

**In The United States District Court
For The Northern District Of Illinois
Eastern Division**

Commodity Futures Trading Commission,
Plaintiff,

vs.

Kevin J. Steele
Defendant.

Civil Action No: 05C 3130

Honorable Judge Shadur
Magistrate Judge Schenkier

Preliminary Injunction Order

**ORDER OF PRELIMINARY INJUNCTION AND OTHER
ANCILLARY RELIEF AGAINST KEVIN J. STEELE**

Plaintiff, Commodity Futures Trading Commission (“CFTC”) filed a Complaint against Kevin J. Steele (“Steele” or “Defendant”) seeking injunctive and other equitable relief for violations of the Commodity Exchange Act, as amended (“Act”), 7 U.S.C. §§ 1 *et seq.* (2002). This matter comes before this Court on the Motion for Preliminary Injunction filed by Plaintiff CFTC. This Court has previously issued an *ex parte* statutory restraining order freezing the Defendant’s assets and containing other relief. Service was properly effected upon Defendant, pursuant to Fed. R. Civ. P. 4(e)(2), by delivering a copy of the summons and complaint to Defendant’s agent, Interactive Brokers LLC (“IBL”) in care of Mr. Jeff Bauch, IBL’s compliance officer, who is authorized by law to receive service of process for Defendant under Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e), and Commission Regulation 15.05, 17 C.F.R. § 15.05 (2004).

This Court having considered the pleadings, memoranda, declarations, and other exhibits filed in support of the CFTC’s Motion:

THIS COURT FINDS:

1. This Court has jurisdiction over the subject matter of this action and the Defendant pursuant to Section 6c(a) of the Act, 7 U.S.C. § 13a-1(a) (2002), which authorizes the CFTC to seek injunctive relief against any person whenever it shall appear that such person has engaged, is engaging or is about to engage in any act or practice constituting a violation of any provision of the Act or any rule, regulation or order thereunder.

2. Venue properly lies with this Court pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1(e), in that the Defendant transacted business in this District, and the acts and practices in violation of the Act have occurred, are occurring, or are about to occur within this District.

3. There is good cause to believe that Defendant Steele has engaged in and is likely to engage in acts and practices that violate Sections 4b(a)(2)(i)-(iii), 4m(1) and 4o(1) of the Act, 7 U.S.C. §§ 6b(a)(2)(i)-(iii), 6m(1) and 6o(1), and there is a reasonable likelihood that the CFTC will prevail on the merits of this action.

4. The Defendant made material misrepresentations and material omissions when he misrepresented the asset value of the pool, failed to disclose trading losses and misrepresented the balance of the pool participants' respective interests in the pool.

5. The Defendant created or caused to be created false statements to pool participants who invested money with Defendant to trade commodity futures contracts and made false statements to the futures commission merchant ("FCM") that carried his commodity trading accounts.

6. The Defendant acted as a commodity pool operator ("CPO") when he was not registered as a CPO in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1).

7. There is good cause for granting a preliminary injunction to protect the status quo, protect public customers from further loss and damage and enable the CFTC to fulfill its statutory duties.

RELIEF GRANTED

IT IS THEREFORE ORDERED THAT:

1. The Defendant and his officers, agents, servants, employees, nominees, or attorneys are restrained, enjoined and prohibited, until further order of this Court, from directly or indirectly:
 - A. Cheating or defrauding or attempting to cheat or defraud other persons in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery, made, or to be made, for or on behalf of any other person, in violation of Section 4b(a)(2)(i) of the Act, 7 U.S.C. § 6b(a)(2)(i);
 - B. Willfully making or causing to be made to other persons any false report or statement thereof, or willfully to enter or cause to be entered for such persons any false record thereof, in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery, made, or to be made, for or on behalf of any other person, in violation of Section 4b(a)(2)(ii) of the Act, 7 U.S.C. § 6b(a)(2)(ii);
 - C. Willfully deceiving or attempting to deceive other persons by any means whatsoever in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery, made, or to be made, for or on behalf of any other person, in violation of Section 4b(a)(2)(iii) of the Act, 7 U.S.C. § 6b(a)(2)(iii);
 - D. Employing any device, scheme, or artifice to defraud any participant or prospective participant, or engaging in any transaction, practice, or course of business which operates as a fraud or deceit upon any participant or prospective participant, by use of the mails or any means or instrumentality of interstate commerce, in violation of Section 4o(1) of the Act, 7 U.S.C. § 6o(1); and
 - E. Operating as a CPO engaged in the business of soliciting, accepting, or receiving from others, funds, securities, or property, for the purpose of trading in any commodity for future delivery on or subject to the rules of

any contract market without being registered with the Commission as a CPO, in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1).

