

J. Sweet

FILED UNDER SEAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

U.S. Commodity Futures Trading Commission,)	
	)	04 CV <u>7609</u>
)	
Plaintiff,	)	<i>Ex Parte</i> Statutory Restraining Order
	)	Freezing Defendants' Assets, Prohibiting
v.	)	Defendants from Destroying or Altering
	)	any Books, Records, or other Documents,
First Liberty Group, Inc. and Mauricio DaSilva,	)	and Barring Defendants from Denying
	)	Access to any Representative of Plaintiff,
Defendants.	)	and Expedited Asset Discovery, and an
	)	Order to Show Cause why a Preliminary
	)	Injunction and an Order Directing
	)	Defendants to Repatriate Assets Should
	)	Not be Entered

Plaintiff, U.S. Commodity Futures Trading Commission (the "Commission"), has filed a complaint for permanent injunction and other relief, and moved *ex parte*, pursuant to Section 6c of the Commodity Exchange Act, as amended ("Act"), 7 U.S.C. §13a-1 (2001), for a statutory restraining order freezing assets, ordering foreign-held assets and documents to be transferred and repatriated to the United States, prohibiting the destruction of books, records, or other documents, granting leave to the parties to engage in an expedited discovery process for the purpose of discovering the nature, location, status, and extent of assets, and ordering First Liberty Group, Inc. ("FLG") and Mauricio DaSilva ("DaSilva") (collectively, the "Defendants") to show cause why a preliminary injunction should not be issued. The Court has considered the pleadings, declarations, exhibits, and memorandum filed in support of the Commission's application and now, being fully advised in the premises, finds that:

- (1) This Court has jurisdiction over the subject matter of this case, and Section 6c of the Act, 7 U.S.C. §13a-1 (2001), authorizes *ex parte* relief;

- (2) There is good cause to believe that Defendants have engaged in, are engaging in, or are about to engage in fraud in violation of 7 U.S.C. §§ 6(a) and 6b(a)(2) (2001) and 17 C.F.R. § 1.1(b) (2002);
- (3) From at least November 2003 to May 2004, Defendants fraudulently marketed foreign currency contracts to individuals nationwide;
- (4) Absent the entry of this statutory restraining order, Defendants are likely to dissipate or transfer assets and destroy business records; and
- (5) This is a proper case for granting a statutory restraining order *ex parte* to preserve the status quo, protect public customers from loss and damage, and enable the Commission to fulfill its statutory duties, therefore the Court orders as follows:

DEFINITIONS

For the purposes of this Order, the following definitions apply:

1. "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, credits, receivables, contracts, insurance policies, and all cash, wherever located, whether in the United States or abroad.



2. 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 reasonable usable form. A draft or non-identical copy is a separate document within the meaning of the term.

RELIEF GRANTED

Asset Freeze

I.

IT IS HEREBY ORDERED that Defendants, except as otherwise ordered by this Court, are restrained and enjoined from directly or indirectly:

-  A. Transferring, selling, alienating, liquidating, encumbering, pledging, leasing, loaning, assigning, concealing, dissipating, converting, withdrawing, or otherwise disposing of any assets, wherever located, including assets held outside the United States, ~~except as provided elsewhere in this Order~~, or as otherwise ordered by the Court; or
- B. Opening or causing to be opened any safe deposit boxes titled in the name or subject to access by any of the Defendants.
-  C. Notwithstanding the provisions of this paragraph, Defendants shall transfer all funds and assets to the Registry of this Court, or otherwise as the Court may order, and repatriate to the territory of the United States and deliver to the Registry of this Court, or otherwise as the Court may order, all funds and assets property located in foreign countries. This includes all funds and assets (1) titled in the name individually or jointly of any Defendant; or (2) held by a person or entity for the benefit of any Defendant; or (3) under such Defendant's direct or indirect control, whether jointly or singly.

Identification and Preservation of Assets

II.

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 titled in the name of, held for the benefit of, or otherwise under the control of any Defendant, or has held, controlled, or maintained custody of any such account or asset of any Defendant at any time since November 2003 shall:

- A. Prohibit Defendants 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;
- B. Deny Defendants and all other persons access to any safe deposit box that is: (1) titled in the name of any Defendant either individually or jointly; or (2) otherwise subject to access by any Defendant;
- C. Provide counsel for the Commission, within five (5) business days of receiving a copy of this Order, a statement setting forth:
 - (1) the identification number of each such account or asset titled in the name, individually or jointly, of any of the Defendants or held on behalf of, or for the benefit of, any of the Defendants, or under the control of any of the Defendants;
 - (2) 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, the name of the person or entity to whom such account or other asset was remitted; and
- (3) the identification of any safe deposit box that is either titled in the name, individually or jointly, of any Defendant, or is otherwise subject to access by any Defendant;
- D. 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, trading records, and safe deposit box logs; and
- E. Cooperate with all reasonable requests of the Commission relating to implementation of this Order, including transferring funds and producing records related to Defendants' accounts.

Accounting of Assets

III.

IT IS FURTHER ORDERED that within five (5) business days following the service of this Order, each Defendant shall:

- A. Provide the Commission with a full accounting of all funds, documents, and assets both within and outside the United States which are (1) titled in the name individually or jointly of such Defendant; or (2) held by person or entity, for the

benefit of any Defendant; or (3) under such Defendant's direct or indirect control, whether jointly or singly;

- B. Provide the Commission access to all records of accounts or assets of Defendants held by financial institutions located both within and outside the territorial United States by signing the Consent to Release of Financial Records attached to this Order.

