

**In The United States District Court
For The Northern District Of Illinois
Eastern Division**

Commodity Futures Trading Commission,
Plaintiff,

vs.

Kevin J. Steele
Defendant.

Civil Action No: 05C 3130

Honorable Judge Shadur
Magistrate Judge Schenkier

**ORDER OF DEFAULT JUDGMENT
FOR PERMANENT INJUNCTION AND OTHER ANCILLARY RELIEF
AGAINST DEFENDANT KEVIN J. STEELE**

Plaintiff, Commodity Futures Trading Commission (“CFTC or Commission”), on May 25, 2005, filed a complaint against the Defendant, Kevin J. Steele (“Steele” or “Defendant”), seeking injunctive and other equitable relief, as well as the imposition of civil penalties, for violations of the Commodity Exchange Act, as amended, (“Act”), 7 U.S.C. §§ 1 *et seq.*, (2002). On June 13, 2005, this Court entered a Preliminary Injunction against Steele. The Defendant did not plead or otherwise defend as to the complaint within the time permitted by the Federal Rules of Civil Procedure (“Fed. R. Civ. P.”), and the Commission moved for a default judgment of permanent injunction.

This Court has considered the complaint, declarations, exhibits, brief in support of the motion for entry of default judgment against Steele and other papers filed herein, and being fully advised in the premises;

THE COURT FINDS:

1. This Court has jurisdiction over this action 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 to the Commission 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.

2. Venue properly lies with this Court pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1(e), in that Steele 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.

3. Service was properly effected upon Defendant on May 26, 2005, pursuant to Fed. R. Civ. P. 4(e)(2), by delivering a copy of the summons and complaint to Defendant's agent, Interactive Brokers LLC ("IBL"), in care of Mr. Jeff Bauch, IBL's compliance officer, who is authorized by law to receive service of process for Defendant under Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e), and Commission Regulation 15.05, 17 C.F.R. § 15.05 (2005).

4. Moreover, on July 7, 2005, Steele was personally served with a copy of the summons, complaint, *Ex Parte* Statutory Restraining Order, and Preliminary Injunction Order entered by this Court.

5. Steele failed to plead or otherwise defend as to the complaint within the time permitted by Fed. R. Civ. P. 12(a)(1). On August 31, 2005, this Court entered a default against Steele pursuant to Fed. R. Civ. P. 55(a).

6. The allegations of the complaint are well-pleaded and hereby taken as true. This Order is supported by the following facts.

The Parties

7. Plaintiff Commission is an independent federal regulatory agency charged with the responsibility for administering and enforcing the provisions of the Act, 7 U.S.C. §§ 1 et seq. (2002), and the Regulations promulgated under it, 17 C.F.R. §§ 1 et seq. (2005).

8. Defendant Steele is a 33-year-old Canadian citizen who resides in Vancouver, British Columbia. He has never been registered in any capacity with the CFTC, nor has he applied for any exemption from registration.

Steele Fraudulently Solicited Investors

9. Since at least January 2003, when Steele began operating his commodity pool, he convinced others that he was a successful commodity futures trader by showing them false statements purporting to reflect his trading successes. Steele offered to split profits with at least two individuals if they agreed to solicit pool participants to entrust their money to him to be pooled with the funds of others and used to trade commodity futures contracts. The pool participants expected a *pro rata* share of the pool's profits and losses.

10. During the period January 2003 to May 2005 (the "relevant period"), Steele made misrepresentations and failed to disclose material facts to pool participants regarding the profitability of the pool that contained the pool participants' money. Specifically, Steele represented that the pool was generating a monthly profit of

approximately 6 to 11 percent. At no time did Steele tell pool participants that the pool had incurred heavy losses.

11. At least two persons, David Shannon (“Shannon”) and David Fulkco (“Fulkco”), became associated with Steele for purposes of soliciting prospective pool participants and assisting in the administration of the pool. Steele told Fulkco that the commodity pool he operated averaged a monthly profit of 10 percent. Fulkco accepted Steele’s offer to solicit for the pool and created a company, Abriel Asset Management (“Abriel”), to accept investor funds.

