

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA

02 - 80435

COMMODITY FUTURES TRADING COMMISSION, )

Plaintiff, )

v. )

DAVID A. LUGER, )

Defendant. )

Case No. **02 - HURLEY**

**FRANK J. LYNCH, JR.**  
UNITED STATES MAGISTRATE JUDGE

FILED by *[Signature]* D.C.  
**JUN - 3 2002**  
CLARENCE MADDOX  
CLERK U.S. DIST. CT.  
S.D. OF FLA. - W.P.B.

**Ex Parte Statutory Restraining Order Freezing Assets of Defendant,  
Prohibiting Defendant From Destroying or Altering any Books, Records or  
Other Documents, Barring the Defendant from Denying Access to those Books,  
Records and Documents to any Representative of Plaintiff, and  
Granting Leave to Take Expedited Discovery**

Plaintiff, the Commodity Futures Trading Commission ("Commission"), has filed a Complaint for permanent injunction and other relief, and moved *ex parte*, pursuant to Section 6c of the Commodity Exchange Act, as amended (the "Act"), 7 U.S.C. § 13a-1 (1994), for a Statutory Restraining Order freezing the assets of the Defendant, prohibiting Defendant from destroying any business records, books or documents and granting leave to take expedited discovery. The Court has considered the pleadings, declarations, exhibits, and memorandum filed in support of the Commission's motion. As it appears to the Court that the Court has jurisdiction over the subject matter of this case, that Section 6c of the Act, 7 U.S.C. § 13a-1, authorizes *ex parte* relief, that there is good cause to believe that Defendant has engaged in, is engaging in or is about to engage in violations of the Act, and that this is a proper case for granting an *ex parte* Statutory Restraining Order to preserve the status quo and enable the Commission to fulfill its statutory duties, the Court orders as follows:

Certified to be a true and correct copy of the document on file  
Clarence Maddox, Clerk,  
U. S. District Court  
Southern District of Florida  
By *[Signature]*  
Deputy Clerk  
Date **JUN 03 2002**

## DEFINITIONS

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

1. 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.
2. "Defendant" means David A. Luger, Boca Raton, Florida 31433.

## RELIEF GRANTED

### I.

#### *Asset Freeze*

**IT IS HEREBY ORDERED** that the Defendant, and all persons or entities who receive notice of this Order by personal service or otherwise, except as otherwise ordered by this Court, is restrained and enjoined from directly or indirectly:

- A. transferring, selling, alienating, liquidating, encumbering, pledging, leasing, loaning, assigning, concealing, dissipating, converting, withdrawing, or otherwise disposing of any assets, including assets held in corporate or partnership accounts in which Defendant has an interest, including but not limited to PDK Productions ("PDK"), and assets held outside the United States, except as provided in Paragraph V of this Order, or as otherwise ordered by the Court;
- B. opening or causing to be opened any safe deposit boxes titled in the name of, or subject to access by, the Defendant.

**II.*****Maintenance of and Access to Business Records***

**IT IS HEREBY ORDERED** that the 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 or personal finances of Defendant, his agents, attorneys, partners, servants, representatives, employees, attorneys, any person(s) acting or purporting to act for or on his behalf, and corporate and partnership entities in which Defendant has an interest, including but not limited to PDK.

**III.*****Inspection and Copying of Books and Records***

**IT IS FURTHER ORDERED** that representatives of the Commission be immediately allowed to inspect the books, records, and other documents of the Defendant, his agents, attorneys, partners, servants, representatives, employees, any person(s) acting or purporting to act for or on his behalf, and corporate and partnership entities in which Defendant has an interest, including but not limited to PDK, including, but not limited to, electronically stored data, tape recordings, and computer discs, wherever they may be situated and whether they are in the person of the Defendant or others, and to copy said documents, data and records, either on or off the premises where they may be situated.

