

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

By *MS*

UNITED STATES COMMODITY
FUTURES TRADING COMMISSION,

Plaintiff,

v.

STRONGBOW INVESTMENTS GP, LLC,
a Delaware limited liability company; and
PATRICK JOSEPH DAILEY, an
individual,

Defendants,

DAILEY FAMILY LIMITED
PARTNERSHIP, a California limited
partnership, and SUZI DAILEY, a/k/a
SUZIE DAILEY and SUZY DAILEY,

Relief Defendants.

Civil Action No. **A09CA 497SS**

FILED UNDER SEAL

(PROPOSED) ORDER GRANTING
PLAINTIFF'S *EX PARTE*
EMERGENCY APPLICATION FOR
STATUTORY RESTRAINING
ORDER, EXPEDITED DISCOVERY,
ORDER TO SHOW CAUSE
REGARDING PRELIMINARY
INJUNCTION AND OTHER
EQUITABLE RELIEF

This matter came before the Court for hearing on June 30, 2009, on Plaintiff's *Ex Parte* Emergency Application for Statutory Restraining Order, Expedited Discovery, Order to Show Cause Regarding Preliminary Injunction, and Other Equitable Relief, and Memorandum in Support ("Application"). The Court, having considered the Application 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 Pursuant to Sections 6c and 2(c)(2)(A) of the Commodity Exchange Act, 7

U.S.C. §§ 13a-1 and 2(c)(2)(A) (2006) (the “Act”), 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 (to be codified at 7 U.S.C. §§ 1 *et seq.* (effective June 18, 2008)).

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 Defendants Strongbow Investments GP LLC (“Strongbow”) by and through its agents, principals and control person, Patrick Joseph Dailey (“Dailey”) (hereinafter, collectively “Defendants”) 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.*, 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.*, and that Relief Defendants Dailey Family Limited Partnership (“DFLP”) and Suzi Dailey, a/k/a Suzie Dailey and Suzy Dailey, (collectively the “Relief Defendants”) have received, are receiving, and are about to receive funds as a result of Defendants’ acts and practices that violate the Act, the Act as amended by the CRA, and/or Regulations.

4. There is good cause to believe that immediate and irreparable damage to the Court’s ability to grant effective final relief for pool participants in the form of monetary redress will occur from the sale, transfer, assignment, or other disposition by Defendants and Relief Defendants of assets or records unless Defendants 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 Defendants and Relief Defendants.

6. Good cause exists for entry of an order prohibiting Defendants and Relief Defendants, their agents, servants, employees, assigns, attorneys, and persons in active concert or participation with the Defendants and Relief Defendants, including any successor thereof, from destroying records and/or denying agents of the Commission access to inspect and copy records to ensure that Commission representatives have immediate and complete access to those books and records.

7. Good cause exists for the Plaintiff to conduct expedited discovery in order to determine the full extent of Defendants' alleged wrongdoing, locate Defendants' other pool participants, identify pool participants' funds and other of the assets of the Defendants and Relief Defendants, and clarify the source and whereabouts of various funds.

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.

DEFINITIONS

For purposes of this Order, the following definitions apply:

9. 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.

10. "Assets" means 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 other financial institutions), credits, receivables, lines of credit, contracts (including futures or option contracts), insurance policies, and all cash. *except reasonable living expenses.* 

11. “Defendants” shall mean and refer to not only Strongbow and Dailey, 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 Strongbow and/or Dailey.

12. “Relief Defendants” shall mean and refer to not only DFLP and/or Suzi Dailey, but also to any d/b/a, successor, or other entity controlled by DFLP and/or Suzi Dailey.

13. “NFA” shall mean and refer to the National Futures Association, which is a not-for profit membership corporation formed as a futures industry self-regulatory organization under Section 17 of the Act and designated a “registered futures association” by the Commission.

RELIEF GRANTED

I. Order Against Transfer, Dissipation, and Disposal of Assets

IT IS HEREBY ORDERED that:

14. Defendants, 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 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 the Assets,

wherever located, including the Assets held outside the United States, except as provided in Section II 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.

15. Defendants 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 Defendants or Relief Defendants.

II. Accounting and Transfer of Funds and Documents

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

16. Provide the Commission with a full detailed accounting of all funds, documents, and assets, including the Assets, inside and outside of the United States that are held by each and every Defendant or Relief 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, including the Assets (other than real property), located outside the United States that are held by each and every Defendant or Relief Defendant, for their benefit, or under their direct or indirect control, whether jointly or singly; and

18. Provide the Commission and the NFA access to all records of Defendants and Relief Defendants held by financial institutions located within or outside the territorial United States by signing the Consent to Release of Financial Records attached to this Order.

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 the Assets at any time since July 1, 2005, shall:

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

20. Deny Defendants and 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 Defendants or Relief Defendants, either individually or jointly, whether in the name, alias, or fictitious "doing business as" name; or (b) otherwise subject to access by Defendants or Relief Defendants;

21. 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 Defendants or Relief Defendants (as defined above), 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 Defendants or Relief Defendants, either individually or jointly, or is otherwise subject to access by Defendants or Relief Defendants; and

22. Upon request by the Commission promptly provide the Commission and the NFA 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, Forms 1099, and safe deposit box logs.

IV. Maintenance of Business Records

IT IS FURTHER ORDERED that:

23. Defendants, Relief Defendants, and their agents, servants, employees, assigns, attorneys, and persons in active concert or participation with the Defendants 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 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 or Relief Defendants.

