

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

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CLERK OF DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY _____

U.S. COMMODITY FUTURES TRADING)
COMMISSION)

Plaintiff,)

v.)

STEVEN LEIGH SHAKESPEARE,)
and)
GUARDIAN FUTURES, INC.)

Defendants.)

Case No.:

A09CA 260SS

**COMPLAINT FOR INJUNCTIVE AND OTHER EQUITABLE RELIEF
AND FOR CIVIL MONETARY PENALTIES UNDER THE
COMMODITY EXCHANGE ACT, AS AMENDED, 7 U.S.C. § 1 et seq.**

I. SUMMARY

1. Beginning on or about November 20, 2007 and continuing to at least January 18, 2008 (the "relevant period"), Defendants Steven Leigh Shakespeare ("Shakespeare"), and his company Guardian Futures, Inc. ("GFI") (collectively the "Defendants") have engaged in a series of unauthorized transactions and fraudulent acts, misrepresentations and practices in their handling of customer accounts, in violation of Sections 4b(a)(2)(i) and (iii) of the Commodity Exchange Act (the "Act" or "CEA"), 7 U.S.C. §§ 6b(a)(2)(i) and (iii) (2006), and Commission Regulation ("Regulation") 166.2, 17 C.F.R. §166.2 (2008).

2. As a result of the Defendants' fraudulent acts and practices, and unauthorized transactions in customer accounts, Defendants' customers have sustained losses of at least \$196,000.

3. As a result of said conduct, Shakespeare is liable for violations of Sections 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i) and (iii) (2006), and Regulation 166.2, 17 C.F.R. §166.2 (2008).

4. Shakespeare was acting as an agent of GFI throughout the relevant period. Therefore, GFI is liable for Shakespeare's violations of Sections 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i) and (iii) (2006), and Regulation 166.2, 17 C.F.R. §166.2 (2008), pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006), and Regulation 1.2, 17 C.F.R. § 1.2 (2008).

5. The Commission brings this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2006), to enjoin Defendants' unlawful acts and practices and to compel their compliance with the Act and Regulations. Unless enjoined by this Court, the Defendants are likely to continue to engage in the acts and practices alleged in this Complaint and similar acts and practices, as more fully set forth below.

6. The Commission also seeks disgorgement, restitution to customers, civil monetary penalties, and/or such other relief as this Court may deem necessary or appropriate.

II. JURISDICTION AND VENUE

7. The Act, as amended, 7 U.S.C § 1 *et seq.*, establishes a comprehensive system for regulating commodity futures contracts and options on commodity futures contracts and those who are registrants pursuant to the Act, among other things. 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 (2006), 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.

8. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. §13a- 1(e) (2006), in that the Defendants reside and transact business in this district, and the acts and practices in violation of the Act occurred, are occurring or are about to occur within this district, among other places.

III. THE PARTIES

A. The Plaintiff

9. **U.S. Commodity Futures Trading Commission** (“Commission” or “CFTC”) 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.*, and the Regulations promulgated under it, 17 C.F.R. §§ 1 *et seq.*

B. The Individual Defendant

10. **Steven Leigh Shakespeare** is an individual residing and conducting business at 3108 Wild Canyon Loop, Austin, Texas 78732. Shakespeare is the sole owner and president of GFI and conducted his business through GFI. Shakespeare was granted a temporary license (“TL”) to act in the capacity of an associated person (“AP”) with introducing broker (“IB”) Spooz Inc. effective August 29, 2000. This TL converted to a full AP registration effective September 27, 2000. Shakespeare remained registered as an AP with Spooz Inc. until September 16, 2003 when he withdrew this AP registration. Shakespeare was a principal of GFI beginning on January 28, 2004, and approved as an AP of GFI on February 2, 2004. On January 18, 2008 he withdrew his status as an AP of GFI.

