

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
NEWNAN DIVISION

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U.S.D.C. - Newnan

JUL - 2 2009
JAMES N. HATTEN, Clerk
Deputy Clerk

COMMODITY FUTURES
TRADING COMMISSION,

Plaintiff,

v.

ELDON A. GRESHAM (a/k/a
ELDON A. GRESHAM, JR.) d/b/a
THE GRESHAM COMPANY,

Defendant,

and

WERNER H. BEIERSDOERFER,
INTERVESTON WINES, LLC, and
KIRK M. GRESHAM,

Relief Defendants.

FILED UNDER SEAL

CASE NO. _____

3 09-CV-75 JTC

**ORDER GRANTING PLAINTIFF'S *EX PARTE* EMERGENCY
MOTION FOR STATUTORY RESTRAINING ORDER, EXPEDITED
DISCOVERY, PRELIMINARY INJUNCTION,
AND OTHER EQUITABLE RELIEF**

This matter came before the Court for hearing on July 2, 2009 on plaintiff Commodity Futures Trading Commission's (Commission) *Ex Parte* Emergency Motion for a Statutory Restraining Order, Expedited Discovery, Preliminary Injunction, and Other Equitable Relief (Motion). The Court,

having considered the Motion, the memorandum in support thereof, and all other evidence presented by plaintiff, and having heard the arguments of plaintiff's 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 (Act), 7 U.S.C. § 13a-1 (2006), and Section 2(c)(2) of the Act, as amended by the Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, Title XIII (the CFTC Reauthorization Act (CRA), §§ 13101-13204, 122 Stat. 1651 (effective June 18, 2008), to be codified at 7 U.S.C. § 2(c)(2).

2. Venue lies properly within this District pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e).

3. There is good cause to believe that defendant Eldon A. Gresham (a/k/a Eldon A. Gresham, Jr.) d/b/a The Gresham Company (Gresham or Defendant) has engaged, is engaging, and is about to engage in acts and practices constituting violations of the Act, as amended, to be codified at 7 U.S.C. §§ 1, *et seq.*, and that relief defendants Werner H. Beiersdoerfer (Beiersdoerfer), Interveston Wines, LLC (Interveston), and Kirk M. Gresham (Kirk Gresham) (collectively, Relief Defendants) have received, are receiving, and are about to receive funds as a result of Defendant's acts and practices that violate the Act.

4. There is good cause to believe that immediate and irreparable damage to the Court's ability to grant effective final relief for customers in the form of monetary redress will occur from the sale, transfer, assignment, or other disposition by Defendant or Relief Defendants of assets or records unless Defendant and Relief Defendants are immediately restrained and enjoined by Order of the Court.

5. Good cause exists for the freezing of assets owned, controlled, managed, or held by, on behalf of, or for the benefit of Defendant and Relief Defendants and for entry of an order prohibiting Defendant and Relief Defendants, their agents, servants, employees, assigns, attorneys, and persons in active concert or participation with Defendant or Relief Defendants, including any successor thereof, from destroying records and/or denying Commission representatives access to inspect and copy records to ensure that Commission representatives have immediate and complete access to those books and records. Further, good cause exists for representatives of the United States Postal Inspection Service or other federal or state authorities to accompany representatives of the Commission as they inspect and copy records.

6. Good cause exists for the Commission to conduct expedited discovery in order to determine the full extent of Defendant's alleged

wrongdoing, locate Defendant's other customers, identify customers' funds and all assets owned, controlled, managed or held by, on behalf of, or for the benefit of Defendant (Defendant's Assets) and Relief Defendants (Relief Defendants' Assets), and clarify the source of various funds.

7. 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.

I.

DEFINITIONS

For purposes of this Order, the following definitions apply:

8. The term "document" is synonymous in meaning and equal in scope to the usage of the term in Federal Rule of Civil Procedure (FRCP) 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.

9. "Assets" mean any legal or equitable interest in, right to, or claim to, any real or personal property, whether individually or jointly, direct

or indirect control, and wherever located, including, but not limited to: chattels, goods, instruments, equipment, fixtures, general intangibles, effects, leaseholds, mail or other deliveries, inventory, checks, notes, accounts (including, but not limited to, bank accounts and accounts at financial institutions), credits, receivables, lines of credit, contracts including spot and futures or options contracts, insurance policies, and all cash, wherever located.

10. “Defendant” shall mean and refer to not only Gresham but also to any d/b/a, successor, affiliate, subsidiary or other entity owned, controlled, managed or held by, on behalf of, or for the benefit of Gresham.

