

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Civil Action No. 04-61235-CIV-Moore/Garber

U.S. COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

v.

LIBERTY FINANCIAL TRADING CORP., INC.,
LIBERTY REAL ASSETS INVESTMENT CORPORATION,
TED ROMEO, RANDY BURSTEIN, NADER YAZDANI, and
LESLIE WEINER,

Defendants.

**CONSENT ORDER OF PERMANENT INJUNCTION AND OTHER
EQUITABLE RELIEF AGAINST DEFENDANT RANDY BURSTEIN**

I. BACKGROUND

On September 21, 2004, the Commodity Futures Trading Commission ("Commission") filed its Complaint against Liberty Financial Trading Corp., Inc. ("LFTC"), Liberty Real Assets Investment Corporation ("LRAIC"), Ted Romeo, Randy Burstein, Nader Yazdani, and Leslie Weiner (collectively, the "Defendants"). On December 7, 2004, this Court entered a Consent Order Granting Preliminary Injunctive Relief ("Consent Preliminary Injunction") that, among other things, enjoined Defendants from violating Section 4c(b) of the Commodity Exchange Act, as amended (the "Act"), 7 U.S.C. § 6c(b) (2002), and Commission Regulations 33.10(a) and (c), 17 C.F.R. §§ 33.10(a) and (c) (2004).

II. CONSENT AND AGREEMENT

1. Solely to effect settlement of the matters alleged in the Complaint in this action without a trial on the merits or any further judicial proceedings or presentation of additional evidence, Defendant Randy Burstein ("Burstein"):

a. Consents to the entry of this Consent Order of Permanent Injunction and Other Equitable Relief ("Order").

b. Affirms that he has read and agreed to this Order voluntarily and that no threat or promise 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.

c. Acknowledges service of the Summons and Complaint.

d. Admits that this Court has jurisdiction over him and the subject matter of this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2002).

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

f. Waives:

i. any and all claims that he may possess under the Equal Access to Justice Act (EAJA), 5 U.S.C. § 504 (2006) and 28 U.S.C. § 2412 (2006), and/or Part 148 of the Commission's Regulations, 17 C.F.R. §§ 148.1 *et seq.* (2009), relating to, or arising from, this action;

ii. any and all claims that he may possess under the Small Business Regulatory Enforcement Fairness Act, Pub. L. 104-121, §§ 231-232, 110 Stat. 862-63 (1996), as amended by Pub. L. No. 110-28, 121 Stat. 112 (2007), relating to or arising from this action;

iii. 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

iv. Any and all rights of appeal in this action.

2. By consenting to the entry of this Order, Burstein neither admits nor denies the allegations of the Complaint or the Findings of Fact and Conclusions of Law contained in this Order, except as to jurisdiction and venue, which he admits. However, Burstein agrees and intends that all of the allegations of the Complaint and all the Findings and Conclusions of Law made by this Court and contained in Order shall be taken as true and correct and be given preclusive effect, without further proof, in the course of: a) any current or subsequent bankruptcy proceeding filed by, or on behalf of, or against Burstein; b) a proceeding to enforce this Order; and/or c) any proceeding pursuant to Section 8a of the Act, 7 U.S.C. § 12a(1), and/or Part 3 of the Commission's Regulations, 17 C.F.R. §§ 3.1 et seq. (2009).

3. Burstein 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 him.

4. Burstein agrees that neither he nor any of his agents, servants, employees, contractors or attorneys shall take any action or make any public statement denying, directly or indirectly, any allegation in the Complaint or Findings of Fact and/or Conclusions of Law contained in this 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 Burstein's (a) testimonial obligations; or (b) right to take legal positions in other proceedings to which the Commission is not a party. Burstein shall take all necessary steps to ensure that all of

his agents, servants, employees, contractors and attorneys understand and comply with this agreement.

5. Burstein voluntarily undertakes never to apply for registration or claim exemption from registration with the Commission in any capacity, or engage 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) (2009), or to act 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)(2009).

6. Burstein consents to the continued jurisdiction of this Court for the purpose of enforcing the terms and conditions of this Order and for any other purposes relevant to this action, even if Burstein now or in the future resides outside the jurisdiction.

