

**BEFORE THE COMMISSIONER OF COMMERCE AND INSURANCE
OF THE STATE OF TENNESSEE AT NASHVILLE**

TENNESSEE SECURITIES DIVISION,)
Petitioner)
vs.)
RIVER FRONT CAPITAL, L.L.C.,)
HOME FRONT TRADING, L.L.C., AND)
EPHRAIM G. KUTNER)
Respondents)

Order No. 04-001

CONSENT ORDER

The Tennessee Securities Division (“Division”), and River Front Capital, L.L.C., Home Front Trading, L.L.C., and Ephraim G. Kutner, Respondents herein, agree to the entry of this Agreed Order in accordance with Tenn. Code Ann. § 48-2-116 of the Tennessee Securities Act of 1980, as amended, Tenn. Code Ann. § 48-2-101, et seq. (“Act”), which states that the Commissioner of Commerce and Insurance (“Commissioner”) from time to time may make such orders as are necessary to carry out the provisions of the Act.

GENERAL STIPULATIONS

1. It is expressly understood that this Consent Order is subject to the Commissioner’s acceptance and has no force and effect until such acceptance is evidenced by the entry of the Commissioner.
2. This Consent Order is executed by the Respondents for the purpose of avoiding further administrative action with respect to this cause. Furthermore, should this

Consent Order not be accepted by the Commissioner, it is agreed that presentation to and consideration of this Consent Order by the Commissioner shall not unfairly or illegally prejudice the Commissioner from further participation or resolution of these proceedings.

3. Respondents fully understand that this Consent Order will in no way preclude additional proceedings by the Commissioner against the Respondent for acts or omissions not specifically addressed in this Consent Order for facts and/or omissions that do not arise from the facts or transactions herein addressed.

4. Respondents expressly waive all further procedural steps, and expressly waive all rights to seek judicial review of or to otherwise challenge or contest the validity of the Consent Order, the stipulations and imposition of discipline contained herein, and the consideration and entry of said Consent Order by the Commissioner.

FINDINGS OF FACT

1. The Tennessee Securities Act of 1980, as amended, Tenn. Code Ann. § 48-2-101, et seq. (the "Act"), places the responsibility for the administration of the Act on the Commissioner of Commerce and Insurance ("Commissioner"). The Division is the lawful agent through which the Commissioner discharges this responsibility. Tenn. Code Ann. § 48-2-115.

2. Respondent, River Front Capital, L.L.C. (hereinafter referred to as "RFC"), was a Tennessee business entity located in Memphis, Tennessee. RFC has never been registered as a broker-dealer, agent of a broker-dealer, or investment adviser with the Division. RFC is no longer in existence.

3. Respondent, Home Front Trading, L.L.C. (hereinafter referred to as "HFT"), was a Tennessee business entity located in Memphis, Tennessee. HFT has never been registered as a broker-dealer, agent of a broker-dealer, or investment adviser with the

Division. HFT is no longer in existence.

4. The Respondent, Ephraim G. Kutner (hereinafter referred to as "Kutner"), is a citizen and resident of New York, who may be contacted through his attorney, Jeff Schwartz, Esq., at 225 Broadway, Suite 2100, New York, New York 10007. Kutner was the Director, Officer, Affiliate, Agent, Employee, Servant, Manager, Governor, Member, Partner, Proprietor and/or other controlling or affiliated person of River Front Capital, L.L.C., and/or Home Front Trading, L.L.C. Kutner was registered in Tennessee with the Division as an agent for Morgan, Keegan & Company from 07/1993 to 05/1994. Kutner was registered in Tennessee with the Division as an agent for Smith Barney, Inc. from 06/1994 to 08/1996. Kutner was registered in Tennessee with the Division as an agent for Republic Financial Services Corp. from 03/1999 to 07/1999. Kutner is not currently registered with the Division as a broker-dealer or agent of a broker-dealer or investment adviser in Tennessee. Kutner's CRD number is 2387778.

