

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

COMMODITY FUTURES TRADING)	Civil Case No. 1:02 - CV 2394
COMMISSION,)	
)	
)	COMPLAINT FOR INJUNCTIVE AND
Plaintiff,)	OTHER EQUITABLE RELIEF AND
)	FOR CIVIL PENALTIES UNDER THE
vs.)	COMMODITY EXCHANGE ACT, AS
)	AMENDED, 7 U.S.C. §§ 1-25
Global Financial Consulting,)	
Inc., Wook Hyun Kim, and)	FILED UNDER SEAL
Chang H. Lee,)	
)	
Defendants.)	
)	
)	

I. SUMMARY

1. Since at least June 2001, Global Financial Consulting, Inc. ("GFC"), Wook Hyun Kim ("Kim"), and Chang H. Lee ("Lee") (collectively referred to as the "Defendants") have fraudulently offered and sold illegal off-exchange foreign currency futures contracts to the retail public in Georgia. By guaranteeing profits and making false claims of significant profits and other claims, Defendants have solicited and obtained approximately \$118,000 from six customers. Defendants claim to have a total of approximately thirty to forty customers. Out of the \$118,000 of customer funds, Defendants invested \$106,000 in Kim's personal commodity trading account, and of that amount, Defendants sustained trading losses of at least \$105,100.

2. Kim is both the owner of GFC and personally solicits customers to invest with GFC. Lee is the "financial consultant" for GFC and claims to have investment experience. Lee allegedly manages the investments of GFC customers, and is also involved in soliciting customers for GFC. Both Kim and Lee provide potential customers with solicitation materials that specifically guarantee significant profits, and they verbally reiterate this guarantee to customers.

3. Because these transactions are not conducted on or subject to the rules of a board of trade designated or registered by the Commodity Futures Trading Commission ("Commission") as a contract market or derivatives transaction execution facility for such commodity, or executed or consummated by or through a contract market, Defendants have violated Section 4(a) of the Commodity Exchange Act ("Act"), as amended by the Commodity Futures Modernization Act of 2000 ("CFMA"), Appendix E of Pub. L. No. 106-554, 114 Stat. 2763, 7 U.S.C. § 6(a) (1994).

4. Furthermore, Defendants have violated Section 4b(a) of the Act, 7 U.S.C. § 6b(a) and Commission Regulations §1.1(b) (1), (2), and (3), 17 C.F.R. §1.1(b) (1), (2), and (3) (2001), by making material misrepresentations, including misrepresenting the likelihood of profits and risks associated with trading foreign currency futures contracts.

5. Accordingly, pursuant to Section 6c of the Act, as amended by the CFMA, 7 U.S.C. § 13a-1, Plaintiff Commission brings this action to enjoin the unlawful acts and practices of Defendants and to bar them from engaging in any commodity-related activity, including soliciting new customers or customers' funds. In addition, the Commission seeks civil monetary penalties in the amount of not more than the higher of \$120,000 or triple the monetary gain to Defendants for each violation of the Act, disgorgement of Defendants' ill-gotten gains, restitution to customers, prejudgment interest, and such other relief as this Court may deem necessary or appropriate.

6. Unless enjoined by this Court, Defendants are likely to continue to engage in the unlawful acts and practices alleged in this Complaint, as more fully described below.

II. JURISDICTION AND VENUE

7. Section 2(c)(2)(B)(i) and (ii) of the Act, as amended, 7 U.S.C. § 2, clarifies the Commission's jurisdiction over certain transactions in foreign currency that are contracts for the sale of a commodity for future delivery, including the transactions alleged in this Complaint. This Court has jurisdiction over this action pursuant to Section 6c of the Act, 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.

8. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, in that Defendants are found in, inhabit, or transact business in this District, and the acts and practices in violation of the Act have occurred, are occurring, or are about to occur, within this District, among other places.

III. THE PARTIES

The Plaintiff

9. Commodity Futures Trading Commission is an independent federal regulatory agency that is charged with responsibility for administering and enforcing the provisions of the Act, as amended, 7 U.S.C. §§ 1 et seq. (1994), and the regulations promulgated thereunder.

