

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA

COMMODITY FUTURES TRADING COMMISSION,

Plaintiff,

v.

PHILIP MILTON, WILLIAM CENTER, GREGORY CENTER, and TRADE, LLC.

Defendants,

BD, LLC, CMJ Capital, LLC, Center Richmond, LLC, and TWTT, LLC.

Relief Defendants.

FILED by [Signature] D.C. JUN 22 2010 STEVEN M. LARIMORE CLERK U. S. DIST. CT. S. D. of FLA. - W.P.B.

CIVIL ACTION NO.: 10-80738-Marc

STATUTORY RESTRAINING ORDER, ORDER FOR EXPEDITED DISCOVERY, AND ORDER TO SHOW CAUSE RE: PRELIMINARY INJUNCTION

STATUTORY RESTRAINING ORDER TO FREEZE ASSETS, PRESERVE BOOKS AND RECORDS, ORDER FOR EXPEDITED DISCOVERY, AND ORDER TO SHOW CAUSE REGARDING PRELIMINARY INJUNCTION

This matter came before the Court on the United States Commodity Futures Trading Commission's ("Commission") motion for an ex parte statutory restraining order, an order for expedited discovery, and an order to show cause regarding a preliminary injunction. The Court, having considered the Commission's motion, memorandum of law, complaint, and other relevant materials, and all other evidence and arguments presented by the Commission, 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), as amended, 7 U.S.C. § 13a-1 (2006).

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, Philip Milton ("Milton"), Gregory Center ("G. Center"), William Center ("W. Center"), and Trade, LLC ("Trade"), have engaged, are engaging, or are about to engage in acts and practices constituting violations of the Act, 7 U.S.C. § 1, *et seq.*, and Commission Regulations (Regulations), 17 C.F.R. § 1.1 *et seq.* (2009).

4. There is good cause to believe that relief defendants, BD, LLC, CMJ Capital, LLC, Center Richmond, LLC, and TWTT, LLC (hereinafter "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 all 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 investors in the form of monetary redress will occur from the sale, transfer, assignment, or other disposition by Defendants or Relief Defendants of assets or records unless Defendants and Relief Defendants are immediately restrained and enjoined by order of the Court.

6. Good cause exists for freezing Defendants' and Relief Defendants' assets and for entry of an order prohibiting Defendants and Relief Defendants from destroying records and denying agents of the Commission access to inspect and copy records.

~~7.5~~ Good cause exists to require an accounting to determine location and disposition of ~~customer funds.~~ *Kan*

~~8~~ Good cause exists to order repatriation of assets controlled by Defendant to assure ~~payment of restitution and disgorgement as authorized and for the benefit of customers.~~ *Kan*

7. 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.

10.8. 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.

#### DEFINITIONS

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

11. 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, drives, networks, servers, 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.

12. "Assets" mean 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, leases, 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.

13. "Defendants" shall mean and refer not only to Milton, G. Center, W. Center, and Trade, but also to any d/b/a, successor, or other entity controlled by any of the aforementioned individuals.

14. "Relief Defendants" shall mean and refer to not only BD, LLC, CMI Capital, LLC, Center Richmond, LLC, and TWTT, LLC, but also to any d/b/a, successor, or other entity controlled by any of the aforementioned parties.

**RELIEF GRANTED**

**I.**

**ORDER AGAINST TRANSFER, DISSIPATION, AND DISPOSAL OF ASSETS**

**IT IS HEREBY ORDERED** that:

15. Defendants, Relief Defendants, and their agents, servants, employees, assigns, attorneys, and persons in active concert or participation with them, who receive actual notice of this order by personal service or otherwise, 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, wherever located, including 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.

16. 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 any or all of 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

account or asset of Defendants and/or Relief Defendants, or has held, controlled, or maintained custody of any account or asset of Defendants and/or Relief Defendants at any time since May 2, 2007, shall:

17. Prohibit Defendants, 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;

18. Deny Defendants, Relief Defendants, and all other persons identified in this order, access to any safe deposit box that is: (a) titled in the name of Defendants and/or Relief Defendants either individually or jointly; or (b) otherwise subject to access by Defendants and/or Relief 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 such account or asset titled in the name, individually or jointly, of each and every Defendant and Relief Defendant, or held on behalf of, or for the benefit of each and every Defendant and/or Relief Defendant; (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 each and every Defendant and/or Relief or is otherwise subject to access by Defendants and/or Relief Defendants; and~~

*Kb*

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

~~assets, determine the amount invested by each customer, and the portion of assets available to pay back customers. This report shall also include a statement as to the estimated time it will take to distribute available assets to customers and wind up the receivership.~~

*KA*

G. The Receiver and all personnel hired by the Receiver as herein authorized, including counsel to the Receiver, are entitled to reasonable compensation for the performance of duties pursuant to this Order and for the cost of actual out-of-pocket expenses incurred by them, from the assets now held by, or in the possession or control of, or which may be received by the Defendants. The Receiver shall file with the Court and serve on the parties, including Plaintiff Commission, periodic requests for the payment of such reasonable compensation, with the first such request filed no more than sixty (60) days after the date of this Order. Plaintiff Commission may object to any part of a request within 30 calendar days of service of a request. The Receiver shall not increase the hourly rates used as the bases for such fee applications without prior approval of the Court.

