

THE UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF INDIANA  
FORT WAYNE DIVISION

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STEPHEN J. ...  
FOR THE UNITED STATES DISTRICT COURT

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<b>Commodity Futures Trading Commission,</b>	)	<b>CIVIL ACTION NO.1:00 CV 0300</b>
	)	
<b>Plaintiff,</b>	)	<b>Judge: Hon. William C. Lee</b>
	)	
<b>v.</b>	)	
	)	<b>Magistrate Judge: Roger B. Cosby</b>
<b>Phillip L. Ferguson, individually and doing business as Ferguson Financial, B&amp;F Trading and First Investors Group, Inc., Geoffrey M. Eltzroth, Thomas T. Miller, Geoffrey M. Eltzroth, James N. Wilson, individually and as an agent of JNW Management and JNW Management,</b>	)	
<b>Defendants.</b>	)	

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**CONSENT ORDER OF PERMANENT INJUNCTION  
AND OTHER EQUITABLE RELIEF  
AGAINST DEFENDANT GEOFFREY M. ELTZROTH**

**I.  
INTRODUCTION**

1. On July 11, 2000, the plaintiff Commodity Futures Trading Commission ("Commission") filed a Complaint against Phillip L. Ferguson ("Ferguson"), individually and doing business as Ferguson Financial, B&F Trading and First Investors Group, Inc., seeking injunctive and other equitable relief for violations of the Commodity Exchange Act, as amended (the "Act"), 7 U.S.C. §§ 1 *et seq.* (2001) and regulations promulgated thereunder, 17 C.F.R. §§ *et seq.* (2002). On February 22, 2002, the Commission filed a First Amended Complaint ("the Amended Complaint") adding new charges against Ferguson and additional defendants,

including Geoffrey M. Eltzroth ("Eltzroth"). The Amended Complaint charged Eltzroth with acting as an associated person ("AP") of a commodity pool operator ("CPO") without the benefit of registration with the Commission, in violation of Section 4k(2) of the Act, 7 U.S.C. § 6k(2) (2001) and engaging in transactions which operated as a fraud upon participants in a commodity futures pool, in violation of Section 4o(1)(B) of the Act, 7 U.S.C. § 6o(1)(B)(2001).

2. To effect settlement of the matters alleged in the Amended Complaint against Eltzroth without a trial on the merits, Eltzroth and the Commission consent to the entry of this Consent Order of Permanent Injunction and other Equitable Relief Against Geoffrey M. Eltzroth ("Consent Order"). Eltzroth also: (1) waives service of Summons and the Amended Complaint; (2) admits both personal and subject matter jurisdiction of this Court in this action; (3) admits that venue properly lies with this Court; and (4) generally waives the entry of findings of fact and conclusions of law in this action pursuant to Rule 52 of the Federal Rules of Civil Procedure, except as provided in Part II below.

3. Eltzroth neither admits nor denies the allegations of the Amended Complaint and the Findings of Fact contained in this Consent Order. By this language, Eltzroth agrees that neither Eltzroth nor any employees, agents or representatives of Eltzroth acting under his authority or control shall take any action or make any public statements denying, directly or indirectly, any allegation in the Amended Complaint or creating, or tending to create, the impression that the Amended Complaint is without factual basis; provided, however, that nothing in this provision affects Eltzroth's (i) testimonial obligations, or (ii) Eltzroth's right to take legal positions in other proceedings to which the Commission is not a party. Eltzroth will undertake all steps necessary to assure that all of his agents and employees understand and comply with this agreement.

4. Eltzroth waives: (1) all claims that he may possess under the Equal Access to Justice Act ("EAJA"), 5 U.S.C. § 504 (1994) and 28 U.S.C. § 2412 (1994), as amended by Pub. L. No. 104-121. §§ 231-32, 110 Stat. 862-63, and Part 148 of the Commission's Regulations, 17 C.F.R. §§ 148.1, et seq. (2001), relating to or arising from this action and any right under EAJA to seek costs, fees and other expenses relating to or arising from this proceeding; (2) 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 (3) all rights of appeal from this Consent Order.

5. The parties hereto also consent to the continued jurisdiction of the Court for the purpose of enforcing the terms and conditions of this Consent Order and for any other purposes relevant to this case.

