

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA**

| | | |
|--------------------------------------|---|--------------------------------|
| U.S. COMMODITY FUTURES |) | |
| TRADING COMMISSION and |) | |
| OKLAHOMA DEPARTMENT OF |) | Case No. 09-CV-1284 (DLR) |
| SECURITIES <i>ex rel.</i> IRVING L. |) | |
| FAUGHT, |) | |
| |) | |
| Plaintiffs, |) | MOTION AND BRIEF IN |
| |) | SUPPORT TO AMEND THE <i>EX</i> |
| v. |) | <i>PARTE</i> STATUTORY |
| |) | RESTRAINING ORDER |
| 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. |) | |
| |) | |

I. INTRODUCTION

Pursuant to Section 6c of the Commodity Exchange Act, 7 U.S.C. § 1 *et seq.* (2006), as amended (“Act”), 7 U.S.C. §13a-1 (2006), plaintiff U.S. Commodity Futures Trading Commission (“Commission”) respectfully moves this Court and submits this Motion and Brief in Support to Amend the *Ex Parte* Statutory Restraining Order, Appointment of Temporary Receiver, Expedited Discovery, Accounting, Order to Show Cause re Preliminary Injunction, and Other Equitable Relief, dated November 20, 2009 (“SRO”), to cover Sheila Marjorie Lee, David Armstrong Lee, and Darren Alexander Lee (collectively, “Relief Defendants”) as relief defendants. The Commission’s co-Plaintiff, the Oklahoma Department of Securities *ex rel.* Irving L. Faught and the Court-appointed

Receiver, Stephen J. Moriarty, do not oppose this motion.

This action commenced on November 20, 2009 with the filing of a Complaint for Injunctive and Other Equitable Relief Under the Commodity Exchange Act and the Oklahoma Uniform Securities Act by the Commission and Oklahoma Department of Securities *ex rel.* Irving L. Faught (“ODS”) against defendants Prestige Ventures Corp. (“Prestige”), Federated Management Group (“Federated” and, together with Prestige, “Prestige Enterprise”), Kenneth Wayne Lee (“Lee”), and Simon Yang (“Yang”). The Complaint alleges that, from at least July 2003 to the present, through their fraudulent solicitations, misappropriation, false statements, and misrepresentations to the Commission, defendants violated several of the anti-fraud provisions of the Act, the Regulations promulgated under it, 17 C.F.R. 1.1, et seq. (2009), and the Oklahoma Uniform Securities Act of 2004, Okla. Stat. tit. 71, §§1-101 – 1-701 (Supp. 2004) (“OUSA”).

On November 20, 2009, this Court entered its SRO against defendants which, among other things, froze defendants’ assets, enjoined defendants from destroying books and records, appointed Stephen J. Moriarty as temporary receiver, allowed for expedited discovery and ordered defendants to show cause why a preliminary injunction should not be entered against them.¹

Amending the SRO to name the Relief Defendants is necessary to prevent further dissipation of pool participant funds held in the form of assets in the names of the Relief

¹ On December 2, 2009, the Court entered Consent Orders of Preliminary Injunction against Lee and Yang (“Consent Preliminary Injunctions”). The Consent Preliminary Injunctions enjoin Lee and Yang from further violations of the Act and the OUSA, and continue the SRO in full force and effect until further order of the Court.

Defendants. Through discovery since filing the action, the Commission has learned that Lee and the Prestige Enterprise diverted over \$2 million of the ill-gotten gains defendants obtained from their fraudulent acts to the purchase of real estate, cars, a boat, cash, and expenses for the benefit of the Relief Defendants. The Commission alleges that none of the Relief Defendants provided legitimate services to the Prestige Enterprise or its pool participants in exchange for these funds, and otherwise have no legitimate entitlement to or interest in the Prestige Enterprise's pool participant funds.

In connection with this Motion, the Commission and ODS filed a Motion for Leave to File First Amended Complaint for Injunctive and Other Equitable Relief Under the Commodity Exchange Act and the Oklahoma Uniform Securities Act, which requests the Court's leave to add the Relief Defendants as parties to this action. The First Amended Complaint includes new allegations concerning Relief Defendants, and requests added relief in the form of an order of disgorgement against Relief Defendants. The Commission now moves to amend the SRO to (1) freeze Relief Defendants' assets; (2) enjoin Relief Defendants from destroying books and records; and (3) subject Relief Defendants' assets to the control of the Receiver, in the form of Proposed Amended Order Granting Plaintiff Commission's Motion for Statutory Restraining Order, Appointment of Temporary Receiver, Expedited Discovery, filed concurrently herewith.

