

FILED

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

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Clerk of Court
U.S. District Court
Northern District of Indiana
Fort Wayne Division

Commodity Futures Trading
Commission,

Plaintiff,

v.

Phillip L. Ferguson, individually and
doing business as Ferguson Financial,
B&F Trading and First Investors
Group, Inc., David G. Johnson, Thomas
T. Miller, Geoffrey M. Eltzroth, James
N. Wilson, individually and as an agent
of JNW Management and JNW
Management,

Defendants.

CIVIL ACTION NO.1:00 CV 0300

Judge: Hon. William C. Lee

Magistrate Judge: Roger B. Cosby

**CONSENT ORDER OF PERMANENT INJUNCTION
AND OTHER EQUITABLE RELIEF
AGAINST DEFENDANTS JAMES N. WILSON AND JNW MANAGEMENT INC.**

**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.* (2001). On February 22, 2002, the Commission filed a First Amended Complaint ("the Amended Complaint") adding new charges against Ferguson and additional defendants,

including James N. Wilson ("Wilson") and JNW Management Inc. ("JNW"). The Amended Complaint charged Wilson, individually and as an agent of JNW, with soliciting funds for participation in Ferguson's commodity pool without the benefit of registration as an associated person ("AP") of Ferguson, 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 and prospective participants in a commodity futures pool, in violation of Section 4o(1)(B) of the Act, 7 U.S.C. § 6o(1)(B) (2001). The Amended Complaint charged JNW with liability for Wilson's violations of the Act pursuant to the *respondeat superior* provisions of Section 2(a)(1)(B) of the Act, 7 U.S.C. § 4 (2001).

2. To effect settlement of the matters alleged in the Amended Complaint against Wilson and JNW without a trial on the merits, Wilson, JNW and the Commission consent to the entry of this Consent Order of Permanent Injunction and other Equitable Relief Against James N. Wilson and JNW Management, Inc. ("Consent Order"). Wilson and JNW also: (1) waive service of Summons and the Amended Complaint; (2) admit personal and subject matter jurisdiction of this Court in this action; (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 Rule 52 of the Federal Rules of Civil Procedure, except as provided in Part II below.

3. Wilson and JNW neither admit nor deny the allegations of the Amended Complaint and the Findings of Fact contained in this Consent Order. By this language, Wilson and JNW agree that neither Wilson or JNW nor any of their employees, agents or representatives acting under their 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 Wilson or JNW's (i) testimonial obligations, or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Wilson and JNW will undertake all steps necessary to assure that all of their employees, agents and representatives understand and comply with this agreement.

4. Wilson and JNW waive: (1) all claims that they 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. Wilson and JNW further affirm that they have read the Consent Order and agree 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 them to consent to this Consent Order, other than as set forth specifically herein.

II. FINDINGS OF FACT

7. 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.

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

9. This Court has personal jurisdiction over Wilson and JNW and Wilson and JNW have waived service of Summons and the Amended Complaint and consented to the Court's jurisdiction over them.

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

11. 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.

12. Defendant James N. Wilson, whose address is 3239 East 10th Street, Anderson, Indiana, 46012, has never been registered with the Commission in any capacity. Wilson has been employed at JNW since 1985.

13. Defendant JNW Management, Inc. is an Indiana corporation located at 8606 Allisonville Rd. Suite 109, Indianapolis, Indiana 46250. JNW offers tax preparation and estate planning services.

III. ORDER FOR PERMANENT INJUNCTION

NOW THEREFORE, IT IS ORDERED THAT:

14. Wilson and JNW are permanently restrained, enjoined and prohibited from soliciting funds for participation in a commodity pool without the benefit of registration, 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 40(1)(B) of the Act.

15. Wilson and JNW are 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 their own account, for any account in which they have a direct or indirect interest and/or having any futures or options traded on their 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 Wilson, JNW and upon any person insofar as he or she is acting in the capacity of officer, agent, servant or employee of Wilson or JNW, 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 Wilson or JNW.

IV.

ORDER FOR OTHER EQUITABLE RELIEF

IT IS FURTHER ORDERED THAT:

17. DISGORGEMENT: Wilson and JNW are ordered to disgorge \$100,182.90 (One Hundred Thousand One Hundred Eighty Two Dollars and Ninety Cents), representing Wilson and JNW's gain from the conduct alleged in the Amended Complaint. Wilson and JNW shall

pay the full amount of disgorgement by electronic funds transfer, U.S. postal money order, certified check, bank cashiers check, or bank money order within ten (10) business days of entry of the Consent Order. Payment shall be to made to the Receiver appointed by the Court in this case and the Receiver shall distribute the funds pursuant to a plan of distribution submitted by the Receiver and approved by the Court.

