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CLERK US DISTRICT COURT
WESTERN DISTRICT OF TEXAS

In The United States District Court
For The Western District Of Texas

BY _____



U. S. COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

vs.

Steven Leigh Shakespeare,

and

Guardian Futures, Inc.

Defendants

Civil Action No: A-09-CV-260 -SS

**CONSENT ORDER OF PERMANENT INJUNCTION AND OTHER EQUITABLE
RELIEF**

**I.
INTRODUCTION**

On April 8, 2009, the U. S. Commodity Futures Trading Commission ("Commission" or "CFTC") filed a Complaint in this civil action against defendants Steven Leigh Shakespeare ("Shakespeare") and Guardian Futures, Inc. ("GFI") (collectively the "Defendants"). The Complaint seeks injunctive and other legal and equitable relief for violations of certain antifraud provisions of the Commodity Exchange Act ("Act"), as amended, 7 U.S.C. § 1 *et seq.* (2006), and Commission Regulations ("Regulations"), 17 C.F.R. § 1.1 *et seq.* (2009).

**II.
CONSENTS AND AGREEMENTS**

To effect settlement of the matters alleged in the Complaint without a trial on the merits or any further judicial proceedings, defendant Shakespeare:

1. Consents to the entry of this "Consent Order of Permanent Injunction and Other Equitable Relief" (hereinafter "Order");

2. Affirms that he has read and agrees to this Order voluntarily, and that no promise 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 Order, other than as set forth specifically herein.

3. Acknowledges proper service of the Summons and Complaint.

4. Admits that this Court has jurisdiction over him and the subject matter of this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2006).

5. Admits that venue properly lies with this Court pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2006).

6. Waives: (a) any and all claims that he may possess under the Equal Access to Justice Act (EAJA), 5 U.S.C. § 504 (2006) and 28 U.S.C. § 2412 (2006), and/or Part 148 of the Regulations, 17 C.F.R. §§ 148.1, *et seq.* (2009), relating to, or arising from, this action; (b) any and all claims that he may possess under the Small Business Regulatory Enforcement Fairness Act, Pub. L. No.104-121, §§ 221-223, 110 Stat. 862-63 (1996), as amended by Pub. L. No.110-28, 121 Stat. 112 (2007), relating to, or arising from, this action; (c) any claim of Double Jeopardy based upon the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief; and (d) all rights of appeal in this action.

7. Consents to the continued jurisdiction of this Court for the purpose of enforcing the terms and conditions of this Order and for any other purpose relevant to this action even if he now or in the future resides or operates outside the jurisdiction.

8. 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 Findings of Fact or Conclusions of Law contained in this Order, or creating, or tending to create, the impression that the Complaint or this Order is without a factual basis; provided, however, that nothing in this provision shall affect defendant Shakespeare's: (a) testimonial obligations; or (b) right to take legal positions in other proceedings to which the Commission is not a party. Defendant Shakespeare shall take all necessary steps to ensure that all of his agents and employees under his authority or control understand and comply with this agreement.

9. By consenting to the entry of this Order, defendant Shakespeare neither admits nor denies the allegations of the Complaint or the Findings of Fact and Conclusions of Law contained in this Order, except as to jurisdiction and venue, which he admits; however, defendant Shakespeare agrees and intends that the allegations of the Complaint and all of the Findings of Fact and Conclusions of Law made by this Court and contained in Part III of this Order shall be taken as true and correct and be given preclusive effect, without further proof, in the course of: any current or subsequent bankruptcy proceeding filed by, on behalf of, or against defendant Shakespeare; any proceeding to enforce this Order; and/or any proceeding pursuant to Sections 8a(1)-(2) of the Act, 7 U.S.C. §§ 12a(1)-(2) (2006), and/or Part 3 of the Regulations, 17 C.F.R. §§ 3 *et seq.* (2009).

10. Defendant Shakespeare shall provide immediate notice of any bankruptcy filed by, on behalf of, or against him in the manner required by Part VI, paragraph 44 of this Order.

11. No provision of this Order shall in any way limit or impair the ability of any person to seek any legal or equitable remedy against any of the Defendants or any other person in any other proceeding.

