

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA

U.S. COMMODITY FUTURES)
TRADING COMMISSION and)
OKLAHOMA DEPARTMENT OF)
SECURITIES *ex rel.* IRVING L. FAUGHT,)

Case No. 09-cv-1284 (DLR)

Plaintiffs,)

v.)

PRESTIGE VENTURES CORP., a)
Panamanian corporation, FEDERATED)
MANAGEMENT GROUP, INC., a Texas)
corporation, KENNETH WAYNE LEE, an)
individual, and SIMON YANG (a/k/a XIAO)
YANG a/k/a SIMON CHEN), an individual,)

Defendants; and)

SHEILA M. LEE, an individual, DAVID A.)
LEE, an individual, and DARREN LEE, an)
individual,)

Relief Defendants.)

**PLAINTIFFS' MOTION IN LIMINE TO PRECLUDE DEFENDANTS AND RELIEF
DEFENDANTS FROM OFFERING WITNESSES AND EXHIBITS IN THEIR CASE IN
CHIEF**

COME NOW Plaintiffs U.S. Commodity Futures Trading Commission ("Commission" or "CFTC") and Oklahoma Department of Securities, *ex rel.* Irving L. Faught ("ODS") (collectively "Plaintiffs") and hereby move this Court, *in limine*, for an order precluding Defendants Kenneth Wayne Lee and Simon Yang (collectively "Defendants") and Relief Defendants Sheila M. Lee, David A. Lee and Darren Lee (collectively "Relief Defendants") from presenting witnesses and exhibits in their case in chief.

BACKGROUND

Since at least July 2003 through the present, the corporate Defendants Prestige Ventures Corp. (“Prestige”) and Federated Management Group (also doing business as Federated Management, Federated Management Group, USA and Federated Management Corp.) (“Federated”), acting as a common enterprise (collectively, the “Prestige Enterprise”), and individual Defendants Kenneth Wayne Lee (“Lee”) and Simon Yang (a/k/a Xiao Yang) (“Yang”), acting directly or through their agents, employees or officers, fraudulently solicited and accepted at least \$8.7 million from at least 140 members of the general public to participate in commodity pools for trading commodity futures contracts and other financial instruments, including stocks, stock options, and foreign currency. Defendants’ solicitations primarily targeted members of the greater Oklahoma City area’s ethnic Chinese community.

Contrary to their claims of successful trading, the Prestige Enterprise and Lee operated a “Ponzi” scheme by paying so-called profits to participants that in actuality came not from successful trading, but from either existing participants’ original investments or money invested by subsequent participants. In doing so, the Prestige Enterprise and Lee misappropriated funds.

Lee and the Prestige Enterprise also misappropriated participant funds by using over \$2 million of pool funds for numerous personal and family expenses including the purchases of real estate, cars, and boats, and to funnel cash to Lee’s wife, Relief Defendant Sheila M. Lee, and Lee’s sons, Relief Defendants David A. Lee and Darren A. Lee (collectively, “Relief Defendants”). The Relief Defendants provided no legitimate services to the Prestige Enterprise or to its pool participants and otherwise have no legitimate entitlement to, or interest in Prestige Enterprise pool participant funds.

Lee sustained net losses of approximately \$4.3 million trading mainly commodity futures and foreign currency, for the period January 2004 through July 2009.

To conceal and perpetuate their fraud, Lee and the Prestige Enterprise created and issued false account statements that consistently showed that pool participant funds were earning monthly profits based on Defendants' purportedly successful trading. The statements reflected that the fictitious Legacy Trading System was responsible for the purported monthly returns.

Defendants, through Yang, also provided false and misleading information, and failed to disclose material information, to the Commission in a required response to a subpoena issued by the Commission to Yang in 2004 concerning the activities of Federated, Lee, Yang and others. In a declaration submitted pursuant to 28 U.S.C. § 1746 and declared to be true and correct by Yang under the penalty of perjury, Yang falsely and misleadingly represented that: he solicited participants solely through emails, all of his information concerning Federated came from the Federated website, he no longer solicited for Federated, and persons he had solicited did not open trading accounts with Federated. Yang did not disclose in his declaration the material information that Prestige, through Lee, was operating and soliciting funds from prospective participants, and that he, Yang, solicited on behalf of Prestige.

