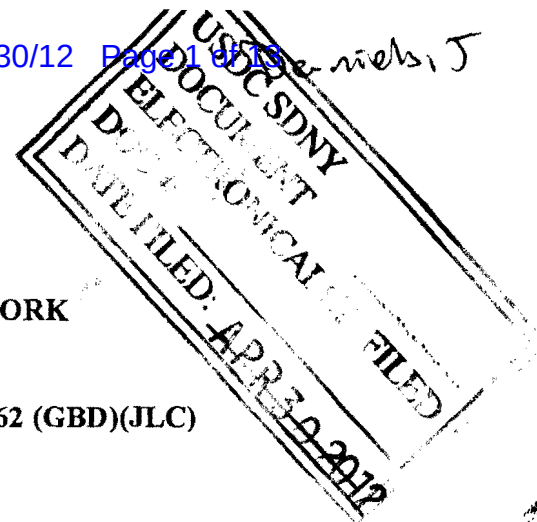




UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

COMMODITY FUTURES
TRADING COMMISSION,

Plaintiff,

v.

KEVIN CASSIDY, EDWARD O'CONNOR
OPTIONABLE INC., DAVID LEE and
ROBERT MOORE,

Defendants.

08-CIV-9962 (GBD)(JLC)

ECF Filed

AMENDED PARTIAL
CONSENT ORDER FOR
PERMANENT INJUNCTION
AND OTHER EQUITABLE
RELIEF AGAINST
DEFENDANT KEVIN CASSIDY

I. INTRODUCTION

On November 18, 2008, Plaintiff Commodity Futures Trading Commission ("Commission" or "CFTC") filed a Complaint against Defendants Kevin Cassidy, Edward O'Connor, Optionable Inc., David Lee and Robert Moore seeking injunctive and other equitable relief, as well as the imposition of civil penalties, for violations of the Commodity Exchange Act ("Act"), 7 U.S.C. §§ 1 *et seq.* (2006), and the Commission Regulations ("Regulations") promulgated thereunder, 17 C.F.R. §§ 1.1 *et seq.* (2008).

II. CONSENTS AND AGREEMENTS

To effect settlement of all charges alleged in the Complaint against Defendant Kevin Cassidy ("Cassidy") without a trial on the merits or any further judicial proceedings, Cassidy:

1. Consents to the entry of this Amended Partial Consent Order for Permanent Injunction and Other Equitable Relief Against Defendant Kevin Cassidy ("Partial Judgment");
2. Affirms that he read and agreed to this Partial Judgment voluntarily, and that no promise, other than as specifically contained herein, or threat, has been made by the Commission

or any member, officer, agent or representative thereof, or by any other person, to induce consent to this Partial Judgment;

3. Acknowledges service of the summons and Complaint;

4. Admits the jurisdiction of this Court over him and the subject matter of this action pursuant to Section 6c of the Act, as amended, 7 U.S.C. § 13a-1;

5. Admits the jurisdiction of the Commission over the conduct and transactions at issue in this action pursuant to the Act, 7 U.S.C. §§ 1, *et seq.*;

6. Admits that venue properly lies with this Court pursuant to Section 6c(e) of the Act, as amended, 7 U.S.C. § 13a-1(e);

7. Waives:

(a) any and all claims that he may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2006) and 28 U.S.C. § 2412 (2006), and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Regulations, 17 C.F.R. §§ 148.1 *et seq.* (2011), relating to, or arising from, this action;

(b) any and all claims that he may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, §§ 201-253, 110 Stat. 847, 857-868 (1996), as amended by Pub. L. No. 110-28, § 8302, 121 Stat. 112, 204-205 (2007), relating to, or arising from, this action;

(c) any claim of Double Jeopardy based upon the institution of this action or the entry in this action of any order imposing a civil monetary penalty or any other relief, including this Partial Judgment; and

(d) any and all rights of appeal from this action;