6. Eltzroth agrees to cooperate fully with the Commission in its prosecution of the Amended Complaint in this proceeding, in any ongoing investigations related to the subject matter of the Amended Complaint, and in all other proceedings arising from such investigations by, among other things: (1) responding promptly, completely, and truthfully to any inquiries or requests for information and otherwise cooperating fully with respect to discovery; (2) providing authentication of documents; (3) testifying completely and truthfully; and (4) not asserting privileges under the Fifth Amendment of the United States Constitution in connection with any testimony Eltzroth is asked to provide only as to violations of the Act or regulations thereunder.

7. Eltzroth further affirms that he has read the Consent Order and agrees to entry of this Consent Order voluntarily, and that no promise or threat of any kind has been made by the Commission or any member, officer, agent or representative thereof, or by any other person, to induce him to consent to this Consent Order, other than as set forth specifically herein.

**II.**  
**FINDINGS OF FACT**

8. 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 to delay. The Court therefore directs the entry of findings of fact, conclusions of law, a permanent injunction and ancillary equitable relief, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2001), as set forth herein.

9. This Court has subject matter jurisdiction over this action and the allegations in the Amended Complaint pursuant to Section 6c of the Act.

10. This Court has personal jurisdiction over Eltzroth and Eltzroth has waived service of Summons and the Amended Complaint and consented to the Court's jurisdiction over him.

11. The Commission and Eltzroth have agreed that this Court shall retain jurisdiction over each of them for the purpose of enforcing the terms of this Consent Order.

12. Plaintiff Commodity Futures Trading Commission is an independent federal regulatory agency charged with the responsibility for administering and enforcing the provisions of the Act and Regulations promulgated under it.

13. Defendant Geoffrey M. Eltzroth, whose address is Marion, Indiana, has never been registered with the Commission in any capacity. From at least 1997 to July 2000, Eltzroth was employed by Ferguson and worked at the offices of Ferguson Financial at 241 W. Third Street in Marion, Indiana, on a daily basis.

**IV.**  
**ORDER FOR PERMANENT INJUNCTION**

NOW THEREFORE, IT IS ORDERED THAT:

14. Eltzroth is permanently restrained, enjoined and prohibited from acting as an AP of a CPO without the benefit of registration with the Commission, in violation of Section 4k(2)

of the Act and from directly or indirectly, using the mails and other means and instruments of interstate commerce, directly or indirectly, to engage in a transaction, practice, or course of business which operates as a fraud and deceit upon participants and prospective participants of a commodity futures pool, in violation of Section 4o(1)(B) of the Act.

15. Eltzroth is further permanently restrained, enjoined and prohibited from directly or indirectly:

- a. Engaging in, controlling or directing the trading for any futures or options accounts for or on behalf of any other person or entity, whether by power of attorney or otherwise;
- b. Entering into any futures or options transactions for his own account, for any account in which he has a direct or indirect interest and/or having any futures or options traded on his behalf; 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, except as provided for in Commission Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9), or acting as a principal, agent, officer or employee of any person registered, exempted from registration, or required to be registered with the Commission unless such exemption is pursuant to Commission Regulation 4.14(a)(9).

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

## V.

### ORDER FOR OTHER EQUITABLE RELIEF

IT IS FURTHER ORDERED THAT:

17. RESTITUTION: Eltzroth is ordered to pay restitution in the amount of \$75,000 (Seventy-Five Thousand Dollars) which includes \$52,889 (Fifty-Two Thousand Eight Hundred

Eighty-Nine Dollars) in restitution and pre-judgment interest thereon to the participants identified in Attachment A and \$22,111 (Twenty-Two Thousand One Hundred Eleven Dollars) to be distributed by the Receiver appointed by the Court in this matter pursuant to a distribution plan submitted to the Court by the Receiver and approved by the Court. Pre-judgment interest is calculated at the underpayment rate established by the Internal Revenue Service, pursuant to 26 U.S.C. § 662(a)(2). Attachment A, attached hereto and incorporated by reference, is a listing of pool participants and the amount of restitution to be paid to each participant. Omission from Attachment A shall in no way limit the ability of any pool participant to seek recovery from Eltzroth or any other person or entity. Eltzroth shall pay post-judgment interest beginning 10 days from the date of this Order until the restitution is paid in full, at the Treasury Bill rate prevailing on the date of this Order, pursuant to 28 U.S.C. § 1961(a).

