

SHORT FORM ORDER**SUPREME COURT - STATE OF NEW YORK
COUNTY OF NASSAU**

Present:

Hon. Thomas Feinman
Justice

PEOPLE OF THE STATE OF NEW YORK by
ANDREW M. CUOMO, Attorney General of the
State of New York,

Petitioners,

- against -

ASM FINANCIAL FUNDING CORPORATION,
ANDREW S. MACKEY, and INGER JENSEN,Respondents.

TRIAL/IAS PART 13
NASSAU COUNTY

INDEX NO. 15485/10

X X XMOTION SUBMISSION
DATE: 11/16/10MOTION SEQUENCE
NOS. 1, 2

The following papers read on this motion:

Order to Show Cause and Affidavits.....	<u>X</u>
Affirmation in Opposition.....	<u>X</u>
Reply Affirmation.....	<u>N/A</u>

The petitioners, by way of Order to Show Cause, on August 16, 2010, obtained the following temporary restraining order from the Honorable Justice Parga:

“AND IT FURTHER APPEARING that a cause of action for temporary relief exists under CPLR §§6301 and 6313 and Executive Law §63(12), it is

ORDERED, that pending the hearing of the petition, respondents, their employees, agents, successors, heirs, assigns, affiliates, transferees, subsidiaries, assignees, officers, directors and partners, and all other persons acting or claiming to act on their behalf or in concert with them, are hereby restrained from operating, promoting, or participating in any business relating to ASM Financial Funding Corporation.

ORDERED, that pending the hearing of this motion, respondents, their employees, agents, successors, heirs, assigns, affiliates, transferees, subsidiaries, assignees, officers, directors and partners, and all other persons acting or claiming to act on their behalf or in concert with them, are enjoined and temporarily restrained from transferring, selling or otherwise disposing of any assets owned, possessed, or controlled by them.

ORDERED, that pending the hearing of this motion, respondents are enjoined and temporarily restrained from transferring, selling, or otherwise disposing of any real property to which they hold title.

ORDERED, that respondents shall provide to petitioners within forty-eight (48) hours after service of this Order, a written listing that identifies all assets for respondents ASM Financial Funding Corporation, Andrew S. Mackey and/or Inger Jensen, identifies the names and addresses of all banks, savings and loan associations and other financial depositories located inside and outside of New York State at which respondents ASM Financial Funding Corporation, Andrew S. Mackey and/or Inger Jensen maintain any accounts or have the right to have funds credited to them in any accounts, together with the account numbers and titles; and it is further

ORDERED, that upon service of a copy of this Order upon any bank or depository which holds funds in the name of or to the credit of respondents ASM Financial Funding Corporation, Andrew S. Mackey and/or Inger Jensen, said bank or depository is hereby temporarily restrained until further order of the Court from paying out, transferring, honoring drafts or checks against or setting off or assigning to themselves or to any other person or firm such funds;

ORDERED, that pending hearing on this motion, respondents are hereby restrained from directly or indirectly destroying or disposing of any records pertaining to respondents.

The petitioners, by way of Order to Show Cause, on September 1, 2010, obtained, by way of order dated September 1, 2010, the following temporary restraining order from this Court:

“AND IT FURTHER APPEARING that a cause of action for temporary relief exists under CPLR §§6301 and 6313 and Executive Law §63(12), it is

ORDERED, that pending determination of the petition, respondents, their employees, agents, successors, heirs, assigns, affiliates, transferees, subsidiaries, assignees, officers, directors and partners, and all other persons acting or claiming to act on their behalf or in concert with them, are hereby restrained from operating, promoting, or participating in any business relating to ASM Financial Funding Corporation;

ORDERED, that pending the hearing and determination of this motion, respondents, their employees, agents, successors, heirs, assigns, affiliates, transferees, subsidiaries, assignees, officers, directors and partners, and all other persons acting or claiming to act on their behalf or in concert with them, are enjoined and temporarily restrained from transferring, selling, or otherwise disposing of any assets owned, possessed, or controlled by them.

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ORDERED, that pending hearing on this motion, respondents are hereby restrained from directly or indirectly destroying or disposing of any records pertaining to respondents.”

The second Order to Show Cause extended petitioner’s time to serve the underlying Order to Show Cause, petition and supporting papers, on respondent, Andrew S. Mackey. The respondents, in opposition papers, provided that they do not object to that portion of the petitioner’s motion seeking service upon respondent, Andrew S. Mackey.

