

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

U.S. Commodity Futures Trading Commission,)

Plaintiff,)

v.)

First Lexington Group, LLC et. al.,)

Defendant(s).)

03 CV 9124 (GBD)

**Order For Entry of
Injunctive Relief, Damages and
Ancillary Equitable Relief Against
First Lexington Group, LLC**

On November 18, 2003, the Commodity Futures Trading Commission (the "Commission") filed a Complaint charging First Lexington Group, LLC ("FLG" or "Defendant") and others with violating Section 4b(a)(2)(i), (ii) and (iii) of the Commodity Exchange Act, as amended ("the Act"), 7 U.S.C. § 6b(a)(2)(i), (ii) and (iii) (2001) and Commission Regulation 1.1(b)(1), (2) and (3), 17 C.F.R. § 1.1(b) (1), (2) and (3) (2001). FLG also was charged with violating Section 4(a) of the Act, 7 U.S.C. § 6(a). In addition, FLG was charged with violating Section 4b(a)(2) of the Act and Commission Regulation 1.1(b) through the conduct of its officers, directors, managers, employees and agents, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2001), Commission Regulation 1.2, 17 C.F.R. § 1.2 (2001).

On November 19, 2003, FLG was properly served pursuant to Rule 4(h)(1) of the Federal Rules of Civil Procedure ("Fed. R. Civ. P."). FLG failed to answer or otherwise defend the Complaint within the time permitted by Rule 12(a)(1) of the Fed. R. Civ. P. Accordingly, on September 16, 2004, the Clerk of this Court entered a certificate of default against FLG, and on January 13, 2005, this Court entered a default judgment against FLG.

The Commission has now submitted its Application for Entry of Injunctive Relief, Damages and Ancillary Equitable Relief (“Application”) against FLG 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 FLG and enters findings of fact and conclusions of law relevant to the allegations in the Complaint. The Court further grants the Commission's request for injunctive relief, damages, restitution and disgorgement. Accordingly, the Court now issues the following Order (“Order”) against FLG.

I. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Jurisdiction and Venue

This Court has jurisdiction over the subject matter of this action and FLG 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 FLG was found in, inhabited, or transacted 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

FLG is a New York limited liability company. From at least October 2001 until approximately March 2003, FLG operated from 322 West 57th Street, Suite 4800, New York, NY. FLG has never been registered with the Commission in any capacity nor has it ever been

one of the regulated entities whose foreign currency transactions fall outside the purview of the Commission's jurisdiction.

From at least August 14, 2002 until March 2003, FLG fraudulently solicited or assisted in the solicitation of funds from the retail public for the purpose of trading managed foreign currency accounts that were, in fact, illegal off-exchange foreign currency futures contracts. Through this scheme, FLG created and provided to customers fictitious account statements which reflected foreign currency trades that did not take place. Customers were defrauded by FLG in the amount of \$2,226,063.68.

The foreign currency contracts that FLG purported to offer and sell were for future delivery of foreign currencies. The contracts included the three necessary factors of futures contracts: 1) futurity, including delivery in the future at prices or pricing formulas that were established at the time the contracts were initiated; 2) risk transference, in that the contracts were undertaken principally to assume or shift price risk without transferring the underlying commodity; and 3) offset, in that the contracts could be satisfied through offset, cancellation, cash settlement or other means calculated to avoid delivery.

FLG marketed its 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. FLG did not require investors to set up banking relationships in order to facilitate delivery of the

foreign currencies. The terms and conditions of the foreign currency contracts sold by FLG were standardized.

FLG was not a financial institution, broker or dealer, or associated person or affiliate of a broker dealer. FLG was never a futures commission merchant ("FCM") or an affiliate of a FCM. FLG did not conduct its transactions on a facility designated as a contract market or registered as a derivatives transaction execution facility. Also, FLG did not conduct its foreign currency futures transactions on or subject to the rules of a board of trade that had been designated by the Commission as a contract market, nor were its transactions executed or consummated by or through a member of such contract market.

C. Conclusions of Law

1. Defendants' Transactions Were Futures Contracts

The foreign currency contracts offered and sold by Defendants were futures contracts. FLG has never been 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.

