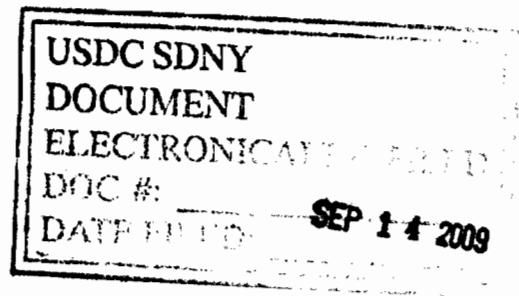


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



U.S. Commodity Futures Trading Commission,

Plaintiff,

v.

Walter, Scott, Lev & Associates, LLC,
Michael Ross,
Maxim Yampolsky,
Edward Sapienza, Jr.,
Frank Schiavone,
Michael Korobov, and
Boris Shuster, a/k/a/ Robert Shuster,

Defendants, and

Michael Edwards Trading Group, Ltd.,
JSG Freight Systems, Inc.,
Shuster, Shuster & Shuster, Ltd.,
BLJ Consulting, Inc.,
Winn Industries Division of Ontario, Limited
(1430214 Ontario, Limited), and
The Fuzzy Group, Inc.,

Relief Defendants.

03 CV 9126 (GBD)

**Order for Entry of Judgment by
Default, Permanent Injunction,
Ancillary Equitable Relief and Civil
Monetary Penalty Against
Defendant Boris Shuster**

On November 18, 2003, the U.S. Commodity Futures Trading Commission ("Commission" or "CFTC") filed a Complaint charging Defendant Boris Shuster and others ("Defendant" or "Shuster") with cheating, defrauding and deceiving investors in an illegal off-exchange foreign currency futures scheme in violation of Section 4(b)(a)(2) of the Commodity Exchange Act, as amended (the "Act"), 7 U.S.C. § 6b(a)(2) (2002), and Commission Regulation ("Regulation") 1.1(b), 17 C.F.R. § 1.1(b) (2001).

On November 24, 2003, Shuster was properly served with the summons, complaint and supporting papers pursuant to Rule 4(e)(2) of the Federal Rules of Civil Procedure

("Fed. R. Civ. P."). Shuster failed to answer the Complaint within the time permitted by Rule 12(a)(1) of the Fed. R. Civ. P. and provided by this Court in the August 6, 2008 Order lifting the stay of proceedings for Shuster and providing him with twenty days to file an answer to the Complaint. Shuster is not an infant, incompetent person, or in the military. Accordingly, on September 8, 2008, the Clerk of this Court entered a certificate of default against Shuster pursuant to Local Rules 55.1 and 55(a) of the Fed. R. Civ. Pro.

The Commission has now submitted its Application for Entry of Judgment by Default with Injunctive Relief, Civil Monetary Penalties, and Ancillary Equitable Relief Against Shuster ("Application") pursuant to Fed. R. Civ. 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, hereby:

GRANTS the Commission's Application against Shuster and enters findings of fact and conclusions of law finding Shuster liable as to all violations charged against him in the Complaint. The Court further grants the Commission's request for injunctive relief, restitution, and a civil monetary penalty. Accordingly, the Court now issues the following Order for Entry of Judgment by Default, Permanent Injunction, Ancillary Equitable Relief and Civil Monetary Penalty Against Defendant Boris Shuster ("Order").

I. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Jurisdiction and Venue

This Court has jurisdiction over the subject matter of this action and Shuster 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 Shuster was found in, inhabited, or transacted business in this district, and the acts and practices in violation of the Act and Regulations occurred within this district, among other places.

B. Findings of Fact

Defendant Walter, Scott, Lev & Associates, LLC (“WSL”) was a New York limited liability company organized in 1998 with an office at 90 John Street, Suite 407, New York, New York 10038. It has never been registered with the Commission in any capacity.

Shuster presently resides in the Federal Correctional Institution in Fort Dix, New Jersey. Shuster has never been registered with the Commission.

