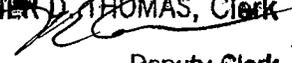


UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

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SEP 26 2005

LUTHER D. THOMAS, Clerk
By: 
Deputy Clerk

U.S. COMMODITY FUTURES
TRADING COMMISSION,

Plaintiff,

v.

AMERICAN DERIVATIVES CORP.,
et al.,

Defendants.

CASE NO.

ORDER GRANTING
STATUTORY RESTRAINING
ORDER TO FREEZE ASSETS,
PRESERVE BOOKS AND
RECORDS AND AUTHORIZING
EXPEDITED DISCOVERY, AND
ORDER TO SHOW CAUSE
REGARDING PRELIMINARY
INJUNCTION

This matter came before the Court on the United States Commodity Futures Trading Commission's, ("Commission") motion for an *ex parte* statutory restraining order and an order to show cause regarding a preliminary injunction. The Court, having considered the Commission's, motion, memorandum of law, complaint, and other relevant materials, and all other evidence and arguments presented by the Commission, 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 ("Act"), as amended, 7 U.S.C. § 13a-1 (2002).
2. Venue lies properly within this District pursuant to Sections 6c(e) of the Act, 7 U.S.C. § 13a-1(e).

3. There is good cause to believe that American Derivatives Corp. ("American Derivatives"), Brokerage Management Corp. ("Brokerage Management"), Layne David Gerstel ("Gerstel"), Devereux Decatur Booth ("Booth"), and David N. Mittler ("Mittler") have engaged, are engaging, and are about to engage in acts and practices constituting violations of the Act, 7 U.S.C. § 1, *et seq.*, and Commission Regulations ("Regulations"), 17 C.F.R. § 1.1 *et seq.* (2004).

4. 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 American Derivatives, Brokerage Management, Gerstel, Booth and Mittler of assets or records unless they are immediately restrained and enjoined by order of the Court.

5. Good cause exists for freezing American Derivatives', Brokerage Management's, Gerstel's, Booth's and Mittler's assets and for entry of an order prohibiting them from destroying records and denying agents of the Commission access to inspect and copy records.

6. 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:

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, drives, networks, servers, 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" mean 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" mean and refer to American Derivatives, Brokerage Management, Gerstel, Booth and Mittler, and also any d/b/a, successor, or other entity controlled by any of these entities or individuals.

RELIEF GRANTED

I. ORDER AGAINST TRANSFER, DISSIPATION, AND DISPOSAL OF ASSETS

IT IS HEREBY ORDERED that:

10. Defendants, and their agents, servants, employees, assigns, attorneys, and persons in active concert or participation with them, who receive actual notice of this order by personal service or otherwise, 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 Section 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. Defendants are 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 any or all of them.

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 Defendants, or has held, controlled, or maintained custody of any account or asset of Defendants at any time since January 6, 2004, shall:

12. Prohibit Defendants 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 Defendants, and all other persons identified in this order, access to any safe deposit box that is: (a) titled in the name of Defendants either individually or jointly; or (b) otherwise subject to access by Defendants;

14. Provide counsel for the Commission, within two (2) 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 each and every Defendant, or held on behalf of, or for the benefit of, each and every 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 each and every Defendant or is otherwise subject to access by Defendants; and

15. Upon request by the Commission, promptly provide the Commission, within five business days of the request, 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 1099 forms, and safe deposit box logs.

III. ACCOUNTING AND TRANSFER OF FUNDS AND DOCUMENTS

IT IS FURTHER ORDERED that within three (3) business days following the service of this order, Defendants shall:

16. Provide the Commission with a full accounting of all funds, assets, and documents inside and outside of the United States that are held by each and

every Defendant, for their benefit, or under their direct or indirect control, whether jointly or singly;

17. Transfer to the territory of the United States all funds, documents, and assets located outside of the United States that are held by each and every Defendant for their benefit, or under their direct or indirect control, whether jointly or singly; and

18. Provide the Commission access to all records of each and every Defendant held by financial institutions located outside the territorial United States.

IV. MAINTENANCE OF BUSINESS RECORDS

IT IS FURTHER ORDERED that:

16. Defendants and their agents, servants, employees, assigns, attorneys, and persons in active concert or participation with them, and all other 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 Defendants.

V. INSPECTION AND COPYING OF BOOKS AND RECORDS

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, hard drives, networks, servers, compact discs, 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, data and records, either on or off the premises; and

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

VI. EXPEDITED DISCOVERY

IT IS FURTHER ORDERED that:

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

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

21. 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 facsimile to the party's last known facsimile number.

22. The parties may also commence discovering documents from third parties pursuant to normal discovery procedures.

VII. BOND NOT REQUIRED OF PLAINTIFF

IT IS FURTHER ORDERED that:

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

VIII. ORDER TO SHOW CAUSE

IT IS FURTHER ORDERED that:

24. Defendants shall appear before this Court on the 18th day of October, 2005, at 9:30 a .m^t, before the Honorable Richard W. Story at the United States Courthouse for the Northern District of Georgia, Atlanta Division, to show cause, if there be any, why an order for preliminary injunction should not be entered to preserve the status quo obtained by the statutory restraining order; to prohibit, among other things,

* Defendants may request an earlier hearing for reconsideration of this statutory restraining order.

violations of Section 4c(b) of the Act and Sections 33.10(a) and (c) and 166.3 of the Regulations:

- a. by making sales solicitations to customers that misrepresent or omit material facts regarding the likelihood of potential profits;
- b. by making sales solicitations to customers that falsely advise customers that they can make large profits based on known or expected events or seasonal trends, or omit to advise customers that such events or trends are already factored into the price of commodity futures and options;
- c. by making sales solicitations to customers that misrepresent the risk of loss or fail to disclose the actual track record of the broker or firm; and
- d. by failing to diligently supervise the handling by their partners, officers, employees and agents of all commodity interest accounts carried, operated, advised or introduced by them;

and to grant other relief requested pending trial on the merits of this action.

25. Should any party wish to file a memorandum of law or other papers in opposition to Plaintiff's Motion for a Preliminary Injunction, all papers shall be filed on or before October 14, 2005 and served no later than October 14, 2005.

IX. SERVICE OF ORDER

IT IS FURTHER ORDERED that:

26. 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 Defendants or that may be subject to any provision of this order, and, additionally, that Elizabeth Padgett, Allison Lurton, Lacey Dingman, and Terry Montgomery are specially appointed by the Court to effect service.

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.

SO ORDERED this 26th day of September 2005, in Atlanta, Georgia.


UNITED STATES DISTRICT COURT JUDGE
NORTHERN DISTRICT OF GEORGIA