

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

2011 MAY 12 11:41 AM EDT
FILED
United States Court of Appeals
Tenth Circuit
MAY 12 2011
ELISABETH A. SHUMAN
Clerk

COMMODITY FUTURES TRADING
COMMISSION, et al.

Plaintiffs – Appellees,

v.

SIMON YANG, an individual

Defendant – Appellant,

And

PRESTIGE VENTURES CORP., et al.

Defendants.

No. 10-6287
(D.C. No. 5:09-CV-01284-R)

APPELLANT’S SECOND BRIEF

These employees of CFTC/ODS are proven liars

Defendant/Appellant, Simon Yang, responds to Appellees’ Brief.

In Appellees’ Brief, CFTC/ODS still maintain that Simon Yang willfully misrepresented to Prestige investors and violated other rules in a Ponzi scheme with Kenneth Lee, but CFTC/ODS do not dispute or disprove or discredit any single one of all evidences that Simon Yang submitted in Appellant’s Opening Brief and Supplement to Appellant’s Opening Brief.

“Yang attaches certain exhibits to his appellant brief. Pet. Br. at A-1 through A-32. These exhibits were never introduced in connection with the summary judgment motion and were not considered by the district court. The exhibits have not been the subject of authentication or stipulation and

Appellees have not had opportunity to test their authenticity or veracity. They cannot be considered from the perspective of the district court at the time of the summary judgment ruling.” (Line 8 to 13 Page 21, Appellees’ Brief)

CFTC/ODS just deceive others again. CFTC/ODS excuse them of having no opportunity to verify those evidences but they had over 60 days to do so for their brief. As a matter of fact, CFTC/ODS do not want to show the truth, because they cannot stand the truth. From at least November 2009 CFTC/ODS had those Prestige business data of bank transactions and U.S. trading accounts, which Simon Yang received those data (in a DVD) from CFTC/ODS in March 2010. Simon Yang was able to open those files on the DVD in February 2011 and presented them in the Appellant’s Opening Brief on February 20, 2011. These evidences were not presented to the district court for summary judgment because Grossman and Mucha of CFTC/ODS willfully presented false evidences out of the same Prestige business records to the court. (Such an act is a crime.) Furthermore, it is at least six months ago from today that Kenneth Lee and Darren Lee submitted to CFTC/ODS/Receiver Moriarty copies of the casher check deposits and Prestige trading account statements with PanAmerica Group. Withholding these truth evidences from the district court and presenting those false evidences by CFTC/ODS caused primarily the wrong orders of Judge Russell.

Furthermore CFTC/ODS do not address the fact that they knew those files of FBI / District Attorney investigation on Simon Yang and Kenneth Lee and the decision of FBI / District Attorney not to charge Simon Yang or Kenneth Lee for any criminal act because those evidences of FBI investigation do not lead to such a conclusion.

It becomes very clear that CFTC/ODS just cannot dispute all evidences that Simon Yang submitted to the Court of Appeals, because those evidences are so plain, strong, and verifiable with FBI / District Attorney investigation data. The truth will stand out eventually and prevail.

First, CFTC and ODS pretended to Judge Russell of the district court that they provided the court all evidences of this Ponzi scheme, but they did not inform the court of the facts that they worked with FBI / District Attorney side by side investigating Simon Yang and Kenneth Lee on Ponzi

scheme in 2009 and the District Attorney / FBI decided not to bring any criminal charge on Simon Yang / Kenneth Lee in September 2009 after reviewing all data FBI collected and analyzed (Prestige business records, computer files, emails, paper files, phone conversations, financial records, employment records, personal backgrounds). From September to November 2009 CFTC/ODS had to prepare their own Prestige bank account report by Glen Grossman and Prestige trading account report by Kara Mucha with this civil case for unjust purposes.

Second, CFTC/ODS willfully presented to the district court the false evidences of Lee family investments. Kenneth Lee told CFTC/ODS repeatedly of his \$1.3 million deposits with Prestige. Besides cash/check deposits of at least \$179,856 as documented by Simon Yang in Appellant's Opening Brief, Kenneth Lee wired about \$1.2 million (each time with \$40,000, \$50,000, \$60,000 and so) to Prestige bank account with Bank of America from Panama through offshore FMG Credit Union operated by Kenneth Lee. BFI investigators did identify those deposits most likely by Kenneth Lee and FBI did not find any bank fraud with Kenneth Lee. But as expert investigator Glen Grossman of ODS testified falsely to the district court that Lee family deposited just \$64, 284 while Grossman knew all those cash/check deposits and wire deposits of Kenneth Lee from bank transaction records of Prestige. Similarly, Receiver Stephen Moriarty reported falsely to the court that Lee family deposited just \$45,638, but willfully passed over the rest cash/check deposits by Lee family and the \$1.2 million wire deposits of Kenneth Lee.

Third, CFTC/ODS willfully presented to the district court the false evidences of trading losses on Prestige trading accounts. FBI investigators analyzed all U.S. trading accounts of Prestige and found that very good profits were made and funds were transferred to brokerage accounts in the Republic of Panama, and there was no evidence of illegal activity. Simon Yang analyzed the trading records of those trading accounts of Prestige and found that exceptional gains were made by Prestige and funds were transferred by commodity contract delivery of U.S. Treasury bonds to Prestige office (see Appellant's Opening Brief). But as an expert investigator, Kara Mucha of CFTC testified falsely to the district court that Kenneth Lee / Prestige lost all capitals of \$4.3 million in all 34 trading accounts over the six years, but in fact Mucha knew that Prestige made very good profits in those trading accounts and Prestige transferred those funds to other places.

