

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

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| Commodity Futures Trading Commission, |) | |
| |) | |
| Plaintiff, |) | |
| v. |) | |
| |) | |
| Dro Kholamian; |) | |
| |) | Civil Action No: 1:18-cv-07907 |
| and |) | Judge Sara L. Ellis |
| |) | |
| Blue Star Trading, LLC |) | |
| |) | |
| Defendants. |) | |
| |) | |

**ORDER GRANTING PLAINTIFF’S MOTION FOR AN EX PARTE STATUTORY
RESTRAINING ORDER**

Plaintiff, the Commodity Futures Trading Commission (“Commission”), has filed a Complaint for Permanent Injunction and Other Relief and moved, pursuant to Section 6c(a) of the Commodity Exchange Act (“Act”), 7 U.S.C. § 13a-1(a) (2012), and in accordance with Federal Rule of Civil Procedure (“Fed. R. Civ. P.”) 65, for an ex parte statutory restraining order freezing assets and allowing inspection of records. The Court has considered the pleadings, declarations, exhibits, and memorandum filed in support of the Commission’s motion, and finds that:

1. This Court has jurisdiction over this action under 28 U.S.C. § 1331 (2012) (federal question jurisdiction) and 28 U.S.C. § 1345 (2012) (district courts have original jurisdiction over civil actions commenced by the United States or by any agency expressly

authorized to sue by Act of Congress). 7 U.S.C. § 13a-1(a) 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 that violates any provision of the Act or any rule, regulation, or order promulgated thereunder.

2. Venue lies properly within this District pursuant to 7 U.S.C. § 13a-1(e).

3. The Commission has made a proper prima facie showing that since at least January 2013 and continuing through the present, Dro Kholamian (“Kholamian”), a managing partner, and an unregistered associated person (“AP”), of Blue Star Trading, LLC (“Blue Star”), an unregistered commodity trading advisor (“CTA”) (collectively, “Defendants”), have engaged in a scheme whereby they fraudulently have solicited and accepted at least \$775,000 from at least three individuals for the purpose of trading both leveraged off-exchange foreign currency contracts (“forex”) and futures contracts on or subject to the rules of a designated contract market in individual account to be managed by the Defendants.

4. The Commission has made a further prima facie showing that Kholamian, acting as an employee and/or agent of Blue Star, willfully, or with reckless disregard for the truth thereof, has made misrepresentations of material fact, including but not limited to representing: (1) that an investment sum of \$25,000 would realize a return of 10-20% within one year; (2) that investment funds could be withdrawn by a client at any time without any penalty; and (3) that existing investments were “doing well” and were on target to make a 20% return after one year. In addition, Kholamian has failed to disclose that he had not used their funds to trade forex and futures contracts, but, instead, had misappropriated client funds for his own purposes.

5. The Commission has made a further prima facie showing that the Defendants have failed to trade their clients’ funds as promised and, instead, simply stole most of their

money. During the relevant time, Kholamian has commingled client funds with his personal and business funds in multiple bank accounts. Kholamian has caused client funds to be deposited into Kholamian's personal account, and subsequently has used at least a portion of those funds to pay his business and personal expenses and also to pay another client in a manner akin to a Ponzi scheme.

6. Therefore, there is good cause to believe that Defendant Kholamian, and Defendant Blue Star, by and through its agents, principals and control persons, including, but not limited to Kholamian, have engaged in, are engaging in, or are about to engage in acts and practices that violate the following sections of the Act and Commission Regulations (“Regulations”):

- a. Section 4b(a)(1)(A) and (C) of the Act, 7 U.S.C. § 6b(a)(1)(A), (C) (2012), which prohibits fraud in connection with commodity futures transactions;
- b. Section 4b(a)(2)(A) and (C) of the Act, 7 U.S.C. § 6b(a)(2)(A), (C) (2012) and Regulation 5.2(b)(1) and (3), 17 C.F.R. § 5.2(b)(1), (3) (2018), which prohibits fraud in connection with forex transactions;
- c. Section 4o(1)(A) and (B) of the Act, 7 U.S.C. § 6o(A), (B) (2012), which prohibits fraud by a CTA or by an AP of a CTA;
- d. Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2012), which prohibits the exercise of discretionary trading authority over the accounts of retail commodity futures clients, without the benefit of registration as a CTA;
- e. Section 2(c)(2)(C)(iii)(I)(bb) of the Act, 7 U.S.C. § 2(c)(2)(C)(iii)(I)(bb) (2012), and Regulation 5.3(a)(3)(i), 17 C.F.R. § 5.3(a)(3)(i) (2018), which prohibit the exercise of discretionary trading authority over the accounts of retail forex clients

who are outside of the definition of Eligible Contract Participants (“ECPs”), without the benefit of registration as a CTA;

- f. Section 4k(3), 7 U.S.C. 6k(3) (2012), which prohibits the solicitation of client’s or prospective client’s discretionary trading accounts, without the benefit of registration as an AP; and
- g. Section 2(c)(2)(C)(iii)(I)(aa) of the Act, 7 U.S.C. § 2(c)(2)(C)(iii)(I)(aa) (2012), and Regulation 5.3(a)(3)(ii), 17 C.F.R. § 5.3(a)(3)(ii) (2018), which prohibit the solicitation of a client’s or a prospective client’s discretionary account in connection with retail forex transactions, without benefit of registration as an AP of a CTA.

