

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION

COMMODITY FUTURES TRADING  
COMMISSION,

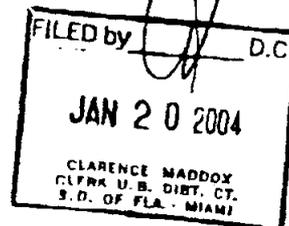
Plaintiff,

vs.

WORLD BANKS FOREIGN CURRENCY  
TRADES, INC., INTERNATIONAL INVESTORS  
TRADING GROUP, INC., DANIEL LEDOUX,  
GAVIN LIVOTI, BRYANT CROWDER, ERIN  
VALKO, CHRISTOPHER BOUTCHIE, and  
FRANK DESANTIS,

Defendants.

CIVIL ACTION NO.  
01-7402-CIV-SEITZ/GARBER



CONSENT ORDER OF PERMANENT INJUNCTION  
AND OTHER EQUITABLE RELIEF AGAINST DEFENDANTS  
FRANK DESANTIS, CHRISTOPHER BOUTCHIE AND ERIN VALKO

Pursuant to the agreement of Defendants Erin Valko ("Valko"), Frank DeSantis ("DeSantis"), and Christopher Boutchie ("Boutchie") (collectively, "Defendants") and Plaintiff Commodity Futures Trading Commission ("the Commission") (collectively referred to herein as "Parties"), the Parties hereby agree to entry of an Order as follows:

I. INTRODUCTION

1. The Commission filed a Complaint against Defendants 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).

2. Defendants answered the Complaint, denying liability and asserting various affirmative defenses.

12/7/04

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3. To effect settlement of the matters alleged in the Complaint without a trial on the merits, Defendants, along with the Commission, consent to the entry of this Consent Order Of Permanent Injunction And Other Equitable Relief ("Consent Order").

4. Defendants also: (1) admit both personal and subject matter jurisdiction of this Court in this action for all acts arising after December 21, 2000; (2) admit that venue properly lies with this Court; and (3) generally 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 herein.

5. By consenting to the entry of this Order, Defendants neither admit nor deny the allegations of the Complaint and the Findings of Fact contained in this Consent Order, except as to jurisdiction and venue. However, Defendants agree and intend that the allegations of the Complaint and all of the Findings of Fact made by this Court and contained herein shall be taken as true and correct and be given preclusive effect without further proof for the purpose of any subsequent bankruptcy proceeding filed by, or on behalf of, or against Defendant DeSantis and/or Boutchie and/or Valko, for the purpose of determining whether Defendant DeSantis and/or Boutchie and/or Valko's restitution obligation and/or other payments ordered herein are excepted from discharge. Defendants DeSantis, Boutchie, and Valko also shall provide immediate notice of any bankruptcy filed by, or on behalf of, or against any of them. Neither the entry of this Consent Order nor the Findings of Fact contained herein shall be admissible for any other purpose.

6. By this language, Defendants DeSantis, Boutchie, and Valko agree they shall not take any action or make any public statements denying, directly or indirectly, any allegation in the Complaint or creating, or tending to create, the impression that the Complaint is without factual basis; provided, however, that nothing in this provision affects Defendants DeSantis' and/or

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Boutchie's and/or Valko's (i) testimonial obligations, or (ii) their right to take legal positions in other proceedings to which the Commission is not a party.

7. Defendants waive: (1) all claims that any of them 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.* (2002), 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.

8. 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.

9. Defendants 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 have been made by the Commission or any member, officer, agent or representative thereof, or by any other person, to induce any of them to consent to this Consent Order, other than as set forth specifically herein.

10. 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 6e of the Act, 7 U.S.C. § 13a-1 (2001), as set forth herein.

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## II. PROCEDURAL BACKGROUND

11. On August 23, 2001, the Commission filed its original three-count Complaint in this action alleging that Defendants World Banks Foreign Currency Traders, Inc. ("World Banks"), International Investors Trading Group, Inc. ("IITG"), Gavin Livoti ("Livoti"), Daniel Ledoux ("Ledoux"), and Bryant Crowder ("Crowder") fraudulently telemarketed foreign currency options contracts to individuals in the United States and Canada in violation of the Commodity Exchange Act (the "Act"), as amended by the Commodity Futures Modernization Act of 2000 ("CFMA"), Pub. L. 106-554, 114 Stat. 2763 (2000).<sup>1</sup> Specifically, the Commission alleged that Defendants violated the Act and Commission regulations by offering and selling illegal foreign currency options contracts, failing to make proper disclosures, and engaging in fraud in connection with the offer and sale of options contracts.