2. Defendant and his officers, agents, servants, employees, nominees, or attorneys are further restrained, enjoined and prohibited, until further order of the Court, from directly or indirectly:

- A. Engaging in, controlling or directing the trading for any commodity futures or options accounts for or on behalf of any other person or entity, whether by power of attorney or otherwise;
- B. Entering into any commodity futures or options transactions for his own account, for any accounts in which he has a direct or indirect interest and/or having any commodity futures or options traded on his behalf; and
- C. Soliciting any new or existing pool participants or accepting any new deposits of funds from any new or existing pool participants.

3. Defendant and his officers, agents, servants, employees, nominees, or attorneys are further restrained, enjoined and prohibited, until further order of this Court from directly or indirectly:

- A. Dissipating, withdrawing, transferring, removing, concealing or disposing of cash, cashiers checks, funds, assets or other property of, or within the custody, control or possession of the Defendant, including, but not limited to, all funds, personal property, money or securities held in safes, safety deposit boxes and all funds on deposit in any financial institution, bank or savings and loan account, including funds or property of customers, wherever located, whether held in the name of the Defendant or otherwise, and the assets affected by this paragraph shall include both existing assets and assets acquired after the effective date of this Order;
- B. Destroying, mutilating, concealing, altering or disposing of, in any manner, any of the books and records, documents, correspondence, brochures, manuals, electronically stored data, tape records or other property of the Defendant, wherever located, including all such records concerning the Defendant's business operations, until further order of the Court; and
- C. Denying CFTC representatives access to the Defendant's books or records upon reasonable request by CFTC representatives.

4. Until further order of this Court, Defendant and each firm, corporation, partnership, association or other person or entity which holds or is a depository of Defendant's funds, securities, assets or other property of any kind, are prohibited from directly or indirectly transferring, withdrawing, removing or disposing of any such funds, securities, assets or other property.

5. The injunctive provisions of this Order shall be binding on Defendant, upon any person insofar as he or she is acting in the capacity of officer, agent, servant, employee or attorney of Defendant, and upon any person who receives actual notice of this Order by personal service, facsimile or otherwise insofar as he or she is acting in active concert or participation with Defendant.

6. Defendant shall prepare, sign and tender to the CFTC within 21 days of this Order, an interim accounting and prepare, sign and file with this Court, within 60 days, a complete and accurate accounting for the period of January 2002, to the date of such accounting, which shall be no earlier than the date of this Order. Such accounting shall include, without limitation, the identification of:

- A. All funds, securities, commodity interests, assets and other property in the Defendant's possession, custody or control, currently owned or controlled (legally, equitably or otherwise) directly or indirectly by the Defendant, whether individually or jointly, including accounts or assets of the Defendant held by financial institutions located outside the territorial United States;
- B. All funds, securities, commodity interests, assets and other property received directly or indirectly by the Defendant, whether individually or jointly, describing the source, amount, disposition, and current location of each listed item;
- C. All funds, securities, commodity interests, assets and other property transferred or otherwise disposed of directly or indirectly by the Defendant, whether individually or jointly, describing the source, amount, disposition, and current location of each listed item, including accounts or assets of the Defendant held by financial institutions located outside the territorial United States and provide the CFTC with access to all records of

accounts or assets of the Defendant held by financial institutions located outside the territorial United States; and

- D. The name and last known address of each bailee, debtor or other person or entity currently holding any funds, securities, commodity interests, assets or other property owned or controlled (legally, equitably or otherwise) by the Defendant, either individually or jointly.


7. The terms of the Statutory Restraining Order entered on May 26, 2005 shall remain in full force and effect until further order of this Court.

8. It is further ordered that Diane M. Romaniuk, Senior Attorney for the CFTC, or Mary E. Spear, an Investigator with the CFTC, shall serve this Order and all other papers in this cause. It is further ordered that this Order may be served by facsimile transmission, electronic mail or data transfer, courier service, certified, registered or first class mail, Federal Express or personal service.

9. This Order shall remain in effect until further order of this Court and this Court shall retain jurisdiction over this action to ensure compliance with this Order and for all other purposes related to this action.

IT IS SO ORDERED.

DATED: June 13, 2005



The Honorable Milton I. Shadur
UNITED STATES DISTRICT JUDGE
Northern District of Illinois