

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

U.S. COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

v.

DANIEL SHAK,

Defendant.

Case No: 14-CV-1632- EGS

FILED

MAR 27 2015

Clerk, U.S. District & Bankruptcy
Courts for the District of Columbia

**CONSENT ORDER FOR PERMANENT INJUNCTION, CIVIL MONETARY
PENALTY AND OTHER EQUITABLE RELIEF AGAINST DANIEL SHAK**

I. INTRODUCTION

On September 30, 2014, Plaintiff U.S. Commodity Futures Trading Commission (“Commission” or “CFTC”) filed a one-count Complaint (Dkt. No. 1) against Daniel Shak (“Shak”) seeking civil monetary penalties, injunctive and other equitable relief for a violation of the Commodity Exchange Act (“Act”), 7 U.S.C. §§ 1 *et seq.* (2012). Specifically, after voluntarily consenting to an Administrative Order¹ (“CFTC Order”) issued by the CFTC in November 2013 prohibiting him from engaging in certain commodity futures trading during the daily closing period, six months later Shak violated the CFTC Order by trading two outright² June 2014 gold futures contracts during the closing period on May 22, 2014 (“the Trade”) - the exact type of commodity futures trading that he agreed to be banned from trading. Shak now consents to the entry of this order for permanent injunction, civil monetary penalty and other equitable relief, which resolves this litigation between the parties in its entirety, as follows:

¹ *In re Daniel Shak and SHK Management LLC*, CFTC Docket No. 14-03, [2013-2014 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 32,878 (CFTC Nov. 25, 2013)

² The term outright, as used herein, refers to futures contracts.

II. CONSENTS AND AGREEMENTS

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

1. Consents to the entry of this Consent Order for Permanent Injunction, Civil Monetary Penalty and Other Equitable Relief Against Daniel Shak (“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 upon him 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 (2012);
5. Admits the jurisdiction of the Commission over the conduct and transactions at issue in this action pursuant to 7 U.S.C. §§ 1, *et seq.* (2012);
6. Admits that venue properly lies with this Court pursuant 7 U.S.C. § 13a-1(e) (2012);
7. Waives:
 - (a) any and all claims that he may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2012) and 28 U.S.C. § 2412 (2012), and/or the rules promulgated by the Commission in conformity therewith. Part 148 of the Regulations, 17 C.F.R. §§ 148.1 *et seq.* (2014), 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 Shak 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 Shak's: (a) testimonial obligations, or (b) right to take legal positions in other proceedings to which the Commission is not a party. Shak 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;

11. Admits to all of the findings made in this Consent Order and all of the allegations of the Complaint. Further, Shak 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 Shak; (b) any proceeding pursuant to 7 U.S.C. § 12a (2012), and/or Part 3 of the Regulations, 17 C.F.R. §§ 3.1 *et seq.* (2014); 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 35 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

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, civil monetary penalty and equitable relief pursuant to 7 U.S.C. § 13a-1 (2012), as set forth herein.

THE PARTIES AGREE AND THE COURT HEREBY FINDS:

A. Findings of Fact

1. Parties to This Consent Order

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

Commission's Regulations ("Regulations") promulgated thereunder, 17 C.F.R. §§ 1.1 *et seq.* (2014).

14. Defendant **Daniel Shak** is an individual residing in Las Vegas, Nevada. Shak is registered with the Commission as a floor broker. Shak is a member of New York Mercantile Exchange, a designated contract market.

2. Prior CFTC Order

15. On November 25, 2013, the Commission issued the CFTC Order instituting administrative proceedings pursuant to Sections 6(c), 6(d), and 8a of the Act, 7 U.S.C. §§ 9. 13b, and 12a(1) (2012), against Shak and SHK Management LLC, a registered commodity pool operator ("CPO") managed by Shak, and simultaneously accepted Shak's Offer of Settlement.

