

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 16-60297-CIV-COHN/SELTZER

U.S. COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

vs.

VISION FINANCIAL PARTNERS, LLC, et al.,

Defendants,

and

PROMETHEUS ENTERPRISES, INC., et al.,

Relief Defendants.

**FINAL DEFAULT JUDGMENT AGAINST RELIEF DEFENDANT COUCARIN
HOLDINGS LTD.**

THIS CAUSE is before the Court upon Plaintiff's Motion for Entry of Default Judgment, Disgorgement and Equitable Relief Against Relief Defendant Coucarin Holdings Ltd. [DE 135] ("Motion"). The Court has reviewed the Motion, the record in this case, notes the lack of response to the Motion by Relief Defendant Coucarin Holdings Ltd.'s ("Coucarin"), and is otherwise advised in the premises.

On February 16, 2016, Plaintiff U.S. Commodity Futures Trading Commission ("Commission" or "CFTC") filed a Complaint against Vision Financial Partners, LLC ("Vision") and Neil Pecker ("Pecker") (collectively "Defendants"), seeking injunctive and other equitable relief, as well as the imposition of civil penalties, for alleged violations of the Commodity Exchange Act ("Act"), 7 U.S.C. §§ 1 *et seq.* (2012) and Commission

Regulations (“Regulations”), 17 C.F.R. §§ 1.1 *et seq.* (2016). [DE 1.]

In addition, the Complaint claimed that Prometheus Enterprises, Inc. (“Prometheus”), Westward International Ltd. (“Westward”), Coucarin, and GDCM Trust (“GDCM”) (collectively, “Relief Defendants”), who were not charged with violations of the Act or Regulations, received funds and assets from Defendants, to which Relief Defendants held no legitimate interest or entitlement and which were derived from Defendants’ fraudulent and violative acts.

On May 9, 2016, Relief Defendant Coucarin was properly served with the summons and Complaint pursuant to Rule 4(h) of the Federal Rules of Civil Procedure by personal service on Neil Pecker, the managing officer of Coucarin. [DE 53.] In addition, on June 14, 2016, a copy of the summons and Complaint was sent via UPS mail to Coucarin. [DE 75.]

On February 19, 2016, the Court entered a Statutory Injunction against Defendants and Relief Defendants that, among other things, authorized the freezing of assets held in the name of or under the control or management of the Defendants and/or Relief Defendants. [DE 9.]

Coucarin has failed to appear or answer the Complaint within the time permitted by Fed. R. Civ. P. 12(a)(1). Accordingly, the Commission filed a motion for entry of a clerk’s default against Coucarin [DE 75], and on July 25, 2016, the Clerk of Court entered a default against Coucarin. [DE 78.]

The Commission has moved this Court to grant final judgment by default against Coucarin and order disgorgement of ill-gotten funds to which it is not entitled.

Accordingly, it is hereby **ORDERED AND ADJUDGED** that the Plaintiff’s Motion

for Final Judgment for Default for Disgorgement and Equitable Relief against Coucarin [DE 135] is **GRANTED**. Thus, the Court enters finding of facts, conclusions of law, and a Final Default Judgment (“Judgment”) pursuant to Section 6c and 6d of the Act, 7 U.S.C. § 13a-1 (2012), as set forth herein.

I. FINDINGS OF FACTS AND CONCLUSIONS OF LAW

A. Findings of Fact

1. Plaintiff U.S. Commodity Futures Trading Commission is an independent federal regulatory agency charged by Congress with the administration and enforcement of the Act, 7 U.S.C. §§ 1-26 (2012), and the Regulations promulgated thereunder, 17 C.F.R. §§ 1.1-190.10 (2016).

2. Defendant Vision Financial Partners, LLC is a Florida limited liability company that Pecker formed in April 2012. Its principal place of business is in Deerfield Beach, Florida. Vision has never been registered with the Commission as a CTA or in any capacity.

3. Defendant Neil Pecker is an individual with a last-known address in Longwood, Florida. Pecker is the sole owner, manager, operator, and registered agent of Vision, and is the owner, director and president of LMC Asset Management, Inc. (“LMC”). Pecker initially registered with the Commission and was approved by the National Futures Association (“NFA”) for Associate Member and Associated Person (“AP”) status with Securities America Inc., Rothchild Financial Group Inc., and Brookstreet Securities Corporation. Pecker held these registrations and membership statuses between October 2006 and April 2012. Pecker’s most recent application to register as a Principal, AP, and NFA Associate Member of Blackrock Trading Advisors,

Inc., is currently pending with the Commission. Pecker has not registered with the Commission to be an AP with Vision.

