

FILED

DEC 21 2004

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

LARRY W. PROPPS, CLERK
FLORENCE, SC

COMMODITY FUTURES TRADING)
COMMISSION,)

Plaintiff,)

v.)

GEORGE HEFFERNAN,)
a/k/a GEORGE W. MARSHALL,)

Defendants.)

Civil Action No.: 4:04-23302-25

ENTERED

~~DEC 21 2004~~

Ex Parte Statutory Restraining
Order with Asset Freeze

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 (the "Act"), 7 U.S.C. § 13a-1 (2000), for a Statutory Restraining Order freezing the assets of the defendant, George Heffernan, and prohibiting the defendant from destroying any business records, books or documents. 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 the defendant has engaged in, is engaging in or is about to engage in violations of the Act, Commission Regulations, and an Order of the Commission, and that this is a proper case for granting an *ex parte* statutory restraining Order to preserve the status quo,

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protect public customers from loss and damage, and enable the Commission to fulfill its statutory duties, the Court Orders as follows:

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" and "Heffernan" mean George Heffernan also known as George W. Marshall, and any person insofar as he or she is acting in the capacity of an officer, agent, servant, employee, or attorney of Heffernan, and any person who receives actual notice of this Order by personal service or otherwise insofar as he or she is acting in concert or participation with Heffernan.

I. Asset Freeze

IT IS HEREBY ORDERED that defendant Heffernan, 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, wherever located, including without limitation assets held

in the name of Heffernan and/or Index Analysis Pool, L.P. or other corporate or partnership accounts in which Heffernan has an interest, except as otherwise provided for in this Order or as otherwise Ordered by this Court;

- B. opening or causing to be opened any safe deposit boxes titled in the name of, or subject to access by Heffernan.

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, or at any time since February 25, 2003, has held, controlled, or maintained custody of any account or asset of Heffernan shall:

- A. Prohibit Heffernan 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 Heffernan and all other persons access to any safe deposit box that is:
1. titled in the name of Heffernan either individually or jointly; or
 2. otherwise subject to access by Heffernan; and
- C. Maintain the confidentiality of this Order.

III. Maintenance of Business Records

IT IS HEREBY ORDERED that Heffernan 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.

IV. Service on the Commission

IT IS HEREBY ORDERED that the defendant shall serve all pleadings, correspondence, notices required by this Order, and other materials on the Commission by delivering a copy to Ted Dowd, Trial Attorney, Division of Enforcement, Commodity Futures Trade Commission, 1155 21st Street, N.W., Washington, D.C. 20581.

V. Service of Order

IT IS HEREBY 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 document or assets of Heffernan, 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 the Federal Rules of Civil Procedure 4.

VI. Force and Effect

IT IS FURTHER ORDERED that this Order shall remain in full force and effect until further Order of this Court. Upon good cause shown, this Court will consider modification of this Order. A hearing will be held to consider any modification of this Order on Tuesday, January 4, 2005, at 9:30 a.m. at the United States District Court in Florence, South Carolina.

IT IS SO ORDERED.

Terry L. Wooten
Terry L. Wooten
United States District Court Judge

December 21, 2004
Florence, South Carolina