

M. W. J. S.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 11/5/08

COMMODITY FUTURES TRADING COMMISSION,

Plaintiff,

v.

LARRY M. WEBMAN, MELVIN H. WEBMAN,
LYLE WEXLER, INTERNATIONAL FOREX
ADVISORY GROUP, AND WORLDWIDE
CURRENCIES CORP.,

Defendants.

Case No. 05-CV-4819 (MBM)

ECF CASE

Order For Entry of
Judgment By Default
Against Against International
Forex Advisory Group and
Worldwide Currencies Corp.

On May 19, 2005, the U.S. Commodity Futures Trading Commission ("Commission") filed a Complaint charging defendants Larry M. Webman, Melvin H. Webman, Lyle Wexler, International Forex Advisory Group ("IFA Group"), and Worldwide Currencies Corp. ("Worldwide") with offering to enter into, entering into, or confirming the execution of, options on foreign currency ("forex options") in violation of Commission Regulations, and specifically: misrepresenting and failing to disclose material facts concerning, among other things, (i) the likelihood that a customer would realize large profits trading forex options; (ii) the risk involved in trading forex options; and (iii) IFA Group's and Worldwide's poor performance record trading forex options on behalf of customers, all in violation of Section 4c(b) of the Commodity Exchange Act (the "Act"), 17 U.S.C. § 6c(b), and Sections 1.1(b) and 32.9 of the Commission Regulations, 17 C.F.R. §§ 1.1(b) and 32.9.

The Commission has now submitted its Application for Entry of Default Judgment ("Application") against IFA Group and Worldwide pursuant to Fed R. Civ. P. 55(b)(2) and Local Civil Rule 55.2. 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 of the premises supporting the Application, hereby:

GRANTS the Commission's Application for Entry of Judgment by Default Against IFA Group and Worldwide and enters findings of fact and conclusions of law finding IFA Group and Worldwide liable as to all violations as alleged in the Complaint. The Court further grants the Commission's request to award restitution and civil monetary penalties against IFA Group and Worldwide. Accordingly, the Court now issues the following Order for Default Judgment, Permanent Injunction, Civil Monetary Penalties, and Ancillary Equitable Relief ("Order") against Defendants IFA Group and Worldwide.

I. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court hereby **FINDS** as follows:

A. Jurisdiction and Venue

1. 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.

2. The Commission has jurisdiction over IFA Group's and Worldwide's transactions because the forex options transactions that Defendants offered to, or entered into with, persons

who were members of the retail investing public who were not "eligible contract participants" as that term is defined under Section 1a(12) of the Act, 7 U.S.C. § 1a(12).

3. IFA Group and Worldwide marketed their forex options 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.

4. The Commission has jurisdiction over IFA Group's and Worldwide's forex options transactions pursuant to Section 2(c)(2)(B) of the Act, 7 U.S.C. § 2(c)(2)(B), the counterparties to the transactions at issue were either not an affiliate of any futures commission merchant for the purposes of Section 2(c)(2)(B)(ii)(III) of the Act, or to they were otherwise subject to liability for options transactions in violation of the Act, pursuant to Section 2(c)(2)(C) of the Act. Accordingly, the Commission and this Court has jurisdiction over IFA Group's and Worldwide's transactions.

5. 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

6. From at least December 2003 to at least July 2004, Defendant IFA Group solicited at least \$3,189,131.00 million from 102 customers for the purchase or sale of forex options. Of those customers, all but two lost substantially all of their investments. Losses to customers of IFA Group (the difference between total deposits and total customer refunds) came to \$2,701,960.00. Of the money solicited by IFA Group, at least \$1,059,510.00 was remitted by the clearing firms to IFA Group as trading commissions.

7. From at least July 2004 to at least November 2004, Defendant Worldwide solicited at least \$366,500.00 from 27 customers for the purchase of forex options. None of those customer profited from their investments. Losses to customers of Worldwide (the difference between total deposits and total refunds) came to \$255,952.00. Of the money solicited by Worldwide, at least \$175,490.00 was remitted by the clearing firm to Worldwide as trading commissions.

8. IFA Group and Worldwide dealt exclusively in out-of-the-money options. "Out-of-the-money" is a term used to describe an option that has no intrinsic value. The premium for an out-of-the-money option is less than for an in-the-money or at-the-money option. IFA Group and Worldwide brokers could purchase a larger number of out-of-the-money options with \$10,000, than they could by purchasing in-the-money options with the same amount of money.