From at least January 1999 to at least April 2002 (“relevant period”), Shuster and others fraudulently solicited customers for the purpose of trading foreign currency contracts that were, in fact, illegal off-exchange foreign currency futures contracts. Instead of actually trading clients’ funds, Shuster misappropriated a portion of those funds obtained from customers. At the same time, Shuster misled investors with false monthly account statements showing considerable profits. Shuster then abruptly notified customers that alleged catastrophic trading losses had wiped out their funds. Shuster knew that client funds were being misappropriated, that the monthly account statements showing profits were false and that the clients’ losses were not due to catastrophic trading losses.

During the relevant period, Shuster defrauded customers in an amount of at least \$1,500,000.

Shuster, through WSL, marketed WSL's managed foreign currency trading accounts to individuals who had assets totaling less than \$5 million and had no business, personal or other need to take or make delivery in foreign currency or to hedge against movements in the foreign currency markets. Instead, investors entered into these transactions to speculate and profit from anticipated price fluctuations in the markets for these currencies.

WSL's clients did not anticipate taking – and did not take – delivery of the foreign currencies they purchased as a consequence of these investments. WSL did not require its clients to set up banking relationships to facilitate delivery of the foreign currencies. Once the market moved in a favorable direction, clients expected, based on the representations made to them, WSL to liquidate their investments by authorizing the sale of the contract and taking the profits. The WSL customer account agreement made reference to the margining and settlement of transactions in WSL customer accounts, and one full paragraph in the customer agreement defined settlement procedures whereby all profits and losses were reflected in customer account statements the following month. WSL's account agreement and solicitation materials provided that commissions are charged on a round-turn basis. Moreover, WSL's brochure assured customers that their principal investments would be protected because WSL would be responsible for all margin requirements, and positions would be exited when stop losses are triggered.

WSL was not a proper counterparty or an affiliate of a proper counterparty under the Act authorized to engage in foreign currency futures transactions with retail customers. WSL was not a financial institution, a broker or dealer, or an associated person of a broker or dealer. WSL was not a Futures Commission Merchant ("FCM"), or an affiliate of a FCM. WSL did not

conduct transactions on a facility designated as a contract market or registered as a derivatives transaction execution facility.

WSL, did not conduct the foreign currency futures transactions on or subject to the rules of a board of trade that had been designated by the CFTC as a contract market. WSL, did not conduct transactions on a facility registered as a derivatives transaction execution facility.

Prior to December 21, 2000, WSL's conduct was such that it operated as a board of trade based upon its being a public marketplace offering standardized futures contracts to buyers and sellers with the availability of price information and an execution and settlement mechanism. WSL mass marketed to small investors by providing a foreign currency trading facility that allowed its customers, with a minimum deposit, to become "traders" at its board of trade. WSL recruited traders, many of whom have no prior trading experience, and urged them to solicit the general public through cold calls to invest with WSL. WSL also provided the mechanism for traders to get prices, make orders, execute orders, and offset those orders with matching opposite transactions. WSL further confirmed, both orally and in writing, that the traders' orders had been executed. WSL's orders were standardized, leveraged contracts of its own devise. The contracts were closed out by entering into an offsetting transaction rather than by taking delivery.

C. Conclusions of Law

1. WSL's Transactions Were Futures Contracts.

The foreign currency contracts offered and sold by Shuster, through WSL, were futures contracts. WSL was not a proper counterparty or an affiliate of a proper counterparty authorized under the Act or Regulations to engage in foreign currency future transactions with retail customers.

2. Shuster is Liable for Violations of Section 4b(a)(2) of the Commodity Exchange Act and Commission Regulation 1.1(b).

During the relevant period, Shuster cheated or defrauded or attempted to cheat or defraud investors or prospective investors of WSL, willfully made or caused to be made false reports or statements, and willfully deceived or attempted to deceive investors or prospective investors by, among other things, knowingly: misappropriating funds received from investors and making false statements regarding trading losses, the risks of trading foreign currencies, the legitimacy of their operation, and the safety of investor funds, all in violation of Section 4b(a)(2) of the Act, 7 U.S.C. § 6b(a)(2) (2001), and Regulation 1.1(b), 17 C.F.R. § 1.1(b) (2002). Shuster's conduct was in connection with the 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 any other persons, and such contracts for future delivery were or could be used for the purposes set forth in Section 4b(a)(2) of the Act, 7 U.S.C. § 6b(a) (2001).

