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FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

FEB 18 2009
at 4 o'clock and 30 min. P.M.
SUE BEITIA, CLERK

ATTEST: A True Copy
SUE BEITIA
Clerk, United States District
Court, District of Hawaii
By Amalthea
Deputy

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

U.S. COMMODITY FUTURES
TRADING COMMISSION,

Plaintiff,

v.

BILLION COUPONS, INC., a/k/a
BILLION COUPONS INVESTMENT,
a Hawaii corporation, and MARVIN
RAY COOPER, an individual,

Defendants.

CASE NO. 09-00069 JMS/LEK

~~(PROPOSED)~~
ORDER GRANTING
PLAINTIFF'S *EX PARTE*
EMERGENCY MOTION FOR
STATUTORY RESTRAINING
ORDER, APPOINTMENT OF
TEMPORARY RECEIVER,
EXPEDITED DISCOVERY,
PRELIMINARY INJUNCTION,
AND OTHER EQUITABLE
RELIEF

This matter came before the Court for hearing on February 18th, 2009, on
Plaintiff Commodity Futures Trading Commission's (Commission or CFTC) *Ex*
Parte Emergency Motion for a Statutory Restraining Order, Appointment of
Temporary Receiver, Expedited Discovery, Preliminary Injunction, and Other

Equitable Relief (Motion). The Court, having considered the Motion, the memorandum in support thereof, and all other evidence presented by Plaintiff, and having heard the arguments of Plaintiff's counsel, finds that:

1. ^{Based upon representations made by CFTC,} This Court has jurisdiction over the parties and the subject matter of ^{finds that it} this action pursuant to Section 6c of the Commodity Exchange Act (Act), 7 U.S.C. §§ 13a-1 (2006), and Section 2(c)(2) of the Act as amended by the Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, Title XIII (the CFTC Reauthorization Act (CRA)), §§ 13101-13204, 122 Stat. 1651 (effective June 18, 2008), to be codified at Section 2(c)(2).

2. Venue lies properly within this District pursuant to Section 6c(e) of the CRA, 7 U.S.C. § 13a-1(e).

3. There is good cause to believe that Defendants Billion Coupons, Inc., a/k/a Billion Coupons Investment (BCI) and Marvin Ray Cooper (Cooper) (collectively, Defendants)—have engaged, are engaging, and are about to engage in acts and practices constituting violations of the Act as amended, to be codified at 7 U.S.C. §§ 1, *et seq.*

4. There is good cause to believe that immediate and irreparable damage to the Court's ability to grant effective final relief for customers 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 assets owned, controlled, managed, or held by, on behalf of, or for the benefit of Defendants and for entry of an order prohibiting Defendants, their agents, servants, employees, assigns, attorneys, and persons in active concert or participation with Defendants, including any successor thereof, from destroying records and/or denying Commission representatives access to inspect and copy records to ensure that Commission representatives have immediate and complete access to those books and records.

6. Good cause exists for the appointment of a Temporary Receiver to take control of all assets owned, controlled, managed, or held by, on behalf of, or for the benefit of Defendants (Defendants' Assets) in order to preserve assets, investigate and determine customer claims, determine unlawful proceeds retained by Defendants and amounts due to customers as a result of their alleged violations, and distribute remaining funds under the Court's supervision.

7. Good cause exists for the Plaintiff to conduct expedited discovery in order to determine the full extent of Defendants' alleged wrongdoing, locate Defendants other customers, identify customers' funds and other of Defendants' Assets, and clarify the source of various funds.

8. 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.

I.

DEFINITIONS

For purposes of this Order, the following definitions apply:

9. The term "document" is synonymous in meaning and equal in scope to the usage of the term in Federal Rule of Civil Procedure (FRCP) 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.

10. "Assets" mean any legal or equitable interest in, right to, or claim to, any real or personal property, whether individually or jointly, direct or indirect control, and wherever located, including, but not limited to: chattels, goods, instruments, equipment, fixtures, general intangibles, effects, leaseholds, mail or other deliveries, inventory, checks, notes, accounts (including, but not limited to, bank accounts and accounts at financial institutions), credits, receivables, lines of

credit, contracts including spot and futures or option contracts, insurance policies, and all cash.

11. "Defendant" shall mean and refer to not only BCI and Cooper but also to any d/b/a, successor, ~~affiliate~~, subsidiary or other entity owned, controlled, managed, or held by, on behalf of, or for the benefit of BCI and/or Cooper.

