

FILED IN CLERK'S OFFICE
U.S.D.C. - ~~Atlanta~~

ATLANTA

MAY 22 2002

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

LUTHER S. THOMAS, Clerk
By: *[Signature]* Deputy Clerk

COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

vs.

Advent Capital Partners, Ltd.
and Samuel Daley,

Defendants.

Civil Action No. 1:02-CV-1381

Ex Parte Statutory
Restraining Order And Order
Granting Leave to Take
Expedited Discovery

Plaintiff, the Commodity Futures Trading Commission ("Commission"), has filed a Complaint for permanent injunction and other relief, and moved pursuant to Section 6c of the Commodity Exchange Act, as amended (the "Act"), 7 U.S.C. § 13a-1 (1994), for a statutory restraining Order freezing the assets of the Defendants, prohibiting Defendants from destroying any business records, books or documents and granting leave to take expedited discovery. The Court has considered the pleadings, declarations, exhibits, and memorandum filed in support of the Commission's motion. As it appears to the Court that the Court has jurisdiction over the subject matter of this case, that Section 6c of the Act, 7 U.S.C. § 13a-1, authorizes ex parte relief, that there is good cause to

believe that Defendants have engaged in, are engaging in or are about to engage in violations of the Act, and that this is a proper case for granting an ex parte statutory restraining Order to preserve the status quo, protect public customers from loss and damage, and enable the Commission to fulfill its statutory duties, the Court orders as follows:

DEFINITIONS

For the purposes of this Order, the following definitions apply:

1. The term "document" is synonymous in meaning and equal in scope to the usage of the term in Federal Rule of Civil Procedure 34(a), and includes, but is not limited to, writings, drawings, graphs, charts, photographs, audio and video recordings, computer records, and other data compilations from which information can be obtained and translated, if necessary, through detection devices into reasonably usable form. A draft or non-identical copy is a separate document within the meaning of the term.

2. "Defendants" mean Advent Capital Partners, Ltd., a corporation located in Atlanta, Georgia, and Samuel Daley, an individual residing in Lithonia, Georgia.

RELIEF GRANTED**I.****Asset Freeze**

IT IS HEREBY ORDERED that the Defendants and all persons or entities who receive notice of this Order by personal service or otherwise, except as otherwise ordered by this Court, are restrained and enjoined from directly or indirectly:

- A. transferring, selling, alienating, liquidating, encumbering, pledging, leasing, loaning, assigning, concealing, dissipating, converting, withdrawing, or otherwise disposing of any assets in which Defendants have an interest, including without limitation Advent Capital Partners, Ltd., and assets held outside the United States, except as provided in Paragraph V of this Order, or as otherwise ordered by the Court; and
- B. opening or causing to be opened any safe deposit boxes titled in the name of, or subject to access by, the Defendants.

II.***Maintenance of and Access to Business Records***

IT IS HEREBY ORDERED that the Defendants and all persons or entities who receive notice of this Order by personal service or otherwise, are restrained and enjoined from directly or indirectly destroying, mutilating, erasing, altering, concealing or disposing of, in any

manner, directly or indirectly, any documents that relate to the business practices or business or personal finances of Defendants, their agents, attorneys, partners, servants, representatives, employees, attorneys, any person(s) acting or purporting to act for or on their behalf, and corporate and partnership entities in which Defendants have an interest, including Advent Capital Partners, Ltd.

III.

Inspection and Copying of Books and Records

IT IS FURTHER ORDERED that representatives of the Commission be immediately allowed to inspect the books, records, and other documents of the Defendants, their agents, attorneys, partners, servants, representatives, employees, any person(s) acting or purporting to act for or on their behalf, and corporate and partnership entities in which Defendants have an interest, including Advent Capital Partners, Ltd., including, but not limited to, electronically stored data, tape recordings, and computer discs, wherever they may be situated and whether they are in the possession of the Defendants or others, and to copy said documents, data and records, either on or off the premises where they may be situated.

IV.