4. Relief Defendant Prometheus Enterprises, Incorporated is a Florida corporation with its principal place of business in Deerfield Beach, Florida. Pecker incorporated Prometheus in January 2014. Pecker is the sole officer and director of Prometheus. Prometheus has never been registered with the Commission in any capacity.

5. Relief Defendant GDCM Trust is a trust located in Las Vegas, Nevada. Upon information and belief, Pecker's brother is the trustee of the GDCM. Pecker's brother's last-known address is in Hallandale Beach, Florida. Neither GDCM nor Pecker's brother have ever been registered with the Commission in any capacity.

6. Relief Defendant Westward International Limited is a British Virgin Islands company with its principal place of business in Deerfield Beach, Florida. Pecker formed Westward on or about February 19, 2013. Pecker is the sole director, signatory, beneficial owner, and officer of Westward. Westward has never been registered with the Commission in any capacity.

7. Relief Defendant Coucarin Holdings, Limited is a Gibraltar company with its principal place of business in Deerfield Beach, Florida. Pecker formed Coucarin on or about May 31, 2013. Pecker is the sole director, shareholder, and beneficial owner of Coucarin. Coucarin has never been registered with the Commission in any capacity.

8. From at least October 12, 2012 through at least the filing of the Complaint ("Relevant Period"), Defendants solicited clients to send funds to Vision in order to trade off-exchange binary options on electronic platforms operated by Banc de Binary Ltd.

("Banc de Binary"), SpotOption, and Binex Markets ("Binex") (herein collectively referred to as "off-shore trading firms"). Binary options are options with discontinuous payoffs, either paying nothing or a considerable amount depending on the satisfaction of some condition. The binary options offered by these platforms permitted clients to predict whether a particular asset, such as the price of oil, gold, or silver, would go up or down on a certain date and time.

9. Banc de Binary, SpotOption, and Binex are located in Israel, Cyprus and the United Kingdom, respectively. SpotOption offers an electronic platform that offers for purchase off-exchange binary options for contracts in oil, gold, silver, and other commodities. SpotOption offers a "white label" program, which provides its brands to run off of SpotOption's trading platform. According to its website, SpotOption has more than 200 "white label" brands, including Banc de Binary. Binex is a binary options firm that offers similar trading options as Banc de Binary and SpotOption.

10. Binary options fall within the definition of "options" that are subject to the Commission's authority pursuant to the Act and Regulations. Moreover, options are a type of swap regulated by the CFTC.

11. Prior to creating Vision, Pecker was the sole director, president, and registered agent of LMC. LMC is a Florida company that Pecker incorporated on or about October 18, 2005. On July 18, 2012, the Commission entered an Order Instituting Proceedings Pursuant to Sections 6(c) and 6(d) of the Commodity Exchange Act, as Amended, Making Findings and Imposing Remedial Sanctions ("LMC Consent Order") against LMC.

12. From at least October 18, 2010 to at least October 21, 2011, LMC

solicited and accepted orders from clients who were not Eligible Contract Participants (“ECPs”)¹ to engage in retail, leveraged foreign currency (“forex”) transactions without being registered with the Commission. The LMC Consent Order held that LMC violated provisions of the Act, made findings of fact, and imposed a civil monetary penalty (“CMP”) in the amount of \$140,000.

13. Pecker, on behalf of LMC, failed to pay the full amount of the CMP. Instead, subsequent to the date of the LMC Consent Order, Pecker transferred approximately \$157,600 of LMC’s funds to Vision’s bank accounts. Pecker incorporated Vision in April 2012, during the Commission’s investigation into the activities of LMC.

14. Beginning at least in October 2012, rather than solicit members of the public to trade forex, Pecker and his new company, Vision, began soliciting existing LMC clients and prospective Vision clients by telephone and email to trade off-exchange binary options. Defendants opened accounts for former LMC clients and new Vision clients to trade binary options with the off-shore trading firms.

15. The solicited clients were not ECPs because the aggregate amount that each of these clients respectively invested on a discretionary basis was less than \$10 million.

16. Defendants made various misrepresentations to clients regarding their likelihood of making money if they traded binary options through Defendants. Defendants also misrepresented that Pecker was very successful in trading derivatives. Defendants reinforced the misrepresentation that they were highly successful by guaranteeing a return on prospective clients’ investments.

¹ As defined in 7 U.S.C. § 1a(18)(xi) (2012).

