

IN THE UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF MINNESOTA

COMMODITY FUTURES TRADING COMMISSION

Plaintiff,

v.

SOVEREIGN RESOURCE MANAGEMENT, INC.,  
KEN MITRA,  
VIRGIL E. SMITH, individually and d/b/a Maximus  
Capital Consultants; and  
ANTHONY J. HEPPNER, individually and d/b/a  
J.T. Investments,

Defendants.

Civil Action No.  
02-CV-1783MJD/JGL

Honorable Michael J. Davis

**PLAINTIFF'S MOTION TO RE-OPEN PROCEEDINGS AGAINST DEFENDANT  
HEPPNER AND TO MODIFY PREVIOUS ASSET FREEZE ORDER TO PERMIT THE  
RELEASE OF FUNDS FOR THE PAYMENT OF RESTITUTION**

Plaintiff, Commodity Futures Trading Commission (the "Commission" or the "CFTC") hereby moves this Court to re-open these proceedings against defendant, Anthony J. Heppner ("Heppner") and to modify a previous asset freeze Order entered by this Court to permit the release of funds to pay restitution to Heppner's victims. In support of this motion, plaintiff states as follows:

1. On May 12, 2003, this Court entered an Order permitting the transfer of certain real estate, namely the property commonly known as 221 County Road 86, Theilman, Wabasha County, Minnesota, 55945 ("subject property") which was, at that time, owned by defendant Heppner, subject to certain conditions. [Exhibit 1] Specifically, although a transfer of the subject property was subject to a prior asset freeze imposed by the Court, an exception was made on that

date permitting AgStar Financial Services, F.L.C.A. ("AgStar"), Heppner's mortgage company for the subject property, to sell the property to recover Heppner's unpaid mortgage balance.

2. The sale of the subject real estate had not been completed by the time of this Court's entry of a Permanent Injunction on December 5, 2005 against Heppner. [Exhibit 2]

3. The Order entered on December 5, 2005, specified that this Court would retain jurisdiction of this cause to assure compliance with the Order. Although Heppner had filed an appeal to the 8<sup>th</sup> Circuit of the summary judgment Order entered on December 5, 2005, that appeal was dismissed and the Mandate was ordered to issue on June 28, 2006.

4. The Permanent Injunction Order [Exhibit 2] required Heppner to pay restitution of \$228,028 to specific persons and in specific amounts identified on Schedule A to the Permanent Injunction Order, which was filed under seal with the Court.

5. To date, Heppner has not made any payments to reduce the amount of restitution owed to his victims.

6. Plaintiff was notified some months ago by AgStar that they had successfully completed the sale of Heppner's real estate and that the sum of \$209,127.10 was available for distribution as "Excess Funds" after the closing. [Exhibit 3] These funds, therefore, are available to reduce Heppner's restitution obligation.

7. However, certain of the individuals on Heppner's list of victims (on Schedule A, under seal), have already received a partial payment of restitution from Heppner's co-defendant in this matter, Ken Mitra ("Mitra"). Mitra made a partial payment of restitution to victims of the Sovereign Resource Management, Inc. ("Sovereign") commodity pool fraud scheme pursuant to a criminal plea agreement that had been reached with the U.S. Department of Justice. (*USA v.*

*Mitra*, D.Ct. Minn., Case No. 04-cr-00225) As such, the payments made by Mitra reduced the net amounts owing to some of Heppner's victims who were entitled to restitution.

8. After the plaintiff received notification from AgStar that it had "Excess Funds" available for distribution after the pay-off of Heppner's mortgage and AgStar's expenses in connection with the sale of the subject property, the plaintiff contacted the U.S. Department of Justice and confirmed the amounts of restitution payments that have been made by Mitra to specific Sovereign victims. As a consequence, the plaintiff was able to modify the Schedule A previously filed (under seal), to reflect the current debt owed by Heppner to his victims after reducing the amounts to reflect payments already made by Mitra to these same victims. The revised schedule is designated as Exhibit B and is filed herein under seal.

9. Due to the Court's May 12, 2003 Order placing certain restrictions on the distribution of proceeds from the sale of the subject property, the plaintiff is seeking approval for the payment of the "Excess Proceeds" amount reflected in Exhibit 3, namely \$209,127.10, to be paid to the National Futures Association ("NFA"), as set forth on page 14, paragraph 1 of the Permanent Injunction Order [Exhibit 2], and that these funds shall then be distributed by the NFA pursuant to the revised schedule for restitution to Heppner's victims set forth in Exhibit B (filed under seal).

WHEREFORE, plaintiff respectfully requests that this Court enter the proposed Order re-opening these proceedings as against defendant Heppner and modifying the previous asset freeze Order to permit the release of funds from the sale of Heppner's real estate by AgStar for payment to Heppner's restitution victims by the NFA pursuant to the schedule set forth in Exhibit B.

Dated: August 30, 2007

Robyn Millenacker  
Attorney Registration No. 0214735  
Assistant United States Attorney  
600 U.S. Courthouse  
300 South Fourth Street  
Minneapolis, MN 55415  
Telephone: (612) 664-5600  
FAX: (612) 6645788  
  
Local counsel for Plaintiff,  
Commodity Futures Trading Commission

Respectfully submitted,

/s/ Susan B. Padove  
Senior Trial Attorney  
Division of Enforcement

525 W. Monroe Street  
Suite 1100  
Chicago, Illinois 60661  
Telephone: (312) 596-0544  
FAX: (312) 596-0714  
e-mail: [spadove@cftc.gov](mailto:spadove@cftc.gov)  
Illinois ARDC No. 3127019  
Indiana Attorney No. 11477-98