

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

U.S. Commodity Futures Trading Commission,

03 CV 9126 (GBD)

Plaintiff,

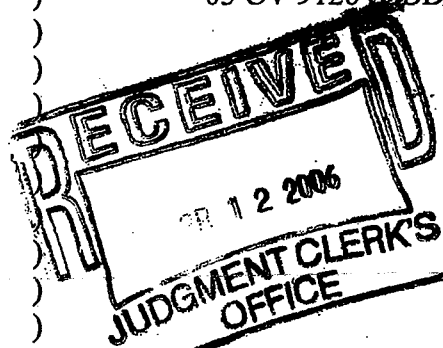
v.

Walter, Scott, Lev & Associates, LLC,
Michael Ross,
Maxim Yampolsky,
Edward Sapienza, Jr.,
Frank Schiavone,
Michael Korobov, and
Boris Shuster, a/k/a/ Robert Shuster,

Defendants, and

Michael Edwards Trading Group, Ltd.,
JSG Freight Systems, Inc.,
Shuster, Shuster & Shuster, Ltd.,
BLJ Consulting, Inc.,
Winn Industries Division of Ontario, Limited
(1430214 Ontario, Limited), and
The Fuzzy Group, Inc.,

Relief Defendants.



CONSENT ORDER OF
PERMANENT INJUNCTION

**CONSENT ORDER OF PERMANENT INJUNCTION,
CIVIL MONETARY PENALTY, AND OTHER EQUITABLE RELIEF
AGAINST DEFENDANT MICHAEL KOROBOV**

I.

On November 18, 2003, Plaintiff, U.S. Commodity Futures Trading Commission ("Commission"), filed a Complaint against defendants Walter, Scott, Lev & Associates, LLC ("WSL"), Michael Ross ("Ross"), Maxim Yampolsky ("Yampolsky"), Edward Sapienza, Jr. ("Sapienza"), Frank Schiavone ("Schiavone"), Michael Korobov ("Korobov"), and Boris Shuster, a/k/a/ Robert Shuster ("Shuster") (collectively, "Defendants") and relief defendants

Michael Edwards Trading Group, Ltd., JSG Freight Systems, Inc., Shuster, Shuster & Shuster, Ltd., BLJ Consulting, Inc., Winn Industries Division of Ontario, Limited (1430214 Ontario, Limited), and The Fuzzy Group, Inc. seeking injunctive and other equitable relief for violations of the Commodity Exchange Act, as amended ("Act"), 7 U.S.C. §§ 1 et seq. (2002), and Regulations promulgated thereunder, 17 C.F.R. §§ 1 et seq. (2004). The Court entered an *ex parte* statutory restraining order on November 18, 2003 that, among other things, froze all assets belonging to or related to Defendants and ordered the maintenance of and access to business records. On July 15, 2004, the Court entered a preliminary injunction against Korobov.

II. CONSENT AND AGREEMENT

To effect settlement of the matters alleged in the Complaint against Korobov without a trial on the merits or any further judicial proceedings, Korobov:

1. Consents to the entry of this Consent Order of Permanent Injunction and Other Equitable Relief and a Civil Monetary Penalty against Korobov ("Order").
2. Affirms that he has agreed to this Order voluntarily, and that no promise or threat has been made by the Commission or any member, officer, agent or representative thereof, or by any other person, to induce consent to this Order, other than as set forth specifically herein.
3. Acknowledges service of the Summons and Complaint.
4. Admits jurisdiction of this Court over him, admits that the Court has subject matter jurisdiction over this action, and admits that venue properly lies with this Court pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1.
5. Waives:
 - (a) all claims that he may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2000) and 28 U.S.C. § 2412 (2000) and Part 148 of the Regulations, 17 C.F.R. § 148.1, et seq. (2004), relating to, or arising from, this action;

(b) any claim of double jeopardy based upon the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief; and

(c) all rights of appeal from this Order.

