

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

U.S. Commodity Futures Trading Commission,	)	
	)	CV 05 4120 (JG)
Plaintiff,	)	
	)	
v.	)	
	)	
Stuart Pippin, individually and doing business as	)	
Pippin Investments,	)	
	)	
Defendant.	)	
	)	
	)	

**CONSENT ORDER OF PERMANENT INJUNCTION, CIVIL MONETARY PENALTY  
AND OTHER EQUITABLE RELIEF AGAINST DEFENDANT STUART PIPPIN**

On August 29, 2005, Plaintiff, U.S. Commodity Futures Trading Commission ("Plaintiff" or "Commission") filed a Complaint for permanent injunction and other relief, and moved pursuant to Section 6c of the Commodity Exchange Act ("Act"), as amended, 7 U.S.C. §13a-1 (2002), for an *Ex Parte* Statutory Restraining Order and a Preliminary Injunction prohibiting Stuart Pippin, individually and doing business as Pippin Investments, ("Pippin" or "Defendant") from destroying any business records, books or documents or dissipating any assets. On the same date, the Court issued the *Ex Parte* Statutory Restraining Order.

On September 8, 2005, this Court issued an Order of Preliminary Injunction which, *inter alia*, preliminarily enjoined Defendant from further violating the Act and Regulations, as alleged in the Complaint, ordered the maintenance of and access to business records, continued the freeze on Defendant's assets, and appointed a Monitor to take custody of those assets.

**I. CONSENTS AND AGREEMENTS**

1. To effect settlement of the matters alleged in the Complaint in this action without

a trial on the merits or any further judicial proceedings, Defendant consents to the entry of this *Consent Order of Permanent Injunction, Civil Monetary Penalty and Other Equitable Relief Against Defendant Stuart Pippin* ("Order").

2. Defendant admits that this Court has jurisdiction over him and the subject matter of this action.

3. Defendant admits that venue properly lies with this Court pursuant to Section 6c of the Act, 7 U.S.C. §13a-1 (2002).

4. In addition, Defendant waives: (a) all claims that he may possess under the Equal Access to Justice Act, 5 U.S.C. §504 (2002) and 28 U.S.C. §2412 (2002); (b) any claim 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 (c) all rights of appeal from this Order.

5. By consenting to the entry of this Order, Defendant neither admits nor denies the allegations of the Complaint or the Findings of Fact contained in this Order, except as to jurisdiction and venue

6. Defendant does not consent to the use of this Order, or the findings of fact or conclusions of law, as the sole basis for any other proceeding brought by, or involving, the CFTC, other than in a proceeding in bankruptcy relating to Defendant or to enforce the terms of this Order. Solely with respect to any bankruptcy proceeding relating to Defendant or any proceeding to enforce this Order, Defendant agrees that the allegations of the Complaint and the findings in this Order shall be taken as true and correct and be given preclusive effect, without further proof. Furthermore, Defendant agrees to provide immediate notice to this Court and the Commission by certified mail of any bankruptcy proceeding filed by, on behalf of, or against

them.

7. By neither admitting nor denying the allegations or the findings and conclusions, Defendant agrees that neither he nor any of his agents or employees under his authority or control, contractors or attorneys shall take any action or make any public statement denying, directly or indirectly, any allegation in the Complaint or findings or conclusions in the Order or creating, or tending to create, the impression that the Complaint or this Order is without a factual basis; provided, however, that nothing in this provision shall affect Defendant's (a) testimonial obligations; or (b) right to take legal positions in other proceedings to which the Commission is not a party. Defendant shall take all necessary steps to ensure that all of his agents and employees understand and comply with this agreement.

8. Defendant agrees that he has read this Order and agrees to this 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 Order, other than as set forth specifically herein.

9. No provision of this Order shall in any way limit or impair the ability of any person to seek any legal or equitable remedy against Defendant or any other person in any other proceeding, including any current or subsequent bankruptcy.

10. Defendant consents to the continued jurisdiction of this Court 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 this Court, to assure compliance with the Order and for any other purposes relevant to this case.

