

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

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SECURITIES AND EXCHANGE COMMISSION,	:	
	:	CIVIL ACTION - LAW
Plaintiff	:	
	:	NO. 97-CV-265J
v.	:	
	:	ASSIGNED TO:
	:	
JOHN GARDNER BLACK, DEVON CAPITAL	:	UNITED STATES DISTRICT
MANAGEMENT, INC. and FINANCIAL	:	COURT JUDGE,
MANAGEMENT SCIENCES, INC.,	:	D. BROOKS SMITH
Defendants	:	
.....	:	

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MOTION FOR RELIEF FROM TEMPORARY RESTRAINING ORDER  
AND PRELIMINARY INJUNCTIVE RELIEF OF  
CORNWALL-LEBANON SCHOOL DISTRICT

Cornwall-Lebanon School District, by and through its attorneys, Rhoads & Sinon LLP, moves for relief from the Temporary Restraining Order entered on September 26, 1997, and from any preliminary injunctive relief entered by the Court, and in support states as follows:

1. Cornwall-Lebanon School District ("Cornwall-Lebanon") is a local governmental agency authorized and existing under the laws of the Commonwealth of Pennsylvania, with a principal place of business located at 105 East Evergreen Road, Lebanon, PA 17042.

2. Cornwall-Lebanon seeks to intervene in the action as of right under Federal Rule of Civil Procedure 24 because it has an

interest relating to property, which property the Trustee appears to be claiming is subject to the Temporary Restraining Order and Order Granting Other Relief entered by the Court on September 26, 1997, and its interests are such that the disposition of the action, including any ruling on preliminary injunctive relief, could as a practical matter impair and impede its ability to protect its interests unless leave to intervene is granted.

3. The interests of Cornwall-Lebanon are not represented by the existing parties. In fact, to the contrary, the interests of Plaintiff, Securities and Exchange Commission ("SEC"), and Defendants, John Gardner Black, Devon Capital Management, Inc., and Financial Management Services, Inc., are adverse to the interests of Cornwall-Lebanon.

4. On September 26, 1997, the SEC filed a Complaint against John Gardner Black ("Black"), Devon Capital Management, Inc. ("Devon"), and Financial Management Sciences, Inc. ("FMS").

5. In its Complaint, the SEC alleged inter alia that Black, acting by and through Devon and FMS, in violation of the Securities Act of 1933, Securities Exchange Act of 1934 and the Investment Advisors Act of 1940, misrepresented the value of certain securities which the Complaint identified as a collateralized mortgage obligation ("CMO") issued by the Federal

National Mortgage Association, held in a Collateral Account maintained at Mid-State Bank. Complaint at ¶33-34.

6. According to the Complaint, the Collateral Account holds securities which are maintained as collateral for the benefit of Devon's clients who have invested subject to a form of investment contract called a Collateralized Investment Agreement, or "CIA." Complaint at ¶21 and 26.

7. The SEC also noted in the Complaint that there exist advisory clients of Devon who hold their own securities outside of the Collateral Account. Complaint at ¶23.

8. Cornwall-Lebanon did not enter into "CIA", but rather entered into a "Repurchase Agreement" with FMS, pursuant to which FMS sold and delivered certain specific securities to Cornwall-Lebanon. The Repurchase Agreement provided that on specified dates the securities, or equivalent substitutes, would be resold to FMS at a pre-established price. Cornwall-Lebanon did NOT enter into CIA of the type alleged in the SEC Complaint. Rather, the securities traded pursuant to the Repurchase Agreement were held by PNC Bank, National Association, in a separate, segregated custodial accounts in the name of, and identified as the property of, Cornwall-Lebanon, which accounts are separate and distinct from

11. Under the Repurchase Agreement and Custody Agreement referenced above, neither Black, Devon nor FMS were permitted to take possession of or act as custodian of the assets of Cornwall-Lebanon. Devon's only relationship with Cornwall-Lebanon was to act as an investment advisor to Cornwall-Lebanon.

12. The securities in each custodial account are the property of Cornwall-Lebanon and, under the terms of the Custody Agreement and the Repurchase Agreement, are held in the name of Cornwall-Lebanon by PNC Bank, National Association, as custodian, in a separate account or accounts for the exclusive benefit of Cornwall-Lebanon, and are not held in the name of, nor in any way titled to, Devon or FMS.

13. Cornwall-Lebanon did not enter into a Collateralized Investment Agreement, or "CIA", as defined in the SEC's Complaint or as described in the Declaration of William R. Meck, Assistant District Administrator in the Philadelphia District Office of the United States Securities and Exchange Commission, filed by the SEC in connection with the Complaint.