C. The Corporate Defendant

11. **Guardian Futures, Inc.** is a Texas corporation founded by Shakespeare with its principal place of business at 3108 Wild Canyon Loop, Austin Texas 78732. Shakespeare is the president and the sole shareholder of GFI. GFI was registered to act as an IB on February 2, 2004. Its registration to act as an IB was withdrawn by Shakespeare on January 18, 2008.

IV. STATUTORY AND REGULATORY BACKGROUND

12. A futures commission merchant ("FCM") is defined in Section 1a(20) of the Act, 7 U.S.C. § 1a(20) (2006), and Regulation 1.3(p), 17 C.F.R. § 1.3(p) (2008), with certain qualifications, as an individual, association, partnership, corporation, or trust that is engaged in soliciting or in accepting orders for the purchase or sale of any commodity for future delivery on or subject to the rules of any contract market or derivatives transaction execution facility; and in or in connection with such solicitation or acceptance of orders, accepts any money, securities or property (or extends credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom.

13. An introducing broker is defined in Section 1a(23) of the Act, 7 U.S.C. § 1a(23) (2006), with certain qualifications, as any person, other than an AP of a FCM, engaged in soliciting or in accepting orders for the purchase or sale of any commodity for future delivery on or subject to the rules of any contract market or derivatives transaction execution facility who does not accept any money, securities, or property (or extend credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom.

14. An associated person is defined in Section 4k of the Act, 7 U.S.C. § 6k (2006), and Regulations 1.3(aa)(1) and (2), 17 C.F.R. §§ 1.3(aa)(1) and (2) (2008), with certain qualifications, as a natural person associated with any FCM or IB, as a partner, officer,

employee, consultant, or agent (or any person occupying a similar status or performing similar functions), in any capacity that involves: (i) the solicitation or acceptance of customers' or options customers' orders; or (ii) the supervision of any person or persons so engaged.

V. FACTS

A. Introduction

15. During the relevant period, the Defendants would introduce customers to FCM Alaron Trading Corp. ("Alaron"), and thereby earn commission and other fees on customers' trades. All of the customers relevant to this action had their non-discretionary accounts introduced by the Defendants to Alaron; that is, the Defendants could only send buy and sell orders to Alaron as directed by the respective customer. Accordingly, none of the account opening documents for these customers contained letters of direction, powers of attorney or other documents authorizing the Defendants to independently trade the customers' accounts.

16. During the relevant period, Shakespeare engaged in a course of unauthorized transactions in the accounts of Plains Grain Company, Inc. ("Plains") and Evans Grain Marketing LLC ("Evans") (collectively "customer accounts"). When Evans noticed the unauthorized transactions, it contacted Shakespeare to ask why transactions it had not authorized had been bought and/or sold for the benefit of its account. Rather than admit to his fraudulent and unauthorized transactions, Shakespeare, acting as the agent of GFI, engaged in a further course of misrepresentations and omissions in an attempt to conceal his prior fraudulent conduct.

17. Throughout the course of the unauthorized transactions, Shakespeare made misrepresentations and omitted material facts to Evans, Plains and Alaron, including but not limited to: falsely representing to Alaron that an "error" had occurred on one customer's account; fraudulently omitting to advise Plains and Evans that he had effected transactions in their respective accounts without authorization; fraudulently omitting to advise Plains and Evans that

he had transferred positions between Evans, Plains and the GFI "Error Account" at Alaron ("GFI Error Account") without authorization and in an attempt to conceal prior unauthorized transactions; falsely representing to Alaron that the unauthorized transactions in the Evans and/or Plains accounts were effected in "error"; and, continuing to effect unauthorized transactions in the Evans and Plains accounts to "get better fills" without authorization and to conceal prior fraudulent acts.

18. Throughout the relevant period, Shakespeare knowingly effected transactions in customers' accounts without authorization, because Shakespeare knew that he was not authorized to effect the transactions for any of the relevant customers' non-discretionary accounts that he had introduced to Alaron.