11. Defendant acknowledges service of the Summons and Complaint.

## II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

12. The Court, being fully advised in the premises, finds that there is good cause for the entry of this Order and that there is no just reason for delay. The Court, therefore, directs the entry of findings of fact, conclusions of law, permanent injunction, and ancillary equitable relief pursuant to §6c and §6d of the Act, 7 U.S.C. §13a-1 (2002), as set forth herein.

### A. FINDINGS OF FACT

13. From June 2004 through August 2005 ("the Relevant Period"), Defendant, while acting as a Commodity Pool Operator ("CPO"), accepted approximately \$2 million from 35 members of the general public ("pool participants") to participate in a commodity pool that purportedly traded commodity futures contracts ("futures") on their behalf through a registered Futures Commission Merchant ("FCM"), Man Financial.

14. During the Relevant Period, the Defendant directed pool participants to send their investment money to one or more bank accounts in the name of Pippin Investments. These bank accounts were, in fact, personal accounts held by Defendant jointly with his wife.

15. Defendant knew that the commodity pool he operated never had a trading account, or conducted any trading, at any FCM, including Man Financial.

16. After receiving funds from the pool participants, Defendant issued false account statements to the pool participants indicating that he was trading futures on their behalf and that the value of the pool participants' accounts had increased to more than \$4 million dollars. Defendant knew that those statements were untrue.

17. Defendant returned approximately \$337,500 to pool participants representing that the funds were trading profits; in fact, Defendant knew when he made these statements that he never traded any funds on behalf of the pool and there were no trading profits.

18. Defendant misappropriated approximately \$106,500 of pool participants' funds.

19. The balance of customer funds remained in Defendant's personal accounts and were never used for the pool's trading purposes.

20. Pippin has never been registered with the Commission in any capacity.

#### B. CONCLUSIONS OF LAW

21. This Court has jurisdiction over the subject matter of this action and all parties hereto pursuant to Section 6c of the Act 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.

22. Venue properly lies with this Court pursuant to Section 6c of the Act.

23. This Court has personal jurisdiction over the Defendant, who has acknowledged service of the Complaint and consented to the Court's jurisdiction over him.

24. The Commission and the Defendant have agreed to this Court's retention of continuing jurisdiction over each of them for the purpose of enforcing the terms of this Order.

25. By the conduct set forth in Section IIA above, Defendant violated Sections 4b(a)(2)(i) - (iii) of the Act, 7 U.S.C. §§6b(a)(2)(i) - (iii) (2002), by, among other things, knowingly: (a) representing to pool participants that Defendant would engage in futures trading on behalf of pool participants, when in fact, he did not; (b) issuing false account statements to pool participants showing futures trading that never occurred and trading profits that were never achieved; and (c) misappropriating pool participants' funds.

26. By the conduct set forth in Section IIA above, Defendant violated Section 4m(1) of the Act, 7 U.S.C. §6m(1) (2002), in that he used the mails or instrumentalities of interstate

commerce in or in connection with his business as a CPO while failing to register with the Commission as such.

27. By the conduct set forth in Section IIA above, Defendant violated Sections 40(1)(A) and (B) of the Act, 7 U.S.C. §60(1)(A) and (B), by, among other things, knowingly: (a) representing to pool participants that Defendant would engage in futures trading on behalf of pool participants, when in fact, he did not; (b) issuing false account statements to pool participants showing futures trading that never occurred and trading profits that were never achieved; and (c) misappropriating pool participants' funds.

28. By the conduct set forth in Section IIA above, Defendant never established a separate pool entity nor any accounts in the name of the pool, accepted pool funds into accounts in his own name rather than accounts in the name of the pool, and commingled the pool funds with his own property, all in violation of Commission Regulation 4.20, 17 C.F.R. §4.20.

29. There is good cause for entry of an order permanently enjoining Defendant from engaging in future violations of the Act, requiring Defendant to pay restitution in the amount of \$1,681,674.22 and a civil monetary penalty in the amount of \$106,500 and for the other equitable relief included in this Order.