18. PAYMENT OF RESTITUTION: Payment of restitution shall be made as follows:

- (a) Within 10 calendar days after entry of this Consent Order Eltzroth shall pay \$52,889 (Fifty-Two Thousand Eight Hundred Eighty-Nine Dollars) in restitution and pre-judgment interest thereon to the participants identified in Attachment A. Payment shall be made by electronic funds transfer, U.S. postal money order, certified check, bank cashiers check, or bank money order. Payment shall be made to Daniel A. Driscoll, Executive Vice President National Futures Association, or his successor, at the following address: National Futures Association, 200 West Madison Street, Chicago, Illinois 60606, who shall distribute the funds to the participants identified in Attachment A.

(b) Within 10 calendar days after entry of this Consent Order Eltzroth shall pay \$22,111 (Twenty-Two Thousand One Hundred Eleven Dollars) to the Receiver appointed by the Court in this matter. Payment shall be made by electronic funds transfer, U.S. postal money order, certified check, bank cashiers check, or bank money order.

19. CIVIL MONETARY PENALTY: Eltzroth shall pay a civil monetary penalty ("CMP") in an amount of \$25,000 (Twenty-Five Thousand Dollars). Payment of the CMP shall be made within 10 calendar days after entry of this Consent Order. Eltzroth shall pay the CMP by electronic funds transfer, or by U.S. postal money order, certified check, bank cashiers check, or bank money order, made payable to the Commodity Futures Trading Commission, and sent to Dennese Posey, Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21<sup>st</sup> Street, NW Washington, D.C. 20581, under cover of a letter that identifies Eltzroth and the name and docket number of the proceeding.

## VI. MISCELLANEOUS PROVISIONS

20. ENTIRE AGREEMENT AND AMENDMENTS: This Consent Order incorporates all of the terms and conditions of the settlement among the parties hereto. Nothing shall serve to amend or modify this Consent Order in any respect whatsoever, unless: (1) reduced to writing; (2) signed by all parties hereto; and (3) approved by order of this Court.

21. WAIVER: The failure of any party hereto at any time or times to require performance of any provision hereof shall in no manner affect the right of such party 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.


22. SUCCESSORS AND ASSIGNS: This Consent Order shall inure to the benefit of and be binding upon the successors, assigns, heirs, beneficiaries and administrators of the parties hereto.

23. ACKNOWLEDGEMENTS: Upon being served with copies of this Consent Order after entry by the Court, Eltzroth shall sign acknowledgements of such service and serve such acknowledgments on this Court and the Commission within seven (7) calendar days.

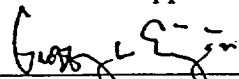
24. INVALIDATION: If any provision of this Consent Order, or the application of any provisions or circumstances is held invalid, the remainder of the Consent Order and the application of the provision to any other person or circumstance shall not be effected by the holding.

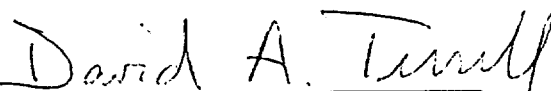
25. JURISDICTION: This Court shall retain jurisdiction of this cause to assure compliance with this Consent Order and for all other purposes related to this action.

ENTERED THIS 12th of FEBRUARY 2003.

  
Hon. William C. Lee  
United States District Court Judge

Consented to and approved for entry by:

  
\_\_\_\_\_  
Geoffrey M. Eltzroth

  
David A. Terrell, Attorney for the Plaintiff  
Commodity Futures Trading Commission  
525 W. Monroe, St 1100, Chicago, IL 60661  
Ph (312) 596-0535 FAX (312) 596-0714



Attachment A

<u>Pool Participant</u>	<u>Restitution</u>	<u>Pre-Judgment Interest</u>	<u>Total</u>
Dow and Sandra Bishop	\$18,952	\$6,135	\$25,087
Sherman Dedman	\$10,000	\$2,599	\$12,599
Michael Green	\$2,000	\$647	\$2,647
Judy Wylam	\$10,000	\$2,556	\$12,556