II.

RELIEF GRANTED

Order Against Transfer, Dissipation, and Disposal of Assets

IT IS HEREBY ORDERED that:

12. Defendants and their agents, servants, employees, assigns, attorneys, and persons in active concert or participation with Defendants, including any successor thereof, and persons in active concert or participation with them, who receive actual notice of this Order by personal service or otherwise, are immediately 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 of Defendants' Assets, wherever located, including Defendants' Assets held outside the United States, except as provided in Section 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.

13. Defendants are restrained and enjoined from directly or indirectly opening or causing to be opened any safe deposit boxes titled in the name of, or subject to, access by Defendants.

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:

14. Provide the Commission with a full detailed accounting of all of Defendants' Assets, inside and outside of the United States, from September 1, 2007 to the date of this Order;

15. Transfer to the territory of the United States, to the possession, custody, and control of the Temporary Receiver, all of Defendants' Assets (other than real property) located outside the United States; and

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

IV.

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 or has

held, controls or has controlled, or maintains or has maintained custody of any of Defendants' Assets at any time since ^{June 18, 2008} ~~September 1, 2007~~, shall:

17. Prohibit Defendants and all other persons from withdrawing, removing, assigning, transferring, pledging, encumbering, disbursing, dissipating, converting, selling, or otherwise disposing of Defendants' Assets, except as directed by further Order of the Court;

18. Deny Defendants and all other persons access to any safe deposit box that is: (a) owned, controlled, managed, or held by, on behalf of, or for the benefit of Defendants, either individually or jointly; or (b) otherwise subject to access by Defendants;

19. 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 account or other asset owned, controlled, managed, or held by, on behalf of, or for the benefit of Defendants, either individually or jointly; (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 owned, controlled, managed, or

held by, on behalf of, or for the benefit of Defendants, either individually or jointly, or is otherwise subject to access by Defendants; and

20. 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, Internal Revenue Service Form 1099s, and safe deposit box logs.

V.

Maintenance of Business Records

IT IS FURTHER ORDERED that:

21. Defendants and their agents, servants, employees, assigns, attorneys, and persons in active concert or participation with Defendants, including any successor thereof, and all other persons or entities who receive notice of this Order by personal service or otherwise, are immediately restrained and enjoined from directly or indirectly destroying, mutilating, transferring, 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 and their subsidiaries ~~or affiliates.~~

VI.

Inspection and Copying of Books and Records

IT IS FURTHER ORDERED that:

22. Representatives of the Commission shall be immediately allowed to inspect the books, records, and other documents of Defendants and their agents, including, but not limited to, electronically stored information, 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, information and records, either on or off Defendants' premises; and

23. Defendants and their agents, servants, employees, assigns, attorneys, and persons in active concert or participation with the Defendants, including any successor thereof, who receive actual notice of this Order by personal service or otherwise, including facsimile or other electronic 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, and to locate and provide to representatives of the Commission information regarding the whereabouts of Defendants.

VII.

Order Appointing Temporary Receiver

IT IS FURTHER ORDERED that:

24. Barry Fisher is appointed as Temporary Receiver of BCI, and its subsidiaries ~~and affiliates~~, with full powers of an equity receiver, including, but not limited to, full power over all funds, assets, collateral, premises (whether owned, leased, occupied, or otherwise controlled), choses in action, books, records, papers and other property belonging to, being managed by or in the possession of or control of BCI, and its subsidiaries ~~and affiliates~~. The Court makes this appointment of a Temporary Receiver after having duly considered the qualifications and experience of said Temporary Receiver and determining said Temporary Receiver qualified. The Temporary Receiver shall be the agent of this Court in acting as Temporary Receiver under this Order. The Temporary Receiver is immediately authorized, empowered and directed:

- A. to have access to and to collect and take custody, control, possession, and charge of all funds, assets, collateral, premises (whether owned, leased, occupied, or otherwise controlled), choses in action, books, records, papers and other real or personal property, wherever located, of or managed by BCI, and its subsidiaries ~~and affiliates~~ including the

property at 835 6th Ave., Honolulu, Hawaii 96816 and 778 Wiliwili St., # 402, Honolulu, Hawaii 96826);