12. During the relevant period, Steele, Shannon, Fulkco, and Fulkco’s father, Wally, solicited approximately 200 investors for the pool, worldwide, who collectively invested at least \$8.1 million.

Steele Falsely Reported Profits to Investors.

13. Throughout the relevant period, Steele falsely reported profitable trading to pool participants. Specifically, each month, Steele provided Fulkco with what purported to be an original monthly commodity trading account statement from IBL, which depicted monthly profits for the pool. Fulkco retained a bookkeeper, who used the account statements he obtained from Steele, to prepare individual monthly account statements for investors. The monthly statements Fulkco received from Steele always showed that the pool earned a monthly profit.

14. A comparison of the account statements Steele sent to Fulkco with the monthly account statements actually issued by IBL show that Steele falsified the account statements he gave to Fulkco. Specifically, the statements Steele gave to Fulko contain

false dollar balances and do not depict the actual trading activity in the IBL commodity account.

15. In early May 2005, Steele gave Fulkco an account statement purportedly issued by IBL for the period ending April 30, 2005, which showed that the pool's account no. U 101217 had a balance of over \$17.3 million. In fact, IBL account no. U 101217 was not controlled by Steele and was never funded. The two commodity accounts Steele controlled at IBL, account nos. U 82666 and U 99311, never had a value of over \$17.3 million.

Steele Incurred Heavy Losses Trading Investors' Funds.

16. Steele's IBL commodity trading accounts, nos. U 82666 and U 99311, incurred steady losses throughout the relevant period. Specifically, Steele's IBL account no. U 82666 was a heavily-traded account that was opened by Steele on December 17, 2002 and had a total of approximately \$7.7 million deposited into the account during the relevant period. All of the monies deposited into account no. U 82666 were pool investors' funds. Steele deposited none of his own funds into that account.

17. Typically, Fulkco instructed the investors he solicited for the pool to wire their funds to a bank account he maintained in the name of Abriel. Fulkco in turn wired those funds to IBL for credit to Steele's account no. U 82666.

18. During the relevant period, Steele lost approximately \$4.3 million of the pool participants' funds trading commodity futures. Indeed, over a two-day period in May 2005, Steele incurred trading losses of over \$2 million. Steele's trading account no.

U 99311, which he opened on April 29, 2003, was not a heavily traded account and sustained losses of approximately \$3,000 in 2003 and \$4,000 in 2004.

Steele Misappropriated Over \$3 Million of Investors' Funds.

19. During the relevant period, Steele misappropriated at least \$3.1 million of the investors' funds. Steele misappropriated investors' funds in three ways: 1) he wire transferred investors' funds from his IBL account into his personal bank account and used those funds for personal expenditures; 2) he requested that IBL issue checks to him, thereby withdrawing pool investors' funds from his IBL account; and 3) he retained approximately \$380,000 of pool investor funds, which he never traded.

20. Steele spent over \$1.3 million on personal luxuries for himself and his girlfriend. Steele used pool investors' funds to vacation at hotels in Atlanta, Hawaii, Vancouver, Las Vegas and California, and to pay for airfare, cruises, gambling, luxury car leases, designer clothing, art, expensive jewelry, dining and personal expenses. Steele used pool investors' funds to pay Shannon and Fulkco a total of over \$800,000 as "draws" for soliciting investors. Steele also used pool investor funds to pay his girlfriend's charge card bills.

21. In sum, Steele received a total of \$8,156,045.12 from pool investors and incurred a total of approximately \$4,303,215.99 in trading losses. Steele returned \$746,850.37 to pool investors. Thus, Steele misappropriated at least \$3,105,978.76 from pool investors in the form of withdrawals.

Steele's Fraudulent Scheme is Uncovered

22. Steele's fraud came to light around May 19, 2005 when a pool participant contacted IBL to ask a question about his account. IBL staff realized that the monthly account statements referenced by the pool participant that purported to be IBL monthly account statements for his account were fictitious.

23. Pursuant to the terms of the statutory restraining order and preliminary injunction entered by this Court, IBL has "frozen" approximately \$240,000 remaining in Steele's two trading accounts. The BOA has also frozen approximately \$2,000 remaining in Steele's Bank of America account.

