

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

**U.S. COMMODITY FUTURES
TRADING COMMISSION,**

Plaintiff,

v.

DAVID BRYANT,

Defendant.

Civil Action No: 1:15-cv-10816

Hon. Edmond E. Chang

**CONSENT ORDER FOR PERMANENT INJUNCTION, CIVIL MONETARY PENALTY
AND OTHER EQUITABLE RELIEF AGAINST DEFENDANT DAVID BRYANT**

I. INTRODUCTION

On December 2, 2015, Plaintiff Commodity Futures Trading Commission (“CFTC” or “Commission”) filed a Complaint for Injunctive and Other Equitable Relief and Penalties Under the Commodity Exchange Act (“Complaint”) (Docket No. 1) against defendant David Bryant (“Bryant”) seeking injunctive and other equitable relief, as well as the imposition of civil penalties, for violations of anti-fraud and registration provisions of the Commodity Exchange Act (“Act”), 7 U.S.C. §§ 1-26 (2012). The same day, the Court entered an *ex parte* Statutory Restraining Order against Bryant (Docket No. 12), which the Court subsequently renewed on December 15, 2015 (Docket No. 17). On December 30, 2015, the Court entered a Consent Order for Preliminary Injunction Against Defendant David Bryant (Docket No. 21).

II. CONSENTS AND AGREEMENTS

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

1. Consents to the entry of this Consent Order for Permanent Injunction, Civil Monetary Penalty and Other Equitable Relief Against Defendant David Bryant (“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 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 the Act, 7 U.S.C. §§ 1-26 (2012);

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

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 Commission Regulations (“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 Bryant now or in the future resides outside the jurisdiction of this Court;

9. Agrees that he will not oppose enforcement of this Consent Order on the ground, if any exists, that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure and hereby 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 his:

(a) testimonial obligations, or (b) right to take legal positions in other proceedings to which the Commission is not a party. Bryant 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 in the Complaint;

12. Agrees to provide immediate notice to this Court and the Commission by certified mail, in the manner required by paragraph 43 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

13. Agrees that no provision of this Consent Order shall in any way limit or impair the ability of any other person or entity to seek any legal or equitable remedy against Bryant in any other proceeding.

III. FINDINGS AND CONCLUSIONS

THE PARTIES AGREE AND THE COURT HEREBY FINDS:

A. Findings of Fact

The Parties To This Consent Order

14. Plaintiff **U.S. Commodity Futures Trading Commission** is an independent federal regulatory agency charged by Congress with the responsibility for administering and enforcing the provisions of the Act, 7 U.S.C. §§ 1-26 (2012), and the Regulations promulgated thereunder, 17 C.F.R. §§ 1.1-190.10. (2014).

15. Defendant **David Bryant** resides in Los Angeles County, California. Bryant has never been registered with the Commission in any capacity.

Bryant's Fraud

16. Between at least June 2014 and December 2015, Bryant solicited and accepted at least \$4,644,785 from multiple individuals, many of them family and friends, by representing that their funds would be traded as a pool in commodity futures. Bryant deposited these funds

into various bank accounts he controlled, where the funds were commingled with Bryant's personal funds.

17. During this time period, Bryant emailed to several of the pool participants regular statements showing that the value of each individual's original investment had increased.

18. Bryant also provided at least one pool participant with four documents, all titled "Daily Statement" and appearing on the letterhead of AMP Global Clearing ("AMP"), a registered futures commission merchant ("FCM") located in Chicago, Illinois. The statements, dated November 25, 2014, January 16, 2015, January 30, 2015, and May 18, 2015, all purported to reflect details of a trading account held in the name of "Bryant Family Investment Fund LLC" at AMP that ends in 9976 and lists Bryant as the sole contact person. According to these statements, the purported cash balance of the 9976 account ranged between \$4.8 million on the low end and \$6.1 million on the high end, and three of them showed trading profits.

19. In November 2015, a pool participant contacted AMP to confirm the balance of the 9976 account as reflected on the four daily statements he had obtained. No account in the name of "Bryant Family Investment Fund LLC" existed at AMP. The four statements were fake.

