UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

U.S. COMMODITY FUTURES TRADING COMMISSION,	)	
Plaintiff,	)	Case No.: 8:09-CV-1811-T-17MAP
vs.	)	
BEAU DIAMOND and DIAMOND VENTURES LLC,	)	
Defendants.	)	

AMENDED ORDER OF PRELIMINARY INJUNCTION AND OTHER ANCILLARY RELIEF AGAINST BEAU DIAMOND AND DIAMOND VENTURES LLC

Plaintiff Commodity Futures Trading Commission ("Commission" or "CFTC") filed a Complaint on September 3, 2009, against Beau Diamond ("Diamond") and Diamond Ventures LLC ("DVL") (collectively "Defendants"), seeking injunctive and other equitable relief for violations of the Commodity Exchange Act ("the Act"), as amended, 7 U.S.C. §§ 1 *et seq.* (2006), as amended by the Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, Title XIII (the CFTC Reauthorization Act of 2008 ("CRA")), §§ 13101-13204, 122 Stat. 1651 and the Commission Regulations promulgated thereunder, 17 C.F.R. §§ 1, *et seq.* (2009).

This matter comes before this Court on the Motion for Preliminary Injunction filed by Plaintiff CFTC. On September 3, 2009, this Court entered an *Ex Parte* Statutory Restraining

Order ("SRO") against Defendants Diamond and DVL. On September 8, 2009, this Court granted Plaintiff's Emergency Motion to Extend the Statutory Restraining Order and extended the SRO to September 21, 2009. (Dkt. 13)

On September 10, 2009 service was properly effected upon Defendants Diamond and DVL pursuant to Fed. R. Civ. P. 4(e)(2), by the U. S. Marshals Service delivering copies of the summons, complaint, Motion for an Ex Parte Statutory Restraining Order, Preliminary Injunction, Expedited Discovery and Other Equitable Relief, and Memorandum in Support thereof, and the Ex Parte Restraining Order, to Diamond, both individually and as registered agent for DVL. (Dkt. 18, 19). Pursuant to Fed. R. Civ. P. 5 (b), Plaintiff also notified Defendants Diamond and DVL of the Hearing on Plaintiff's Motion for Preliminary Injunction by sending a Notice of Hearing to Defendants via Federal Express, C/O Pinellas County Jail; by Certified US Mail to Defendants' last known addresses; and by Regular Mail to Defendants' last known addresses. (Dkt. 15). Plaintiff also sent courtesy copies of the Notice of Hearing (Dkt. 15), its Renewed Motion for a Preliminary Injunction, the Memorandum in Support thereof and all Exhibits, to Mr. Adam Allen, Diamond's appointed Federal Defender, via e-mail. Accordingly, this Injunction is issued in regard to Defendants Diamond and DVL.

This Court, having considered the evidence presented in the CFTC's pleadings, memoranda, declarations and other exhibits filed and made in support of the CFTC's Motion finds as follows:

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THE COURT FINDS THAT:

1. This Court has jurisdiction over the subject matter of this action and Defendants Diamond and DVL pursuant to Section 6c(a) of the Act, 7 U.S.C. § 13a-1(a) (2006), which authorizes the CFTC to seek injunctive relief against any person whenever it shall appear that such person has engaged, is engaging or is about to engage in any act or practice constituting a violation of any provision of the Act or any rule, regulation or order thereunder. This Court also has jurisdiction over the forex transactions pursuant to Section 2(c)(2) of the Act as amended by the CRA, to be codified at 7 U.S.C. § 2(c)(2), for conduct that occurred on or after June 18, 2008.

2. Venue properly lies with this Court pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1(e) (2006), in that the Defendants transacted business in this District, and the acts and practices in violation of the Act have occurred, are occurring, or are about to occur within this District.

3. Diamond's pending Chapter 7 bankruptcy case does not affect the Commission's ability to file an action for injunctive relief seeking to enjoin the Defendants' fraud. Such regulatory actions fall under an exception to the bankruptcy stay provisions. *In re Commerce Oil Co.*, 847 F.2d 291, 295 (6th Cir. 1988) ("In particular, §§ 362(b)(4) and 362(b)(5) of the automatic stay except both 'the commencement or continuation of an action or proceeding' and 'the enforcement of a judgment, other than a money judgment, obtained in an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory powers' from the automatic stay.")

4. There is good cause to believe that Diamond and DVL engaged in and are likely to engage in acts and practices that violate Section 4b(a)(2)(A)-(C) 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")), § 13102, 122 Stat. 1651 (effective June 18, 2008), to be codified at 7 U.S.C. § 6b(a)(2)(A)-(C). Furthermore, there is a reasonable likelihood that the CFTC will prevail on the merits of this action.

5. Defendants operated a Ponzi scheme and defrauded customers by, among other things, (i) misappropriating customer funds; (ii) misrepresenting that Defendants could guarantee the return of customers' deposits and monthly returns on investments because Defendants' off-exchange foreign currency trading was profitable, when, in fact, Defendants' trading resulted in substantial losses, and the purported "profits" paid to customers were from existing customers' original principal and/or from money invested by subsequent customers; and iii) causing false account statements to be issued to customers that misrepresented the value of the customers' investments as well as claiming that Defendants' trading was producing profits when, in fact, it was not.