12. Defendant Shakespeare hereby consents, undertakes and agrees to the following:

- a. He shall not trade on or subject to the rules of any registered entity (as that term is defined in Section 1a(29) of the Act, 7 U.S.C. § 1a(29) (2006);
- b. He shall not enter into any transactions involving commodity futures, options on commodity futures, commodity options (as that term is defined in Regulation 32.1(b)(1)) (“commodity options”), and/or foreign currency (as described in Sections 2(c)(2)(B) and/or 2(c)(2)(C)(i) of the Act as amended by the Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, Title XIII (the CFTC Reauthorization Act of 2008 (“CRA”)), §§ 13101-13204, 122 Stat. 1651 (enacted June 18, 2008), to be codified at 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. He shall not have any commodity futures, options on commodity futures, commodity options, and/or forex contracts traded on his behalf;
- d. He shall not control or direct 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, and/or forex contracts;
- e. He shall not solicit, receive, or accept any funds from any person for the purpose of purchasing or selling any commodity futures,

options on commodity futures, commodity options, and/or forex contracts;

- f. He shall not apply for registration or claim exemption from registration with the Commission in any capacity, and shall not engage 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) (2009); and
- g. He shall not act as a principal (as that term is defined in Regulation 3.1(a)), 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) (2009).

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court, being fully advised in the premises, finds that there is good cause for the entry of this Order and that there is no just reason for delay. The Court therefore directs the entry of 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), as set forth herein.

A. The Parties

13. Plaintiff **U. S. Commodity Futures Trading Commission** is an independent federal regulatory agency that is charged by Congress with responsibility for administering and enforcing the provisions of the Act, 7 U.S.C. §§ 1 *et seq.* (2006), and the Regulations promulgated thereunder, 17 C.F.R. §§ 1.1 *et seq.* (2009).

14. **Steven Leigh Shakespeare** is an individual residing and conducting business at 3108 Wild Canyon Loop, Austin, Texas 78732. Shakespeare is the sole owner and president of GFI and conducted his business through GFI. Shakespeare was granted a temporary license (“TL”) to act in the capacity of an associated person (“AP”) with introducing broker (“IB”) Spooz Inc., effective August 29, 2000. This TL converted to a full AP registration effective September 27, 2000. Shakespeare remained registered as an AP with Spooz Inc. until September 16, 2003 when he withdrew this AP registration. Shakespeare was a principal of GFI beginning on January 28, 2004, and approved as an AP of GFI on February 2, 2004. On January 18, 2008 he withdrew his status as an AP of GFI.

B. Summary

15. Beginning on or about November 20, 2007 and continuing to at least January 18, 2008 (the “relevant period”), the Defendants introduced customers to futures commission merchant Alaron Trading Corp. (“Alaron”), and thereby earned commissions and other fees on customers’ trades. All of the customers relevant to this action had their non-discretionary accounts introduced by the Defendants to Alaron; that is, the Defendants could only send buy and sell orders to Alaron as directed by the respective customer. Accordingly, none of the account opening documents for these customers contained letters of direction, powers of attorney or other documents authorizing the Defendants to independently trade the customers’ accounts.

16. During the relevant period, Shakespeare engaged in a course of unauthorized transactions in the accounts of Plains Grain Company, Inc. (“Plains”) and Evans Grain Marketing LLC (“Evans”) (collectively “customer accounts”). When Evans noticed the unauthorized transactions, it contacted Shakespeare to ask why transactions it had not authorized had been bought and/or sold for the benefit of its account.

17. Rather than admit to his fraudulent and unauthorized transactions, Shakespeare, acting as the agent of GFI, engaged in a further course of misrepresentations and omissions in an attempt to conceal his prior fraudulent conduct.

18. Throughout the course of the unauthorized transactions, Shakespeare made misrepresentations and omitted material facts to Evans, Plains and Alaron, including but not limited to: falsely representing to Alaron that an "error" had occurred on one customer's account; fraudulently omitting to advise Plains and Evans that he had effected transactions in their respective accounts without authorization; fraudulently omitting to advise Plains and Evans that he had transferred positions between Evans, Plains and the GFI "Error Account" at Alaron ("GFI Error Account") without authorization and in an attempt to conceal prior unauthorized transactions; falsely representing to Alaron that the unauthorized transactions in the Evans and/or Plains accounts were effected in "error"; and, continuing to effect unauthorized transactions in the Evans and Plains accounts to "get better fills" without authorization and to conceal prior fraudulent acts.

19. Throughout the relevant period, Shakespeare knowingly effected transactions in customers' accounts without authorization, because Shakespeare knew that he was not authorized to effect the transactions for any of the relevant customers' non-discretionary accounts that he had introduced to Alaron.

