

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

**U.S. COMMODITY FUTURES
TRADING COMMISSION,**

Plaintiff,

v.

MICHAEL PESKIN,

Defendant.

:
:
: **CIVIL ACTION NO.:**
:
: **COMPLAINT FOR PERMANENT**
: **INJUNCTION, CIVIL MONETARY**
: **PENALTIES, AND OTHER EQUITABLE**
: **RELIEF**
:
:
:
:

Plaintiff, Commodity Futures Trading Commission (“Commission” or “CFTC”), by its attorneys, alleges as follows:

I. SUMMARY

1. From at least February 2006, and continuing to at least December 2012 (“the relevant period”), Michael Peskin (“Peskin”) traded commodity futures and options on commodity futures (hereinafter “options”) in violation of a permanent trading prohibition imposed by the U.S. Commodity Futures Trading Commission (“CFTC” or “Commission”) on February 10, 1992, which became effective on March 11, 1993 (“permanent trading ban”), and, therefore, violated Section 8b of the Commodity Exchange Act (“Act”), 7 U.S.C. § 12b (2006).

2. Specifically, Peskin traded commodity futures contracts and options on Commission-regulated exchanges through accounts at various futures commission merchants (“FCMs”) under the names of other persons from February 2006 to December 2012.

3. Accordingly, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2006) (with respect to conduct prior to July 16, 2011); Section 6c of the Act, 7 U.S.C. § 13a-1 (Supp. V 2011) (with respect to conduct on or after July 16, 2011) and Section 6d of the Act, 7 U.S.C.

§ 13a-2 (2006), the Commission brings this action to enjoin Peskin's unlawful acts and practices and to compel his compliance with the Act, and to further enjoin Peskin from engaging in any commodity-related activity.

4. In addition, the Commission seeks disgorgement of the profits Peskin made while trading in violation of the trading ban, and a civil monetary penalty, post-judgment interest, and such other relief as the Court may deem necessary and appropriate.

5. Unless restrained and enjoined by this Court, Peskin likely will continue to engage in the acts and practices alleged in this Complaint and similar acts and practices, as more fully described below.

II. JURISDICTION AND VENUE

6. Section 6c(a) of the Act, 7 U.S.C. § 13a-1(2006) (with respect to conduct prior to July 16, 2011 and Section 6c(a) of the Act, 7 U.S.C. § 13a-1, (Supp. V 2011) (with respect to conduct on or after July 16, 2011), authorize the Commission to seek injunctive relief against any person whenever it shall appear to the Commission that such person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of the Act or any rule, regulation, or order thereunder.

7. The Commission has jurisdiction over the conduct and transactions at issue in this case pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2006) (with respect to conduct prior to July 16, 2011 and Section 6c of the Act, 7 U.S.C. § 13a-1, (Supp. V 2011) (with respect to conduct on or after July 16, 2011).

8. Venue properly lies with the Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2006), because Peskin resides within this District and the transactions, acts,

practices, and courses of business alleged in this Complaint occurred, are occurring, and/or are about to occur within this District.

III. PARTIES

9. Plaintiff, **Commodity Futures Trading Commission**, is an independent federal regulatory agency charged by Congress with the administration and enforcement of the Act, 7 U.S.C. §§ 1 *et seq.*, and the Regulations thereunder, 17 C.F.R. § 1.1 *et seq.* (2012) (“Regulations”).

10. Defendant **Michael Peskin** resides in Chicago, Illinois. Peskin was registered with the Commission as a Floor Broker from January 1, 1982 through October 30, 1989 and again from November 29, 1989 until March 14, 1991. Peskin had a temporary license as an Associated Person (“AP”) from June 18, 1986 to October 24, 1986. He has not been registered in any capacity since March 14, 1991.

IV. FACTS

A. Peskin’s Trading Prohibition

11. On February 10, 1992, in *In the Matter of Peskin*, CFTC Docket No. 89-1, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,235, an Administrative Law Judge (“ALJ”) found that Peskin had knowingly cheated and defrauded public customers by fraudulently allocating post-assigned commodity futures trades in violation of Section 4b of the Act and with aiding and abetting the entry of orders without account identification in violation of Section 4g of the Act and Regulation 1.35(a-1)(2).

12. In the February 10, 1992 Order, the ALJ: (1) ordered that Peskin’s registrations with the Commission be revoked; (2) prohibited Peskin from applying for registration in any capacity for a period of ten years; (3) ordered Peskin to cease and desist from future violations of

the Act; (4) prohibited Peskin from trading on or subject to the rules of any exchange; and (5) ordered Peskin to pay a civil monetary penalty of \$35,000. On March 9, 1992, the ALJ denied Peskin's motion to reconsider and confirmed the previous relief, expressly stating that he imposed a "permanent trading ban and a civil monetary penalty of \$35,000" against Peskin.

