

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA**

U.S. COMMODITY FUTURES TRADING)
COMMISSION,)

Plaintiff,)

v.)

QUEEN SHOALS CONSULTANTS, LLC;)
GARY D. MARTIN; and)
BRENDA K. MARTIN.)

Defendants)

CASE NO. 3:11 cv-000132 RJC -DSC

**SUPPLEMENTAL CONSENT ORDER OF PERMANENT INJUNCTION, CIVIL
MONETARY PENALTY AND OTHER EQUITABLE RELIEF**

**I.
INTRODUCTION**

On March 15, 2011, the U. S. Commodity Futures Trading Commission (“Commission” or “CFTC”) filed a Complaint in this civil action against Defendants Queen Shoals Consultants, LLC (“QSC”), Gary D. Martin (“Martin”) and Brenda K. Martin (“B. Martin”) (collectively “Defendants”). The Complaint seeks injunctive and other legal and equitable relief for violations of certain antifraud provisions of the Commodity Exchange Act (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. §§ 1 *et seq.* The Court entered a Consent Order of Settlement, Permanent Injunction, and Other Equitable Relief (“Consent Order”) on or about August 1, 2011. *See* Docket Entry No. 10. The parties have filed a Joint Motion to

Enter a Supplemental Order of Permanent Injunction, Civil Monetary Penalty and Other Equitable Relief (“Joint Motion”) so that the Court may determine the amount of restitution and civil monetary penalties to be entered against the Defendants. As it appears to the Court that this is a proper case for granting the requested relief to preserve the *status quo*, protect public customers from further loss and damage, and enable the Commission to fulfill its statutory duties, the Court grants the Joint Motion and enters this Supplemental Consent Order of Permanent Injunction, Civil Monetary Penalty and Other Equitable Relief (“Supplemental Order”) as follows:

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, Defendants:

1. Consent to the entry of this Supplemental Order;
2. Affirm that they have read and agreed to this Supplemental 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 Supplemental Order, other than as set forth specifically herein;
3. Acknowledge proper service of the Summons and Complaint;
4. Admit that this Court has jurisdiction over them and the subject matter of this action pursuant to Sections 2(c)(2) and 6c of the Act, 7 U.S.C. §§ 2(c)(2) and 13a-1 (2006 & Supp. IV 2011);
5. Admit that venue properly lies with this Court pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1;

6. Waive: (a) any and all claims that they may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2006) and 28 U.S.C. § 2412 (2006), and the rules promulgated by the Commission in conformity therewith, Part 148 of the Commission's Regulations ("Regulations"), 17 C.F.R. §§ 148.1-30 (2012), relating to, or arising from, this action; (b) any and all claims that they may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, §§ 201-253, 110 Stat. 847, 857-68 (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 that they may possess 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) any and all rights of appeal from this action;

7. Consent to the continued jurisdiction of this Court over them for the purpose of enforcing the terms and conditions of this Supplemental Order and for any other purpose relevant to this action, even if Defendants now or in the future reside outside the jurisdiction;

8. Agree that they and their agents, servants, employees, contractors and attorneys shall not 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 the Consent Order or this Supplemental Order, or creating, or tending to create, the impression that the Complaint, Consent Order, or this Supplemental Order is without a factual basis; provided, however, that nothing in this provision shall affect Defendants': (a) testimonial obligations; or (b) right to take legal positions in other proceedings to which the Commission is not a party. Defendants shall take all necessary steps to ensure that all of their agents, servants, employees, contractors and attorneys understand and comply with this agreement;

9. By consenting to the entry of this Supplemental Order, Defendants neither admit nor

deny the allegations of the Complaint, or the Findings of Fact and Conclusions of Law contained in the Consent Order or this Supplemental Order, except as to jurisdiction and venue, which they admit; however, Defendants agree and intend 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 the Consent Order of Settlement, and in the Supplemental 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 any of the Defendants; any proceeding to enforce the Consent Order and/or this Supplemental Order; and/or any proceeding pursuant to Section 8a of the Act, 7 U.S.C. § 12a(1), and/or Part 3 of the Regulations, 17 C.F.R. §§ 3.1 *et seq.* (2012);

10. Agree to provide immediate notice to this Court and the CFTC of any bankruptcy filed by, on behalf of, or against them collectively and/or individually in the manner required by Part V, paragraph 21 of this Supplemental Order; and

11. Agree that no provision of this Supplemental Order shall in any way limit or impair the ability of any person or entity to seek any legal or equitable remedy against any of the Defendants or any other person 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 Supplemental Order and that there is no just reason for delay. The Court therefore directs the entry of the following restitution, civil monetary penalty and equitable relief, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, as set forth herein.

