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JUL 13 2006

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Deputy Clerk

UNITED STATES DISTRICT COURT
FOR NORTHERN DISTRICT OF GEORGIA
ATLANTA GEORGIA

COMMODITY FUTURES TRADING)
COMMISSION,)
)
Plaintiff,)
)
v.)
)
)
RISK CAPITAL TRADING GROUP, INC,)
DERON BAUGH, TYRONE EDWARDS,)
STEPHEN MARGOL, RICK SIEGEL,)
RICHARD TILLMAN and JUAN VALENTIN)
)
)
Defendants.)

Case No.: 03-2633-ODE

**CONSENT ORDER OF PERMANENT INJUNCTION AND
OTHER EQUITABLE RELIEF AGAINST RICHARD TILLMAN**

I. BACKGROUND

1. On September 3, 2003, the Commission filed its Complaint in the above-captioned action against Defendants Risk Capital Trading Group, Inc. ("Risk Capital"), Deron Baugh ("Baugh"), Ty Edwards ("Edwards"), Stephen Margol ("Margol"), Rick Siegel ("Siegel"), Richard Tillman ("Tillman") and Juan Valentin ("Valentin") (collectively "Defendants"), seeking injunctive and other equitable relief for violations of the Commodity Exchange Act, as amended (the

“Act”), 7 U.S.C. §§ 1 *et seq.*, and Commission Regulations promulgated thereunder, 17 C.F.R. §§ 1 *et seq.*

2. On that same day, pursuant to the Commission’s filing, the Court issued a Statutory Restraining Order freezing Risk Capital’s assets and preserving its books and records.

3. On October 7, 2003, the Court also entered a Consent Order of Preliminary Injunction enjoining all Defendants from, among other things, further violating the Act.

II. CONSENT AND AGREEMENT

1. To effect settlement of the matters alleged in the Complaint in this action without a trial on the merits, any further judicial proceedings or presentation of any evidence, Defendant Tillman:

- a. Consents to the entry of this Consent Order of Permanent Injunction and Other Equitable Relief (the “Consent Order”);
- b. Affirms that he has read and agreed to this Consent Order voluntarily, and that no threat or promise 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, other than as set forth specifically herein;

- c. Acknowledges service of the Summons and Complaint;
- d. 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;
- e. Admits that venue properly lies with this Court pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1;
- f. Waives:
 - i. All claims which may be available under the Equal Access to Justice Act ("EAJA"), 5 U.S.C. § 504 and 28 U.S.C. § 2412, relating to, or arising from, this action and any right under EAJA to seek costs, fees and other expenses relating to, or arising from this action;
 - ii. 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 relief; and
 - iii. Any rights of appeal from this Consent Order;
- g. Consents to the continued jurisdiction of this Court for the purpose of enforcing the terms and conditions of this Consent Order, to assure compliance with the Consent Order, and for any other purposes

relevant to this case, even if Tillman now or in the future resides outside the jurisdiction; and

- h. Agrees that neither Tillman nor any of his agents, employees, or representatives 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 or conclusions in the Consent Order or creating, or tending to create, the impression that the Complaint or this Consent Order is without a factual basis; provided, however, that nothing in this provision shall affect Tillman's (a) testimonial obligations; or (b) right to take legal positions in other proceedings to which the Commission is not a party. Tillman shall take all necessary steps to ensure that all of his agents, employees, or representatives under his authority or control understand and comply with this agreement.

2. By consenting to the entry of this Consent Order, Tillman neither admits nor denies the allegations of the Complaint or the Findings of Fact and Conclusions of Law contained in this Consent Order, except as to jurisdiction and venue, which he admits. However, Tillman agrees, and the parties to this Consent Order intend, that the allegations of the Complaint and the Findings of Fact made

by this Court shall be taken as true and correct and given preclusive effect, without further proof, in any proceeding in bankruptcy or any proceeding to enforce the terms of this Consent Order. Tillman shall provide immediate notice to this Court and the Commission via certified mail of any bankruptcy proceeding filed by, on behalf of, or against him, individually or collectively, and shall provide immediate notice of any change of address, phone number, or contact information.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. 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, without presentation of any evidence, directs the entry of findings of fact, conclusions of law, and a permanent injunction and ancillary equitable relief pursuant to § 6c of the Act, 7 U.S.C. § 13a-1, as set forth herein. This Consent Order shall not bind any party who is not a signatory hereto.