5. On or around 1996, Mr. David Zelig ("Zelig"), a citizen and resident of the State of Tennessee, was contacted by Kutner about investing in Kutner's new business, RFC. Essentially, Kutner would be engaging in day trading.

6. Based on the long-term friendship and relationship of trust built between Kutner and Zelig, Zelig invested over \$70,000 with Kutner.

7. Zelig received very few written reports regarding his investment from RFC and Kutner. The few quarterly statements Zelig received certified a 26% gain. As time passed, Zelig received fewer written reports despite his requests.

8. When Zelig requested the return of his funds, he was told that he would have to wait until the end of the calendar year before the funds could be distributed. Zelig was told, however, that the accounts were performing well.

9. At the end of the calendar year, Kutner acknowledged that all funds were lost, and that some of the reports which Kutner and RFC made to Zelig were false, and that none of the invested funds were available to be returned. Kutner did promise to make full restitution. To date, full restitution has not been made.

10. Zelig filed a claim with the American Arbitration Association and won an award of \$397,589.10 against Kutner and RFC in Case No. 13 168 00487 00. The award was later affirmed by the United States District Court for the Western District of Tennessee in Case No. CIV-99-3053 GV. Subsequently, a private settlement was reached between Kutner and Zelig for \$125,000, of which \$25,000 has been paid. See Settlement Agreement and evidence of partial payment, copies of which are attached hereto and marked as Exhibits "A" and "B" respectively.

CONCLUSIONS OF LAW

11. Pursuant to Tenn. Code Ann. §48-2-115(a), the responsibility for administration of the Act is upon the Commissioner. The Division is the lawful agent through which the Commissioner discharges this responsibility.

12. Tennessee Code Annotated §48-2-109(a) provides that it is unlawful for any person to transact business from or in this state as a broker-dealer, agent of a broker-dealer, or investment adviser unless such person is registered as a broker-dealer, agent of a broker-dealer, or investment adviser under this part.

13. Tennessee Code Annotated §48-2-109(b) provides that it is unlawful for any broker-dealer to employ an agent to transact business as an agent unless the agent is registered under this part.

14. Tennessee Code Annotated §48-2-121 provides that it is unlawful for any person, in connection with the sale or purchase of any security in this state directly or indirectly, (1) to employ any device, scheme, or artifice to defraud, (2) to make any untrue statement of a material fact or omit 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, and/or (3) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

15. The averments in paragraphs six - eleven of this Consent Order, constitute practices by Kutner which would provide grounds under Tenn. Code Ann. §48-2-109 for the entry of an order of sanctions against Kutner.

16. The averments in paragraphs six - eleven of this Consent Order, constitute practices by Kutner which would provide grounds under Tenn. Code Ann. § 48-2-121 for the entry of an order of sanctions against Kutner.

17. The averments in paragraphs six - eleven of this Consent Order, constitute practices by River Front Capital which would provide grounds under Tenn. Code Ann. § 48-2-109(b) for the entry of an order of sanctions against River Front Capital.

18. The averments in paragraphs six - eleven of this Consent Order, constitute practices by River Front Capital which would provide grounds under Tenn. Code Ann. § 48-2-121 for the entry of an order of sanctions against River Front Capital.

ORDER

NOW, THEREFORE, on the basis of the foregoing, and Ephraim G. Kutner's, both individually and in his capacity as the representative of River Front Capital, L.L.C., waiver

of his right to a hearing and appeal under the Tennessee Securities Act and Tennessee's Uniform Administrative Procedures Act, Tenn. Code Ann. § 4-5-101 et seq., and Ephraim G. Kutner's, both individually and in his capacity as the representative of River Front Capital, L.L.C., admission of jurisdiction of the Commissioner, the Commissioner finds that Ephraim G. Kutner, individually and in his capacity as the representative of River Front Capital, L.L.C., for the purpose of settling this matter, admits the matters herein, has agreed to the entry of this Order and that the following Order is appropriate, in the public interest and necessary for the protection of investors.