THE PARTIES AGREE AND THE COURT HEREBY FINDS

12. 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).

13. Defendant Queen Shoals Consultants, LLC is a Florida limited liability company, originally founded and formed by the Martins on December 12, 2007 pursuant to the laws of the state of North Carolina, closed by the Martins, and organized a second time on November 12, 2008 pursuant to the laws of the state of Florida. It's claimed business addresses were listed on the QSC website as 5011 Gate Parkway Building 100, Suite 320, Jacksonville, Florida 32256 and 8520 Cliff Cameron Drive, Suite 150, Charlotte, North Carolina 28269. QSC also claimed to operate from offices in Cave Creek, Arizona. QSC has never been registered with the CFTC in any capacity. QSC is not a financial institution, registered broker dealer, insurance company, financial holding company, or investment bank holding company, nor is it an associated person of such entities.

14. Defendant Gary D. Martin resides in St. Augustine, Florida. Martin held himself out as the president and managing director of QSC, and was the signatory on bank accounts held by QSC. In February 8, 2012, Martin pled guilty to one count of money laundering conspiracy, in violation of 18 U.S.C. § 1956(h), in *United States v. Gary D. Martin*, Case No.: 3:12-cr-39-RJC, filed in the U.S. District Court for the Western District of North Carolina. Martin has never been registered with the CFTC in any capacity.

15. Defendant Brenda K. Martin resides in St. Augustine, Florida. B. Martin held herself out as the vice president and managing director of QSC, and was also a signatory on bank accounts held by QSC. B. Martin has never been registered with the CFTC in any capacity.

IV.

RESTITUTION, CIVIL MONETARY PENALTY AND OTHER EQUITABLE RELIEF

IT IS FURTHER ORDERED THAT:

A. RESTITUTION

16. The Court finds that Martin is obligated to pay restitution to victims of his fraudulent scheme in the concurrent criminal prosecution of Martin in *United States v. Gary D. Martin*, Case No.: 3:12-cr-39-RJC, filed in the U.S. District Court of the Western District of North Carolina. Accordingly, the Court shall not enter a duplicative Restitution Obligation herein.

B. CIVIL MONETARY PENALTY

17. QSC and Martin shall pay a civil monetary penalty in the amount of four million three hundred twenty thousand dollars (\$4,320,000), B. Martin shall pay a civil monetary penalty in the amount of one million four hundred forty thousand dollars (\$1,440,000) (collectively the "CMP Obligation"). The Defendants' CMP Obligation shall be joint and several. Post judgment interest shall accrue on the CMP Obligation commencing on the date of entry of this Supplemental Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Supplemental Order pursuant to 28 U.S.C. § 1961.

18. Defendants shall pay the CMP Obligation to the CFTC 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, 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

Telephone: (405) 954-6569

If the payment is to be made by electronic funds transfer, Defendants shall contact Marie Bateman or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Defendants shall accompany the payment of the CMP Obligation with a cover letter that identifies Defendants and the name and docket number of this proceeding. Defendants shall simultaneously transmit copies of the cover letter and the form of payment to: (a) the Director, Division of Enforcement, U. S. Commodity Futures Trading Commission, 1155 21st Street, NW, Washington, D.C. 20581, and (b) Chief, Office of Cooperative Enforcement, Division of Enforcement, U.S. Commodity Futures Trading Commission, 1155 21st Street, NW, Washington, D.C. 20581.

C. Partial Payments, and Satisfaction of Judgment

19. Partial Payments: Any acceptance by the Commission of partial payment of the CMP Obligation shall not be deemed a waiver of the requirement to make further payments pursuant to this Supplemental Order, or a waiver of the Commission's right to compel payment of any remaining balance.

20. Satisfaction of Judgment: Upon termination of the CMP Obligation, satisfaction of judgment will be entered as to Defendants.

