

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

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

LAWRENCE P. SCHMIDT; FUTUREGEN
COMPANY d/b/a FUTUREGEN CAPITAL;
COMMERCIAL EQUITY PARTNERS, LTD.;
FGC DISTRESSED ASSETS INVESTMENT #1,
LLC; FUTUREGEN CAPITAL DDA CG FUND
LLC; FGC TAX LIEN FUND #2, LLC; FGC
TRADING FUND #1 LLC; FGC SPE NO 1 LLC;
FGC SPE NO 2 LLC; AND FGC CM NOTE
FUND LLC,

Defendants.

Case No. 1:14-cv-01002 (CRC)

***EX PARTE* ORDER FREEZING ASSETS, APPOINTING A RECEIVER,
GRANTING TEMPORARY RESTRAINING ORDER AND
OTHER EMERGENCY RELIEF, AND ISSUING AN ORDER TO
SHOW CAUSE ON A PRELIMINARY INJUNCTION**

This matter came before the Court this 12th day of June 2014, on Motion of the Securities and Exchange Commission (“Commission”), for issuance of an order granting, *ex parte*, certain emergency relief against Defendants Lawrence P. Schmidt, FutureGen Company d/b/a/ FutureGen Capital (“FutureGen”); Commercial Equity Partners, Ltd. (“Commercial Partners”); FGC Distressed Assets Investment #1, LLC; FutureGen Capital DDA CG Fund LLC; FGC Tax Lien Fund #2, LLC; FGC Trading Fund #1 LLC; FGC SPE NO 1 LLC; FGC SPE NO

2 LLC; and FGC CM Note Fund LLC (collectively the “FutureGen Funds”) (collectively with FutureGen and Commercial Partners (the “Corporate Defendants”)).

The Commission seeks orders: (1) appointing a temporary receiver over the Corporate Defendants; (2) freezing the assets of Defendants; (3) requiring an accounting; and (4) authorizing alternative service on Defendants.

Having considered the Commission’s Complaint, Motion, Supporting Memorandum of Law, the Declaration of Dustin A. Ruta and the exhibits thereto, the Court finds that a proper showing, as required by Section 20(b) of the Securities Act of 1933 and Section 21(d) of the Securities Exchange Act of 1934 has been made for the relief granted herein because it appears that appointment of a receiver for the Corporate Defendants is necessary to preserve the status quo, to ascertain the extent of commingling of funds among the Corporate Defendants, Schmidt, and all entities that they control or in which they have an ownership interest, to ascertain the true financial condition of the Corporate Defendants and the disposition of investor funds, to prevent further dissipation of the property and assets of the Corporate Defendants and all entities that they control or in which they have an ownership interest, to prevent the encumbrance or disposal of property or assets of the Corporate Defendants and the investors, to preserve the books, records, and documents of the Corporate Defendants, to be available to respond to investor inquiries, to protect investors’ assets, and to determine whether the Corporate Defendants should undertake bankruptcy filings.

Good and sufficient reasons have been shown why the procedure other than by notice of motion is necessary. The Court finds, in accordance with Federal Rule of Civil Procedure 65(b)(1), that the affidavits accompanying the Commission’s complaint allege facts to support a finding that notice is not required prior to the issuing of this Order and that immediate and

irreparable injury may result absent this Order prior to providing the opposing party the opportunity to be heard.

This Court has jurisdiction over the subject matter of this action and over the Defendants and venue properly lies in this District.

NOW, THEREFORE,

IT IS HEREBY ORDERED that the Motion is **GRANTED**.

I.