7. There is also good cause to believe that immediate and irreparable damage to the Court’s ability to grant effective final relief for clients in the form of monetary redress may occur from the withdrawal, transfer, removal, dissipation or other disposition of funds, assets or other property (“assets”), and/or the destruction, alternation or disposition of books and records and other documents (“records”) by Defendants unless Defendants are immediately restrained and enjoined by Order of the Court.

8. Therefore, there is good cause for the Court to freeze assets owned controlled, managed or held by Defendants or in which they have any beneficial interest.

9. There is also good cause for the Court to prohibit Defendants from destroying, altering or disposing of records, and/or denying representatives of the Commission access to inspect records, when and as requested, to ensure that Commission representatives have immediate and complete access to those records.

10. In summary, this is a proper case for granting a restraining order ex parte freezing assets and allowing inspection of records because the Commission is likely to succeed on the merits. Moreover, there is also a reasonable likelihood that Defendants will transfer or dissipate assets or destroy or alter records. Therefore, the Court orders the following.

DEFINITIONS

For the purpose of this Order, the following definitions apply:

11. The term “assets” encompasses any legal or equitable interest in, right to, or claim to, any real or personal property, whether individually or jointly, directly or indirectly controlled, and wherever located, including but not limited to: chattels, goods, instruments, equipment, fixtures, general intangibles, effects, leaseholds, mail or other deliveries, inventory, checks, notes, account (including but not limited to, bank accounts and accounts at other financial institutions), credits, receivables, lines of credit, contracts (including spot, futures, options, or swaps contracts), insurance policies, and all funds, wherever located, whether in the United States or outside the United States.

12. The term “records” encompasses “documents” and “electronically stored information” as those terms are used in Fed. R. Civ. P. 34(a), and include, but are not limited to, all writings, drawings, graphs, charts, photographs, sound recordings, images, and other data and data compilations – stored in any medium from which information can be obtained or translated, if necessary, into reasonable usable form. The term “records” also refers to each and every such item in Defendants’ actual or constructive possession, including but not limited to: (i) all such items within the custody or control of any agents, employers, employees, or partners of the Defendants and (ii) all items which Defendants have a legal or equitable right to obtain from

another person. A draft or non-identical copy is a separate item within the meaning of the term. A record also includes the file and folder tabs associated with each original and copy.

13. “Defendants” refers to Dro Kholamian and Blue Star Trading, LLC.

RELIEF GRANTED

IT IS FURTHER ORDERED THAT:

I. Asset Freeze Order Prohibiting the Withdrawal, Transfer, Removal, Dissipation and Disposal of Assets

14. The Defendants are immediately restrained and enjoined, except as otherwise ordered by this Court, from directly or indirectly: withdrawing, transferring, removing, dissipating, or otherwise disposing of any assets, wherever located, including Defendants’ assets held outside the United States;

15. The assets affected by this Order shall include existing assets, and assets acquired after the effective date of this Order.

II. Maintenance of and Access to All Records Relating to the Business Activities and Business and Personal Finances

16. The Defendants are restrained from directly or indirectly destroying, altering, or disposing of, in any manner, any records that relate or refer to the business activities and business and personal finances of Defendants.

17. Representatives of the Commission shall be immediately allowed to inspect the records relating or referring to the business activities and business and personal finances of the Defendants, including, but not limited to, both hard-copy documents and electronically stored information, wherever they may be situated and whether they are in the possession of the Defendants or others. To ensure preservation and facilitate meaningful inspection and review of records, Defendants shall allow representatives of the Commission to make copies of said documents and electronically stored information, and if on-site copying of documents and

electronically stored information is not practicable, representatives may make such copies off-site. After any such off-site copying, Plaintiff shall promptly return the original documents and devices upon which electronic information is stored.

18. To further facilitate meaningful inspection and review, Defendant Kholamian shall, absent a valid assertion of his rights against self-incrimination under the Fifth Amendment, promptly provide Commission staff with:

- a. the location of all records relating or referring to the business activities and business and personal finances of the Defendants;
- b. all identification numbers and other identifying information for websites, cloud storage services, email and smartphone accounts, and all accounts at any bank, financial institution or brokerage firm (including any introducing broker or futures commission merchant) owned, controlled or operated by Defendants or to which Defendants have access; and
- c. all passwords to, and the location, make and model of, all computers and/or mobile electronic devices owned and/or used by Defendants in connection with their business activities and business and personal finances.

