

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

U.S. Commodity Futures Trading Commission,)	
)	
Plaintiff,)	Case No. 13c 5211
)	
v.)	
)	Judge Grady
Michael Peskin,)	
)	
Defendant.)	
)	

**CONSENT ORDER FOR PERMANENT INJUNCTION, CIVIL MONETARY PENALTY
AND OTHER EQUITABLE RELIEF AGAINST DEFENDANT MICHAEL PESKIN**

I. INTRODUCTION

Plaintiff Commodity Futures Trading Commission ("Commission" or "CFTC") filed a Complaint against Defendant Michael Peskin ("Peskin" or "Defendant") seeking injunctive and other equitable relief, as well as the imposition of civil penalties, for violations of Section 8b of the Commodity Exchange Act ("Act"), 7 U.S.C. § 12b (2006).

II. CONSENTS AND AGREEMENTS

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

1. Consents to the entry of this Consent Order for Permanent Injunction, Civil Monetary Penalty and Other Equitable Relief Against Defendant Peskin ("Consent Order");
2. Affirms that he has read and agreed to this Consent Order 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 Consent Order;

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, 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);

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) (2006);

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.* (2012), 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 Consent Order; and

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

8. Consents to the continued jurisdiction of this Court over him for the purpose of implementing and enforcing the terms and conditions of this Consent Order and for any other purpose relevant to this action, even if Defendant now or in the future resides outside the jurisdiction of this Court;

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

10. 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 Consent Order, or creating or tending to create the impression that the Complaint and/or this Consent Order 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. Peskin 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; and

11. Admits to all of the findings made in this Consent Order and all of the allegations in the Complaint. Further, Peskin agrees and intends that the allegations contained in the Complaint and all of the Findings of Fact and Conclusions of Law contained in this Consent Order 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 Peskin; (b) any proceeding pursuant to Section 8a of the Act, as amended, 7 U.S.C. § 12a

(2006), and/or Part 3 of the Regulations, 17 C.F.R. §§ 3.1 *et seq.* (2012); and/or (c) any proceeding to enforce the terms of this Consent Order;

12. Agrees to provide immediate notice to this Court and the Commission by certified mail, in the manner required by paragraph 38 of Part VI of this Consent Order, of any bankruptcy proceeding filed by, on behalf of, or against him, whether inside or outside the United States; and

13. Agrees that no provision of this Consent Order shall in any way limit or impair the ability of any other person or entity to seek any legal or equitable remedy against Peskin 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 Consent Order 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, 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), as set forth herein.

THE PARTIES AGREE AND THE COURT HEREBY FINDS:

A. Findings of Fact

1. The Parties To This Consent Order

14. 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.* (2012).

15. 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.

2. Peskin’s Trading Prohibition

16. 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 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).

17. 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. After a motion to reconsider, the ALJ confirmed the previous relief on March 9, 1992 and expressly stated that he imposed a “permanent trading ban and a civil monetary penalty of \$35,000” against Peskin.

18. 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 Order specified that the sanctions became effective thirty days after the service date of the order, or March 11, 1993.

3. Peskin Traded in Violation of the Commission Order

19. 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.

20. 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.

21. From November 2007 through November 2012, Peskin traded for another individual who opened accounts at three different FCMs at various times. Peskin earned \$39,978.68 trading for this individual's accounts at these FCMs from 2007 to 2012.

B. Conclusions of Law

1. Jurisdiction and Venue

22. This Court has jurisdiction over this action pursuant to 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), which provide 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, 7 U.S.C. § 13a-1(e) (2006), because the Defendant resides in this jurisdiction and the acts and practices in violation of the Act occurred within this District.

2. Violation of a Permanent Trading Prohibition

24. By the conduct described in paragraphs 1 through 27 above, Defendant 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.

25. 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.

IV. PERMANENT INJUNCTION

IT IS HEREBY ORDERED THAT:

26. Based upon and in connection with the foregoing conduct, 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 Defendant is permanently restrained, enjoined and prohibited from directly or indirectly engaging in conduct in violation of Section 8b of the Act 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 any order of the Commission prohibiting him from doing so.

27. 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, 7 U.S.C. § 1a (Supp. V 2011));
- 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) (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;
- c. Having any commodity futures, options on commodity futures, commodity options, security futures products, swaps 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, swaps, 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, swaps, 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) (2012); and/or
- g. 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 Commission except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2012).

V. DISGORGEMENT AND CIVIL MONETARY PENALTY

A. Disgorgement

28. Defendant shall pay disgorgement in the amount of Two-Hundred and Thirty-Nine Thousand, Three Hundred and Thirty Nine dollars and seventy-eight cents (\$239,339.78) (“Disgorgement Obligation”), plus post-judgment interest. Post-judgment interest shall accrue on the Disgorgement Obligation beginning on the date of entry of this Consent Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Consent Order pursuant to 28 U.S.C. § 1961.

29. Defendant shall pay his Disgorgement Obligation by electronic funds transfer, U.S. postal money order, certified check, bank cashier’s check, or bank money order. If payment is to be made other than by electronic funds transfer, then the payment shall be made payable to the Commodity Futures Trading Commission and sent to the address below:

Commodity Futures Trading Commission
Division of Enforcement
ATTN: Accounts Receivables – AMZ 340
E-mail Box: 9-AMC-AMZ-AR-CFTC
DOT/FAA/MMAC
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
Telephone: (405) 954-5644

If payment by electronic funds transfer is chosen, Defendant shall contact Linda Zurhorst or her successor at the address above to receive payment instructions and shall fully comply with those instructions. Defendant shall accompany payment of the Disgorgement Obligation with a cover letter that identifies Defendant and the name and docket number of this proceeding. Defendant shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581 and to Rosemary Hollinger, Associate Director and Regional Counsel, Commodity Futures Trading Commission, 525 W. Monroe Street, Suite 1100, Chicago, Illinois, 60661.

