

**UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA  
SOUTHERN DIVISION**

SECURITIES AND EXCHANGE COMMISSION,  
Plaintiff,  
vs.  
TLC INVESTMENTS & TRADE CO., et al.  
Defendants.

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Case No. SACV 00-960 DOC (EEx)

**ORDER OF PRELIMINARY INJUNCTION AND  
ORDERS:**

- (1) FREEZING ASSETS;
- (2) APPOINTING A RECEIVER;
- (3) PROHIBITING THE DESTRUCTION OF DOCUMENTS;
- (4) FOR ACCOUNTINGS;
- (5) FOR REPATRIATION OF ASSETS; AND
- (5) FOR EXPEDITED DISCOVERY

This matter came to be heard on October 30, 2000, upon the Court's Order To Show Cause Re Preliminary Injunction And Appointment Of A Permanent Receiver ("OSC"), issued on October 4, 2000 and filed on October 5, 2000. The OSC is included in the Court's Temporary Restraining Order and Orders: Freezing Assets, Appointing a Temporary Receiver, Repatriating Assets, Prohibiting Destruction of Documents, Granting Expedited Discovery, for Accountings and to Show Cause Re Preliminary Injunction, and Appointment of a Permanent Receiver ("TRO"). The Court, having considered the Securities and Exchange Commission's ("the Commission") Complaint, Ex Parte Application, the Memorandum of Points and Authorities and the Declarations and other documents filed in support of the Application, the Defendants' Oppositions thereto, and all other evidence and argument presented regarding the Application, and all additional evidence and argument presented relating to the OSC, finds that:

- A. This Court has jurisdiction over the parties to, and the subject matter of, this action.
- B. Good cause exists to believe that defendants TLC Investments & Trade Co. ("TLC"), TLC America, Inc. dba Brea Development Company ("TLC America"), TLC Brokerage, Inc., dba TLC Marketing ("TLC Brokerage"), TLC Development, Inc. ("TLC Development"), TLC Real Properties, RLLP-1 ("TLC Real Properties"), Cloud & Associates Consulting, Inc. ("C&A"), Ernest F. Cossey ("Cossey"), Gary W. Williams ("Williams"), Thomas G. Cloud ("Cloud") and each of them, have engaged in, are engaging in, and are about to engage in transactions, acts, practices and courses of business which constitute violations of Sections 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77q(a)] and Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5, and that TLC, TLC America, TLC Brokerage, TLC Development, TLC Real Properties, C&A, Cossey and Cloud and each of them, have engaged in, are engaging in, and are about to engage in transactions, acts, practices and courses of business which constitute violations of Sections 5(a) and 5(c) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. §§ 77e(a) and 77e(c).
- C. The Commission has demonstrated a probability of success on the merits in this action.
- D. Good cause exists to believe that defendants will continue to engage in such violations to the immediate and irreparable loss and damage to investors and to the general public unless they are preliminarily enjoined.

**I.**

IT IS FURTHER ORDERED that defendants TLC, TLC America, TLC Brokerage, TLC Development, TLC Real Properties, C&A, Cossey, Williams, Cloud and their officers, agents, servants, employees, attorneys, and those persons in active concert or participation with any of them, who receive actual notice of this Order, by personal service or otherwise, and each of them, be and hereby are preliminarily restrained and enjoined from, directly or indirectly, in the

offer or sale of any securities, by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails:

- A. employing any device, scheme or artifice to defraud;
- B. obtaining money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or
- C. engaging in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser;

in violation of Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a).