16. As recited in the CFTC Order, in which the CFTC made findings of fact and conclusions of law and imposed remedial sanctions, Shak and SHK Management LLC, his CPO, attempted to manipulate the price of Light Sweet Crude Oil ("WTI") futures contracts traded on the New York Mercantile Exchange ("NYMEX") on two trading days in 2008. In addition, the CFTC Order found that Shak and his CPO violated the intraday spot month speculative position limits for WTI futures contracts on those two trading days.

17. Shak, represented by counsel, neither admitted nor denied the allegations and conclusions contained in the CFTC Order, and consented to the CFTC Order that required, among other things, Shak to refrain from certain trading activity. Specifically, the CFTC Order at Section VI.(4).(b). prohibited Shak:

For a period of two years, trading outright, directly or indirectly, on or subject to the rules of a registered entity, as registered entity is defined in Section 1a of the Act, as amended by the CRA and the Dodd-Frank Act. to be codified at 7 U.S.C. § 1a, from the beginning of the closing period for trading until the end of the closing period for any commodity futures, options on commodity futures, commodity options, security futures products, swaps, and/or foreign currency, or any other product or financial instrument regulated presently or in the future by the Commission.

3. Conduct in Violation of the CFTC Order

18. Open Outcry trading in the Gold Futures pit occurs Monday through Friday from 9:20 a.m. to 1:30 p.m., eastern time. Trading in the close, as designated by the New York Mercantile Exchange, occurs during the last minute before the end of trading in the pit. As such, trades executed between 1:29:00 to 1:30:00 p.m. eastern time are considered executed during the closing period.

19. On Thursday, May 22, 2014, six months after issuance of the CFTC Order, Shak bought two outright, June 2014 gold futures contracts at 1:29:14 seconds eastern time, 46 seconds before the close of the market. Thus, Shak's trades occurred during the closing period in violation of the CFTC Order. This was a one-time incident involving a 2-lot trade.

B. Conclusions of Law

1. Jurisdiction and Venue

20. This Court has jurisdiction over this action pursuant to 7 U.S.C. § 13a-1 (2012), 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.

21. Venue properly lies with this Court pursuant to 7 U.S.C. § 13a-1(e) (2012), because the transactions, acts, practices, and courses of business alleged to have violated the Act occurred, are occurring, and/or are about to occur within this District, the Commission is located in this District, and the CFTC Order was issued from this District.

2. Violation of the CFTC Order

22. Section VI.(4).(b). of the CFTC Order prohibited Shak for a period of two years, beginning on November 25, 2013, from trading outright from the beginning of the closing period until the end of the closing period for any commodity futures, options on commodity futures, commodity options, security futures products, swaps, and/or foreign currency, or any other product or financial instrument regulated presently or in the future by the Commission.

23. On Thursday, May 22, 2014, six months after issuance of the CFTC Order, Shak bought two outright, June 2014 gold futures contracts during the closing period.

24. The Trade violated Section VI.(4).(b).of the CFTC Order.

25. In violating the CFTC Order, Shak violated 7 U.S.C. § 9(4) (2012).

26. Unless restrained and enjoined by this Court, there is a reasonable likelihood that the Shak will continue to engage in the acts and practices alleged in the Complaint.

IV. PERMANENT INJUNCTION

IT IS HEREBY ORDERED THAT:

27. Based upon and in connection with the foregoing conduct, pursuant to 7 U.S.C. § 13a-1 (2012), Shak is permanently restrained, enjoined and prohibited from directly or indirectly violating 7 U.S.C. § 9(4) (2012) and Section VI.(4).(b). of the CFTC Order.

28. Shak is also restrained, enjoined and prohibited from directly or indirectly, for a period of two (2) years from the date of entry of this Consent Order, trading outright, directly or indirectly, on or subject to the rules of a registered entity, as registered entity is defined in 7 U.S.C. §1a (2014), from the beginning of the closing period for trading until the end of the closing period for any commodity futures, options on commodity futures, commodity options, security futures products, swaps, and/or foreign currency, or any other product or financial instrument regulated presently or in the future by the Commission.

