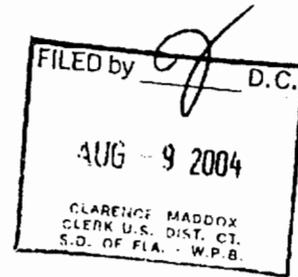


UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA



COMMODITY FUTURES TRADING  
COMMISSION,

Plaintiff,

v.

CIVIL ACTION NO. 03-80032  
Hurley/ Lynch

WORLD-WIDE CURRENCY  
SERVICES, CORP., GENADY  
SPIVACK A.K.A. GEORGE SPIVACK,  
AND ELLISON KENT MORRIS,  
Defendants.

**CLOSED CASE**

*FINAL*  
**ORDER OF SUMMARY JUDGMENT BY DEFAULT FOR PERMANENT  
INJUNCTION AND OTHER ANCILLARY RELIEF AGAINST DEFENDANTS**

On January 13, 2003, the Commodity Futures Trading Commission ("the Commission") filed a complaint charging Defendants World-Wide Currency Services Corp. ("World-Wide"), Genady Spivack ("Spivack"), and Ellison Kent Morris ("Morris") with violating sections 4(a), 4b(a)(2)(i) and (iii) of the Commodity Exchange Act, (the "Act"), 7 U.S.C. 6(a), 6b(a)(2)(i) and (iii)(2003). Specifically, Count I of the complaint charged the Defendants with the "offer and sale of commodity futures contracts not conducted on or subject to a board of trade which has been designated as a contract market or transaction execution facility" in violation sections 4(a) of the Act, 7 U.S.C. 6(a)(2001). Count II of the complaint charged the Defendants with "solicitation fraud and fraud by misappropriation of customer funds" in violation of section 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. 6b(a)(2)(i) and (iii)(2003) and Commission Regulation 1.1, 17 C.F.R. § 1.1 (2003).

On or about February 18, 2003, the parties entered into a consent order for a preliminary injunction, requiring Defendants to cease operation, freeze assets and surrender books and records to counsel for the Commission.

A large, stylized handwritten signature in black ink, appearing to be a combination of letters and numbers, possibly "10/16".

On or about February 27, 2003, the Defendants, through their attorney, filed an answer to the complaint denying the Commission's allegations and asserting affirmative defenses.

On or about March 13, 2003, the parties conferred via telephone as required by Rule 26 of the Federal Rules of Civil Procedure. The Court issued a Scheduling Order on June 26, 2003.

On or about June 18, 2003, the Commission filed a Motion for Sanctions against Defendants for their failure to respond to Interrogatories and Request for Production of documents. The Defendants failed to answer and on July 10, 2003, the Court ordered the Defendants to file full and complete answers to the Commission's discovery requests. Despite the Court's Order, the Defendants have yet to provide the Commission with any answers.

The Commission also filed a Motion for Sanctions for the Defendants' failure to provide the initial disclosures required by Fed. R.Civ. P. 26(a). The Defendants failed to respond. On August 11, 2003, the Court granted the Commission's Motion for Sanctions for failure to provide the discovery mandated by Fed. R.Civ. P. 26(a) and issued an order prohibiting the Defendants from introducing any testimony or evidence at trial except solely for purposes of rebuttal.

On January 14, 2003 the Commission filed a "Motion for Summary Judgment as to Liability," a "Memorandum in Support of the Motion for Summary Judgment," and a "Statement of Undisputed Material Facts," (hereinafter "SUMF"). The Defendants never responded to the Commission's Motion for Summary Judgment nor did they attempt to contest or contradict the Statement of Undisputed Material Facts.

On May 28, 2004 the Court referred the Commission's Motion for Summary Judgment to Magistrate Judge Frank J. Lynch. On June 10, 2004 Magistrate Lynch submitted a "Report and Recommendation" to the Court recommending that the Commission's Motion for Summary Judgment as to liability be granted. No objections were filed by any of the parties.

On July 6, 2004 this Court issued an order adopting Magistrate Judge Lynch's report and recommendation and granting the Commission's motion for summary judgment by default, as incorporated herein.

1. This Court has jurisdiction over this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2003), which authorizes the Commission to seek injunctive relief against any person whenever it shall appear to the Commission 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 there under.

2. Section 2(c)(2)(B) of the Act, 7 U.S.C. § 2(c)(2)(B), grants the Commission jurisdiction over certain retail currency options.

