

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 (“Kenneth Lee”) and Simon Yang (a/k/a Xiao Yang) (“Yang”) (collectively, “Defendants”), 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 Kenneth Lee’s wife, Relief Defendant Sheila M. Lee, and Kenneth 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 July 15, 2010, the Commission served the RFAs on Kenneth Lee. A true and correct copy of this document is attached here to and incorporated herein by reference. Pursuant to Fed. R. Civ. Proc. 36, Defendant Kenneth Lee had 30 days, plus time for mailing to respond to the RFAs. On September 20, 2010, the Commission sent a letter to Defendant Kenneth Lee, in accordance with Local Rule 37.1, reminding him of his obligation to respond to the outstanding

discovery, and giving him until October 1, 2010 to respond (the end of discovery). However, to date, Defendant Kenneth Lee has failed to respond in any fashion. Defendant Kenneth Lee expressed no justification for his failure to respond.

Accordingly, Plaintiffs seek an order, *in limine*, deeming the requests propounded by the Commission to Defendant Kenneth Lee admitted for all purposes in this litigation.

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).

Fed. R. Civ. Proc. 36(a)(3) is abundantly clear on the issue of the effect of not responding to requests for admission. Specifically, the rule states that “A matter is admitted unless, within 30 days after being served, the party to whom the request is directed serves on the requesting party a written answer or objection addressed to the matter and signed by the party...” This Circuit has adopted a strict interpretation of this rule, opining that “unanswered requests for admission are deemed admitted.” *Capital Car Care, Inc. v. U.S.*, 1994 W.L. 397288 (W.D. Okla. 1994), *citing*, *Bergemann v. U.S.*, 820 F.2d 1117 (10th Cir. 1987); *Rainbolt v. Johnson*, 669 F.2d

767 (D.C. Cir. 1981). The *Capital* court deemed the unresponded-to requests for admission admitted, in part, based upon the “surprising...absence of any credible justification for [the party’s] failure to fulfill the most basic requirements of the Rules.” *Id.*

Defendant Kenneth Lee was properly served with the RFAs identified herein. He was not only given the requisite amount of time to respond, pursuant to Fed. R. Civ. Proc. 36, the Commission also unilaterally extended the time to respond until October 1, 2010. Yet, no response was ever forthcoming from Defendant Kenneth Lee.

Therefore, Plaintiffs submit that pursuant to Fed. R. Civ. Proc. 36 and the applicable case law, this Court should deem the attached RFAs admitted as to Defendant Kenneth Lee for all purposes.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully move this Court to grant this motion *in limine*, and to deem the RFAs to Defendant Kenneth Lee admitted for all purposes.

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
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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