

McMahon, C.

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

U.S. COMMODITY FUTURES
TRADING COMMISSION,

Plaintiff,

v.

EJS CAPITAL MANAGMENT,
LLC, ALEX VLADIMIR
EKDESHMAN, and EDWARD J.
SERVIDER,

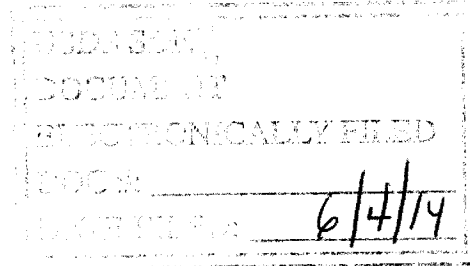
Defendants,

and

ALISA EKDESHMAN,
EXECUTIVE SERVICES OF
FLORIDA, LLC, EXECUTIVE
MANAGEMENT OF MONTANA,
INC., and MICHAEL VILNER,

Relief Defendants.

Civil Action No. 14 CV 3107 (CM)



~~PROPOSED~~ ORDER OF PERMANENT INJUNCTION ON CONTEMPT OF COURT
CLAIM AGAINST ALEX VLADIMIR EKDESHMAN,
PRELIMINARY INJUNCTION ON ALL OTHER CLAIMS
AND OTHER EQUITABLE RELIEF

I. INTRODUCTION

On May 1, 2014, Plaintiff U.S. Commodity Futures Trading Commission (“Commission” or “CFTC”) filed a Complaint against Defendants Edward J. Servider (“Servider”), Alex Vladimir Ekdesman (“Ekdesman”), and EJS Capital Management, LLC (“EJS”) (collectively, “Defendants”) and Relief Defendants Alisa Ekdesman, Executive Services of Florida, LLC (“Executive Services”), Executive Management of Montana, Inc. (“EMI”), and Michael Vilner (“Vilner”) (collectively “Relief Defendants”), seeking injunctive and other equitable relief, as

well as the imposition of civil penalties, for violations of the Commodity Exchange Act, 7 U.S.C. § 1 *et seq.* (the “Act”), and the regulations promulgated thereunder, 17 C.F.R. § 1 *et seq.* (“Commission Regulations”).

Also on May 1, 2014, the Court granted the Commission’s *Ex Parte* Application for Statutory Restraining Order, Expedited Discovery, Order to Show Cause Regarding Preliminary Injunction, and Other Equitable Relief against Defendants and Relief Defendants (the “Statutory Restraining Order”).

On May 12, 2014, at 2:00 p.m. ET, the Court held a hearing on the Commission’s motion by order to show cause for preliminary injunction and other equitable relief (“Show Cause Motion”) which had been served on all Defendants and Relief Defendants prior to the hearing, as well as to determine if a permanent injunction should be issued against Defendant Alex Vladimir Ekdesman for a Contempt of Court claim. At the hearing, counsel for Defendants Servider and Ekdesman agreed not to contest the relief requested in the Show Cause Motion and the Complaint. Counsel for Defendant Ekdesman also agreed not to contest the Contempt of Court claim. Defendant EJS had no counsel at the hearing. Counsel for Relief Defendant Executive Services, EMI and Vilner appeared and participated in the hearing. Relief Defendant Alisa Ekdesman did not appear nor did counsel appear on her behalf at the hearing.

The Court, being fully advised in the premises, finds that there is good cause for the entry of this Order and that there is no just reason for delay, and now being fully advised in the premises, finds that:

II. JURISDICTION AND VENUE

1. This Court has jurisdiction over this action pursuant to Section 6c of the Act, as amended, 7 U.S.C. § 13a-1, 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.

2. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, as amended, 7 U.S.C. § 13a-1(e), because Defendants transacted business in this District and acts and practices in violation of the Act occurred within this District.

3. The Commission has jurisdiction over the forex solicitations and transactions at issue in this case pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, and Section 2(c)(2)(C) of the Act, 7 U.S.C. § 2(c)(2)(C).

III. PERMANENT INJUNCTION

A. Findings of Fact on Contempt of Court Claim

4. Defendant Alex Vladimir Ekdesman was a named defendant in an action titled CFTC v. Paramount Management, LLC and Alex Vladimir Ekdesman, No. 13-Civ. 4436 (CM) (SDNY). In that case, the parties settled the claims and entered into a Consent Order. Ekdesman agreed to the Consent Order on July 8, 2013, and this Court entered the Consent Order on September 9, 2013.