29. This order does not supersede the prior CFTC Order, which remains in effect.

V. CIVIL MONETARY PENALTY

30. Shak shall pay a civil monetary penalty in the amount of one hundred thousand dollars (\$100,000).

31. Shak shall pay the civil monetary penalty ("CMP Obligation"), plus post-judgment interest, within ten (10) days of the date of the entry of this Consent Order. If the CMP Obligation is not paid in full within ten (10) days of the date of entry of this Consent Order, then 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 (2012).

32. Shak 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 U.S. Commodity Futures Trading Commission and sent to the address below:

U.S. 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, Shak shall contact Nikki Gibson or her successor at the address above to receive payment instructions and shall fully comply with those instructions. Shak shall accompany payment of the CMP Obligation with a cover letter that

identifies Shak and the name and docket number of this proceeding. Shak shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer, U.S. Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

33. **Partial Satisfaction:** Any acceptance by the Commission of partial payment of Shak's CMP Obligation shall not be deemed a waiver of Shak's 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

34. **Cooperation:** Shak shall cooperate fully and expeditiously with the Commission, including the Commission's Division of Enforcement, and any other governmental agency in this action, and in any investigation, civil litigation, or administrative matter related to the subject matter of this action or any current or future Commission investigation related thereto.

35. **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:

Director, Division of Enforcement
U.S. Commodity Futures Trading Commission
1155 21st Street NW
Washington, D.C. 20581

Notice to Defendant Daniel Shak:

David Kovel
KIRBY McINERNEY LLP
825 Third Avenue, 16th Floor
New York, NY 10022
212.371.6600
212.699.1194 (fax)

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

36. **Change of Address/Phone** In the event that there is an address and/or telephone number change for Shak, Shak 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.

37. **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.

38. **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.

39. **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.

40. **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 Shak to modify or for relief from the terms of this Consent Order.

41. **Injunctive and Equitable Relief Provisions:** The injunctive and equitable relief provisions of this Consent Order shall be binding upon Shak, 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 Shak.

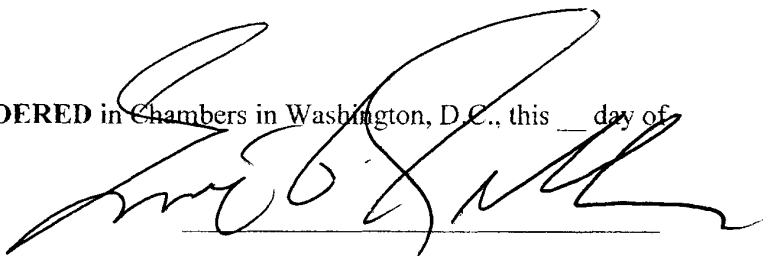
42. **Counterparts and Facsimile Execution:** This Consent Order may be executed in two or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties hereto and delivered (by facsimile, 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.

43. Shak 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 Daniel Shak.

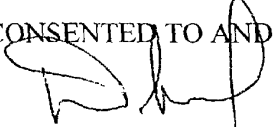
3/26/15

DONE AND ORDERED in Chambers in Washington, D.C., this ___ day of



Hon. Emmet G. Sullivan
United States District Judge

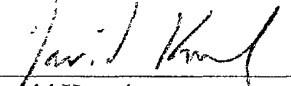
CONSENTED TO AND APPROVED BY:



Daniel Shak, Defendant

Date: 1/27/15

APPROVED AS TO FORM:



David Kovel

Attorney for Defendant Daniel Shak
KIRBY McINERNEY LLP
825 Third Avenue, 16th Floor
New York, NY 10022
Tel: 212.371.6600
Fax: 212.699.1194

Date: 1/29/15

/s/ Jennifer S. Diamond

Jennifer S. Diamond (Illinois Bar No. 6278482)
James H. Holl, III (D.C. Bar No. 453473)
U.S. Commodity Futures Trading Commission
1155 21st Street, NW
Washington, DC 20581
Tel: (202) 418-5244 (Diamond)
Fax: (202) 418-5937
jdiamond@cftc.gov

Date: March 26, 2015