

APR 19 2012

UNITED STATES DISTRICT COURT

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FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

JAMES N. HATTEN, Clerk
By: *[Signature]*
Deputy Clerk

JAMES N. HATTEN, Clerk
By: *[Signature]*
Deputy Clerk

U.S. COMMODITY FUTURES
TRADING COMMISSION,

Plaintiff,

v.

CRABAPPLE CAPITAL GROUP LLC
and ROBERT A. CHRISTY,

Defendants.

RWS

1:12-CV-1346

**[PROPOSED] ORDER GRANTING PLAINTIFF'S *EX PARTE* MOTION
FOR A STATUTORY RESTRAINING ORDER, PRELIMINARY
INUNCTION, AND OTHER EQUITABLE RELIEF**

Before the Court is Plaintiff U.S. Commodity Futures Trading Commission's (Commission's) *Ex Parte* Motion for a Statutory Restraining Order, Preliminary Injunction, and Other Equitable Relief (Motion). The Court has considered the pleadings, declarations, exhibits and memorandum filed in support of the Motion and finds that:

1. This Court has jurisdiction over the parties and over the subject matter of this action. Section 6c of the Commodity Exchange Act (Act), as amended by the Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, title XIII

(the CFTC Reauthorization Act (CRA)), § 13102, 122 Stat. 1651 (effective June 18, 2008), 7 U.S.C. § 13a-1 (Supp. III 2009); and the Act, as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Pub. L. No. 111-203, Title VII (the Wall Street Transparency and Accountability Act of 2010 (Dodd-Frank)), §§ 701-774, 124 Stat. 1376 (enacted July 21, 2010), to be codified at 7 U.S.C. § 13a-1, authorizes this Court to enter a statutory restraining order against Defendants Crabapple Capital Group LLC (Crabapple) and Robert Allen Christy (Christy) (collectively, defendants).

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 Crabapple and Christy have engaged, are engaging, and are about to engage in acts and practices constituting violations of the Act; the Act, as amended by the CRA and Dodd-Frank; and Commission Regulations (Regulations), 17 C.F.R. §§ 1 *et seq.*

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

5. Good cause exists for the freezing of assets owned, controlled, managed, or held by, on behalf of, or for the benefit of defendants.

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

7. Good cause exists for the Commission to conduct expedited discovery in order to determine the full extent of defendants' alleged wrongdoing, locate other victims of defendants, identify assets of defendants, and clarify the source and whereabouts of various funds.

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.

I.

DEFINITIONS

For purposes of this Order, the following definitions apply:

9. The term "document" is synonymous in meaning and equal in scope to the usage of the term in Federal Rule of Civil Procedure ("FRCP") 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.

10. “Assets” mean any legal or equitable interest in, right to, or claim to, any real or personal property, whether individually or jointly, direct or indirect control, and wherever located, including, but not limited to: chattels, goods, instruments, equipment, fixtures, general intangibles, effects, leaseholds, mail or other deliveries, inventory, checks, notes, accounts (including, but not limited to, bank accounts and accounts at financial institutions), credits, receivables, lines of credit, contracts (including spot, futures, or options contracts), insurance policies, and all cash, wherever located.

11. “Defendants” shall mean and refer to not only Christy and Crabapple but also to any d/b/a, successor, affiliate, subsidiary or other entity owned, controlled, managed or held by, on behalf of, or for the benefit of Christy and/or Crabapple.

II.

RELIEF GRANTED

Order Against Transfer, Dissipation, and Disposal of Assets

IT IS HEREBY ORDERED that:

12. Defendants and their agents, servants, employees, assigns, attorneys, and persons in active concert or participation with them, including any successor thereof, and persons in active concert or participation with them, who receive actual notice of this Order by personal service or otherwise, are immediately 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' assets, wherever located, including defendants' assets held outside the United States, except as provided in Section III of this Order, or as otherwise ordered by the Court.

13. 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 defendants.

14. Defendants shall provide the Commission access to all records of defendants held by financial institutions located within or outside the territorial

United States by signing the Consent to Release of Financial Records attached to this Order.

15. The assets affected by this paragraph shall include both existing assets and assets acquired after the effective date of this Order.

III.

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 or has held, controls or has controlled, or maintains or has maintained custody of any of defendants' assets at any time since August 1, 2008, shall:

16. Prohibit defendants and all other persons from withdrawing, removing, assigning, transferring, pledging, encumbering, disbursing, dissipating, converting, selling, or otherwise disposing of defendants' assets, except as directed by further Order of the Court;

17. Deny defendants and all other persons access to any safe deposit box that is: (a) owned, controlled, managed, or held by, on behalf of, or for the benefit of defendants, either individually or jointly; or (b) otherwise subject to access by defendants;

18. 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 account or other asset owned, controlled, managed, or held by, on behalf of, or for the benefit of defendants, either individually or jointly; (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 owned controlled, managed, or held by, on behalf of, or for the benefit of defendants, either individually or jointly, or is otherwise subject to access by defendants; and

19. 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, Internal Revenue Service Form 1099s, and safe deposit box logs.

20. Cooperate with all reasonable requests of the Commission relating to implementation of this Order, including transferring funds at the Commission's direction and producing records relating to defendants' accounts.

IV.

Maintenance of Business Records

IT IS FURTHER ORDERED that:

21. Defendants, and their agents, servants, employees, assigns, attorneys, and persons in active concert or participation with defendants, including any successor thereof, and all other persons or entities who receive notice of this Order by personal service or otherwise, are immediately restrained and enjoined from directly or indirectly destroying, mutilating, erasing, altering, concealing, or disposing of, in any manner, any documents that relate to the business practices or business or personal finances of defendants and their subsidiaries or affiliates.