FINDINGS OF FACT

2. **The Commodity Exchange Act**, 7 U.S.C. § 1 *et seq.*, and the Regulations promulgated thereunder, 17 C.F.R. § 1.1 *et seq.*, establish a comprehensive system for regulating the purchase and sale of commodity futures contracts and options on commodity futures contracts (“options”). One of the primary purposes of the Act and Regulations is consumer protection.

3. **Richard Tillman** is an individual residing at 19380 Collins Avenue, Apt. 1203B, Sunny Isles, Florida 33160. Tillman was registered with the Commission as an AP of Risk Capital from July 27, 2001 to August 5, 2003, with the exception of a brief period between May and August 2003.

A. Tillman's Fraudulent Sales Solicitations

4. From at least July 27, 2001 through at least August 5, 2003 ("the relevant period"), Tillman, as an AP of Risk Capital, solicited members of the general public to open accounts to trade options.

5. Tillman, as an AP of Risk Capital, induced customers to invest with Risk Capital by making false and misleading material representations and omissions during sales solicitation telephone calls to customers and potential customers.

6. In telephone calls, Tillman engaged in fraudulent sales solicitations by knowingly misrepresenting and failing to disclose material facts concerning, among other things: (i) the likelihood that customers would profit from trading options; (ii) the risk involved in trading options; and (iii) the poor performance record of Risk Capital customers trading options.

i.) Tillman's Misrepresentations Exaggerating the Likelihood of Profit
(a). Tillman Misrepresented the Return on Options

7. From his very first interaction with prospective customers, Tillman systematically misrepresented the profit potential involved with trading options and the likelihood that this profit would be achieved.

8. Tillman repeatedly informed his customers that they would make substantial amounts of money in a very short time by trading options through Risk Capital.

9. Customers of Tillman relied upon these statements in making their decision to invest with Tillman and Risk Capital.

10. These statements were false because Tillman's and Risk Capital's customers were not making quick, large returns on their investments; rather, they sustained severe losses.

11. Tillman knowingly or recklessly made these false and misleading statements.

(b). Tillman Misrepresented the Likelihood of Profit Based Upon Well-Known Public Information

12. To entice customers and prospective customers to trade with Risk Capital, Tillman habitually referred to well-known public information, such as

seasonal trends and world events, as the primary, if not the sole, basis to trade options.

13. Specifically, Tillman represented that customers and prospective customers would likely reap substantial profits by trading upon publicly known information, such as the war in Iraq and the rise in heating oil prices in the winter.

14. Commodity markets are efficient markets, and efficient markets quickly factor publicly known information into the price of options contracts. Because of this, one cannot earn substantial profits trading options based on such publicly known information.

15. Tillman failed to disclose these facts to his customers and prospective customers; instead, he misled customers into believing that such profits were probable.

16. Customers of Tillman relied upon these statements in making their decision to invest with Tillman and Risk Capital.

17. Tillman knowingly or recklessly made these false and misleading statements and omissions.

(c). Tillman Used Misleading Leverage Examples

18. Tillman also enticed customers and prospective customers to invest by using misleading leverage examples that emphasized large profit potential with only a small investment amount.

19. Tillman represented to customers and prospective customers that even a small shift in the price of a commodity option would yield large profits.

20. Tillman failed to inform customers and prospective customers that an increase in the price of the underlying futures contract typically does not produce a one-to-one increase in the value of an option on that futures contract and that since Tillman and Risk Capital bought out-of-the-money option contracts for their customers, no move, big or small, in the underlying futures contract would necessarily have any effect on the value of the option contract.

21. These examples also failed to account for the high commissions charged by Risk Capital that substantially impacted the potential for any profit, let alone a large one.

22. Customers of Tillman relied upon these statements in making their decision to invest with Tillman and Risk Capital.

23. Tillman knowingly or recklessly made these false and misleading statements and omissions.

(d). Tillman Improperly Connected Profits to Immediate Investment

24. Tillman commonly told customers and prospective customers that they needed to invest immediately or risk losing the opportunity to make a substantial profit.

25. By using this high-pressure sales tactic, he gave the impression that profits were certain or guaranteed, the only variable being the amount of profit to be made.

26. Tillman routinely urged customers and prospective customers that they should do whatever they could to come up with money to invest, and that they needed to act fast because any delay in trading would cause them to lose out on profits.

