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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

FILED by *J* D.C.
JUN 30 2005
CLARENCE MADDOX
CLERK U.S. DIST. CT.
S.D. OF FLA. ST. LAUD.

COMMODITY FUTURES TRADING COMMISSION)

Plaintiff,)

v.)

CHRISTOPHER SMITHERS, PROSPERITY
CONSULTANTS, INC., and JACK SMITHERS,)

Defendants.)

Case No.

05-80592

CIV. HURLEY

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~~(Proposed)~~ EX PARTE STATUTORY RESTRAINING ORDER CONCERNING
ASSETS AND DOCUMENTS AND EXPEDITED DISCOVERY

Plaintiff, the Commodity Futures Trading Commission ("Commission"), has filed a Complaint for permanent injunction and other relief, and moved *ex parte* pursuant to Section of the Commodity Exchange Act, as amended (the "Act"), 7 U.S.C. § 13a-1 (2002) for a Statutory Restraining Order prohibiting defendants from, among other things, dissipating, concealing, transferring, or otherwise disposing of any assets, as set forth below, or destroying, altering or disposing of, or refusing to permit authorized representatives of the Commission to inspect and copy, when and as requested, any books, records, electronically stored data, including computers and computer data, or other documents wherever they may be. Additionally, the Commission seeks leave of court to conduct expedited discovery.

As it appears 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 defendants have engaged in, are engaging in, or are about to engage in violations of the Act, and that this is a proper case for granting an *ex parte* statutory restraining order to

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preserve the status quo, 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:

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 (including, but not limited to, floppy diskettes, hard disks, ZIP disks, CD-ROMs, optical discs, backup tapes, printer buffers, smart cards, memory calculators, pagers, personal digital assistants such as Palm Pilot computers, as well as printouts or readouts from any magnetic storage device), 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.

"Defendants" means Christopher Smithers, Prosperity Consultants, Inc., and Jack Smithers, and any person insofar as he or she is acting in the capacity of their officer, agent, servant, employee or attorney, 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 participating with them.

I.ASSET FREEZE

IT IS ORDERED that the defendants 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 funds, assets, or other property, wherever situated, including, but not limited to, all personal assets, assets held in corporate or partnership accounts in which defendants have an interest, held in any safe-deposit box or other storage facility, and assets held outside the United States, or causing such conduct to take place, except as may be otherwise ordered by the Court; and

II

MAINTENANCE OF DOCUMENTS

IT IS HEREBY FURTHER ORDERED that the defendants 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, crasing, altering, concealing, or disposing of, in any manner, directly or indirectly, any books, records or documents in the possession or control of the defendants, their agents, attorneys, partners, servants, representatives, employees, attorneys, any person (s) acting or purporting to act for or on their behalf, and/or acting for or on behalf of any corporation, partnership or any other type of entity in which defendants have an interest, and

III.

INSPECTION AND COPYING OF DOCUMENTS

IT IS FURTHER ORDERED that representatives of the Commission be immediately allowed to inspect the books, records, and other documents of the defendants, their agents, attorneys, partners, servants, representatives, employees, any person(s) acting or purporting to act for or on their behalf, and /or any corporate, partnership or any other entity in which defendants have an interest, wherever situated, including, but not limited to, electronically stored data, tape recordings, and computer discs, wherever they may be situated, whether they are in the possession or control of the defendants, or the possession or control of others, and to copy said documents, data and records, either on or off the premises where they may be situated, and

IV.

EXPEDITED DISCOVERY

IT IS FURTHER ORDERED that expedited discovery is hereby authorized and discovery may commence forthwith.

V. SERVICE OF ORDER

IT IS FURTHER ORDERED that this order may be served by first class mail, overnight delivery, facsimile, or personally by employees or agents of the plaintiff, or by any agent or employee of any law enforcement agency, upon any defendant, person or entity that may be subject to any provision of this Order, including any bank, savings and loan institution, credit union, financial institution, brokerage house, escrow agent, money market or mutual fund, commodity trading company, or any other person, partnership, corporation or entity that may be in possession of any assets, documents, property or property right of any of the defendants.

VI. PRELIMINARY INJUNCTION HEARING

IT IS FURTHER ORDERED that each of the defendants shall appear before the Honorable James Hopkins, United States Magistrate Judge, at a time and location to be determined by the Magistrate Judge, to show cause, if any there be, why this Court should not enter a preliminary injunction, pending final ruling on the Complaint against the defendants, enjoining them from further violations of the Commodity Exchange Act, as amended, 7 U.S.C. § 1 et seq., continuing the freeze of their assets and imposing such relief as may be appropriate.

VII. RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court retains jurisdiction of this matter for all purposes.

JUDGE HURLEY

VIII. EXPIRATION OF *EX PARTE* INJUNCTION

IT IS FURTHER ORDERED that this *ex parte* injunction shall expire by its terms after TEN (10) DAYS from the date of issue, subject to further extension upon application of the parties for good cause shown.

SO ORDERED this 30th day of June, 2005 in Fort Lauderdale, Florida at this hour of

9:35 a.m./p.m.


Daniel T. K. Hurley
United States District Judge

cc.

U.S. Magistrate James Hopkins
John Dunfee, Esq. (Attorney for Commodity Futures Trading Commission)
(by fax #202-418-5531)