2. Violations of Section 4b(a)(2) of the Commodity Exchange Act and Commission Regulation 1.1(b)

From at least August 14, 2002 until March 2003, FLG cheated or defrauded or attempted to cheat or defraud customers or prospective customers of FLG and willfully deceived or attempted to deceive customers or prospective customers by, among other things, making or assisted in the making of false statements to customers regarding the trading of its funds and the legitimacy of FLG's operation all in violation of Section 4b(a)(2)(C)(i), (ii) and (iii) of the Act, 7 U.S.C. § 6b(a)(2)(C)(i), (ii) and (iii), and Regulation 1.1(b)(1), (2) and (3), 17 C.F.R. § 1.1(b)(1),(2) and (3). FLG's 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).

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, FLG is liable for any violations of Section 4b(a) of the Act, 7 U.S.C. § 6b, and Commission Regulation 1.1(b), 17 C.F.R. § 1.1(b), by its officers, directors, managers, employees and agents, in that all such violations were within the scope of their office or employment with FLG.

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

From at least August 14, 2002 until March 2003, FLG 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, in violation of Section 4(a) of the Act, 7 U.S.C. § 6(a).

4. Appropriate Relief

Permanent injunctive relief is warranted in light of the egregious nature of FLG's conduct in fraudulently soliciting customers as well as FLG's high level of scienter in conducting a well-planned scheme to systematically defraud the public and sell illegal foreign currency futures contracts. These facts demonstrate a reasonable likelihood of futures violations.

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

II. ORDER FOR RELIEF

A. Permanent Injunction

IT IS THEREFORE ORDERED THAT:

1. FLG 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) (2001) 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)(2001).

2. FLG is further permanently restrained, enjoined and prohibited from directly or indirectly:

- 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 or accepting any funds from any person in connection with the purchase or sale of any commodity interest;
- 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.

B. Civil Monetary Penalty

IT IS FURTHER ORDERED that as of the date of entry of this Order, FLG shall pay a civil monetary penalty in the amount of \$240,000, consisting of \$120,000 for each of the two substantive violations of the Act set forth in the Complaint 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. All payments made by FLG pursuant to this Order shall be applied first to satisfy FLG's Civil Restitution and Disgorgement obligations and, upon satisfaction of such obligations, shall thereafter be applied to satisfy the civil monetary penalty

FLG 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, 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: Marie Bateman – AMZ-300
DOT/FAA/MMAC
6500 S. Macarthur Blvd.
Oklahoma City, OK 73169

If the payment is to be made by electronic funds transfer, contact Marie Bateman at 405-954-6569 for instructions. Respondent shall accompany the payment of the penalty with a cover letter that identifies Respondent and the name and docket number of this proceeding.

FLG shall simultaneously transmit a copy of the cover letter and the form of payment to (a) the Director and to the Office of Cooperative Enforcement, Division of Enforcement, U.S. Commodity Futures Trading Commission, at Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581, and (b) Regional Counsel, U.S. Commodity Futures Trading Commission, Eastern Regional Office, at 140 Broadway, 19th floor, New York, NY 10005.

C. Disgorgement and Restitution

1. Disgorgement

IT IS FURTHER ORDERED that as of the date of this Order, FLG shall disgorge all benefits received, directly or indirectly, from acts or practices which constitute violations of the Act and Regulations as described. FLG is therefore liable to disgorge its ill-gotten gains in the amount of \$2,226,063.68 plus pre-judgment interest and post-judgment interest. Pre-judgment interest from August 14, 2002, 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 entry of this Order pursuant to 28 U.S.C. § 1961.

All disgorgement payments made by FLG shall be used to pay restitution to the defrauded customers. FLG's disgorgement obligation coincides with its restitution obligation, such that satisfaction in any part of its restitution obligation shall simultaneously result in satisfaction of its disgorgement obligation to the same extent. Further, FLG's disgorgement obligation in this matter coincides with the criminal judgment restitution obligation entered against Joseph Grunfeld ("Grunfeld") on December 21, 2006, U.S. District Court for the Southern District of New York in U.S. v. Grunfeld, S.D.N.Y. Docket No. 03 CR 1244 ("criminal judgment obligation"). Accordingly, satisfaction in any part of Grunfeld's criminal judgment obligation shall simultaneously result in satisfaction of FLG's disgorgement obligation to the same extent.

