

**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 FOR RULE TO SHOW CAUSE WHY MARK S.
TRIMBLE SHOULD NOT BE HELD IN CONTEMPT OF COURT FOR
VIOLATING THE RESTRAINING ORDER AND PRELIMINARY
INJUNCTION**

The Plaintiff requests that this Court issue a Rule to Show Cause why Mark S. Trimble ("Trimble") should not be held in contempt for violating the restraining order and preliminary injunction in this case. In support the Plaintiff states the following:

SUMMARY

1. On February 9, 2009, the Plaintiff filed a Complaint alleging that the defendants Trimble and Phidippides Capital Management LLC ("PCM") cheated and defrauded investors by making false reports and false statements regarding the

profitability of the trading in the Phidippides Capital LP commodity pool and by misappropriating customer funds.

2. On February 10, 2009, this court entered the Consent Restraining Order which in relevant part provided that :

Trimble...and all persons insofar as they are acting in the capacity of agents, servants, employees, successors, assigns or attorneys of the defendants and all persons insofar as they are acting in active concert or participation with them, who receive actual notice of this Order by personal service or otherwise, shall be prohibited from directly or indirectly:

a) Dissipating, withdrawing, transferring, removing, concealing or disposing of cash, cashier's checks, funds, assets or other property of, or within the custody, control or possession of the defendants, including funds or property of investors, wherever located, whether held in the name of Trimble, PCM and Phidippides Capital LP ("PC LP" also referred to herein as "Relief Defendant"), or otherwise;

Consent Restraining Order (Doc. 7).

3. On the same day, this Court authorized Bank of America to release \$7,000 to Trimble to fund his living expenses. The order further stated that "no further withdrawals are permitted until further order of this Court." (Doc. 7).

4. On March 6, 2009, the court entered the Consent Preliminary Injunction in this case which continued the asset freeze and ordered Mr. Trimble to prepare, sign and file an accurate accounting with the court that disclosed, among other things, all funds owned or controlled by the

defendants, all funds received by the defendants, all funds disposed of by the defendants and to identify any persons holding funds owned or controlled by the defendants. The preliminary injunction did not grant defendant living expenses. Consent Preliminary Injunction (Doc. 11).

5. Trimble filed his accounting on April 21, 2009. Defendant Trimble's Response to Preliminary Injunction Filed Under Seal (Doc. 21).

FACTS

6. As the Court is aware on January 16, 2009, Trimble transferred \$250,000 each to Nancy Trimble and Denise McGinnis. Plaintiff's Motion to Recover Frozen Assets (Doc. 24). Upon information and belief, Trimble subsequently instructed Ms. McGinnis to withdraw the funds in cash from her account and to give him the money. Upon further information and belief, Ms. McGinnis gave Trimble \$225,000 cash pursuant to his instructions.

7. Although he was ordered not to conceal funds under his control, Trimble concealed the fact that he had this money in his possession after the entry of the Restraining Order. Instead, he actively misled the Plaintiff into believing he needed funds released from the frozen funds at the time the CFTC agreed to the one-time payment of \$7,000 to cover Trimble's living expenses. The CFTC would not have recommended that the Court permit

Bank of America to release those funds had it known that Trimble had \$225,000 cash in his possession and had transferred \$250,000 of customer funds to his wife. (Doc 24)

8. In his accounting that he filed with the court, Trimble did not disclose that he owned or controlled the \$475,000; the transfers of the funds to Denise McGinnis, Nancy Trimble or the \$19,000 he transferred to Kathleen Herrera, his mother; the \$225,000 cash that Denise McGinnis returned to him; or the fact that Denise McGinnis, Nancy Trimble and Kathleen Herrera still hold the property of PCM. (Doc. 21)

9. Counsel for the Plaintiff has subsequently brought this matter to the attention of defense counsel and requested the return of the customer funds.

10. On April 29, Trimble gave the Receiver \$350,000 cash and a check for \$100,000. In regard to the remaining funds, Trimble through counsel has stated: he gave Denise McGinnis \$25,000 for advance child support; and that he has used \$7,000 to \$7,500 to pay his living expenses for March and April, 2009. Trimble also asserted that he is currently retaining \$10,000 for future living expenses.

11. Trimble claims that he is “legally bound to provide for his minor children and regardless has living expenses even if no funds are agreed to by [the CFTC].”

12. Trimble has not sought to have his child support obligations revised in light of his current financial situation or to seek meaningful employment, instead he seeks to support his children with the money of his victims.

13. Trimble knew at all times that all funds under his control were frozen by this court’s restraining order and preliminary injunction. However, rather than risk having his petitions for living expenses denied or reduced, he chose to engage in self-help by deciding for himself what are reasonable amounts to continue his current lifestyle.

Wherefore, the CFTC requests that the Court sent a briefing schedule on this motion, granting the Defendant 7 days to file a response to this Motion for Rule to Show Cause and granting the Plaintiff 3 days in which to reply. In addition, the Plaintiff requests that this matter be set for hearing at the Court’s earliest convenience.

Date: May 8, 2009

Respectfully submitted,

s/ Rosemary Hollinger

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