

**UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:09cv387-RJC-DCK**

**UNITED STATES COMMODITY)
FUTURES TRADING COMMISSION,)
Plaintiff,)
)
v.)
)
CAPITALSTREET FINANCIAL, LLC)
& SEAN F. MESCALL,)
Defendants, and)
)
GERALD T. MESCALL &)
GAINCAPITAL, INC.,)
Relief Defendants.)
)**

ORDER

THIS MATTER is before the Court on an amended motion for order to show cause (Doc. No. 35) and supplemental memorandum (Doc. No. 38). The plaintiff and the receiver, Joseph W. Grier, III, jointly move the Court to order the defendant Sean F. Mescall to show cause as to why he should not be held in civil contempt for violating the Court’s September 16, 2009, Statutory Restraining Order (the “SRO”) (Doc. No. 8).

As it is relevant here, the SRO: (1) appointed Grier as temporary receiver for the defendants and relief defendants; (2) commanded Mescall to transfer to the receiver all of the defendants’ and relief defendants’ assets, other than real property, located outside of the United States; and (3) deliver to the receiver all passwords or information necessary to secure access to the defendants’ and relief defendants’ bank accounts. (*Id.* ¶ 19, 28 & 31). The receiver states that he mailed a copy of the SRO to Mescall on September 17, 2009. (Doc. No. 35-2: Grier Decl. ¶ 4).

The plaintiff and receiver allege that Mescall has violated the SRO by causing \$49,665.28 to be withdrawn from an account he maintained at the Cyprus banking entity FBME Bank Ltd. (“FBME”) and failing to transfer those funds to the receiver. To substantiate this allegation, the

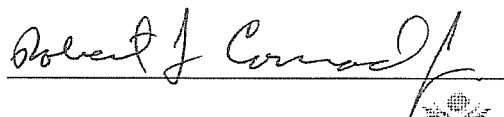
plaintiff and receiver have attached to their amended motion what purport to be FBME records that show a facsimile sent by Mescall to FBME dated October 16, 2009, requesting to close his account, and a check issued by FBME to Mescall on November 4, 2009, in the amount of \$49,665.28. (Doc. No. 35-3 at 3-4). The receiver states that as of March 9, 2010, these funds have not been turned over. (Doc. No. 35-2: Grier Decl. ¶ 12).

The plaintiff and receiver also move the Court to initiate criminal contempt proceedings pursuant to Fed. R. Crim. P. 42(a) and 18 U.S.C. § 401(3). However, the Court finds at this time sufficient grounds to initiate civil contempt proceedings only.

IT IS, THEREFORE, ORDERED that the defendant Sean F. Mescall shall appear before this Court at 9:30 a.m. on Monday, May 24, 2010, in Courtroom 2 of the Charles R. Jonas Federal Building, 401 West Trade Street, Charlotte, NC 28202, to show cause why he should not be held in contempt. The Clerk is directed to certify a copy of this Order to the defendant at the following address:

Sean F. Mescall
4605 River Hills Drive
Denver, NC 28037

Signed: May 12, 2010



Robert J. Conrad, Jr.
Chief United States District Judge



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U.S. COMMODITY FUTURES
TRADING COMMISSION,

Plaintiff,

v.

CAPITALSTREET FINANCIAL, LLC,
And Sean F. Mescall,

Defendants, and

Gerald T. Mescall, and
Gaincapital, Inc.,

Relief Defendants.

CASE NO. 3:09-cv-00387 (RJC-DCK)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that copies of the *Order on Amended Motion to Show Cause Why Sean F. Mescall Should Not Be Held in Civil Contempt*, were served by CM/ECF system, electronic mail or U.S. Mail as indicated below, upon the following parties:

Investors by email

Rimas R. Gavelis
897 E. Broadway
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Elvin Zimmerman
7950 Fenner Road
Plymouth, OH 44865

Horace Gilliam
825 Featherstone St.
Cleburn, TX 76033-4753

Rimas Gavelis
897 E. Broadway
Boston, MA 02127

This the 12th day of May, 2010.

/s/ Joseph W. Grier, III
Joseph W. Grier, III (NC St. Bar No. 7764)
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