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FILED
JUN 29 2005
RICHARD W. WIEKING
CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

U.S. COMMODITY FUTURES TRADING COMMISSION and THE COMMISSIONER OF CORPORATIONS OF THE STATE OF CALIFORNIA, Plaintiffs, vs. NATIONAL INVESTMENT CONSULTANTS, INC., a California corporation, SOUTH CHINA INVESTMENTS, INC., a California corporation, PACIFIC BEST GROUP LTD, a.k.a. PACIFIC BEST COMPANY LTD, a British Virgin Islands Corporation, YI KERRY XU, an individual, RUN PING ZHOU a.k.a FLORA ZHOU, an individual, and WEI M. TSE a.k.a. RAYMOND TSE, an individual, Defendants, and THERESA C. WONG, an individual, Relief Defendant.	Case No.: C 05 2641 JSW FILED UNDER SEAL ~~[Proposed]~~ *Ex Parte* Statutory Restraining Order; Order Permitting Expedited Discovery, and Other Equitable Relief

SEALED

This matter came before this Court for hearing on June 29, 2005 on the Motion without notice of Plaintiffs Commodity Futures Trading Commission and the Commissioner of Corporations of the State of California for an *ex parte*: (1) Statutory Restraining Order; (2) Order Permitting Immediate Expedited Discovery; and (3) Order to Show Cause re: Preliminary Injunction (the "Application"). The Court, having considered the Plaintiffs' Complaint, Motion, Memorandum of Points and Authorities, Exhibits, other materials, all other evidence presented by Plaintiffs filed herein, and having heard the arguments of Plaintiffs' counsel, finds that:

Jun-29-05 04:56pm From-MARRIOTT FISHERMANS WHARF 11 +1-415-474-2099 T-900 P.02 F-420

1. This Court has jurisdiction over the parties and over the subject matter of this action pursuant to Section 6c of the Commodity Exchange Act, as amended (the "Act") 7 U.S.C. § 13a-1 (2002).

2. Venue lies properly within this District pursuant to Sections 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2002). There is good cause to believe that the Defendants have engaged, are engaging and are about to engage in acts and practices constituting violations of the Act, 7 U.S.C. §§ 1, *et seq.* (2002).

3. There is good cause to believe that immediate and irreparable damage to the Court's ability to grant effective final relief for investors in the form of monetary redress will occur from the sale, transfer, assignment, or other disposition by Defendants of assets or records unless Defendants are immediately restrained and enjoined by Order of this Court.

4. Good cause exists for the freezing of Defendants' assets and for entry of an order prohibiting Defendants from destroying records and denying agents of the Commission access to inspect and copy records.

5. Good cause exists to permit discovery before the early meeting of counsel pursuant to Rule 26(d) of the Federal Rules of Civil Procedure.

6. Pursuant to Rule 30(a)(2) of the Federal Rules of Civil Procedure, immediate depositions are consistent with the principles of Rule 26(b)(2) of the Federal Rules of Civil Procedure.

7. Weighing the equities and considering the Commission's likelihood of success in its claims for relief, the issuance of a statutory restraining order is in the public interest.

DEFINITIONS

For the purposes of this Order, the following definitions apply:

8. The term "document" is synonymous in meaning and equal in scope to the usage

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of the term in Federal Rule of Civil Procedure 34(a), and includes, but is not limited to, writings, drawings, graphs, charts, photographs, audio and video recordings, computer records, and other data compilations from which information can be obtained and translated, if necessary, through detection devices into reasonably usable form. A draft or non-identical copy is a separate document within the meaning of the term.

9. "Assets" means any legal or equitable interest in, right to, or claim to, any real or personal property, including but not limited to: chattels, goods, instruments, equipment, fixtures, general intangibles, effects, leaseholds, mail or other deliveries, inventory, checks, notes, accounts including bank accounts and accounts at financial institutions, credits, receivables, lines of credit, contracts including spot and futures contracts, insurance policies, and all cash, wherever located.

