

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA

CLERK'S OFFICE U.S. DIST COURT
AT ROANOKE, VA
FILED
MAR 11 2009
JOHN F. CORCORAN, CLERK
BY: *Bright*
DEPUTY CLERK

U.S. COMMODITY FUTURES TRADING)
COMMISSION,)

Plaintiff,)

v.)

JOHN M. DONNELLY, TOWER ANALYSIS)
INC., NASCO TANG CORP., and NADIA)
CAPITAL CORP.,)

Defendants,)

and)

BLUE LOGIC OPERATING PARTNERS LP,)
NADIA CAPITAL OPERATING)
PARTNERS LP, and)
DEBORAH B. DONNELLY,)

Relief Defendants.)

CIVIL ACTION NO.: 3:09CV00016

ORDER GRANTING MOTION FOR
STATUTORY RESTRAINING ORDER ON
NOTICE, FOR EXPEDITED DISCOVERY,
AND ORDER TO SHOW CAUSE RE:
PRELIMINARY INJUNCTION

This matter came on for hearing before the Court on March 11, 2009 on the Motion of Plaintiff U.S. Commodity Futures Trading Commission (the "Commission" or "Plaintiff") for a: (1) Statutory Restraining Order; (2) Order Permitting Immediate, Expedited Discovery; and (3) Order to Show Cause re: Preliminary Injunction (the "Application"). The Court, having considered the Commission's Complaint, Motion, Memorandum of Points and Authorities, Exhibits, other materials in support thereof, and all other evidence presented by Plaintiff filed herein, and having heard the arguments of all parties, 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, as amended (the "Act") 7 U.S.C. § 13a-1 (2006).

2. Venue lies properly within this District pursuant to Sections 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2006).

3. There is good cause to believe that the Defendants have engaged, are engaging and/or are about to engage in acts and practices constituting violations of the Act, 7 U.S.C. §§ 1, et seq. (2006).

4. There is good cause to believe that the Relief Defendants received funds and/or property as a result of the Defendants' unlawful conduct and have been unjustly enriched thereby. The Relief Defendants have no legitimate entitlement to or interest in any of the funds and/or property received as a result of the Defendants' unlawful conduct.

5. There is good cause to believe that immediate and irreparable damage to the Court's ability to grant effective final relief for commodity pool participants in the form of monetary redress will occur from the sale, transfer, assignment, or other disposition by Defendants and/or Relief Defendants of assets or records unless Defendants and/or Relief Defendants are immediately restrained and enjoined by Order of this Court.

6. Good cause exists for the freezing of assets owned, controlled, managed or held by, on behalf of, or for the benefit of Defendants (hereinafter "Defendants' Assets") in order to assure payment of restitution and disgorgement as authorized and for the benefit of pool participants. Good cause further exists for the freezing of assets owned, controlled, managed or held by, or on behalf of, or for the benefit of Relief Defendants (hereinafter "Relief Defendants' Assets") as well as in order to assure payment of all funds subject to restitution and disgorgement that the Relief

Defendants have been unjustly enriched by, and to which they have no legitimate entitlement or interest, as authorized and for the benefit of pool participants, with the exception of assets controlled, managed or held by Relief Defendant Deborah B. Donnelly in a fiduciary capacity in connection with her employment.

7. Good cause exists for entry of an order prohibiting Defendants and Relief Defendants, their agents, servants, employees, assigns, attorneys, and persons in active concert or participation with the Defendants or Relief Defendants from destroying records and denying agents of the Commission access to inspect and copy records to ensure that Commission representatives have immediate and complete access to those books and records.

8. Good cause exists to permit expedited discovery before the early meeting of counsel pursuant to Rule 26(d) of the Federal Rules of Civil Procedure, in order to ascertain the existence and location of assets, clarify the source of funds, and identify all pool participants and other investors.

9. Good cause exists to require an accounting to determine the location and disposition of pool participants' funds.

10. Good cause exists to order repatriation of assets controlled by Defendants to assure payment of restitution and disgorgement as authorized and for the benefit of pool participants.

11. 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:

12. 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 (including, but not limited to, floppy diskettes, hard disks, ZIP disks, CD-ROMs, optical discs, backup tapes, printer buffers, smart cards, memory calculators, pagers, personal digital assistants such as Palm Pilot computers, as well as printouts or readouts from any magnetic storage device), 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.

13. "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.

14. "Defendants" means John M. Donnelly, Tower Analysis Inc., Nasco Tang Corp., and Nadia Capital Corp. and for all parties includes any person insofar as he or she is acting in the capacity of an officer, agent, servant, employee, or attorney of the Defendants, and any person who receives actual notice of this Order by personal service or otherwise insofar as he or she is acting in concert or participation with Defendants.

15. "Relief Defendants" means Blue Logic Operating Partners LP, Nadia Capital Operating Partners LP, and Deborah B. Donnelly.

RELIEF GRANTED**I.****ORDER AGAINST TRANSFER, DISSIPATION, AND DISPOSAL OF ASSETS****IT IS HEREBY ORDERED** that

16. Defendants and Relief 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, including those held in the name of Defendants and/or Relief Defendants, 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, with the exception of assets controlled, managed or held by Relief Defendant Deborah B. Donnelly in a fiduciary capacity in connection with her employment.