Directives to Financial Institutions and Others

IT IS FURTHER ORDERED, pending further Order of this Court, that any financial or brokerage institution, business entity, or person, that holds, controls, or maintains custody of any account or asset, or at any time since December 21, 2000, has held, controlled, or maintained custody of any account or asset of the Defendants shall:

- A. Prohibit Defendants and all other persons from withdrawing, removing, assigning, transferring, pledging, encumbering, disbursing, dissipating, converting, selling or otherwise disposing of any such asset except as directed by further order of the Court.
- B. Deny Defendants and all other persons access to any safe deposit box that is:
 1. titled in the name of the Defendants either individually or jointly; or
 2. otherwise subject to access by the Defendants.
- C. Provide counsel for the Commission, within five (5) business days of receiving a copy of this Order, a statement setting forth:

1. the identification number of each and every account or asset titled in the name, individually or jointly, of , or held on behalf of, or for the benefit of, the Defendants;
 2. the balance of each such account, or a description of the nature and value of such asset as of the close of business on the day on which this Order is served, and, if the account or other asset has been closed or removed, the date closed or removed, the total funds removed in order to close the account, and the name of the person or entity to whom such account or other asset was remitted; and
 3. the identification of any safe deposit box that is either titled in the name, individually or jointly, of the Defendants. or is otherwise subject to access by the Defendants.
- D. Upon request by the Commission, promptly provide the Commission with copies of all records or other documentation pertaining to such account or asset, including, but not limited to, originals or copies of account applications, account statements, signature cards, checks, drafts, deposit tickets, transfers to and from the

accounts, all other debit and credit instruments or slips, currency transaction reports, 1099 forms, and safe deposit box logs.

V.

Accounting

IT IS FURTHER ORDERED that within five (5) business days following the service of this Order, Defendants shall:

- A. Provide the Commission with a full accounting of all funds and assets both within and outside of the United States which are held by them, on their behalf, or under their direct or indirect control, whether jointly or singly, or in which they have an interest, including those of Advent Capital Partners, Ltd.;
- B. Provide the Commission with full access to and permit copying of all documents both within and outside of the United States which are held by Defendants, on their behalf, or under their direct or indirect control, or relate to a corporate or partnership entity in which they have an interest, including Advent Capital Partners, Ltd.;
- C. Transfer to the territory of the United States all funds, documents, and assets located in foreign countries which are held by Defendants, for their benefit, or under their direct or

- indirect control, whether jointly or singly, including those of Advent Capital Partners, Ltd.;
- D. Provide the Commission access to all records of the Defendants held by financial institutions located both within and outside the territorial United States by signing a Consent to Release of Financial Records; and
- E. Provide the Commission with a complete customer list, including, without limitation, the names, addresses and telephone numbers of all persons who transferred funds to Defendants from December 21, 2000 to the present.

VI.

Expedited Discovery

IT IS FURTHER ORDERED that the parties are granted leave, at any time after service of this Order, to take the deposition of and demand the production of documents from any person or entity for the purpose of discovering information pertaining to the assets, business transactions or business records of the Defendants; forty-eight (48) hours notice shall be deemed sufficient for any such deposition and five (5) days notice shall be deemed sufficient for the production of any such documents. The limitations and conditions set forth in Federal Rule of Civil Procedure 30(a)(2)(B) regarding subsequent depositions of an individual shall not apply to depositions

taken pursuant to this Paragraph. Nor shall any depositions taken pursuant to this Paragraph count towards the ten deposition limit set forth in Federal Rule of Civil Procedure 30(a)(2)(A).

VII.

Service of Order

IT IS FURTHER ORDERED that copies of this Order may be served by any means, including facsimile transmission, upon any entity or person that may have possession, custody, or control of any documents or assets of the Defendants or that may be subject to any provision of this Order, and, additionally, that representatives of the Commission, are specially appointed by the Court to effect service. Service of the summons, Complaint or other process may be effected by U.S. Marshal or deputy U.S. Marshal, or in accordance with Federal Rule Civil Procedure 4.

VIII.

Order to Show Cause

IT IS FURTHER ORDERED that the Defendants shall appear before this Court on the 3rd day of June 2002, at 3:30 p.m., before the Honorable Richard W. Story at the United States Courthouse for the Northern District of Georgia at Atlanta, Georgia to show cause why this Court should not

enter a Preliminary Injunction enjoining Defendants from further violations of the Act, and ordering any additional relief this Court deems appropriate. Should any party wish to file a memorandum of law or other papers concerning the issuance of a Preliminary Injunction against the Defendants, such materials shall be filed, served and received by all parties at least two (2) days before the hearing ordered above.

IX.

Force and Effect

IT IS FURTHER ORDERED that this Order shall remain in full force and effect until further order of this Court, and that this Court retains jurisdiction of this matter for all purposes.

SO ORDERED, at Atlanta, Georgia on this 22nd day of May, 2002, at 4:00 p.m.


UNITED STATES DISTRICT JUDGE