

**IN THE UNITED STATES DISTRICT COURTS
FOR THE
DISTRICT OF MINNESOTA**

COMMODITY FUTURES TRADING COMMISSION

Plaintiff,

v.

SOVEREIGN RESOURCE MANAGEMENT, INC.,
KEN MITRA,
VIRGIL E. SMITH, individually and d/b/a Maximus
Capital Consultants; and
ANTHONY J. HEPPNER, individually and d/b/a
J.T. Investments,

Defendants.

Civil Action No.

02-CV-1783 MJD/JGL

Honorable
Judge Michael J. Davis

PRELIMINARY INJUNCTION

Plaintiff, Commodity Futures Trading Commission (“Commission”) filed a Complaint against Sovereign Resource Management, Inc. (“Sovereign”), Ken Mitra, Virgil E. Smith and Anthony J. Heppner (collectively the “defendants”) seeking injunctive and other equitable relief for violations of the Commodity Exchange Act, as amended (“Act”), 7 U.S.C. §§ 1 *et seq.* (2001), and Regulations promulgated thereunder, 17 C.F.R. §§ 1 *et seq.* (2002). The Court entered a Statutory Restraining Order on July 19, 2002.

This Court has considered the Complaint, declarations, exhibits, brief in support of the motion and other papers filed herein, and on July 31, 2002 received the testimony of witnesses and the argument of counsel for the plaintiff, and the Court being fully advised in the premises,

THE COURT FINDS THAT:

1. This Court has jurisdiction over the subject matter of this action and all parties hereto pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, which authorizes the Commission to seek injunctive relief against any person whenever it shall appear that such person has engaged, is engaging or is about to engage in any act or practice constituting a violation of any provision of the Act or any rule, regulation or order thereunder.

2. Venue properly lies with this Court pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, in that the defendants are found in, inhabit, or transact business in this district, and the acts and practices in violation of the Act have occurred, are occurring, or are about to occur within this district.

3. The defendants Sovereign, Mitra and Heppner have been served with the summons and complaint in this matter but have failed to appear. Defendant Smith was also served with the summons and complaint and appeared before the Court *pro se* at the July 31, 2002 hearing.

4. For the purposes of this Order, the following definitions applies: 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 reasonably usable form. A draft or non-identical copy is a separate document within the meaning of the term.

5. The defendants cheated or defrauded or attempted to cheat and defraud and willfully deceived or attempted to deceive participants or prospective participants by, among other things:

- (a) misappropriating funds received from participants and using them for personal expenses or to repay earlier participants;
- (b) misrepresenting to participants that their funds were being used to trade commodity futures when some funds were not so used;
- (c) misrepresenting the prior success of Sovereign participants to prospective participants;
- (d) misrepresenting to participants that they could withdraw funds from their investment after the expiration of 90 days (for Phase I participants) or 12 months (for Phase II participants); and
- (e) omitting the report of losses and misrepresenting to participants the profits and value of each participant's interest in the pools.

This conduct was in connection with in or in connection with orders to make, or the making of, contracts of sale of commodities for future delivery, made, or to be made, for or on behalf of other persons where such contracts for future delivery were or may have been used for (a) hedging any transaction in interstate commerce in such commodity, or the products or byproducts thereof, or (b) determining the price basis of any transaction in interstate commerce in such commodity, or (c) delivering any such commodity sold, shipped, or received in interstate commerce for the fulfillment thereof in violation of Sections 4b(a)(i) and (iii) of the Act, 7 U.S.C. §§ 6b(a)(i) and (iii).

6. Defendant Mitra, directly or indirectly, controlled Sovereign and knowingly induced, directly or indirectly, the acts constituting Sovereign's conduct as set forth in paragraph 5 and, consequently, in addition to being primarily liable for the conduct alleged in paragraph 5, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13(b), Mitra is also liable for Sovereign's violations of Sections 4b(a)(i) and (iii) of the Act, 7 U.S.C. §§ 6b(a)(i) and (iii) as a controlling person.

7. Sovereign willfully made or caused to be made false reports or statements by preparing and issuing false trading account statements to pool participants. These statements misrepresented profits, omitted losses and overstated the value of each participant's interest in the pool. Further, this conduct was in connection with in or in connection with orders to make, or the making of, contracts of sale of commodities for future delivery, made, or to be made, for or on behalf of other persons where such contracts for future delivery were or may have been used for (a) hedging any transaction in interstate commerce in such commodity, or the products or byproducts thereof, or (b) determining the price basis of any transaction in interstate commerce in such commodity, or (c) delivering any such commodity sold, shipped, or received in interstate commerce for the fulfillment thereof in violation of Section 4b(a)(ii) of the Act, 7 U.S.C. § 6b(a)(ii).

8. Defendant Mitra, directly or indirectly, controlled Sovereign and knowingly induced, directly or indirectly, the acts constituting Sovereign's conduct as set forth in paragraph 7 and, consequently, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13(b), Mitra is also liable for Sovereign's violations of Sections 4b(a)(ii) of the Act, 7 U.S.C. §§ 6b(a)(ii) as a controlling person.

