

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)	
LIMITED, et al.,)	
Defendants.)	

**PLAINTIFF'S MOTION FOR LEAVE TO FILE INSTANTER
ITS SECOND AMENDED COMPLAINT**

Pursuant to Rule 15(a) of the Federal Rules of Civil Procedure ("Fed. R. Civ. P."), Plaintiff Commodity Futures Trading Commission ("Commission") respectfully requests that the Court grant Plaintiff leave to file instanter its Second Amended Complaint. In support thereof, Plaintiff states as follows:

1. On June 26, 2007, the Commodity Futures Trading Commission ("Commission" or "CFTC") filed a one-count complaint charging Lake Shore Asset Management Limited ("LSAM"), a registered commodity trading advisor ("CTA") and commodity pool operator ("CPO"), with refusing to make its books and records available for inspection and for being unable or unwilling to provide information about its commodity pool participants and trading activity as required by Section 4n of the Commodity Exchange Act, as amended ("Act"), 7 U.S.C. § 6n (2002), and Commission Regulations 1.31, 4.23 and 4.33, 17 C.F.R. §§ 1.31, 4.23 and 4.33 (2007).
2. On June 27, 2007, this Court entered an *Ex Parte* Statutory Restraining Order ("SRO") against LSAM which, among other things, froze the assets of LSAM and granted the

Commission immediate access to all of LSAM's books and records. On July 10, 2007, this Court continued the SRO until further order of Court.

3. LSAM appealed this Court's issuance of the SRO. On August 2, 2007, the Seventh Circuit vacated the SRO because it lasted more than 20 days, in violation of Fed. R. Civ. P. 65(b). The Seventh Circuit instructed the district court to hold a prompt hearing to determine whether a preliminary injunction was appropriate.

4. On August 8, 2007, the Commission filed its First Amended Complaint alleging that LSAM was part of a common enterprise, which included the Lake Shore Group of Companies, Inc. Ltd. ("Lake Shore Group") and was controlled by Philip J. Baker ("Baker"). In addition to alleging that Defendants violated the recordkeeping provisions of the Act and Regulations, the First Amended Complaint further alleged that Defendants LSAM, Lake Shore Group and Baker violated the anti-fraud provisions of the Act, Sections 4b and 4o, by defrauding pool participants in at least four commodity pools -- Lake Shore Alternative Financial Asset Funds I, II, III, and IV -- by misrepresenting the performance of the pools and issuing false account statements.

5. On August 28, 2007, after conducting a three-day hearing, this Court entered an Order, granting in part and denying in part the Commission's motion for a preliminary injunction ("PI"). The Court found that LSAM, the Lake Shore Group and Lake Shore Asset Management Inc. ("LSAM Inc."), LSAM's predecessor company, operated as a common enterprise and that the common enterprise fraudulently solicited pool participants and prospective pool participants by misrepresenting the performance of the funds they managed. Specifically, the Court found that while promotional materials prepared by Lake Shore showed highly profitable trading, the records of trading accounts for the funds operated by Lake Shore showed a pattern of losses,

totaling over \$29 million from February 2002 through June 2007. Additionally, the Court found that customer funds under the control of the Lake Shore common enterprise were in jeopardy. In particular, the Court found a discrepancy of approximately \$60 million between the combined assets of the Lake Shore pools as of June 11, 2007 and July 2, 2007. The Court also noted extensive transfers of funds from Lake Shore commodity pool accounts to entities controlled by Baker, Lake Shore's principal, managing director and President of LSAM. The court, therefore, concluded that an asset freeze was necessary to protect customer funds.

6. Based on the foregoing findings, this Court issued a PI against LSAM, individually and as part of the Lake Shore common enterprise ("LS common enterprise"), that: enjoined LSAM from further violations of the Act and Commission Regulations; prohibited LSAM from engaging in any activity related to commodity futures and options trading; froze assets related to Lake Shore Alternative Financial Asset Funds I, II, III, and IV; and prohibited LSAM, individually and as part of the LS common enterprise, from destroying or disposing of its books and records and from refusing to permit Commission representatives from inspecting its books and records (the "PI Order"). The injunctive provisions of the PI Order were "binding on Lake Shore Limited and the Lake Shore common enterprise" and "any person insofar as he or she is acting in the capacity of officer, agent, servant, employee, or attorney of Lake Shore Limited" and "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 Lake Shore Limited or the Lake Shore common enterprise."

7. On August 28, 2007, LSAM moved for a stay pending appeal of this Court's PI Order. On August 30, 2007, after a hearing, this Court denied LSAM's request to stay the PI Order pending appeal. On August 31, 2007, LSAM filed an Emergency Motion for Stay of the

Preliminary Injunction Pending Appeal with the Seventh Circuit Court of Appeals. On September 7, 2007, the Seventh Circuit denied LSAM's application for a stay of the PI Order.

8. On October 4, 2007, this Court appointed Robb Evans & Associates receiver and entered an order outlining the duties and powers of the receiver. Following its appointment, the Receiver made an immediate demand on the London futures commission merchants ("FCMs") for transfer of all Lake Shore documents and for preservation of the funds in the Lake Shore commodities accounts. The FCMs advised the Receiver that the consent of the customer was required, or an Order of the English Court was necessary, before the request could be honored. While the Receiver requested that Baker take action to transfer money held by the FCMs to the Receiver, Baker refused and to date, no funds have been transferred to the Receiver. Similarly, the Receiver demanded that all Lake Shore entities turn over their books and records to the Receiver, but to date, none of the Lake Shore entities have complied.