3. Venue properly lies with this Court pursuant to Section 6C(e) of the Act, 7 U.S.C. § 13a-1(e), because the 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.

4. The Commission is an independent federal regulatory agency charged by Congress with the administration and enforcement of the Act, 7 U.S.C. §§ 1 et seq., and the regulations promulgated there under, 17 C.F.R. §§ 1 et seq. (2003).

Findings of Fact:

5. **World-Wide Currency Services Corp.** is a Florida corporation, incorporated on August 7, 1998 and lists its address as 4801 South University Drive, Suite 2100, Fort Lauderdale, FL 33328. World-Wide has never been registered with the Commission in any capacity, nor has it been designated by the Commission as a contract market.

6. **Gennady Spivack, a.k.a., George Spivack** is an individual who resides at 118 Cassilly Way, Jupiter, FL 33458. Spivack was a director of World-Wide and incorporated the firm in 1998. Spivack held himself out as President of World-Wide, trained telemarketers, was the only one authorized to sign checks on the World-Wide accounts, and generally oversaw the day to day operations of World-Wide. Spivack has never been registered with the Commission in any capacity.

7. **Ellison Kent Morris** is an individual who resides at 1010 10<sup>th</sup> Way, West Palm Beach, FL 33407. He solicited customers on behalf of World-Wide and represented that he was a Vice-President of World-Wide. Morris has never been registered with the Commission in any capacity.

8. Since at least December 21, 2000 until the filing of the complaint in this matter on January 13, 2003, World-Wide fraudulently sold foreign currency futures contracts to customers under the guise of conducting spot currency transactions. The World-Wide sales fraud typically consisted of three stages- the initial sales pitch, the "reload," and the customer's inevitable loss. Defendants solicited customers primarily through telemarketing cold calls. The telemarketers identified themselves as representatives of World-Wide and urged prospective customers to invest in foreign currency futures. (SUMF ¶¶ 8,10)

9. In the initial cold call, telemarketers claim that World-Wide specializes in the foreign currency markets and that by acting quickly customers could take advantage of current market conditions and make substantial profits. (SUMF ¶10,11) The promise of potential profit varied for each customer. (SUMF ¶11) One customer was promised a monthly return of 1-2%, another was told to expect an annual profit of 20%. (SUMF ¶11) Still others were promised

anywhere from doubling their investment to earning as much as five times their investment in just a few months. (SUMF ¶11)

10. The minimization of risk also appears to have varied with each customer. One customer was told that World-Wide had a "checks and balances" system where each trade is reviewed by a manager. (SUMF ¶12)

11. Printed materials distributed to potential customers are just as vague and inconsistent as the telephone solicitations. World-Wide claims in its "disclosure document" to specialize in foreign currency trading. (SUMF ¶13) According to the "disclosure," World-Wide's "Managed Currency Program" is traded with "relatively low exposure possible to risk and only in the most widely traded currencies." (SUMF ¶13) World-Wide further claims that its "program targets a 2-4% monthly return with the lowest risk exposure possible." (SUMF ¶13)

12. After the customer's initial investment, they would receive in the mail a statement reflecting their account balance. (SUMF ¶14) The statement provided no information as to how the money was invested. (SUMF ¶14)

13. Within a few weeks customers received a second statement reflecting either a small loss or profit on their investment. (SUMF ¶15) Again this statement contained no specifics as to what type of investment had been made, or how a loss or gain was calculated. (SUMF ¶15) This statement was inevitably followed by another phone call from the telemarketer. (SUMF ¶15) The telemarketers would urge further investment to either re-coup losses or to realize even greater profits. Concerns about further losses were assuaged by telemarketer's promises that World-Wide would put a stop/loss order on the account which would ensure no further losses on the investment. (SUMF ¶15)

14. After this point customer statements would reflect steady decline until their account balance showed a near total loss of their investment. (SUMF ¶16) Throughout this process investors had no idea what they invested in or how the losses came about.