9. Smith willfully made or caused to be made false reports or statements by preparing and issuing false trading account statements to pool participants. These statements, issued by Smith under the name Maximus, misrepresented profits, omitted losses and overstated the value of each participant's interest in the pool. Further, this conduct was in connection with in or in connection with orders to make, or the making of, contracts of sale of commodities for future delivery, made, or to be made, for or on behalf of other persons where such contracts for future delivery were or may have been used for (a) hedging any transaction in interstate commerce in such commodity, or the products or byproducts thereof, or (b) determining the price basis of any transaction in interstate commerce in such commodity, or (c) delivering any such commodity sold, shipped, or received in interstate commerce for the fulfillment thereof in violation of Section 4b(a)(ii) of the Act, 7 U.S.C. § 6b(a)(ii).

10. Defendant Sovereign engaged in a business that was of the nature of an investment trust, syndicate, or similar form of enterprise by soliciting, accepting and receiving at least \$1.7 million from pool participants for the purpose of trading commodity futures without proper registration with the Commission as a commodity pool operator ("CPO") as required by Section 4m(1) of the Act, 7 U.S.C. § 6m(1).

11. Defendant Mitra, directly or indirectly, controlled Sovereign and knowingly induced, directly or indirectly, the acts constituting Sovereign's conduct as set forth in paragraph 10 and, consequently, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13(b), Mitra is also liable for Sovereign's violations of Sections 4m(1) of the Act, 7 U.S.C. § 6m(1) as a controlling person.

12. Defendants Mitra, Smith and Heppner solicited funds for participation in Sovereign's commodity pool, without proper registration as associated persons ("APs") of Sovereign, as required by Section 4k(2) of the Act, 7 U.S.C. § 6k(2).

13. Defendants Sovereign, while acting as a CPO, and Mitra, Smith and Heppner, while acting as APs of Sovereign, cheated or defrauded or attempted to cheat and defraud and willfully deceived or attempted to deceive participants or prospective participants by, among other things:

- (a) misappropriating funds received from participants and using them for personal expenses or to repay earlier participants;
- (b) misrepresenting to participants that their funds were being used to trade commodity futures when some funds were not so used;
- (c) misrepresenting the prior success of Sovereign participants to prospective participants;
- (d) misrepresenting to participants that they could withdraw funds from their investment after the expiration of 90 days (for Phase I participants) or 12 months (for Phase II participants); and
- (e) omitting the report of losses and misrepresenting to participants the profits and value of each participant's interest in the pools.

This conduct was in connection with in or in connection with orders to make, or the making of, contracts of sale of commodities for future delivery, made, or to be made, for or on behalf of other persons where such contracts for future delivery were or may have been used for (a) hedging any transaction in interstate commerce in such commodity, or the products or byproducts thereof, or (b) determining the price basis of

any transaction in interstate commerce in such commodity, or (c) delivering any such commodity sold, shipped, or received in interstate commerce for the fulfillment thereof in violation of Sections 4o(1)(A) and (B) of the Act, 7 U.S.C. §§ 6o(1)(A) and (B).

14. Defendant Mitra, directly or indirectly, controlled Sovereign and knowingly induced, directly or indirectly, the acts constituting Sovereign's conduct as set forth in paragraph 13 and, consequently, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13(b), Mitra is also liable for Sovereign's violations of Sections 4o(1)(A) and (B) of the Act, 7 U.S.C. § 6o(1)(A) and (B) as a controlling person.

15. Defendant Sovereign, which was required to register as a CPO before soliciting participants to contribute to the Sovereign commodity pool, failed to deliver or cause to be delivered to prospective participants a Disclosure Document containing the information required by Regulations 4.24 and 4.25, 17 C.F.R. §§ 4.24 and 4.25 in violation of Regulation 4.21(a), 17 C.F.R. § 4.21(a).

16. Defendant Mitra, directly or indirectly, controlled Sovereign and knowingly induced, directly or indirectly, the acts constituting Sovereign's conduct as set forth in paragraph 15 and, consequently, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13(b), Mitra is also liable for Sovereign's violations of Regulation 4.21(a), 17 C.F.R. § 4.21(a) as a controlling person.

17. Weighing the equities and considering the Commission's likelihood of success in its cause of action, entry of this Order is in the public interest.

