

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No.05-80002-Civ-Hurley/Hopkins

COMMODITY FUTURES
TRADING COMMISSION,

Plaintiffs,

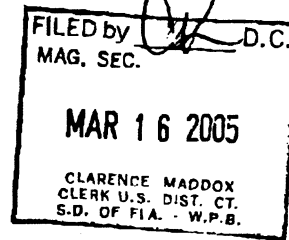
vs.

UNITED INVESTORS GROUP, INC.;
GREG P. ALLOTTA; JAY M. LEVY;
PAUL F. PLUNKETT; ANDREW D.
ROSS; AND MICHAEL H. SAVITSKY III,

Defendants,

GREG ALLOTTA ENTERPRISES, INC. and
MICHAEL SAVITSKY, INC.,

Relief Defendants.



**SUPPLEMENT TO REPORT AND RECOMMENDATION AS TO
PLAINTIFF'S MOTION FOR AN ORDER TO SHOW CAUSE
REGARDING PRELIMINARY INJUNCTION (DE 4)**

THIS CAUSE has come before this Court upon an Order Granting Motion to Show Cause Regarding Plaintiff's Motion for Preliminary Injunction which referred the matter to Magistrate Judge for a Report and Recommendation. (DE 12). Pursuant to Federal Rule of Civil Procedure (FRCP) 52 and for the reasons

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that follow, this Court **RECOMMENDS** that the District Court **ADOPT** the following findings of fact and conclusions of law:

Findings of Fact

1. Defendant UIG is a Florida corporation with its principal place of business at 6909 Southwest 18th Street, Suite 301, Boca Raton, Florida 33433. (DE6, ex. 1 ¶ 5).
2. UIG registered the with Commission on May 7, 2001 and is an Introducing Broker (IB) clearing through universal Financial Holding Corporation (UFHC), a registered Futures Commission Merchant. (DE 6, ex. 1 ¶ 5).
3. Defendants Allotta, Levy and Savitsky did act as Associated Persons (APs) for and on behalf of United Investors Group, Inc. As of the execution of the declaration of Lacey Dingman, each are currently registered with the Commission as APs. (DE 6, ex. 1 ¶¶ 6, 7, 10).
4. As evidenced by the declarations attached as exhibits to the Plaintiff's

motion and memorandum of law, Defendants Allotta, Levy and Savitsky as well as other UIG APs, did participate in the following fraudulent sales activities:

a. Misrepresenting the risks involved with commodities option trading.

For example:

- i. Levy and Allotta told customers that it was impossible to lose money because they were going to make money whether the market moved up or down. (DE 6, ex. 3, Anderson Decl. ¶ 6; Beaumont Decl. ¶10; Hall Decl. ¶ 7; Hartig Decl. ¶ 4; Johnson Decl. ¶ 5; Manders Decl. ¶ 7; Pighin Decl. ¶ 8; Rivera Decl. ¶9).
- ii. Savitsky, Allotta, Shapiro, Atz and Bobba told customers that stop loss orders would limit their losses. (DE 6, ex. 3, Andrade Decl. ¶¶ 6, 11; Landt Decl. ¶¶ 6, 11; Johnson Decl. ¶ 3; Pighin Decl. ¶4).

b. Misrepresenting the ability to predict profits based on seasonal trends and public information. For example:

- i. Bobba recommended that a customer purchase unleaded gas options, citing the coming summer, the war in Iraq and the

general supply and demand for unleaded gas as reasons why such an investment would be profitable at that time. (DE 6, ex. 3, Anderson Decl. ¶ 4).

- ii. Shapiro told a customer that he should purchase heating oil options because heating oil prices would rise “in response to planned production cuts by OPEC and increased consumer demand for heating oil due to this year’s harsh winter in the United States.” (DE 6, ex. 3, Andrade Decl. ¶ 4).
- iii. Allotta advised a customer that crude oil prices would be increasing “due to a recent pipeline sabotage in Kuwait.” (DE 6, ex. 3, Andrade Decl. ¶ 10).
- iv. Bobba advised a customer that “the value of unleaded gasoline options was set to increase in the near term because of the war in Iraq, the threat of terrorism, and the arrival of summer in the United States.” (DE 6, ex. 3, Beaumont Decl. ¶ 4).
- v. Levy advised a customer that the value of the Euro had potential to increase rapidly because “the dollar had to be devalued to combat both U.S. unemployment and the U.S. trade deficit prior to the November 2004 presidential election.” (DE

6, ex. 3, Beaumont Decl. ¶ 10)

- vi. Allotta recommended that a customer invest in crude oil options because “due to a shortage of oil in the US. the war in Iraq, and the beginning of the heating season [the customer] could earn between 30-40% on [his] investment.” (DE 6, ex. 3, DiLollo Decl. ¶ 4).
- c. Misrepresenting the profit potential of commodities option trading.
For example:
 - i. Savitsky told a customer that, in only two months, he should make at least \$14,000 on a \$3,000 investment. (DE 6, ex. 3, Johnson Decl. ¶ 3).
 - ii. Levy told a customer that an additional \$34,000 investment would generate over \$100,000 in only one week. (DE 6, ex. 3, Rivera Decl. ¶ 8).
 - iii. Allotta guaranteed one customer that, in only a few days, he would make a 100% return on a \$25,000 investment in heating oil options. (DE 6, ex. 3, Hall Decl. ¶ 7).
- d. Omitting mention of enormous losses by UIG customers.

