

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

U.S. COMMODITY FUTURES
TRADING COMMISSION, et al.,

Plaintiffs – Appellees,

v.

SIMON YANG, an individual,
a/k/a Xiao Yang, a/k/a/ Simon Chen,
Defendants – Appellants,

and

PRESTIGE VENTURES CORP.,
a Panamanian corporation, et al.,

Defendants.

Appellate Case No. 10-6287

(D.C. No. 5:09-CV-01284-R)

APPELLEES' STATUS REPORT AND NOTICE OF DISTRICT COURT ORDER

Appellees U.S. Commodity Futures Trading Commission and Oklahoma Department of Securities *ex rel.* Irving L. Faught, respectfully notify this Court, pursuant to its Order dated December 27, 2010, as follows:

On January 13, 2011, the U.S. District Court for the Western District of Oklahoma entered the attached Order (Doc. No. 162) denying the motions of Defendant Kenneth Lee and Relief Defendants David Lee, Darren Lee, and Sheila Lee “for reconsideration and relief from judgment under Rules 59 and 60,” filed on December 8, 2010 (Doc. Nos. 134-137).

Respectfully submitted,

s/ Lynn A. Bulan

Lynn A. Bulan

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U.S. COMMODITY FUTURES

TRADING COMMISSION

s/ Terra Shamas Bonnell

Patricia Labarthe, OBA No. 10391

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(Applications for admission mailed January 13, 2011)

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ATTORNEYS FOR APPELLEE

OKLAHOMA DEPARTMENT OF SECURITIES

CERTIFICATE OF SERVICE

I hereby certify that on January 14, 2011, I sent a copy of the foregoing Appellees' Status Report and Notice of District Court Order, via the Court's ECF system, to:

Lynn A. Bulan
lbulan@cftc.gov
Attorney for Plaintiff-Appellee,
Commodity Futures Trading Commission

Warren F. Bickford
wbickford@fellerssnider.com
Attorney for Receiver, Stephen J. Moriarty

I also hereby certify that on January 14, 2011, I sent a copy of the foregoing Appellees' Status Report and Notice of District Court Order, via U.S. mail, to:

Simon Yang
1912 NW 176th Terrace
Edmond, OK 73012
Defendant-Appellant

s/Terra Shamas Bonnell

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

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

Plaintiffs,)

v.)

Case No. CIV-09-1284-R

**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)
E. LEE, an individual,)**

Relief Defendants.)

ORDER

This matter comes before the Court on the Motions for Reconsideration and relief From Judgment Under Rules 59 and 60, filed by Relief Defendants Darren Lee (Doc. No. 134), David Lee (Doc. No. 135), and Sheila Lee (Doc. No. 137), and by Defendant Kenneth Lee (Doc. No. 136) and Plaintiffs responded in opposition to the motions, filing a single response because the Defendant and Relief Defendants filed substantively identical motions. Having considered the parties' submissions, the Court finds as follows.

As noted by Plaintiffs, the motions are not specific in what they request the Court to reconsider. The Court entered an Order granting summary judgment in favor of the Plaintiffs' on the issue of liability, and a subsequent Order on November 29, 2010, imposing civil monetary penalties, restitution and disgorgement of funds improperly received by the Relief Defendants. It is apparent to the Court that Defendant and Relief Defendants are asking that the Court reconsider its rulings on the issues of liability, penalties, damages and disgorgement. Although Plaintiffs have done a thorough analysis of the potentially applicable standards of review, the Court finds no such analysis is necessary, because regardless of the applicable standard, Defendant and Relief Defendants are not entitled to relief.

Defendant and Relief Defendants first contend that Plaintiffs did not present all applicable evidence to the Court in pursuit of summary judgment and during trial on the issues of penalties, damages and disgorgement. Defendant and Relief Defendants misapprehend the Plaintiffs' role in this adversarial process. Defendants and Relief Defendants were required to respond to the motion for summary judgment, which they failed to do. They did not respond nor seek an extension of time in which to respond. It is not Plaintiffs' obligation to present evidence in support of Defendant's and Relief Defendants' contentions, that was purely their obligation. Additionally, Defendant and Relief Defendants were aware of the trial in this matter and chose not to attend.¹

¹ Defendant and Relief Defendants would argue they were unable to attend due to financial constraints caused by the freezing of their assets at the outset of this case. Neither Defendant nor Relief Defendants ever sought the release
(continued...)

Defendants and Relief Defendants contend they were denied due process and the right to counsel. Defendant and Relief Defendants were provided with adequate notice and an opportunity to be heard prior to the Court's entry of the orders and judgment. Defendant and Relief Defendants chose to forego this opportunity, and evidence they submitted after trial was not properly authenticated nor was it subject to the Court's consideration, because it was provided after the close of the evidence in this case. As such, Defendant and Relief Defendants were not entitled to present evidence to the Court or to present proposed findings of fact and conclusions of law.

Defendant and Relief Defendants further contend they were denied their Sixth Amendment right to counsel. There is no Sixth Amendment right to counsel in a civil action, and thus the failure of the Court to appoint counsel does not provide a basis for reconsideration of the Court's prior rulings.

Defendant and Relief Defendants contend they are entitled to protection from the disgorgement of their homes by virtue of South Carolina's homestead exemption. The Court concluded in its prior orders that Defendant and Relief Defendants did not have a right to the properties, because the properties were purchased with assets of the corporate entities, specifically investor funds that the Defendant and Relief Defendants treated as their own. As such, Defendant and Relief Defendants are not entitled to protection under the South Carolina homestead exemption.

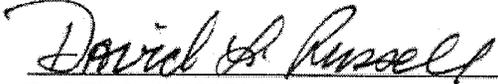
¹(...continued)
of funds for purposes of attending trial or procuring counsel. Indeed, the minimal amount of funds in the frozen accounts would not likely have allowed for either to occur.

Defendant and Relief Defendants contend there is newly discovered evidence that could not, even with reasonable diligence, have been discovered in a timely manner. Again, it was Defendant and Relief Defendants' obligation to provide information to the Court in a timely and admissible format, that is either in response to the motion for summary judgment filed by Plaintiffs or at trial. Defendant and Relief Defendants effectively opted out, and cannot now be heard to complain about their failure to properly present evidence to the Court.

Defendant and Relief Defendants contend they were impacted by the mailing of filings to them, which was required because of their *pro se* status. The Court notes that Defendant and Relief Defendants had ample opportunity to respond to the motion for summary judgment, and they failed to do so. Again, the Court cannot table consideration of the merits of litigation until such time as litigants decide they wish to participate.

Having reviewed the Motion to Reconsider of the Defendant and Relief Defendants, the Court hereby DENIES the motions.

IT IS SO ORDERED THIS 13th day of January, 2011.



DAVID L. RUSSELL
UNITED STATES DISTRICT JUDGE