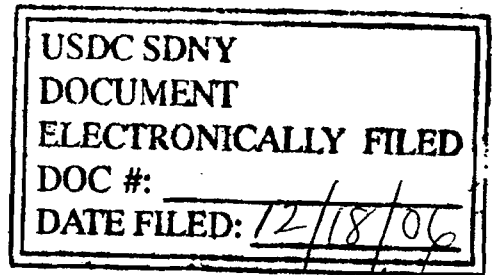


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



U. S. Commodity Futures Trading Commission,

Plaintiff,

v.

Falco & Stevens, Inc.
Vyachelav Nass

Defendants.

06 CIV 1692 (SAS)

**Order for Entry of Judgment by
Default Against Falco & Stevens
Inc. and Vyachelav Nass**

On March 3, 2006 the U.S. Commodity Futures Trading Commission (“Commission”) filed a Complaint charging Defendant Falco & Stevens, Inc. (“F&S”) and Defendant Vyacheslav Nass (“Nass”) with fraudulent solicitation and misappropriation of funds in violation of Section 4b(a)(2)(i) and (iii) of the Commodity Exchange Act (the “Act”), 7 U.S.C. §6b(a)(2)(i) and (iii) (2002), and Section 1.1(b)(1) and (3) of the Commission’s Regulations (the “Regulations”), 17 C.F.R. § 1.1(b)(1) and (3) (2004). The Complaint further charged Defendant F&S with soliciting, or accepting any order for, or otherwise dealing in illegal foreign currency futures contracts in violation of Section 4(a) of the Act, 7 U.S.C. §6(a) (2004). The Complaint also charged defendant F&S with violating Section 4(b)(2)(i) and (iii) of the Act, and Commission Regulation 1.1(b)(1) and (3), pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2002).

The Complaint also charged Defendant Nass with violating Sections 4(a) and 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. §§ 6(a) and 6b(2)(i) and (iii) (2002) and Commission Regulation 1.1(b)(1) and (3), 17 C.F.R § 1.1(b)(1) and (3) (2004), in his capacity as a controlling person of F&S pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2004).

On March 3, 2006, the Court issued a Statutory Restraining Order (“SRO”) which, among other things, froze the Defendants’ assets, granted the Commission immediate access to all books and records related to Defendants’ business, and ordered that the Defendants provide the Commission a full accounting of their assets and funds.

The Defendants were properly served with the complaint. The Defendants failed to appear, plead, file an answer or otherwise defend this action; and Defendant Nass is not an infant, in the military, or an incompetent person. On June 23, 2006, the Clerk of this Court issued certificates of default pursuant to Local Rule 55.1 and Rule 55(a) of the Federal Rules of Civil Procedure (“Fed.R.Civ.P.”) against Defendants.

The Commission has now submitted its Application for Entry of Default Judgment, Permanent Injunction and Ancillary Relief (“Application”) against Defendants pursuant to F.R.C.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 for Entry of Judgment by Default Against Defendants and enters findings of fact and conclusions of law finding Defendants liable as to all violations alleged in the Complaint. The Court further grants the Commission’s request to assess monetary damages against Defendants, including disgorgement, restitution, civil monetary penalties, and costs and fees. Accordingly, the Court now issues the following Order for Default Judgment, Permanent Injunction and Ancillary Equitable Relief (“Order”) against Defendants on issues of liability and ancillary equitable relief.

I. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Jurisdiction and Venue

This Court has jurisdiction over the subject matter of this action and the 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.

Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1, in that the Defendants are found in, inhabit, or transact business in this district, and the acts and practices in violation of the Act occurred within this district, among other places.

B. Findings of Fact

F&S was incorporated on April 8, 2005 in the State of New York. F&S has never been registered with the Commission in any capacity.

Nass is F&S's President and sole signatory on F&S's bank account. Nass has never been registered with the Commission in any capacity. Nass opened the F&S bank account at Bank of America ("BOA") in or about August 2005 into which customer funds were deposited. Nass was the sole signatory of the BOA account and was listed as the President of F&S on these account records. As sole signatory, Nass was responsible for all movements of funds in and out of the account, including the transfers of those funds to accounts outside the U.S. Nass also registered the falcostevens.com website and was responsible for obtaining a business telephone number for F&S from Verizon in July 2005.

