

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

U. S. COMMODITY FUTURES
TRADING COMMISSION,

Plaintiff,

vs.

MATTHEW J. MARCUS,
TECH POWER INC.,
JOHN D. BRINER, and
METROWEST LAW CORP.,

Defendants.

Civil Action No:

Judge

~~PROPOSED~~ **EX PARTE STATUTORY RESTRAINING ORDER
AND ASSET FREEZE**

Plaintiff, the U.S. Commodity Futures Trading Commission (“Commission” or “CFTC”), has filed a Complaint for Injunctive and Other Equitable Relief and Civil Monetary Penalties under the Commodity Exchange Act and moved, pursuant to Section 6c(a) of the Commodity Exchange Act (the “Act”), for an *ex parte* statutory restraining order freezing assets, and prohibiting the destruction of books, records, or other documents. This Court has considered the pleadings, declarations, exhibits, and memorandum filed in support of the Commission’s Motion for *Ex Parte* Statutory Restraining Order (“SRO”) and finds that:

1. This Court has jurisdiction over the parties and over the subject matter of this action pursuant to Sections 2(c)(2) and 6c of the Act, 7 U.S.C. §§ 2(c)(2) and 13a-1 (2012) which authorizes the Commission to seek injunctive relief against any person whenever it shall appear that such person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of any provision of the Act or any rule, regulation or order thereunder.

2. Venue lies properly within this District pursuant to Section 6c(e) of the Act, 7 U.S.C. §13a-1(e) (2012), in that the Defendants are found, inhabit, or transact business in this District, or the acts and practices in violation of the Act have occurred, are occurring or are about to occur within this District.

3. There is good cause to believe that Defendants have engaged in, are engaging in, or are about to engage in violations of 7 U.S.C. § 6c(a) (2012) and 17 C.F.R. § 1.38(a) (2014). Weighing the equities and considering the Commission's likelihood of success in its claims for relief, the issuance of an SRO is in the public interest.

4. There is good cause for the Court to freeze certain assets owned, controlled, managed, or held by or on behalf of, or for the benefit of Defendants. Absent the entry of this statutory restraining order, Defendants are likely to dissipate or transfer assets and destroy business records.

5. There is good cause for entry of an order prohibiting Defendants, their agents, servants, employees, assigns, attorneys, and persons in active concert or participation with Defendants, including any successor thereof, from destroying records and/or denying agents of the Commission access to inspect and copy records to ensure that Commission representatives have immediate and complete access to those books and records.

6. There is good cause to believe that immediate and irreparable damage to the Court's ability to grant effective final relief in the form of monetary redress will occur from the sale, transfer, assignment, or other disposition by Defendants of assets or records unless Defendants are immediately restrained and enjoined by Order of the Court.

7. This is a proper case for granting an *ex parte* statutory restraining order to preserve the status quo and enable the Commission to fulfill its statutory duties.

DEFINITIONS

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

8. "Assets" means any legal or equitable interest in, right to, or claim to, any real or personal property, whether individually or jointly, directly or indirectly controlled, and wherever located, including but not limited to: chattels, goods, instruments, equipment, fixtures, general intangibles, effects, leaseholds mail or other deliveries, inventory, checks, notes, accounts (including, but not limited to, bank accounts and accounts at other financial institutions), credits, receivables, lines of credit, contracts (including spot, futures, options, or swaps contracts), insurance policies, and all cash, wherever located, whether in the United States or outside the United States.

9. "Document" is synonymous in meaning and equal in scope to the usage of the term in Federal Rule of Civil Procedure ("Fed. R. Civ. P.") 34(a), and includes, but is not limited to, all writings or printed matter of any kind, including without limitation: records, correspondence, memoranda, notes, rolodexes, address books, diaries, statistics, e-mail, letters, telegrams, minutes, contracts, reports, studies, checks, statements, receipts, returns, summaries, pamphlets, books, prospectuses, interoffice or intra-office communications, telephone message slips, offers, notations of conversations, bulletins, drawings, plans, computer printouts, computer input or output, teletypes, facsimiles, invoices, worksheets, ledger books, books of accounts, and all drafts, alterations, modifications, changes and amendments of any of the foregoing. The term "document" also includes graphs, charts, photographs, phonographic record, audio and video recordings, computer records, meta data, and other data compilations from which information can be obtained or translated, if necessary, through detection devices into reasonable usable form. The term "document" also refers to each and every document in your actual or

constructive possession, including but not limited to: (i) all documents within your custody or control of any of your present or former agents, employers, employees, partners, and (ii) all documents which you have a legal or equitable right to obtain from another person. A draft or non-identical copy is a separate document within the meaning of the term. A document also includes the file and folder tabs associated with each original and copy.