10. "Defendants" means National Investment Consultants, Inc. ("NICI"), South China Investments, Inc. ("South China"), Pacific Best Group Ltd., a.k.a. Pacifica Best Company Ltd. ("Pacific Best"), Yi Kerry Xu ("Xu"), Run Ping Zhou a.k.a. Flora Zhou ("Zhou"), and Wei M. Tse a.k.a. Raymond Tse ("Tse"), and any person insofar as he or she is acting in the capacity of an officer, agent, servant, employee, or attorney of Defendants, and any person who receives actual notice of this Order by personal service or otherwise insofar as he or she is acting in concert or participation with the Defendants.

RELIEF GRANTED

I.

ORDER AGAINST TRANSFER, DISSIPATION, AND DISPOSAL OF ASSETS

IT IS HEREBY ORDERED that

11. Defendants are restrained and enjoined from directly or indirectly transferring, selling, alienating, liquidating, encumbering, pledging, leasing, loaning, assigning, concealing,

dissipating, converting, withdrawing, or otherwise disposing of any assets, including those held in the name of any of the Defendants, wherever located, including assets held outside the United States, except as provided in Paragraph III of this Order, or as otherwise ordered by the Court. The assets affected by this paragraph shall include both existing assets and assets acquired after the effective date of this Order.

12. Defendants, and their agents, servants, employees, attorneys, and persons in active concert or participation with them who receive actual notice of this Order by personal service except as otherwise ordered by this Court, are restrained and enjoined from directly or indirectly transferring, selling, alienating, liquidating, encumbering, pledging, leasing, loaning, assigning, concealing, dissipating, converting, withdrawing, or otherwise disposing of any assets, including those held in the name of any of the Defendants, wherever located, including assets held outside the United States, except as provided in Paragraph III of this Order, or as otherwise ordered by the Court. The assets affected by this paragraph shall include both existing assets and assets acquired after the effective date of this Order.

13. Defendants are restrained and enjoined from directly or indirectly opening or causing to be opened any safe deposit boxes titled in the name or subject to access by the Defendants.

II.

DIRECTIVES TO FINANCIAL INSTITUTIONS AND OTHERS

IT IS FURTHER ORDERED, pending further Order of this Court, that any financial or brokerage institution, business entity, or person that holds, controls, or maintains custody of any account or asset of the Defendants, or has held, controlled, or maintained custody of any account or asset of the Defendants at any time since July 1, 2000, shall:

14. Prohibit Defendants and all other persons from withdrawing, removing, assigning,

transferring, pledging, encumbering, disbursing, dissipating, converting, selling or otherwise disposing of any such asset except as directed by further order of the Court;

15. Deny Defendants and all other persons access to any safe deposit box that is: (a) titled in the name of the Defendants either individually or jointly; or (b) otherwise subject to access by the Defendants;

16. Provide counsel for the Commission, within five (5) business days of receiving a copy of this Order, a statement setting forth: (a) the identification number of each and every such account or asset titled in the name, individually or jointly, of the Defendants, or held on behalf of, or for the benefit, of the Defendants: (b) the balance of each such account, or a description of the nature and value of such asset as of the close of business on the day on which this Order is served, and, if the account or other asset has been closed or removed, the date closed or removed, the total funds removed in order to close the account, and the name of the person or entity to whom such account or other asset was remitted; and (c) the identification of any safe deposit box that is either titled in the name, individually or jointly, of the Defendants or is otherwise subject to access by the Defendants; and

17. Upon request by the Commission, promptly provide the Commission with copies of all records or other documentation pertaining to such account or asset, including, but not limited to, originals or copies of account applications, account statements, signature cards, checks, drafts, deposit tickets, transfers to and from the accounts, all other debit and credit instruments or slips, currency transaction reports, 1099 forms, and safe deposit box logs.