The Defendants

10. Global Financial Consulting, Inc. ("GFC") is incorporated in the state of Georgia. Its principal place of business is located at 660 Whitlock Avenue, Suite G, Marietta, Georgia, which is also the location of Dixie Cleaners, a dry cleaning business formerly owned by Kim. GFC has never been registered with the Commission in any capacity.

11. Wook Hyun Kim ("Kim") resides at 504 Two Iron Way, Kennesaw, Georgia 30144. Kim is the sole owner of GFC and also

personally solicits customers to invest with GFC. On the GFC incorporation documents, filed with the state of Georgia, Kim is listed as the registered agent, the only person on the Board of Directors, the incorporator, and the applicant seeking incorporation of the company. Kim has never been registered with the Commission in any capacity.

12. Chang H. Lee ("Lee") resides at 2985 Abbotts Point Drive, Duluth, Georgia 30097. As the "financial consultant" for GFC, Lee manages customer investments and solicits new customers to invest with GFC. Lee has never been registered with the Commission in any capacity.

IV. FACTUAL BACKGROUND

Solicitation of Customers

13. Since at least June 2001 to the present, Defendants have solicited customers to purchase illegal foreign currency futures contracts by making false representations, including guaranteeing profits.

14. Defendants do not inform prospective customers that they are purchasing illegal foreign currency futures contracts. In fact, Defendants never articulate to customers the specific characteristics of the "foreign currency investments" in which GFC supposedly invests on behalf of its customers.

15. Instead, Defendants, through solicitation materials, impliedly and falsely represent to prospective customers that

their funds will be used to trade foreign currencies in the "spot" or "forex" market as a means of profiting on price fluctuations. Defendants, however, are actually engaged in the trading of illegal off-exchange futures contracts, as alleged more fully below.

16. Defendants also falsely claim that GFC trades through its "parent company," Forex Capital Markets LLC ("FXCM"), a registered futures commodity merchant ("FCM") located in New York, New York. In fact, there is no relationship between GFC and FXCM.

17. Defendants solicit potential customers to purchase these illegal off-exchange futures contracts in a fraudulent manner. Defendants assure customers, both in writing and verbally, that they will never experience a loss on any of the money they invest with GFC.

18. For example, solicitation materials provided by Defendants state that customers' "invested principal is always guaranteed by GFC." In addition, Defendants inform customers that their funds are deposited into "triple-A rated financial institutions" which are "FDIC insured," and that all GFC client funds are "legally protected and held in escrow," so as to "protect[] clients against bankruptcy as a result of poor management or trading decisions."

19. Defendants guarantee that GFC customers will make profits ranging from 20% to 80% per annum. In fact, GFC states in a customer contract that profits of at least 30% are "**guaranteed** no matter what the market condition is," and in other literature GFC guarantees customers 20% profit on their investment.

20. Defendants thus far have concentrated their solicitation efforts on acquaintances, as well as people living in and around the city of Atlanta. For instance, Defendant Kim tends to solicit people who attend Kim's former church while Lee claims to have solicited former colleagues.

21. Defendant Kim also asks his friends and acquaintances at the church to provide him with additional referrals.

Customer Funds and Purported Trading

22. Upon investing, Defendants provide and have customers sign a "Customer Agreement" document. This document states that GFC "will act as broker" for customers' "investment and/or trading in foreign exchange contracts."

23. Defendants offered customers "six month contracts" where the customers' investment is managed by GFC with guaranteed returns.

24. Defendant Kim requests that customers provide their GFC investment funds to him either in the form of cash or by check payable to him. One GFC customer invested \$99,000 and paid Kim the entire amount over two months in cash.

25. Defendants falsely inform customers in writing and verbally that upon receipt, GFC holds customers funds at Citibank and/or Fleet Bank, and then trades customers' funds through FXCM - a firm which GFC falsely claims is its "parent company."

26. Defendants solicited and accepted funds from customers months before opening a trading account.

27. After receiving and supposedly investing customer funds, GFC maintains that its customers are earning consistent profits. Defendants send customers statements reflecting consistent growth. GFC's account statements make no reference to FXCM or any other firm.

28. For instance, a customer received statements showing consistent returns of almost 7.0% per month (or 80% per annum), even for the months before Defendants had actually opened a trading account at FXCM.

29. To further convince this particular customer that he was earning consistent profits, Defendants sent this customer checks on a fairly consistent basis, claiming such funds were returns on the customer's GFC investment.