27. Customers of Tillman relied upon these statements in making their decision to invest with Tillman and Risk Capital.

28. Tillman knowingly or recklessly made these false and misleading statements.

ii.) Tillman's Misrepresentations and Omissions Minimizing the Risk of Loss

29. During the course of his telephone sales solicitations, Tillman routinely failed to disclose adequately the risk of loss inherent in trading options.

30. Among other things, Tillman fraudulently led customers and prospective customers to believe that risk of loss was, or could be, limited, and any disclosures of risk were vitiated by the unbalanced, high-pressure sales presentations which falsely conveyed that trading options with Tillman and Risk Capital was highly profitable and virtually risk free.

31. Customers relied upon these statements in making their decision to invest with Tillman and Risk Capital.

32. Tillman knowingly or recklessly made these misrepresentations and failed to adequately disclose the risk of loss associated with trading commodity option contracts.

**iii.) Tillman's Misrepresentations and Omissions Regarding
Tillman's and Risk Capital's Losing Performance Record**

33. When urging customers and prospective customers to invest immediately with promises of large profits with limited or no risk, Tillman extolled his performance record and bragged of profits made by his previous customers.

34. Customers relied upon these statements in making their decision to invest with Tillman and Risk Capital.

35. However, Tillman never disclosed that an overwhelming majority of Tillman's and Risk Capital's customers lost most, if not all, of their investment.

36. In fact, between January 24, 2001 and September 2003, approximately 98% of the over 1,200 accounts opened by Risk Capital lost money and Risk Capital customers realized combined losses of approximately \$16 million.

37. At the same time, Risk Capital generated approximately \$8,771,235 in commissions and fees from customers.

38. During his employment at Risk Capital, every single one of Tillman's known customers (approximately 30 individuals) lost money. These losses totaled at least \$345,611.

39. Tillman knowingly or recklessly made these misrepresentations and omissions regarding his and Risk Capital's track records, and failed to disclose to his customers and prospective customers the fact that all of Tillman's and most of Risk Capital's customers sustained severe losses trading through the firm.

CONCLUSIONS OF LAW

40. This Court has jurisdiction over the subject matter of this action and all parties hereto pursuant to Section 6c of the Act, 7 U.S.C. §13a-1, which authorizes the Commission to seek injunctive relief against any person whenever it shall appear that such 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 thereunder.

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

42. This Court has personal jurisdiction over Tillman, who acknowledges service of the Complaint and consents to the Court's jurisdiction over him.

43. The Commission and Tillman have agreed to this Court's retention of continuing jurisdiction over each of them for the purpose of enforcing the terms of this Consent Order.

44. By the conduct described in the Findings of Fact in Section III above, Tillman violated Section 4c(b) of the Act, 7 USC. § 6c(b), and Section 33.10(a) and (c) of the Regulations, 17 C.F.R. § 33.10(a) and (c).

IV. ORDER FOR PERMANENT INJUNCTION

With the consent of the parties, IT IS NOW HEREBY ORDERED THAT:

1. Tillman is permanently restrained, enjoined and prohibited from directly or indirectly engaging in any conduct that violates Section 4c(b) of the Act, 7 U.S.C. § 6c(b), and Regulation 33.10(a) and (c), 17 C.F.R. § 33.10(a) and (c), and from engaging in any commodity-related activity including making sales solicitations to customers that misrepresented or omitted:

- a. the profit potential in commodities trading;
- b. the fact that the market factors into the price of commodities well-known public information such as seasonal trends and well-known market events;
- c. the actual track record of the broker or firm;
- d. the risk involved in commodity trading; and
- e. any material fact necessary to make other facts disclosed not misleading.

2. Tillman is 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(29) of the Act, 7 U.S.C. § 1a(29);
- b. Soliciting, receiving, or accepting any funds in connection with the purchase or sale of any futures contract or option on a futures contract;
- c. Engaging in, controlling or directing the trading for any commodity futures, security futures, options on futures, foreign currency futures, options on foreign currency futures or options on foreign currency

accounts for or on behalf of any other person or entity, whether by power of attorney or otherwise; and

- d. 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), or acting as a principal, 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). This includes, but is not limited to, soliciting, accepting or receiving any funds, revenue or other property from any person, giving commodity trading advice for compensation, except as provided for in Regulation 4.14 (a)(9), 17 C.F.R. § 4.14(a)(9), or soliciting prospective customers, related to the purchase or sale of any commodity futures, security futures, options on futures, foreign currency futures, options on foreign currency futures or options on foreign currency.