The petitioner submits a Memorandum of Law in support of the interim relief and the relief requested in the verified petition, and affidavits of several investors in support of the petition. The respondents submit opposition.

The petitioners have commenced the instant proceeding pursuant to the Martins Act, incorporated in Article 23-A of the General Business Law, and Executive Law §63(12), in order to enjoin respondents’ fraudulent, illegal and deceptive business practices. The verified petition seeks permanent injunctive relief, restitution for defrauded customers and cost.

The petitioner has provided that from 2003 onward, the respondents engaged in two fraudulent schemes, the “Loan Warrantee Program” and the “Wealth Enhancement Club” through which they apparently collected over Ten Million and 00/100 Dollars, (\$10,000,000.00), from approximately 180 consumers.

The Loan Warrantee Program claimed that a homeowner could pay off a thirty-year mortgage in three to five years. The respondent, ASM Financial Funding Corporation, (“ASM”), would be paid an advance fee of seventeen percent, (17%), to twenty-five percent, (25%), of a loan or mortgage sought, the consumer would receive a certificate, (apparently a fraudulent certificate), that provided a maturity with forty-six percent, (46%), and interest per year due to ASM’s “sophisticated knowledge of private investment programs”. The consumer could cash in the certificate, pay off a

mortgage and own his or her home free and clear. The petitioner submits that at least 50 consumers entered this program and entrusted ASM with an aggregate amount totaling at least One Million Three Hundred Thousand and 00/100 Dollars, (\$1,300,000.00).

The Wealth Enhancement Club promised that certain investments would generate three hundred percent, (300%), and even eight hundred percent, (800%), interest annually. The petitioner submits that contracts thereto indicate that approximately 130 consumers invested sums totaling over Nine Million and 00/100 Dollars, (\$9,000,000.00). The respondents recruited individuals to act as financial consultants to ASM.

Here, the petitioners have demonstrated that the respondents' conduct violates that Martins Act. The respondents, in their limited opposition, submit that, by way of counsel, they were "at best patsies and victims themselves", and that since the individual respondents are defendants in a pending related criminal proceeding in the United States District Court in Georgia, this matter should not be decided until the criminal proceeding is dismissed or resolved.

The petitioner, upon the record herein, has demonstrated that the respondents' undisputed acts and omissions fit within the Martin Acts broad definition of fraud, that consumers were lured into investing large sums of money by promising them that they would achieve rates of returns that were simply unattainable, and that investors were misled into believing that their investments were secured by a One Billion and 00/100 Dollar, (\$1,000,000,000.00) bond issued to ASM by the Bak of Venezuela. It is also undisputed that the respondents were not registered as brokers or dealers in security, a clear violation of the Martin Act, Section 359-e(3).

The petitioners have demonstrated that they are entitled to the interim relief requested, and the injunctive relief, penalties and cost requested.

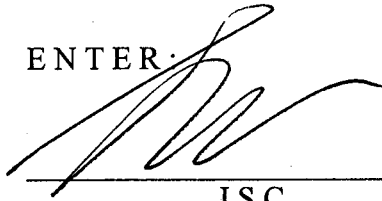
The petitioner requests the following permanent injunction:

"(a) permanently enjoin respondents from engaging in any fraudulent practice in violation of Article 23-A of the General Business Law or section 63(12) of the Executive Law; (b) permanently enjoin respondents from operating, promoting or participating in any business relating to financial services, including but not limited to the offering or sale of financing or investment services, advice or programs, or the offering or sale of any securities; (c) order respondents to discontinue all internet and other advertisements and to shut down and discontinue activity on all websites operated or controlled by respondents; and (d) permanently enjoin respondents from engaging in any business concerning consumers in the State of New York until a \$1,000,000 bond is posted with the Attorney General of the State of New York by a surety or bonding company licensed and approved by the Superintendent of Insurance of the State of New York."

Upon the foregoing, the relief requested is granted in its entirety.

The petitioner is hereby directed to Settle Order on Notice. A copy of this order with notice of entry shall accompany the proposed order.

ENTER:

A handwritten signature in black ink, appearing to be 'J.S.C.', written over a horizontal line.

J.S.C.

Dated: January 10, 2011

cc: Andrew M. Cuomo, Attorney General of the State of New York
Lombardi & Salerno, PLLC

ENTERED

JAN 19 2011

**NASSAU COUNTY
COUNTY CLERK'S OFFICE**