III

MAINTENANCE OF BUSINESS RECORDS

IT IS FURTHER ORDERED that:

19. ~~19.~~ Defendants, Relief Defendants and their agents, servants, employes, assigns, attorneys, and persons in active concert or participation with them, and all other 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 Defendants and/or Relief Defendants.

~~19.~~

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IV.INSPECTION AND COPYING OF BOOKS AND RECORDS

IT IS FURTHER ORDERED that:

~~20.~~ ~~20.~~ Representatives of the Commission be immediately allowed to inspect the books, records, and other documents of Defendants, Relief Defendants and their agents, including, but not limited to, electronically stored data, hard drives, networks, servers, compact discs, 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, data and records, either on or off the premises; and

~~21.~~ ~~21.~~ Defendants, Relief Defendants and their agents, servants, employees, assigns, attorneys, and persons in active concert or participation with the Defendants and/or Relief Defendants 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 Defendants and Relief Defendants, wherever such books and records may be situated.

~~III.~~ V.ORDER PERMITTING EXPEDITED DISCOVERY

IT IS FURTHER ORDERED that:

~~21.~~ ~~21.~~ The prohibition upon discovery before the early meeting of counsel is removed pursuant to Rule 26(d) of the Federal Rules of Civil Procedure.

~~22.~~ ~~22.~~ The prohibition upon the immediate commencement of depositions is removed pursuant to Rule 30(a)(2)(C) of the Federal Rules of Civil Procedure.

<sup>23</sup>  
~~23~~. The parties may proceed to take the oral deposition of any person upon three <sup>BUSINESS</sup> ~~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.

~~24~~. 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.

~~VI~~ VI .

**BOND NOT REQUIRED OF PLAINTIFF**

IT IS FURTHER ORDERED that:

~~25~~. The Commission is an agency of the United States of America and, accordingly, need not post a bond.

~~VII~~ VII .

**ORDER TO SHOW CAUSE**

IT IS FURTHER ORDERED that:

~~26~~. Defendants shall appear before this Court on the <sup>5<sup>th</sup></sup> ~~6<sup>th</sup>~~ day of July, 2010, at 10 a.m., before the Honorable Kenneth A. Marra at the United States Courthouse for the Southern District of Florida, 701 Clematis Street <sup>Courroom 4</sup> ~~West Palm Beach FL~~ to show cause, if there be any, why an order for preliminary injunction should not be entered to preserve the status quo obtained by the statutory restraining order, prohibit further violations of the Act and grant other relief requested pending trial on the merits of this action.

~~27~~. 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 JUNE 30, 2010 and served no later than JUNE 30, 2010.

~~8~~ 8 .



**III. VIII****SERVICE OF ORDER**

**IT IS FURTHER ORDERED** that:

28. ~~28.~~ 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 assets of Defendants and/or Relief Defendants or that may be subject to any provision of this order, and, additionally, that Paul Hayeck, Joan Dunfee, Jason Mahoney, George Malas, or any other 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.

**III. IX.****SERVICE ON THE COMMISSION**

**IT IS FURTHER ORDERED** that:

29. ~~29.~~ Defendants and Relief Defendants shall serve all pleadings, correspondence, notices required by this Order, and other materials on the Commission by delivering a copy to Jason Mahoney, Division of Enforcement, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington, D.C. 20581.

**III. X.****ASSISTANCE OF UNITED STATES MARSHAL SERVICE**

**IT IS FURTHER ORDERED** that:

30. ~~30.~~ The United States Marshals Service is directed to assist the Commission in the service of the summons, complaint, and this statutory restraining order on the Defendants and Relief Defendants.

~~XXI~~ XI

FORCE AND EFFECT

IT IS FURTHER ORDERED that:

JULY 6, 2010 UNLESS EXTENDED BY *KMM*

37. 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 SO ORDERED, at West Palm Beach Florida on this 22<sup>nd</sup> day of June, 2010.

  
UNITED STATES DISTRICT JUDGE  
SOUTHERN DISTRICT OF FLORIDA