

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

U.S. COMMODITY FUTURES
TRADING COMMISSION,

Plaintiff,

v.

LAKE DOW CAPITAL, LLC a/k/a
CLIFFORD, EDWARDS & TAYLOR,
AND TY EDWARDS,

Defendants.

Civil Action File No.
1:05-CV-2709

Judge Clarence Cooper

**RECEIVER'S MOTION TO ADD RELIEF DEFENDANTS TOGETHER
WITH BRIEF IN SUPPORT THEREOF**

COMES NOW, S. Gregory Hays, Receiver (“the Receiver”) and herewith files this Motion and Brief asking that this Court add Aurora Capital Management LLC (“ACM”) and the Aurora Investment Fund (“AIF”) as Relief Defendants in this action and include them as a part of the Receivership Estate and shows this Court as follows:

PROCEDURAL BACKGROUND

1. This action commenced on October 19, 2005 through the filing of a “Complaint for Injunctive and Other Equitable Relief and for Civil Monetary Penalties under the Commodity Exchange Act” (the “Complaint”) by the U.S.

Commodity Futures Trading Commission (“CFTC”) against Lake Dow Capital LLC, a/k/a Clifford Edwards and Taylor and Ty Edwards (the “Defendants”). In the Complaint, the CFTC alleged that the Defendants employed schemes to defraud or had engaged in practices that operated as a fraud or deceit upon actual and prospective commodity pool participants and clients in an investment fund known as the “Aurora Investment Fund”.

2. On October 19, 2005, this Court entered its “Ex Parte Restraining Order to Freeze Assets, Preserve Books and Records, Authorize Expedited Discovery and Appoint a Temporary Receiver” (the “TRO Order”). Pursuant to the terms of this Order, S. Gregory Hays was appointed as Receiver herein. On November 8, 2005, this Court entered its “Consent Order of Preliminary Injunction and Asset Freeze” (the “Preliminary Injunction Order”) continuing the appointment of the Receiver with the duties, obligations and powers set forth in the TRO Order. The TRO Order and the Preliminary Injunction Order shall be collectively referred to as the “Receivership Orders”.

3. The Receiver was, among other things, directed to marshal the assets of the Receiver Estate and to account for the proceeds of the Aurora Investment

Fund Commodity Pool that is the subject of the CFTC's complaint.¹ In addition, in Paragraph I of the TRO Order, this Court froze all of the Defendants' assets and specifically included within the scope of the asset freeze, "assets held in the accounts of Aurora Capital Management LLC and the Aurora Investment Fund." This Motion seeks the formal addition of Aurora Capital Management LLC ("ACM") and Aurora Investment Fund, L.P. ("AIF") as Relief Defendants in this case.

FACTUAL BACKGROUND

4. As set forth in the CFTC's Complaint, the Defendants established a total of three entities to manage a private equity or "hedge" fund. These three entities included not only Clifford, Edwards & Taylor, LLC ("Lake Dow / CET"), which is a named Defendant herein, but also ACM and AIF.

5. ACM is a Delaware Limited Liability Corporation. According to information provided by the Defendants, ACM owned a majority of the stock or ownership interests in Lake Dow/CET. Defendant Edwards initially held a fifty-percent ownership interest in ACM and ultimately came into sole and exclusive control of ACM

¹ See, Receivership Orders.

6. AIF is a Delaware Limited Partnership. The General Partner of AIF was Defendant Lake Dow/CET. Most of the funds raised by Defendants Edwards and Lake Dow/CET for investment purposes were deposited into an AIF bank account Peoples Bank, a Georgia Bank. Most of these funds were subsequently deposited into a brokerage account held in the name of AIF at either Bear Stearns or, later, Man Financial.

7. Bank accounts were opened at Peoples Bank (by Mr. Edwards) and at Wachovia (by Mr. Clifford) for Lake Dow / CET and ACM.

8. The formation, structure and funding of ACM and AIF were intertwined with Lake Dow/CET and, by virtue of his control over all three of these entities, with Defendant Edwards as well. In fact, ACM and AIF were ultimately controlled by Defendant Ty Edwards and any moneys or assets held by these entities are the proceeds of funds raised from persons intending to invest in the Aurora Investment Fund Commodity Pool which is the subject of the CFTC's enforcement action herein. For these reasons, the assets of each of ACM and AIF were frozen pursuant to Paragraph I(A) of the TRO Order which freeze was continued in the Preliminary Injunction Order.

9. While the Receivership Orders have frozen the assets of ACM and AIF and provide the Receiver with authority to take control and preserve these

assets, the Receiver must have formal control over the entire business operation that is the subject of this action and ACM and AIF should be formally included in the Receivership Estate established in the Receivership Orders.