II. STATEMENT OF NEW FACTS

A. Relief Defendants

Sheila Marjorie Lee is an individual whose last known address is in Mt. Pleasant, South Carolina. Declaration of Katherine S. Driscoll, filed concurrently herewith,

“Driscoll” Ex. A at 8:17-19. Sheila Lee is Defendant Lee’s wife. Mrs. Lee has never been registered with the Commission in any capacity or under the OUSA, or any predecessor act. Nat’l Futures Assoc. (“NFA”) Certificate for Sheila M. Lee, attached here as Exhibit 1; Declaration of Carol Gruis, filed concurrently herewith, “Gruis” ¶4.

David Armstrong Lee is an individual whose last known address is in Mt. Pleasant, South Carolina. Driscoll Ex. B at 8:20-22. David Lee is Defendant Lee’s son. Driscoll Ex. B at 6:20-24. David Lee has never been registered with the Commission in any capacity or under the OUSA, or any predecessor act. NFA Certificate for David A. Lee, attached here as Exhibit 2; Gruis ¶4.

Darren Alexander Lee is an individual whose last known address is in Mt. Pleasant, South Carolina. Driscoll Ex. C at 7:3-5. Darren Lee is Defendant Lee’s son. Driscoll Ex. C at 6:14-16. Darren Lee has never been registered with the Commission in any capacity or under the OUSA, or any predecessor act. NFA Certificate for David A. Lee, attached here as Exhibit 3; Gruis ¶4.

B. Relief Defendants Received Ill-Gotten Gains

As detailed below, between 2003 and 2009, Lee and the Prestige Enterprise diverted at least \$2 million in pool participant funds to the Relief Defendants, who are Lee’s wife and sons. These funds are ill-gotten gains resulting from defendants’ fraudulent misconduct and Lee and the Prestige Enterprise’s misappropriation of pool participant funds.

For example, during that time, Lee and the Prestige Enterprise purchased or paid for the following items for David and Darren Lee: a car for Darren Lee (Driscoll Ex. C at

74:15-75:15; Declaration of Glen Grossman, filed concurrently herewith, “Grossman” ¶9b) and two cars for David Lee (Driscoll Ex. B at 70:16-72:18; 111:14-113:15; Grossman ¶8b), a house for each (Driscoll Ex. B at 102:24-104:23; Driscoll Ex. C at 83:6-84:13; Grossman ¶¶8c, 9c), house repairs (Driscoll Ex. C at 84:21-85:3), a boat and boat-related expenses (Driscoll Ex. B at 114:8-116:2; Driscoll Ex. C at 85:4-86:2; Grossman at ¶8, 9), gifts, living expenses, and health insurance (Driscoll Ex. B at 107:6-108:18; Grossman ¶¶8d, 9d); and Darren’s wedding and honeymoon (Driscoll Ex. C at 81:18-82:3). In addition, for at least a portion of that time period, Lee and the Prestige Enterprise gave David and Darren each a \$1,500 check almost every week. Driscoll Ex. B at 106:12-23; Driscoll Ex. C at 76:10-19; Grossman ¶¶8a, 9a.

Similarly, between 2003 and 2009, Mrs. Lee received the benefit of ill-gotten gains from Lee and the Prestige Enterprise in the form of cash, credit card payments, a car, a house, a boat, living expenses, and medical insurance premiums. Grossman ¶7.

C. Relief Defendants Did Not Provide Legitimate Services to the Prestige Enterprise

None of the Relief Defendants provided legitimate services to the Prestige Enterprise or its pool participants, and otherwise have no legitimate entitlement to or interest in the Prestige Enterprise’s pool participant funds. In his deposition, David testified that the only services, if any, he provided to the Prestige Enterprise were watching the markets, watching Lee trade, and doing odd jobs, such as mowing the lawn, around Lee’s house. Driscoll Ex. B at 105:3-106:1.