6. On March 31, 2009, Diamond filed a voluntary bankruptcy petition in the United States Bankruptcy Court for the Middle District of Florida (*In re Beau Diamond*, 8:09-bk-06199). Ms. Shari Streit Jansen is the duly appointed and acting Chapter 7 Trustee ("Trustee").

7. On July 20, 2009, a Criminal Complaint was filed against Diamond in the United States District Court for the Middle District of Florida, Case No. 09-MJ-1334. Diamond was

arrested on or about September 2, 2009, and remains in the custody of the U.S. Marshals Service.

8. There is good cause for granting a preliminary injunction to protect the status quo, protect public customers from further loss and damage and enable the CFTC to fulfill its statutory duties.

DEFINITIONS

FOR THE PURPOSES OF THIS ORDER, THE FOLLOWING DEFINITIONS APPLY:

9. "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, lines of credit, contracts, insurance policies, and all cash, wherever located.

10. 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.

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ORDER OF PRELIMINARY INJUNCTION

IT IS THEREFORE ORDERED THAT:

11. Diamond and DVL and their officers, agents, servants, employees, nominees, or attorneys are restrained, enjoined and prohibited, until further order of this Court, from directly or indirectly:

A. Cheating or defrauding or attempting to cheat or defraud other persons in or in connection with forex contracts, made, or to be made, for or on behalf of any other person, in violation of Section 4b(a)(2)(A) of the Act as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(2)(A).

B. Willfully making or causing to be made any false report or statement to any other person or willfully entering or causing to be entered any false record for any other person in or in connection with forex contracts, made, or to be made, for or on behalf of any other person, in violation of Section 4b(a)(2)(B) of the Act as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(2)(B).

C. Willfully deceiving or attempting to deceive any other person by any means whatsoever in regard to any forex order or forex contract or the disposition or execution of any forex order or contract, or in regard to any act of agency performed, with respect to any forex order or forex contract for or, in connection with any other person, in violation of Section 4b(a)(2)(C) of the Act as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(2)(C).

12. Diamond and DVL and all of their officers, agents, servants, employees, nominees, or attorneys are further restrained, enjoined and prohibited, until further order of the Court, from directly or indirectly:

A. Engaging in, controlling or directing the trading for any commodity futures or options accounts for or on behalf of any other person or entity, whether by power of attorney or otherwise;

B. Entering into any commodity futures or options transactions for their own account, for any accounts in which they have a direct or indirect interest and/or having any commodity futures or options traded on their behalf; and

C. Soliciting any new or existing customers or accepting any new deposits of funds from any new or existing customers.

ASSET FREEZE

13. Diamond and DVL and all of their officers, agents, servants, employees, nominees, or attorneys are further restrained, enjoined and prohibited, until further order of this Court from directly or indirectly:

A. Dissipating, withdrawing, transferring, removing, concealing or disposing of cash, cashiers checks, funds, assets or other property of, or within the custody, control, or possession of Diamond and DVL, including, but not limited to, all funds, personal property, money or securities held in safes, safety deposit boxes and all funds on deposit in any financial institution, bank or savings and loan account, including funds or property of customers, wherever located, whether held in the name of Diamond and DVL or otherwise, and the assets affected by this paragraph shall include both existing assets and assets acquired after the effective date of this Order. The asset freeze prohibits the dissipation of assets in existence before the filing of Diamond's voluntary bankruptcy that are in any way related to the alleged fraud.

B. Destroying, mutilating, concealing, altering or disposing of, in any manner, any of the books and records, documents, correspondence, brochures, manuals, electronically stored data, tape records or other property of Diamond or DVL, wherever located, including all such records concerning Diamond and DVL's business operations, until further order of the Court; and

C. Refusing to permit authorized representatives of the Commission to inspect, when and as requested, any books and records, documents, correspondence, brochures, manuals, electronically stored data, tape records or other property of Diamond and DVL, wherever located, including all such records concerning Diamond and DVL's business operations.

14. The asset freeze portion of this Order is not directed to and affords no relief against the Trustee appointed in the pending Bankruptcy matter of In re Beau Diamond, (Case No. 8:09-bk-06199 (Bankr. M.D.Fl Tampa)), her agents, representatives or attorneys and it should be enforced in a manner which is consistent with the orders of the bankruptcy court and all applicable bankruptcy laws.

15. Nothing in this Order of Preliminary Injunction and Other Ancillary Relief is intended to limit or constrain the Trustee's fulfillment of her responsibilities and duties as Trustee under the laws of the United States, the Bankruptcy Code and/or the orders of the United States Bankruptcy Court, including but not limited to those duties related to the maintenance, preservation, marshalling and distribution of any of the Defendants' assets in accordance with the above authority, including any distribution or liquidation of assets as approved by the Courts or to limit the protections she is afforded under those laws.