19. Shakespeare founded, owned and was president of GFI, and acted as its agent throughout the relevant period. Each fraudulent act, misrepresentation and/or omission made by Shakespeare during the relevant period was made recklessly or with scienter.

20. As a result of said unauthorized transactions, Defendants received ill-gotten gains in the form of unlawful commissions and fees. Thereafter, Shakespeare engaged in a further course of fraudulent conduct and misrepresentations to conceal the unauthorized transactions.

B. The Unauthorized Transactions

21. On or about November 20, 2007, defendant Shakespeare effected the following transactions in the non-discretionary account of Plains, account number 500-51050 at Alaron:

- a. Buy of 5 December Chicago Board of Trade ("CBOT") Wheat at 749.25;
- b. Sell of 20 March '08 CBOT Wheat at 770; and
- c. Sell of 29 March '08 Kansas City Board of Trade ("KCBOT") Wheat at 791.75.

None of the above transactions was authorized by Plains.

22. On November 21, 2007, the above transactions were transferred to the non-discretionary account of Evans by Shakespeare, account number 500-51324 at Alaron. Neither Plains nor Evans authorized Shakespeare to effect the transfer of the above positions from Plains' account to the account of Evans.

23. On or about November 26, 2007, Shakespeare effected the following transactions in the non-discretionary account of Evans, account number 500-51324 at Alaron:

- a. Buy of 20 March '08 CBOT Wheat – 5 at 847.75 and 15 at 848;
- b. Buy of 20 March '08 CBOT Wheat at 862;
- c. Sell of 40 March '08 CBOT Wheat – 4 at 838.75, 14 at 839, 2 at 839.25, 8 at 844.25, 11 at 844.5 and 1 at 844.75.
- d. Sell of 29 March '08 KCBOT Wheat at 859;
- e. Buy of 29 March '08 Wheat KCBOT Wheat at 880;
- f. Sell of 5 December CBOT Wheat – 1 at 832 and 4 at 832.25.

None of the above transactions was authorized by Evans.

24. On or about November 27, 2007, Shakespeare effected the following additional transactions in the non-discretionary account of Evans, account number 500-51324 at Alaron:

- a. Buy of 20 March '08 CBOT Wheat – 6 at 832.75 and 14 at 836; and,
- b. Buy of 29 March '08 KCBOT Wheat at 855.5.

None of the above transactions was authorized by Evans.

25. Later on November 27, 2007, Shakespeare transferred all of the unauthorized positions he transacted on November 26, 2007 and November 27, 2007 from the non-discretionary account of Evans, account number 500-51324 at Alaron, to the GFI Error Account number 500-99989 at Alaron. The transfer of these positions from Evans' non-discretionary account was not authorized by Evans. By this time, Evans and Plains had sustained a combined loss of at least \$196,000 as a result of Shakespeare's unauthorized transactions.

26. On or about November 29, 2007, Alaron's Margin/Risk Department was conducting routine reviews of its Error Accounts, and recognized a debit of \$196,788.44 in the

GFI Error Account number 500-99989. Alaron's Executive Vice President and Chief Operating Officer, President of Futures and Options, and Risk Manager called Shakespeare concerning this debit. Rather than admit to his conduct, Shakespeare falsely stated that a trading error had occurred in a single customer's account. Following this conversation with Shakespeare, Alaron conducted an internal investigation, which preliminarily revealed that: not one but two (2) customer accounts were involved; and Shakespeare had engaged in fraudulent activity by moving positions from one account to another in an attempt to conceal losses.

27. In the course of Alaron's internal investigation of this matter, Alaron requested that Shakespeare provide it with an email detailing how the purported "trading error" claimed by Shakespeare occurred. In an email dated November 29, 2007, Shakespeare stated that the purported "error" was made when he attempted to roll trades in the Plains account from the December to March contract for both the Chicago and Kansas City grain futures. Shakespeare misrepresented the trading activity to Alaron in that his trading was not in error or by mistake.