11. “Relief Defendants” shall mean and refer to not only Beiersdoerfer, Interveston, and Kirk Gresham but also to any d/b/a, successor, affiliate, subsidiary or other entity owned, controlled, managed or held by, on behalf of, or for the benefit of Beiersdoerfer, Interveston, or Kirk Gresham.

II.

ORDER AGAINST TRANSFER, DISSIPATION, AND DISPOSAL OF ASSETS

IT IS HEREBY ORDERED that:

12. Defendant, Relief Defendants, and their agents, servants, employees, assigns, attorneys, and persons in active concert or participation with them, including any successor thereof, and persons in active concert or participation with them, who receive actual notice of this Order by personal service or otherwise, are immediately 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 of Defendant's Assets or Relief Defendants' Assets, wherever located, including Defendant's Assets and Relief Defendants' Assets held outside the United States, except as provided in Section IV of this Order, or as otherwise ordered by the Court.

Defendant's Assets affected by this paragraph shall include both existing Defendant's Assets and Defendant's Assets acquired after the effective date of this Order. Relief Defendants' Assets affected by this paragraph shall include only Relief Defendants' Assets existing as of the effective date of this Order.

13. Defendant and Relief Defendants are restrained and enjoined from directly or indirectly opening or causing to be opened any safe deposit boxes titled in the name of, or subject to, access by Defendant or Relief Defendants.

III.

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 or has held, controls or has controlled, or maintains or has maintained custody of any of Defendant's Assets or Relief Defendants' Assets at any time since January 1, 2004, shall:

14. Prohibit Defendant, Relief Defendants, and all other persons from withdrawing, removing, assigning, transferring, pledging, encumbering, disbursing, dissipating, converting, selling, or otherwise disposing of Defendant's Assets or Relief Defendants' Assets, except as directed by further Order of the Court;

15. Deny Defendant, Relief Defendants, and all other persons access to any safe deposit box that is: (a) owned, controlled, managed, or held by, on behalf of, or for the benefit of Defendant or Relief Defendants,

either individually or jointly; or (b) otherwise subject to access by Defendant or Relief Defendants;

16. 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 account or other asset owned, controlled, managed, or held by, on behalf of, or for the benefit of Defendant or Relief Defendants, either individually or jointly; (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 owned controlled, managed, or held by, on behalf of, or for the benefit of Defendant or Relief Defendants, either individually or jointly, or is otherwise subject to access by Defendant or Relief Defendants; and

17. 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, Internal Revenue Service Form 1099s, and safe deposit box logs.

IV.

ACCOUNTING AND TRANSFER OF FUNDS AND DOCUMENTS

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

18. Provide the Commission with a full accounting of all Defendant's Assets and Relief Defendants' Assets, inside and outside of the United States, from January 1, 2004 to the date of this Order;

19. Transfer to a financial institution in the territory of the United States all of Defendant's Assets and Relief Defendants' Assets (other than real property) located outside the United States and provide notice to the Commission of such transfer; and

20. Provide the Commission access to all records of Defendant and Relief Defendants held by financial institutions located within or outside the territorial United States by signing a Consent to Release of Financial Records provided by the Commission.

V.

MAINTENANCE OF BUSINESS RECORDS

IT IS FURTHER ORDERED that:

21. Defendant, Relief Defendants, and their agents, servants, employees, assigns, attorneys, and persons in active concert or participation with Defendant or Relief Defendants, including any successor thereof, and all other persons or entities who receive notice of this Order by personal service or otherwise, are immediately 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 Defendant or Relief Defendants and their subsidiaries or affiliates.

VI.

INSPECTION AND COPYING OF BOOKS AND RECORDS

IT IS FURTHER ORDERED that:

22. Representatives of the Commission shall immediately be allowed to inspect the books, records, and other documents of Defendant, Relief Defendants, and their agents, including, but not limited to, electronically stored information, tape recordings, and computer discs, wherever they may be situated and whether they are in the person of Defendant, Relief Defendants, or others, and to copy said documents, information and records, either on or off Defendant's or Relief Defendants'

premises. During the inspections and other activity described in this paragraph, representatives of the Commission may be accompanied by representatives of the United States Postal Inspection Service or other federal or state authorities.

23. Defendant and Relief Defendants, including any subsidiaries and affiliates, and their officers, agents, servants, employees, and attorneys, shall, within 24 hours of the service of this Order, caused to be prepared and delivered to the Commission, a detailed and complete schedule of all passwords and identification (ID) numbers for all websites, electronic mail accounts, videophone accounts, and all accounts at any bank, financial institution, or brokerage firm (including any introducing broker or futures Commission merchant) operated by or to which Defendant or Relief Defendants have access.

