

ORIGINAL

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED
MAR - 4 2009
CLERK, U.S. DISTRICT COURT
By _____ Deputy **R**

U.S. COMMODITY FUTURES)
TRADING COMMISSION,)
)
Plaintiff,)
)
v.)
)
CRW MANAGEMENT LP)
and RAY M. WHITE,)
)
Defendants,)
)
CHRISTOPHER R. WHITE)
and HURRICANE MOTORSPORTS,)
LLC,)
)
Relief Defendants.)

CASE NO. _____

3-09CV0408-L

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

This matter came before the Court for hearing on March 4, 2009 on plaintiff
Commodity Futures Trading Commission's (CFTC) *Ex Parte* Emergency Motion for a
Statutory Restraining Order, Appointment of 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. This Court has jurisdiction over the parties and over the subject matter of
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 7 U.S.C. § 2(c)(2).

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

3. There is good cause to believe that defendants CRW Management LP (CRW) and Ray M. White (Ray White) (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.*, and that Relief Defendants Christopher R. White (Christopher White) and Hurricane Motorsports LLC (Hurricane) (collectively, Relief Defendants) have received, are receiving, and are about to receive funds as a result of Defendants' acts and practices that violate the Act.

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 and Relief Defendants of assets or records unless Defendants and Relief 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 Relief Defendants and for entry of an order prohibiting Defendants and Relief Defendants, their agents, servants, employees, assigns, attorneys, and persons in active concert or participation with Defendants and Relief Defendants, including any successor thereof, from destroying records and/or denying CFTC representatives access to inspect and copy records to

ensure that CFTC representatives have immediate and complete access to those books records.

6. Good cause exists for the appointment of a Receiver to take control of all assets owned, controlled, managed or held by, on behalf of, or for the benefit of Defendants (Defendants' Assets) and Relief Defendants (Relief Defendants' Assets) in order to preserve assets, investigate and determine customer claims, determine unlawful proceeds retained by Defendants and Relief Defendants and amounts due to customers as a result of Defendants 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 CFTC'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 options contracts, insurance policies, and all cash, wherever located.

11. "Defendants" shall mean and refer to not only CRW and Ray White 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 CRW and/or Ray White.

12. "Relief Defendants" shall mean and refer to not only Hurricane and Christopher White 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 Hurricane and/or Christopher White.

II.

RELIEF GRANTED

Order Against Transfer, Dissipation, and Disposal of Assets

IT IS HEREBY ORDERED that:

13. Defendants, Relief Defendants, and their agents, servants, employees, assigns, attorneys, and persons in active concert or participation with them, 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 or Relief Defendants' Assets, wherever located, including Defendants' Assets and Relief 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.

14. Defendants and Relief 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 or Relief 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 and Relief Defendants shall:

15. Provide the CFTC and the Receiver with a full accounting of all Defendants' Assets, inside and outside of the United States, from January 1, 2006 to the date of this Order;

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

17. Provide the CFTC and Receiver access to all records of Defendants and Relief 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 or Relief Defendants' Assets at any time since January 1, 2006, shall:

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

19. Deny Defendants, Relief 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 or Relief Defendants, either individually or jointly; or (b) otherwise subject to access by Defendants or Relief Defendants;

20. Provide counsel for the CFTC and Receiver, 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 or Relief 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 or Relief Defendants, either individually or jointly, or is otherwise subject to access by Defendants or Relief Defendants; and

21. Upon request by the CFTC or the Receiver, promptly provide the CFTC and the Receiver 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:

22. Defendants, Relief Defendants, and their agents, servants, employees, assigns, attorneys, and persons in active concert or participation with Defendants or Relief 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, 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 or Relief Defendants and their subsidiaries or affiliates.

VI.

Inspection and Copying of Books and Records

IT IS FURTHER ORDERED that:

23. Representatives of the CFTC and the Receiver shall immediately be allowed to inspect the books, records, and other documents of Defendants, Relief 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, Relief Defendants, or others, and to copy said documents, information and records, either on or off Defendants' or Relief Defendants' premises; and

24. Defendants, Relief Defendants, and their agents, servants, employees, assigns, attorneys, and persons in active concert or participation with Defendants or Relief 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 CFTC and/or the Receiver to locate and provide to representatives of the CFTC and/or the Receiver all books and records of Defendants and Relief Defendants, wherever such books and records may be situated, and to locate and provide to representatives of the CFTC and/or the Receiver information regarding the whereabouts of Defendants and Relief Defendants.

VII.