30. Defendants also guaranteed this customer that, apart from these monthly returns, he was earning 80% annual profit on a separate account GFC established for him. Defendants continue

to assure customers that they are earning significant profits, month after month.

31. It was not until the customer requested a large withdrawal from his account in March 2002 that Defendants revealed any negative information regarding GFC or its customer accounts. Initially, Defendants told the customer that they could release the requested funds to him within ten business days.

32. After the ten business days passed, this customer went to GFC's business premises seeking his requested withdrawal. Instead of producing the money to this customer as promised, Defendant Kim stated that GFC had lost all its money trading and that the company would soon be declaring bankruptcy.

33. Consequently, the customer experienced a net loss of approximately 30% on his GFC investment instead of the 80% profit he was guaranteed. It appears that other GFC customers are unaware of the trading losses incurred by GFC and continue to receive periodic account statements showing consistently profitable results.

Defendant Kim Conducted Limited Trading In His Own Name and Not on Behalf of Customers

34. Defendant Kim conducted some trading of futures contracts through an account in his name at FXCM. Kim never disclosed to FXCM that he had customers, or that he operated any

kind of investment firm. Defendants never opened or traded any GFC customer accounts at FXCM.

35. FXCM never heard of GFC, nor did it ever maintain any kind of business relation or affiliation with it. In addition, the records show that Kim traded only \$106,000 at FXCM, while GFC took in at least \$118,000 from the six customers known to the Commission.

Defendants' Purported Foreign Currency Transactions Are Illegal Futures Contracts

36. Defendants acted as the counterparty to all of the transactions entered into by the retail customers.

37. Defendants purport to offer contracts in "spot" foreign currency to retail investors, which in reality are illegal off-exchange futures contracts. The foreign currency contracts that Defendants offer and sell are futures contracts because they have the characteristics indicative of a futures contract.

38. The contracts represent contracts for future delivery of foreign currencies that are cash settled in US dollars. The prices are established at the time the contracts are initiated, and may be settled through offset, cancellation, cash settlement or other means to avoid delivery.

39. Defendants market the GFC contracts to the general public as a means to speculate and profit from anticipated price fluctuations in the markets for these currencies.

40. Unlike parties to a spot transaction, the customers who purchase these futures contracts have no commercial need for the foreign currency. The customers do not anticipate taking -- and do not take -- delivery of the foreign currencies they purchase as a consequence of these investments.

41. Defendants do not conduct their foreign currency futures transactions on or subject to the rules of a board of trade that has been designated or registered by the Commission as a contract market or derivatives transaction execution facility for such commodity.

42. Defendants do not execute or consummate their contracts by or through a contract market. The foreign currency transactions conducted by defendants are not evidenced by any writing that shows the underlying commodity, its price, and the terms of delivery. As a result, the contracts are illegal futures contracts.

43. Section 2(c)(2)(B)(i) and (ii) of the Act provides that the Commission shall have jurisdiction over an agreement, contract or transaction in foreign currency that is a sale of a commodity for future delivery, so long as the contract is "offered to, or entered into with, a person that is not an

eligible contract participant" unless the counter-party, or the person offering to be the counter-party, is a regulated entity, as enumerated in the CFMA. No Defendant is a proper counter-party for retail foreign currency transactions, and therefore the Commission has jurisdiction over the transactions in retail foreign currency alleged herein.

44. Section 1a(12)(A)(xi) of the Act, as amended by the CFMA, 7 U.S.C. § 1, defines an eligible contract participant as an individual who has total assets in excess of: a) \$10 million; or b) \$5 million and who enters the transaction to manage the risk associated with an asset owned or a liability incurred, or reasonably likely to be owned or incurred. At least some, if not all, of the foreign currency futures transactions alleged herein were offered to or entered into with persons who were not eligible contract participants, and so the Commission has jurisdiction over such GFC contracts.

