

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

Commodity Futures Trading Commission,
Plaintiff,

vs.

Raleigh Capital Management, Inc., and
Richmond H. Hamilton, Jr.,
Defendants,

Raleigh Fund, LP,
Relief Defendant

Civil Action No: 09C6780

Judge

~~(PROPOSED)~~ ORDER GRANTING PLAINTIFF'S MOTION FOR *EX PARTE*
STATUTORY RESTRAINING ORDER, APPOINTMENT OF RECEIVER AND TO
SHOW CAUSE REGARDING PRELIMINARY INJUNCTION,
AND OTHER EQUITABLE RELIEF

This matter came before the Court on plaintiff Commodity Futures Trading Commission's ("Commission") Motion for an *Ex Parte* Statutory Restraining Order, Appointment of Receiver and an Order to Show Cause Regarding Preliminary Injunction and Other Equitable Relief (the "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 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, as amended ("Act"), 7 U.S.C. § 13a-1 (2006).

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 defendants Raleigh Capital Management, Inc. (“RCM”) and Richmond H. Hamilton, Jr. (“Hamilton”) (collectively “Defendants”) have engaged, are engaging, and are about to engage in acts and practices constituting violations of the Act.

4. There is good cause to believe that Relief Defendant Raleigh Fund, LP (“Fund” or “Relief Defendant”) has received, is receiving, and is about to receive funds, assets or property as a result of Defendants’ violative acts and has been unjustly enriched thereby. The Relief Defendant does not have any legitimate interest or entitlement to those funds, assets or property received as a result of Defendants’ unlawful conduct.

5. 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 Defendants and Relief Defendants of assets or records unless Defendants and Relief Defendants are immediately restrained and enjoined by Order of the Court.

6. It further appears to the satisfaction of the Court that this is a proper case for granting an *ex parte* statutory restraining order to preserve the status quo and to protect public investors from further loss and damage.

DEFINITIONS

For 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 (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.

8. “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.

9. “Defendants” shall mean and refer to RCM and Hamilton and 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 RCM and/or Hamilton.

10. “Relief Defendant” shall mean and refer to the Fund and 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 the Fund.

RELIEF GRANTED
STATUTORY RESTRAINING ORDER

I. ASSET FREEZE

IT IS ORDERED that Defendants and Relief Defendant are restrained and enjoined from directly or indirectly withdrawing, transferring, removing, dissipating, selling, alienating, liquidating, encumbering, pledging, leasing, loaning, assigning, concealing, converting, or otherwise disposing of any funds, assets or other property, wherever located, including funds, property or assets held outside the United States, except as ordered by the Court. The assets affected by this Paragraph shall include existing assets and assets acquired after the effective date of this Order, as well as accounts not specifically identified below.

IT IS FURTHER ORDERED that, pending further Order of this Court, any financial or brokerage institution, business entity, or person that holds, controls, or maintains custody of any funds, assets or other property of the Defendants or Relief Defendant, or has held, controlled, or maintained custody of any funds, assets or other property of the Defendants or Relief Defendant, and who receives notice of this order by any means, including facsimile, electronic mail, and Federal Express, shall:

A. Prohibit Defendants or Relief Defendant and any other person from withdrawing, removing, assigning, transferring, pledging, encumbering, disbursing, dissipating, converting, selling or otherwise disposing of any such assets except as directed by further order of the Court;

B. Deny Defendants or Relief Defendant, and all other persons, except the Receiver or as ordered by this Court, access to any safe deposit box that is:

1. titled in the name of the Defendants or Relief Defendant, either individually or jointly; or
2. otherwise subject to access by the Defendants or Relief Defendant;

C. Provide counsel for the CFTC within five (5) business days of receiving a copy of this Order, a statement setting forth:

1. the identification number of each such account or asset titled in the name, individually or jointly, of the Defendants or Relief Defendant, or held on behalf of, or for the benefit, of the Defendants or Relief Defendant;
2. 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
3. the identification of any safe deposit box that is either titled in the name, individually or jointly, of the Defendants or Relief Defendant, or is otherwise subject to access by the Defendants;

D. Upon the request by the Commission or the Receiver, promptly provide 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, 1099 forms, and safe deposit box logs; and

E. Cooperate with the CFTC and the Receiver relating to implementation of this Order, including producing records related to Defendants' or Relief Defendant's accounts and Defendants' businesses.

II. PROHIBITION OF DESTRUCTION OF BOOKS AND RECORDS

IT IS FURTHER ORDERED that the Defendants or Relief Defendant and all persons or entities who receive notice of this Order by personal service or otherwise, including facsimile and Federal Express, 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 the Defendants or Relief Defendant.

III. ACCESS TO AND INSPECTION OF BOOKS AND RECORDS

IT IS FURTHER ORDERED that representatives of the CFTC be allowed immediately to inspect the books, records, and other documents of the Defendants or Relief Defendant and their agents including, but not limited to, electronically stored data, tape recordings, and computer discs, wherever they may be situated and whether they are in the possession of the Defendants or Relief Defendant or others, and to copy said documents, data and records, either on or off the premises where they may be situated.

