

1 1 #30 198 11/16/98

RETURN TO CASHIERS

NOV 9 - 1998

U.S. DISTRICT COURT
NOV 16 1998

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RECEIVED
JUDGMENT CLERK'S OFFICE

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

STERLING FOSTER & COMPANY, INC.
ADAM LIEBERMAN, CRAIG KELLERMAN,
FRANK MONROIG, and DENNIS RUEB,

Defendants.

97 Civ. 1077 (BSJ)

FINAL CONSENT
JUDGMENT OF
PERMANENT
INJUNCTION AND
OTHER RELIEF
AS TO DEFENDANT
ADAM LIEBERMAN

98, 2552

Plaintiff Securities and Exchange Commission ("Commission"), having filed a Complaint for injunctive and other relief on February 14, 1997 ("Complaint") charging, among others, Defendant Adam Lieberman ("Lieberman") with violations of Section 17(a) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. § 77q(a), and Sections 10(b) and 15(c) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. §§ 78j(b) and 78o(c)(1), and Rules 10b-3, 10b-5, 10b-6, 15c1-2, and 15c1-8 thereunder, 17 C.F.R. § 240.10b-3, .10b-5, .10b-6, .15c1-2, and .15c1-8, and Lieberman, having executed the annexed Consent of Defendant Adam Lieberman ("Lieberman"), having admitted to the jurisdiction of this Court over him and over the subject matter of this action, having waived the filing of an Answer pursuant to Rule 12 of the Federal Rules of Civil Procedure and the entry of findings of fact and con-

MICROFILM
NOV 17 1998
-900AM

clusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure, and, without admitting or denying the allegations contained in the Complaint (except as to jurisdiction, which are admitted), having consented to the entry of this Final Consent Judgment Of Permanent Injunction and Other Relief As To Defendant Adam Lieberman ("Final Judgment"), without further notice:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Lieberman hereby is permanently enjoined and restrained, directly or indirectly, singly or in concert, in the offer or sale of any security, by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails, from:

- (1) employing any device, scheme, or artifice to defraud;
- (2) obtaining money or property by means of any untrue statement of material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or,
- (3) engaging in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser,

in violation of Section 17(a) of the Securities Act of 1933, 15 U.S.C. § 77q(a).

II.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Lieberman hereby is permanently enjoined and restrained, directly or indirectly, singly or in concert, in connection with the purchase or sale of any security, by the use of any means or instrumentalities of interstate commerce or of the mails, or of any facility of any national securities exchange, from:

- (1) employing any device, scheme, or artifice to defraud;
- (2) making any untrue statement of a material fact or omitting to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or
- (3) engaging in any act, transaction, practice or course of business which operates or would operate as a fraud or deceit upon any person,

in violation of Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5.

III.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Lieberman, as a controlling person pursuant to Section 20(a) of the Exchange Act, 15 U.S.C. § 78t(a), hereby is permanently enjoined and restrained from, directly or indirectly, singly or in concert, making use of the mails or any means or instrumentality

of interstate commerce to effect any transaction in, or to induce the purchase or sale of, any security (other than commercial paper, bankers' acceptances, or commercial bills) otherwise than on a national securities exchange of which it is a member, by means of any manipulative, deceptive, or other fraudulent device or contrivance, as defined by rules and regulations of the Commission, including, without limitation, by means of

- (A) any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person; or
- (B) any untrue statement of a material fact and any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading, which statement or omission is made with knowledge or reasonable grounds to believe that it is untrue or misleading,

in violation of Sections 10(b) and 15(c)(1) of the Exchange Act, 15 U.S.C. §§ 78j(b), 78o(c)(1), and Rules 10b-3 and 15c1-2, 17 C.F.R. §§ 240.10b-3 and .15c1-2.

