

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA)
c/o United States Attorney's Office)
555 Fourth Street, NW)
Washington, DC 20001)

Plaintiff,

v.

CLARENDON LTD.,)
now known as GLENCORE LTD.)
3 Stamford Plaza)
301 Tresser Blvd.)
Stamford, CT 06901)

Defendant.

Civil Action No.

CASE NUMBER 1:95CV00700

JUDGE: Stanley S. Harris

DECK TYPE: Civil General

DATE STAMP: 04/12/95

COMPLAINT

Plaintiff, The United States of America, by its undersigned attorneys, for its complaint against the defendant alleges as follows:

The United States Attorney for the District of Columbia brings this action for civil penalties and treble damages pursuant to the False Claims Act, 31 U.S.C. §3729, et seq. and at common law.

JURISDICTION AND VENUE

This Court has jurisdiction under 28 U.S.C. §1331 and 31 U.S.C. §3732.

Venue is proper under 28 U.S.C. §1391(b) and (c), and 31 U.S.C. §3732.

PARTIES

The Plaintiff is the United States of America, suing on behalf of the United States Department of the Treasury and the United States Mint.

At all relevant times, the Defendant was a Swiss commodity trading company, doing business in the United States through a branch office in Stamford, CT, under the name of CLARENDON LTD. (now known as Glencore Ltd.).

FACTS

A. Background Regarding Marc Rich and CLARENDON LTD.

1. During the late 1970's and early 1980's, a group of partners composed of Marc Rich, Pincus Green, Alexander Hackel, Felix Posen, John Trafford, and Jacque Hacquel founded and operated a group of commodity trading companies headquartered in Zug, Switzerland. The principal company was known as Marc Rich + Co. AG, (MRAG).

2. In the United States, the group's business was conducted from 1977 through July 6, 1983, by one of these companies, Marc Rich + Co. International, (MRI), a Swiss Corporation whose United States office was in New York, NY. MRI was a wholly owned subsidiary of MRAG.

3. In 1981, the United States Department of Justice began investigating MRAG and MRI for the avoidance of income taxes.

4. In 1982, subpoenas for production of documents were served on each company in New York, NY. MRAG failed to produce documents in accordance with its subpoena and consequently paid \$21 million in contempt fines between 1983 and 1984.

5. In June 1983, facing indictment, Rich and Green left the United States for Zug, Switzerland. Since their indictment in September 1983, Rich and Green failed to return to the United States to stand trial, and are considered fugitives by the United States Government.

6. On July 7, 1983, MRAG sold and transferred 100% of its interest in MRI to MRAG Partner Hackel, with an effective date of June 30, 1983. Hackel changed the name to CLARENDON LTD.

7. On February 28, 1984, the Defense Logistic Agency notified Rich, Green, MRAG and CLARENDON LTD. that they were being placed on the General Services Administration's Consolidated List of Debarred, Suspended and Ineligible Contractors. Due to their fugitive status, the suspension of Rich and Green remains in effect today.

8. On October 10, 1984, MRAG, and CLARENDON LTD. pled guilty, pursuant to a plea agreement with the United States. The plea agreement did not resolve any of the personal charges pertaining to Rich and Green, individually, and as a result of their fugitive status, these charges are also outstanding today.

9. On January 18, 1985, CLARENDON LTD., and MRAG were officially debarred from United States Government contracting until January 17, 1988.

10. On January 1, 1987, MRAG changed its name to Marc Rich + Co. Holding (MRH).

11. Effective January 1, 1988, CLARENDON Holding AG ("CHAG"), a wholly owned subsidiary of a new MRAG, acquired 49% of CLARENDON LTD.'s stock. The remaining 51% was owned by Hackel.

12. At the time of the 1988 sale and purchase agreement, Hackel transferred the shares of CLARENDON LTD. stock to CHAG. At about the same time, MRH assumed Hackel's subordinated debt from Clarendon.

13. There was no change in the management structure of this company at any level after this sale.

14. Beginning on or about July 21, 1988, and thereafter up to and including October 28, 1991, CLARENDON LTD. initiated bidding to obtain a series of contracts to supply coinage metal to the United States Mint.

15. During the time period when CLARENDON LTD. contracted with the United States Mint, the company shared office facilities in Zug, Switzerland with MRH and MRAG, companies controlled by Marc Rich, and in Stamford, Connecticut, with a subsidiary of MRAG.

16. On May 10, 1990, effective January 1, 1990, CHAG, a wholly owned subsidiary of the new MRAG, which was substantially owned by MRH, acquired the remaining 51% of the economic benefits and financial rights derived from the ownership of CLARENDON LTD. stock. The non-financial rights (voting rights and the right to participate in the company's general meetings) of this 51% were retained by Hackel; however, they have never been formally exercised.

17. As a result of competitive bidding, between 1988 and 1991, CLARENDON LTD. was awarded 22 coinage metal supply contracts by the procurement office of the United States Mint, with an aggregate purchase price of \$45,092,820.