V. Inspection and Copying of Books and Records

IT IS FURTHER ORDERED that:

24. Representatives of the Commission and the NFA shall be immediately allowed to inspect the books, records, and other documents of Defendants, 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 Defendants,

Relief Defendants, or others, and to copy said documents, information and records, either on or off the premises; and

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

26. Defendants, and their subsidiaries, affiliates, and their officers, agents, servants, employees and attorneys, shall, within 24 hours of the issuance of this Order, cause 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 any of the Defendants has access.

~~27. Defendants, and their subsidiaries, affiliates, and their officers, agents, servants, employees and attorneys, shall, within 24 hours of the issuance of this Order, cause to be prepared and delivered to the Commission, a detailed and complete schedule of all desk top computers, laptop computers and/or personal digital assistants (PDA) owned and/or used by them in connection with their business. 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~~

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~~location, the name of the person primarily assigned to use the 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 an electronic, digital or hard copy of all of the data contained on the computer(s) and/or PDA(s).~~

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28. All persons, including but not limited to the Defendants, Relief Defendants, and their agents, servants, employees, assigns, attorneys, and persons in active concert or participation with any Defendant or Relief Defendant, including any successor thereof, and any persons who receive actual notice of this Order by personal service or otherwise, are enjoined from in any way interfering with or in any way disturbing the assets and from filing or prosecuting any actions or proceedings which involve or which affect the assets, specifically including any proceeding initiated pursuant to the United States Bankruptcy Code or pursuant to Texas statutes, except with the prior permission of this Court.

29. Defendants, Relief Defendants, and their agents, servants, employees, assigns, attorneys, and persons in active concert or participation with the Defendants or Relief Defendants, including any successor thereof, and any persons who receive actual notice of this Order by personal service or otherwise, shall cooperate in every way with the Commission and the NFA and others working with them and provide such information related to the assets as the Commission and the NFA reasonably request.

30. **IT IS FURTHER ORDERED** that absent express permission and leave by this Court, all clients, investors, trust beneficiaries, note holders, creditors, claimants, lessors, and all other persons or entities seeking relief of any kind from Defendants' and Relief Defendants' Assets (other than the present action by the Commission), in law or in equity, and all persons acting on behalf of any such investor, trust beneficiary, note holder, creditor, claimant, lessor,

consultant group, or other person, including sheriffs, marshals, and all officers and deputies, and ~~their respective attorneys~~⁸², servants, agents and employees, are, until further order of this Court, hereby restrained and enjoined from doing anything, directly or indirectly, to interfere with the administration of Defendants' and Relief Defendants' Assets. Accordingly, all such persons are enjoined from engaging in any self-help, including set-offs, and from filing or prosecuting any actions or proceedings which involve or which affect Defendants' and Relief Defendants' Assets, specifically including any proceeding initiated pursuant to the United States Bankruptcy Code, except with prior permission of this Court. Moreover, any such actions that are so authorized shall be filed in this Court.

VII. Order Granting Expedited Discovery

IT IS HEREBY ORDERED that:

31. 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 Defendants, 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, and more than ten depositions may be taken.

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

VIII. Bond Not Required of Plaintiff

IT IS FURTHER ORDERED that:

33. Plaintiff 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:

34. Defendant shall appear before this Court on the 8th day of July, 2009, at 9:00, A.m., before the Honorable SAM SPARKS at the United States Courthouse for the Western District of Texas, 200 West 8th Street, Austin, Texas 78701, 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.

35. 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 July 7, 2009 and served via facsimile or overnight delivery to the Commission's Washington D.C. office no later than 5:00 o'clock P.m. on July 6, 2009. Any reply papers shall be filed with the Court and delivered to opposing counsel no later than 4:00 o'clock P.m. on July 7, 2009. Service of all papers shall be by electronic mail, facsimile, or personal service.

X. Service

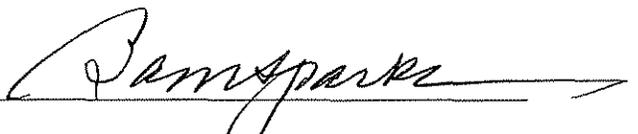
IT IS FURTHER ORDERED that:

36. 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 the Assets that may be subject to any provision of this Order, and, additionally, that Kenneth McCracken, Elizabeth Davis, Andrew Ridenour, Erica Bodin and Richard Glaser, or representatives thereof, and representative(s) of the U.S. Marshal Service 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 U.S. Marshal or deputy U.S. Marshal, or in accordance with FRCP 4, and service on corporate entities may be effected by serving the Summons, Complaint, or other process via overnight delivery to the registered agent of said corporate entities.

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 Austin, Texas on the 30th day of June, 2009
at 3:55 p.m.


UNITED STATES DISTRICT JUDGE
WESTERN DISTRICT OF TEXAS

CONSENT TO RELEASE OF FINANCIAL RECORDS

I, _____, a resident of _____, do hereby direct any bank, trust, or other financial company, as well as any of its officers, employees, and agents, at which I have or had a bank account or other financial account of any kind operated under my name or any other name (including any corporation or other entity) for which I am or was authorized to draw on the account, to disclose all information and deliver copies of all documents of every nature in the bank's, trust's, or other financial company's possession or control which relate to said bank or other financial accounts to any attorney or investigator of the United States Commodity Futures Trading Commission and the National Futures Association and to give evidence relevant thereto, in the matter of *United States Commodity Futures Trading Commission v. Strongbow Investments GP LLC, et al.*, Case No. _____, now pending before the United States District Court for the Western District of Texas, and this shall be irrevocable authority for so doing. This direction is intended to apply to not only the laws of the United States, but also to the law 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 shall apply to any of the bank accounts or other financial accounts for which I may be a relevant principal.

Dated: _____

Signature