10. “Defendants” refers to Matthew J. Marcus, Tech Power, Inc., John D. Briner, and MetroWest Law Corporation and any person insofar as they are acting in the capacity of an officer, agent servant, employee, or attorney of Defendants and any person who receives actual notice of this Order by personal service or otherwise insofar as he or she is acting in concert or participation with Defendants.

11. “Trading and Associated Accounts” refers to Defendants’ futures trading accounts held at Interactive Brokers, account number XXXX0560 in the name of Tech Power, Inc. and account number XXXX7543 in the name of MetroWest Law Corporation, as well as any other of Defendants’ account(s) that received funds as a result of the unlawful conduct.

RELIEF GRANTED

I. Asset Freeze

IT IS HEREBY ORDERED that Defendants and their agents, servants, employees, assigns, attorneys, and person in active concert or participation with them, including any successor thereof, and persons in active concert or participation with them, who receive actual notice of this Order by personal service or otherwise, are immediately restrained and enjoined, except as otherwise ordered by this Court, from directly or indirectly transferring, selling, alienating, liquidating, encumbering, pledging, leasing, loaning, assigning, concealing, dissipating, converting, withdrawing, or otherwise disposing of any assets in the Trading and

Associated Accounts, wherever located, including any assets held outside the United States.

II. Identification and Preservation of Assets

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 assets in the Trading and Associated Accounts, or has held, controlled, or maintained custody of any such account or asset of Defendant, 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; provided, however, that any compliance official of any futures commission merchant at which Defendants maintain accounts shall have the authority and discretion to liquidate or close out any and all open commodity futures contracts or open commodity futures options positions in Defendants' accounts in a prompt and orderly fashion; and

B. Provide counsel for the Commission within 5 (five) business days of receiving a copy of this Order, a statement setting forth:

(1) the identification number of each account or asset titled in the name, individually or jointly, of any Defendant or held on behalf of, or for the benefit of, Defendant or under the control of Defendant; and

(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, the name of the person or entity to whom such account or other asset was remitted; and

C. 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, trading records, 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; and

D. Cooperate with all reasonable requests of the Commission relating to implementation of this Order.

III. Maintenance of, and Access to, Business Records

IT IS FURTHER ORDERED that 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 finances of Defendants Tech Power Inc. or MetroWest Law Corporation.

IV. Commission's Access to, and Inspection of, Documents

IT IS FURTHER ORDERED that representatives of the Commission be immediately allowed to inspect the books, records, and other documents of Defendants and their agents including, but not limited to, paper documents, electronically stored data, tape recordings, and computer discs, wherever they may be situated and whether they are in the possession of any Defendant or others, and to copy said documents, data and records, either on or off the premises where they may be situated.

Upon request of the Commission, Defendants are ordered to deliver to the Commission documents of the Defendants, including but not limited to all books and records of accounts, all financial and accounting records, balance sheets, income statements, bank records (including

monthly statements, cancelled checks, records of wire transfers, and check registers), lists of all customers or investors, title documents, other papers, all keys, computer passwords, entry codes, and combinations to locks necessary to gain or to secure access to any of the assets or documents of Defendants, including but not limited to, access to Defendants' business premises, means of communication, accounts, computer systems, or other property and information identifying the accounts, employees, properties, or other assets or obligations of the Defendants.

V. Service of Order

IT IS FURTHER ORDERED that copies of this Order may be served by any means including e-mail, facsimile transmission, the means described in 17 C.F.R. § 15.05 (2014), or a private express courier service, upon any Defendant or other entity or person that may have possession, custody, or control of any documents or assets of any Defendant or that may be subject to any provision of this Order.

VI. Service on the Commission

IT IS FURTHER ORDERED that Defendants shall serve all pleadings, correspondence, notices required by this Order, and other materials on the Commission by delivering a copy to Lindsey Evans or Diane Romaniuk, Senior Trial Attorney, Division of Enforcement, U.S. Commodity Futures Trading Commission, 525 W. Monroe, Suite 1100, Chicago IL 60661 by personal delivery or courier service (such as Federal Express or United Parcel Service) and not by regular mail.

VII. Bond Not Required of Plaintiff

IT IS FURTHER ORDERED that Plaintiff Commission is an agency of the United States of America and, accordingly, no bond need be posted by the Commission.

VIII. Further Court Hearings and Filing Deadline

IT IS FURTHER ORDERED that the parties shall appear for a status hearing on

April 28, 2015, at 9 o'clock.

IT IS FURTHER ORDERED that should any party wish to file a memorandum of law or other papers in opposition to the Motion for Preliminary Injunction, all papers shall be filed and served on or before April 24, 2015.

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~~**IT IS FURTHER ORDERED** that Plaintiff's Motion for a Preliminary Injunction is set for hearing on _____, 2015 at _____ o'clock.~~

IX. Force and Effect of Order

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 Chicago, Illinois on this 16 day of April, 2015.



UNITED STATES DISTRICT JUDGE