

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

**COMMODITY FUTURES
TRADING COMMISSION,**

Plaintiff,

v.

**DAVID SEIBERT, individually and d/b/a
SEI-EQUITY INVESTMENTS, a/k/a SEI
EQUITY INVESTMENTS, a/k/a SEIBERT
EQUITY INVESTMENTS, and d/b/a
GREAT AMERICA FUNDING, LLC, a/k/a
GREAT AMERICAN FUNDING, L.L.C.,
a/k/a GREAT AMERICAN FUNDING
LENDER SERVICES,**

Defendant.

Case No: 1:20-cv-00935-RP

Hon. Judge Robert Pitman

**CONSENT ORDER FOR PERMANENT INJUNCTION AND OTHER EQUITABLE
RELIEF AGAINST DEFENDANT DAVID SEIBERT, individually and d/ba SEI-EQUITY
INVESTMENTS, a/k/a SEI EQUITY INVESTMENTS, a/k/a SEIBERT EQUITY
INVESTMENTS, and d/b/a GREAT AMERICA FUNDING, LLC, a/k/a GREAT
AMERICAN FUNDING, L.L.C., a/k/a GREAT AMERICAN FUNDING LENDER
SERVICES**

I. INTRODUCTION

On September 8, 2020, Plaintiff Commodity Futures Trading Commission (“Commission” or “CFTC”) filed a Complaint against Defendant David Seibert, individually and d/b/a SEI-Equity Investments, a/k/a SEI Equity Investments, a/k/a Seibert Equity Investments (“SEI”), and d/b/a Great America Funding, LLC, a/k/a Great American Funding, L.L.C., a/k/a Great American Funding Lender Services (“GAF”), seeking injunctive and other equitable relief,

as well as the imposition of civil penalties, for violations of the Commodity Exchange Act (“Act”), 7 U.S.C. §§ 1–26 (2018).

II. CONSENTS AND AGREEMENTS

To effect a partial settlement of the matters alleged in the Complaint against Defendant Seibert, without a trial on the merits or any further judicial proceedings, while reserving a determination of all monetary relief for further adjudication, including restitution, disgorgement and a civil monetary penalty, Defendant Seibert:

1. Consents to the entry of this Consent Order for Permanent Injunction and Other Equitable Relief Against Defendant Seibert (“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 (2018);
5. Admits the jurisdiction of the Commission over the conduct and transactions at issue in this action pursuant to the Act;
6. Admits that venue properly lies with this Court pursuant to 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 (2018) and 28 U.S.C. § 2412 (2018), and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Regulations, 17 C.F.R. pt. 148 (2019), 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, tit. II, §§ 201–253, 110 Stat. 847, 857–74 (codified as amended at 28 U.S.C. § 2412 and in scattered sections of 5 U.S.C. and 15 U.S.C.), 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 Defendant Seibert 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. Defendant shall comply with this agreement, and shall undertake all steps necessary to ensure that all of his agents and/or employees under their authority or control understand and comply with this agreement;

11. Consents to the entry of this Consent Order without admitting or denying the allegations of the Complaint or any findings or conclusions in this Consent Order, except as to jurisdiction and venue, which he admits;

12. Consents to the use of the findings and conclusions in this Consent Order in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party or claimant, and agrees that they shall be taken as true and correct and be given preclusive effect therein, without further proof;

13. Does not consent, however, to the use of this Consent Order, or the findings and conclusions herein, as the sole basis for any other proceeding brought by the Commission or to which the Commission is a party, other than a: statutory disqualification proceeding; proceeding in bankruptcy, or receivership; or proceeding to enforce the terms of this Order;

14. Agrees to provide immediate notice to this Court and the Commission by certified mail, in the manner required by paragraph 48 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

15. 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 him in any other proceeding.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court, being fully advised in the premises, finds that there is good cause for the entry of this Consent Order and that there is no just reason for delay. The Court therefore directs the entry of the following Findings of Fact, Conclusions of Law, permanent injunction and equitable relief pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2018), as set forth herein.

THE COURT HEREBY FINDS:

A. Findings of Fact

The Parties to this Consent Order

16. Plaintiff Commodity Futures Trading Commission is an independent federal regulatory agency charged by Congress with administering and enforcing the Act and CFTC Regulations (“Regulations”), 17 C.F.R. pts. 1-190 (2019).

17. Defendant **David Seibert** resides in Lakeway, Texas. Seibert has never been registered with the CFTC in any capacity. Seibert has done business under the following fictitious names: SEI-Equity Investments, a/k/a SEI Equity Investments, a/k/a Seibert Equity Investments, and d/b/a Great America Funding, LLC a/k/a Great American Funding, L.L.C., a/k/a Great American Funding Lender Services.

