

October 29, 1999 a *Revised Ex Parte Statutory Restraining Order*, partially lifting the freeze on Monte and J. Monte's assets for reasonable and necessary living expenses.

2. To effect settlement of this action prior to a trial on the merits or further judicial proceedings, defendants Monte and Comp Tech (hereinafter referred to collectively as "defendants") consent to this *Consent Order Of Permanent Injunction And Other Equitable Relief Against Defendants Fred Monte and Comp Tech Ltd. Inc.* ("Order"). Specifically, defendants: (1) acknowledge service of the summons and complaint in this action; (2) admit this Court's personal and subject matter jurisdiction over them and this action; and (3) admit that venue properly lies with this Court; and (4) waive the entry of findings of fact and conclusions of law in this action pursuant to Fed. R. Civ. P. 52, except as provided in Part II below, which pertains to defendant Monte only.

3. By consenting to the entry of this Order, defendants neither admit nor deny the allegations of the Commission's complaint or the Findings contained in Part II of this Order, except as to jurisdiction and venue. However, defendants agree, and defendants and the Commission intend, that the allegations of the Commission's complaint and all of the Findings of Fact made by this Court and contained in Part II of this Order shall be taken as true and correct and be given preclusive effect without further proof for the purposes of any subsequent bankruptcy proceeding filed by, on behalf of, or against Monte for the purpose of determining whether the civil monetary payment ordered herein against Monte is excepted from discharge. Monte shall provide immediate notice of any bankruptcy proceeding filed by, on behalf of, or against him in the manner required by Part V, paragraph 1 of this Order.

4. Defendants agree that: (1) they will not take any action or make or permit to be made any public statement denying, directly or indirectly, any finding or conclusion contained in

this Order or creating, or tending to create, the impression that this Order is without a factual basis; and (2) no agent or employee of acting under defendants' individual or joint authority or control shall take any action or make or permit to be made any public statement denying, directly or indirectly, any of the findings or conclusions in this Order or creating, or tending to create, the impression that this Order is without factual basis, and defendants shall undertake all steps necessary to assure that all of their individual or joint agents and employees understand and comply with this agreement. Nothing in this provision shall affect defendants': (1) testimonial obligations or (2) right to take legal positions in other proceedings to which the Commission is not a party.

5. Defendants each waive: (1) all claims that they may possess under the Equal Access to Justice Act ("EAJA"), 5 U.S.C. § 504 and 28 U.S.C. § 2412, 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.*, 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 Order.

6. Defendants consent 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.

7. Defendants affirm that they have read this Order and agrees to this 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 his consent to this Order, other than as set forth specifically herein.

8. This 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. This Court therefore directs the entry of Findings of Fact and a permanent injunction and other equitable relief, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, as set forth herein.

II

FINDINGS OF FACT

9. Monte lives at 21198 Escondido Way, Boca Raton, Florida 33433-2505. Monte was the president and registered agent of Comp Tech. Monte has never been registered with the Commission in any capacity. Monte made all major decisions for Comp Tech. No one else possessed significant control over Comp Tech's activities or operations.

10. Comp Tech Ltd. Inc. ("Comp Tech") was a Florida corporation located at 138 West Palmetto Park Road, Boca Raton, Florida 33432. It was never registered with the Commission in any capacity. Comp Tech was incorporated in Florida in April 1997. Since incorporation, Comp Tech's primary business was to sell a computer-based trading system for foreign currency futures contracts after convincing customers they could successfully trade futures contracts using the Comp Tech software.

A. False Statements to Prospective Customers

11. Comp Tech solicited prospective customers through newspaper advertisements to purchase its trading system. In particular, Comp Tech's newspaper advertisements stated variously that by using the trading system individuals could average three hundred dollars (\$300) per day trading foreign currencies, and that defendants earned an average of three hundred

dollars (\$300) per day trading foreign currencies. However, neither Comp Tech nor Monte had averaged actual profits of three hundred dollars (\$300) per day by trading currencies or currency futures contracts. In fact, Monte did not make actual aggregate net profits by using Comp Tech's trading system.

12. In connection with the sale of Comp Tech's trading system to customers or prospective customers, Monte falsely stated over the telephone or in person at Comp Tech's office:

- (a) That he had many years of experience as a broker or a trader in the futures industry;
- (b) That Comp Tech's system had been successful eighty-three percent (83%) or approximately that amount of the time;
- (c) That every four (4) out of five (5) trades placed with Comp Tech's system were successful, and that only one (1) out of five (5) trades have not been successful;
- (d) That he and many other people have made or are making profits by using Comp Tech's system;
- (e) That he developed or helped to develop a software program for charting commodity futures prices called *Ensign*; and
- (f) That he or Comp Tech could obtain special reduced commission rates for Comp Tech customers at one or more FCMs.