Violations of the Commodity Exchange Act and Regulations

24. From at least January 2003 through May 2005, Steele violated Section 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. §§ 6b(a)(i) and (iii) (2002), in that he cheated or defrauded or attempted to cheat or defraud investors or prospective investors in his pool and willfully deceived or attempted to deceive investors or prospective investors by, among other things: misappropriating at least \$3.1 million of investors' funds, misrepresenting the value of the pool, failing to disclose trading losses, and causing false statements to be issued to pool participants that misrepresented the balance of the pool participant's respective interests in the pool. Defendant engaged in this conduct in or in connection with orders to make, or the making of, contracts of sale of commodities for future delivery, made, or to be made, for or on behalf of other persons where such contracts for future delivery were or may have been used for (a) hedging any transaction in interstate commerce in such commodity, or the products or byproducts thereof, or (b)

determining the price basis of any transaction in interstate commerce in such commodity, or (c) delivering any such commodity sold, shipped, or received in interstate commerce for the fulfillment thereof.

25. From at least January 2003 through May 2005, Steele violated Section 4b(a)(2)(ii) of the Act, 7 U.S.C. § 6b(a)(2)(ii) (2002), in that he, or persons working under his direction, willfully made or caused to be made false reports or statements thereof by preparing and issuing false account statements to investors. Steele, or persons working under his direction, engaged in this conduct in connection with orders to make, or the making of, contracts of sale of commodities for future delivery, made, or to be made, for or on behalf of other persons where such contracts for future delivery were or may have been used for (a) hedging any transaction in interstate commerce in such commodity, or the products or byproducts thereof, or (b) determining the price basis of any transaction in interstate commerce in such commodity, or (c) delivering any such commodity sold, shipped, or received in interstate commerce for the fulfillment thereof.

26. From at least January 2003 through May 2005, Defendant violated Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (2002), in that he, as a commodity pool operator (“CPO”), directly or indirectly employed one or more devices, schemes, or artifices to defraud pool participants or prospective pool participants, or engaged in transactions, practices or courses of business which operated as a fraud or deceit upon pool participants or prospective pool participants by: misappropriating at least \$3.1 million of investors’ funds, misrepresenting the value of the pool, failing to disclose trading losses,

and causing false statements to be issued to pool participants that misrepresented the balance of the pool participant's' respective interests in the pool.

27. During the period January 2003 to May 2005, Steele violated Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2002), in that he acted as a CPO and used the mails or any instrumentality of interstate commerce in connection with his business as a CPO without being registered with the Commission as a CPO.

Need for Permanent Injunctive and Other Ancillary Equitable Relief

28. Plaintiff has made a showing that the Defendant has engaged, is engaging, and is about to engage in acts and practices which violate Sections 4b(a)(2)(i)-(iii), 4o(1) and 4m(1) of the Act. The totality of the circumstances establish that, 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. The imposition of other ancillary equitable relief is required to comply with the basic objectives of the Act. Furthermore, the gravity of Steele's violations and the need to deter others from committing similar violations of the Act and Regulations warrants the imposition of a civil monetary penalty against Steele.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that judgment shall be and hereby is entered in favor of Plaintiff Commission and against Defendant Steele as follows:

- A. Steele is hereby permanently enjoined from directly or indirectly:
 1. Cheating or defrauding or attempting to cheat or defraud and willfully deceiving or attempting to deceive other persons, in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery, made, or to be made, for or on behalf of

any other person if such contract for future delivery is or may be used for (a) hedging any transaction in interstate commerce in such commodity or the products or byproducts thereof, or (b) determining the price basis of any transaction in interstate commerce in such commodity, or (c) delivering any such commodity sold, shipped, or received in interstate commerce for the fulfillment thereof, in violation of Section 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. § 6b(a)(2)(i) and (iii);

