

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

U.S. Commodity Futures Trading Commission,

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,

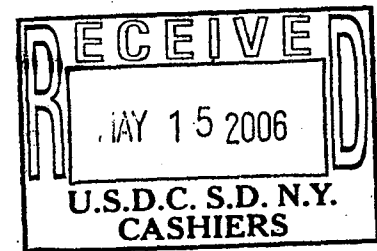
Defendants, and

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.

03 CV 9126 (GBD)

**Order For Entry of  
Ancillary Equitable Relief Against  
Relief Defendants Michael Edwards  
Trading Group, Ltd., JSG Freight  
Systems, Inc., Shuster, Shuster &  
Shuster, Ltd., BLJ Consulting, Inc.,  
and Winn Industries Division of  
Ontario, Limited (1430214 Ontario,  
Limited)**



On November 18, 2003, the Commission filed a Complaint charging 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") with cheating, defrauding and deceiving investors in violation of Section 4(b)(a)(2) of the Commodity Exchange Act ("Act"), 7 U.S.C. § 6b(a)(2) (2002) and Commission Regulation 1.1(b), 17 C.F.R. § 1.1(b) (2001). The Complaint also charged WSL with violating Section 4(a) of the Act, 7 U.S.C. § 6(a), for the sale of illegal foreign currency futures contracts. In addition, WSL was

charged with violating § 4b(a)(2) of the Act and with violations of Commission Regulation 1.1(b) committed by 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) (2002), and Commission Regulation 1.2, 17 C.F.R. § 1.2 (2002), as all such violations were within the scope of those agents' office or employment with WSL. Additionally, the Complaint charged Ross, Yampolsky, Sapienza, Schiavone, and Korobov as controlling persons for the aforementioned violations by WSL. The complaint further charged that Relief Defendants Michael Edwards Trading Group, Ltd. ("METG"), JSG Freight Systems, Inc. ("JSG"), Shuster, Shuster & Shuster, Ltd. ("SSS"), BLJ Consulting, Inc. ("BLJ"), Winn Industries Division of Ontario, Limited (1430214 Ontario, Limited) ("Ontario"), and The Fuzzy Group, Inc. ("Fuzzy") received funds as a result of the defendants' fraud.

On November 18, 2003, the Court issued a Statutory Restraining Order ("SRO") which, among other things, appointed a Receiver and authorized the freezing of up to \$844,840 of METG's funds, \$417,537 of JSG's funds, \$699,053 of SSS's funds, \$684,161 of BLJ's funds, and \$140,988 of Ontario's funds.

On November 19, 2003, METG and JSG were properly served pursuant to Rule 4(h)(1) of the Federal Rules of Civil Procedure ("Fed. R. Civ. P."). On November 24, 2003, SSS was properly served pursuant to Fed. R. Civ. P. 4(h)(1). On December 16, 2003, BLJ was properly served pursuant to Fed. R. Civ. P. 4(h)(1), and Ontario was properly served pursuant to Fed. R. Civ. P. 4(f) and 4(h). METG, JSG, SSS, BLJ, and Ontario failed to answer or otherwise defend the Complaint within the time permitted by Rule 12(a)(1) of the Fed. R. Civ. P. On September 14, 2004, the Clerk of this Court entered certificates of default against METG, JSG, SSS, BLJ, and Ontario, and on January 13, 2005, this Court entered a default judgments against METG, JSG, SSS, BLJ, and Ontario. Further, on September 16, 2004, the Clerk of the Court issued a

certificate of default against WSL, and on January 13, 2005, the Court entered a default judgment against WSL for also failing to answer or otherwise defend the Complaint.

The Commission has now submitted its Application for Entry of Ancillary Equitable Relief ("Application") against METG, JSG, SSS, BLJ, and Ontario 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 METG, JSG, SSS, BLJ, and Ontario 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 disgorgement. Accordingly, the Court now issues the following Order for Ancillary Equitable Relief ("Order") against METG, JSG, SSS, BLJ, and Ontario.

## **I. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

### **A. Jurisdiction and Venue**

This Court has jurisdiction over the subject matter of this action and METG, JSG, SSS, BLJ, and Ontario 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 WSL was found in, inhabited, or transacted business in this district, the acts and practices in violation of the Act occurred within this district, among other places, and METG, JSG, SSS, BLJ, and Ontario benefited from these acts and practices.