IV. SERVICE OF ORDER

IT IS FURTHER ORDERED that copies of this Order may be served by any means, including facsimile transmission, Federal Express, and, with agreement, by email, upon any financial institution or other entity or person that may have possession, custody, or control of any documents or assets of the Defendants or Relief Defendant, or that may be subject to any provision of this Order. John Wilson, an employee of the CFTC, is hereby specially appointed to serve process, including this Order and all other papers in this cause.

V. ORDER APPOINTING RECEIVER

IT IS FURTHER ORDERED that:

Deborah Thorne is appointed temporary Receiver for the Defendants' and Relief Defendants' assets and the assets of any affiliates or subsidiaries of any Defendant or Relief Defendant, with the full powers of an equity receiver. The Receiver shall be the agent of this Court in acting as Receiver under this Order;

A. Powers of the Receiver

IT IS FURTHER ORDERED that the Receiver is directed and authorized to accomplish the following:

1. Take exclusive custody, control and possession of all funds, property, and other assets in the possession of, or under the control of Defendants or Relief Defendant, wherever situated that he has a reasonable basis to believe is related to this action. The Receiver shall have full power to sue for, collect, receive and take possession of all goods, chattels, rights, credits, moneys, effects, land, leases, books, records, work papers, and records of accounts, including computer-maintained information and digital data and other papers and documents.
2. The Receiver is authorized to enter and inspect the business premises of Defendants, and Relief Defendant and to take documents or other property related to Defendants or Relief Defendant;
3. Preserve, hold and manage all receivership assets, and perform all acts necessary to preserve the value of those assets, in order to prevent any loss, damage or injury to customers or clients;
4. Prevent the withdrawal or misapplication of funds entrusted to Raleigh Fund, and otherwise protect the interests of customers or clients;
5. Collect all money owed to Defendants and Relief Defendant;
6. Initiate, defend, compromise, adjust, intervene in dispose of, or become a party to any actions or proceedings in state, federal or foreign jurisdictions necessary to preserve or increase the assets of Defendants or Relief Defendant necessary to carry out the duties pursuant to this Order;
7. Choose, engage, and employ attorneys, accountants, appraisers, and other independent contractors and technical specialists, as the Receiver deems advisable or necessary in the performance of duties and responsibilities upon obtaining leave of this Court and thereafter, only upon further order of this Court;
8. Issue subpoenas to obtain documents and records pertaining to the receivership, and conduct discovery in this action on behalf of the receivership estate;
9. Open one or more bank or securities accounts as designated depositories for funds of Defendants and Relief Defendant. The Receiver shall deposit all funds of Defendants and Relief Defendant in such designated accounts and shall make all payments and disbursements from the receivership estate from such accounts. The Receiver is authorized to invest receivership funds in U.S. Treasury securities, money market funds or other interest-bearing accounts as appropriate in the Receiver's judgment;
10. Make payments and disbursements from the receivership estate that are necessary or advisable for carrying out the directions of, or exercising the authority granted by, this Order. The Receiver shall apply to the Court for prior approval of any payment of any debt or obligation incurred by Defendants or Relief Defendant prior to the date of entry of this Order, except for payments that the Receiver deems necessary or advisable to secure assets; and

11. Close out all commodity futures positions or other outstanding positions and/or hold such assets without further court order.

B. Delivery to Receiver

IT IS FURTHER ORDERED that, immediately upon service of this Order upon them, Defendants and Relief Defendant and any other person or entity served with a copy of this order shall, immediately or within such time as permitted by the Receiver in writing, deliver over to the Receiver;

1. Possession and custody of all funds and all other assets, belonging to Defendants and Relief Defendants;
2. Possession and custody of documents of Defendants and Relief 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, canceled checks, records of wire transfers, and check registers), client lists, title documents and other papers;
3. All keys, computer passwords, entry codes, PIN numbers and combinations to locks necessary to gain or to secure access to any of the assets or documents of Defendants or Relief Defendants, including but not limited to, access to business premises, means of communication, accounts, computer systems, or other property; and
4. Information identifying the accounts, employees, properties or other assets or obligations of Defendants or Relief Defendant.

C. Cooperation with Receiver

IT IS FURTHER ORDERED that Defendants and Relief Defendant, their agents and representatives, and all other persons or entities served with a copy of this Order shall cooperate fully with and assist the Receiver in the performance of his duties. This cooperation and assistance shall include, but not be limited to, providing any information to the Receiver that the Receiver deems necessary to exercising the authority and discharging the responsibilities of the Receiver under this Order; providing all keys, entry codes, PIN numbers, and combinations to locks necessary to gain or secure access to any of the assets or documents of Defendants or Relief Defendant, and any password required to access any computer or electronic files in any

medium of Defendants or Relief Defendant; and advising all persons who owe money to Defendants and Relief Defendant that all debts should be paid directly to the Receiver.