IV.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that,

Lieberman hereby is permanently enjoined and restrained from, while acting as an:

- (A) (1) an underwriter, who is a person who has agreed with an issuer or other person on whose behalf a distribution is to be made (a) to purchase

securities for distribution or (b) to distribute securities for or on behalf of such issuer or other person or (c) to manage or supervise a distribution of securities for or on behalf of such issuer or other person, or

- (2) a prospective underwriter, who is a person who (a) has decided to submit a bid to become an underwriter of securities as to which issuer or other person on whose behalf the distribution is to be made, has issued, directly or indirectly, an invitation for bids, or (b) has reached an understanding, with the issuer, or other person on whose behalf a distribution is to be made, that he or it will become an underwriter, whether or not the terms and conditions of the underwriting have been agreed upon, in a particular distribution of securities, which is an offering of securities, whether or not such offering is subject to registration under the Securities Act, that is distinguished from ordinary trading transactions by the magnitude of the offering and presence of special selling efforts and selling methods, or
- (B) the issuer or other person on whose behalf such distribution is being made, or
- (C) a broker, dealer, or other person who has agreed to participate or is participating in such distribution, or

(D) an "affiliated purchaser," who is:

(1) a person, directly or indirectly, acting in concert with a distribution participant in connection with the acquisition or distribution of any security which is the subject of such distribution, or any security of the same class and series, or any right to purchase any such security, or

(2) an affiliate who, directly or indirectly, controls the purchases of such securities by a distribution participant, whose purchases are controlled by a distribution participant, or whose purchases are under common control with those of a distribution participant, or

(3) an affiliate that is a broker or a dealer, unless the business of the broker or dealer consists solely of effecting transactions in "exempted securities," or

(4) an affiliate (other than a broker or a dealer) that regularly purchases securities, through a broker-dealer or otherwise, for its own account or for the account of others, or recommends or exercises investment discretion with respect to the purchase or sale of securities, unless:

(a) the affiliate is a separate and distinct organizational entity from, with no officers (or persons performing similar functions)

or employees (other than clerical, ministerial, or support personnel) in common with, the distribution participant;

(b) the affiliate and the distribution participant have separate employee compensation arrangements; and

(c) the affiliate's bids for, purchases of, and inducements to purchase the securities subject to Rule 10b-6, 17 C.F.R. § 240.10b-6, are made in the ordinary course of its business,

from directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, either alone or with one or more other persons, to bid for or purchase for any account in which Lieberman has a beneficial interest, any security which is the subject of such distribution, or any security of the same class and series, or any right to purchase any such security, or to attempt to induce any person to purchase any such security or right, until after Lieberman has completed his participation in such distribution,

in violation of Rule 10b-6 thereunder, 17 C.F.R. § 240.10b-6.

V.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, Lieberman, as a controlling person pursuant to Section 20(a) of the Exchange Act, 15 U.S.C. § 78t(a), hereby is permanently enjoined and restrained from, while participating or otherwise having a financial interest in the primary or secondary distribution of any security which is not admitted to trading on a national securities exchange, representing to a customer that such security is being offered to the customer "at the market" or at a price related to the market price, without knowing or having reasonable grounds to believe that a market for such security exists other than that made, created, or controlled by them, or by any person for whom they are acting or with whom they are associated in such distribution, or by any person controlled by, controlling or under common control with them, in violation of Section 15(c)(1) of the Exchange Act, 15 U.S.C. § 78o(c)(1), and 15c1-8, 17 C.F.R. § 240.15c1-8.

VI.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Lieberman pay disgorgement in the amount of \$75,000,000, jointly and severally with Sterling Foster & Company, Inc. and others who may be found liable, representing his gains from the conduct alleged in the Complaint, plus pre-judgment interest thereon in the amount of \$_____. Based upon Lieberman's sworn representations in his

Statement of Financial Condition, dated June 10, 1998, and Supplemental Statement of Financial Condition, dated on August __, 1998, and submitted to the Commission (collectively "Financial Statements"), payment of the disgorgement and pre-judgment interest is waived down to \$11,496,064.21 plus the proceeds of the sale, at fair market prices, of the assets referenced in the Supplemental Statement of Financial Condition, contingent upon the accuracy and completeness of the Financial Statements. Payment of the disgorgement shall be made within one hundred and eighty (180) days of the entry of this Final Judgment or, upon Lieberman's application to the Court for an extension, within such reasonable time as the Court shall order. Prior to the entry of this Final Judgment, Lieberman has made payments totaling \$11,496,064.21 to the United States Treasury and the United States Attorney's Office for the Southern District of New York in connection with *United States v. Lieberman*, 98 Cr. . Such payments and any future payments in *United States v. Lieberman* shall be credited against the disgorgement to be paid by Lieberman pursuant to this paragraph.