13. After an administrative appeal of this decision, the Commission affirmed the permanent trading ban and civil monetary penalty on February 9, 1993, though modifying other parts of the Order. *In the Matter of Peskin*, CFTC Docket No. 89-1, [1992-1994 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,660. The February 9, 1993 Commission Order specified that the sanctions became effective thirty days after the service date of the order, or March 11, 1993.

B. Peskin Traded in Violation of the Commission Order

14. Beginning in at least February 2006, Peskin began trading commodity futures and options in violation of the permanent trading ban and continued to do so at least until December 2012.

15. From February 2006 through December 2012, Peskin traded commodity futures and options through a friend's accounts at two FCMs. Peskin traded for these accounts while assuming his friend's identity and placed orders by phone and electronically through a computer traceable to Peskin's residence. Peskin earned \$199,361.10 trading through his friend's accounts from 2006 to 2012.

16. From November 2007 through November 2012, Peskin again assumed the identity of another person and traded commodity futures and options in accounts opened by the third person at three different FCMs at various times. Peskin earned \$39,978.68 trading for this individual's accounts at these three FCMs from 2007 to 2012.

V. VIOLATIONS OF THE COMMODITY EXCHANGE ACT

**COUNT ONE:
VIOLATION OF SECTION 8b of the Act:
Violation of a Permanent Trading Prohibition**

17. Paragraphs 1 through 16 are realleged and incorporated herein.
18. During the relevant period, Peskin violated Section 8b of the Act, 7 U.S.C. § 12b (2006), by making or causing to be made contracts for future delivery of commodities, on or subject to the rules of any registered entity, in contravention of an order of the Commission.

VI. RELIEF REQUESTED

WHEREFORE, the CFTC respectfully requests that this Court, as authorized by Section 6c of the Act, and pursuant to its own equitable powers, enter:

- A. An order finding that Peskin violated Section 8b of the Act;
- B. An order of permanent injunction prohibiting Peskin, and any of his agents, servants, employees, assigns, attorneys, and persons in active concert or participation with Peskin, including any successor thereof, from, directly or indirectly engaging in conduct in violation of Section 8b of the Act;
- C. An order prohibiting Peskin from:
 - (1) Trading on or subject to the rules of any registered entity (as that term is defined in Section 1a of the Act, of the Act, 7 U.S.C. § 1a (Supp. V 2011));
 - (2) 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) (2012)) (“commodity options”),

security futures products, swaps (as that term is defined in Section 1a(47) of the Act, 7 U.S.C. § 1a(47) (Supp. IV 2011), and as further defined by Regulation 1.3(xxx), 17 C.F.R. § 1.3 (xxx) (2012)), and/or foreign currency (“forex contracts”) (as described in Sections 2(c)(2)(B) and 2(c)(2)(C)(i) of the Act, 7 U.S.C. §§ 2(c)(2)(B) and 2(c)(2)(C)(i) (Supp. V 2011), for his own personal account or for any account in which he has a direct or indirect interest;

- (3) Having any commodity futures, options on commodity futures, commodity options, security futures products, swaps, and/or forex contracts traded on his behalf;
- (4) 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, swaps, and/or forex contracts;
- (5) 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, swaps and/or forex contracts;
- (6) Applying for registration or claiming exemption from registration with the CFTC in any capacity, and engaging in any activity requiring such registration or exemption from registration with the CFTC except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2012); and

(7) Acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2012)), agent, or any other officer or employee of any person registered, exempted from registration or required to be registered with the CFTC except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2012).

D. Enter an order requiring that Peskin disgorge, to any officer appointed or directed by the Court, all benefits received including, but not limited to, salaries, commissions, loans, fees, revenues and trading profits derived, directly or indirectly, from acts or practices that constitute violations of the Act, as amended, and the Regulations, including post-judgment interest;

E. Enter an order requiring Peskin to pay a civil monetary penalty under the Act, to be assessed by the Court, in amounts of not more than the greater of: (1) triple its monetary gain for each violation of the Act, as amended, and the Regulations or (2) \$140,000 for each violation of the Act and Regulations committed on or after October 23, 2008 and \$130,000 for each violation of the Act and Regulations committed between October 23, 2004 and October 22, 2008; plus post-judgment interest;

F. Enter an order requiring Peskin to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2412(a)(2) (2006); and

G. Enter an order providing such other and further relief as this Court may deem necessary and appropriate under the circumstances.

July 22, 2013

Respectfully submitted,

COMMODITY FUTURES TRADING COMMISSION

/s/ Susan B. Padove

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