12. On August 24, 2001, the Court granted the Commission's *ex parte* motion for a statutory restraining order against Defendants World Banks, IITG, Ledoux, Livoti, and Crowder, freezing their assets, prohibiting them from destroying records, requiring them to provide the Commission with a full accounting of funds and allowing the Commission to inspect and copy Defendants' records.

13. On September 7, 2001, the Court held a hearing on the Commission's motion for preliminary injunction. Defendants Ledoux and Livoti consented to the entry of a preliminary injunction. Defendants World Banks, IITG, and Crowder failed to appear.<sup>2</sup> As a result, the Court preliminarily enjoined World Banks, IITG, Ledoux, Livoti, and Crowder from violating

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<sup>1</sup> On December 21, 2000, Congress enacted the CFMA "to clarify the jurisdiction of the [Commission] over certain retail foreign exchange transactions and bucket shops that may not otherwise be regulated." *CFTC v. Buragosh*, 278 F.3d 319, 129 (4<sup>th</sup> Cir. 2002) (quoting CFMA § 2(5), Pub. L. No. 106-554, 114 Stat. 2763 (2000)).

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the Act, from directly or indirectly soliciting or accepting new customers or deposits for commodities futures or options contracts, and continued enforcement of the Court's August 24, 2001 Order freezing Defendants' assets and requiring an accounting.

14. Thereafter, on March 7, 2002, the Commission filed a First Amended Complaint, adding Defendants Valko, Boutchie, and DeSantis to this action. Specifically, the Commission claims in Count II of the First Amended Complaint that Valko offered and sold commodity options not conducted on a board of trade designated by the Commission as a contract market in violation of 7 U.S.C. § 6c(b)<sup>3</sup> and 17 C.F.R. §§ 32.11 and 33.3(a). The Commission also charged Boutchie and DeSantis in Counts I through III with controlling person liability under 7 U.S.C. § 6c(b) for fraud, the offer and sale of commodity options not conducted on a board of trade designated by the Commission as a contract market, and failure to make proper disclosures.

15. On April 29, 2002, the Clerk entered defaults against Defendants World Banks, IITG, and Crowder for failure to appear, answer or otherwise plead. See [DE-54].

16. On December 26, 2002, the Clerk entered default against Defendant Ledoux. See [DE-83].

17. On May 14, 2003, the Commission moved for final default judgment against Defendants World Banks, IITG, Crowder, and Ledoux.

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<sup>2</sup> The Commission confirmed that World Banks and IITG received notice of the hearing. The Commission also confirmed that Crowder could not be found and had not reported to his probation officer since June of 2001. See [DE-23].

<sup>3</sup> 7 U.S.C. § 6c(b) provides:

No person shall offer to enter into, enter into or confirm the execution of, any transaction involving any commodity regulated under this chapter which is of the character of, or is commonly known to the trade as, an "option", "privilege," "indemnity," "bid", "offer", "put", "call", "advance guaranty", or "decline guaranty", contrary to any rule, regulation, or order of the [Commission] prohibiting any such transaction or allowing any such transaction under such terms and conditions as the [Commission] shall prescribe. Any such order, rule, or regulation may be made only after notice and opportunity for hearing, and the [Commission] may set different terms and conditions for different markets.

7 U.S.C. § 6c(b).

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18. The Commission also moved for partial summary judgment as to liability of Defendants Valko, DeSantis, Boutchie, and Livoti. Defendants Valko, DeSantis, and Boutchie responded to the Commission's motion and filed a cross-motion for partial summary judgment.

19. On August 15, 2003, the Court entered an Order Granting Plaintiff's Motion for Partial Summary Judgment as to Liability of Defendants Christopher Boutchie and Gavin Livoti and Denying Plaintiff's Motion for Partial Summary Judgment as to Liability of Defendants Erin Valko and Frank DeSantis and Denying Defendants' Cross-Motion for Partial Summary Judgment.

**III. FINDINGS OF FACT**

**A. Parties**

20. 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.