20. Bryant did, however, maintain a personal commodity futures trading account in his own name at AMP that ended in 1410, along with numerous other personal commodity futures trading accounts at other FCMs located in Chicago, Illinois. He funded these trading accounts with funds from the various bank accounts he controlled.

21. Between at least June 2014 and December 2015, Bryant lost approximately \$2,661,080 trading commodity futures contracts in his personal trading accounts. He failed to disclose to pool participants that he was trading their funds in his own personal trading accounts, and he hid his trading losses from pool participants.

22. Bryant has returned approximately \$1,630,942 million to pool participants.

Bryant has failed to return the approximately \$3,087,343 in remaining funds he received from pool participants; Bryant lost these funds trading futures in his personal trading accounts or misappropriated them for his own personal expenses.

B. Conclusions of Law

Jurisdiction and Venue

23. This Court has jurisdiction over this action pursuant to Section 6c of the Act, 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.

24. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2012), because Defendant Bryant transacted business in this District, and certain of the acts and practices in violation of the Act have occurred, are occurring, or are about to occur within this District, among other places.

Fraud by Misrepresentations, Material Omission, and False Statements

25. By the conduct described in Part III.A, Defendant Bryant violated Section 4b(a)(1)(A)-(C) of the Act, 7 U.S.C. § 6b(a)(1)(A)-(C) (2012), by cheating or defrauding or attempting to cheat or defraud, willfully making or causing to be made false statements, and willfully deceiving or attempting to deceive commodity pool participants in connection with orders to make, or the making of, any contract of sale of any commodity for future delivery that is made, or to be made, for or on behalf of, or with, any other person by, *inter alia*,

misrepresenting that he was profitably trading pooled funds in commodity futures, failing to disclose his trading losses, providing pool participants with fake account statements for a nonexistent account, and misappropriating pool participant funds.

Commodity Pool Fraud

26. By the conduct described in Part III.A, Defendant Bryant violated Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (2012), in that he acted as a commodity pool operator (“CPO”) by engaging in a business that is of the nature of a commodity pool, investment trust, syndicate, or similar form of enterprise and, in connection therewith, soliciting, accepting or receiving funds from others for the purpose of trading commodity interests, including commodities for future delivery, and while acting as such, directly or indirectly employing a device, scheme, or artifice to defraud pool participants and engaging in transactions, practices, or a course of business which operated as a fraud or deceit upon pool participants.

Failure to Register as a CPO

27. By the conduct described in Part III.A, Defendant Bryant violated Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2012), by acting as a CPO without being registered with the Commission as a CPO and, in connection with his CPO business, making use of the mails or other means or instrumentalities of interstate commerce.

28. Unless restrained and enjoined by this Court, there is a reasonable likelihood that Defendant Bryant will continue to engage in the acts and practices alleged in the Complaint and in similar acts and practices in violation of the Act.

IV. PERMANENT INJUNCTION

IT IS HEREBY ORDERED THAT:

29. Based upon and in connection with the foregoing conduct, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2012), Defendant Bryant is permanently restrained, enjoined and prohibited from directly or indirectly:

(a) Cheating or defrauding or attempting to cheat or defraud, willfully making or causing to be entered false reports or statements, or willfully deceiving or attempting to deceive another 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, in violation of Section 4b(a)(1)(A)-(C) of the Act, 7 U.S.C.

§ 6b(a)(1)(A)-(C) (2012);

(b) employing any device, scheme, or artifice to defraud any participant, or engaging in any transaction, practice, or course of business that operates as a fraud or deceit upon any participant, while acting as a CPO, in violation of Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (2012); and/or

(c) acting as a CPO without being registered with the Commission as a CPO, in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2012).

30. Defendant Bryant is also 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(40) of the Act, 7 U.S.C. § 1a(40) (2012));

(b) Entering into any transactions involving “commodity interests” (as that term is defined in Regulation 1.3(yy), 17 C.F.R. § 1.3(yy) (2014)) for his own personal account or for any account in which he has a direct or indirect interest;

(c) Having any commodity interests traded on his behalf;

(d) Controlling or directing the trading for or on behalf of any other person or entity, whether by power of attorney or otherwise, in any account involving commodity interests;

(e) Soliciting, receiving or accepting any funds from any person for the purpose of purchasing or selling any commodity interests;

(f) 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) (2014); and/or

(g) Acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2014)), agent or any other officer or employee of any person (as that term is defined in Section 1a(38) of the Act, 7 U.S.C. § 1a(38) (2012)), 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) (2014).