3. A Permanent Injunction, Civil Monetary Penalty, and Other Equitable Relief are Appropriate Remedies.

Permanent injunctive relief is warranted in light of the egregious nature of Shuster's knowing fraudulent solicitation of customers in a scheme to systematically defraud the public through the offer and sale of illegal foreign currency futures contracts. These facts demonstrate a reasonable likelihood of future violations.

Imposition of a civil monetary penalty is appropriate in this case as Shuster's violations of the Act were intentional and directly affected the numerous victims of this fraud. Likewise, the remedy of restitution is appropriate to compensate the victims of Shuster's wrongful acts and to deprive Shuster of the use of ill-gotten gains.

II. ORDER FOR RELIEF

A. Permanent Injunction

IT IS THEREFORE ORDERED THAT:

1. Shuster, in connection with any order to make, or the making of, any contract of sale of any commodity
 - A. in interstate commerce or for future delivery that is made, or to be made, on or subject to the rules of a designated contract market, for or on behalf of any other person, or
 - B. for any person for future delivery, or other agreement, contract, or transaction subject to paragraphs (1) and (2) of Section 5a(g) of the Act, that is made, or to be made, for or on behalf of, or with, any other person, other than on or subject to the rules of a designated contract market,is permanently restrained, enjoined and prohibited from directly or indirectly: cheating or defrauding or attempting to cheat or defraud the other person; willfully making or causing to be made to the other person any false report or statement or willfully entering or causing to be entered for the other person any false record; and/or willfully deceiving or attempting to deceive the other person by any means whatsoever in regard to any order or contract or the disposition or execution of any order or contract, or in regard to any act of agency performed, with respect to any order or contract for or, in the case of subparagraph (B) above, with the other person in violation of Section 4b(a)(2) of the Act, as amended by The Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, § 13102, 122 Stat. 1651 (to be codified at 7 U.S.C. § 6b(a)(2)).
2. Shuster is further permanently restrained, enjoined and prohibited from engaging directly or indirectly in any activity related to trading in any commodity, as that term is defined in Section 1a(4) of the Act, 7 U.S.C. § 1a(4), (“commodity interest”), including but not limited to the following:
 - A. Trading on or subject to the rules of any registered entity, at that term is defined in Section 1a(29) of the Act, 7 U.S.C. § 1a(29) (2006);

- B. Engaging in, controlling or directing the trading for any commodity interest account for or on behalf of any other person or entity, whether by power of attorney or otherwise;
- C. Soliciting, receiving, or accepting any funds from any person in connection with the purchase or sale of any commodity interest contract;
- D. 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 with the Commission, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2008), or acting as a principal, agent or any other officer or employee of any person registered, exempted from registration or required to be registered with the Commission, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2008);
- E. Entering into any commodity interest transactions for their own personal accounts, for any account in which they have a direct or indirect interest and/or having any commodity interests traded on their behalves; and/or
- F. Engaging in any business activities related to commodity interest trading.

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

B. Civil Monetary Penalty

IT IS FURTHER ORDERED that as of the date of entry of this Order, Shuster shall pay a civil monetary penalty in the amount of \$120,000 plus post-judgment interest (the "CMP Obligation"). Post-judgment interest shall accrue beginning on the date of entry of this Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Order pursuant to 28 U.S.C. § 1961.

Shuster shall pay this CMP Obligation by electronic funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money order. If payment is to be made by

other than electronic funds transfer, Shuster shall make the payment payable to the Commodity Futures Trading Commission and send it to the following address:

Commodity Futures Trading Commission
Division of Enforcement
ATTN: Marie Bateman – AMZ-300
DOT/FAA/MMAC
6500 S. Macarthur Blvd.
Oklahoma City, OK 73169
Telephone: 405-954-6569

If the payment is to be made by electronic funds transfer, Shuster shall contact Marie Bateman, or her successor, at the above address to receive payment instructions and shall fully comply with those instructions. Shuster shall accompany the payment of the CMP Obligation with a cover letter that identifies Shuster and the name and docket number of this proceeding.