17. Defendants made a wide assortment of misrepresentations to prospective clients regarding their registration status and trading experience. Defendants told some clients that Pecker was a licensed broker who was registered with the Securities and Exchange Commission and CFTC, and that Pecker had been trading binary options for 12 years.

18. In addition to their misleading and false representations, Defendants failed to disclose material facts to prospective clients. For example, Defendants failed to inform multiple clients that trading would occur in foreign or off-shore firms and that their funds would be held overseas.

19. Defendants failed to tell prospective clients that they would be signing up for the off-shore trading firms' "bonus" programs, where the trading firm claimed it would provide a matching deposit amounting to a specified percentage of client funds, providing the client "extra trading leverage." The terms and conditions for this "deposit match" provided that clients were prohibited from withdrawing funds from their trading account, including their own funds initially invested, unless and until the client traded at least 20 times the value of his or her trading account.

20. Defendants failed to disclose to clients that the off-shore trading firms were not registered with the Commission in any capacity and that the binary options offered on the off- shore trading firms were impermissible off-exchange options.

21. Defendants sent prospective clients documents to open accounts with the off-shore trading firms. Defendants' misrepresentations and omissions, as described above, prompted clients to sign Limited Power of Authority ("LPOAs"), thereby allowing Defendants the discretionary authority to trade their binary options accounts with the

off-shore trading firms.

22. Defendants directed clients to send their funds directly to bank accounts in the name of Vision via wire transfer or check. Alternatively, the client account application provided the option to send funds directly to the off-shore trading firm via credit or debit card transfer.

23. Clients were given the ability to check their accounts online with the off-shore trading firms, but found the account statements difficult to understand or had difficulties accessing their accounts online.

24. Defendants knowingly and willfully made multiple material misrepresentations and omissions in their solicitation of existing and prospective clients. In making their investment decisions, existing and prospective clients relied on Defendants' material misrepresentations and omissions including statements regarding Defendants' trading prowess, purported profits earned from that trading, and manner in which clients' funds would be used.

25. As a result of these misrepresentations, and omissions of material facts, at least 120 clients located in the United States and Canada sent approximately \$3 million to trade binary options through Vision. Of the approximately \$3 million in client funds sent to Vision that were intended for trading binary options, Defendants misappropriated approximately \$1,974,900.

26. In addition, during the Relevant Period, Defendants channeled client money through and between Prometheus, GDCM, Coucarin, Westward, the off-shore trading accounts, and Pecker's personal accounts.

27. Despite clients' multiple requests to withdraw or close their trading

accounts during the Relevant Period, Defendants failed to redeem the vast majority of those requests. Of the nearly \$3 million in client funds sent to Vision, only approximately \$214,340 was returned to clients from bank accounts in the name of Vision.

28. Despite receiving almost \$3 million in client funds to trade binary options, Vision only transferred approximately \$639,900 directly to the off-shore trading entities, from which Vision withdrew approximately \$274,564. As such, Vision transferred a net of approximately \$365,336 to off-shore trading accounts.

29. Rather than transferring all of the client funds to the trading accounts, Vision transferred approximately \$2,383,100 directly to domestic and off-shore bank accounts in the names of the Relief Defendants that Pecker controlled: approximately \$1,565,480 of client funds were transferred to Coucarin.

30. Coucarin did not provide any legitimate services to Defendants' clients, nor had any legitimate interest in or entitlement to the client funds. Accordingly, Coucarin received ill-gotten gains from Defendants and must disgorge those funds.

B. Conclusions of Law

1. Jurisdiction and Venue

31. This Court has jurisdiction over this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2012), which provides that whenever it shall appear to the Commission that any 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 promulgated thereunder, the Commission may bring an action in the proper district court of the United States against such person to enjoin such act or practice, or

to enforce compliance with the Act, or any rule, regulation or order thereunder.

32. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2012), because Defendants reside in this jurisdiction and the acts and practices in violation of the Act occurred within this District, among other places.

2. Relief Defendant Coucarin Must Disgorge Ill-Gotten Funds.

33. The Court may grant equitable relief against a relief defendant if it is established that the relief defendant possesses property or profits illegally obtained, and the relief defendant has no legitimate claim to them. See *SEC v. Cavanagh*, 155 F.3d 129, 136 (2d Cir. 1998) (“Federal courts may order equitable relief against a person who is not accused of wrongdoing in a securities enforcement action where that person: (1) has received ill-gotten funds; and (2) does not have a legitimate claim to those funds”); *CFTC v. Kimberlynn Creek Ranch, Inc.*, 276 F.3d 187, 192 n.4 (4th Cir. 2002) (“it is entirely appropriate to allow the Commission to proceed against nominal defendants under the same circumstances in which the SEC could proceed against such defendants”) (citing *SEC v. Coello*, 139 F.3d 674, 676 (9th Cir. 1998)). Coucarin has failed to establish its entitlement to the \$1,565,480 and is therefore required to disgorge that amount.