In similar testimony, Darren testified that, in exchange for the \$1,500 he collected

from the Prestige Enterprise every week, he performed menial tasks around Lee's home such as mowing the lawn and spent a large part of the day "scanning software" and looking at charts. Driscoll Ex. C at 31:24-33:15; 76:20-78:2. He stated under oath that he did not consider himself to be an employee of Federated or Prestige, that any involvement he had in Federated ceased sometime between 2001 and 2003, and that he is not involved with Prestige in any way. Driscoll Ex. C at 9:6-10:18; 32:19-33:15; 75:24-76:9. He testified that he did not make any trading decisions on behalf of the pool participants. Driscoll Ex. C at 77:15-22. In fact, he said he did not know anything about investors. Driscoll Ex. C at 76:20-78:2. Even Lee himself testified that Darren and David were not Prestige Enterprise employees. Driscoll Ex. D at 305:21-25.

Mrs. Lee describes herself as a homemaker and says she has never known anything about Lee's business or the Prestige Enterprise. Driscoll Ex. A at 25:14-18.

III. ARGUMENT

A. Sheila, David, and Darren Lee Are Relief Defendants Who Should Be Subject to Certain Provisions of the Statutory Restraining Order

1. Sheila, David, and Darren Lee Are Proper Relief Defendants

Relief or nominal defendants are persons not accused of wrongdoing who (1) have received ill-gotten funds; and (2) do not have a legitimate claim to those funds. *SEC v. Cavanagh*, 155 F.3d 129, 136 (2d Cir. 1998), citing *SEC v. Colello*, 139 F.3d 674, 677 (9th Cir. 1998). A relief or nominal defendant is joined to aid in full relief without asserting separate subject matter jurisdiction over the person or entity. *CFTC v. Kimberlynn Creek Ranch*, 276 F.3d 187, 191 (4th Cir. 2002); *SEC v. Cherif*, 933 F.2d

403, 414 (7th Cir. 1991) (nominal defendant is joined as a means of facilitating collection, no subject matter jurisdiction needs to be asserted as the relief defendant has no ownership interest, but merely possession of the funds that are at the center of the controversy); *Collelo*, 139 F.3d at 677 (in order to effect full relief in recovering assets that are the fruit of the underlying fraud, plaintiff could name a non-party depository as a relief defendant). A “claimed ownership interest must not only be recognized in law; it must also be valid in fact. Otherwise, individuals and institutions holding funds on behalf of wrongdoers would be able to avoid disgorgement (and keep the funds for themselves) simply by stating a claim of ownership, however specious.” *Kimberlynn Creek*, 276 F.3d at 192.

Sheila, David, and Darren Lee are proper relief defendants. Plaintiffs do not accuse the Relief Defendants of wrongdoing. As the Commission describes above, Lee and the Prestige Enterprise diverted over \$2 million in the proceeds from Defendants’ fraud to Relief Defendants in the forms of cash, gifts, goods, and expenses. In return for those funds, Relief Defendants did not provide any legitimate services to the Prestige Enterprise or its pool participants.

2. Relief Defendants Should Be Subject to an Asset Freeze and Temporary Receivership, and Prohibited from Destroying Books and Records

As the Commission explained more fully in its Brief in Support of its *Ex Parte* Motion for Statutory Restraining Order, Appointment of Temporary Receiver, Expedited Discovery, Accounting, Order to Show Cause re Preliminary Injunction, and Other Equitable Relief (Docket Entry No. 8 at pp. 34-39), subjecting Relief Defendants to an

asset freeze, temporary receivership, and prohibition on destruction of books and records is necessary and proper to protect the ill-gotten gains Relief Defendants received from Defendants. Here, the Relief Defendants have such assets and, thus, should be subject to those provisions.

The appointment of a receiver is necessary to ensure that all assets are identified and located, an order prohibiting the destruction of records and granting the Commission access to inspect and copy records will allow the Commission to identify assets and victims. Such relief will preserve the status quo while an investigation is conducted to clarify the sources of various funds. An asset freeze is especially appropriate to preserve funds for disgorgement and restitution.

IV. CONCLUSION

For the foregoing reasons, the Commission respectfully requests that the Court grant the Commission's Motion to Amend Statutory Restraining Order (1) freezing Relief Defendants' assets; (2) enjoining Relief Defendants from destroying books and records;

and (3) subjecting Relief Defendants' assets to the control of the receiver.