14. Cornwall-Lebanon's accounts and securities were never pooled with any accounts of other clients of Devon or FMS, and have always been separately maintained and valued by PNC Bank,

National Association, for the account of, and as the property of, Cornwall-Lebanon.

15. The alleged misrepresentation of value of the CMO's held in the Collateral Account maintained at Mid-State Bank is not applicable to the securities held by PNC Bank, National Association, on behalf of Cornwall-Lebanon, because these securities are the exclusive property of Cornwall-Lebanon.

16. On September 26, 1997, United States District Court Judge William L. Standish, upon application of the Securities and Exchange Commission, entered, among other things, a Temporary Restraining Order and Order Granting Other Relief.

17. In Section III of the Temporary Restraining Order, the Court ordered, among other things:

(a) Defendants Black, Devon and FMS, as well as their officers, directors, subsidiaries, agents, servants, employees, attorneys, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, and each of them, shall hold and retain within their control, and otherwise prevent any disposition, transfer, pledge, encumbrance, assignment, dissipation, concealment, or other disposal whatsoever, of any funds of other assets of each of the

Defendants presently held by them, under their control or over which they exercise actual or apparent investment or other authority, in whatever form such assets may presently exist and wherever located; and

(b) Any financial or brokerage institution or other person or entity located within the territorial jurisdiction of the United States courts and holding any funds or other assets in the name, for the benefit or under the control of the Defendants, and which receives actual notice of this Order by personal service, express courier service, telefax or otherwise, shall hold and retain within its control and prohibit the withdrawal, removal, transfer or other disposal of any such funds or other assets.

18. Cornwall-Lebanon has made demand upon PNC, National Association, for release and transfer of its securities, in kind. PNC Bank, National Association, has interpreted the vague and overbroad Order of the Court as possibly freezing the securities of Cornwall-Lebanon held in its custodial accounts, until this Court's Order is amended or clarified so as to expressly not apply to said custodial accounts.

19. As a result of the entry of the Temporary Restraining Order, Cornwall-Lebanon has been deprived of access to

and use of substantial funds and assets on deposit with PNC Bank, National Association.

20. By virtue of the asset freeze effected by the entry of the Temporary Restraining Order, PNC Bank, National Association, has advised Cornwall-Lebanon that it is unable to take any action in connection with its accounts.

21. At this time, Cornwall-Lebanon has not suffered any loss of principal in its accounts; however, should the market shift by reason of a change of prevailing market interest rates, then Cornwall-Lebanon, by virtue of the asset freeze, will be at risk of suffering a loss of principal as well as the risk of resulting damage which will result solely from the asset freeze. Moreover, all of the securities held in such accounts by PNC Bank, National Association, will mature within the next thirty days. The cash proceeds cannot be reinvested without clarification of the Temporary Restraining Order, all to the great detriment of Cornwall-Lebanon.

22. Cornwall-Lebanon is at further risk that it will suffer financial harm by reason of an ongoing inability to withdraw funds from its accounts at PNC Bank, National Association, for payment of the obligations of the School District for which the accounts were created, that is, amounts due for outstanding

construction projects. The failure to make timely progress payments constitutes default under the respective Construction Contracts and could result in cessation of work, increased construction costs, and liability for damages for breach of contract. Substantial construction progress payments are due within the next 30 days.

23. The funds of Cornwall-Lebanon should not be subject to any Order or preliminary injunction which prevents Cornwall-Lebanon from having access to and the use of those funds.

24. Cornwall-Lebanon School District respectfully requests that the court enter an Order granting it relief from the Temporary Restraining Order entered on September 26, 1997, and further Ordering that any and all funds, securities or other assets held by PNC Bank, National Association, in the custodial accounts established under the aforesaid Custody Agreement are not subject to any preliminary injunctive order that would prevent any disposition, transfer, pledge, encumbrance, assignment, dissipation or other disposal whatsoever of any such funds, securities or other assets, and any such other relief as the Court deems just and appropriate.

25. It is further requested that all parties to this action and persons or entities with actual notice of the Court's



Order be enjoined and precluded from taking any action that is inconsistent with Cornwall-Lebanon's property rights including the transfer or seizure of assets or funds held for the benefit of Cornwall-Lebanon by PNC Bank, National Association.

Respectfully submitted,

RHOADS & SINON LLP

By: 

Thomas A. French  
One South Market Square  
P. O. Box 1146  
Harrisburg, PA 17108-1146  
(717) 233-5731

Attorney for Intervenor Cornwall-  
Lebanon School District

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