



U.S. COMMODITY FUTURES TRADING COMMISSION

Three Lafayette Centre
1155 21st Street, NW, Washington, DC 20581

RECEIVED
C.F.T.C.

00 JUN 29 69 7 33

OFFICE OF
PROCEEDINGS

HOLLY FILKINS,

Complainant

v.

AMERICAN FINANCIAL TRADING
CORP., FRANK ANTHONY DESANTIS,
and GERRI STERNFELD,

Respondents

CFTC Docket
No. 99-R188

INITIAL DECISION

Complainant filed this case alleging that respondents misrepresented the amount that a certain proposed options purchase would cost her by \$4,000. In that initial complaint, Ms. Filkins acknowledged that respondents had offered to waive \$2,000 in commissions when she objected to the higher purchase price, but she scoffed "Big deal" since she had already paid respondents many thousands more over the life of the account. Subsequently, complainant amended her complaint to seek a refund for her total losses on the transaction, some \$22,771.

Respondents' answer contended that the matter had been disposed of through a settlement reached between all respondents and complainant in which complainant was provided a cash refund into her account of \$2,000 and fifteen commission-free trades.¹ A copy of the unequivocal release was attached to the answer.

Neither side took discovery or submitted a verified statement, although respondents filed a motion to dismiss based on the settlement. Complainant has never responded to the settlement defense either time it has been raised in respondents' filings.

Respondents bear the burden of proof on their defense of accord and satisfaction. In this case, there is no evidence whatsoever weighing against giving the settlement its full effectiveness. Complainant's attempt to belittle the settlement in her initial complaint also somehow managed to avoid mentioning that the full value of the settlement to her was \$5,000,

¹ Documents attached to complainant's amended complaint and to respondents' answer demonstrate that commissions charged were \$200 per option, making the value of the settlement \$5,000.

including a cash deposit in her account and commission-free trades as well. For an active trader such as complainant, the latter aspect of the settlement agreement was valuable consideration.²

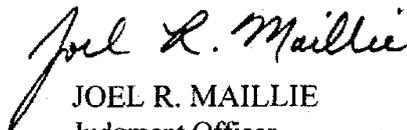
Complainant's attempt now to increase her damages to the full value of her losses does not withstand scrutiny. In her initial complaint, Ms. Filkins took full responsibility for the transaction, saying she knew what she was doing and was only unhappy at the discrepancy in the price she was charged. Only after having reviewed some measure-of-damages information applicable to fraudulently induced transactions (i.e., at the full out-of-pocket loss caused by the transaction; see Office of Proceedings letter dated October 8, 1999) did complainant suddenly decide that she wanted the entire trade voided.

Under the circumstances it is clear that Ms. Filkins' sole unhappiness was the price of the options compared to what she had been quoted; that she expressed that dissatisfaction without delay; that respondents offered to make her *more* than whole through a combination of cash and commission-free trading; and that complainant took advantage of the settlement offer immediately after it was signed. Thus, even assuming (without deciding) that complainant might have had a cause of action associated with an allegedly misquoted options price, there now remains no dispute in this matter to be resolved.

Accordingly, for the reasons stated, the complaint is DISMISSED.

Respondents have asked for "reasonable attorney's fees" incurred in defending this action. No grounds are stated for this request except for a general statement that the settlement agreement was intended to obviate the need for legal action. In the absence of a demonstrated cause of action supporting the fee request, it is DENIED.

Dated: June 29, 2000


JOEL R. MAILLIE
Judgment Officer

² Although neither side submitted a full breakdown accounting for the trades that would be made without commissions, the statements attached to complainant's revised complaint demonstrate that she received the full value of her agreement. On the date that the settlement was finalized, March 31, 1998, complainant purchased 15 options, with \$3,000 charged in commissions and a commission adjustment of \$200. On the next day, complainant received two commission adjustments, for \$2,000 and \$2,800 (March 31 and April 1, 1998, statements).