21. Frank DeSantis is an individual residing at 2410 NE 31 Court, Lighthouse Point, Florida, 33064. DeSantis has been registered with the Commission in various capacities since 1997.

22. Christopher Boutchie is an individual residing at 7502 SW 7<sup>th</sup> Court, Pompano Beach, Florida 33068. Boutchie has never been registered with the Commission in any capacity.

23. Erin Valko is an individual residing at 2410 NE 31 Court, Lighthouse Point, Florida, 33064. Valko has been registered with the Commission as a principal of International Investors Corporation since May 2001.

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**B. World Banks and IITG**

24. From June 2000 to approximately March 2001, World Banks and IITG sold foreign currency options contracts to customers in the United States and Canada.

25. As part of their telemarketing operation, World Banks and IITG telemarketers urged prospective customers to purchase options in Eurodollars or the Japanese Yen in order to capitalize on markets that Defendants represented would move dramatically.

26. The Commission has never designated World Banks or IITG as contract markets for the sale of foreign currency options or any other commodities.

**C. Individual Defendants**

**i. Boutchie**

27. Boutchie incorporated World Banks and IITG and served as director and officer of both corporations.

28. Boutchie held himself out to be the owner and president of World Banks and IITG, and managed the daily operations of both corporations.

29. Among his numerous responsibilities, Boutchie hired employees, supervised and trained telemarketers, prepared corporate brochures, and reviewed the foreign currency options trades sold to World Banks and IITG customers.

30. In January 2001, having become aware of the new changes in the CFMA, Boutchie informed World Banks telemarketers that the company was going to have to cease operations.

31. Boutchie admits that World Banks did not completely suspend all business operations until February 2001.

32. From the time World Banks was formed in June 2000 until approximately February 2001, Boutchie was aware that World Banks was engaged in the sale of foreign currency options.

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Boutchie testified that he paid the monthly rent for the leasehold, and signed the checks on behalf of the company.

**ii. DeSantis**

33. DeSantis served as a consultant for World Banks through his work at International Investments Holdings Corp. ("IHC"), a separate corporate entity.

34. In July of 2000, DeSantis, signing as "President of IHC," entered into a written agreement with World Banks to assist in, among other things, performing cashiering functions, maintaining copies of all accounts, and delivering daily account status reports to World Banks including trade confirmations, open positions, account balances, and commission charges.

35. DeSantis knew at all times that World Banks and ITG solicited and sold foreign currency options to customers. DeSantis had authority over various management functions at World Banks.

**iii. Valko**

36. Valko served as the sole officer, director, owner and employee of Compliance and Customer Care ("CCC"), a separate corporate entity which provided bookkeeping and compliance services for World Banks, and briefly provided compliance work for ITG.

37. In particular, Valko would receive customers' "tickets" and confirm that the customers gave their permission to make the transaction.

38. Valko would tape record the conversation with the customer and then e-mail or call IHC to inform IHC about the ticket.

39. Valko was also responsible for performing data entry functions and making sure that World Banks followed their compliance policies.

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40. Valko knew at all times that World Banks and IITG solicited and sold foreign currency options to customers.

#### IV. CONCLUSIONS OF LAW

41. The aforementioned actions of Defendants Boutchie, DeSantis, and Valko, which took place after December 21, 2000, constituted violations of Section 4c(b) of the Commodity Exchange Act, 7 U.S.C. § 6c(b), and the Commission Regulations 32.11 and 33.3(a), 17 C.F.R. 32.11, 33.3(a) where Defendants Boutchie, DeSantis, and Valko offered to enter into, entered into, executed, confirmed the execution of, or conducted business for the purpose of soliciting, accepting any order for, or otherwise dealing in any transaction in, or in connection with, a commodity option when: (a) such transactions have not been conducted on or subject to the rules of a board of trade which has been designated by the Commission as a "contract market" for such commodity, and (b) such contracts have not been executed or consummated by or through a member of such contract market.