Shuster shall simultaneously transmit copies of the cover letter and the form of payment to: (a) the Director, Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581; (b) the Chief, Office of Cooperative Enforcement, Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581; and (c) Regional Counsel, Commodity Futures Trading Commission, Eastern Regional Office, 140 Broadway, 19th Floor, New York, NY 10005.

C. Restitution

IT IS FURTHER ORDERED that as of the date of this Order, Shuster shall pay and be jointly and severally liable with his co-defendants, WSL, Michael Ross, Maxim Yampolsky, Edward Sapienza, Jr., Frank Schiavone and Michael Korobov in this matter (*CFTC v. Walter, Scott, Lev & Assoc., LLC, et al.*, Docket Number 03 CV 9126 (GBD)), for restitution to

defrauded customers in the amount of \$1,500,000 plus pre-judgment and post-judgment interest (the "Restitution Obligation"). Pre-judgment interest shall accrue from January 1, 1999, to the date of this Order and shall be determined by using the underpayment rate established quarterly by the Internal Revenue Service pursuant to 26 U.S.C. § 6621(a)(2). Post-judgment interest shall accrue beginning on the date of entry of this Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Order pursuant to 28 U.S.C. § 1961. Shuster is ordered to make such payments to Brian Rosner, Esq., the Court-appointed Receiver, Rosner & Napierala, LLP, 26 Broadway, 22nd Floor, New York, NY 10004-24424 by electronic funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money order under cover of a letter that identifies Shuster, the name and Docket number of this action and the name of this Court. Shuster shall simultaneously transmit copies of the cover letter and form of payment to: (a) the Director, Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581; (b) the Chief, Office of Cooperative Enforcement, Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581; and (c) the Regional Counsel, Commodity Futures Trading Commission, Eastern Regional Office, 140 Broadway, 19th Floor, New York, NY 10005.

To the extent that any funds accrue to the U.S. Treasury as a result of the Restitution Obligation, such funds shall be transferred to the Receiver for disbursement in accordance with the procedures set forth in the preceding paragraph.

D. Application of Payments to Monetary Sanctions and Partial Payments

All payments by Shuster pursuant to this Order shall first be applied to satisfaction of the Restitution Obligation. After satisfaction of the Restitution Obligation, payments by Shuster pursuant to this Order shall be applied to satisfy Shuster's CMP Obligation.

Any acceptance by the Commission and/or Receiver of partial payment of Shuster's Restitution Obligation and/or CMP Obligation shall not be deemed a waiver of the respective requirement to make further payments pursuant to this Order, or a waiver of the Commission's and/or Receiver's right to seek to compel payment of any remaining balance.

E. Prohibition on Transfer of Funds

IT IS FURTHER ORDERED that Shuster 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 Receiver, or any officer that may be appointed by the Court.

F. Notices

IT IS FURTHER ORDERED that all notices required to be given by any provision in this Order shall be sent by certified mail, return receipt requested, as follows:

Notice to Commission: Regional Counsel
 U.S. Commodity Futures Trading Commission
 Division of Enforcement - Eastern Regional Office
 140 Broadway, 19th Floor
 New York, New York 10005
 Phone: (646) 746-9700
 Fax: (646) 746-9740

Notice to Receiver: Brian Rosner, Esq.
 Rosner & Napierala, LLP
 26 Broadway, 22nd Floor
 New York, NY 10004-2442
 Phone: (212) 785-2577
 Fax: (212) 785-5203.

G. Jurisdiction

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.

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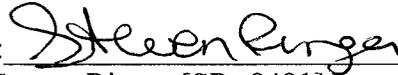
SO ORDERED, at _____, New York on this ____ day of _____, 2009.

SEP 14 2009


UNITED STATES DISTRICT JUDGE
HON. GEORGE B. DANIELS

Respectfully submitted,

U.S. COMMODITY FUTURES TRADING
COMMISSION

By: 

Steven Ringer [SR- 9491]

Chief Trial Attorney

Joseph Rosenberg [JR-5225]

Trial Attorney

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