- B. to have control of, and to be added as the sole authorized signatory for, all accounts of the entities in receivership, including all accounts at any bank, title company, escrow agent, financial institution or brokerage firm (including any futures commission merchant) which has possession, custody or control of any assets or funds of BCI, and its subsidiaries ~~and affiliates~~, or which maintains accounts over which BCI, and its subsidiaries ~~and affiliates~~, and/or any of their employees or agents have signatory authority;
- C. to conduct such investigation and discovery as may be necessary to locate and account for all of the assets of or managed by BCI, and its subsidiaries ~~and affiliates~~, and to engage and employ attorneys, accountants and other persons to assist in such investigation and discovery;
- D. to take such action as is necessary and appropriate to preserve and take control of and to prevent the dissipation, concealment, or disposition of any assets of or managed by BCI, and its subsidiaries ~~and affiliates~~; and

E. to have access to and monitor all mail, electronic mail, and videophone of the entities in receivership in order to review such mail and e-mail which he or she deems relates to their business and the discharging of his or her duties as temporary receiver.

IT IS FURTHER ORDERED that:

25. Defendants BCI and Cooper, and their subsidiaries, ~~affiliates~~, including all the other entities in receivership, and their officers, agents, servants, employees and attorneys, shall, within 24 hours of the issuance of this Order, caused to be prepared and delivered to the Temporary Receiver, a detailed and complete schedule of all passwords and identification (ID) numbers for all websites, electronic mail accounts, videophone accounts, and all accounts at any bank, financial institution or brokerage firm (including any introducing broker or futures commission merchant) operated by or to which BCI and/or Cooper has access.

IT IS FURTHER ORDERED that:

26. Defendants BCI and Cooper, and their subsidiaries, ~~affiliates~~, including all the other entities in receivership, and their officers, agents, servants, employees and attorneys, shall, within 24 hours of the issuance of this Order, caused to be prepared and delivered to the Temporary Receiver, a detailed and complete schedule of all desk top computers, laptop computers and/or personal

digital assistants (PDA) owned and/or used by them in connection with their business. In the case of Defendant Cooper, he shall, within 24 hours of the issuance of this Order, caused to be prepared and delivered to the Temporary Receiver, a detailed and complete schedule of all desk top computers, laptop computers and/or personal digital assistants (PDA) owned and/or used by him for any purpose. The schedules required by this section shall include at a minimum the make, model and description of each computer and/or PDA, along with its location, the name of the person primarily assigned to use computer and/or PDA, and all passwords necessary to access and use the software contained on the computer and/or PDA. The Temporary Receiver shall be authorized to make an electronic, digital or hard copy of all of the data contained on the computer(s) and/or PDA(s).

IT IS FURTHER ORDERED that:

27. Defendants BCI and Cooper, and their subsidiaries, ~~affiliates~~, including all the other entities in receivership, and their officers, agents, servants, employees and attorneys, and any other persons who are in custody, possession or control of any assets, collateral, books, records, papers or other property of or managed by any entities in receivership, shall forthwith give access and control of such property to the Temporary Receiver and shall take no action, directly or indirectly, to hinder, obstruct, or otherwise interfere with the Temporary Receiver

or his or her attorneys, accountants, employees or agents, having access or gaining control of such property, or in the conduct of the Temporary Receiver's duties or to interfere in any manner, directly or indirectly, with the custody, possession, management, or control by the Temporary Receiver of the funds, assets, collateral, premises, and choses in action described above.

IT IS FURTHER ORDERED that:

28. No officer, agent, servant, employee, or attorney of Defendants BCI and Cooper shall take any action or purport to take any action, in the name of or on behalf of BCI without the written consent of the Temporary Receiver or order of this Court.

IT IS FURTHER ORDERED that:

29. Defendants BCI and Cooper, and their subsidiaries ~~and affiliates~~, shall pay the costs, fees and expenses of the Temporary Receiver incurred in connection with the performance of his or her duties described in this Order, including the costs and expenses of those persons who may be engaged or employed by the Temporary Receiver to assist him or her in carrying out his or her duties and obligations. All applications for costs, fees and expenses for services rendered in connection with the receivership other than routine and necessary business expenses in conducting the receivership, such as salaries, rent and any and all other

reasonable operating expenses, shall be made by application setting forth in reasonable detail the nature of the services and shall be heard by the Court.

IT IS FURTHER ORDERED that:

30. No bond shall be required in connection with the appointment of the temporary receiver. Except for an act of gross negligence, the temporary receiver shall not be liable for any loss or damage incurred by any of Defendants, their officers, agents, servants, employees and attorneys or any other person, by reason of any act performed or omitted to be performed by the temporary receiver in connection with the discharge of his or her duties and responsibilities.

