

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FILED

APR 1 2003

**RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

v

DBS CAPITAL, INC and DOUGLAS
STEVENS,

Defendants.

No C-03-1379-VRW

EX PARTE RESTRAINING ORDER,
ORDER PERMITTING EXPEDITED
DISCOVERY AND ORDER TO SHOW
CAUSE WHY A PRELIMINARY
INJUNCTION SHOULD NOT ISSUE.

This matter came on for hearing on April 1, 2003 on the application without notice of plaintiff Commodity Futures Trading Commission (the Commission) for an ex parte: (1) statutory restraining order; (2) order permitting immediate expedited discovery; and (3) order to show cause why a preliminary injunction should not issue. The court, having considered the Commission's complaint, application, memorandum of points and authorities, exhibits, other materials and all other evidence presented by plaintiff filed herein, and having heard the arguments of plaintiff's counsel, finds that:

**SEALED
BY COURT ORDER**

1 1. The court has jurisdiction over the parties and over
2 the subject matter of this action pursuant to Section 6c of the
3 Commodity Exchange Act, as amended (the Act) 7 USC § 13a-1 (2001).

4 2. Venue lies properly within this District pursuant to
5 Sections 6c(e) of the Act, 7 USC § 13a-1(e) (2001). There is good
6 cause to believe that the defendants have engaged, are engaging and
7 are about to engage in acts and practices constituting violations of
8 the Act, 7 USC §§ 1, et seq (2001).

9 3. There is good cause to believe that immediate and
10 irreparable damage to the court's ability to grant effective final
11 relief for investors in the form of monetary redress will occur from
12 the sale, transfer, assignment, or other disposition by defendants of
13 assets or records unless defendants are immediately restrained and
14 enjoined by order of this court.

15 4. Good cause exists to permit discovery before the
16 early meeting of counsel pursuant to Rule 26(d) of the Federal
17 Rules of Civil Procedure.

18 5. Pursuant to Rule 30(a)(2) of the Federal Rules of
19 Civil Procedure, immediate depositions are consistent with the
20 principles of Rule 26(b)(2) of the Federal Rules of Civil
21 Procedure.

22 6. Weighing the equities and considering the Commission's
23 likelihood of success in its claims for relief, the issuance of a
24 statutory restraining order is in the public interest.

25 //

26 //

27 //

28

DEFINITIONS

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

7. 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.

8. "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 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.

9. "Defendants" means DBS Capital, Inc and Douglas Stevens. DBS Capital, Inc is a California corporation with its principal place of business located at 1255 Post Street, San

1 Francisco, CA 94104. Douglas Stevens, the President of DBS,
2 resides at 320 Northgate Ave, Daly City, CA 94015.

3
4 RELIEF GRANTED

5 I

6 ORDER AGAINST TRANSFER, DISSIPATION, AND DISPOSAL OF ASSETS

7 IT IS HEREBY ORDERED that

8 10. Defendants and persons acting in concert with them
9 are restrained and enjoined from directly or indirectly
10 withdrawing, transferring, removing, dissipating, or disposing of
11 any assets, including those held in the name of Premier Trading
12 Group, wherever located, including assets held outside the United
13 States, or as otherwise ordered by the court. The assets affected
14 by this paragraph shall include both existing assets and assets
15 acquired after the effective date of this order.

17 11. Defendants, and their agents, servants, employees,
18 attorneys, and persons in active concert or participation with them
19 are restrained and enjoined from directly or indirectly withdrawing,
20 transferring, removing, dissipating, or disposing of any funds,
21 assets, or other property, including those held in the name of
22 Premier Trading Group, wherever located, including assets held
23 outside the United States, or as otherwise ordered by the court. The
24

25 //

26 //

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IV

Inspection and Copying of Books and Records

IT IS FURTHER ORDERED that:

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

18. Defendants and their agents, servants, employees, attorneys, and persons in active concert or participation with them 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 the defendants, wherever such books and records may be situated.

V

BOND NOT REQUIRED OF PLAINTIFF

IT IS FURTHER ORDERED that:

19. The Commission is an agency of the United States of America and, accordingly, no bond need be posted by the Commission.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

VI

ORDER TO SHOW CAUSE

IT IS FURTHER ORDERED that:

20. Defendants shall appear before the court on the 10th day of April, 2003, at 2 pm, before the Honorable Vaughn R Walker at the United States Courthouse for the Northern District of California, San Francisco Division, located at 450 Golden Gate Ave, San Francisco, California 94102, to show cause, if there be any, why an order for preliminary injunction should not be granted to prohibit further violations of the Act and why the other relief requested should not be granted pending trial on the merits of this action.

21. Should any party wish to file a memorandum of law or other papers in opposition to the Commission's Motion for a Preliminary Injunction, all papers shall be filed on or before April 7, 2003 and served no later than the same date.

VII

ORDER PERMITTING EXPEDITED DISCOVERY

IT IS FURTHER ORDERED that:

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

//
//

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

24. The parties may proceed to take the oral deposition of any person upon three 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.

25. The parties may also commence discovering documents from third parties under normal discovery procedures.

VIII

Service of Order

IT IS FURTHER ORDERED that:

26. This order shall be served on defendants by personal service consistent with Federal Rule of Civil Procedure Rule 4(e). All subsequent pleadings, correspondence, notices required by this order, and other materials be served consistent with Federal Rule of Civil Procedure Rule 4.

//
//
//
//
//

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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.

IT IS SO ORDERED.



VAUGHN R WALKER
United States District Judge