

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

U.S. COMMODITY FUTURES TRADING
COMMISSION,

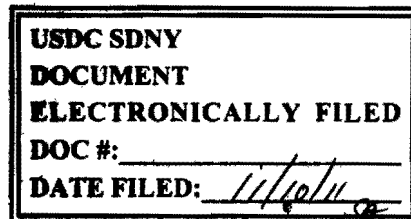
Plaintiff,

v.

PARAGON FX ENTERPRISES, LLC, a
New York corporation,

Defendant.

CASE NO. 1:11-CV-07740-PAE



~~PROPOSED~~ STATUTORY RESTRAINING ORDER AGAINST DEFENDANT
PARAGON FX ENTERPRISES, LLC IMPOSING PARTIAL ASSET
FREEZE AND APPOINTING TEMPORARY RECEIVER TO TAKE
CONTROL OF CERTAIN OF DEFENDANT'S ASSETS

On October 31, 2011, Plaintiff, U.S. Commodity Futures Trading Commission (the "Commission" or "CFTC"), filed a complaint for injunctive and other relief, and moved *ex parte*, pursuant to Section 6c of the Commodity Exchange Act, as amended (the "Act"), 7 U.S.C. § 13a-1(a)(2006), for a statutory restraining order ("SRO") prohibiting the destruction of books, records, or other documents. Plaintiff also moved for a statutory restraining order, on notice, freezing \$856,468 in pool participant funds held by Defendant Paragon FX and related to Paragon FX's conduct as an unregistered entity (hereafter referred to as "Interpleaded Funds"),¹ and providing for the appointment of a temporary receiver to take control of such funds.

¹ Paragon FX filed an interpleader action in this District Court regarding \$856,468 in funds belonging to ProfitStars Int'l Corp. pool participants. See First Amended Complaint in *Paragon FX Enterprises, LLC v. ProfitStars Int'l Corp.*, 11 Civ. 5483 (S.D.N.Y. Aug. 10, 2011). Paragon FX represents that it has distributed \$15.4 million to ProfitStars pool participants but is still holding \$856,468 in pool participant funds. See First Amended Complaint at ¶ 4.

On October 31, 2011, the Court issued an *ex parte* SRO regarding Defendant Paragon FX's books and records and an order to show cause why a statutory restraining order should not be entered against Defendant Paragon FX.

On November 8, 2011, the Court held a hearing to show cause why a statutory restraining order should not be entered against Defendant Paragon FX, freezing the \$856,468 in Interpleaded Funds and appointing a temporary receiver to take control of such funds.

The Court, having considered the pleadings, declarations, exhibits, memorandum filed in support of the Commission's Motion, opposition papers submitted by Paragon FX, and the Court having heard oral argument on November 8, 2011, now, being fully advised, finds that:

1. This Court has jurisdiction over the parties and over the subject matter of this action pursuant to Section 6c of the Commodity Exchange Act (the "Act"), as amended by the Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, Title XII (the CFTC Reauthorization Act of 2008 ("CRA")) § 13101-13204, 122 Stat. 1651 (enacted June 18, 2008), to be codified at 7 U.S.C. § 13a-1, and Section 2(c)(2) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 2(c)(2);

2. Venue lies properly within this District pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2006);

3. There is good cause to believe that Defendant Paragon FX has engaged, is engaging, and is about to engage in acts and practices constituting violations of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 1, *et seq.*;

4. Good cause exists for the freezing of the \$856,468 in Interpleaded Funds currently held by Defendant;

5. Good cause exists for the appointment of a Temporary Receiver to assume custody and control of the \$856,468 in Interpleaded Funds;

6. Good cause exists to require an accounting to determine how Paragon FX handled ProfitStars pool participants' funds, including \$856,468 in Interpleaded Funds now being held by Paragon FX; and

7. Weighing the equities and considering the Commission's likelihood of success in its claims for relief, the issuance of a statutory restraining order is in the public interest.

DEFINITIONS

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

8. The term "assets" means any legal or equitable interest in, right to, or claim to, any real or personal property, including but not limited to: chattels, goods, instruments, equipment, fixtures, general intangibles, effects, leaseholds, mail or other deliveries, inventory, claims and causes of action, checks, notes, accounts (including, but not limited to, bank accounts and accounts at other financial institutions), credits, receivables, contracts, insurance policies, and all cash, wherever located, whether in the United States or abroad.