From at least 2006 to the present, Defendants have not met pool participants' requests for redemptions, despite sending account statements as recently as February 2009 posting monthly profits.

FACTS

On June 24, 2010, this Court held the scheduling conference in this matter and all parties, except for Relief Defendant Sheila Lee were in attendance by telephone. At this hearing, the Court issued a scheduling order that provided, in relevant part, that the Plaintiffs were to file a

list of trial witnesses and exhibits on August 15, 2010. Defendants and Relief Defendants, pursuant to the Order, were to file their list of trial witnesses fourteen (14) days thereafter, to file objections to any Plaintiffs exhibits also fourteen (14) days thereafter, and to file their own list of trial exhibits by August 29, 2010.

Plaintiffs filed their list of trial witnesses and exhibits, pursuant to the Order, on August 15, 2010. However, to date, Defendants and Relief Defendants have failed to file their list of trial witnesses or exhibits.

Accordingly, Plaintiffs seek an order, *in limine*, precluding Defendants and Relief Defendants from presenting any witnesses or exhibits at trial in their case in chief.

ARGUMENT

The decision to exclude evidence pursuant to Fed. R. Evid. 403 is “within the sound discretion of the trial court, and will not be reversed by this court absent a clear abuse of discretion.” *Dunlap v. City of Oklahoma City*, 12 Fed. Appx. 831 (C.A. 10 (Okla.)), quoting, *Getter v. Wal-Mart Stores*, 66 F.3d 1119, 1124 (10th Cir. 1995), *cert. denied*, 516 U.S. 1146 (1996). “Under this standard, this court will not disturb the district court’s decision absent a ‘definite and firm conviction that the lower court made a clear error of judgment or exceeded the bounds of permissible choice in the circumstances.’” *Boughton v. Cotter Corp.*, 65 F.3d 823, 832 (10th Cir. 1995)(quoting *McEwen v. City of Norman*, 926 F.2d 1539, 1553 (10th Cir. 1991)). “Rule 403 balancing is a task best left to the trial judge.” *Agristor Leasing v. Meuli*, 865 F.2d 1150, 1152 (10th Cir. 1988).

The *Dunlap* court upheld the District Court’s exclusion of two exhibits at trial because the items were not identified in the pretrial order; even though the party seeking to offer them

was aware of them before trial, but elected not to seek to amend the pretrial order. An analogous situation is presented here.

The express language of the Court's scheduling order is clear. It provides that

The listing of witnesses and exhibits shall separately state those expected to be called or used and those which may be called or used if the need arises. Except for good cause shown, no witness will be permitted to testify and no exhibit will be admitted in any party's case in chief unless such witness or exhibit was included in the party's filed witness or exhibit list.

Bold in original, italics and underline emphasis added.

Defendants and Relief Defendants have been aware of the deadlines imposed by the scheduling order for several months. Further, both Defendants and Relief Defendants have demonstrated their ability to file documents in a timely fashion with the Court, as the docket is replete with their filings. Thus, as it would appear that the Defendants and Relief Defendants have elected not to file their list of trial witnesses and exhibits, this Court should preclude them from presenting any witnesses or exhibits in their case in chief.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully moves this Court to grant this motion *in limine*, and to preclude Defendants and Relief Defendants from presenting any witnesses or exhibits in their case in chief.

Date: October 26, 2010

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 26, 2010, I caused the above reply to be served by U.S. mail on the following, who are not registered participants of the ECF System:

Simon Yang
1912 NW 176th Terrace
Edmond, OK 73012

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Mt. Pleasant, SC 29466

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David Lee
2676 Palmetto Hall Blvd
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Darren Lee
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I hereby certify that on October 26, 2010, I electronically transmitted the above reply to the Clerk of Court using the ECF System for filing. Based on the records currently on file, the Clerk of Court will transmit a Notice of Electronic Filing to the following ECF registrants:

Terra S. Bonnell

Stephen J. Moriarty

Warren F. Bickford, IV

/s/ James H. Holl, III