VII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the monies to be paid pursuant to paragraph VI. shall be paid to the "Clerk of the Court - Southern District of New York" at the United States District Court for the Southern District of New York, 500 Pearl Street, New York, New York 10007, under cover of a

letter that identifies Lieberman and the name and civil action number of this litigation.

A copy of the cover letter and payment shall simultaneously be transmitted to Carmen J. Lawrence, Regional Director, U.S. Securities and Exchange Commission, Northeast Regional Office, 7 World Trade Center, 13th Floor, New York, New York, 10048,

Attn: Anahaita N. Kotval, Esq.

The monies to be paid pursuant to paragraph VI. shall be deposited into an interest-bearing money market account with the Court Registry Investment System (the "CRIS Account"). Interest earned on the funds in the CRIS Account shall be credited to the CRIS Account and shall thereafter be treated in the same manner as principal. Further, funds in the CRIS Account shall be held until further order of the Court, and shall be disbursed in accordance with a plan of distribution to be submitted by the Commission and approved by the Court. In no event shall any portion of the account be returned to Lieberman, his successors or assigns.

VIII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that based upon Lieberman's sworn representations in the Financial Statements, and submitted to the Commission, the Court is not ordering him to pay a civil penalty pursuant to Section 20(a) of the Securities Act, 15 U.S.C. §77t(a), and Section 21(d) of the Exchange Act, 15 U.S.C. §78u(d). The determination not to impose a civil penalty and

to waive partial payment of disgorgement and pre-judgment interest thereon is contingent upon the accuracy and completeness of the Financial Statements. If at any time following the entry of this Final Judgment the Commission obtains information indicating that Lieberman's representations to the Commission concerning his assets, income, liabilities, or net worth were fraudulent, misleading, inaccurate or incomplete in any material respect as of the time such representations were made, the Commission may, at its sole discretion and without prior notice to Lieberman, petition this Court for an order requiring Lieberman to pay the remaining disgorgement, pre-judgment and post-judgment interest thereon, and a civil penalty. In connection with any such petition, the only issues shall be whether the financial information provided by Lieberman was fraudulent, misleading, inaccurate or incomplete in any material respect as of the time such representations were made, and the amount of civil penalty to be imposed. In its petition, the Commission may move this Court to consider all available remedies, including, but not limited to, ordering Lieberman to pay funds or assets, directing the forfeiture of any assets, or sanctions for contempt of this Final Judgment, and the Commission may also request additional discovery. Lieberman may not, by way of defense to such petition, challenge the validity of this Consent or the Final Judgment, contest the allegations in the Complaint filed by the Commission, the amount

of disgorgement and interest, or assert that disgorgement or the payment of a civil penalty should not be ordered.

IX.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the provisions of the annexed Consent be, and the same hereby are, incorporated in this Final Judgment with the same force and effect as if fully set forth herein.

X.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Final Judgment is binding upon Lieberman, his agents, servants, employees, and attorneys, and upon those persons in active concert or participation with him who receive actual notice of this Final Judgment by personal service or otherwise, pursuant to Federal Rule of Civil Procedure 65(d).

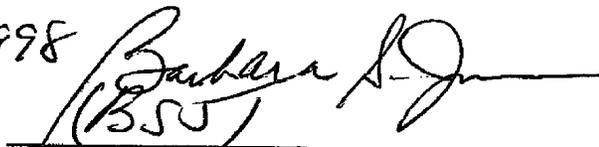
XI.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, there being no just reason for delay, the Clerk of the Court is hereby directed to enter this Final Judgment pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

SO ORDERED.

Dated:

November 11, 1998

Handwritten signature of Barbara S. Jones in black ink, written over a horizontal line. The signature is cursive and includes the initials 'BSJ' in parentheses below the name.

BARBARA S. JONES
United States District Judge

THIS DOCUMENT WAS ENTERED
ON THE DOCKET ON _____