II. ORDER FOR RELIEF

34. The Commission’s Motion for Final Judgment by Default, Disgorgement and other Equitable Relief against Relief Defendant Coucarin is **GRANTED**. Judgment is entered in favor of Plaintiff and against Coucarin.

A. Disgorgement

35. Coucarin shall disgorge the ill-gotten funds it received in the amount of

\$1,565,480 plus post-judgment interest. Post-judgment interest shall accrue on this Disgorgement Obligation beginning on the date of entry of this Judgment and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Judgment pursuant to 28 U.S.C. § 1961 (2012).

36. Coucarin shall pay its Disgorgement 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 other than by electronic funds transfer, then the payment shall be made payable to the Commodity Futures Trading Commission and sent to the address below:

Commodity Futures Trading Commission
Division of Enforcement
ATTN: Accounts Receivables
DOT/FAA/MMAC/AMZ-341
CFTC/CPSC/SEC
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
(405) 954-7262 office
(405) 954-1620 fax
nikki.gibson@faa.gov

If payment by electronic funds transfer is chosen, Coucarin shall contact Nikki Gibson or her successor at the address above to receive payment instructions and shall fully comply with those instructions. Coucarin shall accompany payment of the Disgorgement Obligation with a cover letter that identifies Coucarin and the name and docket number of this proceeding. Coucarin shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer, Commodities Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

B. Provisions Related to Monetary Sanctions

37. Partial Satisfaction: Acceptance by the Commission of any partial payment of Coucarin's Disgorgement Obligation shall not be deemed a waiver of its obligation to make further payments pursuant to this Judgment, or a waiver of the Commission's right to seek to compel payment of any remaining balance.

38. Asset Freeze: On February 19, 2016, the court entered an asset freeze order prohibiting the transfer, removal, dissipation and disposal of Relief Defendant Coucarin's assets. ("Asset Freeze Order"). The court hereby lifts the Asset Freeze Order.

C. Miscellaneous Provisions

39. Notice: All notices required to be given by any provision in this Judgment shall be sent certified mail, return receipt requested, as follows:

Notice to Commission:

Richard A. Glaser
Deputy Director
U.S. Commodity Futures Trading Commission
Division of Enforcement
1155 21st Street, NW
Washington, DC 20581
Telephone: (202) 418-5000
Facsimile: (202) 418-5531
E-Mail: rglaser@cftc.gov

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

40. Change of Address/Phone: Until such time as Coucarin satisfies in full its Disgorgement Obligation as set forth in this Judgment, Coucarin shall provide written notice to the Commission by certified mail of any change to its telephone number and mailing address within ten (10) calendar days of the change.

41. **Invalidation:** If any provision of this Judgment or if the application of any provision or circumstance is held invalid, then the remainder of this Judgment and the application of the provision to any other person or circumstance shall not be affected by the holding.

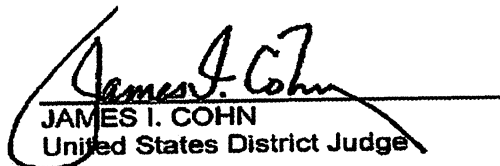
42. **Continuing Jurisdiction of this Court:** This Court shall retain jurisdiction of this action to ensure compliance with this Judgment and for all other purposes related to this action, including any motion by Coucarin to modify or seek relief from the terms of this Judgment.

43. **Equitable Relief Provisions:** The equitable relief provisions of this Judgment shall be binding upon Coucarin, upon any person under its authority or control, and upon any person who receives actual notice of this Judgment, by personal service, e-mail, facsimile or otherwise insofar as he or she is acting in active concert or participation with Coucarin.

44. There being no just reason for delay, the Clerk of the Court is hereby **ORDERED** to enter this *Final Default Judgment Against Relief Defendant Coucarin Holdings Ltd.* forthwith and without further notice.

45. The Clerk shall **CLOSE** this case and **DENY AS MOOT** all pending motions.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, this 23rd day of March, 2017.


JAMES I. COHN
United States District Judge

Copies provided to:
Counsel of record via CM/ECF