

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO**

COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

v.

DAREN L. PALMER and TRIGON GROUP,
INC.,

Defendants.

CIVIL ACTION NO.: 1:09-cv-00076-EJL

MOTION TO SHOW CAUSE AS TO
DEFENDANT DAREN L. PALMER

I.

MOTION

Plaintiff Commodity Futures Trading Commission (“Commission”) and Court-Appointed Receiver Wayne Klein (“Receiver”) move the Court for an order requiring Defendant Daren L. Palmer (“Palmer”) to show cause why his is not in contempt of the Court’s February 26, 2009 Order Granting Motion For Statutory Restraining Order, For Expedited Discovery And Order To Show Cause Re: Preliminary Injunction, and why the Court should not issue and order of contempt, immediate compliance and sanctions against Palmer. In support of this motion, the Commission states as follows:

A. BACKGROUND

1. On February 26, 2009, the Commission filed its complaint against the Defendants in this action seeking injunctive and other equitable relief for violations of the Commodity Exchange Act, as amended, 7 U.S.C. § 1 *et seq.* Docket Entry “D.E.” #1. On that same day this Court entered the SRO. D.E. #5.

2. On May 28, 2009, the Court Entered a Consent Order of Preliminary Injunction with Asset Freeze, which, among other things, continued the full force and effect of the SRO pending further order of the Court. D.E. #14

3. The SRO states that "Defendants" means:

Daren L. Palmer and Trigon Group, Inc. and for all parties includes any person insofar as he or she is acting in the capacity of an officer, agent, servant, employee, or attorney of the 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.

4. Palmer is a founder and registered agent of Trigon Group, Inc. Palmer was served with the Complaint and SRO on March 5, 2009, via his attorney Mitchell Barker. As a named Defendant Palmer is subject to the SRO and is required to comply with the SRO.

B. PROVISIONS OF THE SRO THAT WERE VIOLATED

5. Part I of the SRO specifically provided that the Defendants are prohibited from directly or indirectly:

transferring, selling, alienating, liquidating, encumbering, pledging, leasing, loaning, assigning, concealing, dissipating, converting, withdrawing, or otherwise disposing of any assets, including those held in the name of Defendants, wherever located, including assets held outside the United States . . . The assets affected by this paragraph shall include both existing assets and assets acquired after the effective date of this Order.

6. Part III of the SRO mandated that within five business days following service of the order, Defendants were to provide the Commission with a full accounting of all Defendants' funds, documents, and assets including those outside of the United States; transfer such funds, documents, and assets to the United States; and provide the Commission access to all records of the Defendants held by financial institutions located outside the territorial United States by signing the Consent to Release of Financial Records attached to this Order.

7. Part IV of the SRO sets forth provisions relating to the appointment of the Receiver. Section C of Part IV of the SRO provides that upon service of the SRO, the Defendants and any other person or entity served with a copy of the SRO, shall immediately or within such time as permitted by the Receiver in writing, deliver over to the Receiver:

- a. Possession and custody of all funds, property, and other assets, owned beneficially or otherwise, wherever situated, of the Defendants, including but not limited to those of Trigon, Inc., Blackrock Limited, LLC, Palmer Trading and Investments, LLC, and Pinnacle Company, LLC;
- b. Possession and custody of 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, canceled checks, records of wire transfers, and check registers), client lists, title documents and other papers;
- c. Possession and custody of all precious metals, other commodities, funds, and other assets being held by or on behalf of the Defendants or on behalf of the Defendants' customers, clients, pool participants or investors;
- d. 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 the Defendants, including but not limited to, access to the Defendants' residential and business premises, means of communication, accounts, computer systems, or other property; and
- e. Information identifying the accounts, employees, properties or other assets or obligations of the Defendants.

Section D of Part IV of the SRO provides that:

The Defendants and all other persons or entities served with a copy of this order shall cooperate fully with and assist the Receiver. This cooperation and assistance shall include, but not be limited to, providing any information to the Receiver that the Receiver deems necessary to exercising the authority...