3. The injunctive provisions of this Consent Order shall be binding on Tillman, upon any person insofar as he or she is acting in the capacity of officer,

agent, servant, employee or attorney of Tillman, and upon any person who receives actual notice of this Consent Order by personal service or otherwise insofar as he or she is acting in active concert or participation with Tillman.

V. ORDER FOR RESTITUTION, CIVIL MONETARY PENALTY, AND OTHER ANCILLARY RELIEF

1. With the consent of the parties, IT IS NOW HEREBY ORDERED that Tillman shall comply fully with the following terms, conditions and obligations relating to the payment of restitution and the payment of a civil monetary penalty.

A. RESTITUTION

2. Tillman is liable for restitution to customers in the amount of \$15,000, plus pre-judgment interest and post-judgment interest.

3. All restitution payments are immediately due and owing. Any amount paid to any customer of Tillman at Risk Capital shall not limit the ability of any customer from independently proving in a separate action that a greater amount is owed from Tillman or any other person or entity, and nothing herein shall be construed in any way to limit or abridge the rights of any customer that exist under federal, state, or common law to assert a claim for recovery against Tillman subject

to any offset or credit that Tillman may be entitled to claim under the law governing that customer's claim.

4. Interest: Pre-judgment interest from September 2003 to the date of this Consent Order shall be determined by the Internal Revenue Service 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 the date of entry of this Consent Order and shall be determined by using the Treasury Bill rate prevailing on the date of this Consent Order pursuant to 28 U.S.C. § 1961.

5. Appointment of Monitor: To effect payment by Tillman and distribution of restitution to defrauded customers, the Court appoints Daniel Driscoll of the National Futures Association ("NFA") as Monitor ("Monitor"). The Monitor shall collect restitution payments from Tillman, compute pro rata allocations to injured customers identified in Exhibit A to this Consent Order, and make distributions as set forth below. As the Monitor is not being specially compensated for these services, and these services are outside the normal duties of the Monitor, he shall not be liable for any action or inaction arising from his appointment as Monitor, other than actions involving fraud. Restitution payments under this Consent Order shall be made to the NFA by electronic funds transfer, or

by U.S. postal money order, certified check, bank cashier's check, or bank money order, made payable to the Risk Capital Settlement Fund and sent to Daniel Driscoll, Monitor, National Futures Association, 200 W. Madison St., #1600, Chicago, IL 60606-3447 under a cover letter that identifies Tillman and the name and docket number of the proceeding. Tillman shall simultaneously transmit a copy of the cover letter and the form of payment to Gregory Mocek, Director, Division of Enforcement, Commodity Futures Trading Commission, at the following address: Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581. The NFA, through the Monitor, shall oversee Tillman's restitution obligation and shall make periodic distributions of funds to customers as appropriate. Based upon the amount of funds available, the NFA may defer distribution until such time as it deems appropriate. Restitution payments shall be made in an equitable fashion as determined by the NFA to the persons identified on Exhibit A. Subsequent to the entry of this Consent Order, Tillman shall provide the Commission and the Monitor with immediate notice of any filing or compromise and settlement of any private or governmental actions relating to the subject matter of this Consent Order in the manner required by Part VI of this Consent Order.

B. CIVIL MONETARY PENALTY

6. A civil monetary penalty in the amount of \$60,000 is assessed against Tillman, and is immediately due and owing, plus post-judgment interest pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1.

7. All payments by Tillman shall be applied to his restitution obligation under this Consent Order until his restitution obligation has been paid in full. Upon full payment of his restitution obligation, all payments by Tillman will be applied to his civil monetary penalty obligation under this Consent Order.

8. Post-judgment interest shall accrue 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 this Consent Order pursuant to 28 U.S.C. § 1961.

9. Tillman shall pay this penalty by making electronic funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money order made payable to the Commodity Futures Trading Commission and sent to the attention of the Office of Cooperative Enforcement, Division of Enforcement, CFTC, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581. Tillman shall accompany payment of the penalty with a cover letter that identifies Tillman, and the name and docket number of this proceeding. Tillman shall simultaneously transmit a copy of the cover letter and the form of payment to the

Monitor and to Director, Division of Enforcement, CFTC, Three Lafayette Centre,
1155 21st N.W., Washington, D.C. 20581.

