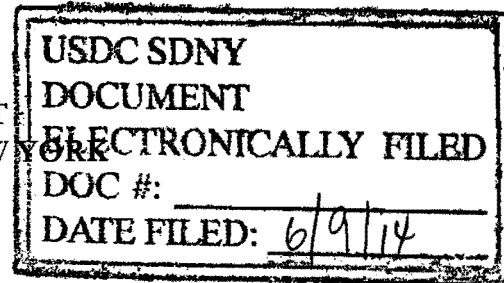


UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK
MANHATTAN DIVISION



U.S. COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

v.

SK MADISON COMMODITIES, LLC,
MICHAEL JAMES SEWARD and YAN
KAZIYEV a.k.a. IAN KAZIYEV,

Defendants,

and

SK MADISON, LLC,

Relief Defendant.

Civil Action No. 1:14-cv-02025-SHS

**ORDER OF DEFAULT JUDGMENT,
PERMANENT INJUNCTION, CIVIL
MONETARY PENALTIES, AND
ANCILLARY EQUITABLE RELIEF
AGAINST DEFENDANTS AND RELIEF
DEFENDANT**

I. INTRODUCTION

On March 24, 2014, the Commission filed its Complaint [D.E. #2] in this matter against Defendants and Relief Defendant alleging, *inter alia*, that Michael James Seward (“Seward”) and Yan Kaziyev, a.k.a. Ian Kaziyev (“Kaziyev”), by and through SK Madison Commodities, LLC (“SKMC”) (collectively, “Defendants”), defrauded members of the public (“pool participants”) of more than \$1.3 million in connection with pooled investments in commodity futures contracts (“futures”) in violation of the Commodity Exchange Act (“CEA”), 7 U.S.C. §§ 1, *et seq.*, and Commission Regulations (“Regulations”), 17 C.F.R. §§ 1.1, *et seq.* The Complaint seeks, among other things, injunctive relief, restitution, and civil monetary penalties.

On March 25 and March 26, 2014, the Commission served Defendants and Relief Defendant with the Summons, Complaint, and other initiating documents filed in this matter. The Commission filed its Proofs of Service for Defendants and Relief Defendant on March 27, 2014 [D.E. #10 and 11]. Defendants’ and Relief Defendant’s Answers and/or motions under Fed. R.

Civ. P. 12 were due on or before April 16, 2014. On April 21, 2014, counsel for the Commission sent emails to Defendants and Relief Defendant informing them of their failure to respond to the Complaint and extending the time before which the Commission would seek default until April 30, 2014. Defendants and Relief Defendant failed to file an answer or other responsive pleading, and on May 1, 2014, the Commission filed its Application for Clerk's Entry of Default [D.E. #18]. The Clerk of the Court entered the defaults against Defendants and Relief Defendant on May 16, 2014 [D.E. #24-27]. On May 22, 2014, pursuant to Fed. R. Civ. P. 55(b)(2) and Local Civil Rule 55.2, the Commission filed a Notice of Plaintiff's Motion for Entry of Default Judgment Against Defendants and Relief Defendant [D.E. #28] and a Memorandum of Law in support of the motion ("Memorandum of Law") [D.E. #29]. Plaintiff's motion and supporting papers were on notice to Defendants and Relief Defendant. [D.E. #28, at 2; D.E. #29, at 19–20.] To ensure that Defendants and Relief Defendant knew of the time and place that the motion was returnable, the Court issued an Order dated May 23, 2014 making clear that the motion was returnable on June 6, 2014 at 10:00 a.m. in Courtroom 23A of the U.S. Courthouse, 500 Pearl Street, New York, NY 10007. [D.E. #30.] The Court directed that plaintiff serve a copy of the May 23 Order on Defendants and the Relief Defendant, and plaintiff complied. [D.E. #31.]

No Defendant or Relief Defendant appeared in Courtroom 23A on June 6 at 10:00 a.m.

