

11 CIV 7740

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

U.S. COMMODITY FUTURES
TRADING COMMISSION,

Plaintiff,

v.

PARAGON FX ENTERPRISES, LLC,
a New York limited liability company,

Defendant.

CASE NO. _____

FILED UNDER SEAL

~~PROPOSED~~ **EX PARTE STATUTORY RESTRAINING ORDER PROHIBITING
DESTRUCTION OF BOOKS AND RECORDS AND FOR ORDER TO SHOW
CAUSE WHY A LIMITED ASSET FREEZE, APPOINTMENT OF TEMPORARY
RECEIVER AND PRELIMINARY INJUNCTION SHOULD NOT BE ENTERED**

On October 3, 2011, Plaintiff, U.S. Commodity Futures Trading Commission ("CFTC" or Commission") filed a complaint for injunctive and other relief, and moved *ex parte*, pursuant to Section 6c of the Commodity Exchange Act, as amended (the "Act"), 7 U.S.C. § 13a-1(a)(2006), for a Statutory Restraining Order prohibiting Defendant Paragon FX, LLC ("Paragon FX") from destroying, altering or disposing of, or refusing to permit Commission representatives from inspecting and copying, any books and records or other documents of Defendant, wherever situated.

The Court, having considered the pleadings, declarations, exhibits, and memorandum filed in support of the Commission's Motion and now, being fully advised, 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 (the "Act"), as amended by the Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, Title XII (the CFTC

Reauthorization Act of 2008 (“CRA”)) §§ 13101-13204, 122 Stat. 1651 (enacted June 18, 2008), to be codified at 7 U.S.C. § 13a-1, and Section 2(c)(2) of the Act, as amended by the CRA, 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) (2006);

3. There is good cause to believe that Defendant Paragon FX has engaged, is engaging, and is about to engage in acts and practices constituting violations of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 1, *et seq.*, and Commission Regulations (“Regulations”), 17 C.F.R. §§ 1.1 *et seq.* (2011);

4. Good cause exists for entry of an immediate *ex parte* order prohibiting Defendant Paragon FX, its agents, servants, employees, assigns, attorneys, and persons in active concert or participation with Defendant, including any successor thereof, from destroying records and/or refusing to permit Commission representatives access to inspect and copy records; and

5. 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; and

6. This is a proper case for granting a statutory restraining order *ex parte* to preserve the status quo and enable the Commission to fulfill its statutory duties.

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, 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. "Defendant" means Paragon FX and any person insofar as he or she has acted or is acting in the capacity of an officer, agent, servant, employee, or attorney of Paragon FX, 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 Paragon FX.

RELIEF GRANTED

I. Maintenance of, and Access to, Business Records

IT IS HEREBY ORDERED that:

9. Defendant and its agents, servants, employees, assigns, attorneys, and persons in active concert or participation with Defendant, 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 or records, wherever they may be situated, that relate to the business practices or business finances of Defendant.

II. Commission's Access to, and Inspection of, Documents

IT IS FURTHER ORDERED that:

10. Representatives of the Commission (accompanied by representatives of other federal or state authorities or the National Futures Association, if the Commission so desires) shall be allowed immediate and continued access, until further Order of this Court, to inspect the

books, records, and other documents of Defendant and its 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;

11. Defendant and its agents, servants, employees, assigns, attorneys, and persons in active concert or participation with Defendant, 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 refusing to permit Representatives of the Commission (accompanied by representatives of other federal or state authorities or the National Futures Association, if the Commission so desires) to have immediate and ongoing unimpeded access, until further Order of this Court, to inspect the books, records, and other documents of Defendant and its 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, Defendant is ordered to deliver to the Commission documents of 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 customers or investors, title documents, other papers, all keys, computer passcodes, entry codes, and combination to locks necessary to gain or to secure access to any of the documents of Defendant,

including but not limited to, access to 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 Defendant.