9. Since commissions charged against IFA Group and Worldwide accounts were determined by the number of options purchased, not the value of each option, IFA Group's and Worldwide's strategy was to induce customers to purchase as many out-of-the-money options as possible in order to maximize the flow of commissions back to IFA Group and Worldwide. This strategy made it all but impossible for customers to realize the profits that IFA Group and Worldwide brokers told customers to expect.

10. IFA Group and Worldwide, through their employees, induced customers to invest with them by making false and misleading representations through fraudulent telephone solicitations. IFA Group and Worldwide account executives made materially false claims about the likelihood that a customer would realize large profits trading forex options; misrepresented the substantial risks involved in trading forex options; and misrepresented IFA Group's and Worldwide's exceptionally poor performance record trading forex options on behalf of their

customers. IFA Group and Worldwide representatives also misrepresented and failed to disclose the background, experience, and training of IFA Group and Worldwide and their staffs, and the rate at which trading commissions would accrue against account equity. IFA Group and Worldwide intentionally made these material misrepresentations in order to obtain customer funds and to profit from abusive trading of those funds.

11. The fraudulent conduct of IFA Group and Worldwide was, from conception through every step of its execution, intentional. The fraud in turn resulted directly in substantial losses to investors and ill-gotten gains to IFA Group and Worldwide. IFA Group profited to the extent of the commissions remitted to it by the futures commission merchant with which it did business, coming in total to \$1,059,510.00. Worldwide profited to the extent of the commissions remitted to it by the futures commission merchant with which it did business, coming in total to \$175,490.00.

C. Conclusions of Law: Violations of Section 4c(b) of the Commodity Exchange Act and Commission Regulations 1.1(b) and 32.9

12. From at least December 2003 to at least November 2004, IFA Group and Worldwide employees, in connection with offers to enter into, the entry into, the confirmation of the execution of commodity options transactions, which were subject to the Commission's foreign exchange jurisdiction, cheated or defrauded or attempted to cheat or defraud customers, and deceived or attempted to deceive customers, in violation of Section 4c(b) of the Act, 7 U.S.C. § 6c(b), and Commission Regulations 1.1 and 32.9, 17 C.F.R. § 32.9. IFA Group's and Worldwide's conduct was in connection with transactions involving commodities regulated under the Act which were of the character of, or commonly known to the trade as "options."

13. Pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B), and Commission Regulation 1.2, 17 C.F.R. § 1.2, IFA Group and Worldwide are liable for the violations of

Section 4c(b) of the Act and Commission Regulations 1.1(b) and 32.9 by their officers, directors, managers, employees, and agents, in that all such violations were within the scope of their office or employment with IFA Group and Worldwide.

II. ORDER FOR PERMANENT INJUNCTION

IT IS HEREBY ORDERED that:

Defendants IFA Group and Worldwide are permanently restrained, enjoined and prohibited from violating, directly or indirectly:

- A. Section 4c(b) of the Act, 7 U.S.C. § 6c(b), and Regulations 1.1(b), 17 C.F.R. §§ 32.9, by cheating or defrauding or attempting to cheat or defraud any person in connection with commodity option transactions, or deceiving or attempting to deceive any other person by any means whatsoever in connection with commodity option transactions.
- B. Soliciting funds for, engaging in, controlling, or directing the trading of any commodity futures or options accounts for or on behalf of any other person or entity, whether by power of attorney or otherwise; and
- C. Withdrawing, transferring, removing, dissipating, or disposing of any funds, assets, or other property, wherever situated, including but not limited to, all funds, personal property, money or securities held in safes, safety deposit boxes and all funds on deposit in any financial institution, bank or savings and loan account held by, under the control, or in the name of, either IFA Group or Worldwide until such time as all monetary damages, including restitution, civil monetary damages, and other costs and fees, are assessed and ordered by the Court and paid in full to the victims and the Commission.

IT IS FURTHER ORDERED that:

- D. IFA Group and Worldwide are permanently restrained, enjoined and prohibited from directly or indirectly destroying, altering or disposing of any books, records, or other documents of either IFA Group or Worldwide, wherever located, including all such records concerning IFA Group's or Worldwide's business operations;
- E. IFA Group and Worldwide shall provide the Commission with continuing access to any books and records or other documents of IFA Group and Worldwide, wherever located, including all such records concerning IFA Group's and Worldwide's business operations;

