

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

**Commodity Futures Trading
Commission,**

Plaintiff,

vs.

**Mark S. Trimble, and
Phidippides Capital Management LLC,**

Defendants, and

Phidippides Capital LP,
Relief Defendant.

Civil Action No: 09 CV

00154-D

Judge Timothy D. DeGiusti

PLAINTIFF'S MOTION TO RECOVER FROZEN ASSETS

The Plaintiff, Commodity Futures Trading Commission, through its attorneys requests that this Court order Nancy Trimble and Denise McGinnis to transfer Phidippides Capital Management LLC property in their custody to the Receiver, David Rhoades. In support of this motion, the Plaintiff states the following:

1. On January 16, 2009, Mark Trimble withdrew \$653,887 from the Phidippides Capital Management LLC ("PCM") account at Mid-First Bank. He deposited these funds to his personal account at Bank of America. (Bloom Declaration) Trimble admits that he paid himself these amounts as commissions and fees based on the Phidippides Capital pool's 2008 trading. (Bloom Declaration, Exhibit 2)

2. As the Court may recall in 2008, the pool lost approximately \$5.6 million trading commodity futures contracts. Almost all of these losses occurred in December 2008. The PCM Offering Memorandum, in relevant part, provided that Trimble was to be paid an incentive fee equal to 20 % of the previous quarter's trading profits. Where there were no profits, there was no compensation due. Hence no incentive fees were due.

3. On January 21, 2009, Mark Trimble wired \$250,000 from his personal account at Bank of America to the account of Nancy Trimble, his wife, at Arvest

Bank and \$250,000 to an account at JP Morgan Chase in the name of Denise McGinnis, his former wife, that same day. (Bloom Declaration)

4. Notably, Trimble failed to disclose these transfers to the Court in the accounting filed with the Court. Specifically, paragraph 6D of the Consent Preliminary Injunction required the defendant to disclose for the period beginning January 1, 2005:

All funds, securities, commodity interests, assets and other property transferred or otherwise disposed of directly or indirectly by Defendants describing the source, amount, disposition, and current location of each listed item, including accounts or assets of Defendants held by financial institutions located outside the territorial United States. (Doc. 11)

5. In response to Item 6D of the required Accounting Trimble responded “not applicable.” (Doc. 19)

6. Funds belonging to Phidippides Capital Management LLC are in the custody of Nancy Trimble and Denise McGinnis who, as third party custodians, have been required since the entry of the Consent Preliminary Injunction in this case not to transfer, withdraw, remove or dispose of these funds until further order of this Court. (Doc. 11)

WHEREFORE, the Plaintiff requests the Court to order Nancy Trimble and Denise McGinnis to each transfer \$250,000.00 to the Receiver in this matter C. David Rhoades.

Date: April 24, 2009

Respectfully submitted,

s/ Rosemary Hollinger

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