IT IS ORDERED, pursuant to Tennessee Code Annotated § 48-2-116(a) of the Tennessee Securities Act that:

1. Respondents shall fully comply with the Tennessee Securities Act, as amended, and all rules promulgated thereunder;
2. Respondents, Ephraim G. Kutner and River Front Capital, L.L.C., shall cease and desist in the further conduct as broker-dealers from or in the state of Tennessee for a period of ten (10) years or until such time as it is effectively registered with the Division to engage in such activity, whichever date is later.
3. The Respondents, Ephraim G. Kutner and River Front Capital, L.L.C., shall cease and desist in further conduct as agents of a broker-dealer from or in the state of Tennessee for a period of ten (10) years or until such time each is effectively registered with the Division to engage in such activity, whichever date is later.
4. The Respondents, Ephraim G. Kutner and River Front Capital, L.L.C., shall cease and desist, from and in the state of Tennessee, in making any untrue statement of a

material fact or omitting 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 as related to the sale or offer to sell securities.

5. The Respondent, Ephraim G. Kutner, agrees that should he seek registration with the Division as a broker-dealer, agent of a broker-dealer, investment adviser, or agent of an investment adviser, he shall, no longer than six (6) months prior to the date he seeks registration with the Division, have retaken and passed the Series 7, General Securities Representative Examination given by NASD, Inc., and the Series 63, Uniform Securities Agent State Law Examination given by the North American Securities Administration Association.

6. Respondent shall amend form U-4, pursuant to the instructions of said form and as required by the NASD, and file the appropriate Disclosure Reporting Page to disclose the details of this filed administrative action.

7. Respondent, Ephraim G. Kutner, individually, is hereby **ASSESSED** a civil penalty in the amount of five thousand dollars (\$5,000.00). \$1,250.00 of said sum shall be due and paid in full upon execution of this document, but in no event later than February 15, 2004. Payment, in the form of a cashier's check made payable to the State of Tennessee, shall be mailed to:

State of Tennessee
Department of Commerce and Insurance
Securities Division
Attention: Michele K. Elliott, Staff Attorney
500 James Robertson Parkway, 5th Floor
Nashville, Tennessee 37243.

The balance of said penalty, being \$3,750.00, shall be due and paid in accordance with the following schedule:

\$1,250.00 on or before June 15, 2004;
\$1,250.00 on or before August 15, 2004;
\$1,250.00 on or before December 15, 2004.

Each of the scheduled payments, in the form of a cashier's check made payable to the State of Tennessee, shall be mailed to:

State of Tennessee
Department of Commerce and Insurance
Securities Division
Attention: Michele K. Elliott, Staff Attorney
500 James Robertson Parkway, 5th Floor
Nashville, Tennessee 37243.

8. Respondent, Ephraim G. Kutner, in his capacity as representative of River Front Capital, L.L.C., is hereby **ASSESSED** a civil penalty in the amount of five thousand dollars (\$5,000.00). \$1,250.00 of said sum shall be due and paid in full upon execution of this document, but in no event later than February 15, 2004. Payment, in the form of a cashier's check made payable to the State of Tennessee, shall be mailed to:

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Nashville, Tennessee 37243.

9. Respondent, Ephraim G. Kutner, individually and in his capacity as representative of River Front Capital, L.L.C., hereby affirms and is **ORDERED** to pay restitution to David Zelig in accordance with the agreement embodied in Exhibit A attached hereto. Respondents agree that failure to comply with the payment of restitution shall result in the permanent denial of any application by Respondents for any type of registration with the Division of Securities and/or with the Department of Commerce and Insurance.

10. Respondent, Ephraim G. Kutner, hereby agrees that his failure to comply with all the requirements and prohibitions contained in this Order shall result in the denial of any application by Respondent, Ephraim G. Kutner, for registration with the Division.