V. RESTITUTION AND CIVIL MONETARY PENALTY

A. Restitution

31. Defendant Bryant shall pay restitution in the amount of three million, eighty-seven thousand, and three hundred forty-three dollars (\$3,087,343) (“Restitution Obligation”), plus post-judgment interest. Post-judgment interest shall accrue on the Restitution 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. To effect payment of the Restitution Obligation and the distribution of any restitution payments to Defendant Bryant's pool participants, the Court appoints the National Futures Association ("NFA") as Monitor ("Monitor"). The Monitor shall collect restitution payments from Defendant Bryant and make distributions as set forth below. Because the Monitor is acting as an officer of this Court in performing these services, the NFA shall not be liable for any action or inaction arising from NFA's appointment as Monitor, other than actions involving fraud.

33. Defendant Bryant shall make Restitution Obligation payments under this Consent Order to the Monitor in the name "David Bryant – Restitution Fund" and shall send such Restitution Obligation payments by electronic funds transfer, or by U.S. postal money order, certified check, bank cashier's, or bank money order, to the Office of Administration, National Futures Association, 300 South Riverside Plaza, Suite 1800, Chicago, Illinois 60606 under cover letter that identifies Bryant and the name and docket number of this proceeding. Defendant Bryant shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581, and to Stephanie Reinhart, Commodity Futures Trading Commission, 525 W. Monroe Street, Chicago, IL 60661.

34. The Monitor shall oversee the Restitution Obligation and shall have the discretion to determine the manner of distribution of such funds in an equitable fashion to Defendant Bryant's pool participants identified by the Commission or may defer distribution until such time as the Monitor deems appropriate. In the event that the amount of Restitution Obligation

payments to the Monitor are of a *de minimis* nature such that the Monitor determines that the administrative cost of making a distribution to eligible pool participants is impractical, the Monitor may, in its discretion, treat such restitution payments as civil monetary penalty payments, which the Monitor shall forward to the Commission following the instructions for civil monetary penalty payments set forth in Part V.B below.

35. Defendant Bryant shall cooperate with the Monitor as appropriate to provide such information as the Monitor deems necessary and appropriate to identify Defendant Bryant's pool participants to whom the Monitor, in its sole discretion, may determine to include in any plan for distribution of any Restitution Obligation payments. Defendant Bryant shall execute any documents necessary to release funds that he has in any repository, bank, investment or other financial institution, wherever located, in order to make partial or total payment toward the Restitution Obligation.

36. The Monitor shall provide the Commission at the beginning of each calendar year with a report detailing the disbursement of funds to Defendant Bryant's pool participants during the previous year. The Monitor shall transmit this report under a cover letter that identifies the name and docket number of this proceeding to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581 and to Stephanie Reinhart, Commodity Futures Trading Commission, 525 W. Monroe Street, Chicago, IL 60661.

37. The amounts payable to each pool participant shall not limit the ability of any pool participant from proving that a greater amount is owed from Defendant Bryant or any other person or entity, and nothing herein shall be construed in any way to limit or abridge the rights of any pool participant that exist under state or common law.

38. Pursuant to Rule 71 of the Federal Rules of Civil Procedure, each pool participant of Defendant Bryant who suffered a loss is explicitly made an intended third-party beneficiary of this Consent Order and may seek to enforce obedience of this Consent Order to obtain satisfaction of any portion of the restitution that has not been paid by Defendant Bryant to ensure continued compliance with any provision of this Consent Order and to hold Defendant Bryant in contempt for any violations of any provision of this Consent Order.

B. Civil Monetary Penalty

39. Defendant Bryant shall pay a civil monetary penalty in the amount of three million dollars (\$3,000,000) (“CMP Obligation”), plus post-judgment interest. 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).

