

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 Judgment by Default,  
Permanent Injunction, Ancillary  
Equitable Relief and Civil Monetary  
Penalty Against  
Defendant Maxim Yampolsky**

On November 18, 2003, the U.S. Commodity Futures Trading Commission ("Commission" or "CFTC") filed a Complaint charging defendant Maxim Yampolsky and others ("Defendant" or "Yampolsky") 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 ("Act"), 7 U.S.C. § 6b(a)(2) (2002), and Commission Regulation ("Regulation") 1.1(b), 17 C.F.R. § 1.1(b) (2001). The Complaint also charged that Yampolsky, as an owner and operator of defendant Walter, Scott, Lev & Associates, LLC ("WSL"), directly or indirectly controlled WSL and did not act in good faith or knowingly

induced, directly or indirectly, WSL's violations of Sections 4(a) and 4(b)(a)(2) of the Act, 7 U.S.C. §§ 6(a) and 6b(a)(2) (2002), and Regulation 1.1(b), 17 C.F.R. § 1.1(b) (2001), making Yampolsky liable as a controlling person of WSL for WSL's violations pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2001).

On November 19, 2003, Yampolsky was properly served with the pleadings pursuant to Rule 4(e)(2) of the Federal Rules of Civil Procedure ("Fed. R. Civ. P."). Yampolsky failed to answer the Complaint within the time permitted by Fed. R. Civ. P. 12(a)(1) and provided by this Court in the November 7, 2006 Order lifting the stay of proceedings for Yampolsky. Yampolsky is not an infant, incompetent person, or in the military. Accordingly, on December 7, 2006, the Clerk of this Court entered a certificate of default against Yampolsky pursuant to Local Rule 55.1 and Fed. R. Civ. Pro. 55(a).

The Commission has now submitted its Application for Entry of Judgment by Default with Injunctive Relief, Civil Monetary Penalty, and Ancillary Equitable Relief Against Yampolsky ("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 Yampolsky and enters findings of fact and conclusions of law finding Yampolsky liable as to all violations alleged in the Complaint. The Court further grants the Commission's request for injunctive relief and a civil monetary penalty. Accordingly, the Court now issues the following Order for Judgment by Default, Permanent Injunction, Ancillary Equitable Relief and Civil Monetary Penalty Against Defendant Maxim Yampolsky ("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 Yampolsky 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 Yampolsky 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**

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.

Yampolsky presently resides in the Federal Correctional Institution in Fort Dix, New Jersey. Yampolsky has never been registered with the Commission. Yampolsky was one of the four individuals who formed WSL and served as Managing Director of WSL. Yampolsky was a signatory on all WSL bank accounts.

From at least January 1999 to at least April 2002 ("relevant period"), Yampolsky and others fraudulently solicited customers for the purpose of trading foreign currency contracts which were, in fact, illegal off-exchange foreign currency futures contracts. Instead of actually trading clients' funds, Yampolsky misappropriated a substantial portion of the funds obtained

from customers. At the same time, Yampolsky misled investors with false monthly account statements showing considerable profits. Yampolsky then abruptly notified customers that alleged catastrophic trading losses had wiped out their funds. Yampolsky knew that client funds were being misappropriated, the monthly account statements showing profits were false, and clients' losses were not due to catastrophic trading losses.

During the relevant period, Yampolsky and others misappropriated \$6,800,951 from customers.

Yampolsky, 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.

Investors 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, investors 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 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 in that it functioned as 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 itself to small investors as 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 Yampolsky, 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. Therefore, the Commission has jurisdiction over WSL's transactions pursuant to Section 2(c)(2)(B) of the Act, 7 U.S.C. § 2(c)(2)(B) (2002).

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

During the relevant period, Yampolsky and WSL, through its employees including Yamplosky, 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. Yampolsky's and WSL's conduct was 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 any other persons, and Yamplosky and WSL therefore violated 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).