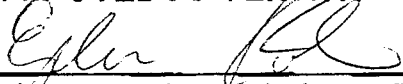
IT IS ORDERED that this Order represents the complete and final resolution of, and discharge with respect to all administrative and civil, claims, demands, actions and causes of action by the Commissioner against River Front Capital, L.L.C., Home Front Trading, L.L.C., Riverfront Trading, and Ephraim G. Kutner for violations of the Act alleged by the Tennessee Securities Division to have occurred with respect to transactions involving David Zelig and the facts contained herein.

This Consent Order is in the public interest and in the best interests of the parties, and represents a compromise and settlement of the controversy between the parties and is for settlement purposes only. By the signature affixed below, Ephraim G. Kutner, individually and as representative of River Front Capital, L.L.C., affirmatively states that he has freely agreed to the entry of this Consent Order, that he waives his right to a hearing on the matters underlying this Consent Order and to a review of the Findings of Fact and Conclusions of Law contained herein, and that no threats or promises of any kind have been made by the Commissioner, the Division, or any agent or representative thereof. The parties, by signing this Consent Order, affirmatively state their agreement to be bound by the terms of this Consent Order and aver that no promises or offers relating to the circumstances described herein, other than the terms of settlement set forth in this Consent Order, are binding upon them.

ENTERED this 19th day of February, 2004.

Paula A. Flowers
Paula A. Flowers, Commissioner
Department of Commerce and Insurance

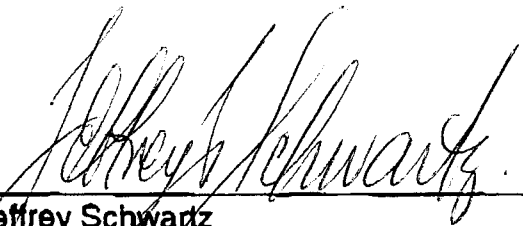
APPROVED FOR ENTRY:



Ephraim G. Kutner, Individually



Ephraim G. Kutner, as Representative of
River Front Capital, L.L.C.



Jeffrey Schwartz

NY Bar # _____

Attorney for Respondents
225 Broadway, Suite 2100
New York, NY 10007
(212) 766-8020



Daphne D. Smith,
Assistant Commissioner for Securities
Department of Commerce and Insurance



Michele K. Elliott (#022618)
Staff Attorney
Department of Commerce and Insurance
500 James Robertson Parkway, Fifth Floor
Nashville, Tennessee 37243
(615) 741-2199

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT ("Settlement Agreement"), is hereby made by and between DAVID ZELIG ("Zelig") and EPHRAIM G. KUTNER ("Kutner"). Collectively Zelig and Kutner are referred to as the "Parties."

WITNESSTH THAT, in consideration of the mutual agreements, covenants and conditions contained herein, the parties agree as follows:

1. RESOLUTION OF THE CLAIM.

On November 30, 1999, Zelig filed a Complaint in the United States District Court for the Western District of Tennessee captioned David Zelig v. River Front Capital, L.L.C., a Delaware Limited Liability Company, and Ephraim G. Kutner, John Doe 1, John Doe 2, and John Doe 3, Case No. CIV-99-3053 GV (the "Lawsuit"). On March 29, 2001 a judgment in favor of Zelig was against Kutner and River Front Capital, LLC entered by the Court in connection with the Lawsuit (the "Judgment").

Whereas, the Parties desire to settle and compromise the claims made as between them including those in the above referenced Lawsuit and to satisfy the Judgment in order to avoid the further substantial expense and burden of the dispute between them subject to the complete performance of all obligations and undertakings set forth herein.

2. SETTLEMENT TERMS.

(a) All damages (except punitive damages) awarded in the aforementioned Judgment entered in the United States District Court for the Western District of Tennessee (the "Court") will be paid by Kutner to Zelig including all fees, expenses and interest. As well, any fees and expenses incurred by Zelig since the entry of the Arbitration Award shall be included in the amount to be paid less and except any such fees incurred by Zelig in connection with settlement discussions only which occurred during the week of September 10, 2001. All fees and expenses for which Kutner shall be responsible may be reviewed by Kutner's counsel. In the event Kutner's counsel objects to any fees or expenses, the final decision as to the reasonableness thereof shall be made by Leo Bearman, Jr.