**IV.*****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, or at any time since January 1, 1999, has held, controlled, or maintained

custody of any account or asset of the Defendant and any corporate and partnership entities in which Defendant has an interest, including but not limited to PDK, 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;
- B. Deny Defendant and all other persons access to any safe deposit box that is:
  1. titled in the name of the Defendant either individually or jointly; or
  2. otherwise subject to access by the Defendant.
- C. 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 and every account or asset titled in the name, individually or jointly, of, or held on behalf of, or for the benefit of, the Defendant;
  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 Defendant or is otherwise subject to access by the Defendant;
- D. 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, 1099 forms, and safe deposit box logs.

V.

*Accounting*

**IT IS FURTHER ORDERED** that within five (5) business days following the service of this Order, Defendant shall:

- A. Provide the Commission with a full accounting of all funds and assets both within and outside of the United States which are held by him, on his behalf, or under his direct or indirect control, whether jointly or singly, or in which he has an interest;
- B. Provide the Commission with full access to and permit copying of all documents both within and outside of the United States which are held by Defendant, on his behalf, or under his direct or indirect control, or relate to a corporate or partnership entity in which he has an interest, including but not limited to PDK;
- C. Transfer to the territory of the United States all funds, documents, and assets located in foreign countries which are held by Defendant, for his benefit, or under his direct or indirect control, whether jointly or singly;
- D. Provide the Commission access to all records of the Defendant held by financial institutions located both within and outside the territorial United States by signing a Consent to Release of Financial Records; and
- E. Provide the Commission with a complete list, including, without limitation, the names, addresses and telephone numbers of all persons who transferred funds to Defendant from January 1, 1999 to the present.

VI.

*Expedited Discovery*

**IT IS FURTHER ORDERED** that the parties are granted leave, at any time after service of this Order, to take the deposition of and demand the production of documents from any person

or entity for the purpose of discovering information pertaining to the business transactions of the Defendant; forty-eight (48) hours notice shall be deemed sufficient for any such deposition and five (5) days notice shall be deemed sufficient for the production of any such documents. The limitations and conditions set forth in Federal Rule of Civil Procedure 30(a)(2)(B) regarding subsequent depositions of an individual shall not apply to depositions taken pursuant to this Paragraph. Nor shall any depositions taken pursuant to this Paragraph count towards the ten deposition limit set forth in Federal Rule of Civil Procedure 30(a)(2)(A).

VII.

*Service of Order*

IT IS FURTHER ORDERED that 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 the Defendant or that may be subject to any provision of this Order, and, additionally, that 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.

VIII.

*Order to Show Cause*

IT IS FURTHER ORDERED that <sup>the Plaintiff's motion for preliminary injunction is referred to Judge Lynch.</sup> the Defendant shall appear before this Court on the

~~\_\_\_\_\_~~ day of June, 2002, at \_\_\_\_\_ m., before the Honorable Frank J. Lynch, Jr., United States Magistrate Judge, at the United States Courthouse for the Southern District of Florida at \_\_\_\_\_ Florida to show

cause why this Court should not enter a Preliminary Injunction enjoining Defendant from further violations of the February 2000 Commission Order and the Act, ordering Defendant to provide the National Futures Association with accurate financial statements and tax records for the year 1999, 2000 and 2001, and 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 the Defendant, such materials shall be filed, served and received by all parties at least two (2) days before the hearing ordered above.

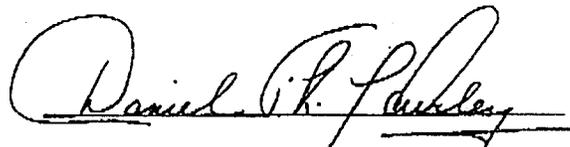
IX.

*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.

SO ORDERED, at West Palm Beach, Florida on this 3rd day of June, 2002, at

11:05 a.m.



UNITED STATES DISTRICT JUDGE

Copies:

U.S. Magistrate Frank J. Lynch, Jr. (by fax from chambers)  
Leanna L. Sales, Esq.