5. In the Consent Order, Ekdesman agreed, and the Court found, that from at least July 16, 2011, Ekdesman, as the agent of Paramount Management, LLC (“Paramount”), fraudulently solicited and misappropriated at least \$1,337,172 from approximately 110 customers in connection with agreements, contracts, or transactions in forex. The Court also found in the Consent Order that Ekdesman cheated, defrauded, and deceived customers in violation of Section 4b(a)(2)(A)-(C) of the Act, 7 U.S.C. § 6b(a)(2)(A)-(C).

6. The Consent Order ordered Ekdeshman and Paramount to pay restitution to customers and a civil monetary penalty. To date, only a portion of the restitution amount, and none of the civil monetary penalty, has been paid.

7. The Consent Order permanently enjoined Ekdeshman from “directly or indirectly cheating or defrauding, or attempting to cheat or defraud, other persons in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery, or swap, 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 of Section 4b(a)(2)(A)-(C) of the Act, 7 U.S.C. § 6b(a)(2)(A)-(C) (2012).”

8. The Consent Order also permanently enjoined Ekdeshman from “directly or indirectly soliciting, receiving or accepting any funds from any person for the purpose of purchasing or selling any commodity futures, options on commodity futures, commodity options, security futures products, forex contracts, and/or swaps.”

9. The Consent Order also permanently enjoined Ekdeshman from “directly or indirectly [a]cting as principal . . . , agent or any other officer or employee of any person . . . required to be registered with the Commission”

10. During the time period that the Consent Order was in effect, Ekdeshman directly or indirectly solicited funds from EJS customers to trade forex, accepted EJS customer funds and acted as a principal, agent or any other officer or employee of EJS which was required to be registered with the Commission. Ekdeshman also: (1) did not trade EJS customer funds as promised; (2) misappropriated EJS customer funds to pay for his personal and business expenses; (3) did not inform prospective EJS customers that the historical trading performance

on the website, www.ejsfinancial.com, was purely fictitious; (4) issued false account statements to EJS customers; and (5) represented on EJS's website a fictitious trading performance.

B. Conclusions of Law on Contempt of Court Claim

11. Ekdesman violated the provisions of the Consent Order by the conduct described above in paragraph 10.

12. Ekdesman's conduct that violated the Consent Order also violated Section 6c(a) of the Act, as amended, 7 U.S.C. § 13a-1(a).

13. Each act constituting a violation of the Consent Order is a separate and distinct violation of Section 6c(a) of the Act, 7 U.S.C. § 13a-1(a).

14. The Commission has made a proper showing demonstrating by clear and convincing evidence, and Defendant Ekdesman has not contested, that Defendant Ekdesman has violated the provisions of this Court's September 9, 2013 Consent Order prohibiting him from engaging in this type of conduct. By this conduct, Defendant Ekdesman has engaged or is engaging in conduct in violation of the Act as set forth in the Complaint.

15. A permanent injunction and other equitable relief are warranted in light of the allegations set forth in the complaint against the Defendant Ekdesman, all of the papers filed by the Commission in support of the Complaint, the statements in open Court by Defendant Ekdesman's counsel that he does not contest the allegations in the Complaint on the Contempt of Court claim and the reasonable likelihood of future violations by Defendant Ekdesman.

IT IS HEREBY ORDERED THAT:

16. Defendant Ekdesman is hereby permanently restrained, enjoined, and prohibited, from directly and indirectly engaging in conduct that violates the Consent Order and conduct which violates Section 6c(a) of the Act, as amended, 7 U.S.C. § 13a-1(a). The penalties

for Defendant Ekdeshman's violation of the Consent Order shall be determined by this Court after an opportunity is provided to the Parties to make appropriate submissions and/or arguments relevant to this issue.

IV. PRELIMINARY INJUNCTION

17. The CFTC has made a prima facie showing that Defendants have violated the Commodity Exchange Act and Commission Regulations and there is a likelihood of their future violations.

18. There is good cause to believe that Defendants have engaged in, are engaging in, or are about to engage in fraud and other conduct in violation of Sections 4b(a)(2)(A)-(C) of the Act, 7 U.S.C. §§ 6b(a)(2)(A)-(C); Section 4m(1) of the Act, 7 U.S.C. § 6m(1); Section 4o(1) of the Act, 7 U.S.C. § 6o(1); Commission Regulation 5.3(a)(3), 17 C.F.R. § 5.3(a)(3); and Commission Regulation 5.2(b), 17 C.F.R. § 5.2(b).