F&S solicited customers to engage in foreign currency transactions, that were, in fact, commodity futures contracts, through its website falcostevens.com. F&S employees solicited

prospective customers to open managed customer foreign currency (“forex”) trading accounts by fraudulently representing F&S’s track record as being profitable from 1999 to 2005 when in fact no trading occurred and falsely promised customers that they would reap profits from 2% to 5% per month.

Instead of using the customer funds deposited into the BOA account for the purpose of trading foreign currency, \$4,463,174.80 of these customers funds were either used by Defendants for their personal or business needs or transferred to overseas accounts for purposes other than trading on behalf of customers. To date, none of the \$4463,174.80 in customer funds have been returned to customers.

Customers invested their funds with F&S in order to speculate on price movements in foreign currencies, and there were no negotiations between the customers and F&S concerning any of the terms of the foreign currency contracts offered by F&S. None of these F&S customers had any business or personal need to make or take delivery of any foreign currency, they never intended or anticipated taking delivery of any foreign currencies, and F&S did not require them to set up banking relationships to facilitate delivery of any foreign currencies. In addition, the personal assets of F&S customers were worth less than \$5,000,000.

C. Conclusions of Law

1. Defendant’s Transactions Were Futures Contracts

The foreign currency contract that Defendants purported to offer and sell were actually foreign currency futures contracts. Defendants offered, and maintained an office in the United States for the purpose of conducting business in, foreign currency futures without conducting those transactions on or subject to the rules of a board of trade that has been designated by the Commission as a contract market, or on a facility registered as a derivatives transaction

execution facility. Most, if not all, the customers solicited by F&S were retail customers, not eligible contract participants. F&S was not an appropriate counterparty under the Act for the offered transactions as alleged herein.

2. Violations of Section 4b(a)(2)(C)(i) and (iii) of the Commodity Exchange Act and Commission Regulation 1.1(b)(1) and (3)

From at least August 2005 to the present, Defendants cheated or defrauded or attempted to cheat or defraud customers or prospective customers and willfully deceived or attempted to deceive customers or prospective customers by, among other things: misappropriating or misusing funds received from customers and making false statements regarding trading losses, the risks of trading foreign currencies, the legitimacy of their operation, and the safety of customer funds, all in violation of Section 4b(a)(2)(C)(i) and (ii) of the Act, 7 U.S.C. § 6b(a)(2)(C)(i) and (iii), and Regulation 1.1(b)(1) and (3), 17 C.F.R. § 1.1(b)(1) and (3). Defendants' conduct was in connection with the 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 such contracts for future delivery were or could be used for the purposes set forth in Section 4b(a)(2)(C)(i) and (iii) of the Act, 7 U.S.C. § 6b(a)(2)(C)(i) and (iii).

During the relevant time period, Nass, as the President and sole signatory of F&S's bank account, directly or indirectly controlled F&S, its employees and others and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting the violations described in this Count I. Thus, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b), Nass also is liable for the violations of Section 4b(a)(2)(C)(i) and (ii) of the Act, 7 U.S.C. § 6b(a)(2)(C)(i) and (iii), and Regulation 1.1(b)(1) and (3), 17 C.F.R. § 1.1(b)(1) and (3).

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, F&S is also liable for any violations of Sections 4b(a)(2)(C)(i)

and (ii) of the Act, 7 U.S.C. § 6b(a)(2)(C)(i) and (iii), and Regulation 1.1(b)(1) and (3), 17 C.F.R. § 1.1(b)(1) and (3) by its officers, directors, managers, employees, and agents, in that all such violations were within the scope of their office or employment with F&S.

3. Violations of Section 4(a) of the Commodity Exchange Act

From at least August 2005 through the present, F&S 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 Commission 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. F&S's actions were therefore in violation of Section 4(a) of the Act, 7 U.S.C. § 6(a).

During the relevant period, Nass, as the President and sole signatory of F&S's bank account, directly or indirectly controlled F&S and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting F&S's violations of Section 4(a) of the Act, 7 U.S.C. § 6(a). Thus, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b), Nass also is liable for the violations of Section 4(a) of the Act, 7 U.S.C. § 6(a), to the same extent as F&S.

4. Appropriate Relief

Permanent injunctive relief is warranted in light of the egregious nature of the Defendants' conduct in fraudulently soliciting and misappropriating \$4,463,174.80 from customers to invest in foreign currency as well as Defendants' high level of scienter in

conducting a well-planned scheme to systematically defraud the public. These facts demonstrate a reasonable likelihood of futures violations.