Maintenance of and Access to Business Records

IV.

IT IS FURTHER ORDERED that Defendants, 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 finances of any Defendant.

Commission's Access to and Inspection of Documents

V.

IT IS FURTHER ORDERED that Defendants shall:

- A. Allow representatives of the Commission to inspect the books and records including but not limited to all financial and accounting records, balance sheets, income statements, bank records, client lists and title documents that relate to the business practices or business finances of Defendants, and other documents of Defendants and their agents including, but not limited to, paper documents, electronically stored data, tape recordings, and computer discs, wherever they

may be situated and whether they are in the possession of Defendants or others, and to copy said documents, data and records, either on or off the premises where they may be situated;

- B. Deliver to representatives of the Commission all keys, computer passwords, entry codes, and combinations to locks necessary to gain or to secure access to any of the assets or documents of the Defendants, including but not limited to, access to the Defendants' business premises, means of communication, accounts, computer systems, or other property; and
- C. Deliver to representatives of the Commission all information identifying the accounts, employees, properties, or other assets or obligations of the Defendants.

Service of Order

VI.

IT IS FURTHER ORDERED that copies of this Order may be served by any means, including facsimile transmission, upon any financial institution or other entity or person that may have possession, custody, or control of any documents or assets of any Defendant or that may be subject to any provision of this Order.

Expedited Discovery

VII.

IT IS FURTHER ORDERED that the parties are granted leave, at any time after service of this Order, to take the deposition of and demand the production of documents from any person or entity for the purpose of discovering the nature, location, status, and extent of assets of Defendants, and the location of documents reflecting the business transactions of Defendants;

forty-eight (48) hours notice shall be deemed sufficient for any such deposition and five (5) days notice shall be deemed sufficient for the production of any such documents.

Depositions

VIII.

IT IS FURTHER ORDERED that the limitations and conditions set forth in Federal Rule of Civil Procedure 30(a)(2)(B) regarding subsequent depositions of an individual shall not apply to depositions taken pursuant to this Order. No depositions taken pursuant to paragraph XV shall count toward the ten-deposition limit set forth in Federal Rule of Civil Procedure 30(a)(2)(A).

Service on the Commission

IX.

IT IS FURTHER ORDERED that Defendants shall serve all pleadings, correspondence, notices required by this Order, and other materials on the Commission by delivering a copy to Elizabeth C. Brennan, **Senior** Trial Attorney, Division of Enforcement, U.S. Commodity Futures Trading Commission, Eastern Regional Office, 140 Broadway, 19th Floor, New York, New York 10005.

Order to Show Cause

X.

IT IS FURTHER ORDERED that each Defendant shall appear before this Court on the 6th day of October 2004, at noon before the Honorable R. W. SWEET at the United States Courthouse for the Southern District of New York at courtroom 18C.

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_____, New York, to show cause why this Court should not enter a preliminary injunction:

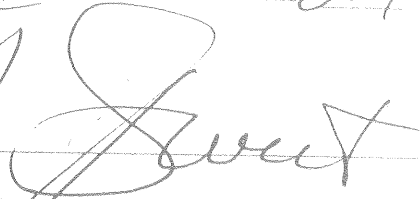
- A. Enjoining Defendants from further violations of the Act;
- B. Continuing the freeze on the assets of Defendants;
- C. Ordering Defendants to transfer and deliver to the Registry of this Court, or otherwise as the Court may order, all funds and assets including those located in foreign countries which are (1) titled in the name individually or jointly of any Defendant; or (2) held by a person or entity for the benefit of any Defendant; or (3) under such Defendant's direct or indirect control, whether jointly or singly;
- D. Ordering Defendants, financial or brokerage institutions, business entities, and others to provide all documents specified in this Order to the Commission; and
- E. Ordering any additional relief this Court deems appropriate.
- F. Should any party wish to file a memorandum of law or other papers concerning the issuance of a preliminary injunction against Defendants, such materials shall be filed, served and received by all parties at least two (2) days before the hearing date ordered above.


Force and Effect of Order

XI.

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 New York, New York on this 27 day of September 2004, at 12:30 PM


UNITED STATES DISTRICT JUDGE

CERTIFIED AS A TRUE COPY
THIS DATE 27 SEP 04
BY 
 Clerk
 Deputy

CONSENT TO RELEASE OF FINANCIAL RECORDS

I, _____, do hereby direct any bank or trust company at which I have a bank account of any kind upon which I am authorized to draw, and its officers, employees and agents, to disclose all information and deliver copies of all documents of every nature in your possession or control which relate to said bank accounts to any attorney of the U.S. Commodity Futures Trading Commission, and to give evidence relevant thereto, in the matter of U.S. Commodity Futures Trading Commission v. First Liberty Group, Inc. and Mauricio DaSilva, Defendants, now pending before the United States District Court for the Southern District of New York, and this shall be irrevocable authority for so doing. This direction is intended to apply to the laws of countries other than the United States which restrict or prohibit the disclosure of bank information without the consent of the holder of the account, and shall be construed as consent with respect thereto, and the same apply to any of the bank accounts for which I may be a relevant principal.

Dated: _____, 2004

Signature