6. Does not consent to the use of this Order in any other proceedings other than those to which the Commission is a party. However, no provision of this Order shall in any way limit or impair the ability of any person, including third-party beneficiaries, to seek any legal or equitable remedy against Korobov or any other person in any other proceeding, including any current or subsequent bankruptcy proceeding.

Furthermore, the allegations of the Complaint shall be taken as true and be given preclusive effect without further proof only for the purpose of any current or subsequent bankruptcy proceeding filed by, or on behalf of, Korobov for the purpose of determining whether his restitution obligation and/or civil monetary penalty ordered herein are excepted from discharge. Korobov shall also provide immediate notice of any bankruptcy filed by, on behalf of, or against him.

7. Agrees that neither he nor any of his agents or employees acting under his authority or control shall take any action or make any public statement denying, directly or indirectly, any allegation of the Complaint or findings or conclusions of law in this Order, or creating, or tending to create, the impression that the Complaint or this Order is without a factual basis; provided, however, that nothing in this provision shall affect Korobov's (i) testimonial obligations; or (ii) rights to take legal, factual or equitable positions in other proceedings to which the Commission is not a party. Korobov shall take all necessary steps to ensure that all of his agents and employees understand and comply with this agreement.

8. Consents to the continued jurisdiction of this Court for the purpose of enforcing the terms and conditions of this Order and for any other purposes relevant to this case.

III. FINDINGS of FACT and CONCLUSIONS of LAW

The Court, being fully advised of the facts, finds that there is good cause for the entry of this Order and that there is no just reason for delay. The Court therefore directs the entry of findings of fact, conclusions of law, and a permanent injunction and ancillary equitable relief pursuant to § 6c of the Act, 7 U.S.C. § 13 a-1 (2002), as set forth herein.

A. Findings of Fact

1. The Commission is an independent federal regulatory agency charged with the responsibility of administering and enforcing the provisions of the Act and Regulations promulgated thereunder.

2. WSL is a New York limited liability company organized in 1998 with an office at 90 John Street, Suite 407, New York, New York 10038. It has never been registered with the Commission in any capacity. In addition, WSL is not a financial institution, a futures commission merchant ("FCM"), an affiliate of a FCM, a broker or dealer, an associated person of a broker or dealer, an insurance company, a regulated subsidiary of an insurance company, a financial holding company, or an investment bank holding company.

3. Korobov was Treasurer and Chief Operating Officer of WSL. Korobov has never been registered with the Commission.

4. From at least January 1999 to at least April 2002 ("relevant time period"), Korobov and others solicited and obtained approximately \$21.9 million from more than 850 customers. On certain dates during the relevant time period, Korobov made misrepresentations to customers about the foreign currency investments in their accounts which were, in fact, illegal

off-exchange foreign currency futures contracts. Korobov intentionally made fraudulent misrepresentations with respect to the actual trading of much of the funds which Korobov knew or should have known would be relied upon by many customers in forwarding funds to be applied to be foreign currency trading investments. Many customers did, in fact, rely upon the misrepresentations made by Korobov in their decision to invest these funds. Further, instead of actually trading all of the clients' funds, Korobov and others misappropriated \$6,800,951 obtained from customers and misled investors with false monthly account statements showing considerable profits. Korobov then falsely notified customers that alleged catastrophic trading losses had wiped out their funds.

5. Defendant did not conduct the purported foreign currency futures transactions on or subject to the rules of a board of trade that has been designated by the Commission as a contract market, nor were Defendant's transactions executed or consummated by or through a contract market. Defendant did not conduct transactions on a facility registered as a derivatives transaction execution facility.

B. Conclusions of Law

1. With the aforementioned practices, Korobov violated Sections 4(a) and 4b(a)(2) of the Act, 7 U.S.C. §§ 4(a) and 6b(a)(2) (2002), and Commission Regulation 1.1(b), 17 C.F.R. § 1.1(b) (2004).

2. This Court has subject matter jurisdiction over this action and the allegations in the Complaint pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1.