15. The Commission subpoenaed account statements from two bank accounts at Bank of America ("BofA") held in the name of World-Wide. The accounts are titled "Customer Segregated" account, number 003064545663 and "Operating" account, number 003064545676. (SUMF ¶31). An analysis was conducted of the two accounts, which included reviewing copies of deposit tickets, cancelled checks, and month end statements during the period December 21, 2000, through April 30, 2003. The purpose of the analysis was to; (1) determine the amount of customer deposits; (2) determine the amount customers were repaid; and (3) determine how World-Wide disbursed and used its customers' funds. (See Declaration of Mary Kaminski dated July 22, 2004)

16. The analysis of the deposits and withdrawals made to both accounts between December 21, 2000 and March 31, 2003 disclosed the following: \$1,603,372.00 was deposited into the World-Wide customer segregated account. The vast majority of those funds were transferred to the World-Wide operating account.

17. Between December 21, 2000 and March 31, 2003, various customers were refunded a total of \$579,747.32. The rest of the funds are used to pay overhead expenses, salaries and commissions and for other unknown purposes unrelated to any legitimate trading, including but not limited to disbursing funds to George Spivack, in the amount of \$226,950.00 and Kent Morris, in the amount of \$74,713.71. (See Declaration of Mary Kaminski July 22, 2004)

18. Customers were told that their accounts traded on a daily or weekly basis and World-Wide generated and mailed monthly statements to customers. However, World-Wide engaged in little or no trading on behalf of its customers. Between December 21, 2000 and October 26, 2001, World-Wide wired some customer funds totaling about \$358,000 to a foreign investment firm, IFX Limited ("IFX"), based in London, England. (SUMF ¶18) The existence of IFX was not disclosed to customers. Customers mailed or wired funds to World-Wide not IFX. Funds were purportedly traded at IFX in an account in the name of World-Wide. The World-Wide account did not list individual accounts for World-Wide customers, nor did it list individual customers as beneficiaries of any trading done by World-Wide. (SUMF ¶18)

19. No customer funds were wired to IFX after October 26, 2001, although World-Wide continued to solicit and receive customer funds between October 27, 2001 and March 31, 2003. (See Declaration of Mary Kaminski dated July 22, 2004)

Conclusions of Law:

20. This Court's Local Rules clearly obligate a non-movant to controvert a statement of undisputed facts or else have them deemed admitted. See Local Rule 7.5(D). The Defendants have never responded to or attempted to contradict the Commission's "Statement of Undisputed Material Facts" filed on January 14, 2004.

21. The failure to oppose a motion is grounds for granting the motion by default. See Fed. R. Civ. P. 56(e) and Local Rule 7.1(C). The Defendant's have had well over seven months to respond to the Commission's Motion for Summary Judgment. This Court has already explained to the Defendants the importance of remaining active in their defense. In it's Motion to Compel (DE 20), the Commission alluded to how the Defendants' counsel had advised that they would be exercising their Fifth Amendment rights, but in its Order, this Court made clear

that they nonetheless remained obligated to respond to the discovery requests, even if their responses were limited to claims of privilege. Despite this caution, and this Court's specific order to file written responses to the Commission's discovery requests, the Defendants have taken no action to defend against the ongoing civil litigation.

22. Consequently, this Court grants the Commission's Motion for Summary Judgment based on the default by the Defendants, the Magistrate Judge's Report and the undisputed facts set out above, and makes the following conclusions of law.

23. Defendants violated section 4(a) of the Commodity Exchange Act (the "Act"), 7 U.S.C. § 6a (2003), since the futures contracts sold by the Defendants are not conducted on or subject to the rules of a board of trade which has been designated or registered by the Commission as a contract market or derivatives transaction facility for such contract.

24. Defendants violated Section 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. §6b(a)(2)(i) and (iii)(2003) and Commission Regulation 1.1, 17 C.F.R. § 1.1 (2003), by making materially false representations concerning the likelihood that customers will profit from purchasing futures contracts from the Defendants, and by making false representations and material omissions concerning the risk of loss.

25. Defendants violated Section 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. §6b(a)(2)(i) and (iii)(2003) and Commission Regulation 1.1, 17 C.F.R. § 1.1 (2003), by misappropriating customer funds for personal expenses.

26. Defendant Spivack is additionally liable as a controlling person under Section 13(b) of the Act, 7 U.S.C. § 13c(b), because (1) World-Wide, the corporate entity violated the Act; (2) Spivack "directly or indirectly" controlled that corporate entity; and (3) Spivack "did not

act in good faith or knowingly induced, directly or indirectly, the act or acts constituting the violation." *CFTC v. Baragosh*, 278 F.3d 319, 330 (4th Cir. 2002).