9. 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.

10. "Defendant" means Paragon FX and any person insofar as he or she has acted or is acting in the capacity of an officer, agent, servant, employee, or attorney of Paragon FX, 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 participating with Paragon FX.

RELIEF GRANTED

I.

Maintenance of Books and Records Statutory Restraining Order

IT IS HEREBY ORDERED that:

11. All of the terms and conditions of the statutory restraining order (“SRO”) earlier entered by this Court on October 31, 2011, relating to Defendant Paragon FX’s books and records, restraining and enjoining Defendant Paragon FX from directly or indirectly destroying, mutilating, erasing, altering, concealing or disposing of, in any manner, directly or indirectly, any documents or records, wherever they may be situated, that relate to the business practices or business finances of Defendant, allowing immediate and continued access by Commission representatives (including assistance from state and other federal officials, and the U.S. Marshal’s Office), to inspect the books, records, and other documents of Defendant and its 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 Defendant or others, and to copy said documents, data and records, either on or off the premises wherever they may be situated, and prohibiting Defendant Paragon FX from directly or indirectly interfering with the rights granted to said Commission representatives to inspect and copy Defendant Paragon FX’s documents, wherever situated, either on or off the premises, shall continue in full force and effect until further order of this Court; and

12. Upon request of the Commission, Defendant is ordered to deliver to the Commission documents of Defendant, 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 passcodes, entry codes, and combination to locks necessary to gain or to secure access to any of the assets or documents of Defendant, including but not limited to, access to Defendant's business premises, means of communication, accounts, computer systems, or other property and information identifying the accounts, employees, properties, or other assets or obligations of Defendant.

II.

Asset Freeze

IT IS FURTHER ORDERED that:

13. Defendant, and its agents, servants, employees, assigns, attorneys, and persons in active concert or participation with Defendant, including any successor thereof, who receive actual notice of this Order by personal service or otherwise, are restrained and enjoined from directly or indirectly transferring, selling, alienating, liquidating, encumbering, pledging, leasing, loaning, assigning, concealing, dissipating, converting, withdrawing, or otherwise disposing of the \$856,468 in Interpleaded Funds, except as provided in this Order, or as otherwise ordered by the Court.

III.

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 or has held, controls or has controlled, or maintains or has maintained custody of any of the \$856,468 in Interpleaded Funds, at any time since October 18, 2010, shall:

14. Prohibit Defendant, and all other persons from withdrawing, removing, assigning, transferring, pledging, encumbering, disbursing, dissipating, converting, selling, or otherwise disposing of the \$856,468 in Interpleaded Funds, except by further Order of the Court;

15. Provide counsel for the Commission and Temporary Receiver, within five (5) business days of receiving a copy of this Order, a statement setting forth: (a) the identification number of each such account or other asset titled in the name, individually or jointly, of Defendant or held on behalf of, or for the benefit of, Defendant or under the control of Defendant; and (b) the balance of each such account, or a description of the nature and value of such asset as 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

16. Upon request by the Commission or the Temporary Receiver, Defendant shall promptly provide the Commission and the Temporary Receiver with copies of all records or other documentation pertaining to any accounts holding the \$856,468 in Interpleaded Funds, 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, Internal Revenue Service Form 1099s, and safe deposit box logs.

IV.

Accounting and Transfer of Funds and Documents

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

17. Provide the Commission and Temporary Receiver with a full accounting of all pool participant or client funds, documents, and assets, including those outside of the United States, from October 18, 2010 to the date of this Order; and

18. Provide the Commission and Temporary Receiver access to all records of Defendant held by financial institutions located within or outside the territorial United States by signing the Consent to Release of Financial Records attached to this Order.

V.