18. CIVIL MONETARY PENALTY: Wilson and JNW shall pay a joint and several civil monetary penalty in the amount of \$110,000 (One Hundred Ten Thousand Dollars). Wilson and JNW shall pay the full amount of the civil monetary penalty 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 21st Street, NW Washington, D.C. 20581, under cover of a letter that identifies Wilson and the name and docket number of the proceeding within ten (10) business days of entry of the Consent Order.

19. DEFAULT: Any failure by Wilson to carry out any of the terms, conditions or obligations under any paragraph of this Consent Order shall constitute an Event of Default. If any Event of Default occurs the Commission shall be entitled to move the Court for imposition of all other available remedies, including, but not limited to, an order holding Wilson in contempt for violation of this Order.

20. RELIANCE ON FINANCIAL DISCLOSURE: Wilson and JNW have submitted sworn representations in a Financial Disclosure Statement dated April 30, 2003, and other evidence regarding their financial condition. The terms of the Consent Order are contingent upon the accuracy and completeness of the Financial Disclosure Statement and other evidence

provided by Wilson and JNW regarding their financial condition. If at any time following the entry of this Consent Order, the Commission obtains information indicating that Wilson or JNW's representations to the Commission concerning their financial condition 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 vacating the Consent Order, holding Wilson and JNW in contempt and authorizing the Commission to conduct additional discovery on Wilson and JNW's financial condition and to seek additional remedies. In connection with any such motion, the only issues shall be whether the financial information provided by Wilson was fraudulent, misleading, inaccurate or incomplete in any material respect as of the time such representations were made. Wilson and JNW may not, by way of defense to such motion, challenge the validity of their consent to this Consent Order, or contest any of the findings of fact or conclusions of law set forth in this Consent Order.

V.

MISCELLANEOUS PROVISIONS

21. **NOTICES**: 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:

Regional Counsel
Division of Enforcement – Central Region
Commodity Futures Trading Commission
525 W. Monroe, Suite 1100, Chicago, Illinois 60661

Notice to Wilson:

James N. Wilson
3239 East 10th Street
Anderson, Indiana 46012

Notice to JNW:

JNW Management, Inc.
8606 Allisonville Rd. Suite 109
Indianapolis, Indiana 46250

Notice to the Receiver:

R. David Boyer
Helmke, Beams, Boyer & Wagner
202 West Berry Street, Suite 300
Fort Wayne, Indiana 46802

In the event that Wilson or JNW change address(es) at any time, they shall provide written notice of their new address(es) to the Commission within ten (10) business days thereof.

22. 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.

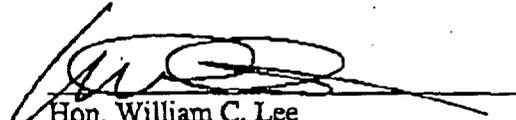
23. WAIVER: The failure of any party hereto at any time or times to require performance of any provision hereof shall in no manner affect the right of such party at a later time to enforce the same or any other provision of this Consent Order. No waiver in one or more instances of the breach of any provision 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.

24. 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.

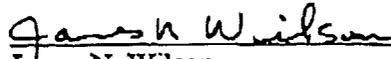
25. INVALIDATION: If any provision of this Consent Order, or the application of any provisions or circumstances is held invalid, the remainder of the Consent Order and the application of the provision to any other person or circumstance shall not be effected by the holding.

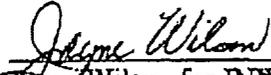
26. JURISDICTION: This Court shall retain jurisdiction of this cause to assure compliance with this Consent Order and for all other purposes related to this action.

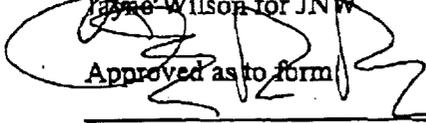
ENTERED THIS 11th of August 2003.


Hon. William C. Lee
United States District Court Judge

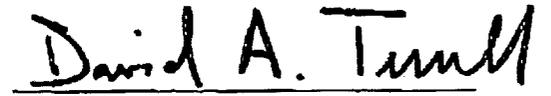
Consented to and approved for entry by:


James N. Wilson


James Wilson for JNW


Approved as to form

Milford M. Miller, Esq.
Miller Carson Boxberger and Murphy
Attorney for James N. Wilson and JNW Management, Inc.


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