

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION AT MEMPHIS**

COMMODITY FUTURES TRADING COMMISSION)

Plaintiff,)

v.)

FxTRADE FINANCIAL, LLC; JEFFREY A.)
MISCHLER; LEE N. ROMANO II; and)
MARY JO SIBBITT,)

Defendants.)

Case No.

04-2181-DAN

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Ex Parte Statutory Restraining

Order to Freeze Assets, Preserve

Books and Records and for an

Order to Show Cause

Re: Preliminary Injunction

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This matter came before the Court for hearing on March 17, 2004 on the Motion of Plaintiff Commodity Futures Trading Commission (the "Commission" or "Plaintiff") for an *ex parte*: (1) Statutory Restraining Order; and (2) Order to Show Cause re: Preliminary Injunction (the "Application"). The Court, having considered the Commission's Complaint, Application, Memorandum of Points and Authorities, Exhibits, other materials, all other evidence presented by Plaintiff filed herein, and having heard the arguments of Plaintiff's counsel, finds that:

1. This Court has jurisdiction over the parties and over the subject matter of this action pursuant to Sections 6c and 2(c)(2)(B) and (C) of the Commodity Exchange Act, as amended (the "Act"), 7 U.S.C. §§ 13a-1 and 2(c) (2001);
2. Venue lies properly within this District pursuant to Sections 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2001).
3. There is good cause to believe that defendants FxTrade Financial, LLC, Jeffrey A. Mischler, Lee N. Romano II, and Mary Jo Sibbitt, (collectively "Defendants") have engaged, are

engaging and are about to engage in acts and practices constituting violations of the Act, 7 U.S.C. §§ 1, et seq. (2001).

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 Defendants of assets or records unless Defendants are immediately restrained and enjoined by Order of the Court.

5. Good cause exists for the freezing of Defendants' assets and for entry of an order prohibiting Defendants from (1) destroying records and (2) denying agents of the Commission access to inspect and copy records.

6. 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:

7. 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.

8. "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.

RELIEF GRANTED

I.

Order Against Transfer, Dissipation, and Disposal of Assets

IT IS HEREBY ORDERED that:

9. Defendants 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, 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.

10. Defendants, and their agents, servants, employees, attorneys, and persons in active concert or participation with them, who receive actual notice of this Order service by personal service or otherwise, 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, 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.

11. Defendants are 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 any or all of the Defendants.

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 of Defendants, or has held, controlled, or maintained custody of any account or asset of Defendants at any time since January 1, 2003, shall:

12. 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;

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

14. 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 each and every Defendant, or held on behalf of, or for the benefit, of each and every 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 each and every Defendant or is otherwise subject to access by Defendants; and

15. 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, Defendants shall:

16. Provide the Commission with a full accounting of all funds, documents, and assets outside of the United States that are held by each and every Defendant, for their benefit, or under their direct or indirect control, whether jointly or singly;

17. Transfer to the territory of the United States all funds, documents, and assets located in foreign countries that are held by each and every Defendant, for their benefit, or under their direct or indirect control, whether jointly or singly; and

18. Provide the Commission access to all records of each and every 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:

19. 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 or personal finances of Defendants.

V.

Inspection and Copying of Books and Records

IS FURTHER ORDERED that:

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

21. Defendants and their agents, servants, employees, attorneys, and persons in active concert or participation with the Defendants 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 Defendants, wherever such books and records may be situated.

VI.

Bond Not Required of Plaintiff

IT IS FURTHER ORDERED that:

22. 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:

23. Defendants shall appear before this Court on the 31 day of March, 2004, at 3:30 p.m., before the Honorable Bernice B. Donald at the United States Courthouse for the Western District of Tennessee at the Clifford Davis Federal Building, 167 North Main Street, Memphis, Tennessee 38103 to show cause, if there be any, why an Order for Preliminary Injunction should not be granted to prohibit further violations of the Act and why the other relief requested should not be granted pending trial on the merits of this action.

24. 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 March 29, 2004 and served no later than March 29, 2004.

VIII.

Service of Order

IT IS FURTHER ORDERED that:

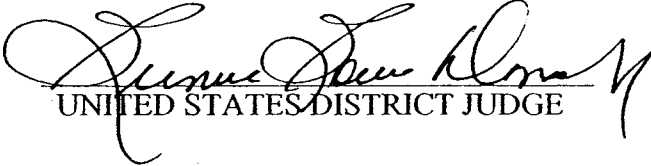
25. Copies of this Order may be served by any means, including facsimile transmission, upon any entity or person that may have possession, custody, or control of any documents or assets of Defendants or that may be subject to any provision of this Order, and, additionally, that Richard Glaser, Charles Marvine, Rachel Hayes and Lacey Dingman are specially appointed by the Court to effect service. Service of the summons, Complaint or other process may be effected by Commission investigator Lacey Dingman, any other investigator for the Commission, any U.S. Marshal or deputy U.S. Marshal, or in accordance with Federal Rule of Civil Procedure 4.

IX.

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.

IT SO ORDERED, at Memphis, Tennessee on this 17th day of March,
2004 at 2:25 p.m.


UNITED STATES DISTRICT JUDGE