

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

CV 05 4120

U.S. Commodity Futures Trading Commission,

05 CV _____

Plaintiff,

v.

Stuart Pippin, individually and doing business as
Pippin Investments,

Defendant.

)
)
) *Ex Parte* Statutory Restraining Order
) Freezing Defendant's Assets, Prohibiting
) Defendant from Destroying or Altering
) any Books, Records, or other Documents,
) Barring Defendant from Denying Access
) to any Representative of Plaintiff,
) Permitting Expedited Asset Discovery,
) and an Order to Show Cause why a
) Preliminary Injunction and an Order
) Directing Defendant to Repatriate Assets
) Should Not be Entered

GLEESON, J.

LEVY, M.J.

Plaintiff, U.S. Commodity Futures Trading Commission (the "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 ("Act"), 7 U.S.C. §13a-1 (2001), for a statutory restraining order freezing assets, ordering foreign-held assets and documents to be transferred and repatriated to the United States, prohibiting the destruction of books, records, or other documents, granting leave to the parties to engage in expedited discovery for the purpose of discovering the nature, location, status, and extent of assets, and ordering Defendant Stuart Pippin, doing business as Pippin Investments ("Pippin") to show cause why a preliminary injunction should not be issued. The Court has considered the pleadings, declarations, exhibits, and memorandum filed in support of the Commission's application and now, being fully advised in the premises, finds that:

- (1) This Court has jurisdiction over the subject matter of this case, and Section 6c of the Act, 7 U.S.C. §13a-1, authorizes *ex parte* relief;

- (2) There is good cause to believe that Defendant has engaged in, is engaging in, or is about to: (a) engage in fraud in violation of 7 U.S.C. §§ 6b(a)(C)(2)(i), (ii) and (iii) and § 6o(1)(A) and (B); (b) act as an unregistered Commodity Pool Operator (“CPO”) in violation of 7 U.S.C. § 6m(1); and (c) operate his commodity pool as an entity not cognizable as a legal entity separate from that of the pool operator, receive funds not in the pool’s name and commingle pool funds in violation of 17 C.F.R. § 4.20(a)(b) and (c);
- (3) Absent the entry of this statutory restraining order, Defendant is likely to dissipate or transfer assets and destroy business records;
- (4) There is a 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.
- (5) 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.
- (6) Good cause exists to permit discovery before the early meeting of counsel pursuant to Rule 26(d) of the Federal Rules of Civil Procedure.
- (7) Pursuant to Rule 30(a)(2) of the Federal Rules of Civil Procedure, immediate depositions are consistent with the principles of Rule 26(b)(2) of the Federal Rules of Civil Procedure.

- (8) 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.
- (9) This is a proper case for granting a statutory restraining order *ex parte* to preserve the status quo, protect public customers from loss and damage, and enable the Commission to fulfill its statutory duties, therefore the Court orders as follows:

DEFINITIONS

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

1. "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, credits, receivables, contracts, insurance policies, and all cash, wherever located, whether in the United States or abroad.
2. 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 reasonable usable form. A draft or non-identical copy is a separate document within the meaning of the term.
3. "Defendant" means Defendant Stuart Pippin ("Pippin"), doing business as Pippin Investments, and any person insofar as he or she is acting in the capacity of an officer, agent, servant, employee, or attorney of Pippin or Pippin Investments, 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 Pippin or Pippin Investments.

RELIEF GRANTED

Asset Freeze

I.

IT IS HEREBY ORDERED that Defendant, 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 assets held outside the United States, except as provided in this Order, or as otherwise ordered by the Court; or
- B. Opening or causing to be opened any safe deposit boxes titled in the name or subject to access by Defendant.
- C. Notwithstanding the provisions of this paragraph, Defendant shall transfer

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possession of all assets to the ^{clerk} Registry of the Court pursuant to this Order. *for deposit into an interest-bearing account.*

Identification and Preservation of Assets

II.

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 titled in the name of, held for the benefit of, or otherwise under the control of Defendant, or has held, controlled, or maintained custody of any such account or asset of Defendant, 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 Defendant either individually or jointly; or (2) otherwise subject to access by 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 such account or asset titled in the name, individually or jointly, of Defendant or held on behalf of, or for the benefit of, Defendant, or under the control of 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, 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 Defendant, or is otherwise subject to access by 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, trading records, 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; and

- E. Cooperate with all reasonable requests of the Commission relating to implementation of this Order, including transferring funds to the Registry of the Court and producing records related to Defendant's accounts.

Accounting of Assets

III.

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, documents, and assets both within and outside the United States which are (1) titled in the name individually or jointly of Defendant; or (2) held by any person or entity, for the benefit of Defendant; or (3) under Defendant's direct or indirect control, whether jointly or singly;
- B. Transfer to the territory of the United States all funds, documents, and assets located in foreign countries which are held by Defendant, for Defendant's benefit, or under Defendant's direct or indirect control; and
- C. Provide the Commission access to all records of accounts or assets of Defendant held by financial institutions located both within and outside the territorial United States by signing the Consent to Release of Financial Records attached to this Order.

Delivery of Assets to the Registry of the Court

IV.