28. At all times relevant hereto, Shakespeare was acting as the agent of GFI. Shakespeare had actual knowledge that he was not authorized to effect the transactions for the non-discretionary accounts of Plains and/or Evans. Despite not being so authorized, Shakespeare intentionally effected the subject transactions, directly causing Evans and Plains to incur combined trading losses of at least \$196,000.

VI. VIOLATIONS OF THE COMMODITY EXCHANGE ACT

COUNT I

VIOLATIONS OF SECTIONS 4b(a)(2)(i) and (iii) OF THE ACT, 7 U.S.C. §§ 6b(a)(2)(i) and (iii) (2006),

FRAUD BY MISREPRESENTATIONS AND OMISSIONS

29. Plaintiff re-alleges paragraphs 1 through 28 above and incorporates these allegations by reference as if fully set forth herein.

30. Sections 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i) and (iii)(2006), make it unlawful for any person to cheat or defraud or attempt to cheat or defraud; or willfully deceive or attempt to deceive by any means whatsoever other persons in or in connection with order to make, or the making of, contracts of sale of commodities, for future delivery, made, or to be made, for or on behalf of such 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.

31. Throughout the relevant period, Shakespeare knowingly, willfully or with reckless disregard for the truth, violated Sections 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i) and (iii) (2006), by, among other things,: falsely representing to Alaron that an “error” had occurred on one customer’s account; fraudulently omitting to advise Plains and Evans that he had effected transactions in their respective accounts without authorization; fraudulently omitting to advise Plains and Evans that he had transferred positions between Evans, Plains and the GFI Error Account without authorization and in an attempt to conceal prior unauthorized transactions; falsely representing to Alaron that the unauthorized transactions in the Evans and/or Plains accounts were effected in “error”; and, continuing to effect unauthorized transactions in the Evans and Plains accounts to “get better fills” without authorization and to conceal prior fraudulent acts.

34. Shakespeare was acting as an agent of GFI when he violated the Act as set forth in this count. GFI, as Shakespeare’s principal, is therefore liable for Shakespeare’s violations of Sections 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i) and (iii)(2006), pursuant to

Section 2(a)(1)(B) of the Act, 7 U.S.C. §4(a)(1)(B) (2006), and Regulation 1.2, 17 C.F.R. § 1.2 (2008).

35. Each misrepresentation or omission of material fact, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Sections 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i) and (iii)(2006).

COUNT II

VIOLATIONS OF SECTIONS 4b(a)(2)(i) and (iii) OF THE ACT, 7 U.S.C. §§ 6b(a)(2)(i) and (iii) (2006), AND REGULATION 166.2, 17 C.F.R. §166.2 (2008), FRAUD BY UNAUTHORIZED TRANSACTIONS IN CUSTOMERS' ACCOUNTS

36. Plaintiff re-alleges paragraphs 1 through 35 above and incorporates these allegations by reference as if fully set forth herein.

37. Regulation 166.2, 17 C.F.R. §166.2 (2008) provides:

No futures commission merchant, introducing broker or any of their associated persons may directly or indirectly effect a transaction in a commodity interest for the account of any customer unless before the transaction the customer, or person designated by the customer to control the account –

(a) Specifically authorized the futures commission merchant, introducing broker or any of their associated persons to effect the transaction (a transaction is 'specifically authorized' if the customer or person designated by the customer to control the account specifies (1) the precise (sic) commodity interest to be purchased or sold and (2) the exact amount of the commodity interest to be purchased or sold); or

(b) Authorized in writing the futures commission merchant, introducing broker or any of their associated persons to effect transactions in commodity interests for the account without the customer's specific authorization: *Provided, however,* That if such futures commission merchant, introducing broker or any of their associated persons is also authorized to effect transactions in foreign futures or foreign options without the customer's specific authorization, such authorization must be expressly documented.