B. Civil Monetary Penalty

30. Defendant shall pay a civil monetary penalty in the amount of Two-Hundred and Fifty-Thousand Dollars (\$250,000) ("CMP Obligation"), plus post-judgment interest. Post-judgment interest shall accrue on the CMP Obligation beginning on the date of entry of this Consent Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Consent Order pursuant to 28 U.S.C. § 1961 (2006).

31. Defendant shall pay his CMP Obligation by electronic funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money order. If payment is to be made other than by electronic funds transfer, then the payment shall be made payable to the Commodity Futures Trading Commission and sent to the address below:

Commodity Futures Trading Commission
Division of Enforcement
ATTN: Accounts Receivables – AMZ 340
E-mail Box: 9-AMC-AMZ-AR-CFTC
DOT/FAA/MMAC
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
Telephone: (405) 954-5644

If payment by electronic funds transfer is chosen, Defendant shall contact Linda Zurhorst or her successor at the address above to receive payment instructions and shall fully comply with those instructions. Defendant shall accompany payment of the CMP Obligation with a cover letter that identifies Defendant and the name and docket number of this proceeding. Defendant shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581 and to Rosemary Hollinger, Associate Director and Regional Counsel, Commodity Futures Trading Commission, 525 W. Monroe Street, Suite 1100, Chicago, Illinois, 60661.

C. Provisions Related to Monetary Sanctions

32. Partial Satisfaction: Any acceptance by the Commission of partial payment of Defendant's Disgorgement Obligation, or CMP Obligation shall not be deemed a waiver of his obligation to make further payments pursuant to this Consent Order, or a waiver of the Commission's right to seek to compel payment of any remaining balance.

VI. MISCELLANEOUS PROVISIONS

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

Notice to Commission:

Rosemary Hollinger
Associate Director, Division of Enforcement
U.S. Commodity Futures Trading Commission
525 W. Monroe Street, Suite 1100
Chicago, IL 60661

Notice to Defendant:

Michael Peskin
7230 N. Oakley Ave., #2N
Chicago, IL 60645

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 Defendant satisfies in full his Disgorgement Obligation and CMP Obligation as set forth in this Consent Order, Defendant 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 Consent Order incorporates all of the terms and conditions of the settlement among the parties hereto to date. Nothing shall serve to amend or modify this Consent Order 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 Consent Order or if the application of any provision or circumstance is held invalid, then the remainder of this Consent Order 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 Consent Order at any time to require performance of any provision of this Consent Order shall in no manner affect the right of the party at a later time to enforce the same or any other provision of this Consent Order. No waiver in one or more instances of the breach of any provision contained in this Consent Order 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 Consent Order.

38. Continuing Jurisdiction of this Court: This Court shall retain jurisdiction of this action to ensure compliance with this Consent Order and for all other purposes related to this action, including any motion by Defendant to modify or for relief from the terms of this Consent Order.

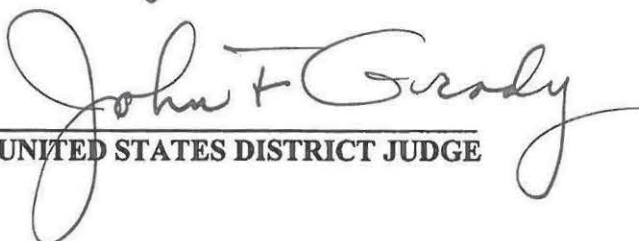
39. Injunctive and Equitable Relief Provisions: The injunctive and equitable relief provisions of this Consent Order shall be binding upon Defendant, upon any person under his authority or control, and upon any person who receives actual notice of this Consent Order, by personal service, e-mail, facsimile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

40. Counterparts and Facsimile Execution: This Consent Order 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 Consent Order 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 Consent Order.

41. Defendant understands that the terms of the Consent Order are enforceable through contempt proceedings, and that, in any such proceedings he may not challenge the validity of this Consent Order.

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

IT IS SO ORDERED on this 24th day of July, 2013.


UNITED STATES DISTRICT JUDGE

CONSENTED TO AND APPROVED BY:



Michael Peskin, Defendant
7230 N. Oakley Ave., #2N
Chicago, IL 60645

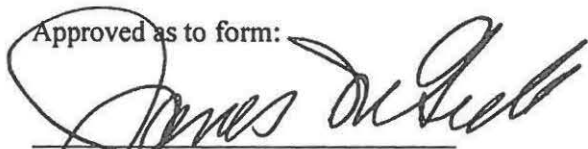
Date: 5/13/13



Susan B. Padove
Senior Trial Attorney
Commodity Futures Trading Commission
525 W. Monroe St., Suite 1100
Chicago, IL 60661
(312) 596-0544
(312) 596-0714 (facsimile)
spadove@cftc.gov

Date: 7-22-13

Approved as to form:



James McGurk
Counsel for Defendant
Law Offices of James A. McGurk, P.C.
10 South LaSalle Street
Suite 3300
Chicago, Illinois 60603
(312) 236-8900
(312) 277-3497 (facsimile)
jamcgurk@flash.net

Date: 05/14/2013