Argument and Citation to Authority

It is important to note that the Receiver requests the addition of ACM and AIF as “relief defendants” only. A relief defendant is a person or entity who (i) has received ill-gotten funds, and (ii) does not have a legitimate claim to those funds. *CFTC v. Cavanagh*, 155 F.3d 129, 136 (2d Cir. 1998). A relief defendant may either be a gratuitous beneficiary of the proceeds from the principal defendants' fraud or merely the custodian of the principal defendants' assets. *CFTC v. Hanover Trading Co.*, 34 F. Supp.2d 203, 207 (S.D.N.Y. 1999). In either case, the relief defendants have not performed any bona fide services for these funds and consequently have no ownership interest in these funds. *CFTC v. IBS, Inc.*, 113 F.Supp. 2d 830, 855 (W.D.N.C. 2000).

A court may freeze the assets of a relief defendant. *See SEC v. Heden*, 51 F. Supp.2d 296, 299 (S.D.N.Y. 1999). Indeed, as set forth above, the assets of ACM and AIF have already been frozen. "The paradigmatic [relief] defendant is a 'trustee, agent, or depository. . . [who is] joined purely as a means of facilitating collection.'" *SEC v. Colello*, 139 F.3d 674, 676 (9th Cir. 1998).

As set forth above, the Receiver is informed and believes that the only assets of either ACM or AIF were proceeds of investments intended to be made into the Aurora Investment Fund Commodity Pool. The Receiver is in the process of preparing a plan of distribution in this case which will provide for the return of funds already frozen under the Receivership Orders, including the funds held by ACM and AIF, to investors. In order to effectuate such a plan, and to provide for the orderly administration of the Receivership, ACM and AIF should be added as Relief Defendants herein. They and their already frozen assets should be formally placed under the control of the Receiver pursuant to the Receivership Orders. *See CFTC v. Kimberlynn Creek Ranch, Inc.*, 276 F.3d 187 (4th Cir. 2002) (concluding that once a district court has subject matter jurisdiction over an underlying enforcement action, the district court has the authority to recover tainted funds that have been traced to relief defendants).

In addition, the joinder of ACM and AIF as Relief Defendants is in accordance with the Federal Rules of Civil Procedure. In relevant part, Fed. R. Civ. Pro. 19 (a) – Joinder of Persons Needed for Just Adjudication – provides:

Persons to be Joined if Feasible. A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in the person’s absence, complete relief cannot be accorded among those already parties . . .

ACM and AIF fall squarely within the ambit of this rule. They are subject to service of process; their joinder as Relief Defendants will not deprive the court of jurisdiction; and, most importantly, their inclusion in the receivership is necessary to afford complete relief here. Indeed, the assets of each of ACM and AIF have already been frozen and the addition of ACM and AIF as Relief Defendants together with their inclusion in the Receiver Estate will largely clarify the Receiver's interests in their assets and will ultimately enable the Receiver to file a Plan of Distribution for the return of money to investors in this case.

If the Court is not persuaded that ACM and AIF are necessary under Rule 19, then Fed. R. Civ. Pro. 20 regarding permissive joinder provides another basis for adding them as Relief Defendants. In relevant part, Rule 20 provides:

Permissive Joinder. All persons . . . may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all defendants will arise in the action.

Again, ACM and AIF fall squarely within the parameters of this rule. The allegations made against the named Defendants herein apply with equal force to ACM and AIF. They are an important part of the series of transactions and

occurrences that are the subject of the CFTC's Complaint and their presence as Relief Defendants is necessary to effectuate a return of investor funds to investors.

Conclusion

Accordingly, the Receiver requests that ACM and AIF be added as Relief Defendants herein and that they and their already frozen assets be formally placed under the Receiver's direction and control in accordance with the terms and provisions of the Receivership Orders. The Receiver requests that this Motion be granted and for such other and further relief as may be just and proper.

This 25th day of July, 2006.

s/Henry F. Sewell, Jr.
Henry F. Sewell, Jr.
Georgia Bar No. 636265

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CERTIFICATE OF COMPLIANCE WITH LR 7.1(D)

I certify that RECEIVER'S MOTION TO ADD RELIEF DEFENDANTS TOGETHER WITH BRIEF IN SUPPORT THEREOF has been prepared with one of the font and point selections approved by the court in LR 7.1(D), NDGa.

This 25th day of July, 2006.

s/Henry F. Sewell, Jr.
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CERTIFICATE OF SERVICE

This is to certify that I have this day served the within and foregoing **Motion to Add Relief Defendants Together with Brief in Support Thereof** upon counsel of record in the above-captioned action by First Class, United States Mail, postage pre-paid, addressed as follows:

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This 25th day of July, 2006.

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