III. CIVIL MONETARY PENALTY

1. Defendant IFA Group shall pay within ten (10) days of the entry of this Order a civil monetary penalty of \$3,178,530.00 (triple the income from trading commissions realized by IFA Group during the relevant time period), plus post-judgment interest. Interest after the date of this Order until the civil monetary penalty is paid in full shall be paid at the post-judgment interest rate set forth in 28 U.S.C. § 1961. IFA Group shall pay such civil monetary penalty by electronic funds transfer, or by U.S. postal money order, certified check, bank cashier's check, or bank money order, made payable to the Commodity Futures Trading Commission, and sent to Dennese Posey, or her successor, Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street N.W., Washington, D.C. 20581, under cover of a letter that identifies Defendant and the name and docket number of this proceeding. Defendant IFA Group shall simultaneously transmit a copy of the cover letter and the form of payment to the Director, Division of Enforcement, Commodity Futures Trading Commission, at the following address: 1155 21st Street N.W., Washington, D.C. 20581.

2. Defendant Worldwide shall pay within ten (10) days of the entry of this Order a civil monetary penalty of \$526,470.00 (triple the income from trading commissions realized by Worldwide during the relevant time period) plus post-judgment interest. Interest after the date of this Order until the civil monetary penalty is paid in full shall be paid at the post-judgment interest rate set forth in 28 U.S.C. § 1961. Worldwide shall pay such civil monetary penalty by electronic funds transfer, or by U.S. postal money order, certified check, bank cashier's check, or bank money order, made payable to the Commodity Futures Trading Commission, and sent to Dennese Posey, or her successor, Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581, under

cover of a letter that identifies Defendant and the name and docket number of this proceeding. Defendant IFA Group shall simultaneously transmit a copy of the cover letter and the form of payment to the Director, Division of Enforcement, Commodity Futures Trading Commission, at the following address: 1155 21st Street, NW, Washington, D.C. 20581.

IV. ORDER FOR OTHER EQUITABLE RELIEF

IT IS FURTHER ORDERED that:

A. **RESTITUTION:** Defendant IFA Group shall pay restitution within ten (10) days of the entry of this Order to investors in the amount of \$2,701,960.00. In addition, IFA Group shall pay pre-judgment interest thereon from December 1, 2003 to the date of this Order calculated at the IRS underpayment rate established by the Internal Revenue Service, pursuant to 26 U.S.C. § 6621(a)(2). IFA Group shall also pay post-judgment interest at the Treasury Bill rate prevailing on the date this Order is entered, pursuant to 28 U.S.C. § 1961, accruing from that date to the date full payment of restitution is made. Attachment A to this Order includes the names of the IFA Group investors to whom restitution shall be made pursuant to this paragraph, together with the amount of restitution payable by IFA Group to each of them (not including required interest). IFA Group's obligations to make restitution under this paragraph shall be reduced by any amounts paid to the investors listed in Attachment A pursuant to any restitution ordered in any other legal proceeding or pursuant to any collateral agreement, subject to the conditions as set forth in paragraph 8 below. All payments made pursuant to this Order by IFA Group shall be considered restitution payments and dispersed on a pro rata basis until those amounts (including interest) are fully satisfied. All payments after satisfaction of the restitution shall be applied to the civil monetary penalty described herein.

B. Defendant Worldwide shall pay restitution within ten (10) days of the entry of this Order to investors in the amount of \$255,952.00. In addition, Worldwide shall pay pre-judgment interest thereon from July 1, 2004 to the date of this Order calculated at the IRS underpayment rate established by the Internal Revenue Service, pursuant to 26 U.S.C. § 6621(a)(2). Worldwide shall also pay post-judgment interest at the Treasury Bill rate prevailing on the date this Order is entered, pursuant to 28 U.S.C. § 1961, accruing from that date to the date full payment of restitution is made. Attachment B to this Order includes the names of the Worldwide investors to whom restitution shall be made pursuant to this paragraph, together with the amount of restitution payable by Worldwide to each of them (not including required interest). Worldwide's obligations to make restitution under this paragraph shall be reduced by any amounts paid to the investors listed in Attachment A pursuant to any restitution ordered in any other legal proceeding or pursuant to any collateral agreement, subject to the conditions as set forth in paragraph F below. All payments made pursuant to this Order by Worldwide shall be considered restitution payments and dispersed on a pro rata basis until those amounts (including interest) are fully satisfied. All payments received by the Restitution Agent after satisfaction of the restitution obligations set forth in this Order shall be applied to the civil monetary penalty described herein.