## RELIEF GRANTED

### Injunctive Relief

#### I.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that:

Defendants Spivack, Morris, and World-Wide Currency Corp., are permanently restrained, enjoined and prohibited from directly or indirectly:

- a. In or in connection with an offer to enter into, the entry into, or the confirmation of the execution of, any commodity option transactions: (1) cheating or defrauding or attempting to cheat or defraud any persons; and (2) deceiving or attempting to deceive any person, in violation of Section 4c(b) of the Act and Commission Regulation 32.9;
- 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 commodity option 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, in violation of Section 4c(b) of the Act, and Commission Regulations 32.11 and 33.3(a);
- 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. Applying for registration or claiming exemption from registration with the Commission in any capacity, and engaging in any activity requiring such registration or exemption from registration, except as provided for in

Commission Regulation 4.14(a)(9), or acting as a principal, agent, officer or employee of any person registered, exempted from registration or required to be registered with the Commission, unless such exemption is pursuant to Commission Regulation 4.14(a)(9); and

- f. Trading on or subject to the rules of any registered entity, as that term is defined in Section 1a(29) of the Act

The injunctive provisions of this Consent Order shall be binding upon Defendants Spivack, Morris, and World-Wide Currency Corp., upon any person insofar as he or she is acting in the capacity of officer, agent, servant or employee of Defendant Spivack and/or Morris and/or World-Wide Currency Corp., 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 Spivack and/or Morris and/or World-Wide Currency Corp., pursuant to Fed. R. Civ. P. 65(d).

## II.

### Monetary Judgment

IT IS FURTHER ORDERED that judgment for restitution, disgorgement, and civil monetary penalties shall be entered in favor of the Commission and against Defendants World-Wide, Spivack, and Morris, for which Defendants shall be jointly and severally liable for the following:

- A. Restitution for injured investors in the amount of \$1,092,880.60<sup>1</sup>, which includes pre-judgment interest, plus any post-judgment interest which accrues following the entry of this Order. The judgment amount for restitution represents the monies received by

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<sup>1</sup> From December 21, 2000 through March 31, 2003, \$1,603,372.00 was deposited into the World-Wide customer segregated account. During that same time period World-Wide returned \$579,745.00 to various customers, leaving a total of \$1,023,624.68 used to pay overhead expenses, salaries and commissions and for other unknown purposes unrelated to any legitimate trading. Pre-judgment interest of \$69,255.92, is calculated from the filing of the complaint on January 13, 2003.

Defendants from customers less any refunds or other payments received by customers from Defendants or customer funds that have been frozen pursuant to the asset freeze. ~~Defendants shall pay restitution to the Commission within fourteen (14) days of entry of this Order.~~

~~B. Within fourteen days of entry of this Order, Defendants Spivack and Morris shall disgorge to the Commission or any other person appointed by the Court, all benefits obtained directly or indirectly as a result of the illegal acts and practices found in this Order, including but not limited to salaries, commissions, fees, bonuses, loans, and payments in kind. Defendant Spivack received at least \$226,950.00 in salary and/or commission from the World-Wide operation. Defendant Morris received at least \$74,731.53 in salary and/or commission from the World-Wide operation. Payments made by Defendants toward restitution obligations shall reduce the amount of disgorgement dollar for dollar.~~

C. Civil Penalties in an amount to be determined following an evidentiary hearing and upon due notice to the Defendants. The judgment amount for civil monetary penalties shall be payable only upon full satisfactions of judgments for restitution.

The Court will determine the appropriate distribution of Defendants' assets, which are subject to the asset freeze, after the Commission submits a proposed distribution plan.

### III.

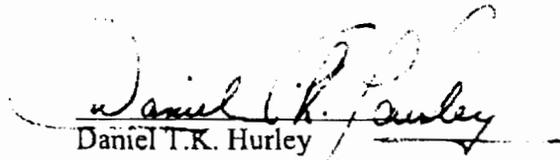
IT IS FURTHER ORDERED that the Defendants shall not transfer or cause others to transfer funds or other property to the custody, possession or control of any other person for the purpose of concealing such funds or property from the Court, the Commission, or any other officer that may be appointed by the Court.

IV

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

IT IS SO ORDERED.

Date Aug. 5, 2004.

  
Daniel T.K. Hurley  
United States District Judge

**CLOSED CASE**