Fourth, CFTC/ODS coached witnesses for false evidences. Simon Yang documented in his Answer to Complaint that the six witnesses of CFTC/ODS willfully presented many false statements in their declarations; furthermore many identical but false statements of lawyer-word style appeared in all their declarations:

“Neither Lee nor Simon Yang ever told me that Lee, Simon Yang, Federated and/or Prestige were violating federal and state laws in connection with the investments being offered to me, nor was I aware of this at the time I made my investments with Prestige and Federated.” (#50 Ming Yu, #33 Zhong Xiang Luo, #19 Dexiang Luo, #30 Jian Yue, #29 Xihai Zhong, #67 Susie Southwell);

“Neither Lee nor Simon Yang ever told me that Lee would use investors’ funds to pay himself, his family members, and his personal expenses, nor was I aware of this at the time I made my investments with Prestige.” (#51 Ming Yu, #34 Zhong Xiang Luo, #20 Dexiang Luo, #31 Jian Yue, #30 Xihai Zhong, #68 Susie Southwell);

“Neither Lee nor Simon Yang ever told me that the returns being credited to the Pooled Account and my individual account exceeded the returns earned by actual trading, nor was I aware, at the time I made my investments with Prestige and Federated, that this would happen.” (#52 Ming Yu, #35 Zhong Xiang Luo, #21 Dexiang Luo, #32 Jian Yue, #31 Xihai Zhong, #69 Susie Southwell)

Obviously these statements were prepared by CFTC/ODS for the six witnesses to copy in their declarations. Those witnesses did not have any evidence to support their statements at the time of their signatures.

Oral Argement

If the Court of Appeals does not see clearly the misconducts of CFTC/ODS and injustice of Judge Russell’s orders, Simon Yang will be willing to present all these evidences in person to the Court of Appeals and debate orally with CFTC/ODS on all evidences and prove those false evidences of CFTC and ODS. Because CFTC/ODS always twist facts and lie to the court as documented in my Appellant’s Opening Brief.

There are many such twisting and lies in Appellees’ Brief:

“After communicating with Lee by email and telephone for a week and meeting him in person, Yang invested \$100,000 with Lee. To safeguard his investment, Yang kept in daily contact with

Lee. Yang eventually invested approximately **\$469,507** with Lee and his company Federated and Prestige. **Yang invested even though he testified that he thought that there was an ‘overwhelming chance’ that Lee’s investment pool, Federated, was a ‘Ponzi’ scheme.**” (Line 8 Page 7 to Line 2 Page 9)

“From March 2003 until November 2009, Yang received approximately **\$133,500 of investor money** from the Prestige Enterprise.” (Line 13 to 15 Page 16)

“Appellees have not had the opportunity to test their authenticity or veracity.” (Line 11 to 12 Page 21)

It is a crime to willfully provide false information to other persons for monetary gains. CFTC/ODS willfully presented many false evidences to the court so that wrong orders were issued by Judge Russell and large unjust fines were imposed on Simon Yang and Kenneth Lee. Therefore Simon Yang has provided those evidences of evil acts of CFTC/ODS to FBI for criminal investigation.

The Court of Appeals to order justly

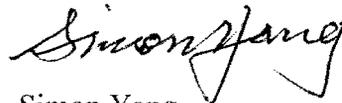
With the undisputed evidences, these employees of CFTC/ODS have been proven liars before this court; therefore, Simon Yang asks the Court of Appeals respectfully:

1. Dismiss this case and reverse the orders of Judge Russell of the district court;
2. Strip the license of practicing law of Katherine Driscoll, James Holl, Lynn Bulan, Kevin Webb, Gretchen Lowe, Gloria Clement, Dan Berkovitz of CFTC; Terra Bonnell, Patricia Labarthe, Irving Faught of ODS; and Stephen Moriarty and Warren Bickford of the Receivership;
3. Order a civil monetary penalty of \$140,000 (the same rules CFTC/ODS applied to Simon Yang) to be paid to Simon Yang by each individual who willfully presented false evidences to the district court and the court of appeals: Katherine Driscoll, James Holl, Kara Mucha, Lynn Bulan, Kevin Webb, Gretchen Lowe, Gloria Clement and Dan Berkovitz of CFTC; Terra Bonnell, Patricia Labarthe, Glen Grossman, Irving Faught of ODS; Ming Yu, Zhong Xiang Luo, Jian Yue, Dexiang Luo, Xihai Zhang, and Susie Southwell of CFTC/ODS witnesses; Stephen Moriarty and Warren Bickford of the Receivership.
4. Order CFTC/ODS/Receiver to return all properties of Lee family.

To expose those evil acts of those employees of CFTC/ODS for the benefits of this country, Simon Yang has prepared a civil lawsuit against CFTC/ODS requesting for damages of at least \$5,263,000 plus attorney fees.

Date: May 8, 2011

Submitted respectfully,

A handwritten signature in black ink that reads "Simon Yang". The signature is written in a cursive style with a large, sweeping flourish at the end.

Simon Yang

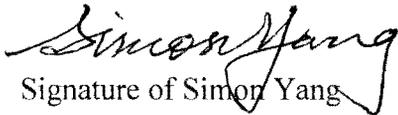
1912 NW 176th Terrace

Edmond, OK 73012

CERTIFICATE OF SERVICE

I hereby certify that on May 8, 2011 I served a copy of Appellant's Second Brief to Lynn Bulan (Lbulan@CFTC.gov), Terra Bonnell (tbonnell@securities.ok.gov), Ken Lee (klee88@prestigeventures.com), and S. Moriarty (Smoriarty@fellerssnider.com) by email.

Date: May 8, 2011


Signature of Simon Yang