

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

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U.S. COMMODITY FUTURES)	
TRADING COMMISSION,)	
)	
	Plaintiff,)	
)	
v.)	Case No. H-05-333
)	Judge Hoyt
MICHAEL WHITNEY,)	
)	
	Defendant.)	
)	
)	
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CONSENT ORDER OF PERMANENT INJUNCTION, CIVIL MONETARY PENALTY AND OTHER EQUITABLE RELIEF AGAINST DEFENDANT MICHAEL WHITNEY

On February 1, 2005, Plaintiff U.S. Commodity Futures Trading Commission (the "Commission") filed a complaint against Michael Whitney ("Whitney" or "Defendant") seeking injunctive and other equitable relief for violations of the Commodity Exchange Act, as amended ("Act"), 7. U.S.C. §§ 1 *et seq.* (2002).

I. CONSENTS AND AGREEMENTS

To effect settlement of the matters alleged in the complaint in this action prior to a trial on the merits or further judicial proceedings, Whitney, without admitting or denying any of the allegations of the Complaint:

1. Consents to the entry of this Consent Order of Permanent Injunction, Civil Monetary Penalty and Other Equitable Relief ("Order");

2. Affirms that he has read and agreed to this Order voluntarily, and that no threat or promise other than as set forth specifically herein, 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;

3. Acknowledges service upon him of the summons, complaint and this Order;

4. Consents, solely for the purposes of settlement, to the jurisdiction of the Court in this action;

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

6. Waives:

a. The entry of findings of fact and conclusions of law;

b. All claims that may be available under the Equal Access to Justice Act (EAJA), 5 U.S.C. § 504 (2000) and 28 U.S.C. § 2412 (2000), relating to, or arising from, this action and any right pursuant to EAJA to seek costs, fees and other expenses relating to or arising from this action;

c. 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;

d. All rights of appeal from this Order;

7. Agrees that he will not oppose enforcement of the Order on the ground that it fails to comply with Rule 65(d) of the Federal Civil Rules of Civil Procedure and waives any objections based thereon;

8. Consents to the continued jurisdiction of this Court for the purpose of enforcing the terms and conditions of this Order, to assure compliance with the Order, and for any other purposes relevant to this action, even if Whitney now or in the future resides outside the jurisdiction; and

9. Agrees that neither he nor any of his agents under his control shall take any action or make any public statement denying directly or indirectly, or creating, or tending to create the impression that any allegation in the Complaint and this Order are without a factual basis; provided, however, that nothing in this provision shall affect Whitney's (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Defendant shall take all steps necessary to ensure his agents and employees comply with this provision.

10. By consenting to the entry of this Order, Whitney neither admits nor denies the allegations contained in the Complaint.

II. ORDER FOR PERMANENT INJUNCTION

Based upon and in connection with the foregoing, **IT IS HEREBY ORDERED THAT:**

1. Whitney is permanently restrained, enjoined and prohibited from directly or indirectly engaging in any conduct that violates Sections 6(c), 6(d), and 9(a)(2) of the Act, 7 U.S.C. §§ 9, 13b, and 13(a)(2), including:
 - a. Reporting any false, misleading or knowingly inaccurate information regarding crop or market information or conditions that affect or tend to affect the price of any commodity in interstate commerce; and
 - b. Attempting to manipulate the price of any commodity in interstate commerce or for future delivery on or subject to the rules of a registered entity.

2. Whitney is restrained, enjoined and prohibited from applying for registration or engaging in any activity requiring such registration, or acting as a principal (as defined by the National Futures Association Registration Rule 101) of any registered entity or person, or entity or person required to be registered, for a period of four (4) years from the date of this Order.

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

III. ORDER FOR CIVIL MONETARY PENALTY AND OTHER ANCILLARY RELIEF

IT IS HEREBY ORDERED that Whitney shall comply fully with the following terms, conditions and obligations relating to the payment of a civil monetary penalty.

1. A civil monetary penalty in the amount of Fifty-Five Thousand Dollars (\$55,000) is assessed against Whitney, and is due and owing upon entry of the Order, plus post-judgment interest pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1.

2. Pursuant to 28 U.S.C. § 1961, post-judgment interest shall accrue beginning on the date payment is due and shall be determined by using the Treasury Bill rate prevailing on the date of this Order.

3. Whitney 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 made payable to the Commodity Futures Trading Commission, and send it 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, OK 73169

4. If payment by electronic funds transfer is chosen, contact Marie Bateman or her successor at 405-954-6569 for instructions. Whitney shall accompany payment of the penalty with a cover letter that identifies the Defendant and the name and docket number of this proceeding. Whitney shall simultaneously transmit copies of the cover letter and the form of payment to:

Office of Cooperative Enforcement
Division of Enforcement
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, D.C. 20581

IV. MISCELLANEOUS PROVISIONS

1. Notices. All notices required by this Order shall be sent by certified mail, return receipt requested, as follows:

- a. Notice to Plaintiff Commission:
Division of Enforcement
Commodity Futures Trading Commission
1155 21st Street, N.W.
Washington, D.C. 20581
- b. Notice to Defendant Michael Whitney:
c/o Samuel F. Abernethy, Esquire
Menaker & Herrmann LLP
10 East 40th Street
New York, NY 10016-0301

2. Successors and Assigns. This Order shall inure to the benefit of and shall bind the parties' successors, assigns, heirs, beneficiaries and administrators.

3. Counterparts. This Order may be executed by the parties in counterparts and by facsimile.

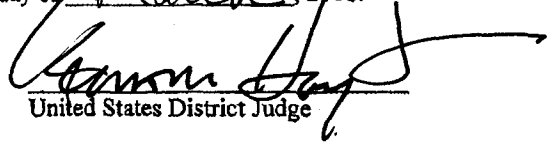
4. Entire Agreement, Amendments and Severability. This Order incorporates all of the terms and conditions of the settlement among the parties. Nothing shall serve to amend or modify this Order in any respect whatsoever, unless: (1) reduced to writing, (2) signed by all parties, and (3) approved by order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

5. Invalidation. If any provision of this Order, or if the application of any provisions or circumstances is held invalid, the remainder of this Order and the application of the provisions to any other person or circumstance shall not be affected by the holding.

6. 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 Order. No waiver in one or more instances of the breach of any provision contained in this 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 Order.


7. Continuing Jurisdiction of this Court. The Court shall retain jurisdiction of this case to assure compliance with this Order and for all other purposes related to this action.

DONE AND ORDERED this 5th day of March, 2008.

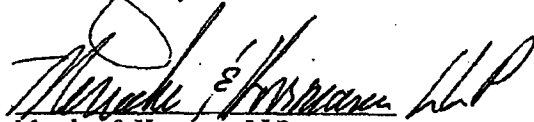

United States District Judge

Consented to and
Approved for Entry by:

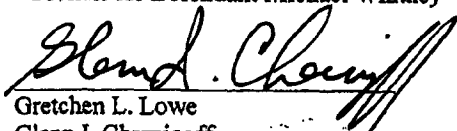
Dated: 12/19/07


Michael Whitney

Dated: 12/19/07


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fax: (212) 545-1656
sfa@mhjur.com
Counsel for Defendant Michael Whitney

Dated: 3/3/08


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Glenn I. Chernigoff
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Trading Commission
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Washington D.C. 20581
(202) 418-5305 (Chernigoff telephone)
(202) 418-5362 (facsimile)
Counsel for Plaintiff Commission