

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

COMMODITY FUTURES TRADING,)
COMMISSION,)
)
Plaintiff,)

-vs-

CASE NO. CV-09-154-D

MARK S. TRIMBLE, and)
PHIDIPIDES CAPITAL)
MANAGEMENT, LLC,)
Defendants, and)
PHIDIPIDES CAPITAL, LP,)
Relief Defendant.)

**RESPONSE TO PLAINTIFF’S MOTION FOR SHOW CAUSE
AND REQUEST FOR RELIEF RELATING TO EMPLOYMENT,
LIVING EXPENSES, AND ATTORNEY’S FEES**

Comes now the Defendant Mark S. Trimble through counsel and files the following response to the Plaintiff’s Motion for Show Cause (Dkt. #26) why said Defendant should not be held in contempt and further for relief relating to employment, living expenses and attorney’s fees. In furtherance of said Motion the Defendant Trimble would show this Honorable Court as follows:

1. As outlined in the Plaintiff’s Motion for Show Cause prior to the entry of the consent restraining order dated February 10, 2009, Mr. Trimble transferred approximately \$500,000.00 to his wife and ex-wife. At some point thereafter, those funds were subsequently returned to Mr. Trimble in the form of currency.

2. Thereafter, on April 29, 2009 in a meeting with Mr. Trimble and the Court Appointed Receiver, Mr. C. David Rhoades, Mr. Trimble provided to Mr. Rhoades \$350,000.00 currency and a check in the amount of \$100,000.00 as a part of the accounting of Mr. Trimble’s assets.

Additionally, Mr. Trimble advised Mr. Rhoades that although he had been paid \$7,000.00 for living expenses in February of 2009, and he had not received any living expenses for March or April of 2009, and that as a result he had used approximately \$15,000.00 for living expenses. Mr. Rhoades was further advised that Mr. Trimble's ex-wife had received \$25,000.00 as child support as payment of an ongoing obligation of which Mr. Trimble is subject by court order. Additionally, on that date Mr. Rhoades has provided an automobiles, jewelry, and other personal property items of Mr. Trimble in his continuing efforts to comply with the Receiver's attempts to preserve any and all assets in this case.

Mr. Trimble is currently in possession of approximately \$10,000.00 of which the receiver is aware and was advised of on April 29, 2009, which is still being preserved for potential future living expenses by Mr. Trimble.

3. Contrary to the assertions of the Plaintiff in their Motion for Show Cause Defendant Trimble would advise the Court that he has and continues to make substantial lifestyle changes and considerably lowered his necessary living expenses. Additionally, his wife is now employed and as will be outlined below Mr. Trimble is attempting to earn a living, subject to approval of the Court and with oversight and review by the Receiver.

Because of the unprecedented publicity relating to this investigation and litigation it is virtually impossible for Mr. Trimble to obtain meaningful employment that will assist in returning capital to the Receiver in this matter.

Additionally, contrary to the assertions of the Plaintiff numerous conversations have been engaged in with Plaintiff's counsel by Mr. Trimble's counsel concerning Mr. Trimble engaging in earning a living to which the Plaintiff's counsel objects. Specifically, Mr. Trimble has been a

trader for over ten years and for the most part rather successful in this field. Plaintiff's counsel has strenuously objected to Mr. Trimble's involvement in any type of stock related transactions, even for himself. In an attempt to appease the CFTC Mr. Trimble has voluntarily not engaged in any type of personal stock trading even though it does not appear to counsel that such activity for Mr. Trimble personally would be in violation of the consent preliminary injunction entered March 6, 2009.

4. Counsel can state that Mr. Trimble has certain family members who are able and willing to provide him a "grubstake" for the purposes of personally trading in the Stock Market, subject to the review and oversight of the receiver Mr. C. David Rhoades. Mr. Rhoades has been advised of Mr. Trimble's request to engage in "day trading" in the Stock Market and has no objection so long as he is provided the opportunity for review and oversight. Mr. Trimble is requesting this Court's approval of such activities so that Mr. Trimble would be in a position where he could immediately pay the \$10,000.00 that he is currently holding for living expenses to the Receiver. Additionally, Mr. Trimble would not need to make any application for living expenses since he will be making income from this activity. Further, Mr. Trimble would not need to make application for Attorney's Fees as he will be able to pay those expenses out of his earnings, and finally use any additional funds to pay towards the balance of any deficit that is in the funds relating to any of the pool members.

5. Contrary to the Plaintiff's assertions in paragraph 12, that Mr. Trimble has not sought to have his child support obligations revised in light of his current financial situation or sought to have meaningful employment, Mr. Trimble would advise that he is currently without sufficient Attorney's Fees to hire an attorney to go into Court and to prosecute an action for a modification

of his child support. Additionally, as this court may be aware by reports in the media there are other actions and investigation, ongoing for which Mr. Trimble is in need of Attorney's Fees in particular a civil action has been filed in this matter in the District Court of Oklahoma County styled the Howard Family Charitable Foundation, et, al. v. Mark S. Trimble, Case no. CJ-2009-3904, further there is an ongoing investigation by the United States Attorney's Office for the Western District of Oklahoma. To defend those matters, and possibly others Mr. Trimble will either need to be employed to allow him to afford attorneys or to apply to the fund for the payment of Attorneys Fees in this matter.

PRAYER FOR RELIEF, the Defendant Trimble requests this Honorable Court issue an order authorizing the following relief in response to the Plaintiff's Motion for Show Cause:

1. Allow the Defendant Mark S. Trimble (personally) to day trade in the Stock Market subject to the oversight and review authority of the receiver David Rhoades;
2. Issue an order that based upon the Defendant's personal trading activities that no further living expenses will be paid to Defendant Trimble at this time;
3. Issue an order that based upon the Defendant's personal trading activities as outlined above that no further attorneys fees will be paid to the Defendant Trimble at this time;
4. Issue an order requiring that the Defendant within 10 days of the date of this order pay to the receiver \$10,000.00 which the Defendant currently possess in this matter;
5. Issue an order that with oversight and review of the receiver that any additional funds which the Defendant obtains as the result of his personal trading activities, above those necessary living expenses and attorneys fees as determined by the Receiver, that the Defendant provide those funds to the receiver for purposes of restoring the fund to its full amount.

WHEREFORE, Defendant Trimble prays that this Court upon setting this matter for hearing and upon review of the matters herein issue the requested relief outlined above.

Respectfully submitted,

MARTIN LAW OFFICE

/s/ Mack K. Martin

Mack K. Martin, OBA #5738
Martin Law Office
125 Park Avenue
Fifth Floor
Oklahoma City, Oklahoma 73102
Telephone 405-236-8888
Facsimile 405-236-8844
Email: Mack@Martinlawoffice.net

CERTIFICATE OF SERVICE

I certify that on the 15th day of May, 2009, I electronically transmitted the attached document to the Clerk of the Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants: Ms. Rosemary Hollinger and Mr. Scott R. Williamson, Attorneys for the Commodities Future Trading Commission.

/s/ Mack K. Martin