IT IS THEREFORE ORDERED THAT:

1. Defendants Sovereign, Mitra, Smith and Heppner and all persons insofar as they are or have been acting in the capacity of agents, servants, employees, successors,

assigns, or attorneys of and all persons insofar as they are or have been acting in active concert or participation with Sovereign, Mitra, Smith and Heppner, who receive actual notice of this Order by personal service or otherwise, are prohibited from directly or indirectly:

- a. Cheating, defrauding or deceiving investors in or in connection with orders to make, or the making of, contracts of sale of commodities for future delivery, made, or to be made, for or on behalf of other persons where such contracts for future delivery were or may have been used for (a) hedging any transaction in interstate commerce in such commodity, or the products or byproducts thereof, or (b) determining the price basis of any transaction in interstate commerce in such commodity, or (c) delivering any such commodity sold, shipped, or received in interstate commerce for the fulfillment thereof, in violation of Section 4b(a)(i) and (iii) of the Act, 7 U.S.C. §§ 6b(a)(i) and (iii);
- b. Directly or indirectly employing one or more devices, schemes, or artifices to defraud pool participants or prospective pool participants, or engaging in transactions, practices or courses of business which operate as a fraud or deceit upon pool participants or prospective pool participants, or engaging in transactions, practices or courses of business which operate as a fraud or deceit upon pool participants or prospective pool participants, in violation of Section 4o(1)(A) and (B) of the Act, 7 U.S.C. § 6o(1)(A) and (B).

2. Defendants Sovereign, Mitra and Smith and all persons insofar as they are or have been acting in the capacity of agents, servants, employees, successors, assigns, or attorneys of and all persons insofar as they are or have been acting in active concert or

participation with Sovereign and Smith, who receive actual notice of this Order by personal service or otherwise, are prohibited from directly or indirectly willfully making or causing to be made to such other person any false report or statement thereof, in violation of Section 4b(a)(ii) of the Act, 7 U.S.C. § 6b(a)(ii).

3. Defendants Sovereign and Mitra are prohibited from operating as a commodity pool operator engaged in the business of soliciting, accepting, or receiving from others, funds, securities, or property, for the purpose of trading in any commodity for future delivery on or subject to the rules of any contract market without being registered with the Commission as a CPO, in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1).

4. Defendants Mitra, Smith and Heppner are prohibited from soliciting, accepting, or receiving from others, funds, securities, or property, for the purpose of trading in any commodity for future delivery on or subject to the rules of any contract market without being registered with the Commission as an AP of a CPO, in violation of Section 4k(2) of the Act, 7 U.S.C. § 6k(2).

5. Defendants Sovereign and Mitra are prohibited from directly or indirectly failing to deliver to prospective pool participants a Disclosure Document proving the information required by Regulations 4.24 and 4.25, 17 C.F.R. §§ 4.24 and 4.25, in violation of Regulation 4.21.

6. Defendants Sovereign, Mitra, Smith and Heppner are prohibited from directly or indirectly:

(a) Soliciting, receiving or accepting any funds from any person in connection with the purchase or sale of any commodity futures contract;

(b) Soliciting, accepting or placing orders, giving advice or price quotations or other information in connection with the purchase or sale of commodity futures contracts for themselves or others, introducing customers to any other person engaged in the business of commodity futures trading, issuing statements or reports to others concerning commodity futures trading, and otherwise engaging in any business activities related to commodity futures trading;

(c) Controlling or directing the trading for any commodity futures or options account for or on behalf of any other person or entity, whether by power of attorney or otherwise;

(d) Seeking registration with the Commission in any capacity under the Act and acting in any capacity for which registration with the Commission is required under the Act.

7. The defendants are prohibited from directly or indirectly destroying, mutilating, concealing, altering or disposing of, or refusing to permit authorized representatives of the Commission to inspect, when and as requested, any books and records, documents, correspondence, brochures, manuals, electronically stored data, tape records or other property of defendants, wherever located, including all such records concerning defendants' business operations.

8. The provisions of this Order shall be binding upon Sovereign, Mitra, Smith and Heppner and upon any person insofar as he or she is acting in the capacity of officer, agent, servant, employee or attorney of any of the defendants, and upon any

person who receives actual notice of this Order, by personal service or otherwise, insofar as he or she is acting in active concert or participation with any of the defendants.

9. Each of the defendants shall prepare and file with the Court, within thirty (30) days of the date of this Order, a preliminary accounting for the period from November 1997 to the date of such accounting. The accounting shall include the following:

(a) all of the defendants' assets and liabilities, identifying their value, nature and location, including but not limited to all real and personal property, and all bank, credit union, checking, commodity or security accounts, either directly or indirectly under the possession or control of defendants, wherever situated;

(b) For any corporation owned or controlled by any of the defendants, all of its assets and liabilities, identifying their value, nature and location, including but not limited to all real and personal property, and all bank, credit union, checking, commodity or security accounts, either directly or indirectly under the possession or control of defendants, wherever situated;

(c) transfers of real and personal property;

(d) all salaries, commissions, fees, loans, and other disbursements of money and property of any kind, including but not limited to that which was in or in connection with commodity futures or options transactions or investments in foreign currencies; and

(e) all participant funds received and disbursed by or on behalf of defendants in connection with all commodity futures or options transactions,

purported commodity futures or options transactions, or operation or purported operation of any commodity pools, or investments in foreign currencies.

The accounting shall be made under oath attesting to a full and complete accounting and shall be signed by each defendant. A copy of the accounting shall be provided to the plaintiff.

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 over this matter for all purposes.

SO ORDERED, this 2nd day of August, 2002 at 12:30 pm.

United States District Court Judge
Honorable Michael J. Davis