17. Defendants, Relief Defendants and their agents, servants, employees, attorneys, and persons in active concert or participation with Defendants or Relief Defendants who receive actual notice of this Order by personal service except as otherwise ordered by this Court, 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 of Defendants' and/or Relief Defendants' 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,

with the exception of assets controlled, managed or held by Relief Defendant Deborah B. Donnelly in a fiduciary capacity in connection with her employment.

18. 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 or subject to access by the Defendants and/or Relief 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 Defendants' asset or account, or account established by Defendants on behalf of any other entity or person, including a commodity pool, or Relief Defendants' accounts or assets, or has held, controlled, or maintained custody of any account or asset of the Defendant or Relief Defendants at any time since January 1, 1998, shall:

19. Prohibit Defendants and Relief 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, with the exception of assets controlled, managed or held by Relief Defendant Deborah B. Donnelly in a fiduciary capacity in connection with her employment;

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

21. 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 the Defendants and/or Relief Defendants, or held on behalf of, or for the benefit, of the Defendants and/or Relief Defendants: (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 the Defendants and/or Relief Defendants or is otherwise subject to access by the Defendants and/or Relief Defendants; and

22. 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 and Relief Defendants shall:

23. Provide the Commission with a full accounting of all Defendants' and Relief Defendants funds, documents, and assets, including those outside of the United States from January 1, 1998, to the date of this Order, with the exception of assets controlled, managed or held by Relief Defendant Deborah B. Donnelly in a fiduciary capacity in connection with her employment;

24. Transfer to the territory of the United States all Defendants' Assets and documents located outside of the United States, with the exception of assets controlled, managed or held by Relief Defendant Deborah B. Donnelly in a fiduciary capacity in connection with her employment; and

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

IV.

TEMPORARY RECEIVER

IT IS FURTHER ORDERED that:

26. Plaintiff may move the Court for appointment of a receiver at a later date.

V.

MAINTENANCE OF BUSINESS RECORDS

IT IS FURTHER ORDERED that:

27. Defendants, Relief 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 the Defendants and Relief Defendants.

VI.

INSPECTION AND COPYING OF BOOKS AND RECORDS

IT IS FURTHER ORDERED that:

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

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

VII.

BOND NOT REQUIRED OF PLAINTIFF

IT IS FURTHER ORDERED that:

30. Plaintiff Commission is an agency of the United States of America and, accordingly, no bond need be posted by the Commission.

VIII.

ORDER TO SHOW CAUSE

IT IS FURTHER ORDERED that:

31. Defendants and Relief Defendants shall appear before this Court on the 24th day of March 2009, at 2:00 pm., before the United States District Judge Conrad at the United States Courthouse for the Western District of Virginia, in Roanoke, Virginia, to show cause, if there be any, why an Order for Preliminary Injunction should not be granted to prohibit further violations of

the Act by Defendants and why other relief requested should not be granted pending trial on the merits of this action.

32. Defendants and Relief Defendants shall serve any papers in opposition to such relief by hand delivery or overnight courier service to counsel for the Commission, Eugene Smith, Commodity Futures Trading Commission, 1155 21st Street, NW, Washington, DC, 20581, or via email to esmith@cftc.gov, no later than three (3) full business days before such hearing.

IX.

ORDER PERMITTING EXPEDITED DISCOVERY

IT IS FURTHER ORDERED that:

33. The prohibition upon discovery before the early meeting of counsel is removed pursuant to Rule 26(d) of the Federal Rules of Civil Procedure.

34. The prohibition upon the immediate commencement of depositions is removed pursuant to Rule 30(a)(2)(C) of the Federal Rules of Civil Procedure.

35. The parties may proceed to take the oral deposition of any person upon three calendar days actual notice if the notice is served upon the parties personally or by telecopier to the party's last known business telecopier number.

36. The parties may take the deposition of any person for the purpose of discovering the nature, location, status and extent of assets of the Defendants or Relief Defendants and the location of any documents reflecting those assets.

X.

SERVICE OF ORDER

IT IS FURTHER ORDERED that:

37. Copies of this Order may be served by any means, including facsimile and e-mail transmission, upon any entity or person that may have possession, custody, or control of any documents of the Defendants or Relief Defendants or that may be subject to any provision of this Order, and, additionally, that representatives of the Commission are specially appointed by the Court to effect service. Service of the summons, Complaint or other process may be effected by U.S. Marshal or Deputy U.S. Marshal, or in accordance with Fed. R. Civ. P. 4. All subsequent pleadings, correspondence, notices required by this Order, and other materials shall be served consistent with Federal Rule of Civil Procedure Rule 4.

XI.

FORCE AND EFFECT

IT IS FURTHER ORDERED that:

38. 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 Roanoke, Virginia on this 11th day of March, 2009.

John Conrad

United States District Judge

A TRUE COPY, TESTE:
JOHN F. CORCORAN, CLERK
BY: *L. Bright*
DEPUTY CLERK