### III. ORDER FOR PERMANENT INJUNCTION, RESTITUTION AND CIVIL MONETARY PENALTY

NOW THEREFORE, IT IS ORDERED THAT:

1. The Defendant shall be permanently restrained, enjoined and prohibited from directly or indirectly:

A. Cheating or defrauding or attempting to cheat or defraud other persons, or willfully making or causing to be made to another person any false report or statement thereof, or willfully entering or causing to be entered for another person any false record

thereof, or willfully deceiving or attempting to deceive another person by any means whatsoever in regard to any order or contract or the disposition or execution of any order or contract, or in regard to any act of agency performed with respect to any order or contract for another person 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:

- (1) hedging any transaction in interstate commerce in a commodity or the products or byproducts thereof;
- (2) determining the price basis of any transaction in interstate commerce in such commodity; or
- (3) delivering any commodity sold, shipped, or received in interstate commerce for the fulfillment thereof

in violation of Section 4b(a)(2)(C)(i)-(iii) of the Act, 7 U.S.C. §6b(a)(2)(C)(i)-(iii) (2002); including, but not limited to, the activity described in section IIA paragraphs 13 through 20;

B. Making use of the mails or any means or instrumentality of interstate commerce in connection with Defendant's business as a commodity trading advisor or commodity pool operator without being registered with the Commission as such in violation of Section 4m(1) of the Act, 7 U.S.C. §6m (2002); and

C. While acting as a commodity trading advisor or commodity pool operator, directly or indirectly using the mails or any means or instrumentality of interstate commerce --

- (A) to employ any device, scheme or artifice to defraud any client or participant or prospective client or participant; or

- (B) to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or participant or prospective client or participant

in violation of Section 4o(1)(A) and (B) of the Act, 7 U.S.C. §6o(1)(A) and (B) (2002)

including, but not limited to, the activity described in section IIA paragraphs 13 through 20; and

- D. While acting as a commodity pool operator:
- (a) Failing to operate the pool as an entity cognizable as a legal entity separate from that of the pool operator; and
  - (b) Failing to receive all funds, securities or other property from existing or prospective pool participants for the purchase of an interest or as an assessment (whether voluntary or involuntary) on an interest in a pool that Defendant operates or intends to operate in the pool's name; and
  - (c) Commingling the property of a pool operated or intended to be operated by Defendant with the property of any other person

in violation of Commission Regulation 4.20, 17 C.F.R. §4.20 (2002).

2. Defendant is permanently restrained, enjoined, and prohibited from directly or indirectly:

- A. trading on or subject to the rules of any registered entity;
- B. engaging in, controlling, or directing the trading for any commodity futures, security futures, options, options on futures, or foreign currency options account for or on behalf of any other person or entity, whether by power of attorney or otherwise; and
- C. 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) (2004), 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) (2004). 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) (2004), or soliciting prospective customers, related to the purchase or sale of any commodity futures, security futures, options, options on futures, or foreign currency futures.

3. The injunctive provisions of this Consent Order shall be binding upon the Defendant, upon any person insofar as he or she is acting in the capacity of officer, agent, servant, employee or attorney of the Defendant, and upon any person who receives actual notice of this Consent Order, by personal service or otherwise, insofar as he or she is acting in active concert or participation with the Defendant.

**IT IS FURTHER ORDERED THAT:**

4. Restitution: At the date of this order, Defendant shall be liable for and pay Restitution to pool participants in the amount of \$1,681,674.22 plus post-judgment interest. Interest after the date of this Order shall be paid at the post-judgment interest rate set forth in 28 U.S.C. §1961. Defendant shall direct all payments made pursuant to this section to the Court-appointed Monitor, Daniel Driscoll, National Futures Association, 200 W. Madison, 16th Floor, Chicago, IL 60606, by cashier's check, certified check or postal money order made payable to the Pippin Settlement Account, under cover of a letter that identifies the name and number of this action and the name of this Court, with a copy to Sheila L. Marhamati, Esq., counsel of record for the Plaintiff U.S. Commodity Futures Trading Commission. The Restitution shall be distributed by the Monitor to the pool participants *pro rata* in accordance with Schedule A, which is annexed to this Order. The Monitor shall file a report with the Court within fifteen days of each distribution providing, for each payee, the name, amount paid, and date of distribution.

