

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

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SECURITIES AND EXCHANGE COMMISSION  
450 5th Street, N.W.  
Washington, D.C. 20549

Plaintiff

v.

JOHN G. BLACK,  
DEVON CAPITAL MANAGEMENT SERVICES, INC.,  
and, FINANCIAL MANAGEMENT SCIENCES, INC.

Defendants

Civil Action No. 97-2655

**ORDER APPOINTING TRUSTEE**

Upon the Application of Plaintiff Securities and Exchange Commission ("Commission") for an ex parte order, among other things, appointing a trustee for defendants Devon Capital Management Services, Inc. ("Devon"), an investment adviser registered with the Commission, and its affiliate Financial Management Sciences, Inc. ("FMS"), the Court has considered the Commission's Complaint, dated September 26, 1997, the Declaration of William R. Meck, and the exhibits thereto, and the Memorandum of Law in Support of Plaintiff's Application. Based upon the foregoing, the Court finds that a proper showing has been made for the relief granted herein, for the following reasons:

1. It appears from the evidence presented that defendants John G. Black ("Black"), Devon and FMS, directly and indirectly, have obtained at least \$233 million from Devon's investment advisory clients by engaging in conduct in violation of Section 17(a) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934, and Sections

206(1), 206(2) and 206(4) of the Investment Advisers Act of 1940 and Rule 206(4)-2(a) thereunder as more specifically set forth in the Court's Order of 26 Sept. 1997 temporarily restraining defendants from violating the above provisions and granting other relief.

2. It appears that defendants John G. Black ("Black"), Devon and FMS (the "Corporate Defendants") have concealed significant losses from Devon's investment advisory clients, and that Black misappropriated more than \$2 million from these clients.

3. Due in part to the Defendants' apparent misconduct, it appears that Devon and FMS are each in a precarious financial condition.

4. The appointment of a trustee is necessary to (i) preserve the status quo, (ii) ascertain the true financial condition of Devon and FMS, (iii) determine how clients funds should be distributed, (iv) prevent the further dissipation, misappropriation or misuse of the property and assets of Devon, FMS and Devon's investment advisory clients, (v) prevent the encumbrance or disposal of property or assets of Devon, FMS and Devon's investment advisory clients, (vi) bring Devon and FMS into compliance with the law, (vii) report to the Court on the assets and liabilities of Devon and FMS and other matters set forth herein, (viii) bring any legal process necessary to recover assets that have been misappropriated, fraudulently conveyed, or that are otherwise recoverable by the Corporate Defendants, and (ix) preserve and maintain the value of any assets or property of the Corporate Defendants for the benefit of Devon's investment advisory clients.

NOW, THEREFORE,

IT IS HEREBY ORDERED that, pending further order of this Court, Richard Thornburgh, and hereby is, appointed to act as a trustee for defendants Devon

and FMS. The trustee is hereby empowered to:

- A. take and retain immediate possession, custody, and control of all assets and property and the books and records of original entry of the Corporate Defendants;
- B. notwithstanding the asset freeze imposed by this Court in its Order of 26 Sept. 1997 take and maintain immediate control, custody, possession and legal title to all shares of common stock or other equity in the Corporate Defendants in which Black has any legal or beneficial interest, and to exercise all rights and powers incident to such stock ownership, including but not limited to: (i) replacing the board of directors and any officers of the Corporate Defendants, and (ii) taking any other corporate actions necessary in furtherance of this Order.
- C. take all steps he deems necessary to immediately secure and protect the assets and property of the Corporate Defendants, including but not limited to the premises located at 5 West 10th Street, Tyrone, Pennsylvania, 16686 and the contents therein;
- D. engage and employ persons to assist him in carrying out his duties and responsibilities hereunder, including accountants, attorneys, and experts;
- E. acquire and retain all rights and powers which the Corporate Defendants have to manage, control, operate and maintain their businesses (including, but not limited to, the power to direct, hire, suspend, and terminate personnel, and to possess, receive, or use income, earnings, rents, and profits with full power to commence, maintain, defend or participate in legal proceedings, to sue for, collect, receive

and take into possession of all goods, chattels, rights, general intangibles, chose in action, credits, monies, effects, lands, books and records of account, and other papers, including exclusive authority to make expenditures on behalf of the Corporate Defendants, with a view to preventing loss, damage, and injury to Devon's investment advisory clients, and preserving assets and the records of the Corporate Defendants.

- F. Notwithstanding the asset freeze imposed by this Court in its Order of 26 Sept. 1997, the trustee shall have the power to open and close bank accounts and securities accounts at locations to be determined by the trustee and to execute checks or otherwise disburse money from those bank or securities accounts of the Corporate Defendants to pay their obligations in the normal course of business; except, however, that pending further order of the Court, neither the Corporate Defendants nor the trustee shall release any property held by the Corporate Defendants for the benefit of any of Devon's investment advisory clients;
- G. if appropriate, have the sole authority to file for relief and protection under the United States Federal Bankruptcy Code on behalf of the Corporate Defendants, after notice to all parties in this action, provided, however, that any creditor who seeks to file an involuntary bankruptcy petition against either or both Corporate Defendant(s) must first file an application with this Court seeking leave to do so upon 72 hours notice to the trustee and the Commission;
- H. report to the Court and the parties within 30 days, the following information for each of the Corporate Defendants:

1. The amount of cash on hand;
  2. The total value of all assets in any and all bank accounts controlled by or in the name of Devon, FMS or Devon's investment advisory clients;
  3. Any other monthly income and expenses of each of the Corporate Defendants;
  4. The names and identities of the Devon's investment advisory clients;
- I. report to the Court and the parties within 90 days, subject to such reasonable extensions as the Court may grant, the following information for each of the Corporate Defendants;
1. all assets, liabilities, money, funds, securities, and real or personal property currently held directly or indirectly by or for the benefit of the Corporate Defendants and Devon's investment advisory clients and each of their controlled, related or affiliated entities, including, but not limited to, bank accounts, brokerage accounts, investments, business interests, and real and personal property, wherever situated, identifying and describing each asset and liability, its current location and amount;
  2. all money, assets, funds, securities, and real or personal property received by the Corporate Defendants for the direct or indirect benefit of the Corporate Defendants and/or Devon's investment advisory clients, at any time from January 1, 1995 to the date of the accounting provided to this Court, which shall describe the source, amount, disposition and current location of each of the items listed;

3. all money, assets, funds, securities, and real or personal property disbursed by any of the Corporate Defendants for the direct or indirect benefit of Black or any member of his immediate family, at any time from January 1, 1995 to the date of the accounting provided to this Court, which shall describe the source, amount, and date of disbursement of each of the items listed;
  4. the names, last known addresses, and account-identifying information of all financial institutions, bailees, creditors, and other persons and entities that are currently holding any money, assets, funds, securities, real or personal property for the direct or indirect benefit of the Corporate Defendants, Black and Devon's investment advisory clients; and
- J. oversee the preparation and filing with the Court and service on the Commission and the parties of:
1. audited balance sheets for the Corporate Defendants as of September 26, 1997, with notes, prepared and presented in conformity with generally accepted accounting principles;
  2. audited income and cash flow statements for the Corporate Defendants for the period December 31, 1989 through September 26, 1997, with notes, prepared and presented in conformity with generally accepted accounting principles;
  3. reports setting forth the value of assets held by FMS in the Collateral Account maintained at Mid-State Bank, 1130 Twelfth Ave., Altoona,

Pennsylvania, Account # 76-1411-10-7.

4. reports setting forth the amount of principal investment lost by each client who invested in a Collateralized Investment Agreement.
- K. take such further action as the Court shall deem equitable, just and appropriate under the circumstances upon proper application, including ex parte application.
- L. prepare and file any necessary tax returns for the Corporate Defendants, and obtain any necessary extensions of the relevant filing deadlines

II.

IT IS FURTHER ORDERED that the Corporate Defendants shall pay the reasonable costs, fees and expenses of the trustee in connection with the performance of his respective duties described herein, including, but not limited to, the reasonable costs, fees and expenses of all persons who may be engaged or employed by the trustee to assist him in carrying out his duties and obligations. All applications for costs, fees and expenses of the trustee and those employed by him shall be made by application to the Court setting forth in reasonable detail the nature of such costs, fees and expenses. Upon approval of any such applications, the trustee may pay himself and those employed by him from the assets of the Defendants under his control.

III.

IT IS FURTHER ORDERED that the trustee and all persons who may be engaged or employed by the trustee to assist him in carrying out his duties and obligations hereunder shall not be liable for any act or omission of the trustee or such person, respectively, or any of their partners, employees, or agents, unless it shall be proven that the trustee or such other person in bad faith acted or omitted to act. This provision shall apply to claims based on conduct

during the term of any agreement that may be entered into between the trustee and any other person who may be engaged or employed by the trustee hereunder, even if such claims are filed after the termination of any such agreement.

Defendants Black, Devon and FMS, shall indemnify, defend and hold harmless the trustee and his law firm and his or its agents, employees, consultants, successors, and assigns, from and against all actions (pending or threatened and whether at law or in equity in any forum), liabilities, damages, losses, costs, and expenses, including but not limited to reasonable attorneys' and other professionals' fees, arising from conduct or omission of the trustee or his law firm or his or its agents, employees, and consultants under the terms of this Order.

#### IV.

IT IS FURTHER ORDERED that, subject to all rights and privileges available under the law, Black and the Corporate Defendants and their officers, directors, agents, servants, employees and attorneys-in-fact shall:

- A. provide to the trustee all information requested relating to the past and present operations, activities and condition of the Corporate Defendants and shall take no action, directly or indirectly, to hinder, obstruct, delay or otherwise interfere in any manner with the actions of the trustee or any other person engaged or employed by the trustee to assist him in carrying out his duties and obligations herein; and
- B. provide to the trustee forthwith access to and a written description and the location of all of the following documents which it has within its current possession, custody or control:



1. all lists, files and data bases of the Corporate Defendants' investment and use of Devon's investment advisory clients funds; and,
2. all accounting and financial books and records of original entry and, as requested by the Trustee, all supporting documentation and the names of all persons making entries in each such book or record.

IT IS FURTHER ORDERED that this Order shall be, and is, binding upon each of the Defendants, and each's officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them and any other persons who receive actual notice of this Order by personal service, facsimile service, or otherwise. A motion to modify this Order may be made at any time by the Commission or the trustee.

  
UNITED STATES DISTRICT JUDGE

Issued at 3:00 p.m.

September 26, 1997