8. Waives service of the Partial Judgment and agrees that entry of the Partial Judgment by the Court and the filing of the Partial Judgment with the Clerk of the Court will constitute notice to Cassidy of its terms and conditions. Cassidy agrees to execute and provide to the Commission a written declaration pursuant to 28 U.S.C. § 1746 acknowledging his receipt of the Partial Judgment no later than twenty (20) days after a copy of the Partial Judgment has been delivered to Cassidy's counsel;

9. Consents to the continued jurisdiction of this Court over him for the purpose of: resolving the reserved issues of the amounts of restitution, disgorgement and civil monetary penalty; implementing and enforcing the terms and conditions of this Partial Judgment; and for any other purpose relevant to this action, even if Cassidy now or in the future resides outside the jurisdiction of this Court;

10. Agrees that he will not oppose enforcement of this Partial Judgment by alleging that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure and waives any objection based thereon;

11. Agrees that neither he nor any of his agents or employees under his authority or control shall take any action or make any public statement denying, directly or indirectly, any allegation in the Complaint or the Findings of Fact or Conclusions of Law in this Partial Judgment, or creating or tending to create the impression that the Complaint and/or this Partial Judgment is without a factual basis; provided, however, that nothing in this provision shall affect his: (a) testimonial obligations, or (b) right to take legal positions in other proceedings to which the Commission is not a party. Cassidy shall undertake all steps necessary to ensure that all of his agents and/or employees under his authority or control understand and comply with this agreement;

12. Admits to all of the findings made in this Partial Judgment. Further, Cassidy agrees and intends that all of the Findings of Fact and Conclusions of Law contained in this Partial Judgment shall be taken as true and correct and be given preclusive effect, without further proof, in the course of: (a) any current or subsequent bankruptcy proceeding filed by, on behalf of, or against Cassidy; (b) any proceeding pursuant to Section 8a of the Act, as amended, 7 U.S.C. § 12a, and/or Part 3 of the Regulations, 17 C.F.R. §§ 3.1 *et seq.* (2011); and/or (c) any proceeding to enforce the terms of this Partial Judgment;

13. Agrees to provide immediate notice to this Court and the Commission by certified mail, in the manner required by paragraph 33 of Part VI of this Partial Judgment, of any bankruptcy proceeding filed by, on behalf of, or against him, whether inside or outside the United States; and

14. Agrees that no provision of this Partial Judgment shall in any way limit or impair the ability of any person or entity to seek any legal or equitable remedy against Cassidy in any other proceeding.

III. FINDINGS AND CONCLUSIONS

The Court, being fully advised in the premises, finds that there is good cause for the entry of this Partial Judgment and that there is no just reason for delay. The Court therefore directs the entry of the following Findings of Fact, Conclusions of Law, permanent injunction and equitable relief pursuant to Section 6c of the Act, as amended, 7 U.S.C. § 13a-1, as set forth herein.

THE PARTIES AGREE AND THE COURT HEREBY FINDS:

A. Findings of Fact

15. Plaintiff Commodity Futures Trading Commission is an independent federal regulatory agency that is charged by Congress with administering and enforcing the Act, as

amended, 7 U.S.C. §§ 1 *et seq.*, and the Regulations promulgated thereunder, 17 C.F.R. §§ 1.1 *et seq.* (2011).

16. Defendant Kevin Cassidy is an individual residing in Bedford Hills, NY. Cassidy was the CEO of Defendant Optionable Inc. (“Optionable”) from March 2001 until March 2004, and then resumed the role of Optionable’s CEO in October 2005. He resigned that role on May 14, 2007. As part of his employment with Optionable, Cassidy was a “voice broker” for Bank of Montreal (“BMO”) and was Defendant David Lee’s (“Lee”) primary voice broker during the relevant period. Cassidy’s place of employment during the relevant period was at Optionable’s locations in Valhalla and Briar Cliff Manor, New York. Cassidy has never been registered with the Commission in any capacity.