5. As evidenced by the declaration of Lacey Dingman, Defendants did receive over \$1.5 million in commissions and fees between August 4, 2003 and December 31, 2003. Between January 1, 2004 and June 30, 2004. UIG charged over \$2.5 million in commission and fees. (DE 6, ex. 1).

6. As evidenced by the declaration Lacey Dingman, UIG customers did lose in excess of \$6 million between August 4, 2003 and June 30, 2004. During this time, only seven accounts realized net profits. These profits totaled approximately \$11,585. (DE 6, ex. 1 ¶¶ 13-14).

7. Defendants Ross and Plunkett acted as principals for UIG, and were involved with training the sales force, disciplinary action, and customer complaints. (DE 6, ex. 1, 2).

8. As evidenced by the declaration of Lacey Dingman, each of the individual Defendants have been named in prior actions, or have been affiliated with firms named in prior actions involving use of fraudulent sales practices. (DE 6, ex. 1)

9. The declarations attached as Exhibit 3 to Plaintiffs memorandum in support of its motion were executed by individuals having no affiliation to either party in the current action. Exhibit 3 contains 16 customer declarations detailing misrepresentations and misleading omissions utilized by Defendants to entice customers to purchase commodities options. (DE 6, ex. 1-3)

10. The declarations attached as exhibits to Defendants memorandum in opposition were executed by the Defendants themselves. The Defendants have included no customer declarations. Rather than produce testimony of customers supporting the Defendants' position that sales practices complied with all legal and regulatory requirements, the Defendants have submitted only their own declarations denying the accusations made by the customers. (DE 29, ex. B-D)

Any of the foregoing factual findings which may represent conclusions of law are incorporated as conclusions of law.

Conclusions of Law

11. Based on the foregoing, there is reason to believe that the defendants have committed violations of the Commodities Exchange Act (CEA), 7 U.S.C. 6c(b) and Regulation 33.10(a) and (c) of the Commission Regulations, 17 C.F.R. § 33.10(a) and (c).

12. Based on the foregoing, there is reason to believe that Defendants Ross and Plunkett are liable under the CEA, 7 U.S.C. § 13c(b), as controlling persons. *See In re JCC*, Comm. Fut. L. Rep. ¶ 26,080 (CFTC May, 1994), *aff'd* 63 F.3d 1557 (11th Cir. 1995); *see also CFTC v. Standard Forex*, Comm. Fut. L. Rep. (CCH) ¶ 26,063; 1993 U.S. Dist. LEXIS 19909 (E.D.N.Y. Aug. 9, 1993).

13. Absent a preliminary injunction, there is reason to believe that the Defendants will continue to engage in sales practices in violation of the CEA. This likelihood may be inferred from the Defendants' past conduct. *See CFTC v. MAD Financial, Inc.*, Comm. Fut. L. Rep. ¶ 28,980; 2002 WL 1972063 (S.D.Fla. 2002).

14. An asset freeze is necessary and appropriate to prevent the concealment, dissipation or diversion of assets, thereby rendering final relief ineffective. *See Levi Strauss & Co. v. Sunrise International Trading Inc.*, 51 F.3d 982 (11th Cir. 1995).

15. This court has the authority to fashion such relief as is necessary, including a freeze of the Defendants' assets. *See Levi Strauss*, 51 F.3d 982; *see also MAD Financial*, Comm. Fut. L. Rep. ¶ 28,980, 2002 WL 1972063.

Any of the foregoing conclusions of law factual findings which may represent findings of fact are incorporated as findings of fact.


RECOMMENDATION TO THE DISTRICT COURT

This Court **RECOMMENDS** that the District Court **ADOPT** the above findings of fact and conclusions of law.

A party shall serve and file written objections, if any, to this Report and Recommendation with the Honorable Daniel T. K. Hurley, District Court Judge

for the Southern District of Florida, within ten (10) days of being served with a copy of this Report and Recommendation. *See* 28 U.S.C. § 636(b)(1)(C); *United States v. Warren*, 687 F.2d 347, 348 (11th Cir. 1982), *cert. denied*, 460 U.S. 1087 (1983). Failure to timely file objections shall bar the parties from attacking on appeal the factual findings contained herein. *See LoConte v. Dugger*, 847 F.2d 745 (11th Cir. 1988), *cert. denied*, 488 U.S. 958 (1988); *RTC v. Hallmark Builders, Inc.*, 996 F.2d 1144, 1149 (11th Cir. 1993).

DONE and SUBMITTED in Chambers this 16 day of March, 2005, at West Palm Beach in the Southern District of Florida.



JAMES M. HOPKINS
UNITED STATES MAGISTRATE JUDGE

Copies to:
United States District Court Judge Daniel T. K. Hurley
Charles D. Marvine (Counsel for Plaintiff)
Rachel A. Hayes (Counsel for Plaintiff)
Francisco Oscar Sanchez (Counsel for Defendants)