24. Defendant and Relief Defendants, including any subsidiaries and affiliates, and their officers, agents, servants, employees, and attorneys, shall, within 24 hours of the service of this Order, caused to be prepared and delivered to the Commission, a detailed and complete schedule of all desktop computers, laptop computers, and/or personal digital assistants (PDA) owned and/or used by them and state whether such device is/was used by them in connection with their business, forex trading, or other

investments. The schedules required by this section shall include at a minimum the make, model, and description of each computer and/or PDA, along with its location, the name of the person primarily assigned to use computer and/or PDA, and all passwords necessary to access and use the software contained on the computer and/or PDA. The Commission shall be authorized to make or have made an electronic, digital, or hard copy of all of the data contained on the computer(s) and/or PDA(s).

25. Defendant, Relief Defendants, their agents, servants, employees, assigns, attorneys, and persons in active concert or participation with Defendant or Relief Defendants, including any successor thereof, who receive actual notice of this Order by personal service or otherwise, including facsimile or other electronic transmission, shall cooperate fully with the Commission to locate and provide to representatives of the Commission all books and records of Defendant and Relief Defendants, wherever such books and records may be situated.

VII.

ORDER GRANTING EXPEDITED DISCOVERY

IT IS HEREBY ORDERED that:

26. The Commission may conduct expedited discovery, removing the prohibition upon discovery before the early meeting of counsel pursuant

to FRCP 26(f), in accordance with FRCP 26(d), and that the Commission may take depositions of Defendant, Relief Defendants, and non-parties subject to two calendar days notice pursuant to FRCP 30(a) and 45—that notice may be given personally, by facsimile, or by electronic mail. Further, more than ten depositions may be taken and, if necessary, any deposition may last more than seven hours.

27. The Commission may conduct expedited discovery to enable the Commission to fulfill its statutory duties and protect customers from further loss or damage. This expedited discovery will allow the Commission to determine the full extent of Defendant's alleged wrongdoing (including, but not limited to, the possible involvement of others), locate Defendant's other customers, identify customers' funds, and other of Defendant's Assets and Relief Defendants' Assets, and clarify the sources of various funds.

VIII.

BOND NOT REQUIRED OF PLAINTIFF

IT IS FURTHER ORDERED that:

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

IX.

ORDER TO SHOW CAUSE

IT IS FURTHER ORDERED that:

29. Defendant shall appear before this Court on the 23 day of July, 2009, at 10:00 a.m., before the Honorable Jack Camp at the United States Courthouse for the Northern District of Georgia, ~~Newnan~~ ^{Atlanta} Division to show cause, if there be any, why an Order for Preliminary Injunction should not be granted to prohibit further violations of the Act and why the other relief requested should not be granted pending trial on the merits of this action.

30. Should any party wish to file a memorandum of law or other papers in opposition to Plaintiff's Ex Parte Motion for a Statutory Restraining Order, Preliminary Injunction, and Other Equitable Relief, all papers shall be filed on or before July 15, 2009 and delivered to the Commission's Kansas City, Missouri office no later than 5 o'clock p.m. on July 17, 2009. Any reply papers shall be filed with the Court and delivered to opposing counsel no later than 5 o'clock p.m. on July 21, 2009. Service of all papers referenced in this paragraph shall be by electronic mail, overnight mail, facsimile, or personal service.

X.

SERVICE

IT IS FURTHER ORDERED that:

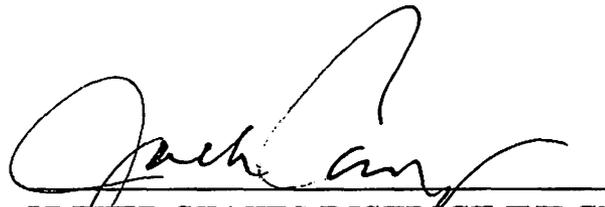
31. Copies of this Order may be served by any means, including electronic mail or facsimile transmission, upon any entity or person that may have possession, custody, or control of any documents or Defendant's Assets or Relief Defendants' Assets that may be subject to any provision of this Order, and, additionally, that Charles Marvine, Rachel Hayes, Michael Loconte, Jill Warren, and Rick Glaser (among other representatives of the Commission) are specially appointed by the Court to effect service. Further, service of the Summons, Complaint, or other process may be effected by any Commission representative, any United States Postal Inspection Service representative, any U.S. Marshal or deputy U.S. Marshal, or in accordance with FRCP 4.

XI.

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.

IT IS SO ORDERED, at Newnan, Georgia, on the 2 day of July, 2009, at 12:20 p.m.


UNITED STATES DISTRICT JUDGE
NORTHERN DISTRICT OF GEORGIA