Imposition of a civil monetary penalty is appropriate in this case as Defendants' violations of the Act were intentional and directly impacted the numerous victims of this fraud. Likewise, the remedies of disgorgement and restitution also are appropriate to compensate the victims of Defendants' wrongful acts and to deprive Defendants of the use of their ill-gotten gains.

II. ORDER FOR PERMANENT INJUNCTIONS

IT IS HEREBY ORDERED that:

Defendants F&S and Nass are permanently restrained, enjoined and prohibited from directly or indirectly:

- A. offering or entering into, executing, confirming the execution of, or conducting 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 in violation of Section 4(a) of the Act, 7 U.S.C. § 6(a);
- B. cheating or defrauding or attempting to cheat or defraud other persons or willfully deceiving or attempting to deceive such other person by any means whatsoever in regard to any such order or contract in or in connection with any sale of any futures contract of any commodity that is or may be used for hedging or determining the price basis of any transaction or for delivering any commodity in interstate commerce for or on behalf of any other person in violation of Section 4(b)(a)(2)(C)(i) and (iii) of the Act, 7 U.S.C. § 6b(a)(2)(C)(i) and (iii);

- C. cheating or defrauding or attempting to cheat or defraud any person or willfully deceiving or attempting to deceive any person by any means whatsoever for any foreign currency transaction within the Commission's jurisdiction in violation of Section 1.1(b)(1) and (3) of the Regulations , 17 C.F.R. § 1.1(b)(1) and (3);
- D. trading on or subject to the rules of any entity registered with the U.S. Commodity Futures Trading Commission; and
- E. 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.

IT IS FURTHER ORDERED that F&S and Nass are permanently restrained, enjoined and prohibited from directly or indirectly:

- A. destroying, mutilating, concealing, altering or disposing of any books and records, documents, correspondence, brochures, manuals, electronically stored data, tape records or other property of F&S and Nass, wherever located, including all such records concerning F&S's business operations;
- B. refusing to permit authorized representatives of the Commission to inspect, when and as requested, any books and records, documents, correspondence, brochures, manuals, electronically stored data, tape records or other property of Defendants, wherever located, including all such records concerning Defendants' business operations; and
- C. withdrawing, transferring, removing, dissipating, concealing, or disposing of, in any manner, 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 any of the Defendants for the amounts indicated in this complaint.

IT IS FURTHER ORDERED that F&S and Nass shall:

- A. provide the Commission with continuing access to any books and records, documents, correspondence, brochures, manuals, electronically stored data, tape records or other property of F&S and Nass, wherever located, including all such records concerning F&S's business operations; and
- B. provide an accounting to the court of all of F&S's and Nass' assets and liabilities, together with all funds it received from and paid to clients and other persons in connection with commodity futures transactions or purported commodity futures transactions, and all disbursements for any purpose whatsoever of funds received from commodity transactions, including salaries, commissions, interest, fees, loans and other disbursements of money and property of any kind, from, but not limited to, August 2005, through and including the date of such accounting.

The injunctive provisions of this Order shall be binding upon F&S and Nass, upon any person insofar as he or she is acting in the capacity of officer, agent, servant or employee of F&S, 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 F&S and Nass.

III. ORDER FOR CIVIL MONETARY PENALTY

IT IS FURTHER ORDERED that:

F&S and Nass shall each pay a civil monetary penalty in the amount of \$260,000, consisting of \$130,000 for each of the two charges of violations of the Act set forth in the Complaint plus post judgment interest. Post-judgment interest shall be determined by using the Treasury Bill rate prevailing on the date of this Order pursuant to 28 U.S.C. § 1961. Post-judgment interest shall not exceed 9%.

All payments made by Defendants pursuant to this Order shall be applied first to satisfy Defendants' Civil Restitution and Disgorgement obligations and, upon satisfaction of such obligations, shall thereafter be applied to satisfy the civil monetary penalty. Post-judgment interest shall accrue beginning on the date of entry of this Order.

Defendants shall each 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 U.S. Commodity Futures Trading Commission, and sent to Dennese Posey, or her successor, Division of Enforcement, U.S. Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581, under cover of a letter that identifies Defendants and the name and docket number of the proceeding; Defendants shall simultaneously transmit a copy of the cover letter and the form of payment to the Director, Division of Enforcement, U.S. Commodity Futures Trading Commission, at the following address: Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581, and to the Regional Counsel, U.S. Commodity Futures Trading Commission, Eastern Regional Office, at the following address: 140 Broadway, 19th floor, New York, NY 10005.