The Court has considered the motion, the Memorandum of Law, and the allegations in the Complaint and in Plaintiff's *Ex Parte* Emergency Motion for a Statutory Restraining Order (with attached Appendix of Exhibits). Because Defendants and Relief Defendant have not contested the Complaint's well-pleaded allegations, the Court deems those allegations on all non-damages issues to be true, and grants Plaintiff's motion for a default judgment. See Greyhound Exhibitgroup, Inc. v. E.L.U.L. Realty Corp., 973 F.2d 155, 158 (2d Cir. 1992). In this context, allegations are "well-pleaded" unless they are "made indefinite or erroneous by other allegations in the same complaint," "contrary to facts of which the court will take judicial notice, . . . not susceptible of proof by

legitimate evidence, or . . . contrary to uncontroverted material in the file of the case.” See Trans World Airlines, Inc. v. Hughes, 449 F.2d 51, 63 (2d Cir. 1971) (citing Thomson v. Wooster, 114 U.S. 104 (1885)), rev’d on other grounds sub nom. Hughes Tool Co. v. Trans World Airlines, Inc., 409 U.S. 363 (1973).

Accordingly, the Court now issues the following Order for Entry of Default Judgment, Permanent Injunction, Civil Monetary Penalty, and Ancillary Equitable Relief Against Defendants and Relief Defendant (“Order”). In addition, the Order directs Relief Defendant to disgorge its assets for purposes of satisfying Defendants’ restitution obligation.

II. LEGAL DISCUSSION

When a party against whom a default judgment is sought has failed to plead or otherwise assert a defense, and that fact has been documented, the clerk shall enter the party’s default. Fed. R. Civ. P. 55(a). Thereafter, the opposing party may move for a default judgment against the defaulting party. Fed. R. Civ. P. 55(b). This rule “tracks the ancient common law axiom that a default is an admission of all well-pleaded allegations against the defaulting party.” Vermont Teddy Bear Co., Inc. v. 1-800 Beargram Co., 373 F.3d 241, 246 (2d Cir. 2004). Nonetheless, a plaintiff must establish an evidentiary basis for any damages sought. Brogden v. Bize, 2014 WL 77479 at *2 (S.D.N.Y. 2014) (citing Cement & Concrete Workers Dist. Council v. Metro Found. Contractors, Inc., 699 F.3d 230, 234 (2d Cir. 2012)). Although the Court must make an independent determination regarding damages, an evidentiary hearing is not required; the Court may rely on affidavits or documentary evidence in the record to determine the appropriate sum. Id.

Defendants and Relief Defendant failed to admit or deny or assert any defenses to the facts asserted in the Commission’s Complaint, which are repeated in the Commission’s *Ex Parte* Emergency Motion for a Statutory Restraining Order and supported by the affidavits and documentary evidence appended thereto. Therefore, the Commission is entitled to judgment as a matter of law, and the record in this case establishes an evidentiary basis for the relief requested.

The Court has jurisdiction over the conduct at issue in this case pursuant to 7 U.S.C. § 13a-1 (2012). Venue exists pursuant to 7 U.S.C. § 13a-1(e) (2012), because at least some of the acts and practices in violation of the CEA and the Regulations occurred within this District.

III. REMEDIES

A. Permanent Injunction

Defendants have not denied that they engaged in acts and practices which violated 7 U.S.C. §§ 6b(a)(1)(A)-(C), 6k(2), 6m(1), and 6o(1) (2012) and 17 C.F.R. §§ 3.12, 4.20(a), and 4.41(a) (2013). Unless restrained and enjoined by this Court, there is a reasonable likelihood that Defendants will continue to engage in the acts and practices alleged in the Complaint and in similar acts and practices in violation of the CEA and Regulations. Based on Defendants' conduct as alleged and pursuant to 7 U.S.C. § 13a-1 (2012), the Court enters an injunction against Defendants permanently restraining, enjoining, and prohibiting them from directly or indirectly:

- a. engaging in conduct that violates 7 U.S.C. §§ 6b(a)(1)(A)-(C), 6k(2), 6m(1), and 6o(1) (2012) and 17 C.F.R. §§ 3.12, 4.20(a), and 4.41(a) (2013);
- b. trading on or subject to the rules of any registered entity (as that term is defined in 7 U.S.C. § 1a (2012));
- c. entering into any transactions involving commodity futures, options on commodity futures, commodity options (as that term is defined in 17 C.F.R. § 1.3(hh) (2013)), security futures products, swaps (as that term is defined in 7 U.S.C. § 1a(47) (2013), and as further defined by 17 C.F.R. § 1.3(xxx) (2013)), and/or foreign currency (as described in 7 U.S.C. § 2(c)(2)(B) and 2(c)(2)(C)(i) (2012)) ("forex contracts") for their own personal account(s) or for any account(s) in which they have a direct or indirect interest;
- d. having any commodity futures, options on commodity futures, commodity options, security futures products, swaps, and/or forex contracts traded on their behalf;

e. 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, security futures products, swaps, and/or forex contracts;

f. 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, swaps, and/or forex contracts;

g. 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 17 C.F.R. § 4.14(a)(9) (2013); and/or

h. acting as a principal (as that term is defined in 17 C.F.R. § 3.1(a) (2013)), agent, or any other officer or employee of any person (as that term is defined in 7 U.S.C. § 1a (2012)) registered, exempted from registration, or required to be registered with the Commission except as provided for in 17 C.F.R. § 4.14(a)(9) (2013).

B. Restitution

In its Memorandum of Law and supporting affidavits and exhibits, the Commission has established that the amount of pool participant funds misappropriated by Defendants prior to July 16, 2011, was \$43,790.13¹ and that the amount of losses incurred by Defendants' pool participants on and after July 16, 2011 was \$993,190.88.² Accordingly, the Court orders Defendants, jointly and severally, to pay restitution in the amount of \$1,036,981.01, plus post-judgment interest ("Restitution Obligation"). Post-judgment interest shall accrue on the Restitution Obligation beginning on the date of entry of this

¹ Before July 16, 2011, the measure of restitution was "defendant[s]' unjust gains." See FTC v. Verity Int'l, Ltd., 443 F.3d 48, 68 (2d Cir. 2006).

² Since July 16, 2011, the measure of restitution has been "the amount of [the] losses proximately caused by" defendants' violations of the Commodity Exchange Act. See 7 U.S.C. § 13a-1(d)(3).

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.

To effect payment of the Restitution Obligation and the distribution of any restitution payments to Defendants' pool participants, the Court appoints the National Futures Association ("NFA") as Monitor. The Monitor shall collect restitution payments from Defendants, including the financial institutions referenced above, and make distributions as set forth below. Because the Monitor is acting as an officer of this Court in performing these services, the NFA shall not be liable for any action or inaction arising from NFA's appointment as Monitor, other than actions involving fraud.

Defendants shall make Restitution Obligation payments under this Order to the Monitor in the name "SK Madison Commodities – Restitution Fund" and shall send such Restitution Obligation payments by electronic funds transfer, or by U.S. postal money order, certified check, bank cashier's, or bank money order, to the Office of Administration, National Futures Association, 300 South Riverside Plaza, Suite 1800, Chicago, Illinois 60606 under a cover letter that identifies the Defendant making payment and the name and docket number of this proceeding. Defendants shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

The Monitor shall oversee the Restitution Obligation and shall have the discretion to determine the manner of distribution of such funds in an equitable fashion to Defendants' pool participants identified by the Commission or may defer distribution until such time as the Monitor deems appropriate. In the event that the amount of Restitution Obligation payments to the Monitor are of a de minimis nature such that the Monitor determines that the administrative cost of making a distribution to eligible pool participants is impractical, the Monitor may, in its discretion, treat such restitution payments as civil monetary penalty payments, which the Monitor shall forward to the Commission following the instructions for civil monetary penalty payments set forth in Part C below.

The Court further orders that the funds currently frozen in the accounts referenced below shall be immediately released directly to the Monitor and applied to payment of the Restitution Obligation in accordance with the terms of this Order:

Financial Institution	Account Name	Account No.	Approximate Balance
Interactive Brokers	SKMC	XXXXXX3113	\$494,000
FXCM	SKMC	XXXXXX0750	\$2,500

Defendants shall cooperate with the Monitor as appropriate to provide such information as the Monitor deems necessary and appropriate to identify Defendants' pool participants to whom the Monitor, in its sole discretion, may determine to include in any plan for distribution of any Restitution Obligation payments. Defendants shall execute any documents necessary to release funds that they have in any repository, bank, investment or other financial institution, wherever located, in order to make partial or total payment toward the Restitution Obligation.