13. Through written materials distributed by Monte at Comp Tech's office, in connection with the sale of its trading system, Comp Tech made statements, or statements to the same effect, that were false or misleading, including claims of 5-10% returns on each day of trading, limited customer losses through use of a computer and good risk-management strategy, and the existence of pre-arranged inexpensive trade opportunities with a brokerage firm, among other false assertions.

14. Comp Tech required customers who were convinced by Monte's declarations and agreed to purchase Comp Tech's trading software to enter into a written agreement

("Agreement") concerning the trading system and training. The Agreement stated that "Comp Tech . . . has developed or otherwise obtained the rights to certain methods and techniques that have been successfully applied as they relate to currency trading in the past." In addition, Comp Tech required each customer to sign a "Statement of Risk," which provided "that the parties providing the Currency Trading Training . . . are not . . . CTA's (Commodity Trading Advisors) or Commodity Brokers" and that "[t]he techniques that are being taught are those that have been found to work in the past"

B. The Trading System And Training

15. Through its trading system, Comp Tech recommended specific commodity futures transactions to its customers. At Comp Tech's office, Monte taught customers Comp Tech's trading system. In person at Comp Tech's office or from home, Monte further instructed customers in using Comp Tech's system by directing the customer to enter simulated trades, or "paper trades," in accordance with the system, and assisted customers in setting up a data feed and software for use with Comp Tech's trading system. Following training, Monte allowed customers to execute commodity interest transactions in their accounts from Comp Tech's office, and agreed to provide additional training as necessary.

16. Comp Tech stated through written materials distributed by Monte to customers or prospective customers that "*Computerized Day Trading*" is "the use of sophisticated computer programs that have an outstanding ability to give you the information you need to make precise buy and sell decisions and take much of the guesswork out of Currency Trading." Although Monte repeatedly asserted their use of Comp Tech's software resulted in successful trading, Comp Tech's trading system has not generated actual aggregate net profits.

C. Funds Received By Defendants

17. Comp Tech charged each customer six thousand dollars (\$6,000), or approximately that amount, for its trading system and training, and between approximately \$195 and \$225 per month in data feed and software fees. Since April 1997, at least (45) deposits of six thousand dollars (\$6,000), or approximately that amount, have been made into a Comp Tech checking account at NationsBank for the purchase of the trading system and training. Monte has signature authority over that checking account.

D. Defendants' Commodity Interest Trading Records

18. Monte maintained a commodity interest trading account in his name at Rosenthal Collins Group, L.L.P.'s Spike Trading Division or its predecessor-in-interest ("Spike Trading"), a Futures Commission Merchant ("FCM"), from June 1998 through October 1998. Although Monte told customers or prospective customers that he had many years experience as a futures broker or trader, Monte stated in the account opening documents that he had no investment experience in commodity futures and that he did not maintain, and never had maintained, a prior interest in any commodity futures account. In fact, through aggregate net trading losses entered from June through the end of August 1998, Monte reduced \$10,000 in Comp Tech's trading account at Spike Trading to approximately seventy-five dollars (\$75).

19. Monte managed commodity interest trading accounts under power of attorney for at least three (3) persons. In each instance, Monte incurred aggregate net trading losses. Each customer subsequently revoked their power of attorney or closed their account.

III

PERMANENT INJUNCTION

A. **IT IS HEREBY ORDERED** that defendants Monte and Comp Tech, along with any officer, agent, servant, employee and attorney, or person in active concert or participation with

them who receive actual notice of this Order by personal service or otherwise, is permanently enjoined and restrained from directly or indirectly:

1. Cheating or defrauding or attempting to cheat or defraud or willfully deceiving or attempting to deceive other persons 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 (a) hedging any transaction in interstate commerce in such commodity or the products or byproducts thereof, or (b) determining the price basis of any transaction in interstate commerce in such commodity, or (c) delivering any such commodity sold, shipped, or received in interstate commerce for the fulfillment thereof, in violation of Sections 4b(a)(i) and (iii) of the Act, 7 U.S.C. § 6b(a)(i) and (iii);
2. Employing any device, scheme, or artifice to defraud any client or participant or prospective client or participant, 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, by use of the mails or any means or instrumentality of interstate commerce, in violation of Section 4o(1) of the Act, 7 U.S.C. § 6o(1); and
3. Violating Section 4.41(a) of the Regulations, 17 C.F.R. § 4.41(a) (2000), by advertising in a manner which: (1) employs a device, scheme or artifice to defraud participants or clients or prospective participants or clients; or (2) involves any transaction, practice or course of business which operates as a fraud or deceit upon participants or clients or prospective participants or clients.