B. Facts Pertaining to the Present False Claims Action

18. As a condition to contracting with the United States, CLARENDON LTD. was required under the Federal Acquisitions Regulations (FAR), to file Master Solicitations USM-88-07, USM-90-01, USM-91-01, AND USM-92-04, the last three of which include "Section K--Representation, Certifications, and Acknowledgments", which, in turn, included "K.15 Certification Regarding Debarment, Suspension, Proposed Debarment and other Responsibility Matters". 48 C.F.R. §9.409(a); 48 C.F.R. §52.209-5.

19. In connection with Master Solicitations, USM-90-01, USM-91-01, and USM-92-04, and related certificates, CLARENDON LTD. officials affirmatively indicated that neither the "Offeror

(CLARENDON LTD.), and/or any of its Principals" were "presently debarred, or declared ineligible for the award of contracts by any Federal Agency" or "presently indicted for, or otherwise criminally or civilly charged by a government entity." 48 C.F.R. §52.209-5(a)(1)(i)(A,C). FAR defines "Principals" as "Officers; directors; owners; partners; and persons having primary management or supervisory responsibilities within a business entity (e.g. general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions." 48 C.F.R. §52.209-5(A)(2).

20. On April 18, 1990, legal counsel for CLARENDON LTD. informed the United States Mint that:

"...Mr. Rich is a significant shareholder of Marc Rich + Co. AG, which, through Clarendon Holdings Ltd. owns a minority of the stock of CLARENDON LTD.

21. The President of CLARENDON LTD. was also the head of the Metals and Minerals Division for MRAG, which was substantially owned by MRH.

22. On March 19, 1993, Clarendon Ltd. was served with a Notice of Suspension from Government Contracting by the Department of the Treasury.

COUNT I

False Claims Act

This is a claim against defendant for treble damages and forfeiture under the False Claims Act, 31 U.S.C. §§3729-3731.

23. Plaintiff United States incorporates here the allegations contained in paragraphs 1 through 21 of this Complaint.

24. Defendant knowingly made, used, or caused to be made or used, false statements or actions concerning the ownership of CLARENDON LTD., which was substantially owned by MRAG, which in turn was substantially owned by MRH for the purpose of obtaining metals contracts from the United States Mint.

25. In reliance on such false claims, the United States of America awarded the CLARENDON LTD. coinage metal contracts during the period of 1989 to 1991.

26. WHEREFORE, the United States requests that judgment be entered against Defendant CLARENDON LTD. for treble the amount of plaintiff's damages, plus civil penalties of \$10,000 per false claim and any and all costs incurred by the United States as well as any further relief as may be just under the False Claims Act, 31 U.S.C. §§3729-3733 or that the court shall deem proper.

COUNT II

Unjust Enrichment

27. Plaintiff United States incorporates here the allegations contained in paragraphs 1 through 21 of this Complaint.

28. Because of Defendant CLARENDON LTD.'s conduct, acts and omissions, it received funds of the United States to which it is not entitled.

29. Defendant CLARENDON LTD. therefore has been unjustly enriched and the United States has been damaged.

30. WHEREFORE, the United States requests that an order of restitution directing the Defendant CLARENDON LTD. to make the United States whole for the benefits conferred upon it by the United States, as a result of the false claims made to the United States; and that Plaintiff United States be granted such other and further relief as the court shall deem proper.

COUNT III

Breach of Contract

31. Plaintiff United States incorporates here the allegations contained in paragraphs 1 through 21 of this Complaint.

32. Defendant CLARENDON LTD. submitted false certifications of the ownership of CLARENDON LTD. in order to secure metal contracts with plaintiff.

33. WHEREFORE, the Defendant CLARENDON LTD. breached its contract with the United States through the conduct alleged above.

COUNT IV

Mistake of Fact

34. The United States incorporates here the allegations contained in paragraphs 1 through 21 of this complaint.

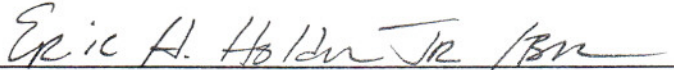
35. The Defendant CLARENDON LTD., through its certification, failed to disclose the identity of Marc Rich, a substantial owner of MRH, that in turn through MRAG was a substantial owner of CLARENDON LTD.

36. The United States would not have paid CLARENDON LTD. for the coinage metal contracts if the United States had known of the extent of Marc Rich's indirect ownership of CLARENDON LTD.

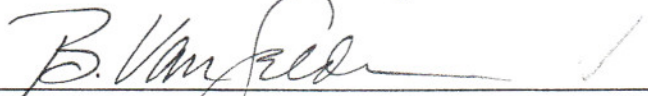
37. The payments made by the United States to CLARENDON LTD., for the supply of coinage metals were made under the mistaken belief that the Master Solicitation submissions and statements were accurate, complete, and current.

38. WHEREFORE, the United States requests damages, costs, attorney's fees, and such other and further relief as the court shall deem proper.

Respectfully submitted,



Eric H. Holder, Jr., D.C. Bar # 303115
United States Attorney



Barbara Van Gelder, D.C. Bar # 265603
Assistant United States Attorney
555 4th Street, N.W.
Washington, D.C. 20001
(202) 514-7238

Dated: Washington, D.C.
April 12, 1995