

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI

| | | |
|--|---|------------------------|
| In the Matter of an Application to | : | |
| Enforce the Administrative Subpoena of the | : | |
| | : | |
| U.S. COMMODITY FUTURES TRADING | : | |
| COMMISSION, | : | Misc. Case No. 16-9010 |
| | : | |
| Petitioner, | : | |
| | : | |
| v. | : | |
| | : | |
| CHARLES MCALLISTER, | : | |
| | : | |
| Respondent. | : | |
| | : | |
| | : | |

**APPLICATION FOR AN ORDER TO SHOW CAUSE AND ORDER
REQUIRING COMPLIANCE WITH ADMINISTRATIVE SUBPOENA**

Almost five months ago, the Division of Enforcement (Division) of the Commodity Futures Trading Commission (Commission) served a subpoena *duces tecum* on Charles McAllister (McAllister) with regard to his involvement as the President of BullionDirect, Inc. (BDI). BDI is a precious metals company that declared bankruptcy on July 20, 2015, leaving thousands of customers without approximately \$24 million in purchased metals from BDI. To date, McAllister has refused to produce any documents responsive to the subpoena based on his assertion of the Fifth Amendment act of production privilege. Because the Division does not believe that the Fifth Amendment privilege applies to corporate documents of BDI, and because McAllister has not addressed why the privilege would apply to any non-corporate documents (if any such documents even exist), the Commission brings this Application for an Order to Show Cause and Order Requiring Compliance with Administrative Subpoena (Application).

JURISDICTION AND VENUE

1. The Commission is an independent federal regulatory agency responsible for administering and enforcing the provisions of the Commodity Exchange Act (Act), 7 U.S.C. §§ 1 *et seq.* (2012), and the Commission's Regulations (Regulations), 17 C.F.R. §§ 1.1 *et seq.* (2015).

2. The Commission brings this action pursuant to Section 6(c)(8) of the Act, 7 U.S.C. § 9(8), and applies to this Court for an Order to Show Cause, in the form attached, requiring Respondent McAllister to show cause why he should not be ordered by this Court to fully comply with the administrative subpoena issued by the Commission on January 21, 2016 and duly served upon him as part of an ongoing Commission investigation. Should no good cause be shown, the Commission respectfully requests an Order Requiring Compliance with an Administrative Subpoena, in the form attached, requiring McAllister to comply in all respects with the Commission's subpoena.

3. In support of this Application, the Commission relies upon the accompanying Suggestions in Support of Application for Order to Show Cause and Order Requiring Compliance with Administrative Subpoena (Suggestions in Support), incorporated herein by reference.

4. The Commission's investigation is conducted pursuant to a May 5, 2015 formal order of investigation entitled "Certain Persons Engaged In Unlawful Retail Commodity Transactions" (as amended July 24, 2015) (Investigation).

5. The attorneys working on the Investigation are assigned to the Commission's Kansas City, Missouri office and the Subpoena issued to Respondent was issued from and returnable to Kansas City, Missouri. Furthermore, the Subpoena required Respondent to

appear at the Commission's Kansas City, Missouri office to produce documents and testify.

6. Section 6(c)(8) of the Act, 7 U.S.C. § 9(8), confers jurisdiction upon this Court to enforce administrative subpoenas issued by the Commission.

THE ADMINISTRATIVE SUBPOENA

7. On or about December 17, 2015 and January 21, 2016, in furtherance of the Investigation, the Division issued a subpoena *duces tecum* to McAllister. The January 21, 2016 subpoena *duces tecum* (Subpoena) required McAllister to appear and produce documents and testify on February 11, 2016. In lieu of this appearance, McAllister was given the option to produce the requested documents to the Division by February 4, 2016. (*Id.* ¶ 14, Exhibit 2.)

8. The Division served the December 17, 2015 subpoena, consistent with the requirements of the Act, on McAllister at an address in Austin, Texas 78749. (*Id.* ¶ 10, Exhibit 2; *see also* Exhibit 3.) The Division served the January 21, 2016 subpoena, consistent with the requirements of the Act, on counsel for McAllister, Randy Leavitt at The Law Office of Randy T. Leavitt, 1301 Rio Grande Street, Austin, TX 78701. (*Id.* ¶ 15, Exhibit 2.)