17. As BMO’s natural gas trader, Lee traded, i.e., bought and sold, natural gas contracts, including futures and options contracts on the New York Mercantile Exchange (“NYMEX”). Lee entered into natural gas option contracts on the NYMEX, a trading facility within the jurisdiction of the Commission. A substantial amount of the natural gas options contracts Lee traded were either American-style or European-style natural gas options contracts, both of which are “exchange-traded and cleared” options on the NYMEX.

18. One of Lee’s responsibilities as a natural gas trader was to assign a value to his open positions. Lee performed this task by “marking” – or assigning a value to – his open option positions.

19. BMO’s risk management department possessed certain procedures to verify the value of its traders’ exchange traded and over-the-counter positions on a bi-monthly basis, including Lee’s. This was known as the independent price verification (“IPV”) process. The

intended goal of this process was to ensure that trader prices used to value BMO's trading books are reasonably in line with market prices quoted by external sources.

20. In the fall of 2006, Cassidy arranged for Optionable to develop a service called RealMarks to provide market quotes concerning natural gas option contracts.

21. In *United States v. Cassidy*, 08-cr-1101 (TPG) (S.D.N.Y.), Cassidy pleaded guilty to violating 18 U.S.C. § 371. In connection with that plea, Cassidy admitted the facts set out in the transcript of his plea allocution, a copy of which is attached as Exhibit A to this Partial Judgment, and those same facts are admitted as if set forth in this Partial Judgment.

B. Conclusions of Law

1. Jurisdiction and Venue

22. This Court has jurisdiction over this action pursuant to Section 6c of the Act, as amended, 7 U.S.C. § 13a-1, which provides that whenever it shall appear to the Commission that any person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of any provision of the Act or any rule, regulation, or order promulgated thereunder, the Commission may bring an action in the proper district court of the United States against such person to enjoin such act or practice, or to enforce compliance with the Act, or any rule, regulation or order thereunder.

23. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, as amended, 7 U.S.C. § 13a-1(e), because the Defendant resides in this jurisdiction and the acts and practices in violation of the Act occurred within this District.

2. Fraud Involving Options

24. Section 4c(b) of the Act, 7 U.S.C. § 6c(b), makes it unlawful for any person to enter into or confirm the execution of any transaction involving any commodity regulated under this Act that is of the character of, or is commonly known to the trade as an option, bid, offer, put

or call contrary to any rule, regulation, or order of the Commission, prohibiting such transaction or allowing such transaction under such terms and conditions as the Commission shall prescribe.

25. Pursuant to Section 4c(b) of the Act, the Commission promulgated Regulation 33.10, 17 C.F.R. § 33.10, which relates to options entered into on a trading facility and provides that it shall be unlawful for any person directly or indirectly, in or in connection with an offer to enter into, the entry into, the confirmation of the execution of, or the maintenance of, any commodity option transaction, to:

- (a) cheat or defraud or attempt to cheat or defraud any other person;
- (b) make or cause to be made to any other person any false report or statement hereof or cause to be entered for any person any false record thereof; or
- (c) deceive or attempt to deceive any other person by any means whatsoever.

26. By the conduct described in paragraphs 15 through 21 above, Cassidy violated Section 4c(b) of the Act, and Regulations 33.10(a), (b) and (c).

27. Unless restrained and enjoined by this Court, there is a reasonable likelihood that the Defendant will continue to engage in the acts and practices alleged in the Complaint and in similar acts and practices in violation of the Act and Regulations.