IT IS FURTHER ORDERED that, immediately upon service of this Order upon them, Defendant, and any other person or entity served with a copy of this Order, shall immediately or within such time as permitted by the Court in writing, deliver over to the

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Clerk
~~Registry~~ of the Court:

A. Possession and custody of all funds, assets, property, and all other assets, owed beneficially or otherwise, wherever situated, of the Defendant;

B. Possession and custody of all precious metals, other commodities, funds, and other assets being held by or on behalf of the Defendant;

To the extent that assets other than monies from accounts are delivered, the Clerk may seek (formally or informally) a revised order of the Court regarding the Maintenance of and Access to Business Records V. possession and liquidation of any of such assets.

IT IS HEREBY ORDERED that 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 finances of Defendant.

Commission's Access to and Inspection of Documents

VI.

IT IS FURTHER ORDERED that representatives of the Commission be immediately allowed to inspect the books, records, and other documents of Defendant and his agents including, but not limited to, paper documents, electronically stored data, tape recordings, and computer discs, wherever they may be situated and whether

they are in the possession of Defendant or others, and to copy said documents, data and records, either on or off the premises where they may be situated. Upon request of the Commission, the Defendant is ordered to deliver to the Commission documents of the Defendant, including but not limited to all books and records of accounts, all financial and accounting records, balance sheets, income statements, bank records (including monthly statements, cancelled checks, records of wire transfers, and check registers), lists of all commodity pool participants, title documents, other papers, all keys, computer passwords, entry codes, and combinations to locks necessary to gain or to secure access to any of the assets or documents of the Defendant, including but not limited to, access to the Defendant's business premises, means of communication, accounts, computer systems, or other property and information identifying the accounts, employees, properties, or other assets or obligations of the Defendant.

Service of Order

VII.

IT IS FURTHER ORDERED that copies of this Order may be served by any means, including facsimile transmission, upon any financial institution or other entity or person that may have possession, custody, or control of any documents or assets of Defendant or that may be subject to any provision of this Order.

Expedited Discovery

VIII.

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 the nature, location, status, and extent of assets of Defendant, and the location of documents reflecting the business transactions of 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.

Depositions

IX.

IT IS FURTHER ORDERED that 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 Order. No depositions taken pursuant to Paragraph XV shall count toward the ten-deposition limit set forth in Federal Rule of Civil Procedure 30(a)(2)(A).

Service on the Commission

X.

IT IS FURTHER ORDERED that Defendant shall serve all pleadings, correspondence, notices required by this Order, and other materials on the Commission by delivering a copy to Sheila L. Marhamati, Trial Attorney, Division of Enforcement, U.S. Commodity Futures Trading Commission, Eastern Regional Office, 140 Broadway, 19th Floor, New York, New York 10005.

Order to Show Cause

XI.

IT IS FURTHER ORDERED that Defendant shall appear before this Court on the 8th day of September, 2005, at 11:30 am, before the

Honorable John Keenan, _____ at the United States
Courthouse for the Eastern District of New York at
225 CADMAN PLAZA E., Brooklyn, New

York, to show cause why this Court should not enter a preliminary injunction:

- A. Enjoining Defendant from further violations of the Act;
- B. Continuing the freeze on the assets of Defendant;
- C. Ordering Defendant to transfer to the territory of the United States and deliver to the Registry of the Court all funds and assets located in foreign countries which are (1) titled in the name individually or jointly of Defendant; or (2) held by a person or entity for the benefit of Defendant; or (3) under such Defendant's direct or indirect control, whether jointly or singly;
- D. Ordering Defendant, financial or brokerage institutions, business entities, and others to provide all documents specified in this Order to the Commission; and
- E. 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 Defendant, such materials shall be filed, ON THE COURT AND ALL AFFECTED ON OR BEFORE SEPTEMBER 6, 2005 AT served and ~~received by all parties at least two (2) days before the hearing date ordered~~ 1:00 p.m.

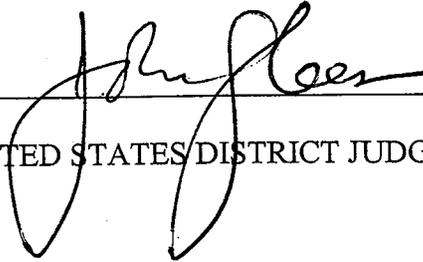
~~above.~~

JB Service of this order on the defendant shall be effected ON OR BEFORE AUGUST 31, 2005.
Force and Effect of Order

XII.

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 Bobby, New York on this 29th day of
August 2005, at 11:02 AM.


UNITED STATES DISTRICT JUDGE

CONSENT TO RELEASE OF FINANCIAL RECORDS

I, _____, do hereby direct any bank or trust company at which I have a bank account of any kind upon which I am authorized to draw, and its officers, employees and agents, to disclose all information and deliver copies of all documents of every nature in your possession or control which relate to said bank accounts to any attorney of the U.S. Commodity Futures Trading Commission, and to give evidence relevant thereto, in the matter of U.S. Commodity Futures Trading Commission v. Stuart Pippin DBA Pippin Investments, Defendant, now pending before the United States District Court for the Eastern District of New York, and this shall be irrevocable authority for so doing. This direction is intended to apply to the laws of countries other than the United States which restrict or prohibit the disclosure of bank information without the consent of the holder of the account, and shall be construed as consent with respect thereto, and the same apply to any of the bank accounts for which I may be a relevant principal.

Dated: _____, 2005

Signature