During the relevant period, Yampolsky, as an owner and operator of WSL, directly or indirectly controlled WSL and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting WSL's violations 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). Thus, pursuant to Section

13(b) of the Act, 7 U.S.C. § 13c(b) (2001), Yampolsky is liable for WSL's violations 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), to the same extent as WSL.

**3. Yampolsky is Liable for Violations of Section 4(a) of the Commodity Exchange Act.**

During the relevant period, WSL offered to enter into, executed, confirmed the execution of, or conducted an office or business in the United States for the purpose of soliciting, accepting any order for, or otherwise dealing in transactions in, or in connection with, a contract for the purchase or sale of a commodity for future delivery when: (a) such transactions were not conducted on or subject to the rules of a board of trade which was designated or registered by the CFTC as a contract market or derivatives transaction execution facility for such commodity, and (b) such contracts were not executed or consummated by or through such contract market, in violation of Section 4(a) of the Act, 7 U.S.C. § 6(a) (2001).

During the relevant period, Yampolsky, as an owner and operator of WSL, directly or indirectly controlled WSL and did not act in good faith or knowingly induced, directly or indirectly, WSL's acts constituting the violations of Section 4(a) of the Act, 7 U.S.C. § 6(a) (2001). Thus, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2001), Yampolsky is liable for WSL's violations of Section 4(a) of the Act, 7 U.S.C. § 6(a) (2001) to the same extent as WSL.

**4. 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 Yampolsky'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 because Yampolsky's violations of the Act were intentional and directly affected the numerous victims of this fraud.

## **II. ORDER FOR RELIEF**

### **A. Permanent Injunction**

#### **IT IS THEREFORE ORDERED THAT:**

1. Yampolsky is permanently restrained, enjoined and prohibited from directly or indirectly:

A. Cheating or defrauding or attempting to cheat or defraud other persons, or willfully making or causing to be made to another person any false report or statement thereof, or willfully entering or causing to be entered for another person any false record thereof, or willfully deceiving or attempting to deceive another 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 another person, in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery, made, or to be made, for or on behalf of any other person if such contract for future delivery is or may be used for:

- (1) hedging any transaction in interstate commerce in a commodity or the products or byproducts thereof;
- (2) determining the price basis of any transaction in interstate commerce in such commodity; or
- (3) delivering any commodity sold, shipped, or received in interstate commerce for the fulfillment thereof

in violation of Section 4b(a)(2) of the Act, 7 U.S.C. § 6b(a)(2) (2002), and Section 1.1(b) of the Regulations, 17 C.F.R. §1.1(b) (2001); and

B. Offering to enter into, entering into, executing, confirming the execution of, or conducting any office or business anywhere in the United States, its territories or possessions for the purpose of soliciting, accepting any order for, or otherwise dealing in, any transaction in, or connection with, a contract for the purchase or sale of a commodity for future delivery in violation of Section 4(a) of the Act, 7 U.S.C. § 6(a)(2002).

2. Yampolsky 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);
- 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) (2004), 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) (2004);
- E. Entering into any commodity interest transactions for his own personal account, for any account in which he has a direct or indirect interest and/or having any commodity interests traded on his behalf; and/or
- F. Engaging in any business activities related to commodity interest trading.

3. Yampolsky is further permanently restrained, enjoined and prohibited from filing a petition in bankruptcy without providing the Commission with prompt notice by Certified Mail of such filing, as required by Part II.D of this Order.

4. The injunctive provisions of this Order shall be binding upon Yampolsky, upon any person insofar as he or she is acting in the capacity of officer, agent, servant or employee of Yampolsky, and upon any person who receives actual notice of this Order, by personal service,

email or facsimile, insofar as he or she is acting in active concert or participation with Yampolsky.

**B. Civil Monetary Penalty**

**IT IS FURTHER ORDERED** that as of the date of entry of this Order, Yampolsky shall pay a civil monetary penalty in the amount of \$1,875,081, consisting of triple his monetary gain of \$625,027, plus post-judgment interest. 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.