## **II.**

IT IS FURTHER ORDERED that defendants TLC, TLC America, TLC Brokerage, TLC Development, TLC Real Properties, C&A., Cossey, Williams, Cloud, and their officers, agents, servants, employees, attorneys, and those persons in active concert or participation with any of them, who receive actual notice of this Order, by personal service or otherwise, and each of them, be and hereby are preliminarily restrained and enjoined from, directly or indirectly, in connection with the purchase or sale of any securities, by the use of any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange:

- A. employing any device, scheme or artifice to defraud;
- B. making any untrue statement of a material fact or omitting to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or
- C. engaging in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person;

in violation of Section 10(b) of the Exchange Act (15 U.S.C. § 78j(b)) and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

## **III.**

IT IS HEREBY ORDERED that defendants TLC, TLC America, TLC Brokerage, TLC Development, TLC Real Properties, C&A, Cossey, and Cloud and their officers, agents, servants, employees, attorneys, and those persons in active concert or participation with any of them, who receive actual notice of this Order, by personal service or otherwise, and each of them, be and hereby are preliminarily restrained and enjoined from, directly or indirectly, through the use of the means or instruments of transportation or communication in interstate commerce or the mails, offering to sell or selling securities, or, directly or indirectly, carrying or causing securities to be carried through the mails or in interstate commerce, for the purpose of selling or delivery after selling, in violation of Sections 5(a) and 5(c) of the Securities Act, 15 U.S.C. §§ 77(e)(a) and 77(e)(c).

## **IV.**

IT IS FURTHER ORDERED that, except as otherwise ordered by this Court, defendants TLC, TLC America, TLC Brokerage, TLC Development, TLC Real Properties, C&A, Cossey, Williams, and their officers, agents, servants, employees, attorneys, and those persons in active concert or participation with any of them, who receive actual notice of this Order, by personal service or otherwise, and each of them, be and hereby are preliminarily restrained and enjoined from, directly or indirectly transferring, assigning, selling, hypothecating, changing, wasting, dissipating, converting, concealing, encumbering, or otherwise disposing of, in any manner, any funds, assets, securities, claims, or other property of defendants TLC, TLC America, TLC Brokerage, TLC Development, TLC Real Properties, C&A, Cossey, Williams, and Cloud, owned by, controlled by, or in the possession or custody of any of them. However, the

\$125,000 retainers held pursuant to non-refundable retainer agreements entered into before entry of the TRO by Steward & Miller and Stokke & Riddet for the representation of Cossey and Williams, respectively, are not subject to the asset freeze.

**VI.**

IT IS FURTHER ORDERED that \$217,500 received from TLC America and held in trust by Steward & Miller and Stokke & Riddet is subject to the asset freeze imposed by the Court and those law firms are ordered to pay that money over to the Receiver, Robb Evans, by 12:00 p.m. on Friday, November 3, 2000.

**VI.**

IT IS FURTHER ORDERED that, pending final resolution of this matter and except as otherwise ordered by this Court, an immediate freeze shall be placed on all monies and assets in all accounts at any bank, financial institution or brokerage firm, all certificates of deposit, and other funds or assets, held in the name of, for the benefit of, or over which account authority is held by:

- A. TLC;
- B. TLC America;
- C. TLC Brokerage;
- D. TLC Development;
- E. TLC Real Properties;
- F. C&A;
- G. Cossey;
- H. Williams;
- I. Cloud; or
- J. any trust, partnership, joint venture, person or entity affiliated with defendants,

Bank accounts in the name of Marcia Williams that Williams' counsel represented contain Ms. Williams' separate earnings are not subject to this freeze. The funds and other assets subject to this order shall include but are not limited to the accounts set forth below:

<b><u>Bank Name</u></b>	<b><u>Account Name</u></b>	<b><u>Account No.</u></b>
Tokai Bank	TLC America, Inc. Procurement Checking	001-533509
Tokai Bank	TLC America, Inc. Procurement Bus Savings	001-533908
Tokai Bank	TLC America, Inc. Rents	001-539280
Tokai Bank	TLC Brokerage, Inc. dba TLC Marketing	001-539183
Tokai Bank	TLC Development Inc. Checking Account	001-539272
Tokai Bank	Real Administrative Services of America, Inc.	001-539264
Tokai Bank	American Procurement, Inc. Checking Account	001-539191
Tokai Bank	American Procurement, Inc. Funds Trust Account/Mega Account	001-539205
Tokai Bank	Lease Holding USA Inc. Checking Account	001-539213
Tokai Bank	Lease Holding USA Inc. Funds Trust Account/Mega Account	001-539248
Tokai Bank	Shore to Shore Development LLC Checking Account	001-539221
Tokai Bank	Shore to Shore Development LLC Funds Trust Account/Mega Account	001-539256
Tokai Bank	TLC Real Properties RLLP-1	001-539299
Tokai Bank	Colorado Registered LLP Mega Account (aka TLC Real Properties RLLP-1)	001-539302