III

ACCOUNTING AND TRANSFER OF FUNDS AND DOCUMENTS

IT IS FURTHER ORDERED that within five (5) business days following the service of this Order, Defendants shall:

18. Provide the Commission with a full accounting of all funds, documents, and assets, including those outside of the United States, that are held by them, for their benefit, or under their direct or indirect control, whether jointly or singly;

19. Transfer to the territory of the United States all funds, documents, and assets located in foreign countries which are held by them, for their benefit, or under their direct or indirect control, whether jointly or singly; and

20. Provide the Commission access to all records of the defendants held by financial institutions located outside the territorial United States by signing the Consent to Release of Financial Records attached to this Order.

IV

MAINTENTANCE OF BUSINESS RECORDS

IT IS FURTHER ORDERED that:

21. Defendants and all persons or entities who receive notice of this Order by personal service or otherwise, are restrained and enjoined from directly or indirectly destroying, mutilating, erasing, altering, concealing or disposing of, in any manner, directly or indirectly, any documents that relate to the business practices or business or personal finances of the Defendants.

V.

INSPECTION AND COPYING OF BOOKS AND RECORDS

IT IS FURTHER ORDERED that:

22. Representatives of the Commission be immediately allowed to inspect the books, records, and other documents of the Defendants and their agents including, but not limited to, electronically stored data, tape recordings, and computer discs, wherever they may be situated and whether they are on the person of the Defendants or others, and to copy said documents, data

and records, either on or off the premises where they may be situated; and

23. Defendants and their agents, servants, employees, attorneys, and persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, including facsimile transmission, shall cooperate fully with the Commission to locate and provide to representatives of the Commission all books and records of the Defendants, wherever such books and records may be situated.

VI.

BOND NOT REQUIRED OF PLAINTIFF

IT IS FURTHER ORDERED that:

24. Plaintiff Commission is an agency of the United States of America and, accordingly, no bond need be posted by the Commission.

VII

ORDER TO SHOW CAUSE

IT IS FURTHER ORDERED that:

25. Defendants shall appear before this Court on July 8, 2005 at 9:00am to show cause, if there be any, why an Order for Preliminary Injunction should not be granted to prohibit further violations of the Act and why the other relief requested should not be granted pending trial on the merits of this action.

26. Should any party wish to file a memorandum of law or other papers in opposition to Plaintiff's Motion for a Preliminary Injunction, all papers shall be filed on or before July 5, 2005 at noon ~~2005~~ and served no later than noon on July 5, 2005. Plaintiffs may file a reply by no later than noon on July 6, 2005.

VIII.

ORDER PERMITTING EXPEDITED DISCOVERY

IT IS FURTHER ORDERED that:

27. The prohibition upon discovery before the early meeting of counsel is removed pursuant to Rule 26(d) of the Federal Rules of Civil Procedure.

28. The prohibition upon the immediate commencement of depositions is removed pursuant to Rule 30(a)(2)(C) of the Federal Rules of Civil Procedure.

29. The parties may proceed to take the oral deposition of any person upon three calendar days actual notice if the notice is served upon the parties personally or by telecopier to the party's last known business telecopier number.

30. The parties may take the deposition of any person for the purpose of discovering the nature, location, status and extent of assets of the defendants and the location of any documents reflecting those assets.

IX.

SERVICE OF ORDER

IT IS FURTHER ORDERED that:

33. Copies of this Order may be served by any means, including facsimile transmission, upon any entity or person that may have possession, custody, or control of any documents or assets of the Defendant or that may be subject to any provision of this Order, and, additionally, that representatives of the Commission, are specially appointed by the Court to effect service. Plaintiffs shall serve Defendants by 3:00pm on June 30, 2005 and shall inform the Court by 5:00pm on June 30, 2005 if they are unable to comply with this provision.

X.

FORCE AND EFFECT

IT IS FURTHER ORDERED that this Order shall remain in full force and effect until further order of this Court, and that this Court retains jurisdiction of this matter for all purposes.

Jun-29-05 04:59pm From-MARKIOTT FISHERMANS WHARF +1-415-474-2099 T-900 P.09/33 F-420

SO ORDERED, at San Francisco, California on this 29 day of June 2005.

UNITED STATES DISTRICT JUDGE