(b) Kutner will pay \$25,000.00 in good funds to Zelig on the date of the execution of this Agreement.

(c) Kutner will cause a security interest in a certain Model 5 Rosewood Square Grand Steinway piano (No. 37310 - manufactured in 1877) (the "Piano") to be granted to Zelig immediately. Zelig shall have the right to have the Piano appraised by the appraiser of his choice. If the aforementioned appraisal is not satisfactory to Kutner, Kutner shall have the right to have the Piano appraised by an appraiser of his choice. The cost of each parties' appraisal shall be born by the party obtaining such appraisal. If either of the party's appraisal is not

acceptable to the other party, then a third appraisal shall be obtained by an appraiser selected by the parties' appraisers. If this occurs, the three appraisals shall then be averaged together to represent the appraised value of the Piano. The cost of the third appraisal shall be born by the two parties equally. Kutner will have 75 days from the date hereof to sell the Piano at which time the net proceeds of the sale shall be paid to Zelig. Kutner will use his best efforts to sell the piano at the highest possible price. Zelig will have the option to refuse any sale which nets less than the appraised value. No commission or load on the sale shall be permitted to be paid unless such is approved by Zelig in advance. Neither Kutner nor anyone connected with or related to him shall be permitted to earn a commission on the sale. At the end of 75 days, Zelig will have the option, but not the obligation, to take the Piano and credit the unpaid debt by the amount of the appraised value.

(d) Zelig will be granted a third position deed of trust on the Kutner residence located at 5584 North Ashley Square, Memphis, Tennessee 38120 (the "Property"). Kutner will have 45 days to further mortgage the Property. Kutner will use his best efforts to obtain the highest mortgage proceeds to be paid to Zelig. The net proceeds of the mortgage will be paid to Zelig. During the time any debt is outstanding from Kutner to Zelig, Kutner will pay all mortgage obligations on the Property, taxes and insurance, unless the property is sold. Kutner shall notify Zelig when each payment is made. In the event of sale, the net proceeds of the sale will be paid to Zelig. Zelig will release his judgment lien on the property once the Deed of Trust in his favor is fully executed. If a further mortgage of the property is acceptable to Zelig, he will subordinate the Trust Deed in his favor to such further mortgage. Zelig shall have the right to review and approve any proposed mortgage or sale agreement.

(e) Kutner will execute a promissory note to Zelig for the balance of the debt (not including punitive damages) less the initial payment of \$25,000.00, to be paid quarterly with interest accrued at 6.5% per annum, with the first payment due February 1, 2002. The debt will be amortized over two years and will be secured by the aforesaid Trust Deed and security interest on the piano.

(f) Neither Zelig nor anyone on his behalf will actively initiate or cause to be initiated any type of legal, regulatory, or other governmental action regarding his claims against Kutner or his wife.

(g) The parties agree to a mutual non-disparagement requirement. Neither party nor their representatives will discuss with anyone, other than as may be required by law, any details of the actions of Kutner, River Front Capital Company or any other affiliated or related companies, or the details of this Agreement. Neither party will order a copy of the deposition taken of Kutner printed and the exhibits shall be subject to the confidentiality agreement.

(h) Upon request by Zelig, Kutner shall keep Zelig fully informed of the status and progress of the aforementioned piano sale and mortgage efforts. Each Party will inform the other of any change of address. All notices contemplated by this Agreement shall be in writing, sent certified mail, return receipt requested.

Current Address: Ephraim G. Kutner
329 Hicksville Road
Rockaway, NY 11691

David Zelig
5575 Poplar Avenue, #512
Memphis, TN 38119

(i) In the event Kutner defaults on any payments or obligations due under this Agreement, then Zelig shall be entitled to prosecute all claims to the fullest, including the full amount of the judgment and further fees and expenses in accordance with applicable law. In the event of default, Zelig shall be entitled to depose Kutner and to take all actions regarding his claims permitted by law.