20. Shakespeare founded, owned and was president of GFI, and acted as its agent throughout the relevant period. Each fraudulent act, misrepresentation and/or omission made by Shakespeare during the relevant period was made recklessly and/or with scienter.

C. The Unauthorized Transactions

21. On or about November 20, 2007, defendant Shakespeare effected the following transactions in the non-discretionary account of Plains, account number [redacted] at Alaron:

- a. Buy of 5 December Chicago Board of Trade ("CBOT") Wheat at 749.25;
- b. Sell of 20 March '08 CBOT Wheat at 770; and
- c. Sell of 29 March '08 Kansas City Board of Trade ("KCBOT") Wheat at 791.75.

None of the above transactions were authorized by Plains.

22. On November 21, 2007, the above transactions were transferred to the non-discretionary account of Evans by Shakespeare, account number [redacted] at Alaron. Neither Plains nor Evans authorized Shakespeare to effect the transfer of the above positions from Plains' account to the account of Evans.

23. On or about November 26, 2007, Shakespeare effected the following transactions in the non-discretionary account of Evans, account number [redacted] at Alaron:

- a. Buy of 20 March '08 CBOT Wheat - 5 at 847.75 and 15 at 848;
- b. Buy of 20 March '08 CBOT Wheat at 862;
- c. Sell of 40 March '08 CBOT Wheat - 4 at 838.75, 14 at 839, 2 at 839.25, 8 at 844.25, 11 at 844.5 and 1 at 844.75.
- d. Sell of 29 March '08 KCBOT Wheat at 859;
- e. Buy of 29 March '08 Wheat KCBOT Wheat at 880;
- f. Sell of 5 December CBO1' Wheat - 1 at 832 and 4 at 832.25.

None of the above transactions were authorized by Evans.

24. On or about November 27, 2007, Shakespeare effected the following additional transactions in the non-discretionary account of Evans, account number [redacted] at Alaron:

- a. Buy of 20 March '08 CBOT Wheat - 6 at 832.75 and 14 at 836; and
- b. Buy of 29 March '08 KCBOT Wheat at 855.5.

None of the above transactions were authorized by Evans.

25. Later on November 27, 2007, Shakespeare transferred all of the unauthorized positions he established on November 26, 2007 and November 27, 2007 from the non-discretionary account of Evans, account number [redacted] at Alaron, to the GFI Error Account

number [redacted] at Alaron. The transfer of these positions from Evans' non-discretionary account was not authorized by Evans. By this time, Evans and Plains had sustained a combined loss of at least \$196,000 as a result of Shakespeare's unauthorized transactions.

26. On or about November 29, 2007, Alaron's Margin/Risk Department was conducting routine reviews of its Error Accounts, and recognized a debit of \$196,788.44 in the GFI Error Account number [redacted]. Alaron's Executive Vice President and Chief Operating Officer, President of Futures and Options, and Risk Manager called Shakespeare concerning this debit. Rather than admit to his conduct, Shakespeare falsely stated that a trading error had occurred in a single customer's account. Following this conversation with Shakespeare, Alaron conducted an internal investigation, which preliminarily revealed that: not one but two (2) customer accounts were involved; and Shakespeare had engaged in fraudulent activity by moving positions from one account to another in an attempt to conceal losses.

27. In the course of Alaron's internal investigation of this matter, Alaron requested that Shakespeare provide it with an email detailing how the purported "trading error" claimed by Shakespeare occurred. In an email dated November 29, 2007, Shakespeare stated that the purported "error" was made when he attempted to roll trades in the Plains account from the December to March contract for both the Chicago and Kansas City grain futures. Shakespeare misrepresented the trading activity to Alaron in that his trading was not in error or by mistake.

28. At all times relevant hereto, Shakespeare was acting as the agent of GFI. Shakespeare had actual knowledge that he was not authorized to effect the transactions for the non-discretionary accounts of Plains and/or Evans. Despite not being so authorized, Shakespeare intentionally effected the subject transactions, directly causing Evans and Plains to incur combined trading losses of at least \$196,000.

D. Jurisdiction and Venue

29. This Court has jurisdiction over this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2006).

30. This Court has personal jurisdiction over defendant Shakespeare, who acknowledges service of the Summons and Complaint and consents to the Court's jurisdiction over him.

31. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2006), in that defendant Shakespeare is found in, inhabits, and/or transacts business in this district, and the acts and practices in violation of the Act and Regulations have occurred, are occurring, or are about to occur within this district, among other places.

