

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEYCivil Action No. 08-1932 (JBS)COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

v.

Robert J. Sucarato d/b/a New York Financial Company,

Defendant.

~~PROPOSED~~ ORDER

This matter came on for hearing the 22nd day of April, 2008 on the *ex parte* application of Plaintiff U.S. Commodity Futures Trading Commission (the "Commission") for a: (1) Statutory Restraining Order; (2) Order Permitting Immediate, Expedited Discovery; and (3) Order to Show Cause re: Preliminary Injunction. The Court, having considered Plaintiff's Complaint, Motion, Memorandum in Support, Exhibits, other materials, all other evidence presented by Plaintiff filed herein, and having heard the arguments of all parties, finds that:

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 "CEA"), 7 U.S.C. § 13a-1 (2002). *Venue is proper under 28 U.S.C. § 1391(b).*

JWS
4-22-08

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

3. There is good cause to believe that Defendant has engaged in, are engaging in, or are about to engage in violations of Sections 4b(a)(2)(i) -(iii), 4c(b), 4m(1), and 4o(1) of the Act, 7 U.S.C. §§ 6b(a)(2)(i) -(iii), 6c(b), 6m(1) and 6o(1) (2002) and Commission Regulations 4.20, 4.21, and 33.10, 17 C.F.R. §§ 4.20, 4.21, and 33.10 (2007).

4. 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 Defendant of assets or records unless Defendant is immediately restrained and enjoined by Order of this Court.

5. Good cause exists for the freezing of assets, owned, controlled, managed, or held by, on behalf of, or for the benefit of Defendant in order to assure payment of restitution and disgorgement as authorized and for the benefit of pool participants and other investors.

6. Good cause exists for entry of an order prohibiting Defendant from destroying records and denying agents of the Commission access to inspect and copy

records.

7. Good cause exists to permit expedited discovery before the early meeting of counsel pursuant to Rule 26(d) of the Federal Rules of Civil Procedure, in order to ascertain the existence and location of assets, clarify the source of funds and identify all pool participants and other investors.

8. Good cause exists to require an accounting to determine the location and disposition of pool participants' and other investors' funds.

9. Good cause exists to order repatriation of Defendant's assets to assure payment of restitution and disgorgement as authorized and for the benefit of pool participants and other investors.

10. 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.

11. 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:

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

13. "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.

14. "Defendant" means Robert J. Sucarato ("Sucarato") d/b/a New York Financial Company, and for all parties includes any person insofar as he or she is acting in the capacity of an officer, agent, servant, employee, or attorney of any or all of the Defendant, 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 Defendant.

RELIEF GRANTED

I.

ORDER AGAINST TRANSFER, DISSIPATION, AND DISPOSAL OF ASSETS

IT IS HEREBY ORDERED that

15. Defendant is 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 owned, controlled, managed, or held by, on behalf of, or for the benefit of Defendant, 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.

16. Defendant, and his 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 owned, controlled, managed, or held by, on behalf of, or for the benefit of Defendant, 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.

17. Defendant is 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 Defendant.

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 owned, controlled, managed, or held by, on behalf of, or for the benefit of Defendant, or has held, controlled, or maintained custody of any account or asset owned, controlled, managed, or held by, on behalf of, or for the benefit of Defendant, shall:

18. Prohibit Defendant 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;

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

otherwise subject to access by the Defendant;

20. 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 Defendant, or owned, controlled, managed, or held by, on behalf of, or for the benefit of the Defendant; (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 Defendant or is otherwise subject to access by the Defendant; and

21. 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, Defendant shall:

22. Provide the Commission with a full accounting of all funds, documents, and assets, including those outside of the United States, that are owned, managed, or held by, on behalf of, or for the benefit of, or under the direct or indirect control of Defendant, whether jointly or singly;

23. Transfer to the territory of the United States all funds, documents, and assets located in foreign countries which are owned, managed, or held by, on behalf of, or for the benefit of, or under the direct or indirect control of Defendant, whether jointly or singly; and

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

IV.

MAINTENANCE OF BUSINESS RECORDS

IT IS FURTHER ORDERED that:

25. Defendant 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 Defendant.

V.

INSPECTION AND COPYING OF BOOKS AND RECORDS

IT IS FURTHER ORDERED that:

26. Representatives of the Commission be immediately allowed to inspect the books, records, and other documents of the Defendant 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 Defendant or others, and to copy said documents, data and records, either on or off the premises where they may be situated; and

27. Defendant 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 Defendant, wherever such books and records may be situated.

VI.

BOND NOT REQUIRED OF PLAINTIFF

IT IS FURTHER ORDERED that:

28. 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:

29. Defendant shall appear before this Court on the 8th day of May 2008, at 3:00 p. m., before the United States District Judge J. B. Simandke at the United States Courthouse for the District of New Jersey, ^{in Camden, New Jersey} to show cause, if there be any, why an Order for Preliminary Injunction should not be granted to prohibit further violations of the CEA and why the other relief requested should not be granted pending trial on the merits of this action.

30. 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 May 2, 2008 and served no later than May 5, 2008.

VIII.

ORDER PERMITTING EXPEDITED DISCOVERY

IT IS FURTHER ORDERED that:

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

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

33. 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.

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

IX.

SERVICE OF ORDER

IT IS FURTHER ORDERED that:

35. This Order shall be served on Defendant by personal service consistent with Federal Rule of Civil Procedure Rule 4(e) *within 72 hours of the signing of this Order.* All subsequent pleadings, correspondence, notices required by this Order, and other materials shall be served consistent with Federal Rule of Civil Procedure Rule 4.

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.

SO ORDERED, at Camden, New Jersey, on the 22nd day of April 2008 *at 2:40 PM*

Jerome B. Swartz

UNITED STATES DISTRICT
JUDGE