9. On December 28, 2007, the Seventh Circuit Court of Appeals affirmed the Court's issuance of the PI Order to the extent it concerns LSAM. However, the Seventh Circuit found that to the extent the injunction issued by the Court imposes obligations on LSAM, "as part of the Lake Shore common enterprise," that phrase must be deleted so that the injunction only addresses LSAM. Specifically, the Court held that before any person or entity can be deemed "in active concert or participation with" LSAM, notice and an opportunity for a hearing must be provided. Thus, because the Commission had not named as defendants all of the corporations and entities that operated with LSAM as a common enterprise, and because the Commission had neither served Baker nor those corporations and entities with process at the time of the PI hearing, the appellate court was restricting the injunction "to the extent the injunction imposed duties on other entities."

10. On January 16, 2008, after the issuance of the mandate in the Seventh Circuit, this Court amended the PI Order to delete the phrase “individually and as part of the Lake Shore common enterprise,” wherever that phrase is located in the PI Order.

11. The narrowing of the PI Order has serious implications for this litigation and, in particular, the receivership because LSAM has asserted that any assets in the name of the corporate entities not named as defendants, such as the commodity pools operated by LSAM, are not covered by the asset freeze or the receivership. The commodity pools, under Baker’s control, have already demanded that the London FCMs release the pool funds to them.

12. The Plaintiff now seeks leave of Court, pursuant to Fed. R. Civ. P. 15(a), to file instant its Second Amended Complaint. The Commission is seeking to amend its complaint to add as defendants additional corporations, entities and commodity pools controlled by Baker because they operated in concert with LSAM as a common enterprise and are, therefore, liable for violating Sections 4b, 4o(1) and 4n of the Act and Commission Regulations 1.31, 4.23, and 4.33. The Second Amended Complaint alleges that Baker, LSAM, the Lake Shore Group, Hanford Investments Ltd. (“Hanford”) and at least twelve commodity pools controlled by Baker, operating as a common enterprise, defrauded hundreds of commodity participants who invested at least \$300 million to trade commodity futures contracts on U.S. futures markets.

13. Specifically, the Second Amended Complaint alleges that from February 2002 through the present, the Lake Shore Common Enterprise misappropriated pool participants’ funds by improperly charging incentive fees, by transferring over \$10 million in profits from accounts maintained at Sentinel Management Group, Inc. (“Sentinel”) to an account owned by Hanford, and by transferring over \$1 million from pool accounts at Sentinel to Anglo International Associates Ltd. (“Anglo”) for operating and administrative expenses. The Second

Amended Complaint also alleges that the Lake Shore Common Enterprise fraudulently solicited pool participants by misrepresenting the profits and losses incurred by the commodity pools and distributed false account statements to participants showing they were earning substantial profits when, in fact, the trading accounts in the name of the pools collectively lost approximately \$37.5 million from February 2002 through June 2007.

14. Like the CFTC's original complaint filed against LSAM on June 26, 2007, the Second Amended Complaint charges the Lake Shore Common Enterprise with violating the record keeping and inspection provisions of the Commodity Exchange Act and Commission Regulations.

15. In the alternative, the Second Amended Complaint names Anglo, Hanford and the commodity pools controlled by Baker as relief defendants because they received pool participants funds and hold such funds in constructive trust for the benefit of Lake Shore participants.

16. Pursuant to Rule 15(a), leave to amend a complaint "shall be freely given when justice so requires." In the absence of any apparent or declared reason – such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, or undue prejudice to the opposing party by virtue of the amendment, the leave should, as the rules require, be "freely given." *Foman v. Davis*, 371 U.S. 178, at 182, 83 S. Ct. 227, at 230 (1962).

17. In the case herein, it is in the interest of justice to allow Plaintiff to file its Second Amended Complaint. Granting Plaintiff leave to amend its Second Amended Complaint would not result in undue prejudice to Defendants. Indeed, it is Defendant Baker and the Lake Shore Common Enterprise he controls, that is guilty of bad faith in the instant case. This Court has

found LSAM, the registered CTA and CPO Baker controls, in civil contempt of court and has referred LSAM's contumacious conduct to the United States Attorney for prosecution of criminal contempt charges against LSAM. Moreover, there is no question that Baker has resisted personal service of process in this case and flaunted this Court's orders. Given the serious nature of the allegations against Defendants, the Commission will subsequently file a Motion for Preliminary Injunction against all Defendants and a brief in support thereof.

18. A copy of Plaintiff's Second Amended Complaint is attached hereto.

Date: February 12, 2008

Respectfully submitted,

/s/ Diane M. Romaniuk

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CERTIFICATE OF SERVICE

The undersigned, an attorney with the Commodity Futures Trading Commission, certifies that on February 12, 2008, I caused the foregoing,

- ***Plaintiff's Motion For Leave To File Instantly Its Second Amended Complaint***
- ***Plaintiff's Second Amended Complaint***
- ***Notice of Motion***

to be electronically filed with the Clerk of the Court using CM/ECF and to be served on the following individuals by Electronic means and/or ECF notification.

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Respectfully submitted,

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