E. Conclusions of Law

32. By the conduct described in Part III above, the Court finds that defendant Shakespeare violated Sections 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i) and (iii) (2006), and Regulation 166.2, 17 C.F.R. § 166.2 (2009).

**IV.
ORDER OF PERMANENT INJUNCTION AND ANCILLARY RELIEF**

IT IS HEREBY ORDERED THAT:

33. Based upon and in connection with the foregoing conduct, pursuant to

Section 6c of the Act, 7 U.S.C. § 13a-1 (2006):

A. defendant Shakespeare, in or in connection with any order to make, or the making of, any contract of sale of any commodity in interstate commerce or for future delivery that is made, or to be made, on or subject to the rules of a designated contract market, for or on behalf of any other person, is permanently restrained, enjoined, and prohibited from directly or indirectly cheating or defrauding or attempting to cheat or defraud other persons in or in connection with any order to make, or the making of any contract of sale of any commodity in interstate commerce or for future delivery, made, or to be made for or on behalf of any other person; willfully making or causing to be made to such other person any false report or false statement or willfully entering or causing to be entered for others any false record; and/or willfully deceiving or attempting to deceive any other persons by any means whatsoever in regard to any such order or contract or the disposition or execution of any such order or contract, or in regard to any act of agency performed with respect to such order or contract for such persons in violation of Sections 4b(a)(1)(A)-(C) of the Act as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(1)(A)-(C); and

B. defendant Shakespeare is permanently restrained, enjoined, and prohibited from directly or indirectly engaging in the unauthorized trading of customers' accounts at any U.S. futures commission merchant without the customers' knowledge or consent, in violation of Sections 4b(a)(1)(A) and (C) of the Act as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(1)(A) and (C), and Regulation 166.2, 17 C.F.R. §166.2 (2009).

34. The Court accepts defendant Shakespeare's consents, undertakings and

agreements set forth in Part II, and based thereupon, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, defendant Shakespeare is ordered to comply with each of the consents, undertakings and agreements set forth in Part II of this Order.

35. The injunctive provisions of this Order shall be binding upon defendant Shakespeare, upon any person who acts in the capacity of an agent, employee, representative, and/or assign of defendant Shakespeare and upon any person who receives actual notice of this Order, by personal service or otherwise, insofar as he or she is acting in active concert or participation with defendant Shakespeare.

V.
CIVIL MONETARY PENALTY AND OTHER EQUITABLE RELIEF

IT IS FURTHER ORDERED THAT:

36. Defendant Shakespeare shall comply fully with the following terms, conditions and obligations relating to the payment of a civil monetary penalty. The equitable relief provisions of this Order shall be binding upon defendant Shakespeare and any person who is acting in the capacity of officer, agent, employee, servant, or attorney of defendant Shakespeare, and any person acting in active concert or participation with defendant Shakespeare.

A. CIVIL MONETARY PENALTY

37. Good cause exists for the imposition of a civil monetary penalty ("CMP") upon defendant Shakespeare.

38. Pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2006), and Regulation 143.8(a)(1)(i), 17 C.F.R. § 143.8(a)(1)(i) (2009), this Court may impose an order directing defendant Shakespeare to pay a CMP, to be assessed by the Court, of not more than the greater

of \$130,000 for each violation of the Act and Regulations described herein, or triple the monetary gain to the defendant.

39. In determining the amount of the CMP to be paid by the defendant, the Court has considered the egregiousness, duration, and scope of the fraud and unauthorized trading. A proper showing having been made, defendant Shakespeare is hereby assessed a total CMP in the amount of \$130,000, plus pre- and post-judgment interest.

40. Defendant Shakespeare shall pay the CMP within ten (10) days of the entry of this Order. Defendant Shakespeare shall pay the CMP 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 by other than electronic funds transfer, 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: Marie Bateman -- AMZ-300
DOT/FAA/MMAC
6500 S. Macarthur Blvd.
Oklahoma City, OK 73169

If the payment is to be made by electronic funds transfer, contact Marie Bateman at 405-954-6569 for instructions. Defendant Shakespeare shall accompany the payment of the CMP with a cover letter that identifies him and the name and docket number of this proceeding. Defendant Shakespeare shall simultaneously transmit copies of the cover letter and the form of payment to: the Director, Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581; and to the Chief, Office of Cooperative Enforcement, Division of Enforcement, at the same address.

B. PROVISIONS RELATED TO MONETARY SANCTIONS

41. Partial Payments: Any acceptance by the Commission of partial payment of

defendant's CMP obligation shall not be deemed a waiver of his requirement to make further payments pursuant to this Order, or a waiver of the Commission's right to seek to compel payment of any remaining balance.