42. Since December 21, 2000, World Banks, IITG and the World Banks telemarketers, in or in connection with an offer to enter into, the entry into, or the confirmation of the execution of, commodity option transactions, have cheated, defrauded or deceived, or attempted to cheat, defraud, or deceive other persons by making false, deceptive, or misleading representations of material facts and by failing to disclose material facts, in soliciting customers or potential customers, including, but not limited to:

- (a) false representations that customers will reap substantial profits in a short period;
- (b) false representations that the World Banks Common Enterprise investment scheme involves little or no risk; and
- (c) failure to disclose the effect of commissions and fees on the potential to profit in the context of claims that a customer will reap substantial profit.

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43. Each misrepresentation, omission and willful deception made since December 21, 2000, is a separate and distinct violation of Section 4c(b) and Commission Regulation 32.9.

44. Boutchie, directly or indirectly, controlled World Banks and IITG and did not act in good faith, or knowingly induced, directly or indirectly, the acts constituting these violations of Section 4c(b) of the Act, and Commission Regulation 32.9. Boutchie is therefore liable for these violations by operation of Section 13(b) of the Act, 7 U.S.C. § 13c(b).

45. DeSantis, directly or indirectly, controlled World Banks and did not act in good faith, or knowingly induced, directly or indirectly, the acts constituting these violations of Section 4c(b) of the Act, and Commission Regulation 32.9. DeSantis is therefore liable for these violations by operation of Section 13(b) of the Act, 7 U.S.C. § 13c(b).

**V. ORDER FOR PERMANENT INJUNCTION**

Based upon the foregoing findings of fact and conclusions of law and the consent of the Parties, it is ORDERED AND ADJUDGED that:

46. Defendants DeSantis, Boutchie, and Valko are permanently restrained, enjoined and prohibited from directly or indirectly:

- a. In or in connection with an offer to enter into, the entry into, or the confirmation of the execution of, any commodity option transactions: (1) cheating or defrauding or attempting to cheat or defraud any persons; and (2) deceiving or attempting to deceive any person, in violation of Section 4c(b) of the Act and Commission Regulation 32.9;
- b. Offering to enter into, entering into, executing, confirming the execution of, or conducting business for the purpose of soliciting, accepting any order for, or otherwise dealing in any transaction in, or in connection with,

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a commodity option when: (1) such transactions have not been conducted on or subject to the rules of a board of trade which has been designated by the Commission as a "contract market" for such commodity; and (2) such contracts have not been executed or consummated by or through a member of such contract market, in violation of Section 4c(b) of the Act, and Commission Regulations 32.11 and 33.3(a);

- c. Soliciting, receiving, or accepting any funds in connection with the purchase or sale of any commodity futures contract or any option on a futures contract;
- d. Controlling or directing the trading of any commodity futures or commodity options account for or on behalf of any person or entity, directly or indirectly, whether by power of attorney or otherwise;
- e. 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); and
- f. Trading on or subject to the rules of any registered entity, as that term is defined in Section 1a(29) of the Act, 7 U.S.C. § 1a(29).

47. The injunctive provisions of this Consent Order shall be binding upon Defendants DeSantis, Boutchie, and Valko, upon any person insofar as he or she is acting in the capacity of

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officer, agent, servant or employee of Defendant DeSantis and/or Boutchie and/or Valko, 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 DeSantis and/or Boutchie and/or Valko.

**VI. ORDER FOR OTHER EQUITABLE RELIEF**

IT IS FURTHER ORDERED THAT:

48. **RESTITUTION:** A total of \$600,000.00 in restitution is hereby ordered. Defendant DeSantis shall pay a total of \$300,000.00 in restitution to customers and Defendant Boutchie shall pay a total of \$300,000.00 in restitution to customers.

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

- a. Within 180 calendar days after entry of this Consent Order,
  1. Defendant DeSantis shall pay the amount of \$130,000.00.
    - (i) Payment shall be made by electronic funds transfer, U.S. postal money order, certified check, bank cashiers check, or bank money order.
    - (ii) Payment shall be made to Daniel A. Driscoll, Esq., Executive Vice President, Chief Compliance Officer, or his successor, at the following address: National Futures Association, 200 West Madison Street, Chicago, Illinois 60606, who shall distribute the funds to the investors as described in subsection (c) below.
- b. Within two (2) years after entry of this Consent Order,
  1. Defendant DeSantis shall pay the amount of \$170,000.00.