Dated: March 3, 2010

Respectfully submitted,

ATTORNEYS FOR THE PLAINTIFF
U.S. COMMODITY FUTURES TRADING
COMMISSION

/s/ Katherine S. Driscoll

Gretchen L. Lowe, Associate Director
James H. Holl, III, Chief Trial Attorney
Katherine S. Driscoll, Trial Attorney
1155 21st Street NW
Washington, DC 20581
Telephone: (202) 418-5000
Facsimile: (202) 418-5538

CERTIFICATE OF SERVICE

I hereby certify that, on March 3, 2010, I caused one copy of **MOTION AND BRIEF IN SUPPORT TO AMEND THE *EX PARTE* STATUTORY RESTRAINING ORDER** and exhibits to be served by Federal Express on:

Simon Yang
1912 NW 176th Terrace
Edmond, OK 73012

Kenneth Wayne Lee
1660 Jorrington Street
Mt. Pleasant, SC 29466

and to be served by Certified Mail/Restricted Delivery/Return Receipt on the following:

Sheila Lee
1660 Jorrington Street
Mt. Pleasant, SC 29466

David Lee
2676 Palmetto Hall Blvd
Mt. Pleasant, SC 29466

Darren Lee
2676 Palmetto Hall Blvd
Mt. Pleasant, SC 29466

/s/ Katherine S. Driscoll
Katherine S. Driscoll

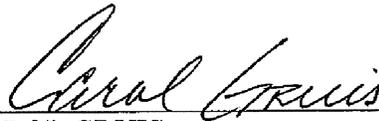
**DECLARATION OF CAROL GRUIS
PURSUANT TO 28 U.S.C. § 1746 AND 12 O.S. § 426**

I, Carol Gruis, hereby declare and state the following:

1. I am the Director of Examinations and Licensing of the Oklahoma Department of Securities (the "Department").
2. I have conducted an examination of the registration files of the Department pertaining to current and past registered investment advisers, broker-dealers, investment adviser representatives, broker-dealer agents, and issuer agents.
3. I have also conducted an examination of the Central Registration Depository ("CRD").
4. Nowhere within such registrations files of the Department or CRD did I find a record of the registration pursuant to the Oklahoma Uniform Securities Act of 2004, Okla. Stat. tit. 71, §§1-101 to 1-701 (Supp. 2004), or the predecessor Oklahoma Securities Act repealed effective July 1, 2004, for Sheila Marjorie Lee, Darren Alexander Lee or David Armstrong Lee.

I declare under penalty of perjury under the laws of the United States of America and of the state of Oklahoma that the foregoing is true and correct.

Executed on this 14th day of January, 2010, in Oklahoma City, Oklahoma.



CAROL GRUIS
Director of Examinations and Licensing
Oklahoma Department of Securities
First National Center, Suite 860
120 North Robinson
Oklahoma City, Oklahoma 73102
(405) 280-7700

**EXHIBIT 1 to MOTION TO AMEND *EX*
PARTE STATUTORY RESTRAINING ORDER**



CERTIFICATION

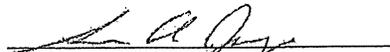
With respect to: Sheila M. Lee

1. I, Sandra A. Jung, am employed by National Futures Association ("NFA") as Document Research Supervisor. I also have served as Deputy Record Custodian since May 6, 1996. NFA is a futures association registered with the Commodity Futures Trading Commission ("CFTC") under Section 17 of the Commodity Exchange Act ("Act"). 7 U.S.C. § 21 (1994).
2. Under Sections 4f, 4k, 4n, 8a and 19 of the Act, the CFTC is authorized to collect and maintain registration records for each category of registration under the Act. 7 U.S.C. §§ 6f, 6k, 6n, 12a and 23 (1994). Under Sections 8a(10) and 17o of the Act, 7 U.S.C. §§ 12a(10) and 21o (1994), the CFTC has delegated to NFA the responsibility and authority to process and act as custodian of the official CFTC registration records for all categories of registration under the Act.
3. Pursuant to the CFTC's delegation of responsibility and authority, NFA receives, processes, stores and records all official CFTC registration records in the normal, ordinary and regular course of NFA's business. NFA has adopted Registration Rules, which the CFTC has reviewed and approved, governing access to and certification of the official CFTC registration records.
4. As Deputy Record Custodian, I am responsible for NFA's receipt, processing, storage and recording of all official CFTC registration records. As such, I am familiar with these records and the system that NFA uses to maintain these records.
5. Under my supervision, I have caused to be conducted a review of these official CFTC records from July 1982 to the present, which disclosed the following information:

There is no record of a registration in any capacity for Sheila M. Lee with the name and social security number as provided.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Date: January 13, 2010


Deputy Record Custodian

National Futures Association
300 South Riverside Plaza
Suite 1800
Chicago, Illinois 60606

**EXHIBIT 2 to MOTION TO AMEND *EX*
PARTE STATUTORY RESTRAINING ORDER**



CERTIFICATION

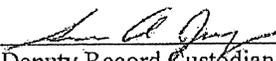
With respect to: David A. Lee

1. I, Sandra A. Jung, am employed by National Futures Association ("NFA") as Document Research Supervisor. I also have served as Deputy Record Custodian since May 6, 1996. NFA is a futures association registered with the Commodity Futures Trading Commission ("CFTC") under Section 17 of the Commodity Exchange Act ("Act"). 7 U.S.C. § 21 (1994).
2. Under Sections 4f, 4k, 4n, 8a and 19 of the Act, the CFTC is authorized to collect and maintain registration records for each category of registration under the Act. 7 U.S.C. §§ 6f, 6k, 6n, 12a and 23 (1994). Under Sections 8a(10) and 17o of the Act, 7 U.S.C. §§ 12a(10) and 21o (1994), the CFTC has delegated to NFA the responsibility and authority to process and act as custodian of the official CFTC registration records for all categories of registration under the Act.
3. Pursuant to the CFTC's delegation of responsibility and authority, NFA receives, processes, stores and records all official CFTC registration records in the normal, ordinary and regular course of NFA's business. NFA has adopted Registration Rules, which the CFTC has reviewed and approved, governing access to and certification of the official CFTC registration records.
4. As Deputy Record Custodian, I am responsible for NFA's receipt, processing, storage and recording of all official CFTC registration records. As such, I am familiar with these records and the system that NFA uses to maintain these records.
5. Under my supervision, I have caused to be conducted a review of these official CFTC records from July 1982 to the present, which disclosed the following information:

There is no record of a registration in any capacity for David A. Lee with the name and social security number as provided.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Date: January 13, 2010


Deputy Record Custodian

National Futures Association
300 South Riverside Plaza
Suite 1800
Chicago, Illinois 60606

**EXHIBIT 3 to MOTION TO AMEND *EX*
PARTE STATUTORY RESTRAINING ORDER**



CERTIFICATION

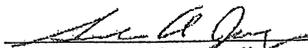
With respect to: Darren Lee

1. I, Sandra A. Jung, am employed by National Futures Association ("NFA") as Document Research Supervisor. I also have served as Deputy Record Custodian since May 6, 1996. NFA is a futures association registered with the Commodity Futures Trading Commission ("CFTC") under Section 17 of the Commodity Exchange Act ("Act"). 7 U.S.C. § 21 (1994).
2. Under Sections 4f, 4k, 4n, 8a and 19 of the Act, the CFTC is authorized to collect and maintain registration records for each category of registration under the Act. 7 U.S.C. §§ 6f, 6k, 6n, 12a and 23 (1994). Under Sections 8a(10) and 17o of the Act, 7 U.S.C. §§ 12a(10) and 21o (1994), the CFTC has delegated to NFA the responsibility and authority to process and act as custodian of the official CFTC registration records for all categories of registration under the Act.
3. Pursuant to the CFTC's delegation of responsibility and authority, NFA receives, processes, stores and records all official CFTC registration records in the normal, ordinary and regular course of NFA's business. NFA has adopted Registration Rules, which the CFTC has reviewed and approved, governing access to and certification of the official CFTC registration records.
4. As Deputy Record Custodian, I am responsible for NFA's receipt, processing, storage and recording of all official CFTC registration records. As such, I am familiar with these records and the system that NFA uses to maintain these records.
5. Under my supervision, I have caused to be conducted a review of these official CFTC records from July 1982 to the present, which disclosed the following information:

There is no record of a registration in any capacity for Darren Lee with the name and social security number as provided.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Date: January 13, 2010


Deputy Record Custodian

National Futures Association
300 South Riverside Plaza
Suite 1800
Chicago, Illinois 60606