IV. ORDER FOR ANCILLARY EQUITABLE RELIEF

IT IS FURTHER ORDERED that:

A. Restitution: F&S and Nass shall pay and be jointly and severally liable for restitution to defrauded customers in the amount of \$4,464,607.91 plus pre-judgment interest and post-judgment interest. Pre-judgment interest from August 1, 2005, to the date of this Order shall be determined by using the underpayment rate established quarterly by the Internal Revenue Service pursuant to 26 U.S.C. § 6621(a)(2). 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 this Order pursuant to 28 U.S.C. § 1961. Pre-judgment interest shall not exceed 9%. Post-judgment interest shall not exceed 9%.

Defendants are ordered to make such payments to the Registry of this Court by cashier's check, certified check or postal money order, under cover of a letter that identifies the name and docket number of this action and the name of this Court, with a copy to Joseph Rosenberg, counsel of record for the plaintiff U.S. Commodity Futures Trading Commission. All payments made pursuant to this Order by Defendants shall first be made to the defrauded customers for restitution, pursuant to a payment plan that will be determined by the Court, 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. F&S Disgorgement: F&S shall disgorge all benefits received, directly or indirectly, from acts or practices which constitute violations of the Act as described herein and deposit into the Registry of this Court \$4,449,898.80, plus pre-judgment interest. Pre-judgment interest shall not exceed 9%. F&S shall provide the Commission and the Court with a written description of the funds and assets so disgorged. F&S is ordered to make such payments to the

Registry of this Court by cashier's check, certified check or postal money order, under cover of a letter that identifies the name and docket number of this action and the name of this Court, with a copy to Joseph Rosenberg, counsel of record for the plaintiff U.S. Commodity Futures Trading Commission. All disgorgement payments made pursuant to this Order by F&S shall be used to pay restitution to the defrauded customers, pursuant to a payment plan that will be determined by the Court, until those amounts (including interest) are fully satisfied. F&S's disgorgement obligations under this Paragraph are co-terminus with F&S's restitution obligations, such that partial or full satisfaction or discharge of F&S's disgorgement obligations shall simultaneously result in identical partial or full satisfaction or discharge of F&S's restitution obligations.

C. Nass Disgorgement: Nass shall disgorge all benefits received, directly or indirectly, from acts or practices which constitute violations of the Act as described herein and deposit into the Registry of this Court \$13,276 plus pre-judgment interest thereon. Pre-judgment interest shall not exceed 9%. Nass shall provide the Commission and the Court with a written description of the funds and assets so disgorged. Nass is ordered to make such payments to the Registry of this Court by cashier's check, certified check or postal money order, under cover of a letter that identifies the name and docket number of this action and the name of this Court, with a copy to Joseph Rosenberg, counsel of record for the plaintiff U.S. Commodity Futures Trading Commission. All disgorgement payments made pursuant to this Order by Nass shall be used to pay restitution to the defrauded customers, pursuant to a payment plan that will be determined by the Court, until those amounts (including interest) are fully satisfied. Nass's disgorgement obligations under this Paragraph are co-terminus with Nass's restitution obligations, such that partial or full satisfaction or discharge of Nass's disgorgement obligations shall simultaneously result in identical partial or full satisfaction or discharge of Nass's restitution obligations.

D. Prohibition on Transfer of Funds: F&S and Nass 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, or any officer that may be appointed by the Court.

E. Third-Party Beneficiaries: Pursuant to Rule 71 of the Federal Rules of Civil Procedure, each of the defrauded customers of F&S 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 Defendants.


F. Notices: 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: Stephen J. Obie, Regional Counsel
U.S. Commodity Futures Trading Commission
Division of Enforcement - Eastern Regional Office
140 Broadway, 19th floor
New York, New York 10005; and

F. 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 18 day of Dec, 2006, at

9 a.m./p.m.



Honorable Shira A. Scheindlin
UNITED STATES DISTRICT JUDGE

Appearances

For Plaintiff:

Joseph Rosenberg, Senior Trial Attorney
Steven Ringer, Chief Trial Attorney
U.S. Commodity Futures Trading Commission
Division of Enforcement
140 Broadway, 19th Floor
New York, NY 10005
(646) 746-9765