

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION (CHICAGO)**

SECURITIES AND EXCHANGE COMMISSION,	:	
	:	
Plaintiff,	:	
	:	
vs.	:	Civil Action No. 1:07cv1208
	:	ECF
ONE OR MORE UNKNOWN PURCHASERS OF	:	Judge Lindberg
CALL OPTIONS FOR THE COMMON STOCK OF	:	
TXU CORP., et al.,	:	
	:	
Defendants.	:	
	:	

FINAL JUDGMENT BY DEFAULT AGAINST GARCIA

This matter came before the Court on Plaintiff’s Motion for Default Judgment Against Garcia (“Motion”). The Court, having considered all of the pleadings and evidence in the record, is of the opinion that Plaintiff’s Motion should be GRANTED.

The Court, having considered all of the pleadings, records, and proceedings herein, enters the following findings of fact and conclusions of law:

1. The Commission’s Complaint was filed on March 2, 2007, alleging that defendants, Unknown Purchasers of the Call Options of TXU Corp., violated the Securities Exchange Act of 1934 (“Exchange Act”) Section 10b and Rule 10b-5 thereunder. The Commission later determined that the Unknown Purchaser of Call Options for the Common Stock of TXU Corp. #3 is Defendant Francisco Javier Garcia.

2. Service of the Summons and Complaint was made on Fimat, LLC as agent for Garcia on March 26, 2007, in accordance with the Court’s Temporary Restraining Order, ¶ V [Docket No. 15], which specifically allowed for service in that manner. The Commission caused

the affidavit of return of service to be filed with this Court on March 27, 2007. Garcia was validly served with process.

3. Garcia is not an infant or an incompetent person, nor is he currently serving in the United States military. Garcia is not eligible for relief under the Soldiers' and Sailors' Civil Relief Act of 1940 [50 U.S.C. Appendix, § 501 et seq.].

4. Garcia has not filed an answer to the Commission's Complaint or other required pleading, nor has he otherwise appeared before this Court to defend this cause.

5. The Commission is entitled to entry of a final judgment of permanent injunction against Garcia for violating Exchange Act Section 10b [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

6. The district court has broad discretion not only in determining whether or not to order disgorgement but also in calculating the amount to be disgorged. Disgorgement need only be a reasonable approximation of profits causally connected to the violation.

7. The Commission has met its burden of presenting evidence reasonably approximating the amount of ill-gotten gains.

8. The appropriate amount of disgorgement to be assessed against Defendant Garcia is the total amount of illicit profits or ill-gotten gains he received from his insider trading. According to the Commission's accounting of illicit profits based upon Defendant's trading records produced in this matter, Garcia received \$150,500 in ill-gotten profits.

9. The IRS underpayment of federal income tax rate as set forth in 26 U.S.C. § 6621(a)(2) is appropriate for calculating prejudgment interest in SEC enforcement actions such as this one. That rate of interest reflects what it would have cost to borrow the money from the government and therefore reasonably approximates one of the benefits the defendant derived from

its fraud. Pursuant to these calculations, the prejudgment interest accrued on Garcia's ill-gotten profits is \$23,426.18.

10. The Commission is entitled to an Order requiring Garcia to disgorge \$150,500, representing the profit of Garcia's illegal trading as pled by the Commission, plus prejudgment interest in the amount of \$23,426.18, for a total of \$173,926.13.

On the basis of the foregoing findings of fact and conclusions of law, the Court enters the following Final Judgment:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant Garcia, his agents, servants, employees, attorneys, and all persons in active concert or participation with him who receives actual notice of this final judgment by personal service or otherwise, and each of them, are permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security: (1) to employ any device, scheme or artifice to defraud; (2) to make any untrue statement of a material fact or omitting to state a material fact necessary in order to make the statement(s) made, in the light of the circumstances under which were made, not misleading; or (3) to engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person.

II.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Garcia is liable for disgorgement of \$150,500, representing profits gained as a result of the conduct alleged

in the Commission's Complaint, together with prejudgment interest thereon in the amount of \$23,426.18, for a total of \$173,926.18. The Commission may enforce the Court's judgment for disgorgement and prejudgment interest by moving for civil contempt (and/or through other collection procedures authorized by law) at any time after 60 days following entry of this Final Judgment. In response to any such civil contempt motion by the Commission, the defendant may assert any legally permissible defense. Payment under this paragraph shall be made within 30 days of the entry of this Final Judgment, by certified check, bank cashier's check or United States postal money order payable to the Clerk of this Court, together with a cover letter identifying Francisco Javier Garcia as a defendant in this action; setting forth the title and civil action number of this action and the name of this Court; and specifying that payment is made pursuant to this Final Judgment. The payment shall be delivered or mailed to the United States District Court for the Northern District of Illinois, Michael W. Dobbins, Clerk of Court, Everett McKinley Dirksen United States Courthouse, 219 South Dearborn Street, Chicago, IL 60604, and shall be accompanied by a letter. By making this payment, Defendant relinquishes all legal and equitable right, title, and interest in such funds, and no part of the funds shall be returned to Defendant. The Clerk shall deposit the funds into an interest bearing account with the Court Registry Investment System ("CRIS") or any other type of interest bearing account that is utilized by the Court. These funds, together with any interest and income earned thereon (collectively, the "Fund"), shall be held in the interest bearing account until further order of the Court. In accordance with 28 U.S.C. § 1914 and the guidelines set by the Director of the Administrative Office of the United States Courts, the Clerk is directed, without further order of this Court, to deduct from the income earned on the money in the Fund a fee equal to ten percent of the income earned on the Fund. Such fee shall not exceed that authorized by the Judicial

Conference of the United States. The Commission may propose a plan to distribute the Fund subject to the Court's approval. Defendant shall pay post-judgment interest on any delinquent amounts pursuant to 28 USC § 1961.

III.

The Court's Order dated March 28, 2007 ("Asset Freeze Order"), entered a Preliminary Injunction against Garcia (then identified as "Unknown Purchaser #3 through Fimat") and, among other things, continued the asset freeze as to the proceeds from the sale or exercise of the call options at issue here. (Asset Freeze Order at ¶ I.) The Asset Freeze Order remains in full force and effect, except that the Asset Freeze Order is modified to permit Garcia, his officers, agents, servants, employees, attorneys, and those persons in active concert or participation with him who receive actual notice of this Final Judgment by personal service or otherwise (including, without limitation, Swiss American Securities, Inc., Fimat USA, LLC, Fimat Banque Frankfurt Zwiagniederlassung, Newedge USA, LLC, or their affiliates, successors in interest, and assigns), to transfer any and all funds held pursuant to the Asset Freeze Order to the United States District Court for the Northern District of Illinois at the address and in the manner listed above to satisfy, in full or in part, Defendant's disgorgement obligation.

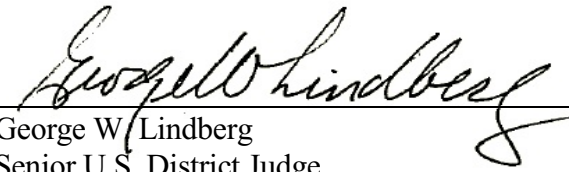
IV.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.

V.

There being no just reason for delay, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Clerk is ordered to enter this Final Judgment forthwith and without further notice.

SIGNED this 8th day of July, 2009.


George W. Lindberg
Senior U.S. District Judge