40. Defendant 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 Commodity Futures Trading Commission and sent to the address below:

Commodity Futures Trading Commission
Division of Enforcement
ATTN: Accounts Receivables
DOT/FAA/MMAC/AMZ-341
CFTC/CPSC/SEC
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
(405) 954-7262 office
(405) 954-1620 fax
nikki.gibson@faa.gov

If payment by electronic funds transfer is chosen, Defendant Bryant shall contact Nikki Gibson or her successor at the address above to receive payment instructions and shall fully comply with

those instructions. Defendant Bryant shall accompany payment of the CMP Obligation with a cover letter that identifies Bryant and the name and docket number of this proceeding.

Defendant Bryant shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581, and to Stephanie Reinhart, Commodity Futures Trading Commission, 525 W. Monroe Street, Chicago, IL 60661.

C. Provisions Related to Monetary Sanctions

41. Partial Satisfaction: Acceptance by the Commission/CFTC or the Monitor of any partial payment of Defendant Bryant's Restitution Obligation or CMP Obligation shall not be deemed a waiver of his obligation to make further payments pursuant to this Consent Order, or a waiver of the Commission/CFTC's right to seek to compel payment of any remaining balance.

42. Asset Freeze: The Consent Order for Preliminary Injunction Against Defendant David Bryant entered on December 30, 2015 (Docket No. 21) contains in Part III an asset freeze prohibiting the transfer, removal, dissipation, or other disposal of Defendant Bryant's assets ("Asset Freeze Order"). The Court hereby lifts the Asset Freeze Order.

VI. MISCELLANEOUS PROVISIONS

43. 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 the Commission:

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

and

Stephanie Reinhart, Senior Trial Attorney
U.S. Commodity Futures Trading Commission
525 W. Monroe St.
Chicago, IL 60661

Notice to Defendant Bryant:

Edward M. Robinson
Law Office of Edward M. Robinson
21515 Hawthorne Blvd., Suite 665
Torrance, CA 90503

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

44. Change of Address/Phone: Until such time as Defendant Bryant satisfies in full his Restitution Obligation and CMP Obligation as set forth in this Consent Order, Defendant Bryant shall provide written notice to the Commission, in the manner required by paragraph 43 of Part VI of this Consent Order, of any change to his telephone number and mailing address within ten (10) calendar days of the change.

45. 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.

46. 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.

47. Waiver: The failure of any party to this Consent Order or of any pool participant at any time to require performance of any provision of this Consent Order shall in no manner affect the right of the party or pool participant 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.

48. 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 Defendant Bryant to modify or for relief from the terms of this Consent Order.

49. Injunctive and Equitable Relief Provisions: The injunctive and equitable relief provisions of this Consent Order shall be binding upon Defendant Bryant, 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 Defendant Bryant.

50. 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.

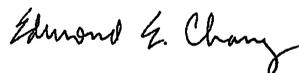
51. Contempt: Defendant Bryant understands that the terms of the Consent Order are enforceable through contempt proceedings, and that in any such proceedings, he may not challenge the validity of this Consent Order.

52. Agreements and Undertakings: Defendant Bryant shall comply with all of the undertakings and agreements set forth in this Consent Order.

There being no just reason for delay, the Clerk of the Court is hereby ordered to enter this Consent Order for Permanent Injunction, Civil Monetary Penalty and Other Equitable Relief Against Defendant David Bryant forthwith and without further notice.

IT IS SO ORDERED.

DONE, this the 23rd day of May, 2016.



HONORABLE EDMOND E. CHANG
United States District Court Judge

Consented to and approved by:

David Bryant, individually

Dated _____, 2016

Approved as to form:

Edward M. Robinson
Counsel for Defendant
Law Office of Edward M. Robinson
21515 Hawthorne Blvd., Suite 665
Torrance, CA 90503
(310) 316-9333 (phone)
(310) 316-6442 (facsimile)
ErobLAW@aol.com

Dated _____, 2016

Stephanie Reinhart (IL ARDC No. 6287179)
Counsel for Plaintiff

U.S. Commodity Futures Trading Commission
525 W. Monroe St., Suite 1100

Chicago, Illinois 60661
(312) 596-0688 (phone)
(312) 596-0714 (facsimile)
sreinhart@cftc.gov

Dated _____, 2016