

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA**

COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

v.

DAVID A. LUGER,

Defendant.

CIVIL ACTION NO: 02-80435
CIV-HURLEY

COMPLAINT FOR A PERMANENT
INJUNCTION AND OTHER
EQUITABLE RELIEF, AND CIVIL
MONETARY PENALTIES UNDER
THE COMMODITY EXCHANGE ACT,
AS AMENDED, 7 U.S.C. §§ 1, *et seq.*

I. SUMMARY

1. Defendant David Alan Luger (“Luger”) has violated, and continues to violate, an order entered by the Commodity Futures Trading Commission (“Commission”) in settlement of fraud charges.

2. In November 1996, the Commission filed an administrative complaint against Luger, among others, for fraudulently soliciting customers to trade options on commodity futures contracts (“options”) in violation of the anti-fraud provisions of the Commodity Exchange Act, as amended (the “Act”), and regulations promulgated by the Commission (“Regulations”). In the Matter of Lexus Financial Group, et. al., CFTC Docket No. 97-4 (Nov. 1996).

3. In February 2000, Luger agreed to the entry of an order making findings and imposing remedial sanctions (“Order”) requiring Luger and another defendant to jointly and severally pay \$6.8 million in restitution, among other sanctions and undertakings. In the Matter of Lexus Financial Group, et. al. (Feb. 2000).

4. Based upon testimony provided by Luger concerning his income and net worth at that time, Luger was not ordered to pay restitution at the time the proceeding was settled. Rather, Luger was ordered to pay restitution pursuant to a five-year payment plan. In accordance with

the payment plan, Luger is required to provide sworn financial statements on June 30 and December 31 each year and to provide signed federal tax returns and other tax records by June 30 of the year following the year for which the tax return was filed, so that the amount of restitution owed by Luger for that year can be determined. Luger, however, has failed to provide his financial information timely, has reported false information on those occasions when he has provided such financial information, and has failed to submit any tax records, all in violation of the Order and Section 6c of the Act, 7 U.S.C. §13a-1 (1994).

5. Defendant has engaged in, is engaging in and, unless restrained and enjoined, will continue to engage in, acts and practices which constitute violations of the Order and Section 6c of the Act, 7 U.S.C. §13a-1 (1994).

6. Accordingly, the Commission brings this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, to enjoin the Defendant's unlawful acts and practices and to compel his compliance with the Act and the Order, including providing accurate and timely financial information as required by the Order, and to pay restitution as required under the Order. In addition, the Commission seeks a civil monetary penalty and such equitable relief as this Court may deem necessary or appropriate.

II. JURISDICTION AND VENUE

7. This Court has jurisdiction over this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (1994), which provides that whenever it shall appear to the Commission that any 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 promulgated thereunder, the Commission may bring an action in the proper District Court of the United States against such

person to enjoin such practice, or to enforce compliance with the Act, or any rule, regulation or order thereunder.

8. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (1994), because the Defendant is found in, inhabits, or transacts business in the Southern District of Florida, and the acts and practices in violation of the Act have occurred within this District, among other places.

9. Unless restrained and enjoined by this Court, the Defendant is likely to engage in the acts and practices alleged in this Complaint or in similar acts and practices, as described more fully below.

II. THE PARTIES

10. Plaintiff Commission is an independent federal regulatory agency that is charged with the administration and enforcement of the Act, 7 U.S.C. §§ 1 et seq. (1994), and the regulations promulgated thereunder. The Commission maintains its principal office at Three Lafayette Center, 1155 21st Street, NW, Washington, DC 20581.

11. Defendant David Luger resides at 7409 Champagne Place, Boca Raton, Florida 31433. Luger was previously registered as an associated person of the following firms spanning the period 1984 through January 2000: American Futures Group, Inc.; Trinity Financial Group, Inc.; First Sierra Corp.; RGL Investments, Inc.; Options Trading Corp.; International Futures Strategists, Inc.; National Commodities Trading Corp.; International Trading Group, Ltd.; and Lexus Financial Group, Inc. In February 2000, the Commission revoked Luger's registration as an associated person of Lexus Financial Group, Inc.

III. FACTUAL BACKGROUND

12. On November 25, 1996, the Commission issued a Complaint and Notice of Hearing against, among others, Luger. The Complaint charged Luger with fraud in connection with the solicitation and sale of exchange-traded options, in violation of Section 4c(b) of the Act, 7 U.S.C. 6c(b) (1994), and Section 33.10 of the Regulations, 17 C.F.R. §33.10 (2001). Luger was also charged with failure to supervise, in violation of Section 166.3 of the Regulations, 17 C.F.R. §166.3 (2001). In the Matter of Lexus Financial Group, Inc. et al., CFTC Docket No. 97-4 (Nov. 1996).

