currently on the list of customers in Attachment A from offering proof to the Monitor that the customer belongs on Attachment A. The Commission or Monitor is free to amend Attachment A at any time to add customers or to change the amounts of pro rata distribution, and the Monitor shall not make any disbursements pursuant to this Order until at least 90 days after entry of this Order. Nothing herein shall be construed in any way to limit or abridge the rights of any customer that exist under state or common law.

**IT IS FURTHER ORDERED** that:

Plaintiff Commission is awarded judgment against Sun Platinum and Dmanskiy, of a civil monetary penalty in the amount of \$30,926,325.30, which represents the statutorily prescribed penalty amount of three times the monetary gain from this fraud. Upon completion of payment of the entire restitution amount described above, Dmanskiy, individually, and on behalf

of Sun Platinum 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;

Payment of the civil monetary penalty shall be made to the Commodity Futures Trading Commission, Division of Enforcement, 1155 21<sup>st</sup> 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 Defendant 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 21<sup>st</sup> Street, N.W., Washington, D.C. 20581.

**IT IS FURTHER ORDERED** that:

The Defendants or Relief Defendants shall not transfer or cause others to transfer funds or other property to the custody, possession or control of any other person for the purpose of concealing such funds or property from the Court, the Plaintiff, the Monitor, or any officer that may be appointed by the Court.

**IT IS FURTHER ORDERED** that this Court shall retain jurisdiction of this case to assure compliance with this Order and for all other purposes related to this action.

SO ORDERED, at New York New York on this 19<sup>th</sup> day of Aug., 2004, at 3:04 p.m.

*No opposition by any Defendant or Relief Defendant*

*Louis L. Stanton*

Honorable Louis L. Stanton  
UNITED STATES DISTRICT JUDGE

THIS DOCUMENT WAS ENTERED  
ON THE DOCKET ON 8/24/04