The Monitor shall provide the Commission at the beginning of each calendar year with a report detailing the disbursement of funds to Defendants' pool participants during the previous year. The Monitor shall transmit this report under a cover letter that identifies the name and docket number of this proceeding to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

The amounts payable to each pool participant shall not limit the ability of any pool participant from proving that a greater amount is owed from Defendants or any other person or entity, and nothing herein shall be construed in any way to limit or abridge the rights of any pool participant that exist under state or common law. Pursuant to Rule 71 of the Federal Rules of Civil Procedure, each pool participant of Defendants who suffered a loss 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 that has not been paid by Defendants to ensure continued compliance with any provision of this Order and to hold Defendants in contempt for any violations of any provision of this Order.

To the extent that any funds accrue to the U.S. Treasury for satisfaction of Defendants' Restitution Obligation, such funds shall be transferred to the Monitor for disbursement in accordance with the procedures set forth above.

C. Civil Monetary Penalties

Significant civil monetary penalties are warranted in this case. Defendants have not denied that they committed repeated violations of core provisions of the CEA and Regulations that fraudulently divested 27 pool participants of \$1.3 million. Therefore, the Court orders Defendants Seward, Kaziyev, and SKMC to pay, jointly and severally, a civil monetary penalty of \$2,486,865.57 (triple the amount misappropriated by Defendants) ("CMP Obligation"). [See Decl. of Michael Loconte dated Mar. 6, 2014, ¶ 14 & Attach. C (listing the amount of misappropriated funds as \$828,955.19)]; 7 U.S.C. § 13a-1(d)(1) (providing for "a civil penalty in the amount of . . . triple the monetary gain").

Defendants shall pay the CMP Obligation immediately and post-judgment interest shall accrue on the CMP Obligation 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. Defendants shall pay the CMP Obligation by electronic funds transfer, or by 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, 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 – AMZ 340
DOT/FAA/MMAC
6500 S. MacArthur Blvd.
Oklahoma City, Oklahoma 73169
Telephone: 405-954-5644

If payment is to be made by electronic funds transfer, Defendants shall contact Nikki Gibson or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Defendants shall accompany payment of the penalty with a cover letter that identifies the

paying Defendant and the name and docket number of the proceedings. Defendants shall simultaneously transmit copies of the cover letter and the form of payment to the Director, Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581, and the Chief, Office of Cooperative Enforcement, Division of Enforcement, at the same address.

D. Disgorgement of Relief Defendant's Assets

A total of approximately \$52,000 of pool participant funds remains in a trading account in the name of SKM at Citibank N.A, Account No. XXXXX6678. [See Decl. of Michael Loconte dated Mar. 6, 2014, ¶ 15d.] Because Defendants do not deny that they fraudulently obtained these funds and merely transferred them to an account in the name of Relief Defendant ("SKM"), SKM has no legitimate claim to the funds. Nor has SKM denied that it is "(1) in possession of ill-gotten funds and (2) lacks a legitimate claim to those funds." See CFTC v. Walsh, 618 F.3d 218, 225 (2d Cir. 2010). Therefore, the Court orders that these funds be immediately disgorged by SKM, released directly to the Monitor, and applied to the Restitution Obligation in accordance with the terms of this Order.

IV. MISCELLANEOUS PROVISIONS

Equitable Relief: The injunctive and equitable relief provisions of this Order shall be binding upon Defendants and upon any persons who are acting in the capacity of agent, officer, employee, servant, attorney, successor and/or assign of any of the Defendants, and upon any person acting in active concert or participation with any Defendant who receives actual notice of this Order by personal service or otherwise.

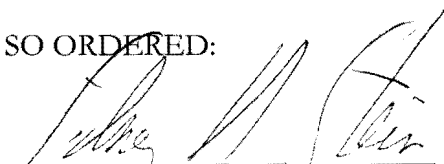
Notices: All notices required to be given to the Commission by any provision in this Order shall be sent certified mail, return receipt requested, as follows:

Director of Enforcement
Commodity Futures Trading Commission
Division of Enforcement
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Continuing Jurisdiction of this Court: This Court shall retain jurisdiction of this case to assure compliance with this Order and for all other purposes related to this action.

Dated: New York, New York
June 9, 2014

SO ORDERED:



Sidney H. Stein, U.S.D.J.