38. Sections 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i) and (iii)(2006), make it unlawful for any person to cheat or defraud or attempt to cheat or defraud; or willfully deceive or attempt to deceive by any means whatsoever other persons in or in connection with order to make, or the making of, contracts of sale of commodities, for future delivery, made, or to

be made, for or on behalf of such 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.

39. Throughout the relevant period, Shakespeare violated Regulation 166.2, 17 C.F.R. §166.2 (2008), in that he effected unauthorized transactions in customers' accounts at Alaron.

40. Further, because Shakespeare executed these transactions knowing that his acts were unauthorized and contrary to customers' instructions, he violated Sections 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i) and (iii)(2006).

40. Shakespeare was acting as an agent of GFI when he violated the Act and Regulations as set forth in this count. GFI, as Shakespeare's principal, is therefore liable for Shakespeare's violations of Sections 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i) and (iii) (2006), and Regulation 166.2, 17 C.F.R. §166.2 (2008), pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006), and Regulation 1.2, 17 C.F.R. § 1.2 (2008).

41. Each unauthorized transaction, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Sections 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i) and (iii) (2006), and Regulation 166.2, 17 C.F.R. §166.2 (2008).

VII. RELIEF REQUESTED

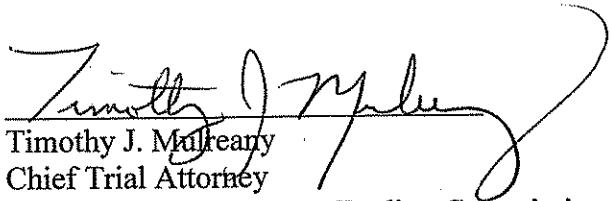
WHEREFORE, plaintiff respectfully requests that this Court, as authorized by Section 6c(a) of the Act, 7 U.S.C. § 13a-1 (2006), and pursuant to its equitable powers:

- A. Find the Defendants liable for violating Sections 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i) and (iii) (2006), and Regulation 166.2, 17 C.F.R. §166.2 (2008);
- B. Enter an order of permanent injunction prohibiting the Defendants and any other person or entity associated with them, or any successor thereof, from engaging in conduct violative of the provisions of the Act and Regulations as alleged in this Complaint;
- C. Enter orders of preliminary and permanent injunction enjoining Defendants and all persons insofar as they are acting in the capacity of their agents, servants, employees, successors, assigns, and attorneys, and all persons insofar as they are acting in active concert or participation with them who receive actual notice of such order by personal service or otherwise, from engaging, directly or indirectly, in any activity related to trading in any commodity, as that term is defined in Section 1a(4) of the Act, 7 U.S.C. § 1a(4) (2006) (“commodity interest”), including but not limited to, the following:
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 interest account for or on behalf of any other person or entity, whether by power of attorney or otherwise;
 3. Soliciting or accepting any funds from any person in connection with the purchase or sale of any commodity interest;
 4. Entering into any commodity interest transactions for his own personal account, for any account in which he has a direct or indirect interest and/or having any commodity interests traded on his behalf;
 5. Engaging in any business activities related to commodity interest trading;
and

6. 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) (2008), 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) (2008);
- D. Enter an order directing the Defendants and any successors thereof, to disgorge, pursuant to such procedure as the Court may order, all benefits received from the acts or practices which constituted violations of the Act, as described herein, and interest thereon from the date of such violations;
- E. Enter an order directing the Defendants to make full restitution to every client, participant or customer whose funds were received by them as a result of acts and practices which constituted violations of the Act and Regulations, as described herein, and interest thereon from the date of such violations;
- F. Enter an order directing the Defendants to pay a civil monetary penalty in the amount of not more than the higher of (i) triple the monetary gain to each Defendant for each violation of the Act and Regulations or (ii) \$130,000 for violations occurring after October 23, 2004;
- G. Enter an order requiring the Defendants to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2412(a)(2); and
- H. Enter an order providing such other and further remedial ancillary relief as the Court may deem just and appropriate.

Date: April 8, 2009

Respectfully submitted,



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