IT IS FURTHER ORDERED that a temporary receiver to be named by separate order of the Court be and hereby is appointed to act as receiver for the Corporate Defendants and all entities they control or in which they have an ownership interest, to: (1) preserve the status quo; (2) ascertain the true financial condition of the Corporate Defendants, of all entities they control or in which they have an ownership interest, and the disposition of investor funds; (3) prevent further dissipation of the property and assets of the Corporate Defendants and all entities they control or in which they have an ownership interest; (4) prevent the encumbrance or disposal of property or assets of the Corporate Defendants, and of all entities they control or in which they have an ownership interest; (5) preserve the books, records, and documents, of the Corporate Defendant and all entities they control or in which they have an ownership interest; (6) be available to respond to investor inquiries; (7) determine if the Corporate Defendants and all entities they control or in which they have an ownership interest should undertake a bankruptcy filing. To effectuate the foregoing, the receiver is empowered to:

(A) Take and retain immediate possession and control of all of the assets and property of the Corporate Defendants and all entities they control or in which they have an ownership interest, and all books, records, and documents, of the Corporate

- Defendants and all entities they control or in which they have an ownership interest, and the rights and powers of it with respect thereto;
- (B) Have exclusive control of, and be made the sole authorized signatory for all accounts at any bank, brokerage firm, or financial institution that has possession or control of any assets or funds of the Corporate Defendants and all entities they control or in which they have an ownership interest;
- (C) Succeed to all rights to manage all properties owned or controlled, directly or indirectly, by the Corporate Defendants;
- (D) Pay from available funds necessary business expenses required to preserve the assets and property of the Corporate Defendants and all entities they control or in which they have an ownership interest, including the books, records, and documents, of the Corporate Defendants;
- (E) Take preliminary steps to ascertain the disposition and use of funds obtained by the Corporate Defendants resulting from the sale of securities issued by the Defendants and the entities they control;
- (F) Engage and employ persons, including accountants, attorneys, and experts, to assist in the carrying out of the receiver's duties and responsibilities hereunder;
- (G) Take all necessary steps to gain control of any Corporate Defendants' interests in assets in foreign jurisdictions and funds maintained in accounts at foreign institutions, which may be proceeds of Defendants' fraud, including but not limited to taking steps necessary to repatriate foreign assets;
- (H) Take such further action as the Court shall deem equitable, just and appropriate under the circumstances upon proper application of the receiver.

II.

IT IS FURTHER ORDERED that no person or entity, including any creditor or claimant against any of the Defendants, or any person acting on behalf of such creditor or claimant, shall take any action to interfere with the taking control, possession, or management of the assets, including, but not limited to the filing of any lawsuits, liens, or encumbrances, or bankruptcy cases to impact the property and assets subject to this order.

III.

IT IS FURTHER ORDERED that the Defendants shall pay the reasonable costs, fees, and expenses of the receiver incurred in connection with the performance of the 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 receiver to assist the receiver in carrying out the duties and obligations. All applications for costs, fees, and expenses of the receiver and those employed by the receiver shall be made by application to the Court setting forth in reasonable detail the nature of such costs, fees, and expenses, and shall conform to be Fee Guidelines that will be supplied by the U.S. Securities and Exchange Commission.

IV.

IT IS FURTHER ORDERED that the Defendants and their officers, agents, servants, employees, attorneys, subsidiaries and affiliates, and those persons in active concert or participation with any of them, who receive actual notice of this Order, by personal service or otherwise, and each of them, be and hereby are temporarily restrained and enjoined from, directly or indirectly withdrawing, transferring, assigning, selling, pledging, hypothecating, changing, wasting, dissipating, converting, concealing, encumbering, or otherwise disposing of, in any manner, any funds, assets, accounts, securities, claims, or other real or personal property,

in whatever form and wherever located, in the name, for the benefit, or under the control of the Defendants and their subsidiaries and affiliates, whether owned by, controlled by, managed by, over which they exercise actual or apparent investment or other authority, or in the possession or custody of any of them, including assets held in corporate or partnership accounts in which the Defendants have an interest. This Order expressly includes a prohibition on opening or causing to be opened any safe deposit boxes titled in the name of, or subject to access by, any of the Defendants.

V.