(j) The parties will execute appropriate documentation in the form of security documents, as necessary to evidence their respective rights granted hereby..

(k) The prevailing party in any effort to enforce this Agreement shall be entitled to also recover reasonable attorneys fees and expenses of enforcement provided said are ordered to be paid by the court.

3. FULL CAPACITY.

The parties represent that they have the full mental and physical capacity and authority to enter into, execute and perform this Agreement.

4. ADVICE OF COUNSEL.

The parties have determined that this settlement is fair and reasonable under all the circumstances and that this determination has been based solely upon their independent judgment after consulting with their legal counsel. In making this determination, the parties have had an adequate opportunity to discuss and assess the merits of all their claims or potential claims. The parties further agree that no fact, event, evidence, circumstance or transaction relating to the Lawsuit, or which could have been asserted therein, or which may hereafter be discovered, shall affect in any manner the final and unconditional nature of the settlement and covenants not to sue as set forth herein.

5. BINDING AGREEMENT.

This Agreement shall be binding upon and inure to the benefit of the parties, their parent companies, subsidiaries, affiliates, and their heirs, executors, administrators, successors and assigns.

6. GOVERNING LAW.

This Agreement is deemed entered into in the State of Tennessee, where Zelig resides and where the actions which were the subject of the Lawsuit occurred, and shall be construed and interpreted in accordance with the laws of the State of Tennessee. The Parties acknowledge that the courts of the state of Tennessee have jurisdiction over this matter.

7. ENTIRE AGREEMENT.

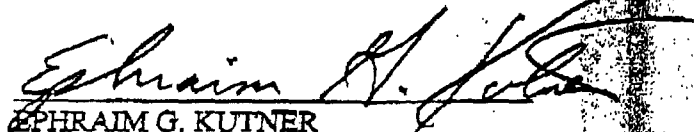
This Agreement contains the entire agreement between the parties hereto. The terms of said Agreement are contractual and may not be modified orally, but only by a written instrument duly signed by each party.

8. COUNTERPARTS.

The Agreement may be signed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. A facsimile signature shall be valid.

We further confirm and state that we have carefully read the foregoing Settlement Agreement and General Release, know the contents thereof, and sign our names as our own free act.

WITNESS our hands and seals at the place and on the date indicated below.


EPHRAIM G. KUTNER

STATE OF TENNESSEE)

COUNTY OF SHELBY)

I, Lynn J. Chrisman, an officer authorized to take acknowledgments, duly qualified by the State of Tennessee, hereby certify that EPHRAIM G. KUTNER, to me personally known, this day acknowledged before me that he executed the foregoing General

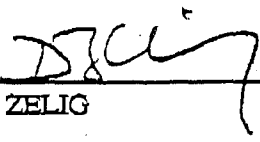
Release and Settlement Agreement; and I further certify that I know EPHRAIM G. KUTNER to be the individual described in and who executed the said Settlement Agreement and General Release.

IN WITNESS WHEREOF, I hereunto set my hand and official seal at the City of Memphis, said County and State, this 14th day of September, 2001.



Notary Public
State of Tennessee
My Commission Expires:

My Commission Expires May 14, 2003




DAVID ZELIG

STATE OF TENNESSEE)
)
COUNTY OF SHELBY)

I, Lynn Chrisman, authorized to take acknowledgments, duly qualified by the State of Tennessee, hereby certify that DAVID ZELIG, to me personally known, this day acknowledged before me that he executed the foregoing Settlement Agreement and General Release; and I further certify that I know the said person to be DAVID ZELIG and to be the individual described in and who executed the said Settlement Agreement and General Release.

IN WITNESS WHEREOF, I hereunto set my hand and official seal at the City of Memphis, said County and State, this 14th day of September, 2001.


Notary Public
State of Tennessee
My Commission Expires:

My Commission Expires May 14, 2009

T:\Wade\ZELIG\Settlement Agreement and General Release