13. On February 17, 2000, the Commission accepted the offers of settlement of all respondents, including Luger, and issued an Order Making Findings and Imposing Remedial Sanctions (“Order”) against respondents, which, among other things, ordered Luger and another respondent, jointly and severally, to pay restitution of \$6,809,5213.53, plus prejudgment interest of \$1,804,523.91, totaling \$8,613,570. In the Matter of Lexus Financial Group, et. al. (Feb. 2000).

14. Luger is required to make the restitution payments to a Monitor designated by the Commission pursuant to a five-year payment plan, requiring Luger to pay a percentage of his income as restitution. Luger did not have to pay restitution in any given year if his income was under \$50,000 for that year.

15. The payment plan requires Luger to submit to the Monitor sworn financial statements twice a year, June 30 and December 31. It also requires Luger to submit to the Monitor “signed federal income tax returns, including all schedules and attachments thereto (*e.g.*, IRS Forms W-2) and Forms 1099, as well as any filings he is required to submit to any state tax or revenue

authority,” (“Tax Records”) on or before June 30 of every year following the year for which the tax returns were filed.

16. The Order also requires Luger to “cooperate fully and expeditiously with the Monitor and the Commission in carrying out all aspects of his.... restitution Annual Payments.”

17. Pursuant to the Order, Luger’s first sworn financial statement and year 1999 Tax Records were due to the Monitor by June 30, 2000. Luger did not timely provide this information.

18. The Monitor sent a letter to Luger on August 28, 2000 reminding Luger he was required to provide the financial statement and Tax Records.

19. Luger provided a financial statement to the Monitor in September 2000. Contrary to the requirement of the Order, Luger did not swear to the financial statement. In his September 2000 statement, Luger claimed he had been receiving \$3,000 per month in salary. Luger provided no Tax Records for 1999 and provided no other information as to his 1999 income.

20. Based on the information submitted by Luger, the Monitor determined that Luger did not owe any restitution for the year 1999, and Luger has not paid any restitution for the year 1999.

21. Luger was next required to submit a sworn financial statement to the Monitor on December 31, 2000. Luger did not provide the statement to the Monitor at that time. The Monitor sent Luger a letter on February 2, 2001 reminding him of his obligations under the Order.

22. On or about April 16, 2001, Luger provided a financial statement to the Monitor claiming income of \$1000 a week. Contrary to the requirement of the Order, Luger did not swear to the financial statement.

23. Luger was next required to provide a sworn financial statement and year 2000 Tax Records to the Monitor on June 30, 2001. Luger did not timely provide this information to the Monitor.

24. On July 26, 2001, August 8, 2001 and October 29, 2001, the Monitor sent letters to Luger notifying him that he had not complied with his obligation under the Order because he had not submitted his sworn financial statement for June 30, 2001 and his Tax Records for 1999 and 2000. Luger has never responded to these letters.

25. Based on the financial information provided by Luger in April 2001, and his failure to provide Tax Records for the year 2000, the Monitor was unable to determine whether Luger had to pay restitution for the year 2000, and Luger has not paid restitution for the year 2000.

26. Luger has failed to submit another sworn financial statement that was due on December 31, 2001.

27. From at least April 1999 to October 2000, Luger worked as a broker for USFX, Inc. (“USFX”), a foreign currency trading company.

28. On May 10, 2001, Luger testified at a bond hearing before the Circuit Court of the Fifteenth Judicial Circuit, Criminal Division in and for Palm Beach County, Florida, that he had been paid in excess of \$150,000 from USFX, an amount of money substantially in excess of what Luger claimed for that time period in his September 2000 and April 2001 financial statements to the Monitor. Luger’s wife, Susan Todesco Luger (“Todesco”), who was not employed by USFX, received in excess of \$120,000.

29. After USFX closed on or about October 2000, Luger worked at Worldwide Forex, Inc. (“WWF”), another foreign currency trading company, through at least March 2001.

30. Luger told Philip Kahn (“Kahn”), the owner of WWF, that his salary checks could not exceed \$1000 in any week to avoid having to report more than \$1,000 per week to the Monitor.