Order Appointing Receiver

IT IS FURTHER ORDERED that:

25. Tim Mack is appointed as Receiver, with the 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 Defendants, Relief Defendants, or any of their subsidiaries and affiliates. The Court makes this appointment of a Receiver after having duly considered the qualifications and experience of said Receiver and determining said Receiver qualified. The Receiver shall be the agent of this Court in acting as Receiver under this Order. The 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 Defendants or Relief Defendants, and their subsidiaries and affiliates, including the property at 1102 Inglewood Drive, Mansfield, Texas 76063; 1118 Enterprise Place, Arlington, Texas 76001; 13408 County Road 1145, Tyler, Texas 75710; and 1414 Concho Trail, Mansfield, Texas 76063.
- 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 Defendants or Relief Defendants, and their subsidiaries and affiliates, or which maintains accounts over which Defendants or Relief Defendants, and their 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 Defendants or Relief Defendants, and their 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 Defendants or Relief Defendants, and their subsidiaries and affiliates;
- E. to make an accounting, as soon as practicable, to this Court, the CFTC, and any interested government agencies, including the Securities and Exchange Commission, of the assets and financial condition of Defendants and Relief Defendants, and to file the accounting with the Court and deliver copies thereof to all parties;
- F. to make such payments and disbursements from the funds and assets taken into custody, control, and possession or thereafter received by him, and to

incur, or authorize the making of, such agreements as may be necessary and advisable in discharging his duties as Receiver;

- G. to employ attorneys, accountants and others to investigate and, where appropriate, to institute, pursue, and prosecute all claims and causes of action of whatever kind and nature which may now or hereafter exist as a result of the activities of present or past employees or agents of Defendants or Relief Defendants, and their subsidiaries and affiliates; and
- H. 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 deems relates to their business and the discharging of his duties as Receiver.

IT IS FURTHER ORDERED that:

25. Defendants and Relief Defendants, including any subsidiaries and affiliates, 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 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 Defendants or Relief Defendants have access.

IT IS FURTHER ORDERED that:

26. Defendants and Relief Defendants, including any subsidiaries and affiliates, 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 Receiver, a detailed and complete schedule of all desktop 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 Ray White and Relief Defendant Christopher White, they shall, within 24 hours of the issuance of this Order, caused to be prepared and delivered to the Receiver, a detailed and complete schedule of all desktop computers, laptop computers and/or personal digital assistants (PDA) owned and/or used by them 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 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 and Relief Defendants, including any subsidiaries and affiliates, and their officers, agents, servants, employees, and attorneys, and any other persons who are in custody, possession, or control of any assets, funds, 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 Receiver and cooperate with and assist the Receiver and shall take no action, directly or indirectly, to hinder, obstruct, or otherwise interfere with the Receiver or his attorneys, accountants, employees, or agents, having access or gaining control of such property, or in the conduct of the Receiver's duties or to interfere in any manner, directly or indirectly, with the custody, possession,

management, or control by the Receiver of the assets, funds, collateral, books, records, premises, and choses in action described above.

IT IS FURTHER ORDERED that:

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

IT IS FURTHER ORDERED that:

29. Defendants and Relief Defendants, and their subsidiaries and affiliates, shall pay the costs, fees, and expenses of the Receiver incurred in connection with the performance of his duties described in this Order, including the costs and expenses of those persons who may be engaged or employed by the Receiver to assist him in carrying out his 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 Receiver. Except for an act of gross negligence, the Receiver shall not be liable for any loss or damage incurred by any of Defendants, Relief 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 Receiver in connection with the discharge of his or her duties and responsibilities.

IT IS FURTHER ORDERED that:

31. Representatives of the CFTC 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 Defendants and Relief Defendants, including any subsidiaries and affiliates, and their officers, agents, servants, employees, and attorneys, and continuing access to inspect their assets, funds, premises, collateral, books, records, or other property, 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 and Relief Defendants' Assets (other than the present actions by the CFTC 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 Receiver's performance of his or her duties and the administration of Defendants' Assets and Relief 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 Receiver or which affect Defendants' Assets or Relief 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 CFTC and 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 CFTC and Receiver may take depositions of Defendants, Relief 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. Further, more than ten depositions may be taken and, if necessary, any deposition may last more than seven hours.

34. The CFTC and Receiver may conduct expedited discovery to enable the CFTC to fulfill its statutory duties and protect investors from further loss or damage. This expedited discovery will allow the CFTC and 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 Relief Defendants' Assets, and clarify the sources of various funds.

IX.

Bond Not Required of Plaintiff

IT IS FURTHER ORDERED that:

35. The CFTC 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 11th day of march, 2009, at 10:30, a.m., before the Honorable Judge Kinkeade at the United States Courthouse for the Northern District of Texas, Dallas, Texas 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 march 9, 2009 and served via facsimile or overnight delivery to the CFTC's Kansas City, Missouri office no later than 5 o'clock p.m. on march 9, 2009. Any reply papers shall be filed with the Court and delivered to opposing counsel no later than 5 o'clock p.m. on march 10, 2009. Service of all papers shall be by electronic mail, overnight 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 or Relief Defendants' Assets that may be subject to any provision of this Order, and, additionally, that Christopher Reed, Charles Marvine, Michael Loconte, and Rick Glaser (among other representatives of the CFTC), as well as representatives of the SEC, are specially appointed by the Court to effect service. Further, service of the Summons, Complaint, or other process may be effected by any CFTC representative, any SEC representative, the 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 Dallas, Texas, on the 4th day of March, 2009, at 10:28 a.m.


UNITED STATES DISTRICT JUDGE
NORTHERN DISTRICT OF TEXAS