Bank of Commerce	TLC Investment & Trade Co.	04-320727
Bank of Commerce	TLC Investment & Trade Co.	04-948098
Citizens Business Bank	TLC America, Inc. Procurement Account	234280570
Citizens Business Bank	TLC America, Inc. Procurement General Account	234142917
Citizens Business Bank	TLC America, Inc. Rental Account	234144979
Citizens Business Bank	TLC Marketing	234144960
Citizens Business Bank	TLC Development, Inc.	234280597
Citizens Business Bank	TLC America, Inc. Silverlakes	234142828
Dean Witter	TLC Investment & Trade Co.	249-082272
Dean Witter Money Market Bank One Columbus, Ohio	TLC Investment & Trade Co.	4841003488678
Morgan Stanley Dean Witter	TLC America, Inc.	269-011537-110
First Hawaiian Credit Corp.	TLC Investments	002720002147
First State Bank 32nd Street Branch	Ernest F. Cossey Oren Cossey Eva Deanne Colliers	11404 18 mo. CD
Frost National Bank	TLC Investments	01-0407631
Home Savings of America, FSB	Ernest & Candyse Cossey	694-905216-8
Home Savings of America, FSB	TLC Marketing	694-3300225
Home Savings of America, FSB	TLC Marketing	694-3000908
Home Savings of America, FSB	EF Cossey Enterprises, Inc.	694-3300514
Chase Bank of Texas	TLC Investment & Trade Co.	102630283
Chase Bank of Texas	TLC Investment & Trade Co.	00102619948
Chase Bank of Texas	TLC Investment & Trade Co.	00103180726
Washington Mutual Bank	Ernest F. Cossey Candyse B. Cossey	1627877151992
Washington Mutual Bank	Ernest F. Cossey Candyse B. Cossey	8760031363844
Sterling Bank	TLC America Marketing Account	151104581
Southtrust Bank	TLC America	63114298
Bank of Alabama	TLC America, Inc.	0304592
Bank of Alabama	TLC America, Inc.	0304600
NationsBank, N.A.	Cloud & Associates Consulting, Inc.	000108557357
NationsBank, N.A.	Cloud & Associates Consulting, Inc.	000108557307
Wells Fargo Bank	Gary W. Williams	654 543487
Wells Fargo Bank	Marcia Williams and Gary W. Williams	6016 068843
Wells Fargo Bank	Marcia Williams and Gary W. Williams	0359 350899
Farmers & Merchants Bank	Gary and Marcia Williams	15 29723 3
Farmers & Merchants Bank	Gary and Marcia Williams	15 05904 8
Wells Fargo Bank	Marcia Williams	600 2009165

## VII.

IT IS FURTHER ORDERED that Robb Evans be appointed as receiver of TLC, TLC America, TLC Brokerage, TLC Development, TLC Real Properties, and their subsidiaries and affiliates, with full powers of an equity receiver, including, but not limited to, full power over all funds, assets, collateral, premises (whether owned, leased, occupied, or otherwise controlled), choses in action, books, records, papers and other property belonging to or in the possession of or control of TLC, TLC America, TLC Brokerage, TLC Development, TLC Real Properties, and any of their subsidiaries and affiliates, including any partnerships and joint ventures for which TLC, TLC America, TLC Brokerage, TLC Development, or TLC Real Properties is the Managing General Partner, and that such receiver is immediately authorized, empowered and directed:

- A. to have access to and to collect and take custody, control, possession, and charge of all funds, assets, collateral, premises (whether owned, leased, occupied, or otherwise controlled), choses in action, books, records, papers and other property of TLC, TLC America, TLC Brokerage, TLC Development, TLC Real Properties, and their subsidiaries and affiliates, with full power to sue, foreclose, marshal, sell, liquidate, collect, receive, and take into possession all such property;
- B. to have control of, and to be added as the sole authorized signatory for TLC, TLC America, TLC Brokerage, TLC Development, TLC Real Properties, and their subsidiaries and affiliates, including all accounts over which TLC, TLC America, TLC Brokerage, TLC Development, TLC Real Properties and any of their officers, employees or agents, have signatory authority, at any bank, title company, escrow agent, financial institution or brokerage firm which has possession, custody or control of any assets or funds of TLC, TLC America, TLC Brokerage, TLC Development, TLC Real Properties, or which maintains accounts over which TLC, TLC America, TLC Brokerage, TLC Development, TLC Real Properties and/or any of their officers, employees or agents have signatory authority;
- C. to conduct such investigation and discovery as may be necessary to locate and account for all of the assets of TLC, TLC America, TLC Brokerage, TLC Development, TLC Real Properties and their affiliates and to engage and employ attorneys, accountants and other persons to assist in such investigation and discovery;
- D. to take such action as is necessary and appropriate to preserve and take control of and to prevent the dissipation, concealment, or disposition of any assets of TLC, TLC America, TLC Brokerage, TLC Development, TLC Real Properties and their affiliates;
- E. to make an accounting, as soon as practicable, to this Court and the Commission of the assets and financial condition of TLC, TLC America, TLC Brokerage, TLC Development, TLC Real Properties and the client assets under their management, and to file the accounting with the Court and deliver copies thereof to all parties;
- F. to make such payments and disbursements from the funds and assets taken into custody, control, and possession or thereafter received by him or her, and to incur, or authorize the making of such agreements as may be necessary and advisable in discharging his or her duties as receiver;
- G. to employ attorneys and others to investigate, advise and, where appropriate, to institute, pursue, and prosecute all claims and causes of action of whatever kind and nature which may now or hereafter exist as a result of the activities of present or past employees or agents of TLC, TLC America, TLC Brokerage, TLC Development, and TLC Real Properties; and
- H. to have access to and monitor all mail of TLC, TLC America, TLC Brokerage, TLC Development, and TLC Real Properties in order to review such mail which he deems relates to the business of TLC, TLC America, TLC Brokerage, TLC Development, and TLC Real Properties and the discharging of his duties as receiver;
- I. to exercise all of the powers of TLC, TLC America, TLC Brokerage, TLC Development, and TLC Real Properties and their officers, directors, employees, representatives, or persons who exercise similar powers and perform similar duties;

### **VIII.**

IT IS FURTHER ORDERED that Defendants TLC, TLC America, TLC Brokerage, TLC Development, TLC Real Properties, Cossey, Williams and their officers, agents, servants, employees and attorneys, and any other persons who are in custody, possession or control of any assets, collateral, books, records, papers or other property of TLC, TLC America, TLC Brokerage, TLC Development, and/or TLC Real Properties, shall forthwith give access to and control of such property to the receiver.

### **IX.**

IT IS FURTHER ORDERED that no officer, agent, servant, employee, or attorney of TLC, TLC America, TLC Brokerage, TLC Development, TLC Real Properties or their subsidiaries or affiliates shall take any action or purport to take any action, in the name of or on behalf of TLC, TLC America, TLC Brokerage, TLC Development, TLC Real Properties or any of their subsidiaries and affiliates, without the written consent of the receiver or order of this Court.