19. Absent the entry of this preliminary injunction, Defendants and Relief Defendants are likely to dissipate or transfer assets and destroy business records,

20. This is a proper case for granting a preliminary injunction to preserve the status quo, protect public customers from loss and damage, and enable the Commission to fulfill its statutory duties.

21. The Commission has made a proper showing for a preliminary injunction pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2006) as to all Defendants and Relief Defendants.

22. A preliminary injunction and other equitable relief are therefore warranted.

23. Until further order of this Court, Defendants are hereby preliminarily restrained, enjoined, and prohibited, from directly or indirectly:

- A. Engaging in conduct in violation of Sections 4b(a)(2)(A)-(C) of the Act, 7 U.S.C. §§ 6b(a)(2)(A)-(C); Section 4m(1) of the Act, 7 U.S.C. § 6m(1); Section 4o(1) of the Act, 7 U.S.C. § 6o(1); Commission Regulation 5.3(a)(3), 17 C.F.R. § 5.3(a)(3); and Commission Regulation 5.2(b), 17 C.F.R. § 5.2(b);
- B. Cheating or defrauding or attempting to cheat or defraud any other person, or making or causing to be made any false report or statement thereof or causing to be entered for any person any false record thereof, or deceiving or attempting to deceive any other person by any means whatsoever, in or in connection with any order to make, or the making of, any contract of sale of any commodity 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 in violation of Section 4b(a)(2)(A)-(C) of the Act, 7 U.S.C. § 6b(a)(2)(A)-(C);
- C. Cheating or defrauding, and willfully deceiving, or attempting to deceive, customers by, among other things (1) not trading their funds as promised; (2) misappropriating customer funds to pay for personal and business expenses; (3) not informing prospective customers that the historical trading performance on the website, www.ejsfinancial.com, is purely fictitious; (4) issuing false account statements to customers; and (5) representing on their website a fictitious trading performance in violation of Regulation 5.2(b), 17 C.F.R. § 5.2(b);
- D. Making use of the mails or any means or instrumentality of interstate commerce in connection with their business as a CTA, as defined in Section 1a(12) of the Act, 7 U.S.C. § 1a(12), and Commission Regulation 1.3(bb), 17 C.F.R. § 1.3(bb),

while failing to register with the Commission as a CTA, in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1).

- E. Exercising discretionary trading authority or obtaining written authorization to exercise discretionary trading authority over customer accounts of customers who were not ECPs in connection with retail forex transactions while failing to register as a CTA in violation Regulation 5.3(a)(3), 17 C.F.R. § 5.3(a)(3);
- F. Employing any device, scheme, or artifice to defraud any client or participant or prospective client or participant, or engaging in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or participant or prospective client or participant by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly, while acting as a CTA or an associated person of a CTA, as defined in Section 1a(12) of the Act, 7 U.S.C. § 1a(12), and Commission Regulation 1.3(bb), 17 C.F.R. § 1.3(bb), in violation of Section 4o(1) of the Act, 7 U.S.C. § 6o(1); and

24. Until further order of this Court, Defendants are hereby preliminarily restrained, enjoined, and prohibited, from directly or indirectly engaging 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 (as that term is defined in Section 1a(29) of the Act, 7 U.S.C. § 1a(29));
- B. Entering into any transactions involving commodity futures, options on commodity futures, commodity options (as that term is defined in Regulation 1.3(hh), 17 C.F.R. § 1.3(hh)) (“commodity options”), swaps (as that term is

defined in Section 1a(47) of the Act, 7 U.S.C. § 1a(47), and as further defined by Commission Regulation 1.3(xxx), 17 C.F.R. § 1.3(xxx)), security futures products and/or foreign currency (as described in Sections 2(c)(2)(B) and 2(c)(2)(C)(i) of the Act, 7 U.S.C. §§ 2(c)(2)(B) and 2(c)(2)(C)(i)) (“forex contracts”) for their own personal account or for any account in which any Defendant has a direct or indirect interest;

- C. Having any commodity futures, options on commodity futures, commodity options, security futures products, swaps, and/or forex contracts traded on their behalf;
- D. Controlling or directing the trading for or on behalf of any other person or entity, whether by power of attorney or otherwise, in any account involving commodity futures, options on commodity futures, commodity options, swaps, security futures products and/or forex contracts;
- E. Soliciting, receiving, or accepting any funds from any person for the purpose of purchasing or selling any commodity futures, options on commodity futures, commodity options, swaps, security futures products and/or forex contracts;
- F. 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 Commission Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9); and
- G. Acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a)), 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 Commission Regulation 4.14(a)(9), 17 C.F.R.