III. Service

IT IS FURTHER ORDERED that:

12. This Order shall be served by any means, including e-mail, facsimile transmission, the means the means described in 17 C.F.R. § 15.05 (2011), or a private express courier service, upon Defendant or any 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.

13. Defendant shall serve all pleadings, correspondence, notices required by this Order, and other materials on the Commission by delivering a copy to Danielle Karst, Trial Attorney, Division of Enforcement, U.S. Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington, D.C. 20581 by personal delivery or courier service (such as Federal Express or United Parcel Service), and to the Receiver.

14. The Summons, Complaint, or other process may be effected by any Commission representative, any U.S. Marshal or deputy U.S. Marshal, or in accordance with Rule 4 of the Federal Rules of Civil Procedure.

IV. Bond Not Required of Plaintiff

IT IS FURTHER ORDERED that:

Plaintiff Commission is an agency of the United States of America and, accordingly, no bond need be posted by the Commission.

V. Order to Show Cause

IT IS FURTHER ORDERED that:

15. Defendant shall appear before this Court on the 8 day of November 2011, at 2:00 pm before the Honorable P.A. Engelmayer at the United States Courthouse of the Southern District of New York at 500 Pearl St., New York, New York, to show cause why this Court should not enter a statutory restraining order and preliminary injunction:

- a. Freezing the \$856,468 in funds belonging to ProfitStars pool participants held and identified by Paragon FX in its interpleader action, *Paragon FX Enterprises, LLC v. ProfitStars Intl Corp.*, 11 Civ 5483, in this District Court (hereinafter referred to as "Interpleaded Funds");
- b. Appointing a temporary receiver to take custody, control, and possession of the \$856,468 in Interpleaded Funds belonging to ProfitStars pool participants;
- c. Ordering Defendant, financial or brokerage institutions, business entities, and others to provide all documents specified in this Order to the Commission;
- c. Ordering Defendant to provide the Commission with a full accounting of all ProfitStars pool participant or client funds, documents, and assets;
- d. Enjoining Defendant from further violations of the Act and Commission Regulations; 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 statutory restraining order and preliminary injunction against Defendant, such materials shall be filed, served and received by all parties at least two (2) days before the hearing

date ordered above. Service of all papers shall be by electronic mail, overnight mail, facsimile, or personal service.

VI. Assistance of U.S. Marshals Office and Other Law Enforcement Personnel

IT IS FURTHER ORDERED that:

16. The U.S. Marshal shall accompany and assist the Commission representatives in the service and execution of this order. The Commission, on behalf of whom the order is being issued, is authorized under the supervision and with the assistance of the U.S. Marshal, to take all necessary steps to secure the premises and remove the following property: books, records, documents, and electronically stored information of Paragon FX located at 140 Broadway, New York, New York, for the sole purpose of inspecting and copying said records, either on or off the premises, including breaking open, entering and searching for said books and records and placing it with an appropriate storage facility;

17. Anyone interfering with the execution of this Order is subject to arrest by the United States Marshal and/or his or her representative; and

18. The Commission, on whose behalf of the court issues this Order, will account completely for all books, records, documents, and electronically stored information of Paragon FX seized pursuant to this order and shall compile a written inventory of all such books, records, documents, and electronically stored information and shall provide a copy to the U.S. Marshal, who shall include such a copy with his return to the court.

VII. Force and Effect of Order

IT IS FURTHER ORDERED that:

19. 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.

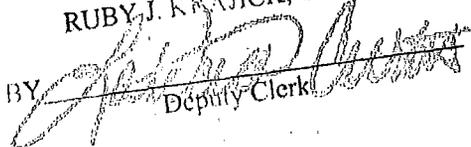
✓ SO ORDERED, at New York, New York this 31 day of October, 2011

Service of all papers to be made by Nov 1, 2011 4:00 p.m.


UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF NEW YORK

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A CERTIFIED COPY
RUBY J. KRAJICK, CLERK

BY 
Deputy Clerk