Yampolsky shall pay this penalty 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, Yampolsky shall make the payment payable to the U.S. Commodity Futures Trading Commission and send to the following address:

U.S. Commodity Futures Trading Commission  
Division of Enforcement  
Attention: Marie Bateman – AMZ-300  
DOT/FAA/MMAC  
6500 South MacArthur Boulevard  
Oklahoma City, OK 73169  
Telephone: 405-954-6569

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

Yampolsky shall simultaneously transmit copies of the cover letter and the form of payment to (a) the Director, Division of Enforcement, U.S. Commodity Futures Trading Commission, at Three Lafayette Centre, 1155 21<sup>st</sup> Street, NW, Washington, D.C. 20581, (b)

Chief, Office of Cooperative Enforcement, Division of Enforcement, at the same address, and (c) Regional Counsel, U.S. Commodity Futures Trading Commission, Eastern Regional Office, at 140 Broadway, 19<sup>th</sup> Floor, New York, NY 10005.

Any acceptance by the Commission of partial payment of Yampolsky's civil monetary penalty obligation shall not be deemed a waiver of Yampolsky's requirement to make further payments pursuant to this Order, or a waiver of the Commission's right to seek to compel payment of any remaining balance.

**C. Restitution and Disgorgement**

**IT IS FURTHER ORDERED** that Yampolsky's violations of the Act and Commission Regulations merit the award of significant restitution and disgorgement. However, the Court recognizes that Yampolsky is already subject to a \$6,800,951 criminal judgment restitution obligation entered in *U.S. v. Ross, et al.*, S.D.N.Y. Docket No. 03 Cr. 01306-02 (DLC) for the misconduct at issue in this civil action. Because the criminal court imposed restitution to Yampolsky's defrauded customers, additional restitution is not ordered in this matter. Further, because Yampolsky's disgorgement obligation coincides with his criminal judgment restitution obligation, disgorgement is not ordered in this matter.

**D. Prohibition on Transfer of Funds**

**IT IS FURTHER ORDERED** that Yampolsky 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.

**E. 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, 19<sup>th</sup> Floor  
   New York, New York 10005  
   Phone: (646) 746-9700  
   Fax: (646) 746-9740

All such notices to the Commission shall reference the name and docket number of this proceeding.

**F. Cooperation**

Yampolsky shall cooperate fully with the Commission, the Receiver, and/or any government agency seeking to enforce the restitution and civil monetary provisions of this Order by providing any requested information relating to his financial status including, but not limited to, income and earnings, assets, financial statements, asset transfers, and tax returns.

**G. Partial Lifting of Freeze**

Any order entered in this proceeding freezing Yampolsky's assets or prohibiting the Yampolsky's transfer of funds or other property shall remain in full force and effect, except that Yampolsky shall be permitted to use such assets, funds, or property to satisfy his civil monetary penalty obligation as set forth in Part II.B, above.

**H. Accounting**

Yampolsky shall provide an accounting to the Court within thirty (30) days hereof of all of Yampolsky's assets and liabilities, together with all funds he received from and paid to clients and other persons in connection with commodity interest transactions or purported commodity interest transactions, and all disbursements for any purpose whatsoever of funds received from

commodity interest transactions, including salaries, commissions, interest, fees, loans and other disbursements of money and property of any kind, from, but not limited to, January 1999 through and including the date of such accounting.

**I. Jurisdiction Retained**

**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 8<sup>th</sup> day of February, 2008.

FEB 03 2008

  
UNITED STATES DISTRICT JUDGE  
JUDGE GEORGE B. DONOHOE

Respectfully submitted,

U.S. COMMODITY FUTURES TRADING  
COMMISSION

Stephen J. Obie  
Regional Counsel

By: *S. Marhamati*

Sheila L. Marhamati [SM-8016]

Senior Trial Attorney

Steven Ringer [SR- 9491]

Chief Trial Attorney

U.S. COMMODITY FUTURES TRADING  
COMMISSION

140 Broadway, 19<sup>th</sup> Floor

New York, New York 10005

(646) 746-9743

(646) 746-9940 (facsimile)

smarhamati@cftc.gov