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

B. IT IS FURTHER ORDERED that Monte and Comp Tech and any person insofar as he or she is acting in the capacity of officer, agent, servant, employee, or attorney of Monte and Comp Tech, and persons in active concert or participation with him who receives actual notice of this Order by personal service or otherwise, are permanently enjoined, restrained, and prohibited from:

1. trading on or subject to the rules of any registered entity as that term is defined by Section 1(a)(20) of the Act, as amended by the Commodity Futures Modernization Act of 2000, Appendix E of Pub. L. No. 106-554, 114 Stat. 2763, 7 U.S.C. § 1(a) 29;
2. engaging in, controlling, or directing the trading for any commodity interest account on behalf of any other person or entity, whether by power of attorney or otherwise, and
4. applying for registration or seeking exemption from registration, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2000), with the Commission in any capacity, or engaging in any activity requiring such registration or exemption from registration, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2000), or acting as an agent or officer of any person registered, exempted from registration, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2000), or required to be registered with the Commission. This includes, but is not limited to, soliciting, accepting, or receiving any funds, revenue, or other property from any person, giving advice for compensation, or soliciting prospective customers, related to the purchase or sale of any commodity futures or options on commodity futures contracts, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2000).

IV.

ORDER FOR CONTINGENT CIVIL MONETARY PENALTY AGAINST DEFENDANT MONTE

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED THAT:

1. Monte shall pay a contingent civil monetary penalty in the amount of One Hundred Ten Thousand Dollars (\$110,000) pursuant to the terms of the payment plan specified below. Monte shall make an annual civil monetary penalty payment (“Annual CMP Payment”) as directed by a monitor designated by the Commission (“the Monitor”) on or before June 30th of each calendar year, starting in calendar year 2002 and continuing for ten years (or until the civil monetary penalty is paid in full, if that happens first).¹ Monte shall make such Annual CMP Payment by U.S. postal money order, certified check, bank cashier’s check, or bank money order, made payable to the Commodity Futures Trading Commission, and addressed to Dennese

¹ The Commission shall provide written notice to Monte of the name and address of the Monitor. Monte’s ten-year CMP period shall run from the calendar year December 31, 2001 through December 31, 2011. Annual CMP payments for a calendar year shall take place June 1st of the following year. Therefore, the final Annual CMP payment for the year 2012 will occur on or before June 1, 2012.

Posey, or her successor, Division of Trading and Markets, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington D.C. 20581 under cover of a letter that identifies him and the name and docket number of the proceeding. A copy of the cover letter and the form of payment shall be simultaneously transmitted to Director, Division of Enforcement, Commodity Futures Trading Commission, at 1155 21st Street, N.W., Washington, D.C. 20581.

2. The amount of Monte's Annual CMP Payments shall consist of a portion of (1) the adjusted gross income (as defined by the Internal Revenue Code) earned or received by Monte during the course of the preceding calendar year, plus (2) all other net cash receipts, net cash entitlements or net proceeds of non-cash assets received by Monte during the course of the preceding calendar year. The Annual CMP Payments will each be determined as follows:

Where Adjusted Gross Income plus Net Cash Receipts Total:	Percent of Total to be paid by Monte is:
Up to \$25,000	0%
\$25,000 - \$50,000	20% of the amount above \$25,000
\$50,000 - \$100,000	20% of the amount above \$25,000, plus 30% of the amount between \$50,000 and \$100,000
above \$100,000	20% of the amount above \$25,000, plus 30% of the amount between \$50,000 and \$100,000, plus 40% of the amount over \$100,000.

3. In the event that Monte does not make payments as directed in paragraph 2, above, the Commission may bring a proceeding or an action to enforce compliance with this Order and at its option may seek payment of the unpaid Annual CMP payment(s), or seek immediate payment of the entire amount of the civil monetary penalty required by paragraph 2. The only

issue Monte may raise in defense of such enforcement action is whether he has respectively made the Annual CMP Payment(s) as directed by the Monitor. Any action or proceeding brought by the Commission compelling payment of the Annual CMP Payments, due and owing pursuant to paragraph 2, above, or any portion thereof, or any acceptance by the Commission of partial payment of the Annual CMP Payments made by Monte, shall not be deemed a waiver of Monte's obligation to make further payments pursuant to the payment plan, or a waiver of the Commission's right to seek to compel payments of the remaining balance of the civil monetary penalty assessed against Monte.