42. Satisfaction: Upon full satisfaction of the defendant's CMP obligation, satisfaction of judgment will be entered as to defendant Shakespeare.

43. Interest: Pre-judgment interest shall accrue from June 18, 2008 to the date this Order is entered, and shall be determined by using the underpayment rate established quarterly by the Internal Revenue Service pursuant to 26 U.S.C. § 662(a)(2). Post-judgment interest shall accrue beginning on eleventh day after the date of entry of this Order and shall be calculated by using the Treasury Bill rate prevailing on the date of entry of this Order pursuant to 28 U.S.C. § 1961.

VI.
MISCELLANEOUS PROVISIONS

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

Notice to Commission:

Director of Enforcement
Commodity Futures Trading
Commission
1155 21st Street N.W.
Washington, DC 20581

Timothy J. Mulreany
Division of Enforcement
Commodity Futures Trading
Commission
1155 21st Street N.W.
Washington, DC 20581

Notice to Defendant Shakespeare:

Steven L. Shakespeare,
3108 Wild Canyon Loop
Austin, Texas 78732

45. Entire Agreement and Amendments: This Order incorporates all of the terms

and conditions of the settlement among the parties hereto. Nothing shall serve to amend or modify this Order in any respect whatsoever, unless: (1) reduced to writing; (2) signed by all parties hereto; and (3) approved by order of this Court.

46. Invalidation: If any provision of this Order or the application of any provisions or circumstances is held invalid, the remainder of the Order and the application of the provision to any other person or circumstance shall not be affected by the holding.

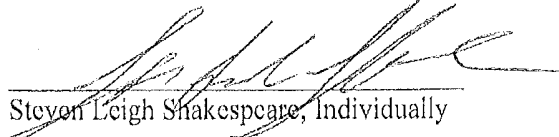
47. Waiver: The failure of any party hereto at any time or times to require performance of any provision hereof shall in no manner affect the right of such party at a later time to enforce the same or any other provision of this Order. No waiver in one or more instances of the breach of any provision contained in this 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 Order.

48. Acknowledgements: Upon being served with copies of this Order after entry by the Court, defendant Shakespeare shall sign acknowledgments of such service and serve such acknowledgments on the Court and the Commission within seven (7) calendar days.

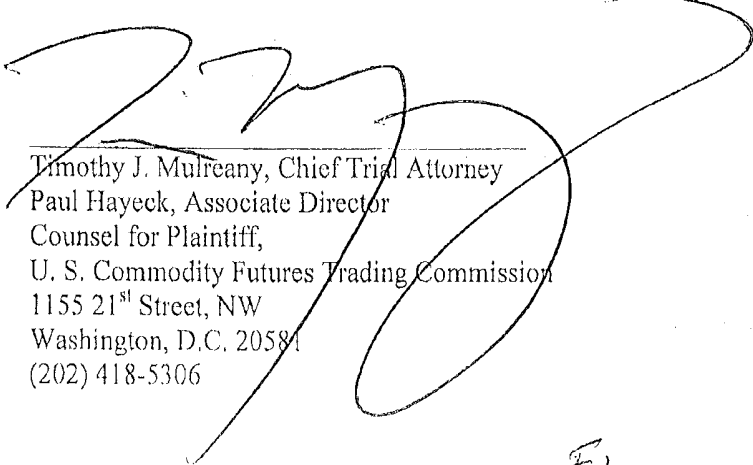
49. Continuing Jurisdiction of this Court: This Court shall retain jurisdiction of this case to assure compliance with this Order and for all other purposes related to this action.

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

CONSENTED AND APPROVED BY:


Steven Leigh Shakespeare, Individually

Date: _____, 2009

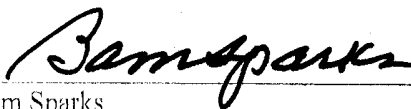


Timothy J. Mulreany, Chief Trial Attorney
Paul Hayeck, Associate Director
Counsel for Plaintiff,
U. S. Commodity Futures Trading Commission
1155 21st Street, NW
Washington, D.C. 20581
(202) 418-5306

Date: February 1, ~~2009~~ 2010

ORDERED AND ADJUDGED:

DONE AND ORDERED in Chambers at Austin, Texas, this 17th day of March, 2009.



Sam Sparks
United States District Judge

cc: All counsel and *pro se* parties of record