SEIBERT’S FRAUDULENT SCHEME

Seibert’s Representations About his Fraudulent “Bridge Loan” Deals

18. Beginning in at least March 2016, Seibert asked potential participants, many of whom reside in Texas, to participate with him as lenders in short-term secured loans that Seibert would originate and arrange.

19. Seibert represented to potential participants that he and his purported company, GAF, were engaged in the business of making short-term, high-interest “bridge loans” to commercial borrowers in order for the borrowers to make additions or repairs to property or to otherwise meet cash needs before permanent financing could be secured.

20. Seibert told potential participants that he would advise them of lending opportunities, complete the due diligence to determine if the borrower was well-qualified and that the offered collateral would fully secure the loan, and handle the preparation of the loan

documents and the closing of the transaction through a qualified attorney and title company, and that GAF would service the loan.

21. Seibert described the loans as interest-only loans paying interest on a monthly basis with a balloon payment of all principal after a term of approximately one year. The offered loans were to be secured by a first lien deed of trust on real property, a security interest on the assets of the debtor and a personal guarantee.

The Closing of Seibert's Deals

22. When an individual decided to participate in one of Seibert's deals, Seibert would tell them to write a check made payable to him personally or, more frequently, to wire the funds to a bank account which he said was held in the name of GAF. In reality, the account was Seibert's personal bank account. The participants' funds were pooled in Seibert's bank account and commingled there with funds from other participants and with Seibert's personal funds.

23. After the deals "closed," Seibert sent binders of documents to participants purporting to show that the loan transaction had been documented and closed by a law firm through a title company as escrow agent. Among the documents enclosed in these binders were the loan agreement, the personal guarantee of a principal of the borrowing company, a first lien deed of trust and a promissory note in the original principal sum that was purportedly executed by the borrower.

24. After the closing, Seibert paid the participants monthly "interest" payments on the loans, with participants presuming them to be paid by the borrower in the loan deal. In reality, the payments derived from funds of other participants.

Seibert's Misappropriation and Fraud

25. Seibert received approximately \$10 million in funds from at least eight participants that was deposited into his personal bank account.

26. Seibert used the majority of his pooled participants' funds to trade commodity interests in his trading account. Seibert used additional participants' funds for various personal expenses.

27. Seibert never disclosed to the participants that instead of using their funds to make bridge loans, he was actually pooling their funds with those of other participants and using them to trade commodity interests. Nor did he disclose that he was using additional participants' funds for personal expenses described above.

28. On March 9, 2017, Seibert opened a commodity trading account in the name of David Seibert at a futures commission merchant ("FCM") ("FCM A"). His account application at FCM A stated that he was employed as a financial advisor for "Seibert Equity Investments" earning an income of \$300,000 annually and that all of the funds in the account belonged to him.

29. From March 2017 to April 2019, Seibert deposited \$8,645,198 into his personal commodity trading account at FCM A. The vast majority, if not all, of the deposited funds were participants' funds.

30. Seibert lost \$8,336,148 trading commodity interests in his account at FCM A from March 2017 to April 2019.

B. Conclusions of Law

Jurisdiction and Venue

31. This Court possesses jurisdiction over this action pursuant to 28 U.S.C. § 1331 (2018) (codifying federal question jurisdiction) and 28 U.S.C. § 1345 (2018) (providing that U.S. district courts have original jurisdiction over civil actions commenced by the United States or by any agency expressly authorized to sue by Act of Congress). Section 6c(a) of the Act, 7 U.S.C. § 13a-1(a) (2018), provides that the Commission may bring actions for injunctive relief or to

enforce compliance with the Act or any rule, regulation, or order thereunder in the proper district court of the United States 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 thereunder.

32. Venue properly lies with this Court pursuant to 7 U.S.C. § 13a-1(e), because Defendant resides in this jurisdiction and the acts and practices in violation of the Act occurred within this District.

Fraud by a Commodity Pool Operator

33. A commodity pool is defined in Section 1a(10) of the Act, 7 U.S.C. § 1a(10) (2018), in part, as:

[A]ny investment trust, syndicate, or similar form of enterprise operated for the purpose of trading in commodity interests, including any –
(i) commodity for future delivery, security futures product, or swap; (ii) agreement, contract, or transaction described in section 2(c)(2)(C)(i) of this title or section 2(c)(2)(D)(i) of this title; (iii) commodity option authorized under section 6c of this title; or (iv) leverage transaction authorized under section 23 of this title.