VI. MISCELLANEOUS PROVISIONS

1. **Notices.** All notices required by this Consent Order shall be sent by certified mail, return receipt requested, as follows:

- a. Notice to Plaintiff Commission:
Division of Enforcement
Commodity Futures Trading Commission
1155 21st Street, NW
Washington, DC 20581
- b. Notice to the Restitution Monitor:
Daniel Driscoll
National Futures Association
200 West Madison Street
Chicago, IL 60606
- c. Notice to Defendant Tillman:
c/o Homer & Bonner, P.A.
1441 Brickell Avenue
12th Floor
Miami, FL 33131

2. **Equitable Relief:** The equitable relief provisions of this Consent Order shall be binding upon Tillman and any person who is acting in the capacity of officer, agent, employee, servant, or attorney of Tillman, and any person acting in active concert or participation with Tillman who receives actual notice of this Consent Order by personal service or otherwise.

3. Counterparts. This Consent Order may be executed by the parties in counterparts and by facsimile.

4. Entire Agreement, Amendments and Severability. This Consent Order incorporates all of the terms and conditions of the settlement among the parties. Nothing shall serve to amend or modify this Consent Order in any respect whatsoever, unless: (1) reduced to writing, (2) signed by all parties, and (3) approved by order of the Court.

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

6. 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 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.

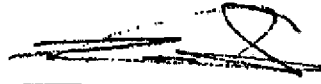
7. Acknowledgements: Upon being served with copies of this Consent Order after entry by the Court, Tillman shall sign acknowledgment of such service and serve such acknowledgment on the Court and the Commission within seven (7) calendar days. Tillman further acknowledges and understands that this Consent Order must be accepted and ratified by the Commission before it becomes final. However, Tillman understands and agrees that by his signatures he is bound by the terms and conditions of this Consent Order, unless the Commission refuses to accept and ratify the Consent Order.

8. Continuing Jurisdiction of this Court. Upon entry of this Consent Order, this case shall be dismissed with prejudice as to Tillman, and the Court shall retain jurisdiction of this cause only to assure compliance with this Consent Order.

WHEREFORE, 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 Against Defendant Richard Tillman.

Consented to and approved for entry by:

Dated: June ____, 2006



R. Lawrence Bonner, Esq.
Francisco O. Sanchez, Esq.
Homer & Bonner, P.A.
The Four Seasons Tower
1441 Brickell Avenue, Suite 1200
Miami, FL 33131
Counsel for Defendants

Dated: June ____, 2006


Joseph B. Alonso, Esq.
Brock, Clay & Calhoun, P.C.
49 Atlanta Street, SW
Marietta, GA 30060
Local Counsel for Defendants

Dated: June ____, 2006



Richard Tillman

Dated: ^{July} June 10, 2006




Anne M. Termine, Esq.
Daniel C. Jordan, Esq.
Kathleen Banar, Esq.
Richard S. Wagner, Esq.
Commodity Futures Trading Commission
1155 21st Street, NW
Washington, DC 20581
Counsel for Plaintiff

Consented to and approved for entry by:

Dated: June ____, 2006

R. Lawrence Bonner, Esq.
Francisco O. Sanchez, Esq.
Homer & Bonner, P.A.
The Four Seasons Tower
1441 Brickell Avenue, Suite 1200
Miami, FL 33131
Counsel for Defendants

Dated: June 16, 2006



Joseph B. Alonso, Esq.
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49 Atlanta Street, SW
Marietta, GA 30060
Local Counsel for Defendants

Dated: June ____, 2006

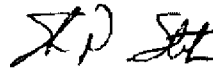


Richard Tillman

Dated: June ____, 2006

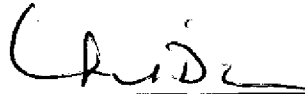
Anne M. Termine, Esq.
Daniel C. Jordan, Esq.
Kathleen Banar, Esq.
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Commodity Futures Trading Commission
1155 21st Street, NW
Washington, DC 20581
Counsel for Plaintiff

Dated: July 11, 2006



Sharon D. Stokes, Esq.
Assistant United States Attorney
600 U.S. Courthouse
75 Spring Street, S.W.
Atlanta, Georgia 30303
Local Counsel for Plaintiff

Ordered on this 13 day of July, 2006.



HON. ORINDA D. EVANS
UNITED STATES DISTRICT JUDGE