However, this requirement does not impinge on any person's right to assert applicable privileges.

D. Stay

IT IS FURTHER ORDERED that except by leave of the Court, during the pendency of the receivership ordered herein, Defendants, Relief Defendant, and all other persons and entities be and hereby are stayed from taking any action to establish or enforce any claim, right or interest for, against, on behalf of, or in the name of Defendant or Relief Defendant, the Receiver, receivership assets, or the Receiver's duly authorized agents acting in their capacities as such, including but not limited to, the following actions:

1. Commencing, prosecuting, litigating or enforcing any civil suit, except that actions may be filed to toll any applicable statute of limitations;
2. Accelerating the due date of any obligation or claimed obligation, enforcing any lien upon, or taking or attempting to take possession of, or retaining possession of, property of Defendant or Relief Defendant or any property claimed by Defendant or Relief Defendant, or attempting to foreclose, forfeit, alter or terminate any of Defendants' or Relief Defendant's interests in property, whether such acts are part of a judicial proceeding or otherwise;
3. Using self-help or executing or issuing, or causing the execution or issuance of any court attachment, subpoena, replevin, execution, right of offset, or other process for the purpose of impounding or taking possession of or interfering with, or creating or enforcing a lien upon any property, wherever located, owned by or in the possession of Defendant or Relief Defendant, or the Receiver or any agent of the Receiver; and
4. Doing any act or thing to interfere with the Receiver taking control, possession or management of the property subject to the receivership, or to in any way interfere with the Receiver or the duties of the Receiver, or to interfere with the exclusive jurisdiction of this Court over the property and assets of Defendants or Relief Defendant. This paragraph does not stay the commencement or continuation of an action or proceeding by a governmental or regulatory unit, such as the National Futures Association ("NFA"), to enforce such governmental or regulatory unit's police or regulatory power.

E. Receiver's Report to the Court and Compensation

IT IS FURTHER ORDERED that the Receiver maintain written accounts, itemizing receipts and expenditures, describing properties held or managed, and naming the depositories of receivership funds; make such written accounts and supporting documentation available to the Commission for inspection, and, within ninety (90) days of being appointed and periodically thereafter, as directed by the Court, file with the Court and serve on the parties a report summarizing efforts to marshal and collect assets, administer the receivership estate, and otherwise perform the duties mandated by this Order.

IT IS FURTHER ORDERED that the Receiver and all personnel hired by the Receiver as herein authorized, including counsel to the Receiver, are entitled to reasonable compensation for the performance of duties pursuant to this Order and for the cost of actual out-of-pocket expenses incurred by them for those services authorized by this Order that when rendered were (1) reasonably likely to benefit the receivership estate or (2) necessary to the administration of the estate. The Receiver and all personnel hired by the Receiver shall be compensated solely out of funds now held by or in the possession or control of or which may in the future be received by Defendants and Relief Defendant, or from proceeds of the sale of Defendants' and Relief Defendant's assets, and shall not be entitled to any compensation from the Commission. The compensation of the Receiver and his professionals shall be entitled to priority as administrative expenses. The Receiver shall file with the Court and serve on the parties periodic requests for the payment of such reasonable compensation, with the first such request filed no more than ninety (90) days after the date of this Order and subsequent requests filed quarterly thereafter. The requests for compensation shall itemize the time and nature of services rendered by the Receiver and all personnel hired by the Receiver. The Receiver shall not increase the hourly rates used as the bases for such fee applications without prior approval of the Court.

F. No Bond

IT IS FURTHER ORDERED that the Receiver is appointed without bond.

VI. SERVICE ON THE COMMISSION

IT IS FURTHER ORDERED that the Defendants and Relief Defendant shall serve all pleadings, correspondence, notices required by this Order, and other materials on the Commission by delivering a copy to Joseph Konizeski, Senior Trial Attorney, Division of Enforcement, Commodity Futures Trading Commission, 525 W. Monroe, Suite 1100, Chicago, Illinois 60661.

VII. COURT MAINTAINS JURISDICTION

IT IS FURTHER ORDERED that this Statutory Restraining Order shall remain in full force and effect until further Order of this Court, upon application, notice and an opportunity to be heard, and that this Court retains jurisdiction of this matter for all purposes.

VIII. FURTHER COURT HEARINGS

1. **IT IS FURTHER ORDERED** that this matter is set for a status hearing on:

08/27 ~~11/10/09~~ 10:30 NOV. 6, 2009

08/27² **IS FURTHER ORDERED** that plaintiff's Motion for a Preliminary Injunction is set for hearing on ~~11/10/09~~ 10:30 NOV. 10, 2009

IT IS SO ORDERED.

Signed at _____ o'clock am/pm on the 29 day of OCT, 2009

Charles Mergel
UNITED STATES DISTRICT JUDGE