31. Luger, however, also received commissions from WWF in the form of cash in addition to the \$1,000 per week salary check from WWF.

32. WWF ceased operations on or about March 2001. Luger, however, continued to solicit foreign currency customers. From April 2001 through at least February 2002, Luger received commissions in connection with foreign currency trading in the name of PDK Productions (“PDK”), a company previously owned by Kahn and transferred to Todesco at Luger’s request.

33. Luger has not reported any of the commissions noted in paragraphs 31 and 32 above to the Monitor pursuant to the Order.

IV. VIOLATIONS OF THE COMMODITY EXCHANGE ACT

COUNT ONE

VIOLATION OF THE FEBRUARY 17, 2000 ORDER AND SECTION 6c OF THE ACT

34. The allegations contained in paragraphs 1 through 33 are realleged and incorporated herein by reference.

35. Section VI, paragraph 4 of the Order requires Luger to pay restitution to customers of up to \$6,809,046.53, plus prejudgment interest thereon, pursuant to a five-year restitution payment plan, in an amount to be determined each year based upon a portion of: 1) the adjusted gross income earned or received by Luger during the course of the preceding calendar year; plus 2) all other net cash receipts, net cash entitlements or net proceeds of non-cash assets received by Luger during the course of the preceding calendar year. By virtue of the conduct described in Paragraphs 20 and 25 above, Luger has violated this provision of the Order.

36. Section VI, paragraph 6, subsection a, of the Order requires Luger to provide his sworn financial statement to the Monitor on June 30 and December 31 of each calendar year, starting June 30, 2000, and continuing through and including December 31, 2003. By virtue of the conduct described in Paragraphs 17 through 19, and 21 through 24 and 26 above, Luger has violated this provision of the Order.

37. Section VI, paragraph 6, subsection a, of the Order requires Luger to provide the Monitor with complete copies of his signed federal income tax return, including all schedules and attachments thereto and Forms 1099, as well as any filings he is required to submit to any state tax or revenue authority, on or before June 30 of each calendar year. By virtue of the conduct described in Paragraphs 17, 19, 23 and 24 above, Luger has violated this provision of the Order.

38. Section VI, paragraph 6, subsection b, of the Order requires Luger to cooperate fully and expeditiously with the Monitor and the Commission in carrying out all aspects of his restitution annual payments, and provide such additional information and documents with respect thereto as may be requested by the Monitor or the Commission. By virtue of the conduct described in Paragraphs 17 through 19, 21 through 24, 26 and 33 above, Luger has violated this provision of the Order.

39. Section VI, Paragraph 6, subsection c, of the Order provides that Luger shall not transfer or cause others to transfer funds or other property to the custody, possession, or control of any member of Luger's family or any other person for the purpose of concealing such funds or property from the Monitor or the Commission. By virtue of the conduct described in Paragraphs 28 and 30 through 32 above, Luger has violated this provision of the Order.

40. By violating the Order, Luger has thereby violated Section 6c of the Act.

41. Each violation of the Order by Luger constitutes a separate and distinct violation of the Order and Section 6c of the Act.

V. RELIEF REQUESTED

WHEREFORE, the Commission respectfully requests that this Court, as authorized by Section 6c of the Act, 7 U.S.C. §13a-1, and pursuant to its own equitable powers, enter:

- a) an order of permanent injunction prohibiting Defendant from continuing to violate the Commission's Order of February 17, 2000 and any other Commission order and from violating Section 6c of the Act, 7 U.S.C. § 13a-1;
- b) an order directing Luger to provide accurate sworn financial statements and Tax Records for the years 1999, 2000 and 2001, as required by the Order of February 17, 2000;
- c) an order directing Defendant to pay restitution pursuant to the Order of February 17, 2000 in an amount to be determined after the submission of complete and accurate financial statements, tax returns and other tax records required to be provided to the Monitor;
- d) an order directing the Defendant to disgorge, pursuant to such procedure as the Court may order, all benefits received from the acts or practices which constitute violations of the Act or Regulations, as described herein, and interest thereon from the date of such violations;
- e) a civil penalty against Defendant in the amount of not more than the higher of \$110,000 or triple the monetary gain to the Defendant for each violation by the Defendant of the Act or Regulations prior to October 23, 2000, and not more than the higher of \$120,000 or triple the monetary gain to the Defendant for each violation by the Defendant of the Act or Regulations on or after October 23, 2000; and

- f) Such other and further equitable or remedial ancillary relief as the Court may deem appropriate.

Respectfully submitted,

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