

BEFORE THE
COMMODITY FUTURES TRADING COMMISSION

In the Matter of:)
)
SENTINEL MANAGEMENT GROUP, INC.) NFA Case No. 07-MRA-011
(NFA ID #2526))
)
)

PETITION FOR A STAY OF EFFECTIVE DATE OF A MEMBER RESPONSIBILITY ACTION PENDING A HEARING BY THE NATIONAL FUTURES ASSOCIATION

This is a petition on behalf of Lake Shore Alternative Financial Asset Ltd. (“LSAFA”) for a stay of the effective date of the “Notice of Member Responsibility Action Under NFA Compliance Rule 3-15 (“MRA”) pending a hearing by National Futures Association (“NFA”). LSAFA is an aggrieved party with respect to the MRA within the meaning of CFTC Reg. § 171.41 (a). LSAFA seeks a stay of the following sections of the MRA:

1. Effective immediately, Sentinel is prohibited from liquidating, selling, transferring, encumbering, or otherwise disposing of any securities, investments, or other assets held on behalf of the “Seg III Account” including, but not limited to, those in the custody account at Bank of New York (Account No. 26833-4), as well those held on behalf of the “House Account,” including, but not limited to, those in the custody account at Bank of New York (Account No. 26830-4).
2. Effective immediately, Sentinel is prohibited from distributing, disbursing or transferring any funds, including to existing customers, without the prior approval of NFA.

The stay should be granted as to these sections of the MRA, hereinafter referred to as “asset freeze,” for the following reasons:

1. There is no legal basis for the NFA’s purported asset freeze. The NFA’s MRA states that it is issued pursuant to NFA Rule 3-15. However, Rule 3-15 does not provide any authority to the NFA to institute asset freezes. Rule 3-15 only provides that a member “may be summarily suspended” or “may be required to restrict its operations

(e.g., restrictions on accepting new accounts), or may otherwise be directed to take remedial action, (e.g., may be ordered to immediately infuse additional capital or to maintain its adjusted net capital at a level in excess of its current capital requirement)[.]”

Rule 3-15 does not allow the NFA to implement a freeze on a member’s assets or on anyone else’s assets. Therefore, the NFA’s MRA to Sentinel, which imposes an asset freeze on accounts of Sentinel containing property of LSAFA, and which prohibits transfers to LSAFA without NFA’s approval, has no basis in the rule that the NFA relies on for its authority.

2. Even if the NFA had authority to impose an asset freeze (which it does not), the authority could not be exercised, because it would be a violation of the constitutional protection that a person’s property may not be taken without due process of law. The NFA’s procedure for MRAs involves first a hearing before a panel of NFA members, followed by a possible appeal before an appeals committee of the NFA, and then followed by a lengthy process of appeal before the CFTC before the proceeding can be reviewed by a court. *See* NFA Rule 3-15; 17 C.F.R. § 171.45. A unilaterally imposed asset freeze by the NFA for this lengthy period prior to judicial scrutiny would clearly not pass constitutional muster. As the Seventh Circuit held in the case brought by the CFTC in the Northern District of Illinois against LSAM, an indefinite asset freeze would “pose serious constitutional problems”. *See CFTC v. Lake Shore Asset Management Ltd.*, No. 07-2790, slip op. at 2-3. *See also Grupo Mexicano de Desarrollo, S.A. v. Alliance Bond Fund, Inc.* 527 U.S. 308 (1999).

3. The fact that the Bankruptcy Court has adopted the NFA’s MRA does not undermine this petition, but rather supports it. If a firm is in bankruptcy, the Bankruptcy

Court has adequate powers granted by Congress to protect assets. There is no basis for NFA to independently purport to exercise authority it does not have. Moreover, in the absence of a stay, if an aggrieved party such as LSFAFA were successful in petitioning the Bankruptcy Court to vacate its adoption of the MRA, NFA could nevertheless contend that the MRA remains effective. This is precisely what NFA did when the Seventh Circuit vacated the District Court's restraining order in *CFTC v. Lake Shore Asset Management Limited, supra*. Despite a court order vacating the restraining order, NFA took the position that assets could not be distributed without its approval, based solely on the MRA.