§ 4.14(a)(9).

25. Until further order of this Court, Defendants are hereby preliminarily restrained, enjoined, and prohibited from directly or indirectly operating the website www.ejsfinancial.com to solicit customers and/or to obtain funds from customers. Defendants are further ordered to close down this website.

26. Pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, no bond need be posted by the Plaintiff Commission, which is an agency of the United States of America.

V. CONTINUATION OF ASSET FREEZE AND OTHER RELIEF

27. The Court's May 1, 2014 Order Granting Plaintiff's Ex Parte Motion for Statutory Restraining Order, Expedited Discovery, Asset Freeze, Order to Show Cause, and Other Equitable Relief ("May 1, 2014 Order") shall remain in full force and effect until further order of the Court.

28. For the avoidance of doubt, the continued applicability of the May 1, 2014 Order includes but is not limited to all other provisions on the asset freeze prohibiting the transfer, removal, dissipation, and disposal of assets (Part I), directives to financial institutions and others (Part II), maintenance of and access to business records (Part III), inspection and copying of books and records (Part V), and expedited discovery (Part VII) until further order of this Court.

29. As to Relief Defendant Alisa Ekdesman, the Commission has shown that there is a reasonable likelihood of success on the merits that she has received ill-gotten gains and does not have a legitimate claim to those funds. Accordingly any assets up until the amount of \$97,000 shall be frozen and/or remain frozen until further order of this Court.

30. As to Relief Defendants Michael Vilner, Executive Services and EMI ("Vilner Relief Defendants"), the Commission has shown that there is a reasonable likelihood of success

on the merits that they have received ill-gotten gains and do not have a legitimate claim to those funds. Paragraphs 17(b) and 21(b) of the May 1, 2014 Order shall be and hereby are modified to provide that assets of the Vilner Relief Defendants, wherever located, shall be frozen and/or remain frozen up to the increased amount of \$555,000 until further order of this Court.

31. It is further ordered that any financial institution, including, but not limited to any future commission merchant, that maintains an account in the name of or under the control of the Defendants or Relief Defendants that is subject to this Order, shall close out or liquidate any existing long or short foreign currency exchange position with an equal and opposite transaction in an orderly fashion as expeditiously as possible.

VI. SERVICE OF ORDER

IT IS FURTHER ORDERED that:

32. Copies of this Order may be served by any means, including electronic mail, or facsimile transmission, upon any financial institution or other entity or person that may have possession, custody, or control of any documents or assets of Defendants and Relief Defendants or that may be subject to any provision of this Order.

VII. DEPOSITIONS

IT IS FURTHER ORDERED that:

33. The limitations and conditions set forth in Federal Rule of Civil Procedure 30(a)(2)(B) regarding subsequent depositions of an individual shall not apply to depositions taken pursuant to this Order. No depositions taken pursuant to this Order shall count toward the ten-deposition limit set forth in Federal Rule of Civil Procedure 30(a)(2)(A).

VIII. SERVICE ON THE COMMISSION

IT IS FURTHER ORDERED that:

34. Defendants and Relief Defendants shall serve all notices and other such materials required by this Order, and other materials on the Commission by delivering a copy to Steven Ringer, Chief Trial Attorney, Division of Enforcement, U.S. Commodity Futures Trading Commission, Eastern Regional Office, 140 Broadway, 19th Floor, New York, New York 10005.

IX. FORCE AND EFFECT OF ORDER

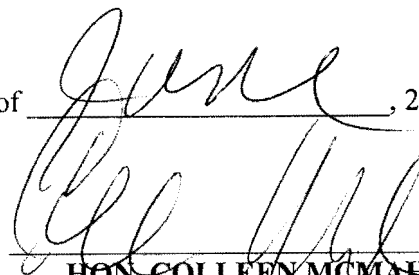
IT IS FURTHER ORDERED that:

35. This Order shall remain in full force and effect until further order of this Court, and this Court retains jurisdiction of this matter for all purposes.

* * *

There being no just reason for delay, the Clerk of Court is hereby directed to enter this *Order of Permanent Injunction against Defendant Alex Vladimir Ekdeshman, Preliminary Injunction of All Other Claims and Other Equitable Relief.*

IT IS SO ORDERED on this 3 day of June, 2014.



HON. COLLEEN MCMAHON
UNITED STATES DISTRICT JUDGE