### **X.**

IT IS FURTHER ORDERED that, except by leave of this Court, during the pendency of this receivership, all clients, investors, trust beneficiaries, note holders, creditors, claimants, lessors, and all other persons or entities seeking relief of any kind, in law or in equity, from TLC, TLC America, TLC Brokerage, TLC Development, TLC Real Properties, and all persons acting on behalf of any such investor, trust beneficiary, note holder, creditor, claimant, lessor, or other person, including sheriffs, marshals, servants, agents, employees, and attorneys, are hereby preliminarily restrained and enjoined from, directly or indirectly, with respect to TLC, TLC America, TLC Brokerage, TLC Development, and TLC Real Properties:

- A. commencing, prosecuting, continuing or enforcing any suit or proceeding (other than the present action by the Commission) against TLC, TLC America, TLC Brokerage, TLC Development, and/or TLC Real Properties;
- B. 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 or property interests owned by or in the possession of TLC, TLC America, TLC Brokerage, TLC Development, and/or TLC Real Properties, any partnerships or joint ventures for which TLC, TLC America, TLC Brokerage, TLC Development, and/or TLC Real Properties is the Managing General Partner, wherever situated; and
- C. doing any act or thing whatsoever to interfere with taking control, possession or management by the receiver appointed hereunder of the property and assets owned, controlled or in the possession of TLC, TLC America, TLC Brokerage, TLC Development, and/or TLC Real Properties, any partnership or joint venture for which TLC, TLC America, TLC Brokerage, TLC Development, and/or TLC Real Properties is the Managing General Partner, or in any way to interfere with or harass the receiver or to interfere in any manner with the discharge of his duties and responsibilities hereunder.

### **XI.**

IT IS FURTHER ORDERED that Defendants TLC, TLC America, TLC Brokerage, TLC Development, TLC Real Properties, Cossey and Williams and their subsidiaries and affiliates and their officers, agents, servants, employees and attorneys, shall cooperate with and assist the receiver and shall take no action, directly or indirectly, to hinder, obstruct, or otherwise interfere with the receiver in the conduct of his duties or to interfere in any manner, directly or indirectly, with the custody, possession, management, or control by the receiver of the funds, assets, collateral, premises, and choses in action described above.

### **XII.**

IT IS FURTHER ORDERED that Defendants TLC, TLC America, TLC Brokerage, TLC Development, TLC Real Properties, Cossey and Williams shall pay the costs, fees and expenses of the receiver incurred in connection with the

performance of his duties described in this Order, including the costs and expenses of those persons who may be engaged or employed by the receiver to assist him in carrying out his duties and obligations. All applications for costs, fees and expenses for services rendered in connection with the receivership other than routine and necessary business expenses in conducting the receivership, such as salaries, rent and any and all other reasonable operating and liquidating expenses, shall be made by application setting forth in reasonable detail the nature of the services and shall be heard by the Court.

### **XIII.**

IT IS FURTHER ORDERED that no bond shall be required in connection with the appointment of the receiver. Except for an act of gross negligence, the receiver shall not be liable for any loss or damage incurred by any of the Defendants, their officers, agents, servants employees and attorneys or any other person, by reason of any act performed or omitted to be performed by the receiver in connection with the discharge of his duties and responsibilities.

### **XIV.**

IT IS FURTHER ORDERED that representatives of the Commission are authorized to have continuing access to inspect or copy any or all of the corporate books and records and other documents of TLC, TLC America, TLC Brokerage, TLC Development, and TLC Real Properties and continuing access to inspect their funds, property, assets and collateral, wherever located.

### **XV.**

IT IS FURTHER ORDERED that, except as otherwise ordered by this Court, defendants TLC, TLC America, TLC Brokerage, TLC Real Properties, C&A, Cossey, Williams, Cloud, and their officers, agents, servants, employees, attorneys, and those persons in active concert or participation with any of them, who receive actual notice of this Order, by personal service or otherwise, and each of them, be and hereby are preliminarily restrained and enjoined from, directly or indirectly: destroying, mutilating, concealing, transferring, altering, or otherwise disposing of, in any manner, any documents, which includes all books, records, computer programs, computer files, computer printouts, correspondence, memoranda, brochures, or any other documents of any kind in their possession, custody or control, however created, produced, or stored (manually, mechanically, electronically, or otherwise), pertaining in any manner to defendants TLC, TLC America, TLC Brokerage, TLC Real Properties, TLC Development, C&A, Cossey, Williams, and Cloud.