Order Appointing Temporary Receiver

IT IS FURTHER ORDERED that:

19. Kelly Crawford of the firm of Scheef & Stone, LLP, Dallas, Texas, is appointed Temporary Receiver to assume custody and control of the \$856,468 in Interpleaded Funds currently held by Defendant Paragon FX, with the full powers of an equity receiver with regard to any claim relating to said funds;

20. Subject to the approval of the Court, the Temporary Receiver is directed and authorized to accomplish the following:

- a. Take exclusive custody, control, and possession of the \$856,468 in Interpleaded Funds currently held by Defendant Paragon FX. The Temporary Receiver shall have full power to sue for, collect, receive and take possession of goods, chattels, rights, credits, moneys, effects, land, leases, books, records, work papers, and records of accounts, including computer-maintained information, and other papers and documents of Defendant related in any manner to the Interpleaded Funds, including documents related to customers or clients whose interests are now held by or under the direction, possession, custody or control of Defendant;

- b. Preserve, hold and manage the \$856,468 in Interpleaded Funds and perform all acts necessary to preserve the value of those assets, in order to prevent any loss, damage or injury to Defendant's customers, clients, pool participants or investors;
- c. Protect the interests of customers, clients, pool participants or investors;
- d. Initiate, prosecute, compromise, adjust, intervene in or become a party to any actions or proceedings in state, federal or foreign courts that the Temporary Receiver deems necessary to preserve or increase the assets of the Receivership to carry out his or her duties pursuant to this Order;
- e. Defend, compromise, adjust or otherwise dispose of any actions or proceedings in state, federal or foreign courts instituted against the Temporary Receiver or Defendant relating to the Interpleaded Funds that the Temporary Receiver deems necessary to preserve or increase the assets of the Receivership to carry out his or her duties pursuant to this Order;
- f. Choose, engage and employ attorneys, accountants, appraisers, and other independent contractors and technical specialists, as the Temporary Receiver deems advisable or necessary in the performance of duties and responsibilities under the authority granted by this Order;
- g. Issue subpoenas to obtain documents and records pertaining to the receivership, and conduct discovery in this action on behalf of the receivership estate;
- h. Open one or more bank accounts as designated depositories for the Interpleaded Funds of Defendant. The Temporary Receiver shall deposit all Interpleaded Funds of Defendant in such designated accounts and shall make all payments and disbursements from the receivership estate from such accounts; and

- i. Make payments and disbursements from the receivership estate that are necessary or advisable for carrying out the directions of, or exercising the authority granted by, this Order. The Temporary Receiver shall apply to the Court for prior approval of any payment of any debt or obligation incurred by Defendant relating to the Interpleaded Funds prior to the date of entry of this Order, except for payments that the Temporary Receiver deems necessary or advisable to secure the Interpleaded Funds of Defendant.

21. Immediately upon service of this Order upon it, Defendant, and any other person or entity served with a copy of this Order, shall immediately or within such time as permitted by the Temporary Receiver in writing, deliver over to the Temporary Receiver:

- a. Possession and custody of the \$856,468 in Interpleaded Funds, wherever situated;
- b. Possession and custody of all documents of Defendant related to the Interpleaded Funds, 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. All keys, computer passwords, entry codes, and combinations to locks necessary to gain or to secure access to any of the documents of Defendant related to the Interpleaded Funds, including but not limited to, access to Defendant's business premises, means of communication, accounts, computer systems, or other property; and
- d. Information identifying the accounts, employees, properties or other assets or obligations of Defendant.

22. Defendant, and all other persons or entities served with a copy of this Order shall cooperate fully with and assist the Temporary Receiver. This cooperation and assistance shall include, but not be limited to: providing any information to the Temporary Receiver that the Temporary Receiver deems necessary to exercising the authority; providing any password required to access any computer or electronic files in any medium; and discharging the responsibilities of the Temporary Receiver under this Order; and advising all persons who owe money to Defendant that all debts should be paid directly to the Temporary Receiver;

23. Except by leave of the Court, during the pendency of the receivership ordered herein, Defendant, and all other persons and entities seeking relief of any kind relating to the Interpleaded Funds (other than the present action by the Commission) including but not limited to customers, clients, pool participants, investors, members, partners, trust beneficiaries, note holders, creditors, claimants, lessors, in law or in equity, and all persons acting on behalf of any such customer, client, pool participant, investor, member, partner, trust beneficiary, note holder, creditor, claimant, lessor, or other person, including sheriffs, marshals, and all offices and deputies, and their respective attorneys, servants, agents and employees, are, until further orders of this Court, be and hereby are restrained, enjoined and stayed from doing anything, directly or indirectly, to interfere with the Temporary Receiver's performance of his duties and the administration of the Interpleaded Funds. Accordingly, all such persons are enjoined and stayed from taking any action to establish or enforce any claim, right or interest relating to the Interpleaded Funds for, against, on behalf of, in, or in the name of, Defendant, the Temporary Receiver, receivership assets, or the Temporary Receiver's duly authorized agents acting in their capacities as such, including but not limited to, the following actions:

- a. Commencing, prosecuting, litigating or enforcing any suit, except that actions may be filed to toll any applicable statute of limitations;
- b. Accelerating the due date of any obligation or claimed obligation, enforcing any lien upon, or taking or attempting to take possession of, or retaining possession of, property of Defendant or any property claimed by Defendant, or attempting to foreclose, forfeit, alter or terminate any of Defendant's interests in property, whether such acts are part of a judicial proceeding or otherwise;
- c. Using self-help or executing or issuing, or causing the execution or issuance of any court attachment, subpoena, replevin, execution or other process for the purpose of impounding or taking possession of or interfering with, or creating or enforcing a lien upon any property, wherever located, owned by or in the possession of Defendant, or the Temporary Receiver, or any agent of the Temporary Receiver; and
- d. Doing any act or thing to interfere with the Temporary Receiver taking control, possession or management of the property subject to the receivership, or to in any way interfere with the Temporary Receiver or the duties of the Temporary Receiver, or to interfere with the exclusive jurisdiction of this Court over the Interpleaded Funds currently held by Defendant.

24. This paragraph does not stay the commencement or continuation of an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power.

25. Within sixty (60) days of the date of this Order, the Temporary Receiver shall file with this Court and serve Plaintiff Commission a report outlining the steps taken to secure the Interpleaded Funds, identify customers, determine the amount invested by each customer, and

the portion of remaining assets available to pay back customers. This report shall also include a statement as to the estimated time it will take to distribute remaining available assets to customers and wind up the receivership.

26. The Temporary Receiver and all personnel hired by the Temporary Receiver as herein authorized, including counsel to the Temporary Receiver, are entitled to reasonable compensation for the performance of duties pursuant to this Order and for the cost of actual out-of-pocket expenses incurred by them, from the assets now held by, or in the possession or control of, or which may be received by Defendant. The Temporary Receiver shall file with the Court and serve on the parties, including Plaintiff Commission, periodic requests for the payment of such reasonable compensation, with the first such request filed no more than sixty (60) days after the date of this Order. Plaintiff may object to any part of a request within thirty (30) calendar days of service of a request. The Temporary Receiver shall not increase the hourly rates used as the bases for such fee applications without prior approval of the Court.

VI.

Bond Not Required of Plaintiff

IT IS FURTHER ORDERED that:

27. The Commission is an agency of the United States of America and, accordingly, need not post a bond.

VII.

Service

IT IS FURTHER ORDERED that:

28. This Order shall be served by any means, including e-mail, facsimile transmission, or a private express courier service, upon any entity or person that may have possession, custody, or

control of any documents or assets of Defendant, or that may be subject to any provision of this Order;

29. Defendant shall serve all pleadings, correspondence, notices required by this Order, and other materials on the Commission by personal delivery or reliable overnight delivery service (such as Federal Express or United Parcel Service) to Peter M. Haas, Chief Trial Attorney, and Danielle E. Karst, Trial Attorney, Division of Enforcement, U.S. Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington, D.C. 20581; and

30. The Summons, Complaint, or other process may be effected by any Commission representative, any U.S. Marshal or Deputy U.S. Marshal, or in accordance with Fed R. Civ. P. 4.

VIII.

Assistance of U.S. Marshal's Office and Other Law Enforcement Personnel

IT IS FURTHER ORDERED that:

31. The U.S. Marshal's Office shall accompany and assist the Commission's representatives outside and inside the premises, as well as secure the premises, in the service and execution of this Order and to undertake such efforts as are reasonably necessary to ensure that the Commission's representatives have an unimpeded right to inspect and copy books, records, and documents as set forth above wherever such books, records, and documents are or are believed by the Commission to be located. State and local law enforcement agencies are also authorized to so assist the Commission in this manner.

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 New York, New York this 10th day of November, 2011

Paul A. Engeln

UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF NEW YORK