III. FINDINGS AND CONCLUSIONS

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, without presentation of additional evidence, the entry of findings of fact, conclusions of law, and a permanent injunction and ancillary equitable relief pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2002), as set forth herein.

A. Findings of Fact

1. From approximately early 2002 until approximately May 2008, LFTC was registered with the Commission as an introducing broker. From approximately June or July 2004 until approximately May 2008, LRAIC was registered with the Commission as an introducing broker. Together, LFTC and LRAIC operated as a common enterprise (together, the

“Liberty Common Enterprise”) to solicit customers through telephone calls to open and maintain commodity options trading accounts through the Liberty Common Enterprise to trade commodity options.

2. From approximately January 2003 through approximately July 2003, and again from approximately September 2003 through approximately March 2004, Burstein was registered as an associated person of, and worked for, LFTC. In this capacity, Burstein solicited customers through telephone calls to open and maintain commodity trading accounts through the Liberty Common Enterprise to trade commodity options.

3. During the course of his solicitations, Burstein, on several occasions, made false and misleading material representations to prospective and existing customers of the Liberty Common Enterprise by knowingly or recklessly: 1) misrepresenting the likelihood that customers would profit from the purchase of commodity options; 2) misrepresenting the risk of trading commodity options; and 3) failing to disclose, in light of the profit representations he was making, the Liberty Common Enterprise’s dismal performance record trading commodity options for customers.

4. Burstein, on several occasions, told customers that they could earn large profits trading in commodity options while failing to disclose adequately the risk of loss inherent in trading commodity options. Burstein’s misrepresentations and omissions conveyed the false impression that trading commodity options with the Liberty Common Enterprise entailed minimal risk and maximum potential for profit.

5. While making these claims of profit potential with little risk, Burstein failed to disclose the Liberty Common Enterprise’s losing track record to prospective and existing

customers, including the fact that in 2002, ninety-six percent (96%) of the Liberty Common Enterprise's customers lost money and in 2003, ninety-two percent (92%) lost money.

6. Burstein, on several occasions, also used misleading investment advice based on well known public information already factored into the existing market pricing by the commodity markets to entice customers to trade with the Liberty Common Enterprise.

7. Burstein's misrepresentations and omissions were material and Burstein's customers relied upon the misrepresentations and omissions made by him in making their decision to trade commodity options through the Liberty Common Enterprise. Burstein knew that his misrepresentations and omissions were false or misleading or made them in reckless disregard for the truth.

B. Conclusions of Law

1. 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, 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.

2. Venue properly lies with this Court pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, in that Burstein 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, among other places.

3. This Court has personal jurisdiction over Burstein, who acknowledges service of the Complaint and consents to the Court's jurisdiction over him.

4. Burstein has agreed to this Court's continuing jurisdiction over him for the purpose of enforcing the terms and conditions of this Order and for any other purposes relevant to this action.

5. By the conduct described in Section III.A above, Burstein committed fraudulent acts and thereby violated Section 4c(b) of the Act, 7 U.S.C. § 6c(b) (2002), and Commission Regulations 33.10(a) and (c), 17 C.F.R. §§ 33.10(a) and (c) (2004).

IV. ORDER OF PERMANENT INJUNCTION

NOW THEREFORE, IT IS ORDERED THAT:

1. Burstein is permanently restrained, enjoined and prohibited from directly or indirectly:

a. offering to enter into, entering into, executing, confirming the execution of, or conducting business for the purpose of soliciting, accepting any order for, or otherwise dealing in any transaction in, or in connection with, a commodity option contrary to any rule, regulation, or order of the Commission prohibiting any such transaction or allowing any such transaction under such terms and conditions as the Commission shall prescribe, in violation of Section 4c(b) of the Act, 7 U.S.C. § 6c(b) (2006); and

b. in or in connection with an offer to enter into, the entry into, or the confirmation of the execution of, or the maintenance of, any commodity option transaction, cheating or defrauding or attempting to cheat or defraud any person; or deceiving or attempting to deceive any person by any means whatsoever, in violation of Section 4c(b) of the Act, 7 U.S.C. § 6c(b) (2006), and Commission Regulations 33.10(a) and (c), 17 C.F.R. §§ 33.10(a) and (c) (2009).