34. A commodity pool operator (“CPO”) is defined in Section 1a(11) of the Act, 7 U.S.C. § 1a(11) (2018), in part, as any person:

[E]ngaged in a business that is of the nature of a commodity pool, investment trust, syndicate, or similar form of enterprise, and who, in connection therewith, solicits, accepts, or receives from others, funds, securities or property, either directly or through capital contributions, the sale of stock or other forms of securities, or otherwise for the purpose of trading in commodity interests, including any—(I) commodity for future delivery . . .

35. From at least March 2016 to April, 2019, Seibert has been operating as a CPO in that he engaged in a business that is of the nature of an investment trust, syndicate or similar form of enterprise, and in connection therewith, solicited, accepted, or received funds, securities, or property from others for the purpose of trading commodity interests.

36. Section 4o(1)(A) of the Act, 7 U.S.C. §6o(1)(A) (2018), provides, in relevant part, that it shall be unlawful for a CPO, by use of the mails or any means or instrumentality of

interstate commerce, directly or indirectly “to employ any device, scheme or artifice to defraud any client . . . or prospective client. . . .”

37. Section 4o(1)(B) of the Act, 7 U.S.C. § 6o(1)(B) (2018), provides, in relevant part, that it shall be unlawful for a CPO, by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly “to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client . . . or prospective client. . . .”

38. From at least March 2016 to April 2019, Seibert through the use of the mails or other means or instrumentalities of interstate commerce (including through the use of telephone calls and electronic mail with prospective and existing participants and through the use of interstate wire transfers), violated 7 U.S.C. §§ 6o(1)(A) and (B) by: (1) misappropriating participant funds for Seibert’s benefit; (2) falsely promising that participants’ funds were protected as loans collateralized by real property; and (3) not disclosing to participants that their funds were being used for, and lost by, his trading of commodity interests.

39. Seibert engaged in the acts and practices described herein willfully, knowingly, or with reckless disregard for the truth.

40. Each act of misappropriation, misrepresentation or omission of material facts by Seibert constitutes a separate and distinct violation of 7 U.S.C. §§ 6o(1)(A) and (B).

Failure to Register as a CPO

41. Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2018), makes it unlawful for any CPO, unless registered with the CFTC, to make use of the mails or any means or instrumentality of interstate commerce in connection with its business as a CPO.

42. Seibert has never been registered as a CPO nor does he qualify for a CPO registration exemption under either the Act or the CFTC Regulations.

43. From at least March 2016 to April 2019, Seibert used the mails, wires, or other instrumentalities of interstate commerce in or in connection with his business as a CPO while failing to register as a CPO and violated 7 U.S.C. § 6m(1).

44. Each instance of soliciting, accepting, or receiving funds, securities or property from others, either directly or indirectly through capital contributions, the sale of stock or other forms of securities, or otherwise for the purpose of trading in commodity interests by making use of the mails or other means or instrumentality of interstate commerce, is a separate and distinct violation of 7 U.S.C. § 6m(1).

IV. PERMANENT INJUNCTION

IT IS HEREBY ORDERED THAT:

45. Based upon and in connection with the foregoing conduct, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2018), Seibert is permanently restrained, enjoined and prohibited from directly or indirectly:

- a. While operating as a commodity pool operator, employing any device, scheme, or artifice to defraud any client or prospective client, or engaging 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(a)(A), (B) (2018); and/or
- b. Making use of the mails or any means or instrumentality of interstate commerce in connection with its business as a CPO without registration with the CFTC as a CPO, in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2018).

46. Seibert 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) (2018));
- b. Entering into any transactions involving “commodity interests” (as that term is defined in Regulation 1.3, 17 C.F.R. § 1.3 (2018)) for his own personal accounts 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) (2019); and/or
- g. Acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2019)), 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) (2018)), registered, exempted from registration or required to be registered with the Commission except as provided for in 17 C.F.R. § 4.14(a)(9).

V. RESTITUTION, DISGORGEMENT, AND CIVIL MONETARY PENALTY

47. The issue of relief pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2018), regarding restitution to Defendant’s defrauded participants, disgorgement and an appropriate

civil monetary penalty to be assessed against Defendant Seibert, is still unresolved and is hereby reserved for further determination by this Court upon motion of the Commission or by a proposed Consent Order. However, Seibert agrees to pay full restitution to defrauded participants in an amount to be determined later.

48. In connection with any Commission motion for restitution, disgorgement and/or civil monetary penalties, and at any hearing held on such motion: (a) Defendant Seibert will be precluded from arguing the he did not violate the federal laws as agreed to in this Consent Order; (b) Defendant Seibert may not challenge the validity of his consent and agreement herein or this Consent Order; (c) solely for the purposes of such motion, the Findings of Fact and Conclusions of Law of this Consent Order shall be accepted as and deemed true by the Court; and (d) the court may determine the issues raised in the motion on the basis of affidavits, declarations, excerpts of sworn deposition or investigative testimony, witness testimony, and documentary evidence, without regard to the standards for summary judgment contained in Rule 56(c) of the Federal Rules of Civil Procedure. In connection with the Commission's motion for restitution, disgorgement and/or civil monetary penalties, the parties may take discovery, including discovery from appropriate non-parties.

