

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

COMMODITY FUTURES )  
TRADING COMMISSION )  
 )  
and )  
 )  
STATE OF MARYLAND EX REL )  
MARYLAND SECURITIES )  
COMMISSIONER )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
ANDREW M. SILBERSTEIN )  
 )  
Defendant. )  
 )

Case No.

**RDB** 04 CV 666

Proposed Order Granting  
Motion For a Statutory Restraining  
Order

Plaintiffs, the Commodity Futures Trading Commission ("Commission"), and the State of Maryland Ex Rel Maryland Securities Commissioner ("State of Maryland"), have filed a Complaint for permanent injunction and other relief, and moved pursuant to Section 6c and 6d of the Commodity Exchange Act ("Act"), as amended, 7 U.S.C. § 13a-1 and § 13a-2 (2001), for a statutory restraining order, on notice, freezing the assets of the Defendant, Andrew M. Silberstein, and prohibiting the Defendant from destroying any business records, books or documents (the "Application").

The Court, having considered the Commission's Complaint, Application, Memorandum of Points and Authorities, Exhibits, other materials, all other evidence presented by Plaintiffs filed herein, and having heard the arguments of Plaintiffs' counsel, 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, as amended (the "Act") 7 U.S.C. § 13a-1 (2001).

2. Venue lies properly within this District pursuant to Sections 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2001). There is good cause to believe that the Defendant has engaged, is engaging and is about to engage in acts and practices constituting violations of the Act, 7 U.S.C. §§ 1, et seq. (2001).

3. 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 Defendant of assets or records unless Defendant is immediately restrained and enjoined by Order of this Court.

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

5. 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:

6. 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.

7. "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.

8. "Defendant" means Andrew M. Silberstein; any person insofar as that person is acting in the capacity of an agent, servant, employee, or attorney of Andrew M. Silberstein.

## **RELIEF GRANTED**

### **I.**

#### *Order Against Transfer, Dissipation, And Disposal Of Assets*

**IT IS HEREBY ORDERED** that

9. Defendant is 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 Paragraph 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.

10. Defendant, and his agents, servants, employees, attorneys, and persons in active concert or participation with him who receive actual notice of this Order by personal service except as otherwise ordered by this Court, 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 Paragraph 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.

11. Defendant is restrained and enjoined from directly or indirectly opening or causing to be opened any safe deposit boxes titled in the name or subject to access by the Defendant.

## 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 the Defendant, or has held, controlled, or maintained custody of any account or asset of the Defendant at any time since June 2000, shall:

12. 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;

13. Deny Defendant and all other persons access to any safe deposit box that is: (a) titled in the name of the Defendant either individually or jointly; or (b) otherwise subject to access by the Defendant;

14. 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 the Defendant, or held on behalf of, or for the benefit, of the 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 the Defendant or is otherwise subject to access by the Defendants; and

15. 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.

### III.

#### *Accounting and Transfer of Funds and Documents*

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

16. Provide the Commission with a full accounting of all funds, documents, and assets, including those outside of the United States, that are held by him, for his benefit, or under his direct or indirect control, whether jointly or singly; and

17. Transfer to the territory of the United States all funds, documents, and assets located in foreign countries which are held by him, for his benefit, or under his direct or indirect control, whether jointly or singly.

IV.

*Maintenance of Business Records*

IT IS FURTHER ORDERED that:

18. 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 the Defendant.

V.

*Inspection and Copying of Books and Records*

IT IS FURTHER ORDERED that:

19. Representatives of the Commission be immediately allowed to inspect the books, records, and other documents of the Defendant and his 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 the Defendant or others, and to copy said documents, data and records, either on or off the premises where they may be situated; and

20. Defendant 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 Defendant, wherever such books and records may be situated.

VI.

*Bond Not Required Of Plaintiff*

IT IS FURTHER ORDERED that:

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

VII.

*Service of Order*

IT IS FURTHER ORDERED that:

22. 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.

VIII.

*Force and Effect*

IT IS FURTHER ORDERED that:

23. 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 BALTIMORE, Maryland on this 8<sup>th</sup> day of  
April, 2004, at 4:01 P.m. EOT

R.M.D. Bennett  
UNITED STATES DISTRICT JUDGE