2. Burstein is permanently restrained, enjoined and prohibited, 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:

- a. 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) (2006);
- b. 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;
- c. soliciting or accepting any funds from any person in connection with the purchase or sale of any commodity interest; and
- d. engaging in any business activities related to commodity interest trading.

3. Burstein is ordered to comply with the terms of his voluntary undertaking as set forth in Section II.5 above.

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

V. **RESTITUTION, CIVIL MONETARY PENALTY, AND ANCILLARY RELIEF**

NOW THEREFORE, IT IS ORDERED THAT:

Burstein shall comply fully with the following terms, conditions and obligations relating to the payment of restitution, the payment of a civil monetary penalty, and other ancillary equitable relief.

A. **RESTITUTION**

1. **IT IS HEREBY ORDERED THAT** Burstein shall be jointly and severally liable with LFTC and LRAIC, previously ordered to pay restitution by this Court in its April 24, 2007 *Consent Order of Permanent Injunction and Other Equitable Relief Against Defendants Liberty Financial Trading Corp., Inc., Liberty Real Assets Investment Corporation, and Ted Romeo*, to pay restitution in the amount of \$120,000, plus post-judgment interest. Restitution shall be paid within ten days of entry of this Order. Post-judgment interest shall accrue beginning eleven days after the date of entry of this Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Order pursuant to 28 U.S.C. § 1961 (2006).

2. Further, the amount payable for restitution shall not limit the ability of any Liberty Common Enterprise customer from proving that a greater amount is owed from Burstein or any other person or entity, and nothing herein shall be construed in any way to limit or abridge the rights of any Liberty Common Enterprise customer that exist under state or common law.

3. **Appointment of Monitor:** To effect payment by Burstein and distribution of restitution, the Court appoints the National Futures Association ("NFA") as Monitor ("Monitor"). The Monitor shall collect restitution payments from Burstein and make distributions as set forth below. Because the Monitor is not being specially compensated for these services, and these services are outside the normal duties of the Monitor, he shall not be

liable for any action or inaction arising from his appointment as Monitor, other than actions involving fraud.

4. Burstein shall make restitution payments under this Order to the NFA 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 "Liberty Financial Settlement Fund" and sent to Office of Administration, National Futures Association, 300 S. Riverside Plaza, Suite 1800, Chicago, IL 60606-6615, under a cover letter that identifies himself and the name and docket number of the proceeding. Burstein shall simultaneously transmit copies of the cover letter and the form of payment to the Director, Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581, and to the Chief, Office of Cooperative Enforcement, Division of Enforcement, at the same address.

5. The NFA shall oversee Burstein's restitution obligation and shall have discretion to determine the manner for distribution of funds in an equitable fashion to defrauded Liberty Common Enterprise customers, as appropriate, or may defer distribution until such time as it deems appropriate. Restitution payments shall be made in an equitable fashion as determined by the Monitor to the persons identified on Exhibit A to the April 24, 2007 *Consent Order of Permanent Injunction and Other Equitable Relief Against Defendants Liberty Financial Trading Corp., Inc., Liberty Real Assets Investment Corporation, and Ted Romeo*.

6. Should the Monitor be unable to locate certain investors after making reasonable efforts to locate such investors, the Monitor shall distribute the funds owed to those investors equitably to the other investors. In the event that the amount of restitution payments to the Monitor are of a *de minimis* nature such that the Monitor determines that the administrative costs of the making a restitution distribution 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.

7. Burstein shall cooperate with the Monitor as appropriate to provide such information as the NFA deems necessary and appropriate to identify Liberty Common Enterprise customers whom the Monitor, in his sole discretion, may determine to include in any plan for distribution of any restitution payments.

8. To the extent that any funds accrue to the U.S. Treasury as a result of Burstein's restitution obligation, such funds shall be transferred to the Monitor for disbursement in accordance with the procedures set forth in paragraph 4 of this Section.