4. Based upon Monte's sworn representations in his Financial Disclosure Statement and other evidence provided by Monte to the Commission regarding his financial condition, the Court is not ordering payment of disgorgement, restitution and a civil monetary penalty, other than as set forth herein in this Order. This determination is contingent upon the accuracy and completeness of Monte's Financial Disclosure Statement, and other evidence provided by Monte regarding his financial condition. If at any time following the entry of this Order, the Commission obtains information indicating that Monte's representations to the Commission concerning his financial condition or accounting were fraudulent, misleading, inaccurate or incomplete in any material respect as of the time such representations were made, the Commission may move this Court for an order requiring Monte to make immediate payment of his entire Restitution Obligation and/or civil monetary penalty, or of any portion thereof, the amount of which shall be determined by the Commission. In connection with any such motion, the only issues shall be whether the financial information provided by Monte was fraudulent, misleading, inaccurate or incomplete in any material respect as of the time such representations were made. In its motion, the Commission may move this Court to consider all available remedies, including, but not limited to, ordering Monte to

pay funds or transfer assets or directing the forfeiture of any assets, and the Commission may also request additional discovery. Monte may not, by way of defense to such motion, challenge the validity of his Consent to this Order, or contest any of the findings of fact or conclusions of law set forth in this Order, assert that payment of a civil monetary penalty should not be ordered, or contest the amount of the civil monetary penalty to be paid. If in such motion, the Commission moves for, and the Court orders, payment of less than the full amount of the civil monetary penalty, such motion will not be deemed a waiver of the Commission's right to require Monte to make further payment pursuant to the payment plans set forth above.

5. Monte shall comply with the following undertakings as set forth in the Order:

A. Reporting/Disclosure Requirements to be Reviewed by Monitor. Monte shall provide a sworn financial statement, CFTC Form 177, to the Monitor on or before February 28, 2002, and thereafter on or before December 31st of each calendar year, starting on December 31, 2002, and continuing through and including December 31, 2011. The financial statement shall provide:

- i. a true and complete itemization of all of Monte's rights, title and interest in (or claimed in) any asset, wherever, however and by whomever held;
- ii. an itemization, description and explanation of all transfers of assets with a value of \$1,000 or more made by or on behalf of Monte over the preceding six-month interval; and
- iii. a detailed description of the source and amount of all of Monte's income or earnings, however generated.

Monte shall provide the Monitor with complete copies of his signed federal income tax returns, including all schedules and attachments thereto (*e.g.*, IRS Forms W-2 and Forms 1099), as well as any filings he is required to submit to any state tax or revenue authority, on or before June 30th of each calendar year or as soon thereafter as the same are filed. In the event Monte moves

his residence at any time, he shall provide written notice of his new address to the Monitor and the Commission within ten (10) calendar days thereof.

B. Cooperation. Monte shall cooperate fully and expeditiously with the Monitor and the Commission in carrying out all aspects of his Annual Payments. He shall cooperate fully with the Monitor and the Commission, including providing sworn testimony, in explaining his financial income and earnings, status of assets, financial statements, asset transfers, tax returns, and shall provide any information concerning himself as may be required by the Commission. Furthermore, Monte shall provide such additional information and documents with respect thereto as may be requested by the Monitor or the Commission.

C. Fraudulent Transfers. Monte shall not transfer or cause others to transfer funds or other property to the custody, possession, or control of any member of the Monte family or any other person for the purpose of concealing such funds or property from the Monitor or the Commission.

V

OTHER PROVISIONS

IT IS FURTHER ORDERED THAT:

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

a. Notice to Commission:

Director, Division of Enforcement
Commodity Futures Trading Commission
1155 21st St. NW
Washington, DC 20581

b. Notice to Monitor:

Vice President, Compliance

National Futures Association
200 West Madison Street
Chicago, IL 60606

c. Notice to defendants:

21198 Escondido Way
Boca Raton, Florida 33433-2505

2. Entire Agreement and Amendments: This Order incorporates all of the terms and conditions of the settlement among the parties hereto. 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.

3. 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.

4. Successors and Assigns: This Order shall inure to the benefit of and be binding upon the successors, assigns, heirs, beneficiaries, and administrators of the parties hereto.

Acknowledgements: Upon being served with copies of this Order after entry by this Court, defendants shall each sign an acknowledgment of such service and serve such acknowledgment on this Court and the Commission within seven (7) calendar days.

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

6. Jurisdiction of this Court: This Court shall retain jurisdiction of this cause to

assure compliance with this Order and for all other purposes related to this action.

Done and ordered this 7th day of February 2002, at West Palm Beach, Florida.

Kenneth L. Ryskamp
United States District Court Judge

Consented to:

Fred Monte
Dated: _____

Comp Tech Ltd.
by: _____
Dated: _____

Peter M. Haas
Attorney
Commodity Futures Trading Commission
1155 21st Street, N.W.
Washington, D.C. 20581
(202) 418-5377
Dated: _____

Approved as to form:

Richard Levenstein, Esq.,
Attorney for Fred Monte, Jeanne Monte and Comp Tech Ltd.
Kramer, Sewell, Sopko & Levenstein, P.A.
853 S.E. Monterey Commons Boulevard
Stuart, Florida 34996
Dated: _____