C. RESTITUTION AGENT: All restitution payments made in satisfaction of the restitution obligations of both IFA Group and Worldwide shall be sent to Daniel Driscoll, Executive Vice-President, Chief Compliance Officer, or his successor (the "Restitution Agent"), at the National Futures Association, 200 W. Madison Street #1600, Chicago, Illinois 60606, and made payable to the IFA Group/Worldwide Settlement Fund. The Restitution Agent shall distribute restitution payments to customers on a pro rata basis unless, at his sole discretion,

based upon the amount of funds available for distribution, the Restitution Agent decides to defer distribution.

D. PARTIAL PAYMENTS: Any acceptance by the Commission or the Restitution Agent of partial payment of Defendant IFA Group's or Defendant Worldwide's restitution and/or civil monetary obligations, shall not be deemed a waiver of Defendants' obligation to make further payments pursuant to this Order, or a waiver of the Commission's right to seek to compel payment of any remaining balances.

E. THIRD-PARTY BENEFICIARIES: Pursuant to Rule 71 of the Federal Rules of Civil Procedure, each of the individuals identified in Attachments A and B hereto is explicitly made an intended third-party beneficiary of this Order and may seek to enforce obedience of this Order to obtain satisfaction of any portion of the restitution amount which has not been paid by either IFA Group or Worldwide, to ensure continued compliance with any provision of this Order and to hold Defendants IFA Group and Worldwide in contempt for any violations of any provision of this Order.

F. COLLATERAL AGREEMENTS: Defendants IFA Group and Worldwide shall immediately notify the Commission and Restitution Agent if they make or have previously made any agreement with any investor obligating them to make payments outside of this Order. They shall also provide immediate evidence to the Court, the Commission and Restitution Agent of any payments made pursuant to such agreement. Upon being notified of any payments made by Defendant IFA Group or Worldwide to investors outside of this Order, and receiving evidence of such payments, the Restitution Agent will have the right to reduce and offset IFA Group's or Worldwide's obligation to specified investors and to make any other changes in the restitution distribution schedule that he deems appropriate.

G. IFA Group and Worldwide shall take such steps as are necessary to repatriate to the territory of the United States all funds, assets or other property of IFA Group's and Worldwide's customers described herein which are held by IFA Group or Worldwide, or are under their direct or indirect control, jointly or singly, and deposit such funds with the Clerk of this Court and provide the Commission and the Court with a written description of the funds and assets so repatriated; and

H. IFA Group and Worldwide shall provide an accounting to this Court of all of IFA Group's and Worldwide's assets and liabilities, together with all funds it received from and paid to clients and other persons in connection with commodity futures and options transactions or purported commodity futures or options transactions, and all disbursements for any purpose whatsoever of funds received from commodity futures or options transactions, including salaries, commissions, interest, fees, loans and other disbursements of money and property of any kind, from, but not limited to, December 2003 through and including the date of such accounting.

V. MISCELLANEOUS PROVISIONS

A. NOTICES: All notices required by this Order shall be sent by certified mail, return receipt requested, as follows:

1. Notice to Commission:

Director of Enforcement
Commodity Futures Trading Commission
1155 21st Street N.W.
Washington, DC 20581

David Acevedo
Division of Enforcement, Eastern Regional Office
Commodity Futures Trading Commission
140 Broadway, 19th Floor
New York, NY 10005

2. Notice to Defendants:

International Forex Advisory Group
12000 Biscayne Boulevard, Suite 509
Miami, Florida 33181

Worldwide Currencies Corp.
12000 Biscayne Boulevard, Suite 509
Miami, Florida 33181

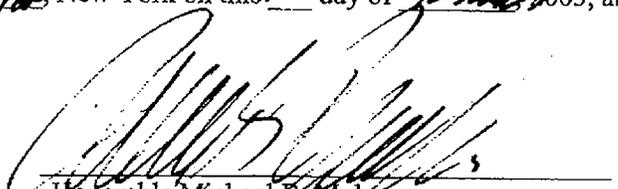
B. SUCCESSORS AND ASSIGNS: This Order shall inure to the benefit of and be binding on the parties' successors, assigns, heirs, beneficiaries and administrators.

C. JURISDICTION: This Court shall retain jurisdiction of this cause to assure compliance with this Order and for all other purposes related to this action.

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

There being no just reason for delay, the Clerk of the Court is hereby directed to enter this Default Judgment against Defendants International Forex Advisory Group and Worldwide Currencies Corp.

SO ORDERED, at New York New York on this 4th day of March 2005, at 4¹⁰ a.m./p.m.



Honorable Michael B. Mukasey
UNITED STATES DISTRICT JUDGE