

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

U.S. COMMODITY FUTURES)
TRADING COMMISSION)
)
Plaintiff,)
)
v.)
)
CARMINE GAROFALO,)
)
Defendant.)

CIVIL ACTION NO. 1:10-CV-2417

**EX PARTE STATUTORY RESTRAINING ORDER FREEZING
DEFENDANT'S ASSETS AND PROHIBITING DEFENDANT FROM DESTROYING OR
ALTERING ANY BOOKS, RECORDS, OR OTHER DOCUMENTS AND ORDER TO
SHOW CAUSE WHY PRELIMINARY INJUNCTION SHOULD NOT BE ENTERED**

On April 19, 2010, Plaintiff, U.S. Commodity Futures Trading Commission (the "Commission" or "CFTC"), filed a complaint for a injunctive and other relief, and moved *ex parte*, pursuant to Section 6c of the Commodity Exchange Act, as amended ("Act"), 7 U.S.C. §13a-1(a)(2006), for a statutory restraining order freezing assets and prohibiting the destruction of books, records, or other documents.

The Court has considered the pleadings, declarations, exhibits, and memorandum filed in support of the Commission's Motion and now, being fully advised, finds that:

- (1) This Court has jurisdiction over the subject matter of this case, and Section 6c of the Act, 7 U.S.C. §13 a-1 (2006), authorizes *ex parte* relief;
- (2) There is good cause to believe that Defendant Carmine Garofalo ("Garofalo" or "Defendant") has engaged in, is engaging in, or is about to engage in violations of 7 U.S.C. § 6c(a) - (b) (2006), 17 C.F.R. § 33.10(a) and (c) (2009), and 17 C.F.R. §

1.38(a) (2009);

- (3) Absent the entry of this statutory restraining order, Defendant is likely to dissipate or transfer assets and destroy business records;
- (4) There is a good cause to believe that immediate and irreparable damage to the Court's ability to grant effective final relief in the form of monetary redress will occur from the sale, transfer, assignment, or other disposition by the Defendant of assets or records unless the Defendant is immediately restrained and enjoined by Order of this Court;
- (5) Good cause exists for the freezing of the Defendant's assets and for entry of an order prohibiting Defendant from destroying records and denying agents of the Commission access to inspect and copy records;
- (6) 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; and
- (7) This is a proper case for granting a statutory restraining order *ex parte* to preserve the status quo and enable the Commission to fulfill its statutory duties, therefore the Court orders as follows:

DEFINITIONS

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

1. "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, credits, receivables, contracts, insurance policies, and all cash, wherever located, whether in the United States or abroad.

2. 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, and other data compilations from which information can be obtained and translated, if necessary, through detection devices into reasonable usable form. A draft or non-identical copy is a separate document within the meaning of the term.

3. "Defendant" means Carmine Garofalo and any person insofar as he or she is acting in the capacity of an agent, servant, employee, or attorney of Defendant, 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 Garofalo.

RELIEF GRANTED

I. Asset Freeze

IT IS HEREBY ORDERED that Defendant, except as otherwise ordered by this Court, is 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, except as provided in this Order, or as otherwise ordered by the Court.

II. Identification and Preservation of Assets

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 account or asset titled in the name of, held for the benefit of, or otherwise under the control of Defendant, or has held, controlled, or maintained custody of any such account or asset of Defendant, shall:

- A. Prohibit Defendant 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; *provided, however,* that any compliance official of any futures commission merchant at which defendant Garofalo maintains an account shall have the authority and discretion to liquidate or close out any and all open commodity futures contracts or open commodity futures options positions in Garofalo's account in a prompt and orderly fashion, and

- B. Provide counsel for the Commission, 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 Defendant or held on behalf of, or for the benefit of, Defendant or under the control of Defendant; and
 - (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, the name of the person or entity to whom such account or other asset was remitted;
- C. 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, trading records, 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
- D. Cooperate with all reasonable requests of the Commission relating to implementation of this Order.

III. Records of Accounts and Assets

IT IS FURTHER ORDERED that within five (5) business days following the service of this Order, Defendant shall provide the Commission access to all records of accounts or assets of Defendant held by financial institutions located both within and outside the territorial United States by signing the Consent to Release of Financial Records attached to this Order.

IV. Maintenance of, and Access to, Business Records

IT IS FURTHER ORDERED that Defendant, 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 finances of Defendant.

V. Commission's Access to, and Inspection of, Documents

IT IS FURTHER ORDERED that representatives of the Commission be immediately allowed to inspect the books, records, and other documents of Defendant and his agents including, but not limited to, paper documents, electronically stored data, tape recordings, and computer discs, wherever they may be situated and whether they are in the possession of Defendant or others, and to copy said documents, data and records, either on or off the premises where they may be situated.

Upon request of the Commission, Defendant is ordered to deliver to the Commission documents of the Defendant, including but not limited to all books and records of accounts, all financial and accounting records, balance sheets, income statements, bank records (including monthly statements, cancelled checks, records of wire transfers, and check registers), lists of all customers or investors, title documents, other papers, all keys, computer passwords, entry codes, and combinations to locks necessary to gain or to secure access to any of the assets or documents of the Defendant, including but not limited to, access to the Defendant's business premises, means of communication, accounts, computer systems, or other property and information identifying the

accounts, employees, properties, or other assets or obligations of the Defendant.

VI. Service of Order

IT IS FURTHER ORDERED that copies of this Order may be served by any means including e-mail, facsimile transmission, the means described in 17 C.F.R. § 15.05 (2009), or a private express courier service, upon Defendant or other entity or person that may have possession, custody, or control of any documents or assets of Defendant or that may be subject to any provision of this Order.

VII. Service on the Commission

IT IS FURTHER ORDERED that Defendant shall serve all pleadings, correspondence, notices required by this Order, and other materials on the Commission by delivering a copy to Allison Baker Shealy, Trial Attorney, Division of Enforcement, U.S. Commodity Futures Trading Commission, 1155 21 St., N.W., Washington, D.C. 20581 by personal delivery or courier service (such as Federal Express or United Parcel Service) and not by regular mail.

VIII. Bond Not Required of Plaintiff

IT IS FURTHER ORDERED that 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 the Defendant shall appear before this Court within prior to the expiration of this Statutory Restraining Order on the 29th day of April, 2010, at 9:00 AM before the Honorable Ronald A. Czerniak at the United States Courthouse of the Northern District of Illinois, 219 S. Dearborn Street, Chicago, Illinois, to show cause why this Court should not enter a preliminary injunction:

- A. Enjoining Defendant from further violations of the Act and Commission Regulations;

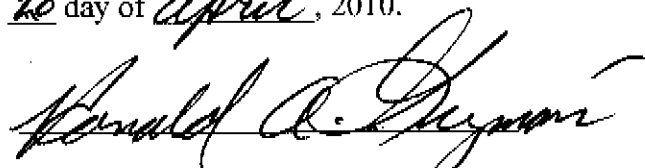
- B. Continuing the freeze on the assets of Defendant;
- C. Ordering Defendant, financial or brokerage institutions, business entities, others to provide all documents specified in this Order to the Commission;
- D. Ordering Defendant to provide the Commission with a full accounting of all funds, documents, and assets; and
- E. Ordering any additional relief this Court deems appropriate.

Should any party wish to file a memorandum of law or other papers concerning the issuance of a preliminary injunction against Defendant, such materials shall be filed, served and received by all parties at least two (2) days before the hearing date ordered above.

IX. Force and Effect of Order

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.

SO ORDERED at Chicago, Illinois on this 20 day of April, 2010.



UNITED STATES DISTRICT JUDGE