3. This Court has personal jurisdiction over Korobov pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2002).

4. Venue properly lies with this Court pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2002).

5. There is good cause for entry of an order permanently enjoining Korobov from engaging in future violations of the Act, requiring Korobov to pay restitution in the amount of \$6,800,951 and a civil monetary penalty in the amount of \$240,000 and for the other equitable relief stated in this Order.

IV. ORDER FOR PERMANENT INJUNCTION

IT IS THEREFORE ORDERED THAT:

1. Korobov 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) (2002) and Section 1.1(b) of the Regulations promulgated thereunder ("Regulations"), 17 C.F.R. §1.1(b) (2004); or

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 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)(2002).

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

- A. Trading on or subject to the rules of any registered entity;
- B. Engaging in, controlling or directing the trading for any commodity futures or options accounts for or on behalf of any other person or entity, whether by power of attorney or otherwise; and
- C. 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, except as provided for in Section 4.14(a)(9) of the Commission's Regulations, 17 C.F.R. § 4.14(a)(9), or acting, directly or indirectly, as a principal, agent, or any other officer, agent or employee of any person registered, required to be registered, or exempted from registration with the Commission, unless such exemption is pursuant to Section 4.14(a)(9) of the Commission's Regulations, 17 C.F.R. § 4.14(a)(9).

**V. ORDER FOR RESTITUTION, CIVIL MONETARY PENALTY, AND OTHER
EQUITABLE RELIEF**

IT IS FURTHER ORDERED THAT:

1. Restitution: Korobov shall pay and be jointly and severally liable for restitution to investors/creditors in the amount of \$6,800,951 plus post-judgment interest as required by the terms of the Sentencing Judgment entered against Korobov on October 14, 2004, U.S. District Court for the Southern District of New York in *U.S. v. Michael Ross, et al.*, S.D.N.Y. Docket No. S1 03 Cr. 1306 (DLC) ("Criminal Judgment"). Korobov's restitution obligations under this Paragraph ("Civil Restitution Obligations") are identical to and co-terminus with Korobov's Criminal Judgment restitution obligations, such that partial or full satisfaction or discharge of Korobov's Criminal Judgment restitution obligations shall simultaneously result in identical partial or full satisfaction or discharge of his Civil Restitution Obligations. Interest after the date

of this Order shall be paid at the post-judgment interest rate set forth in 28 U.S.C. § 1961 until the Civil Restitution Obligations are fully satisfied or discharged. Korobov shall direct all payments made pursuant to this section 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 number of this action and the name of this Court, with a copy to Sheila L. Marhamati, Esq., counsel of record for Plaintiff U.S. Commodity Futures Trading Commission.

2. Civil Monetary Penalty: Korobov shall pay a civil monetary penalty of \$240,000, plus post-judgment interest. All payments made by Korobov pursuant to this Consent Order shall be applied first to satisfy Korobov's Civil Restitution Obligations and, upon satisfaction of such Obligations, shall thereafter be applied to satisfy the Civil Monetary Penalty. Interest after the date of this Order for the Civil Monetary Penalty shall be paid at the post-judgment interest rate set forth in 28 U.S.C. § 1961. Korobov shall 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, N.W., Washington, D.C. 20581, under cover of a letter that identifies Korobov and the name and docket number of the proceeding. Korobov shall simultaneously transmit copies of the cover letters and the form of payments to the Director, Division of Enforcement, U.S. Commodity Futures Trading Commission, 1155 21st Street, NW, Washington, D.C. 20581 and to the Regional Counsel, U.S. Commodity Futures Trading Commission, Division of Enforcement, Eastern Regional Office, 140 Broadway, 19th Floor, New York, NY 10005.

3. Cooperation: Korobov shall fully cooperate with and assist the Receiver and the Commission in this proceeding. Such cooperation shall include, but not be limited to (1) responding promptly, completely, and truthfully to any inquiries or requests for information; (2) authenticating documents; (3) testifying completely and truthfully; (4) not asserting privileges under the Fifth Amendment of the United States Constitution; (5) transferring or repatriating Korobov's funds and (6) producing any password required to access any electronic files in any medium of the Korobov or WSL.