IV. PERMANENT INJUNCTION

IT IS HEREBY ORDERED THAT:

28. Based upon and in connection with the foregoing conduct, pursuant to Section 6c of the Act, as amended, 7 U.S.C. § 13a-1, Cassidy is permanently restrained, enjoined and prohibited from directly or indirectly, in or in connection with an offer to enter into, the entry into, the confirmation of the execution of, or the maintenance of, any commodity option transaction, to:

- (a) cheat or defraud or attempt to cheat or defraud any other person;
- (b) make or cause to be made to any other person any false report or statement hereof or cause to be entered for any person any false record thereof; or
- (c) deceive or attempt to deceive any other person by any means whatsoever in violation of Section 4c(b) of the Act, 7 U.S.C. § 4c(b), and Regulation 33.10, 17 C.F.R. § 33.10

29. Defendant is also permanently restrained, enjoined and prohibited from directly or indirectly:

- (a) Trading on or subject to the rules of any registered entity (as that term is defined in Section 1a of the Act, as amended, 7 U.S.C. § 1a);
- (b) Entering into any transactions involving commodity futures, options on commodity futures, commodity options (as that term is defined in Regulation 1.3 (hh), 17 C.F.R. § 1.3(hh) (2011)) (“commodity options”), security futures products, and/or foreign currency (as described in Sections 2(c)(2)(B) and 2(c)(2)(C)(i) of the Act, as amended, 7 U.S.C. §§ 2(c)(2)(B) and 2(c)(2)(C)(i)) (“forex contracts”) for his own personal account or for any account in which he has a direct or indirect interest;
- (c) Having any commodity futures, options on commodity futures, commodity options, security futures products, and/or forex contracts traded on his behalf;
- (d) Controlling or directing the trading for or on behalf of any other person or entity, whether by power of attorney or otherwise, in any account involving commodity futures, options on commodity futures, commodity options, security futures products, and/or forex contracts;

(e) Soliciting, receiving or accepting any funds from any person for the purpose of purchasing or selling any commodity futures, options on commodity futures, commodity options, security futures products, and/or forex contracts;

(f) Applying for registration or claiming exemption from registration with the Commission in any capacity, and engaging in any activity requiring such registration or exemption from registration with the Commission, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2011); and/or

(g) Acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2011)), agent or any other officer or employee of any person (as that term is defined in Section 1a of the Act, as amended, 7 U.S.C. § 1a) registered, exempted from registration or required to be registered with the Commission except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2011).

V. CIVIL MONETARY PENALTY

30. Cassidy shall pay restitution, disgorgement of ill-gotten gains, and a civil monetary penalty pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2006). The Court shall determine the amounts of the restitution, disgorgement and civil monetary penalties upon motion of the Commission.

31. In connection with any hearing or briefing to determine the amounts of restitution, disgorgement and civil monetary penalty, and at any oral argument held: (a) Cassidy shall be precluded from arguing that he did not violate the Act as alleged in the Complaint and found in this Partial Judgment; (b) Cassidy may not challenge the validity of this Partial Judgment or his consent thereto; (c) solely for purposes of such hearing, briefing or argument, the allegations of the Complaint shall be accepted and deemed true by the Court; and (d) the Court may determine

the issues raised in the hearing, briefing or argument on the basis of affidavits, declarations, excerpts of sworn testimony or investigative testimony and documentary evidence, without regard to the standards for summary judgment contained in Rule 56(c) of the Federal Rules of Civil Procedure and without conducting an evidentiary hearing.

32. In order to facilitate the determination of appropriate amounts for restitution, disgorgement and civil monetary penalty, Cassidy shall cooperate fully with the Commission, including but not be limited to the following:

(a) fully and truthfully completing financial questionnaire forms and providing any available documentary verification required by the forms, should the Commission deem it necessary;

(b) submitting to a financial deposition or interview regarding the subject matter of said form, should the Commission deem it necessary;

(c) fully and truthfully answering all questions regarding his past and present financial condition in such interview or deposition; and

(d) providing any additional documentation within his possession or control requested by the Commission regarding his financial condition or status, including, but not limited to, income and earnings, assets, financial statements, asset transfers, and tax returns.

VI. MISCELLANEOUS PROVISIONS

33. Notice: All notices required to be given by any provision in this Partial Judgment shall be sent certified mail, return receipt requested, as follows:

Notice to Commission:

Director, Division of Enforcement
Commodity Futures Trading Commission
1155 21st Street NW
Washington, DC 20581

Notice to Defendant Cassidy:

Lawrence R. Gelber, Esq.
Attorney At Law
The Vanderbilt Plaza
34 Plaza Street, Suite 1107
Brooklyn, NY 11238

All such notices to the Commission shall reference the name and docket number of this action.