IT IS FURTHER ORDERED that any bank, savings and loan, mutual fund, or other financial or brokerage institution, or any other person, partnership, or corporation or other person or entity located within the territorial jurisdiction of the United States courts that (i) holds, controls, or maintains custody of any funds, accounts or other assets in the name, for the benefit or under the control of the Defendants, or any of them, or for which the Defendants, or any of them, are signatories or have signing authority, and (ii) receives actual notice of this Order, by personal service or otherwise:

Shall hold and retain within its control and prohibit the withdrawal, removal, assignment, transfer, pledge, encumbrance, disbursement, dissipation, conversion, sale or other disposal of any funds or other assets in such accounts;

Shall deny the Defendants and all other persons or entities further access to any safe deposit box that is titled in the name of any Defendant either individually or jointly; or otherwise subject to access by any Defendant; and

Shall provide to counsel for the Commission identified below, within five (5) business days of receiving a copy of this Order, a statement setting forth:

- (A) the identification number of each and every account or asset titled in the name, individually or jointly, of, or held on behalf of, or for the benefit of, any Defendant;
- (B) the balance of each such account, or a description of the nature and value of such asset as of the close of business on the day on which this Order is served, and, if the account or other asset has been closed or removed, the date closed or removed, the total funds removed in order to close the account, and the name of the person or entity to whom such account or other asset was remitted; the identification of any safe deposit box that is either titled in the name, individually or jointly, of any Defendant or is otherwise subject to access by any Defendant; and
- (C) A list of all transactions involving the asset or account which have occurred within the last 90 days; and
- (D) Upon request by the Commission, promptly provide to the Commission counsel identified below copies of all records or other documentation pertaining to such account or asset, including, but not limited to, originals or copies of account applications, account statements, signature cards, checks, drafts, deposit tickets, transfers to and from the accounts, all other debit and credit instruments or slips, currency transaction reports, 1099 forms, and safe deposit box logs.

For the purposes of this section, service on counsel for the Commission shall be by express courier service or facsimile, or some other means agreed to by counsel for the Commission, directed to John V. Donnelly, Senior Trial Counsel, United States Securities and Exchange Commission, Philadelphia Regional Office, One Penn Center, 1617 JFK Boulevard, Suite 520, Philadelphia, PA 19103, facsimile number (215) 597-2740.

VI

IT IS FURTHER ORDERED that each Defendant, as applicable, within seven (7) business days of the entry of this Order, shall provide the Commission and the receiver a full, verified, accounting of the following:

- (A) a current balance sheet showing all assets and all liabilities of such Defendant and his or her spouse;
- (B) for the period May 1, 2008 to the present, a cash flow analysis reporting all monthly income and all monthly expenses of such Defendant and his or her spouse which identifies all sources of income and all payees;
- (C) for the period May 1, 2008 to the present, an identification and description of all assets which such Defendant and his or her spouse held a beneficial interest and which such Defendant and his or her spouse conveyed to any other person or entity, which identification and description are also to include the date of transfer, the name(s) of the transferee(s), the reason for the transfer, the consideration received (if any), and whether the consideration received was full and adequate;
- (D) identification and description of each account with any financial institution or brokerage firm maintained in the name of such Defendant and/or the name of his or her spouse, or in which such Defendant and his or her spouse has or has had any direct or indirect beneficial interest;
- (E) every transaction in which any funds or other assets of any kind were transferred between or among such Defendant and any other Defendant(s) in this action, or from such Defendant to any other person or entity in which any of the Defendants has any ownership interest;

(F) all funds received by the Defendant, directly or indirectly, from investors, or any other person, including a list of:

1. the name, address, and telephone number of each investor; and
2. the amount invested by each investor and a statement of the location and disposition of any funds received from investors or other person;

(G) all currency transactions or other transactions directly or indirectly by the Defendant constituting or relating to the investment of funds raised from investors;

(H) all transactions relating to the leveraging of funds raised from investors;

(I) the names, addresses, and telephone numbers of all persons with knowledge of investments made with, and/or use of, investor funds; and

(J) the names, addresses, and telephone numbers of all present and former employees, officers, directors, agents, attorneys, representatives, associates, affiliates, or subsidiaries of Defendants.

