

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

U.S. COMMODITY FUTURES)	Civil Action No.: 07 C 3598
TRADING COMMISSION,)	
)	
Plaintiff)	Honorable Judge Manning
vs.)	Magistrate Judge Mason
)	
LAKE SHORE ASSET MANAGEMENT,)	
et al.)	
Defendants.)	

**PLAINTIFF’S RESPONSE TO DEFENDANT’S EMERGENCY MOTION FOR A
STAY OF PRELIMINARY INJUNCTION ORDER PENDING APPEAL**

Plaintiff, Commodity Futures Trading Commission (“Commission” or “CFTC”), as its Response to Defendant’s Emergency Motion for a Stay of Preliminary Injunction Order Pending Appeal states as follows:

1. On August 28, 2007, this Court issued its Memorandum and Order (“Order”) granting in part and denying in part the Commission’s Motion for a preliminary injunction. On August 29, 2007, Defendant Lake Shore Asset Management Limited (“Defendant”) filed a Notice of Appeal of the Court’s Order. On the same day, the Defendant filed an emergency motion asking this Court to stay the preliminary injunction pending appeal.

2. Fed. R. Civ. P. 62(c) permits a district court, in its discretion, to stay the enforcement of an order granting injunctive relief. *The Pepsi-Cola Metropolitan Bottling Co., v. PepsiCo, Inc.*, 637 F.Supp. 1014 (N.D. Ill June 23, 1986). In order to obtain a stay pending appeal, the Defendant must demonstrate that they will suffer irreparable harm if a stay is not issued and that there is a reasonable probability that the Defendants will

succeed on the merits. *Id.* at 1019-20, (denying motion to stay injunction pending appeal), and, citing *Glick v. Koenig*, 766 F.2d 265, 269 (7th Cir. 1985).¹ Defendants cannot meet their burden.

3. First, after an evidentiary hearing and an opportunity to assess the credibility of the witnesses, this Court found that the balance of harms weights in favor of entering a preliminary injunction in favor of the Commission and that the Commission carried its burden of proof by making a *prima facie* case that the Defendants violated the Commodity Exchange Act, as amended, as charged. At that point, the burden of proof shifted to the Defendants. The Defendants, by presenting virtually no evidence at the evidentiary hearing, clearly failed to meet their burden. Specifically, this Court, found, among other things, that the Defendant, acting as part of a common enterprise with others, misrepresented profits and losses in its performance records and omitted material facts in failing to disclose transfers of large amounts of customer funds to Hanford and Anglo. After a careful consideration of the evidence and a thorough review of the facts, this Court concluded that there is sufficient evidence to show the likelihood of success on the merits in favor of the Commission. Had this Court thought an appeal would be successful, it is unlikely it would have ruled as it did. See *Thomas v. City of Evanston*, 636 F.Supp. 587 (N.D. Ill. 1986).

4. Second, the Defendant cannot support its contention that a stay is necessary to prevent harm to its business or business reputation. To the extent that its reputation is harmed it is from its own conduct in violation of the Commodity Exchange Act, not the

¹ In *Glick*, the Seventh Circuit set out four factors for the district courts to consider when determining whether to grant a stay pending appeal: (1) whether appellant has made a showing of likelihood of success on appeal, (2) whether appellant has demonstrated a likelihood of irreparable injury absent a stay, (3) whether the stay would substantially harm other parties to the litigation, and (4) where the public interest lies. 766 F.2d at 269.

injunction. Defendant's contention that a stay will harm innocent customers is unsupported by any case law that even suggests that a delay in returning customer funds is irreparable injury. *Centurion Reinsurance Co., Ltd. v. Singer*, 810 F.2d 140, 144 (7th Cir. 1987) (law has never recognized that delay in receiving money is irreparable.) Indeed, the threat of irreparable injury to the customers if the injunction is lifted and Defendants can withdraw the \$73.8 million on deposit in the London FCMs is real, since Lake Shore either has completed or is in the process of dismantling Lake Shore's computers and business equipment and is vacating and abandoning its only known physical location in London. See Exhibit 1; Supplemental Declaration of Mary E. Spear and attachments, attached to this response. As reflected in the string of emails referred to in Exhibit 1, Lake Shore is not at all concerned about its customers or any loss of business. Rather, it appears that Philip Baker is preparing to surreptitiously skip town. Id. Such dissipation of Lake Shore assets and what appears to be a simple case of flight by Baker, its principal, and blatant disregard for its customers clearly shows that the interest of investors, other interested parties and the public are better served by keeping this Court's preliminary injunction in place. Finally, the public interest in protecting all market participants, U.S. citizens or not, from fraud in connection with trading on U.S. markets is paramount.

For the above reasons, the Plaintiff respectfully requests that this Court deny Defendant's emergency motion for a stay pending appeal.

Date: August 30, 2007

Respectfully submitted,

/s/ Ava M. Gould
Ava M. Gould
Diane Romaniuk

Senior Trial Attorneys
Rosemary Hollinger
Regional Counsel,
Attorneys for Plaintiff,
Commodity Futures Trading
Commission
525 West Monroe Street, Suite 1100
Chicago, Illinois 60661
(312) 596-0541 (Romaniuk)
(312) 596-0535 (Gould)
(312) 596-0520 (Hollinger)
(312) 596-0700 (office number)
(312) 596-0714 (facsimile)