**B. Findings of Fact**

WSL was a limited liability company in the State of New York. WSL has never been registered with the Commission in any capacity.

METG, JSG, SSS, BLJ are New York State corporations and are Relief Defendants. Ontario is a Canadian corporation and is a Relief Defendant. METG, JSG, SSS, BLJ, and Ontario have never been registered with the Commission.

From at least January 1999 to at least April 2002, WSL fraudulently solicited and obtained funds from its customers, the retail public, for the purpose of trading foreign currency contracts which were, in fact, illegal off-exchange foreign currency futures contracts. Instead of actually trading clients' funds, WSL misappropriated a substantial portion of the funds obtained from customers. METG, JSG, SSS, BLJ, and Ontario benefited from these actions in that METG received \$844,841, JSG received \$417,537, SSS received \$699,054, BLJ received \$684,161, and Ontario received \$140,989 of fraudulently obtained customer funds from WSL and these funds were directly traceable to WSL's fraud.

WSL did not conduct its 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 WSL's transactions executed or consummated by or through a contract market. WSL did not conduct transactions on a facility registered as a derivatives transaction execution facility. WSL was not an appropriate counterparty or affiliate of a proper counterparty under the Act for the alleged transactions herein.

Prior to December 21, 2000, WSL's conduct was such that it operated as a board of trade based upon its being a public marketplace offering futures contracts to buyers and sellers with the availability of price information and an execution and settlement mechanism. WSL mass

marketed to small investors by providing a foreign currency trading facility that allowed its customers, with a minimum deposit, to become "traders" at its board of trade. WSL recruited traders, many of whom have no prior trading experience, and urged them to solicit the general public through cold calls to invest with WSL. WSL provided traders with brochures for use in soliciting potential customers. WSL also provided the mechanism for traders to get prices, make orders, execute orders, and offset those orders with matching opposite transactions. WSL further confirmed, both orally and in writing, that the traders' orders had been executed. WSL's orders were leveraged contracts of its own devise. The contracts were closed out by entering into an offsetting transaction rather than by taking delivery.

WSL marketed its managed 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.

WSL's investors did not anticipate taking – and did not take – delivery of the foreign currencies they purchased as a consequence of these investments. WSL did not require its clients to set up banking relationships to facilitate delivery of the foreign currencies. As evidenced by the trading records issued to and representations made to customers, WSL, as the counterparty to its customers, routinely offset customers' positions and thereby avoided delivery on the foreign currency contracts. The WSL customer account agreement made reference to the margining and settlement of transactions in WSL customer accounts, and one full paragraph in the customer agreement defined settlement procedures whereby all profits and losses are reflected in customer account statements the following month. WSL's account agreement and solicitation materials

provided that commissions were charged on a round-turn basis. Moreover, WSL's brochure assured customers that their principal investments would be protected because WSL would be responsible for all margin requirements, and positions will be exited when stop losses are triggered.

**C. Conclusions of Law**

**1. Relief Defendants METG, JSG, SSS, BLJ, and Ontario Were Unjustly Enriched by WSL's Fraudulently Obtained Customer Funds**

WSL committed a fraud upon its customers in connection with the purchase and sale of foreign currency contracts as alleged herein. Relief Defendants METG, JSG, SSS, BLJ, and Ontario received funds or otherwise benefited from funds that are directly traceable to the funds obtained from WSL customers through fraud. METG, JSG, SSS, BLJ, and Ontario will be unjustly enriched if they are not required to disgorge the funds or the value of the benefit they received as a result of WSL's fraud. METG, JSG, SSS, BLJ, and Ontario have no legitimate claim to these funds, and therefore, METG, JSG, SSS, BLJ, and Ontario should be required to disgorge the funds and assets, or the value of the benefit they received from those funds and assets, which are traceable to WSL's fraud.

**2. WSL's Transactions Were Futures Contracts**

The Commission has jurisdiction over the transactions from which METG, JSG, SSS, BLJ, and Ontario benefited because the foreign currency contracts offered and sold by WSL were futures contracts. The contracts involved the purchase and sale of foreign currency for future delivery at prices or using pricing formulas that were established at the time the contracts were initiated.