4. Third-Party Beneficiaries: Pursuant to Rule 71 of the Federal Rules of Civil Procedure, each of the investors/creditors of WSL 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 Korobov.

Collateral Agreements: Korobov shall immediately notify the Commission if he makes any agreement with any investor/creditor obligating him to make payments outside of this Order. Korobov shall also provide immediate evidence to the Court and to the Commission of any payments made pursuant to such agreement.

6. Freeze Orders Dissolved: All prior freeze orders or orders limiting the amount that Korobov can spend on a monthly basis are dissolved.

7. Scope of Injunctive Relief: The injunctive provisions of this Order shall be binding on Korobov, and upon any person insofar as he or she is acting in the capacity of officer, agent, servant, employee or attorney of Korobov, and upon any person who receives actual notice of this Order by personal service, facsimile or otherwise insofar as he or she is acting in active concert or participation with Korobov.

8. Notices: All notices required to be given by any provision in this Consent Order shall be sent certified mail, return receipt requested, as follows:

Notice to Commission:

Regional Counsel
Division of Enforcement – Eastern Regional Office
U.S. Commodity Futures Trading Commission
140 Broadway, 19th Floor
New York, NY 10005

Notice to Defendants:

Chad Seigel, Esq.
Law Offices of Joseph Tacopina, P.C.
Counsel to Maxim Yampolsky
321 Broadway, 6th Floor
New York, NY 10007

Michael Koblenz, Esq.
Mound, Cotton, Wollan & Greengrass
Counsel to Michael Ross
One Battery Park Plaza
New York, NY 10004

Mark Goodman, Esq.
Debevoise & Plimpton
Counsel to Michael Korobov
919 Third Avenue
New York, NY 10022

Joel Winograd, Esq.
Winograd & Winograd, P.C.
Counsel to Edward Sapienza, Jr.
450 Seventh Avenue, Suite 1308
New York, New York 10123

Alan Futerfas, Esq.
Counsel to Boris Shuster, a/k/a Robert Shuster
260 Madison Avenue, 22nd Floor
New York, NY 10016

Mr. Frank Schiavone
New York Metropolitan
Correctional Center
150 Park Row
New York, NY 10007
Prisoner ID# 55706-054

Barry Fallick, Esq.,
Rochman, Platzer & Fallick
Counsel to The Fuzzy Group, Inc.
666 3rd Avenue
New York, NY 10017

9. Entire Agreement and Amendments: This Order incorporates all of the terms and conditions of the settlement between the Commission and Defendant Korobov. Nothing shall serve to amend or modify this Consent Order in any respect whatsoever, unless (1) reduced to writing; (2) signed by all parties hereto; and (3) approved by order of this Court.

10. This Order shall remain in effect until further order of the Court and the Court shall retain jurisdiction over this action to ensure compliance with this Order and for all other purposes related to this action.

IT IS SO ORDERED.

Dated: NOV 08 2006

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

CONSENTED TO AND APPROVED BY:

U.S. COMMODITY FUTURES TRADING COMMISSION
Attorney for Plaintiff U.S. Commodity Futures Trading Commission

By: Sheila L. Marhamati 4/11/06
Sheila L. Marhamati (SM-8016)
140 Broadway, 19th Floor
New York, New York 10005

By: Michael Korobov
Defendant Michael Korobov
Lewisburg Federal Prison Camp
2400 Robert F. Miller Drive
Lewisburg PA 17837

DEBEVOISE & PLIMPTON
Attorney for Defendant Michael Korobov
By: [Signature]
Mark Goodman, Esq. (MG-3848)
919 Third Avenue
New York, NY 10022

Brian Rosner, Esq.
Receiver
By: [Signature]
Heather J. Haase, Esq. (HH-0222)
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