VI. MISCELLANEOUS PROVISIONS

49. 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 Commission:

Robert T. Howell
Deputy Director
Commodity Futures Trading Commission
Division of Enforcement
525 W. Monroe Street
Suite 1100
Chicago, IL 60661

Notice to Defendant:

David Seibert, individually and d/b/a
SEI-Equity Investments, a/k/a SEI
Equity Investments, a/k/a Seibert Equity
Investments, and d/b/a Great America
Funding, LLC, a/k/a Great American
Funding, LLC a/ka Great American
Funding Lender Services

103 Palos Verdes Dr.
Lakeway, Texas 78734

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

50. Change of Address/Phone: Until such time as Defendant satisfy in full their Restitution Obligation, and CMP Obligation as set forth in this Consent Order, Defendants shall provide written notice to the Commission by certified mail of any change to his telephone number and mailing address within ten calendar days of the change.

51. 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.

52. 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.

53. Waiver: The failure of any party to this Consent Order or of any 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 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.

54. Waiver of Service, and Acknowledgement: Defendant waives service of this Consent Order and agrees that entry of this Consent Order by the Court and filing with the Clerk of the Court will constitute notice to the Defendant of its terms and conditions. Defendant further agrees to provide counsel for the Commission, within thirty days after this Consent Order is filed with the Clerk of Court, with an affidavit or declaration stating that Defendant has received and read a copy of this Consent Order.

55. Continuing Jurisdiction of this Court: This Court shall retain jurisdiction of this action to ensure compliance with this Consent Order and for the determination of damages under Section 6c of the Act, and for all other purposes related to this action, including any motion by Defendant to modify or for relief from the terms of this Consent Order.

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

57. 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.

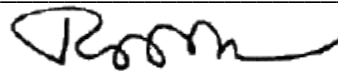
58. Contempt: Defendant understands that the terms of the Consent Order are enforceable through contempt proceedings, and that, in any such proceedings he may not challenge the validity of this Consent Order.

59. Cooperation: Defendant has cooperated fully, and agrees that he will continue to cooperate fully with the Commission, including the Commission's Division of Enforcement, in this action, and in any current or future Commission investigation or action related thereto. Defendant also agrees that he will cooperate in any investigation, civil litigation, or administrative matter related to, or arising from, the subject matter of this action.

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

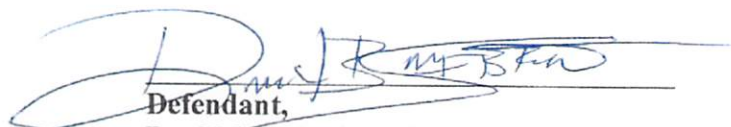
There being no just reason for delay, the Clerk of the Court is hereby ordered to enter this *Consent Order for Permanent Injunction and Other Equitable Relief Against Defendant, David Seibert, individually and d/b/a SEI-Equity Investments, a/k/a SEI Equity Investments, a/k/a Seibert Equity Investments, and d/b/a Great American Funding, LLC, a/k/a Great American Funding, L.L.C., a/k/a Great American Funding Lender Services*, forthwith and without further notice.

IT IS SO ORDERED on this _____ day of _____, 2020.



UNITED STATES DISTRICT JUDGE

CONSENTED TO AND APPROVED BY:



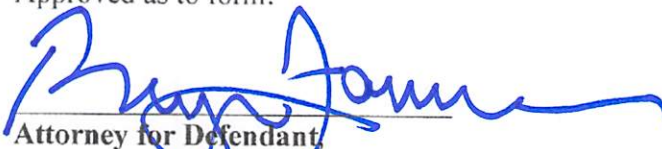
Defendant,
David Seibert, individually and d/b/a
SEI-Equity Investments, a/k/a SEI Equity
Investments, a/k/a Seibert Equity Investments,
and d/b/a Great American Funding, LLC, a/k/a
Great American Funding, L.L.C., a/k/a Great
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312-596-0544
(312) 596-0714 (facsimile)
spadove@cftc.gov

Date: 8.29.20

Date: _____

Approved as to form:



Attorney for Defendant
David Seibert, individually and d/b/a
SEI-Equity Investments, a/k/a SEI Equity
Investments, a/k/a Seibert Equity Investments,
and d/b/a/ Great American Funding, LLC, a/k/a
Great American Funding, L.L.C., a/k/a Great
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bryan@formanlawfirm.com

Date: 8.24.20