4. The lack of NFA's authority to freeze assets, and the CFTC's lack of authority to grant this power to NFA, is readily apparent by comparing the NFA's MRA with the CFTC's own authority. The CFTC cannot obtain an asset freeze without a court order, and cannot even enforce a subpoena without a court order. *See* Commodity Exchange Act, Sections 6(c), 6c. There is no basis for the CFTC to grant the NFA authority to freeze assets when the CFTC lacks authority to do so itself.

5. LSFAFA is an aggrieved party with respect to the MRA. The NFA's MRA against LSAM caused irreparable harm to LSFAFA by preventing it from withdrawing assets from Sentinel prior to Sentinel's bankruptcy. The MRA against Sentinel is irreparably harming LSFAFA because it is preventing LSFAFA from having access to its own assets, subject to any orders of the Bankruptcy Court. *See* Declaration of Philip Baker.

6. The factors listed in CFTC Reg. § 171.41(d) in support of a stay are all present as follows:

(1) It is not consistent with fundamental fairness for NFA to seize property and hold on to it pending a hearing. *See Grupo, supra.*

(2) Irreparable harm is resulting and will continue to result. (*See Declaration of Philip Baker*).

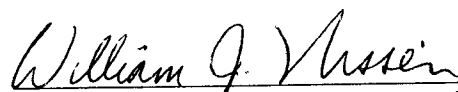
(3) A grant of the stay would promote the interests of NFA because it would prevent NFA from engaging in an unlawful and unconstitutional seizure of property.

(4) A grant of the stay would promote the public interest because it would require the NFA to comply with its own rule and the constitutional protection against deprivation of property without due process.

Wherefore, petitioner requests that the Commission grant the stay.

Date: August 21, 2007

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DECLARATION OF PHILIP BAKER

Philip Baker declares as follows:

1. I am Managing Partner, Lake Shore Group of Companies Inc. Ltd. ("LSGC").
2. One of the companies associated with LSGC is Lake Shore Alternative Financial Asset Ltd. ("LSAFA"), a corporation organized in the Turks and Caicos Islands.
3. LSAFA maintains accounts (the "Accounts") with Sentinel Management Group, Inc. ("Sentinel"), and I am one of the persons authorized to order transfers of funds from the Accounts.
4. As a result of a restraining order entered in *CFTC v. Lake Shore Asset Management Limited*, No. 07 C 3598, by the U.S. District Court for the Northern District of Illinois against Lake Shore Asset Management Limited ("LSAM") on June 27, 2007, and extended on July 13, 2007, Sentinel declined to accept instructions from me with respect to the LSAFA accounts while that order was in effect. LSAM is a company associated with LSGC, and is separate and distinct from LSAFA. Each company has its own board of directors. The U.S. Court of Appeals for the Seventh Circuit vacated the restraining order on August 2, 2007.
5. Following the vacating of the restraining order, Sentinel again declined to accept instructions from me with respect to the LSAFA accounts. The reason given by Sentinel was that the Member Responsibility Action ("MRA") of National Futures Association ("NFA") in NFA Case No. 07-MRA-007, against LSAM, prevented Sentinel from accepting my instructions. LSAM has moved the CFTC to stay the asset freeze portion of the NFA's MRA in 07-MRA-007, and that matter has been docketed by the CFTC as CFTC Docket No. CRAA 07-02.
6. I understand that on August 17, 2007, Sentinel filed for bankruptcy in the U.S. Bankruptcy Court for the Northern District of Illinois.

7. I have received a copy of an MRA issued by the NFA against Sentinel, No. 07-MRA-011, dated August 17, 2007. This MRA prohibits Sentinel, among other things, from distributing funds to its customers without prior approval of NFA.

8. The MRA against LSAM has caused irreparable harm to LSAFA because it prevented LSAFA from accessing its assets at Sentinel prior to the bankruptcy of Sentinel. The MRA against Sentinel is also irreparably harming LSAFA because it means that even if LSAFA is successful in obtaining bankruptcy court approval for access to its assets at Sentinel, it will nevertheless not be granted access to its own assets by Sentinel in the absence of obtaining approval from NFA.

9. LSAFA is not a member of NFA.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on:

Date

August 21/07


Philip Baker

CERTIFICATE OF SERVICE

I, William J. Nissen, an attorney, hereby certify that I have served copies of the foregoing upon the following on August 21, 2007.

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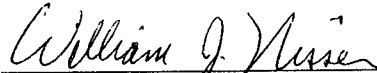
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