

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

U.S. Commodity Futures Trading
Commission,

Plaintiff,

v.

Anthony A. Demasi and Tsunami Capital,
LLC,

Defendants.

No. 07 CIV _____

07C 2256

JUDGE GETTLEMAN
MAGISTRATE JUDGE COLE

~~Proposed~~ EX PARTE STATUTORY RESTRAINING ORDER

Having read the Complaint for Injunctive and Other Equitable Relief, the Plaintiff's Motion for an *Ex Parte* Statutory Restraining Order, the Declaration of William Heitner and exhibits thereto, and the transcript of testimony of Brett Simons, and the brief submitted in support of its motion;

THE COURT FINDS:

1. The Court has jurisdiction over the subject matter.
2. Section 6c of the Commodity Exchange Act, as amended ("Act"), 7 U.S.C. § 13a-1 (2000), permits this Court to enter a statutory restraining order ("SRO").
3. It appears that there is good cause to believe that Defendants Antony A. Demasi and Tsunami Capital, LLC, have engaged, are engaging in and are about to engage in violations of Sections 4b(a)(2)(i), (ii) and (iii) and 4o(1) of the Commodity Exchange Act, as amended ("Act") 7 U.S.C. § 6b(a)(2)(i), (ii) and (iii) and 6o(1) (2000). There is good cause to believe that immediate and irreparable damage to the Court's ability to grant effective final relief for pool participants in the form of monetary redress will occur from the sale, transfer, assignment, or

other disposition by the Defendants of their assets or destruction of records unless the Defendants are immediately restrained and enjoined by Order of this Court and, accordingly, there is good cause to issue this order

3. It further appears to the satisfaction of the Court that this is a proper case for granting an *ex parte* statutory restraining order to preserve the status quo and to protect public investors from further loss and damage.

ORDER

DEFINITIONS

For the purposes of this Order, the following definitions apply:

6. "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.

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, 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. "Defendants" means, Anthony A. Demasi and Tsunami Capital, LLC and any person insofar as he or she is acting in the capacity of an officer, agent, servant, employee or

attorney of Defendants, and any person who receives actual notice of this Order by personal service or otherwise, including Federal Express and facsimile, insofar as he or she is acting in concert or participation with Defendants.

RELIEF GRANTED
STATUTORY RESTRAINING ORDER

I. ASSET FREEZE

IT IS ORDERED that Defendants are restrained and enjoined from directly or indirectly withdrawing, transferring, removing, dissipating, selling, alienating, liquidating, encumbering, pledging, leasing, loaning, assigning, concealing, converting, or otherwise disposing of any funds, assets or other property, wherever located, including funds, property or assets held outside the United States, except as 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, as well as accounts not specifically identified below.

IT IS FURTHER ORDERED that, pending further Order of this Court, any financial or brokerage institution, business entity, or person that holds, controls, or maintains custody of any funds, assets or other property of the Defendants, or has held, controlled, or maintained custody of any funds, assets or other property of the Defendants, and who receives notice of this order by any means, including facsimile, electronic mail, and Federal Express, shall:

- A. Prohibit Defendants and any other person from withdrawing, removing, assigning, transferring, pledging, encumbering, disbursing, dissipating, converting, selling or otherwise disposing of any such assets except as directed by further order of the Court;
- B. Deny Defendants, and all other persons access to any safe deposit box that is:
 - 1. titled in the name of the Defendants, either individually or jointly; or

2. otherwise subject to access by the Defendants;

C. Provide counsel for the CFTC within five (5) business days of receiving a copy of this Order, a statement setting forth:

1. the identification number of each such account or asset titled in the name, individually or jointly, of the Defendants, or held on behalf of, or for the benefit, of the Defendants;

2. 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

3. the identification of any safe deposit box that is either titled in the name, individually or jointly, of the Defendants, or is otherwise subject to access by the Defendants;

D. Upon the request by the CFTC, promptly provide the CFTC 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; and

E. Cooperate with all reasonable requests of the CFTC relating to implementation of this Order, including producing records related to Defendants' accounts and Defendants' businesses.

II. PROHIBITION OF DESTRUCTION OF BOOKS AND RECORDS

IT IS FURTHER ORDERED that the Defendants and all persons or entities who receive notice of this Order by personal service or otherwise, including facsimile and Federal Express, 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.

III. ACCESS TO AND INSPECTION OF BOOKS AND RECORDS

IT IS FURTHER ORDERED that representatives of the CFTC be allowed immediately to inspect the books, records, and other documents of the 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 possession of the Defendants or others, and to copy said documents, data and records, either on or off the premises where they may be situated.

IV. SERVICE OF ORDER AND ASSISTANCE OF U.S. MARSHALL'S SERVICE

IT IS FURTHER ORDERED that copies of this Order may be served by any means, including facsimile transmission and Federal Express, upon any financial institution or other entity or person that may have possession, custody, or control of any documents or assets of the Defendants, or that may be subject to any provision of this Order. William Heitner, Thomas Koprowski, Cynthia Cannon, and Venice Bickham, all employees of the CFTC, are hereby specially appointed to serve process, including this Order and all other papers in this cause.

IT IS FURTHER ORDERED that the United States Marshals Service is directed to assist the Commission with service of process, including the summons and complaint, and all other papers in this case as well as assist the Commission with taking control and custody of the assets, records and business premises of the Defendants.

V. SERVICE ON THE COMMISSION

IT IS FURTHER ORDERED that the Defendants shall serve all pleadings, correspondence, notices required by this Order, and other materials on the Commission by delivering a copy to Susan Gradman, Senior Trial Attorney, Division of Enforcement, Commodity Futures Trading Commission, 525 W. Monroe, Suite 1100, Chicago, Illinois 60661.

VI. COURT MAINTAINS JURISDICTION

IT IS FURTHER ORDERED that this Statutory Restraining Order shall remain in full force and effect until further Order of this Court, upon application, notice and an opportunity to be heard, and that this Court retains jurisdiction of this matter for all purposes.

VII. FURTHER COURT HEARINGS

- 4. IT IS FURTHER ORDERED that this matter is set for a status hearing on May 4, 2007, *at 8:45 a.m.*
- 5. *presentation* IS FURTHER ORDERED that plaintiff's Motion for a Preliminary Injunction is set for *hearing* on May 4, 2007, at 8:45 a.m.

IT IS SO ORDERED.

Signed at 8:50 o'clock am/pm on the 26th day of April, 2007

Robert W. Gellman

UNITED STATES DISTRICT JUDGE