2. Willfully making or causing to be made to another person any false report or statement in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery, made, or to be made, for or on behalf of any other person if such contract for future delivery is or may be used for (a) hedging any transaction in interstate commerce in such commodity or the products or byproducts thereof, or (b) determining the price basis of any transaction in interstate commerce in such commodity, or (c) delivering any such commodity sold, shipped, or received in interstate commerce for the fulfillment thereof, in violation of Section 4b(a)(2)(ii) of the Act, 7 U.S.C. § 6b(a)(2)(ii);
3. Employing any device, scheme, or artifice to defraud any participant or prospective participant, or engaging in any transaction, practice, or course of business which operates as a fraud or deceit upon any participant or prospective participant in the course of any activities as a commodity pool operator ("CPO"), by use of the mails or any means or instrumentality of interstate commerce, in violation of Section 4o(1) of the Act, 7 U.S.C. § 6o(1); and

B. Steele is also hereby permanently enjoined from directly or indirectly:

1. 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);
2. engaging in, controlling or directing the trading for any commodity futures or options on commodity futures or foreign currency, for or on behalf of any other person or entity, whether by power of attorney or otherwise; and
3. 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) (2005), 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) (2005). 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) (2005), or soliciting prospective customers related to the purchase or sale of any commodity futures, security futures or options.

C. The injunctive provisions of this Order shall be binding on Steele, upon any person insofar as he or she is acting in the capacity of agent, servant, employee, successor, assign, or attorney of Steele, 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 Steele.

D. Judgment is entered in favor of the Commission and against Steele and within thirty days of the date of this Order, Steele shall make restitution in the total amount of \$7,409,194.75 U.S. (“Restitution Amount”) to make whole each and every investor whose funds were received by Steele and who was harmed by Steele as alleged in the Complaint. In addition, Steele shall pay pre-judgment interest thereon from May 25, 2005 to the date of this Order calculated at the underpayment rate established by the Internal Revenue Service, pursuant to 26 U.S.C. § 662(a)(2). Steele shall also pay post-judgment interest at the Treasury Bill rate prevailing on the date this Order is entered, pursuant to 28 U.S.C. § 1961(a), from the date this Order is entered until thirty days after the date of this Order. Steele shall pay such restitution to the Receiver General for Canada, in care of Inspector George Pemberton, Royal Canadian Mounted Police, 401 West Georgia Street, Vancouver, BC V6B5A1.

E. Interactive Brokers LLC (“IBL”), 209 South LaSalle Street, Chicago, Illinois 60604 shall release any funds held in IBL commodity trading account nos.

U 82666 and U 99311 in the name of Kevin J. Steele to the Receiver General for Canada, in care of Inspector George Pemberton, Royal Canadian Mounted Police, 401 West Georgia Street, Vancouver, BC V6B5A1. Steele's obligation to make restitution under Paragraph D of this Order shall be reduced by the amount of funds distributed by IBL to the Receiver General for Canada.

F. The Bank of America ("BOA") shall release any funds held in BOA account no. 76298942 in the name of Kevin Jason Steele to the Receiver General for Canada, in care of Inspector George Pemberton, Royal Canadian Mounted Police, 401 West Georgia Street, Vancouver, BC V6B5A1. Steele's obligation to make restitution under Paragraph D of this Order shall be reduced by the amount of funds distributed by BOA to the Receiver General for Canada.

G. After Steele has paid the full Restitution Amount, Steele shall pay to the Commission a civil monetary penalty of \$6.2 million (six million two hundred thousand dollars) ("CMP Payment"), which represents twice the monetary gain to Defendant for his violations of the Act. Steele shall make such CMP Payment by 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 Dennese Posey, Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581, under cover of a letter that identifies Steele and the name and docket number of this proceeding. Copies of the cover letter and the form of payment shall be simultaneously transmitted to Gregory Mocek, Director, Division of Enforcement, Commodity Futures Trading

Commission, at the following address: 1155 21st Street, N.W., Washington, D.C. 20581,
and to Rosemary Hollinger, Regional Counsel, Division of Enforcement, Commodity
Futures Trading Commission, at the following address: 525 W. Monroe Street, Suite
1100, Chicago, IL 60661.

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this cause
to assure compliance with this Order and for all other purposes related to this action.

IT IS SO ORDERED.



Milton I. Shadur
United States District Judge

DATED: November 22, 2005