9. As explained in the accompanying Suggestions in Support, the Commission has had numerous communications with Respondent's counsel regarding the Subpoena; however, to date, McAllister has neither appeared nor produced the documents sought in the Subpoena. (*Id.* ¶ 17.) Further, McAllister has stated that he will not comply with the Subpoena absent a court order.

10. McAllister's refusal to comply with the Subpoena and his failure to produce a single document responsive to that Subpoena are without legal basis. As such, McAllister has been advised that the Commission will institute a subpoena enforcement action against him and seek an award of attorney's fees and costs as part of that action. (*Id.* ¶ 32, Exhibit 6.)

11. As set forth in the Suggestions in Support, the documents requested in the Subpoena are relevant to the Investigation to determine whether BDI and/or McAllister have violated the Act or Regulations; therefore, the Commission seeks to have this Court enforce the Subpoena and compel McAllister to produce responsive documents.

12. The relief requested herein has not been requested previously of this or any other Court or tribunal.

RELIEF

WHEREFORE, the Commission respectfully requests that this Court:

A. Enter an Order to Show Cause requiring McAllister to appear before this Court on a date to be fixed to show cause, if any, why he should not be compelled to comply with the Subpoena issued to him on January 21, 2016;

B. Enter an Order requiring McAllister to comply with the Subpoena and to produce the documents specified in the Subpoena by a date certain;

C. Grant the Commission its attorney's fees and costs expended in bringing this enforcement action; and

D. Grant such other and further relief as may be just and proper under the circumstances.

Dated: May 23, 2016

Respectfully submitted:

By: s/ Jo Mettenburg
Charles D. Marvine (Mo. Bar # 44906)
Jo Mettenburg (W.D. Mo. Bar # V2057)
J. Alison Auxter (Mo. Bar # 59079)
Attorneys for Petitioner
U.S. Commodity Futures Trading Commission
4900 Main Street, Ste. 500
Kansas City, MO 64112
(816) 960-7700 (telephone)
(816) 960-7751 (facsimile)

CERTIFICATE OF SERVICE

I hereby certify that on May 23, 2016, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which did not send notification of such filing to any of the respondents. I hereby certify that I have mailed by United States Postal Service the document to the following non CM/ECF participants:

Randy Leavitt
The Law Office of Randy T. Leavitt
1301 Rio Grande Street
Austin, TX 78701

David Botsford
1307 West Avenue
Austin, TX 78701

/s/Jo Mettenburg
Attorney for Petitioner
U.S. Commodity Futures Trading
Commission

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI**

MISCELLANEOUS COVER SHEET

This automated JS-44 conforms generally to the manual JS-44 approved by the Judicial Conference of the United States in September 1974. The data is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. The information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is authorized for use only in the Western District of Missouri.

The completed cover sheet must be saved as a pdf document and filed as an attachment to the Complaint or Notice of Removal.

Plaintiff(s):

First Listed Plaintiff:

U.S. Commodity Futures Trading Commission ;

County of Residence: Jackson County

Defendant(s):

First Listed Defendant:

Charles McAllister ;

County of Residence: Outside This District

County Where Claim For Relief Arose: Jackson County

Plaintiff's Attorney(s):

Jo E. Mettenburg (U.S. Commodity Futures Trading Commission)

U.S. Commodity Futures Trading Commission

4900 Main Street, Suite 500

Kansas City, Missouri 64112

Phone: 816-960-7700

Fax: 816-960-7751

Email: jmettenburg@cftc.gov

Defendant's Attorney(s):

Randy Leavitt (Charles McAllister)

The Law Office of Randy T. Leavitt

1301 Rio Grande Street

Austin, Texas 78701

Phone: 512-476-4475

Fax: 512-542-3372

Email: randy@randyleavitt.com

Basis of Jurisdiction: 1. U.S. Government Plaintiff

Origin: 1. Original Proceeding

Nature of Suit: 999 Miscellaneous Case

Cause of Action: Miscellaneous Case Commodity Exchange Act Section 6(c)(8), 7 U.S.C. § 9(8) (2012)

Requested in Complaint

Related Cases: Is NOT a refiling of a previously dismissed action

Signature: s/Jo E. Mettenburg

Date: May 23, 2016

If any of this information is incorrect, please close this window and go back to the Civil Cover Sheet Input form to make the correction and generate the updated JS44. Once corrected, print this form, sign and date it, and submit it with your new civil action.