19. When inspecting records that are subject to this Order, including those contained on computer(s) and/or other electronic devices, the Commission should undertake reasonable measures to prevent the review of the Defendants' privileged communications by the Commission's attorneys and other staff who are part of the litigation team in this matter. Moreover, Defendants or their counsel shall promptly contact Plaintiff's counsel to assert any claims of privilege relating to the contents of any records that are subject to this Order and promptly cooperate with Plaintiff's counsel to develop reasonable protocols to isolate and

prevent disclosures of claimed privileged materials to the Commission's attorneys and other staff who are part of the litigation team in this matter. However, nothing herein shall excuse Defendants from full and immediate compliance with this Court's Order permitting Plaintiff to inspect the books and records which relate to Defendants' business activities and their business and personal finances.

III. Notice to Financial Institutions and Others That Hold or Control Assets or Records

20. To ensure the effectiveness of the asset freeze and pending further Order of this Court, any financial or brokerage institution, business entity, or person that receives actual notice of this Order and holds, controls, or maintains custody of any account or asset owned by, held for the benefit of, or otherwise under the control of any Defendants, shall not, in active concert or participation with Defendants, permit Defendants or other persons to withdraw, transfer, remove, dissipate, or otherwise dispose of Defendants' funds, assets, or other property, including, but not limited to, assets or property held in accounts or safety deposit boxes, except as directed by further order of the Court.

21. Any financial or brokerage institution, business entity, or person that receives notice of this Order by personal service or otherwise shall not, in active concert or participation with any Defendant, directly or indirectly destroy, alter or dispose of, in any manner, any records relating to the business activities and business and personal finances of any Defendant.

22. Furthermore, any financial or brokerage institution, business entity, or person that receives actual notice of this Order and holds, controls, or maintains custody of any account or asset titled in the name of, held for the benefit of, or otherwise under the control of any Defendants, or has held, controlled, or maintained custody of any such account or asset of any Defendants at any time since January 1, 2013, shall not, in active concert or participation with Defendants, deny a request by the Commission to inspect all records pertaining to every account

or asset owned, controlled, managed or held by Defendants, or managed or held on behalf, or for the benefit, of Defendants, including, but not limited to, originals or copies of account applications, account statements, signature cards, checks, drafts, deposit tickets, transfers to and from the accounts, all other debit and credit instruments or slips, currency transaction reports, 1099 forms, and safe deposit box logs. As an alternative to allowing inspection of records, a financial or brokerage institution, business entity or other person may provide copies of records requested by the Commission.

IV. Persons Bound by this Order

23. This Order is binding on any person who receives actual notice of this Order by personal service or otherwise and is acting in the capacity of an officer, agent, servant, employee, or attorney of the Defendants, or is in active concert or participation with the Defendants.

V. Bond Not Required of Plaintiff

24. As Plaintiff Commission has made a proper showing under Section 6c(b) of the Act, 7 U.S.C. § 13a-1(b) (2012), it is not required to post any bond in connection with this Order.

VI. Service of Order and Assistance of United States Marshals Service and/or Other Law Enforcement Personnel

25. Copies of this Order may be served by any means, including via email or facsimile transmission, upon any financial institution or other entity or person that may have possession, custody, or control of any records or assets of any Defendant, or that may be subject to any provision of this Order.

26. Heather Dasso, Staci Pan, Susan B. Padove, Elizabeth M. Streit, and representatives of the United States Marshal Service are specially appointed by the Court to effect service.

27. The United States Marshal's Service and/or Illinois or local law enforcement officers are authorized to: a) accompany and assist the Commission representatives in the service and execution of the Summons, Complaint and this Order on the Defendants, and b) to help maintain lawful order while Commission representatives inspect records as provided in this Order.

VII. Service on the Commission

28. The Defendants shall comply with all electronic filing rules and requirements of the U.S. District Court of the Northern District of Illinois, Eastern Division and shall serve all pleadings, correspondence, notices required by this Order, and other materials on the Commission by delivering a copy to Susan B. Padove, Senior Trial Attorney, Division of Enforcement, Central Regional office, 525 W. Monroe Street, Suite 1100, Chicago, Illinois 60661, by electronic filing, e-mail, personal delivery or courier service (such as Federal Express or United Parcel Service) and not by regular mail due to potential delay resulting from heightened security and decontamination procedures applicable to the Commission's regular mail.

VIII. Further Proceedings

29. Plaintiff's Motion for a Preliminary Injunction is set for hearing on the 14th day of December, 2018, at 2:00 p. m., before the Honorable Judge Sara L. Ellis, Courtroom 1403 at the United States Courthouse for the Northern District of Illinois, Eastern Division at 219 S. Dearborn Street, Chicago, Illinois. Should any party wish to file a memorandum of law or other papers concerning the issuance of a preliminary injunction against the Defendants, such materials shall be filed, served and received by all parties at least two (2) days before the hearing ordered above.

IX. Force and Effect

30. This Order shall remain in full force and effect until December 14, 2018, unless extended further by order of this Court pursuant to Fed. R. Civ. P. 65(b)(2), and this Court retains jurisdiction of this matter for all purposes.

IT IS SO ORDERED, at Chicago, Illinois on this 30th day of November, 2018 at 12:30 pm.



U.S. DISTRICT JUDGE SARA L. ELLIS