C. VIOLATIONS BY PALMER

8. As described in detail in the Memorandum of Law filed in support of this Motion and the Affidavits submitted contemporaneously herewith, Defendant Palmer continues to engage in a game of deception and concealment with the Commission and Receiver. For

example, in a deposition taken pursuant to Part VII of the SRO, Palmer concealed the fact that he had pursued a refund of unused funds from an audio/video design firm, Sight & Sound LLC, and accepted payment from that firm in the form of real property, which he assigned to an LLC controlled by a personal friend of his, Stanley Mills. Palmer then used that property as collateral for a \$62,000 loan of which he directed all the proceeds. This assignation of property and the subsequent loan were both concluded after the SRO was filed. Additionally, Palmer redeemed shares he possessed in a real estate investment trust ("REIT") by forging his wife's name on a redemption form. Again, this redemption was subsequent to the SRO. At his deposition, Palmer was asked about assets and property transfers. He did not identify the unused funds at Sight & Sound, which were in part paid by Trigon Group, Inc., nor did he identify the REIT that he held in his and his wife's name. Additionally, Palmer denied that he had transferred any property subsequent to February 2008.

9. Palmer has violated Part I of the SRO by concealing assets of the Defendants, such as the Southstone property assigned to Resource Solutions LLC, an real estate investment account ("REIT"), and assorted physical assets stored at a friend's shop. As described in detail in the Memorandum of Law filed in support of this Motion, Palmer has continued to pledge, assign, encumber and/or transfer assets subject to the SRO by entering contracts and agreements on behalf of Trigon and forging his wife's consent.

10. Palmer has violated Part III of the SRO by failing to provide to the Commission or the Receiver the required accounting of all assets wherever located, failing to provide the Commission and Receiver a full customer list.

11. Palmer has violated Part IV of the SRO, by failing to provide the Receiver with possession and custody of all assets and documents of the Defendants, and by failing to

cooperate fully with and assist the Receiver, in particular by concealing and/or withholding material information and documents from the Receiver.

12. Palmer's conduct has undermined the Receiver's obligations under the SRO to locate and marshal assets and documents of the Defendants and has caused the Receiver unnecessary trouble and expense. The Commission and the Receiver are fearful that there may be additional assets and activities that are being concealed by Palmer. Palmer's pattern of cooperating and acknowledging material information only after it is learned by the Commission and/or Receiver from other sources needs to cease.

D. RELIEF REQUESTED

13. Defendant Palmer as co-founder and agent of Defendant Trigon, has violated, and is violating, this Court's SRO, and will not comply with the SRO unless coerced to do so by this Court. The Commission and Receiver are fearful that Defendant Palmer founder and agent of Defendant Trigon is continuing to conceal assets and may be continuing to conduct business and further pledging, assigning, encumbering, and/or transferring assets subject to the SRO.

14. Plaintiff Commission and the Receiver request that this Court issue an Order requiring Defendant Palmer to show-cause why he is not in civil contempt of the March 5, 2009 SRO, and why this Court should not issue an Order of contempt, immediate compliance and sanctions against Palmer, which would require him to comply with the SRO by immediately identifying and repatriating all assets of the Defendants, wherever located, cooperating with the Commission and Receiver in executing their duties by not withholding and/or concealing information, turning over to the Receiver any assets currently being held or concealed by the Defendants, turning over all records and documents relating to any business being conducted by

the Defendants, and providing Plaintiff and the Receiver with the required accounting under Part III of the SRO.

15. To ensure Defendants' compliance with the contempt order, this Court should impose contingent coercive fines on Palmer and/or order Palmer incarcerated until such time as he complies fully with the SRO. The Court should also order the Defendants to pay Plaintiff the costs and expenses it has incurred in litigation to correct this contemptuous conduct.

WHEREFORE, the Commission and the Receiver respectfully request that this Court enter an order requiring Defendant Palmer to show cause why he is not in contempt of the Court's SRO, and why the Court should not issue an order of contempt, immediate compliance and sanctions against Palmer.

Respectfully submitted:

PLAINTIFF UNITED STATES COMMODITY
FUTURES TRADING COMMISSION

With

RECEIVER, WAYNE KLEIN

By: S/Alison B. Wilson

Alison Wilson

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Dated: August 26, 2009

By: S/Wayne Klein

Wayne Klein

Receiver

wklein@lbfmiami.com

Lewis B. Freeman & Partners, Inc.

299 South Main, Suite 1300

Salt Lake City, UT 84111

CERTIFICATE OF SERVICE

I hereby certify that on August 26, 2009 a true and correct copy of **Plaintiff's and Court-Appointed Receiver's Motion to Show Cause as to Defendant Daren L. Palmer** was served by ECF and US mail, postage pre-paid, on the following persons:

By: S/Alison B. Wilson
Alison B. Wilson