### **XVI.**

IT IS FURTHER ORDERED that defendant C&A shall, on or before November 6, 2000, make a detailed and complete accounting of its financial operations for the period October 1996 to the present, including all cash inflows and the source, use, and disposition of those monies. Such accounting shall include a statement of assets and financial condition of C&A as of the date of entry of this Order. Such accounting shall be filed with the Court and a copy shall be delivered to the Commission's Pacific Regional Office located at 5670 Wilshire Blvd., 11th Floor, Los Angeles, California 90036. After completion of the accounting, Defendant C&A shall produce to the Commission's Pacific Regional Office, at a time agreeable to the Commission, all books, records and other documents supporting or underlying the accounting in its possession or control.

### **XVII.**

IT IS FURTHER ORDERED that defendant Cloud shall, on or before November 6, 2000 at 12:00 p.m., prepare and deliver to the Commission a detailed and complete schedule of all of his personal assets, including a description of the source of such assets. Such accounting shall be filed with the Court and a copy shall be delivered to the Commission's Pacific Regional Office. After completion of the accounting, defendant Cloud shall produce to the Commission's Pacific Regional Office, at a time agreeable to the Commission, all books, records and other documents supporting or underlying their accountings.

### **XVIII.**

IT IS FURTHER ORDERED that within ten days from the date of this Order, Defendants Cossey and Williams, and each of them, shall transfer to the registry of this Court all assets, funds, and other property that is presently held in foreign locations in the name of TLC, TLC America, TLC Brokerage, TLC Development, TLC Real Properties, Cossey, Williams, or for the benefit or under the control of any of them, or over which any of them exercise actual investment or other authority, including signatory authority;

**XIX.**

IT IS FURTHER ORDERED that the Commission's application for expedited discovery be and hereby is granted and that, at any time after notice to TLC, TLC America, TLC Brokerage, TLC Development, TLC Real Properties, C&A, Cossey, Williams, and Cloud, of the issuance of this Order, the Commission may take depositions of non-parties upon oral examination subject to two calendar days notice pursuant to Rules 30(a) and 45 of the Federal Rules of Civil Procedure, that the Commission may take more than one deposition at the same time and that depositions of the Defendants, including depositions pursuant to Fed. R. Civ. P. 30(b)(6) may be taken on any day, including Saturdays, Sundays, and holidays. All Defendants may also take depositions pursuant to these provisions.

**XX.**

IT IS FURTHER ORDERED that no funds be released to pay Defendant Cossey's living expenses. A total of approximately \$4,090.98, representing Marcia Williams' separate earnings, may be released from Ms. Williams' bank accounts (including accounts held jointly with Defendant Williams) to pay Defendant Williams' living expenses. Defendants Cossey and Williams, however, may renew their requests for living expenses if and when their financial situations change. Further, Defendants Cossey and Williams may also renew their requests for attorneys' fees after they submit full accountings to the Court, the Receiver, and the Commission.

**XXI.**

IT IS FURTHER ORDERED that this Court shall retain jurisdiction over this action for the purpose of implementing and carrying out the terms of all orders and decrees which may be entered herein and to entertain any suitable application or motion for additional relief within the jurisdiction of this Court

IT IS SO ORDERED.

DATED: November 1, 2000

**DAVID O. CARTER**

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HONORABLE DAVID O. CARTER  
UNITED STATES DISTRICT JUDGE

Presented by:

Marianne Wisner

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Attorney for Plaintiff  
Securities and Exchange Commission