

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

_____)	
)	CIVIL ACTION
COMMODITY FUTURES TRADING)	
)	
COMMISSION,)	No. 03-2193-CM
)	
Plaintiff,)	
)	Honorable Judge Murguia
v.)	
)	
WALL STREET UNDERGROUND,)	
INC.,)	
et al.)	
)	
Defendants.)	

MOTION FOR ORDER RELEASING FUNDS

Plaintiff, Commodity Futures Trading Commission (“CFTC” or “Commission”), respectfully submits its motion for an order directing US Bank, Kansas City, Kansas, to release the balance of funds remaining in bank accounts in the name of Web Fulfillment Centre and Frank Asaro, and to pay those funds to the Commission as payment towards the Civil Monetary Penalty ordered by this Court in its Order of April 7, 2006 (Doc. 266). In support of its motion, the Commission states as follows:

1. On April 22, 2003, the CFTC filed a Complaint against defendants Wall Street Underground, Inc., (“WSU”), Web Fulfillment Centre, Inc., (“Web”); Nicholas A. Guarino, Jr. (“Guarino”), Derek Abrams and Frank Asaro (“Asaro”) (collectively, the “Defendants”), seeking injunctive and other equitable relief, and a civil monetary penalty, for violations of the Commodity Exchange Act, as amended (“Act”), 7 U.S.C. §§ 1 *et seq.* (2002), relating to the offer and sale of commodity futures contracts to residents of the United States.

2. On April 23, 2003, the Court entered an Ex Parte Statutory Restraining Order (“SRO”) containing, among other things, an asset freeze freezing Defendants’ assets. Pursuant to that Order, the US Bank placed a hold on four bank accounts: two accounts belonged to WSU; one account belonged to Web; and, one account belonged to Asaro.

3. On May 9, 2003, the Court granted Asaro and Web’s request for access to their frozen funds to pay reasonable attorneys’ fees and on November 13, 2003, the Court approved their Amended Attorneys’ Fees Budget and granted them access to the amount of \$22,964.00 to pay the costs of attorneys’ fees. (Doc. #93).

4. On June 26, 2003, the Court held a hearing on Plaintiff’s motion for a preliminary injunction, and on July 18, 2003, the Court entered its Memorandum and Order granting the Plaintiff’s motion for preliminary injunction and continuing the asset freeze against all Defendants. (Doc. #49).

5. On March 18, 2004, the Court appointed Robb Evans & Associates LLC as Receiver solely for WSU. (Doc. #136). Accordingly, US Bank turned over the frozen WSU’s funds to the Receiver.

6. On April 7, 2006, the Court entered a Consent Order of Permanent Injunction and Other Equitable Relief, including, among other things, an order directing Web and Asaro, jointly and severally, to pay a civil monetary penalty of \$310,000. (Doc. #266). The Court retained jurisdiction of this cause to assure compliance with the Order.

7. On May 25, 2007, the Court entered an Order granting Verified Motion Seeking Approval of Receiver’s Supplemental Report of Activities and Recommending Distribution of Wall Street Underground Funds, etc. (Doc. #276). Pursuant to that order,

once the Receiver certifies distribution of the funds, it will be discharged and the case will be closed. Any WSU Funds remaining after payment of the 223 Approved Investors claims and all past and future fees and expenses of the Receiver and Receiver's counsel following termination of the Receivership shall be paid to the CFTC as payment towards the Civil Monetary Penalty ordered by the Court in its Order against WSU entered on July 11, 2006. (Doc. #268).

8. Approximately \$35,943.32 remains in Web's account ending in 598 and approximately \$12.89 remains in Asaro's account ending in 747 at US Bank. Said funds should be released and paid to the CFTC as payment towards the Civil Monetary Penalty ordered by this Court in its Consent Order of April 7, 2006. (Doc. #266).

9. The Receiver consents to this motion.

10. A proposed Order is being submitted in electronic format to the Court's chambers.

WHEREFORE, the CFTC, with the consent of the Receiver, moves this Court for an order directing the US Bank to pay over to the CFTC, the balance of funds remaining in Web's bank account ending in 598 and Asaro's bank account ending in 747, to the CFTC as payment towards Web and Asaro's joint and several Civil Monetary Penalty liability.

Date: June 15, 2007

Respectfully submitted,
Commodity Futures Trading Commission

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CERTIFICATE OF SERVICE

The undersigned certifies that on the 15th day of June 2007, the foregoing **Motion for Order Releasing Funds** was electronically filed with the clerk of the court by using the CM/ECF system, which will send a notice of electronic filing to the following counsel of record:

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I further certify that on this date the foregoing document and the notice of electronic filing were served via U.S. mail upon the following non-CM/ECF participant:

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In addition, this Motion was sent via U.S. mail on this 15th day of June 2007, to the entities listed on Addendum 1, attached hereto.

s/Ava M. Gould
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ADDENDUM I

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9003 W. 51st St.
Shawnee, KS 66203-2105

Possible Landlord for Wall Street Underground
550 Lakeshore West St.
Lake Quivera, KS 66217

Kansas City Power & Light
P.O. Box 418679
Kansas City, MO 64141-9679

Kansas Gas Service
7421 W. 129th Street
Overland Park, KS 66213

Johnson County Wastewater
11811 S. Sunset Drive, Suite 2500
Olathe, KS 66061

Water One (Water District No. 1)
10747 Renner Blvd.
Lenexa, KS 66219

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Shawnee, KS 66217-9742

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