B. CIVIL MONETARY PENALTY

1. Burstein shall pay to the Commission a civil monetary penalty in the amount of \$120,000, plus post-judgment interest, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2006). The civil monetary penalty shall be paid within ten days of entry of this Order. Post-judgment interest shall accrue beginning eleven days after the date of entry of this Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Order pursuant to 28 U.S.C. § 1961.

2. Burstein shall pay this civil monetary penalty by electronic funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money order. If payment is to be made other than by electronic funds transfer, the payment shall be made payable to the Commodity Futures Trading Commission and sent to the address below:

Commodity Futures Trading Commission
Division of Enforcement
Attn: Marie Bateman – AMZ-300
DOT/FAA/MMAC

6500 S. MacArthur Blvd.
Oklahoma City, Oklahoma 73169
Telephone: 405-954-6569

If payment is to be made by electronic funds transfer, Burstein shall contact Marie Bateman or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Burstein shall accompany payment of the penalty with a cover letter that identifies Burstein and the name and docket number of the proceedings. Burstein shall simultaneously transmit copies of the cover letter and the form of payment to the Director, Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581, and the Chief, Office of Cooperative Enforcement, at the same address.

C. PRIORITY OF MONETARY SANCTIONS AND PARTIAL PAYMENTS

1. All payments by Burstein pursuant to this Order shall first be applied to satisfaction of his restitution obligation, consistent with the authority granted the Monitor in Part V.A., above. After satisfaction of his restitution obligation, payments by Burstein pursuant to this Order shall be applied to satisfy Burstein's civil monetary penalty obligation.

2. Any acceptance by the Commission and/or Monitor of partial payment of Burstein's restitution obligation and/or civil monetary penalty shall not be deemed a waiver of Burstein's requirement to make further payments pursuant to this Order, or a waiver of the Commission's and/or Monitor's right to seek to compel payment of any remaining balance.

D. EQUITABLE RELIEF PROVISIONS

The equitable relief provisions of this Order shall be binding upon Burstein and any person who is acting in the capacity of officer, agent, employee, servant or attorney of Burstein, and any person acting in active concert or participation with Burstein who receive actual notice of this Order by personal service or otherwise.

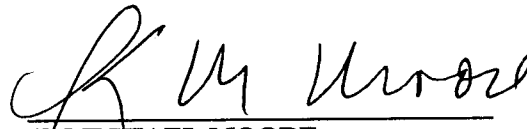
VI. MISCELLANEOUS PROVISIONS

IT IS FURTHER ORDERED THAT:

1. **ENTIRE AGREEMENT, AMENDMENTS AND SEVERABILITY:** This Order incorporates all of the terms and conditions of the settlement among the parties. Nothing shall serve to amend or modify this Order in any respect whatsoever, unless: (1) reduced to writing, (2) signed by all parties, and (3) approved by order of the Court. If any provision of this Order or the application of any provision or circumstance is held invalid, the remainder of this Order shall not be affected by the holding.
2. **COUNTERPARTS:** This Order may be executed by the parties in counterparts and by facsimile.
3. **COLLATERAL AGREEMENTS:** Burstein shall immediately notify the Commission if he makes any agreement with any investor/creditor obligating him to make payments outside of this Order. Burstein shall also provide immediate evidence to the Court and to the Commission of any payments made pursuant to such agreement.
4. **JURISDICTION:** This Court shall retain jurisdiction of this cause to assure compliance with this Order and for all other purposes related to this action.

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

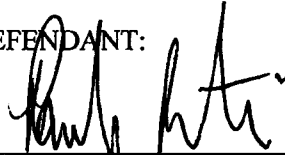
DONE AND ORDERED in Chambers, at Miami, Florida, this 15th day of July,
2009.



K. MICHAEL MOORE
UNITED STATES DISTRICT JUDGE

Consented to and approved for entry by:

DEFENDANT:



Randy Burstein



Michael A. Kaiser, Esq.
520 West Hallendale Beach Boulevard
Hallandale, Florida 33135
Attorney for Defendant Randy Burstein

PLAINTIFF:



Alan Edelman
James H. Holl, III
U.S. Commodity Futures Trading
Commission
Three Lafayette Centre
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