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- (i) Payment shall be made by electronic funds transfer, U.S. postal money order, certified check, bank cashiers check, or bank money order.
- c. Within ten (10) calendar years after entry of this Consent Order,
1. Defendant Boutchie shall pay the entire amount of \$300,000.00.
- (i) Until the \$300,000 is paid in full, Boutchie shall make equal payments, including 6% interest, beginning six (6) months from the date of this Order and continuing every six (6) months thereafter.
- (ii) In the event that Boutchie makes full payment within two (2) calendar years of this Order, interest payments shall be credited toward the principal amount of \$300,000.
- (iii) Payments shall be made 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 Defendant Boutchie, as well as the name and docket number of the proceeding.
- d. The National Futures Association shall be designated as the Monitor for a period beginning with the date of entry of this Consent Order and continuing until distribution of the last payment called for by this Consent

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Order. As Monitor, the National Futures Association shall distribute restitution payments according to the percentage interests set forth in Attachment A. The Commission will provide the National Futures Association with the addresses of these individuals.

**VII. MISCELLANEOUS PROVISIONS**

50. 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.

51. 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.

52. 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.

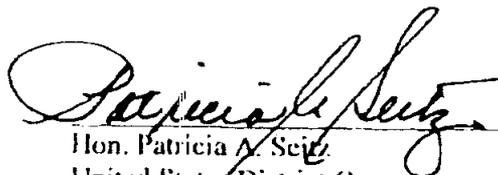
53. ACKNOWLEDGEMENTS: Upon being served with copies of this Consent Order after entry by the Court, Defendants DeSantis, Bontchie and Valko shall sign acknowledgements of such service and serve such acknowledgments on this Court and the Commission within seven (7) calendar days.

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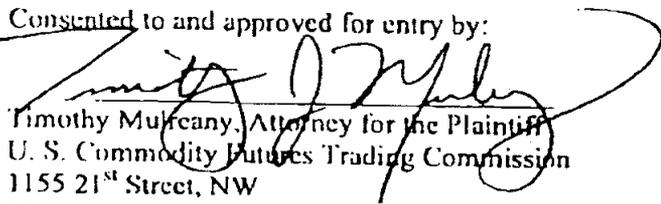
54. INVALIDATION: If any provision of this Consent Order, or the application of any provisions or circumstances is held invalid, the remainder of the Consent Order and the application of the provision to any other person or circumstance shall not be effected by the holding.

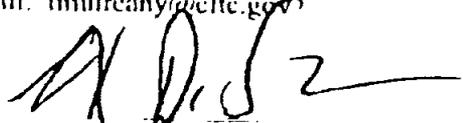
55. JURISDICTION: This Court shall retain jurisdiction of this cause to assure compliance with this Consent Order and for all other purposes related to this action.

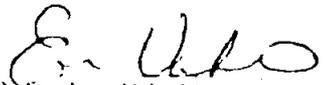
ENTERED THIS 20<sup>th</sup> of January, 2004.

  
Hon. Patricia A. Seitz  
United States District Court

Consented to and approved for entry by:

  
Timothy Mulreany, Attorney for the Plaintiff  
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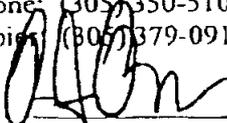
  
Defendant Frank DeSantis

  
Defendant Erin Valko

  
Defendant Christopher Boutchie *see page 17 attached for signature*

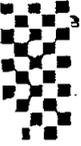
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54. INVALIDATION: If any provision of this Consent Order, or the application of any provisions or circumstances is held invalid, the remainder of the Consent Order and the application of the provision to any other person or circumstance shall not be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

55. 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 \_\_\_ of \_\_\_\_\_, 2004.

\_\_\_\_\_  
Hon. Patricia A. Seitz  
United States District Court

Consented to and approved for carry by:

\_\_\_\_\_  
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\_\_\_\_\_  
Defendant Frank DeSantis

\_\_\_\_\_  
Defendant Eric Valko

  
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Defendant Christopher Boutchie

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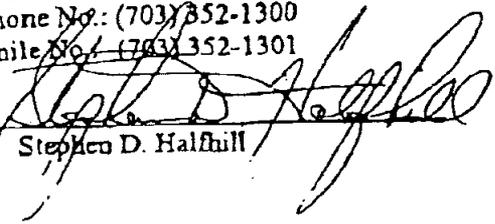
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Stephen D. Halfhill

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