

No. 10-6287

IN THE 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,

Defendant-Appellant,

and

PrestigeVentures Corp., a
Panamanian corporation, et al.,

Defendants.

Stephen J. Moriarty,

Receiver.

No. 10-6287

Motion for Extension of
Time to File Appellees'
Brief

Appellees' Commodity Futures Trading Commission and Oklahoma
Department of Securities
Motion for Extension of Time

Appellees U.S. Commodity Futures Trading Commission ("CFTC")
and the Oklahoma Department of Securities ("ODS") hereby request a
three-week extension to file Appellees' brief in this appeal. Currently,

Appellees' brief is due on March 25, 2011. If the court grants Appellees' request for a three week extension to file, Appellees' brief would be due on April 15, 2011. Appellant's reply brief would then be due on April 29, 2011.

In support of their motion, Appellee CFTC states:

1. Appellants' record in this case exceeds 4400 pages. Contained in those 4400 pages are several complete condensed deposition transcripts (printed 4 pages to a single sheet).

2. Undersigned counsel for Appellee CFTC is scheduled to represent a CFTC witness subpoenaed to appear in Superior Court of California in San Diego in a criminal matter, *People v. Marcellus Lopez Lee, et al.*, Criminal No. CD219673 (Cal.) in mid-March. This matter is the result of a multi-year investigation by the CFTC, the Federal Bureau of Investigation, and the San Diego County District Attorney's Office into a forex fraud scheme. The participation of undersigned counsel for the CFTC is critical to preparing the CFTC witness to testify in the San Diego criminal matter, and to ensuring that appropriate objections are made while the witness is on the stand.

The San Diego District Attorney's Office has tentatively scheduled the CFTC witness to testify the week of March 14, 2011. The District

Attorney's Office has previously represented to the CFTC that the witness's testimony could easily comprise a couple of days of direct testimony followed by rebuttal testimony later in the trial. This matter was originally scheduled to proceed to trial in September 2010, was postponed to late November 2010 and is scheduled to start on March 1, 2011. Motions in limine and jury selection began on February 28, 2011. The District Attorney reports to the CFTC that, as of the last status conference a few weeks ago, the parties were still too far apart on any possible plea deals.

3. Undersigned counsel for Appellee CFTC is also involved in five ongoing rulemakings that are being promulgated by the CFTC under expedited schedules under the Dodd-Frank Wall Street Reform and Consumer Protection Act. Specifically, Dodd-Frank requires the CFTC to promulgate more than 30 substantive rules within one year of passage of the Act (*i.e.*, before July 21, 2011). This has been properly characterized as a "Herculean" task, unprecedented in the history of the agency or of the commodities markets. These rules will completely reshape the way in which the commodities and derivatives markets function. Because the CFTC is a small agency, it is not possible for undersigned counsel to pass her rulemaking responsibilities on to other

agency counsel in order to meet the Court's current briefing schedule.

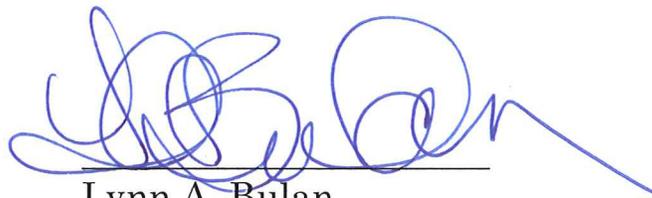
4. In light of the very real possibility of a government shutdown in the next few weeks due to a Congressional impasse regarding the federal budget, the CFTC is taking necessary steps to avoid violating the Anti-Deficiency Act, 31 U.S.C. § 1341, or breaching its duty and obligations to the court. The requested extension should allow Appellee CFTC to fulfill all of its obligations without violating any federal laws should there be a shutdown in March.

5. Counsel for Appellee CFTC twice contacted Appellant Simon Yang to determine whether he consented to the requested extension on February 9 and again on February 28 and Mr. Yang finally replied and objected to the request for an extension on February 28, 2011.

Respectfully submitted,

Dan M. Berkovitz
General Counsel

Gloria P. Clement
Acting Deputy General Counsel



Lynn A. Bulan
Counsel, CFTC
1155 21st Street, N.W.
Washington, D.C. 20581

Telephone: (202) 418-5143
Attorneys for Appellee Commodity
Futures Trading Commission

Terra Shamas Bonnell
Patricia Labarthe
Oklahoma Department of Securities
120 North Robinson, Suite 860
Oklahoma City, OK 73012
Email: tbonnell@securities.ok.gov
Telephone: (405) 280-7700
Facsimile: (405) 280-7742
Attorneys for Appellee Oklahoma
Department of Securities

Dated: March 2, 2011

CERTIFICATE OF SERVICE

I hereby certify that an original and three copies of the foregoing Motion to Dismiss was served by ECF and overnight express service on March 2, 2011 on the following:

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

Warren F. Bickford, IV, Esq.
Fellers Snider Blankenship
Bailey & Tippers – OKC
100 N. Broadway Ave., Suite 1700
Oklahoma City, OK 73102-8820
Attorney for Receiver Stephen J. Moriarty, Esq.



Lynn A. Bulan
Counsel
COMMODITY FUTURES TRADING
COMMISSION
Office of the General Counsel
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581
Telephone: (202) 418-5143
Facsimile: (202) 418-5567