34. Change of Address/Phone: Until such time as Cassidy pays in full any civil monetary penalty ordered by the Court, Cassidy shall provide written notice to the Commission by certified mail of any change to his telephone number and mailing address within ten (10) calendar days of the change.

35. Entire Agreement and Amendments: This Partial Judgment incorporates all of the terms and conditions of the settlement among the parties hereto to date. Nothing shall serve to amend or modify this Partial Judgment in any respect whatsoever, unless: (a) reduced to writing; (b) signed by all parties hereto; and (c) approved by order of this Court.

36. Invalidation: If any provision of this Partial Judgment or if the application of any provision or circumstance is held invalid, then the remainder of this Partial Judgment and the application of the provision to any other person or circumstance shall not be affected by the holding.

37. Waiver: The failure of any party to this Partial Judgment at any time to require performance of any provision of this Partial Judgment shall in no manner affect the right of the party at a later time to enforce the same or any other provision of this Partial Judgment. No waiver in one or more instances of the breach of any provision contained in this Partial Judgment shall be deemed to be or construed as a further or continuing waiver of such breach or waiver of the breach of any other provision of this Partial Judgment.

38. Continuing Jurisdiction of this Court: This Court shall retain jurisdiction of this action for the purpose of resolving the reserved issues of the amounts of restitution, disgorgement and civil monetary penalty; implementing and enforcing the terms and conditions of this Partial Judgment; and for all other purposes related to this action, including any motion by Cassidy to modify or for relief from the terms of this Partial Judgment.

39. Injunctive and Equitable Relief Provisions: The injunctive and equitable relief provisions of this Partial Judgment shall be binding upon Cassidy, upon any person under his authority or control, and upon any person who receives actual notice of this Partial Judgment, by personal service, e-mail, facsimile or otherwise insofar as he or she is acting in active concert or participation with Cassidy.

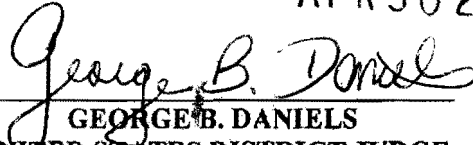
40. Counterparts and Facsimile Execution: This Partial Judgment may be executed in two or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties hereto and delivered (by facsimile, e-mail, or otherwise) to the other party, it being understood that all parties need not sign the same counterpart. Any counterpart or other signature to this Partial Judgment that is delivered by any means shall be deemed for all purposes as constituting good and valid execution and delivery by such party of this Partial Judgment.

41. Cassidy understands that the terms of the Partial Judgment are enforceable through contempt proceedings, and that, in any such proceedings he may not challenge the validity of this Partial Judgment.

42. There being no just reason for delay, the Clerk of the Court is hereby directed to enter this *Amended Partial Consent Order for Permanent Injunction, Civil Monetary Penalty and Other Equitable Relief Against Defendant Kevin Cassidy*.

IT IS SO ORDERED on this _____ day of _____, 2012.

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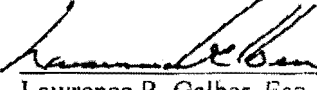

GEORGE B. DANIELS
UNITED STATES DISTRICT JUDGE

CONSENTED TO AND APPROVED BY:


Kevin Cassidy

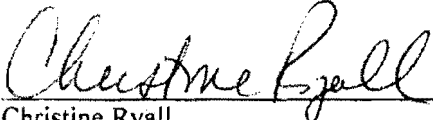
Date: 4-23-2012

Approved as to form:


Lawrence R. Gelber, Esq. (att)
Attorney At Law
The Vanderbilt Plaza
34 Plaza Street, Suite 1107
Brooklyn, NY 11238

Attorney for Kevin Cassidy

Date: 4/24/12


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Date: 4/25/12