5. Civil Monetary Penalty: Pursuant to §6c of the Act, 7 U.S.C. §132a-1 (2002), Defendant shall pay and be liable for a Civil Monetary Penalty of \$106,500 plus post-judgment

interest. All payments made by Defendant pursuant to this Order shall be applied first to satisfy Defendant's Restitution obligations under this Order and, upon satisfaction of such obligations, shall thereafter be applied to satisfy Defendant's Civil Monetary Penalty obligations under this Order. Interest after the date of this Order until the Civil Monetary Penalty is paid in full shall be paid at the post-judgment interest rate set forth in 28 U.S.C. §1961. Defendant shall pay such Civil Monetary Penalty by electronic funds transfer, or by U.S. postal money order, certified check, bank cashier's check, or bank money order, made payable to the U.S. Commodity Futures Trading Commission, and sent to Dorene Posey, Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21<sup>st</sup> Street, N.W., Washington, D.C. 20581, or her successor, under cover of a letter that identifies Defendant and the name and docket number of the proceeding. Defendant shall simultaneously transmit a copy of the cover letter and the form of payment to the Director, Division of Enforcement, U.S. Commodity Futures Trading Commission, at the following address: 1155 21<sup>st</sup> Street, NW, Washington, D.C. 20581. All payments of the Civil Monetary Penalty shall be paid to the U.S. Treasury.

#### IV. MISCELLANEOUS PROVISIONS

6. Withdrawal of Applications for Registration and Notices of Exemption: The Defendant shall withdraw any and all pending applications for registration with the Commission and/or the National Futures Association and any and all requests to the Commission and/or the National Futures Association seeking exemption from registration with the Commission.

7. Third-Party Beneficiaries: Pursuant to Rule 71 of the Federal Rules of Civil Procedure, each of the pool participants is explicitly made an intended third-party beneficiary of this Order and may seek to enforce obedience of this Order to obtain satisfaction of any portion of the Restitution amount which has not been paid by Defendant.

8. Collateral Agreements: Defendant shall immediately notify the Commission if he makes any agreement with any pool participants obligating him to make payments outside of this Order. Defendant shall also provide immediate evidence to the Court and to the Commission of any payments made pursuant to such agreement.

9. Freeze Orders Dissolved: All prior freeze orders are dissolved, and all funds over which the Monitor took custody pursuant to prior freeze orders, including all interest earned on those funds, shall be applied toward satisfying Defendant's Restitution and Civil Monetary Penalty obligations under this Order. Defendant waives all rights and claims to the funds, including interest, in the Monitor's custody pursuant to this Court's prior freeze orders.

10. Scope of Injunctive Relief: The injunctive provisions of this Order shall be binding on Defendant, and upon any person insofar as he or she is acting in the capacity of officer, agent, servant, employee or attorney of Defendant, and upon any person who receives actual notice of this Order by personal service, facsimile or otherwise insofar as he or she is acting in active concert or participation with Defendant.

11. Jurisdiction Retained to Implement Order: 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 this Court, and to assure compliance with this Order.

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

Notice to the Commission:  
Sheila L. Marhamati  
Steven Ringer  
U.S. Commodity Futures Trading Commission  
Eastern Regional Office

140 Broadway, 19<sup>th</sup> Floor  
New York, NY 10005  
Telephone (646) 746-9743  
Facsimile (646) 746-9940

Notice to Defendant:

Stuart J. Pippin  
XXX Water Street  
Kerrville, Texas 78028

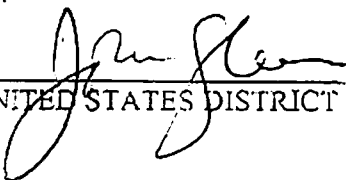
Notice to Monitor:

Daniel Driscoll  
National Futures Association  
200 W. Madison, 16th Floor  
Chicago, IL 60606

13. Change of Address: In the event that Defendant changes his residential or business telephone number(s) and/or address(es) at any time, he shall provide written notice of the new number(s) and/or address(es) to the Commission within ten calendar days thereof.

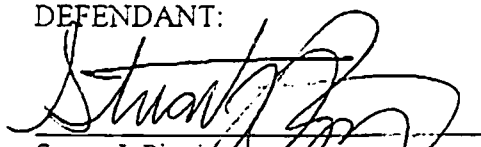
14. Entire Agreement and Amendments: This Order incorporates all of the terms and conditions of the settlement between the Commission and Defendant. Nothing shall serve to amend or modify this Order in any respect whatsoever, unless (1) reduced to writing; (2) signed by all parties hereto; and (3) approved by order of this Court.