16. Notwithstanding the asset freeze provisions of Paragraph A above, and subject to compliance with all applicable bankruptcy laws, the parties (as well as the bankruptcy trustee) may seek modification of the asset freeze order.

ACCESS TO AND INSPECTION OF BOOKS AND RECORDS

17. The Trustee or others may have custody and control of previously identified books and records of Beau Diamond. The Trustee, Diamond and DVL and their agents, servants, employees, assigns, attorneys, and persons in active concert or participation with Diamond and DVL who receive actual notice of this Order by personal service or otherwise, including facsimile transmission, shall cooperate fully with the Commission to locate and provide to representatives of the Commission, upon reasonable notice, all books, records and other documents of Defendants wherever such books and records may be situated; and shall not destroy, alter, conceal or dispose of any books, records, documents, correspondence, brochures, manuals, electronically stored data, meta data, tape recordings or other property, wherever stored or located concerning the Defendants; and shall permit representatives of the Commission, upon reasonable notice to make copies of those books and records.

18. Until further order of this Court, Diamond, DVL and each firm, corporation, partnership, association or other person or entity which holds or is a depository of Defendants' funds, securities, assets or other property of any kind, are prohibited from directly or indirectly transferring, withdrawing, removing or disposing of any such funds, securities, assets or other property, wherever situated.

19. The injunctive provisions of this Order shall be binding on Diamond and DVL, and upon any person insofar as he or she is acting in the capacity of officer, agent, servant, employee or attorney of Diamond and DVL and upon any person who receives actual notice of this Order by personal service, facsimile or otherwise insofar as he or she is acting in active concert or participation with Diamond and DVL.

ACCOUNTING

20. Diamond and DVL shall prepare, sign and tender to the CFTC within 21 days of this Order, an interim accounting and prepare, sign and file with this Court, within 60 days, a complete and accurate accounting for the period of April 2006, to the date of such accounting, which shall be no earlier than the date of this Order. Such accounting shall include, without limitation, the identification of:

A. All funds, securities, commodity interests, assets and other property in Diamond or DVL's possession, custody or control, currently owned or controlled (legally, equitably or otherwise) directly or indirectly by Diamond or DVL, whether individually or jointly, including accounts or assets of Defendants' held by financial institutions located outside the territorial United States;

B. All funds, securities, commodity interests, assets and other property received directly or indirectly by Diamond or DVL, whether individually or jointly, describing the source, amount, disposition, and current location of each listed item;

C. All funds, securities, commodity interests, assets and other property transferred or otherwise disposed of directly or indirectly by Diamond or DVL, whether individually or jointly, describing the source, amount, disposition, and current location of each listed item, including accounts or assets of Diamond or DVL held by financial institutions located outside the territorial United States and provide the CFTC with access to all records of accounts or assets of Diamond or DVL held by financial institutions located outside the territorial United States; and

D. The name and last known address of each bailee, debtor or other person or entity currently holding any funds, securities, commodity interests, assets or other property owned or controlled (legally, equitably or otherwise) by Diamond or DVL, either individually or jointly.

DIRECTIVES TO FINANCIAL INSTITUTIONS

21. 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 owned, controlled, managed, or held by, on behalf of, or for the benefit of Diamond or DVL, or has held, controlled, or maintained custody of any account or asset owned, controlled, managed, or held by, on behalf of, or for the benefit of Diamond or DVL at any time since 2006, shall:

A. Provide counsel for the CFTC, within five (5) business days of receiving a copy of this Order, a statement setting forth: (a) the identification number of each and every such account or asset titled in the name, individually or jointly, of Diamond or DVL, or owned, controlled, managed, or held by, on behalf of, or for the benefit of the Diamond or DVL; (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 either titled in the name, individually or jointly, of Diamond or DVL or is otherwise subject to access by Diamond or DVL; and

B. Upon request by the CFTC, promptly provide the CFTC 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 instructions or slips, currency transactions reports, 1099 forms, and safe deposit box logs.

22. It is further ordered that copies of this Order may be served by any means, including by way of personal service, Federal Express or other commercial overnight service, email or facsimile or pursuant to Federal Rule of Civil Procedure 4, upon any financial institution or other entity or person that may have possession, custody, or control of any documents or assets of Diamond or DVL, or that may be subject to any provision of this Order. Senior Trial Attorney Diane M. Romaniuk and Senior Investigator Mary Elizabeth Spear are hereby specially appointed to serve process, and/or effectuate service of process, including this Order and all other papers in this case.

23. Pursuant to Section 6(c) of the Act, 7 U.S.C. § 13a-1, no bond need be posted by the Plaintiff, CFTC, which is an agency of the United States of America.

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24. This Order shall remain in effect until further order of this Court and this Court shall retain jurisdiction over this action to ensure compliance with this Order and for all other purposes related to this action

IT IS SO ORDERED.

DATED: September 22, 2009.

ELIZABETH A. KOVACHEVICH
UNITED STATES DISTRICT JUDGE

Copies to:

All parties and counsel of record