IT IS FURTHER ORDERED that:

31. Representatives of the Commission and any other government agency, including the Securities and Exchange Commission, are authorized to have continuing access to inspect or copy any or all of the corporate books and records and other documents of BCI and Cooper and the other entities in receivership, and continuing access to inspect their funds, property, assets and collateral, wherever located.

IT IS FURTHER ORDERED that:

32. Absent express permission and leave by this Court, during the pendency of this receivership, all clients, investors, trust beneficiaries, note holders, creditors, claimants, lessors, and all other persons or entities seeking relief

of any kind from Defendants' Assets (other than the present action by the Commission and the Securities and Exchange Commission), in law or in equity, and all persons acting on behalf of any such investor, trust beneficiary, note holder, creditor, claimant, lessor, consultant group, or other person, including sheriffs, marshals, and all officers and deputies, and their respective attorneys, servants, agents and employees, are, until further order of this Court, hereby ~~are~~ restrained and enjoined from doing anything, directly or indirectly, to interfere with the Temporary Receiver's performance of his or her duties and the administration of Defendants' Assets. Accordingly, all such persons are enjoined from engaging in any self-help, including set-offs, and from filing or prosecuting any actions or proceedings which involve the Temporary Receiver or which affect Defendants' Assets, specifically including any proceeding initiated pursuant to the United States Bankruptcy Code, except with prior permission of this Court. Moreover, any such actions that are so authorized shall be filed in this Court.

VIII.

Order Granting Expedited Discovery

IT IS HEREBY ORDERED that:

33. The Commission and Temporary Receiver may conduct expedited discovery, removing the prohibition upon discovery before the early meeting of counsel pursuant to FRCP 26(f), in accordance with FRCP 26(d), and that the Commission and Temporary Receiver may take depositions of Defendants and non-parties subject to two calendar days notice pursuant to FRCP 30(a) and 45, that notice may be given personally, by facsimile or by electronic mail, and more than ten depositions may be taken.

34. The Commission and Temporary Receiver may conduct expedited discovery to enable the Commission to fulfill its statutory duties and protect investors from further loss or damage. This expedited discovery will allow the Commission and Temporary Receiver to determine the full extent of Defendants' alleged wrongdoing (including, but not limited to, the possible involvement of others), locate Defendants' other customers, identify customers' funds and other of Defendants' Assets, and clarify the sources of various funds.

IX.

Bond Not Required of Plaintiff

IT IS FURTHER ORDERED that:

35. The Commission is an agency of the United States of America and, accordingly, need not post a bond.

X.

Order to Show Cause

IT IS FURTHER ORDERED that:

36. Defendants shall appear before this Court on the 2d day of March, 2009, at 9:00, a.m., before the Honorable J. Michael Seabright at the United States Courthouse for the District of Hawaii, Honolulu, Hawaii 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.

37. 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 February 25, 2009 and served via facsimile or overnight delivery to the Commission's Washington D.C. office no later than 5:00 o'clock p.m. on February 25, 2009. Any reply papers shall be filed with the Court and delivered to opposing counsel no later than 5:00 o'clock p.m. on February 27, 2009. Service of all papers shall be by electronic mail, facsimile, or personal service.

XI.

Service

IT IS FURTHER ORDERED that:

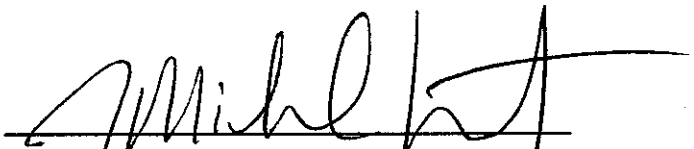
38. Copies of this Order may be served by any means, including facsimile transmission, upon any entity or person that may have possession, custody, or control of any documents or Defendants' Assets that may be subject to any provision of this Order, and, additionally, that Kenneth McCracken, Elizabeth Davis, Michael Loconte and Rick Glaser are specially appointed by the Court to effect service. Further, service of the Summons, Complaint, or other process may be effected by any Commission representative, the Temporary Receiver or any of his representatives, any U.S. Marshal or deputy U.S. Marshal, or in accordance with FRCP 4.

XII.

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 IS SO ORDERED, at Honolulu, Hawaii, on the 18th day of February, 2009 at 4:15 p..m.


UNITED STATES DISTRICT JUDGE
DISTRICT OF HAWAII