V. MISCELLANEOUS PROVISIONS

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

Notice to Commission:

Director
Division of Enforcement
Commodity Futures Trading Commission,
Three Lafayette Centre, 1155 21st Street, NW,
Washington, D.C. 20581

Notice to Defendants:

Jacob H. Sussman
TIN FULTON WALKER & OWEN PLLC
301 East Park Avenue
Charlotte, NC 28203
(p) 704-338-1220
(f) 704-338-1312
email: jsussman@tinfulton.com

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

22. **Change of Address/Phone:** Until such time as Defendants satisfy in full the CMP Obligation, Defendants shall provide written notice to the Commission by certified mail of any change to their telephone number(s) and mailing address(s) within ten (10) calendar days of the change.

23. **Entire Agreement and Amendments:** This Supplemental 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 Supplemental Order in any respect whatsoever, unless: (a) reduced to writing; (b) signed by all parties hereto; and (c) approved by order of this Court.

24. **Invalidation:** If any provision of this Supplemental Order or if the application of any provision or circumstance is held invalid, then the remainder of this Supplemental Order and the application of the provision to any other person or circumstance shall not be affected by the holding.

25. **Waiver:** The failure of any party to this Supplemental Order or of any Participant at any time to require performance of any provision of this Supplemental Order shall in no manner affect the right of the party or participant at a later time to enforce the same or any

other provision of this Supplemental Order. No waiver in one or more instances of the breach of any provision contained in this Supplemental 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 Supplemental Order.

26. **Continuing Jurisdiction of this Court:** This Court shall retain jurisdiction of this action in order to implement and carry out the terms of all orders and decrees that may be entered herein, to entertain any suitable application or motion for additional relief within the jurisdiction of the Court, to assure compliance with this Supplemental Order and for any other purpose relevant to this action.

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

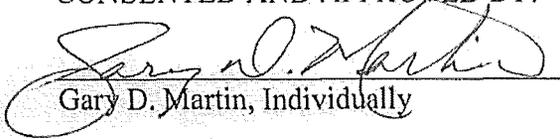
28. **Counterparts and Facsimile Execution:** This Supplemental Order may be executed in two or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties hereto and delivered (by facsimile,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

29. Defendants understand that the terms of the Supplemental Order are enforceable through contempt proceedings, and that, in any such proceedings Defendants may not

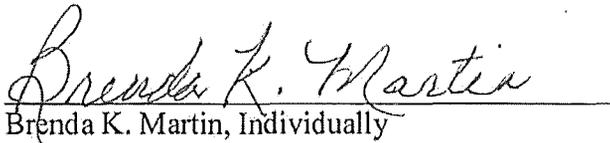
challenge the validity of this Supplemental Order.

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

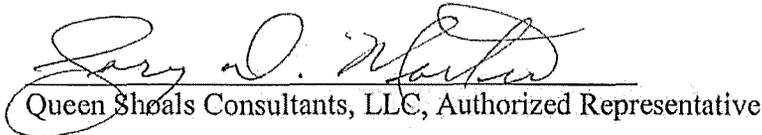
CONSENTED AND APPROVED BY:


Gary D. Martin, Individually

Date: 11/09/2012


Brenda K. Martin, Individually

Date: 11/09/2012

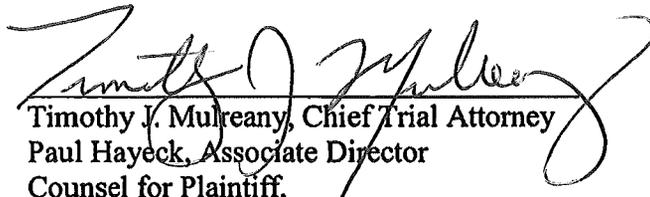

Queen Shoals Consultants, LLC, Authorized Representative

Date: 11/09/2012

Approved for Entry:


Jacob H. Sussman, Esq.
TIN FULTON WALKER & OWEN PLLC
301 East Park Avenue
Charlotte, NC 28203
(p) 704-338-1220
(f) 704-338-1312

Date: 11/29/12



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: May 14, 2013

ORDERED AND ADJUDGED:

DONE AND ORDERED in Chambers at Charlotte, North Carolina, this _____ day of _____, 201~~2~~³.

United States District Judge

cc: All counsel and pro se parties of record