SO ORDERED, this 26<sup>th</sup> day of April, 2006, at Brooklyn, New York.

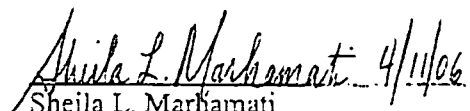
  
UNITED STATES DISTRICT JUDGE

Consented to and approved for entry by:


DEFENDANT:

  
Stuart J. Pippin  
Defendant, *pro se*  
Kerrville, Texas 78028

ATTORNEYS FOR PLAINTIFF  
U.S. COMMODITY FUTURES  
TRADING COMMISSION:

  
Sheila L. Marhamati  
Steven Ringer  
U.S. Commodity Futures Trading  
Commission  
Eastern Regional Office  
140 Broadway, 19<sup>th</sup> Floor  
New York, NY 10005  
Telephone (646) 746-9743  
Facsimile (646) 746-9940

MONITOR:

  
Daniel Driscoll  
National Futures Association  
200 W. Madison, 16th Floor  
Chicago, IL 60606

SCHEDULE A

POOL PARTICIPANTS	DEPOSITS	WITHDRAWALS	AMOUNT OWED	PARTICIPANT'S PERCENTAGE OF RESTITUTION AMOUNT
Denis Whitco	\$16,000	\$0	\$16,000	0.951%
John Whitco	\$4,000	\$0	\$4,000	0.238%
Jerri Ann Jones	\$21,000	\$3,500	\$17,500	1.041%
Arlene Jones	\$15,000	\$10,500	\$4,500	0.268%
Matt McGee	\$3,500	\$0	\$3,500	0.208%
Tye Education Fund	\$9,104.22	\$3,500	\$5,604.22	0.333%
Jeff Tye	\$7,000	\$0	\$7,000	0.416%
Janice Tye	\$19,400	\$14,000	\$5,400	0.321%
Jared Tye	\$3,500	\$0	\$3,500	0.208%
Tim Tye	\$10,500	\$3,500	\$7,000	0.416%
Irene Morris	\$89,000	\$77,500	\$11,500	0.684%
Allen Morris	\$12,500	\$7,000	\$5,500	0.327%
Lisa Hazzard	\$23,000	\$10,500	\$12,500	0.743%
Fred Vela	\$130,000	\$94,200	\$35,800	2.129%
Allan Foster	\$10,500	\$0	\$10,500	0.624%
Landon Allen	\$4,300	\$0	\$4,300	0.256%
Elizabeth Dickson	\$31,500	\$10,500	\$21,000	1.249%
Eric Barber	\$7,000	\$0	\$7,000	0.416%
Josephine Barber	\$92,500	\$0	\$92,500	5.500%
Sean Barber	\$3,500	\$0	\$3,500	0.208%
Jaime Searles	\$7,000	\$0	\$7,000	0.416%
John Barber	\$7,000	\$0	\$7,000	0.416%
Ralph Victor	\$45,500	\$0	\$45,500	2.706%
Doug Victor	\$270,160	\$0	\$270,160	16.065%
Daniel Victor	\$46,000	\$0	\$46,000	2.735%
Logan Milne	\$24,500	\$7,000	\$17,500	1.041%
D. Edward Green	\$178,500	\$0	\$178,500	10.614%
Melonie Milne	\$7,000	\$0	\$7,000	0.416%
Fred Pippin	\$13,410	\$0	\$13,410	0.797%
Randall Voigt	\$790,500	\$0	\$790,500 *	47.007%
Vina Burns	\$7,000	\$0	\$7,000	0.416%
Jacob Piatt	\$14,000	\$0	\$14,000	0.833%
<b>TOTALS</b>	<b>\$1,923,374.22</b>	<b>\$241,700.00</b>	<b>\$1,681,674.22</b>	<b>100.000%</b>

\* Since \$100,000 of the funds over which the Monitor took custody pursuant to the September 8, 2005 Order of Preliminary Injunction were distributed to Randall Voigt on an emergency basis on or about September 30, 2005, Mr. Voigt is currently owed \$690,500.