V. VIOLATIONS OF THE COMMODITY EXCHANGE ACT

COUNT I

**VIOLATION OF SECTION 4(a) OF THE ACT, 7 U.S.C. § 6(a):
OFFER AND SALE OF COMMODITY FUTURES CONTRACTS
NOT CONDUCTED ON A BOARD OF TRADE WHICH HAS BEEN DESIGNATED AS
A CONTRACT MARKET**

45. Plaintiff realleges paragraphs 1 through 44 above and incorporates these allegations herein by reference.

46. Since at least June 2001, and continuing to the present, Defendants have offered to enter into, entered into,

executed, confirmed the execution of, or conducted an office or business in the state of Georgia 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 have not been conducted on or subject to the rules of a board of trade which has been designated by the Commission as a contract market or derivatives transaction execution facility for such commodity, (b) such contracts have not been executed or consummated by or through a contract market, and (c) such contracts have not been evidenced by a record in writing which shows the property covered, its price, and the terms of delivery, in violation of Section 4(a) of the Act, as amended by the CFMA, 7 U.S.C. § 6(a).

47. Each foreign currency futures transaction not conducted on a designated contract market or derivatives transaction execution facility for such commodity made during the relevant time period, including but not limited to those conducted by the Defendants as specifically alleged herein, is alleged as a separate and distinct violation of Section 4(a) of the Act, as amended by the CFMA, 7 U.S.C. § 6(a).

COUNT II
**VIOLATION OF SECTION 4b(a) OF THE ACT AND REGULATION 1.1(b), 7
U.S.C. § 6(a) AND 17 C.F.R. §1.1(b): FRAUD**

48. Plaintiff realleges paragraphs 1 through 47 above and incorporates these allegations herein by reference.

49. During the relevant time period, Defendants, in or 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, where such contracts for future delivery were or could be used for the purposes set forth in Section 4b(a) of the Act, 7 U.S.C. § 6b(a) (1994), have cheated or defrauded or attempted to cheat or defraud investors or prospective investors and willfully deceived or attempted to deceive investors or prospective investors by, among other things: 1) explicitly guaranteeing profits and misrepresenting profit potential and risks associated with the illegal foreign currency futures contracts they offered and purported to sell to members of the public; 2) luring customers by falsely claiming that FXCM is the parent company of GFC, and that GFC held customer funds at Citibank and/or Fleet Bank and thus were "FDIC insured"; 3) misrepresenting the fact that customer funds were held in escrow to protect against poor management decisions or trading decisions, when in fact no such escrow account existed; and 4) misrepresenting, orally and through account statements to customers, the results of their trading and failure to disclose that Kim and Lee experienced consistent losses.

50. Defendants committed the aforementioned acts all in violation of Section 4b(a) the Act, 7 U.S.C. § 6b(a) (1994), and in violation of Commission Regulation §1.1(b) (1), (2), and (3), 17 C.F.R. § 1.1(b) (1), (2), and (3) (2002).

51. Each fraudulent misrepresentation and omission, including those specifically alleged herein, is alleged as a separate and distinct violation of Section 4b of the Act and Commission Regulation 1.1(b).

VI. RELIEF REQUESTED

WHEREFORE, Plaintiff Commission respectfully requests that this Court, as authorized by Section 6c of the Act, and pursuant to the Court's equitable powers, enter:

1. an order of permanent injunction prohibiting Defendants GFC, Kim, and Lee and any other person or entity associated with them, including any successor thereof, from engaging in conduct violative of Section 4(a) of the Act, as amended by the CFMA, 7 U.S.C. § 6(a), Section 4b(a) of the Act, 7 U.S.C. § 6b(a) and Commission Regulation §1.1(b) (1), (2), and (3), 17 C.F.R. § 1.1(b) (1), (2), and (3);
2. an order directing Defendants GFC, Kim, and Lee and any successors thereof, to disgorge, pursuant to such procedure as the Court may order, all benefits

- received from the acts or practices which constituted violations of the Act, as described herein, and interest thereon from the date of such violations;
3. an order directing Defendants GFC, Kim, and Lee to make full restitution to every customer whose funds were received by them as a result of acts and practices which constituted violations of the Act, and interest thereon from the date of such violations;
 4. an order directing Defendants GFC, Kim, and Lee to pay a civil penalty in the amount of not more than the higher of \$120,000 or triple the monetary gain to Defendants for each violation of the Act;
 5. an order requiring Defendants GFC, Kim, and Lee to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2412(a)(2); and
 6. such other and further remedial ancillary relief as the Court may deem just and proper.

Respectfully submitted:

Date: August 28, 2002

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