The foreign currency futures transactions that WSL offered or entered into were with persons who were members of the retail investing public and were not eligible contract participants. WSL marketed its managed 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, customers entered into these transactions to speculate and profit from anticipated price fluctuations in the markets for these currencies. In short, they were unsophisticated retail customers who intended to profit by speculating on the changing relative values of foreign currencies and the United States dollar through their accounts at WSL.

Furthermore, WSL acted as the counterparty to the transactions with its customers. WSL was not a proper counterparty or an affiliate of a proper counterparty pursuant to Section 2(c)(2)(B) of the Act, 7 U.S.C. § 2(c)(2)(B). WSL was not a financial institution, a broker or dealer, an associated person of a broker or dealer, an insurance company, a financial holding company, or an investment bank holding company. WSL was not a futures commission merchant ("FCM"), or an affiliate of a FCM. Accordingly, the Commission has jurisdiction over WSL's transactions from which METG, JSG, SSS, BLJ, and Ontario benefited.

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

From at least January 1999 through April 2002, WSL cheated or defrauded or attempted to cheat or defraud customers or prospective customers of WSL, willfully made or caused to be made to customers false reports or statements, or willfully entered or caused to be entered for such customers false records, and willfully deceived or attempted to deceive customers or prospective customers by, among other things: making material misrepresentations to customers regarding the profitability of their accounts and failing to disclose the fraudulent withdrawal of

funds from the customers' accounts, all in violation of Section 4b(a)(2) of the Act, 7 U.S.C. § 6b(a)(2), and Regulation 1.1(b), 17 C.F.R. § 1.1(b). Defendant WSL'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) of the Act, 7 U.S.C. § 6b(a)(2).

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, WSL is also liable for any violations of Section 4b(a)(2) of the Act and Regulation 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 WSL.

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

From at least January 1999 through April 2002, WSL 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) (2001).

#### **5. Appropriate Relief**

Imposition of ancillary equitable relief is appropriate in this case as METG, JSG, SSS, BLJ, and Ontario benefited from WSL's intentional violations of the Act and Regulations which



directly impacted the numerous victims of this fraud. Accordingly, the remedy of disgorgement is appropriate in that those funds will be used to compensate the victims of WSL's wrongful acts and will deprive METG, JSG, SSS, BLJ, and Ontario the use of ill-gotten gains.

## **II. ORDER FOR ANCILLARY EQUITABLE RELIEF**

### **A. Disgorgement**

**IT IS HEREBY ORDERED that:**

1. METG shall disgorge \$844,841,
2. JSG shall disgorge \$417,537,
3. SSS shall disgorge \$699,054,
4. BLJ shall disgorge \$684,161, and
5. Ontario shall disgorge \$140,989,

which represents all benefits METG, JSG, SSS, BLJ, and Ontario received, directly or indirectly, from acts or practices in violation of the Act and Regulations as described herein. Accordingly, these funds shall be paid to the Court-appointed Receiver and shall remain in the custody and control of the Receiver until such time as an asset allocation plan is filed with and approved by this Court. At such time, these funds and any other funds frozen pursuant to this fraud shall be distributed to the victims of this fraud.

### **B. 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:

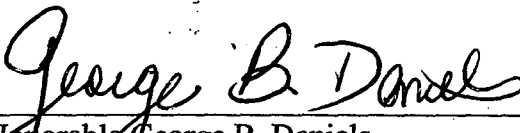
Notice to Commission:      Regional Counsel  
   U.S. Commodity Futures Trading Commission  
   Division of Enforcement - Eastern Regional Office  
   140 Broadway, 19<sup>th</sup> floor  
   New York, New York 10005

Notice to Receiver: Brian Rosner, Esq.  
Rosner, Moscow & Napierala, LLP  
26 Broadway, 22<sup>nd</sup> floor  
New York, NY 10004-24424

**C. 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 ~~NOV 09 2006~~ New York on this \_\_\_ day of \_\_\_\_\_, 2006.

  
\_\_\_\_\_  
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: *Sheila L. Marhamati*  
Sheila L. Marhamati [SM-8016]

Trial Attorney

Steven Ringer [SR- 9491]

Chief Trial Attorney

U.S. COMMODITY FUTURES TRADING  
COMMISSION

140 Broadway, 19<sup>th</sup> Floor

New York, New York 10005

(646) 746-9743

(646) 746-9939 (facsimile)

smarhamati@cftc.gov