The foregoing verified accountings shall be delivered by express courier service or facsimile or by some other means agreed to by counsel for the Commission to John V. Donnelly, Senior Trial Counsel, United States Securities and Exchange Commission, Philadelphia Regional Office, One Penn Center, 1617 JFK Boulevard, Suite 520, Philadelphia, PA 19103, facsimile number (215) 597-2740. Immediately after submission of the verified accountings, the Defendants shall make available to the Commission and receiver, at a time and place agreeable to the Commission and receiver, all books, records, electronic data, and other documents or tangible things underlying the verified accountings.

VII.

IT IS FURTHER ORDERED that the Defendants and all persons or entities acting at their direction or on their behalf who receive actual notice of this Order, by personal service, facsimile service, or otherwise, are hereby enjoined and restrained from destroying, altering, concealing, or otherwise interfering with the Commission's access to, any and all documents, books, and records in the possession, custody, or control of the Defendants, their agents, officers, employees, servants, accountants, financial or brokerage institutions, or attorneys relating to the assets of the Defendants or to the allegations of the Complaint, including but not limited to documents relating to the business operations of the Defendants, the offer or sale of securities, and the use of investor funds.

VIII.

IT IS FURTHER ORDERED that a copy of this Order and the papers supporting the Commission's Application be served upon the Defendants on or before June 17, 2014. The Commission may effect service of this Order and the underlying motion and supporting documents, by any means of service authorized by the Federal Rules of Civil Procedure, or by alternative means. With respect to the Corporate Defendants, the Commission may effect service by overnight mail or courier service, such as UPS overnight, to the registered agents for or the Secretary of State of the state of incorporation of the Corporate Defendants. With respect to Schmidt, the Commission may effect service via email to one or more of the following email addresses: lschmidt@futuregenco.com or lschmidtcep@gmail.com. The Commission shall also provide a copy of this Order and the papers supporting the Commission's Application to Dawn Kil and Robert Heim.

IX.

IT IS FURTHER ORDERED that this Order shall be, and is, binding upon the Defendants and each of their respective officers, agents, servants, employees, attorneys-in-fact, subsidiaries, affiliates and those persons in active concert or participation with them who receive actual notice of this Order by personal service, facsimile service, or otherwise.

XII.

IT IS FURTHER ORDERED that, unless otherwise provided herein or by Court Order, the Defendants shall serve all pleadings, correspondence, notices required by this Order, and other materials on the Commission by delivering a copy by receipted transmission to John V. Donnelly, Senior Trial Counsel, United States Securities and Exchange Commission, Philadelphia Regional Office, One Penn Center, 1617 JFK Boulevard, Suite 520, Philadelphia, PA 19103.

XIII.

IT IS FURTHER ORDERED that this Order shall expire at six o'clock p.m. on June 26, 2014, unless, for good cause shown, it is extended or unless the parties against whom it is directed consent that it may be extended for a longer time.

XIV.

IT IS FURTHER ORDERED that Defendants shall file any response and opposition to Plaintiff's motion for a preliminary injunction on or before June 23, 2014 at 5 o'clock p.m.

XV.

IT IS FURTHER ORDERED that Plaintiff may file a reply to any opposition filed by Defendants or submit supplemental materials in support of their motion for a preliminary injunction on or before June 24 at 5 o'clock p.m.

XVI.

IT IS FURTHER ORDERED that Defendants show cause, if there be any, to this Court at four o'clock p.m., on the 26th day of June, 2014 in Courtroom 27A of the United States District Court for the District of Columbia, 333 Constitution Avenue, N.W., Washington, DC 20001 why this Court should not enter an Order preliminarily enjoining them from committing further violations of the respective provisions of the federal securities laws that the Defendants have been restrained from violating pursuant to this Order.

SO ORDERED.

Dated: June 12, 2014

Time: 6:00 p.m.

Cristopher R. Cooper
United States District Judge