FLG shall pay disgorgement to Brian Rosner, Esq., the Court-appointed Receiver, Rosner, Moscow & Napierala, LLP, 26 Broadway, 22nd floor, New York, NY 10004-24424 by electronic funds transfer, or by U.S. postal money order, certified check, bank cashier's check or bank money order, under cover of a letter that identifies Defendant and the name and Docket number of the proceeding; FLG shall simultaneously transmit a copy of the cover letter and the form of payment to the Director and to the Office of Cooperative Enforcement, 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.

2. Restitution

IT IS FURTHER ORDERED that as of the date of this Order, FLG shall pay and be liable for restitution to defrauded customers in the amount of \$2,226,063.68 plus pre-judgment and post-judgment interest. Pre-judgment interest shall accrue from August 14, 2002, to the date of this Order and 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. FLG is ordered to make such payments to Brian Rosner, Esq., the Court-appointed Receiver, Rosner, Moscow & Napierala, LLP, 26 Broadway, 22nd floor, New York, NY 10004-24424 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 the Director and to the Office of Cooperative Enforcement, 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.

All payments made pursuant to this Order by FLG 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 the restitution and disgorgement obligations have been satisfied shall then be applied to the civil monetary penalty described herein.

FLG's restitution obligation coincides with its disgorgement obligation and with the criminal judgment obligation entered against Grunfeld on December 21, 2006, U.S. District Court for the Southern District of New York in *U.S. v. Grunfeld*, S.D.N.Y. Docket No. 03 CR 1244. Accordingly, satisfaction of any part of FLG's disgorgement obligation or satisfaction in any part of Grunfeld's criminal judgment restitution obligation shall simultaneously result in satisfaction of FLG's restitution obligation in this matter to the same extent.

D. Prohibition on Transfer of Funds

IT IS FURTHER ORDERED that FLG 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. Permanent Receiver

IT IS FURTHER ORDERED that Brian Rosner, Esq., Rosner, Moscow & Napierala, LLP, 26 Broadway, 22nd floor, New York, NY 10004-24424 is appointed as a permanent equity receiver to take into his or her immediate custody, control, and possession all cash, cashier's checks, funds, assets, and property of FLG, including funds or property of investors wherever found, whether held in the name of FLG or otherwise, including, but not limited to, all books and records of account and original entry, electronically stored data, tape recordings, all funds, securities, contents of safety deposit boxes, metals, currencies, coins, real or personal property, commodity futures trading accounts, bank and trust accounts, mutual fund accounts, credit card line-of-credit accounts and other assets, of whatever kind and nature and wherever situated, and authorizing, empowering and directing such receiver to collect and take charge of and to hold and administer the same subject to further order of the Court, in order to prevent irreparable loss,

damage and injury to investors, to conserve and prevent the dissipation of funds, to prevent further evasions and violations of the federal commodity laws by FLG and to satisfy FLG's obligations to pay restitution, disgorge its ill-gotten gains and to pay a civil monetary penalty.

F. 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:

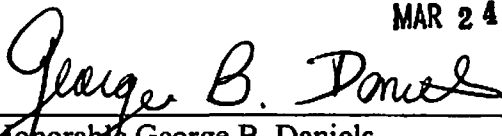
Notice to Commission: Regional Counsel
 U.S. Commodity Futures Trading Commission
 Division of Enforcement - Eastern Regional Office
 140 Broadway, 19th floor
 New York, New York 10005.

G. Jurisdiction

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 ^{4:00 PM} _____, New York on this 24 day of MARCH, 2008

MAR 24 2008



Honorable George B. Daniels
UNITED STATES DISTRICT JUDGE
HON. GEORGE B. DANIELS

Respectfully submitted,

U.S. COMMODITY FUTURES TRADING
COMMISSION

Stephen J. Obie
Regional Counsel

By:  _____
Steven Ringer [SR- 9491]

Chief Trial Attorney
U.S. COMMODITY FUTURES TRADING
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