V.

Inspection and Copying of Books and Records

IT IS FURTHER ORDERED that:

22. Representatives of the Commission shall immediately be allowed to inspect the books, records, and other documents of defendants and their agents, including, but not limited to, electronically stored information, tape recordings, and computer discs, wherever they may be situated and whether they are in the person of defendants or others, and to copy said documents, information and records, either on or off defendants' premises;

23. Defendants, and their subsidiaries, affiliates, and their officers, agents, servants, employees and attorneys, shall, within 24 hours of the service of this Order, cause to be prepared and delivered to the Commission, a detailed and complete schedule of all desk top computers, laptop computers and/or any other electronic storage devices or mobile devices, including, without limitation, smart phones and personal digital assistants (collectively, "Computing Devices") owned and/or used by them in connection with defendants' business. The schedules required by this section shall include at a minimum the make, model and description of each Computing Device, along with its location, the name of the person primarily assigned to use the Computing Device, and all passwords necessary to access and use the software contained on the Computing Device. The Commission shall be authorized to make an electronic, digital or hard copy of all of the data contained on the Computing Devices.

24. Defendants and their agents, servants, employees, assigns, attorneys, and persons in active concert or participation with defendants, including any successor thereof, who receive actual notice of this Order by personal service or otherwise, including facsimile or other electronic transmission, shall cooperate fully with the Commission to locate and provide to representatives of the Commission all books and records of defendants, wherever such books and records may be situated.

VI.

Order Granting Expedited Discovery

IT IS HEREBY ORDERED that:

25. In advance of the preliminary injunction hearing referenced below, the parties may conduct expedited discovery, removing the prohibition upon discovery before the early meeting of counsel pursuant to FRCP 26(f), in accordance with FRCP 26(d). Depositions of parties and non-parties may be taken subject to two calendar days' notice pursuant to FRCP 30(a) and 45, that notice may be given personally, by facsimile, or by electronic mail, and, if necessary, any deposition may last more than seven hours.

26. The Commission may conduct expedited discovery to enable the Commission to fulfill its statutory duties and protect entities from further loss or damage. This expedited discovery will allow the Commission to determine the full extent of defendants' alleged wrongdoing (including, but not limited to, the possible involvement of others), locate defendants' other victims, identify defendants' assets, and clarify the sources of various funds.

VII.

Bond Not Required of Plaintiff

IT IS FURTHER ORDERED that:

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

VIII.

Hearing

IT IS FURTHER ORDERED that:

28. The Commission and defendants shall appear before this Court on the 1st day of May, 2012, at 9:30, a.m., before the Honorable Richard W. Story at the United States Courthouse for the Northern District of Georgia, Courtroom 2105, to show cause, if there be any, why an Order for Preliminary Injunction should not be granted to prohibit further violations of the Act, as amended, and Commission Regulations and why the other relief requested should not be granted pending trial on the merits of this action. *Defendant may request an earlier hearing by contacting the Court's Deputy Clerk, Mr. Rick Goss.*

29. Should any party wish to file a memorandum of law or other papers in opposition to the Commission's Motion, all papers shall be filed on or before April 26, 2012 and served via facsimile, email, or overnight delivery to the Commission's Kansas City office no later than 5:00 o'clock

p.m. on April 26, 2012. Any reply papers shall be filed with the Court and delivered to opposing counsel via facsimile, email, or overnight delivery no later than 5:00 o'clock p.m. on April 30, 2012. Service of all papers shall be by electronic mail, facsimile, or personal service.

IX.

Service

IT IS FURTHER ORDERED that:

30. 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 defendants' assets that may be subject to any provision of this Order.

31. Jo Mettenburg, Thomas L. Simek, Charles D. Marvine, Stephen B. Turley, Jeremy Christianson, Shannon Perkins, Joyce Brandt, and Richard Glaser, and representatives of the U.S. Marshal Service are specially appointed by the Court to effect service.


32. The United States Marshal's Service is authorized to assist Commission representatives in effecting in the service of the Order, summons and Complaint upon defendants and carrying out the seizure of documents as set out in this Order and in accordance with FRCP 4.

X.

Force and Effect

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.

IT IS SO ORDERED, at Atlanta, Ga., on the 19~~th~~ day of April 2012, at 10:30 a.m.


UNITED STATES DISTRICT JUDGE
NORTHERN DISTRICT OF GEORGIA

CONSENT TO RELEASE OF FINANCIAL RECORDS

I, Robert A. Christy, a resident of the State of Georgia in the United States of America, do hereby direct any bank, trust, or other financial company, as well as any of its officers, employees, and agents, at which I have or had a bank account or other financial account of any kind operated under my name or any other name (including any corporation or other entity) for which I am or was authorized to draw on the account, to disclose all information and deliver copies of all documents of every nature in the bank's, trust's, or other financial company's possession or control which relate to said bank or other financial accounts to any attorney of the U.S. Commodity Futures Trading Commission, and to give evidence relevant thereto, in the matter of U.S. Commodity Futures Trading Commission v. Crabapple Capital Group LLC, et al., Case No. _____, now pending before the U.S. District Court for the Northern District of Georgia, and this shall be irrevocable authority for so doing. This direction is intended to apply to the laws of countries other than the United States which restrict or prohibit the disclosure of bank information without the consent of the holder of the account, and shall be construed as consent with respect thereto, and the same shall apply to any of the bank accounts or other financial accounts for which I may be a relevant principal.

Dated: _____

Robert A. Christy