UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

RICHARD BRUGGEMAN, Complainant, v. BROADSTREET FINANCIAL CORP., ANGEL FERNANDO COLLAZO, EMPIRE ASSET MANAGEMENT, and ANDREW DAVID FISHER, Respondents.	CFTC Docket No. 01-R105

INITIAL DECISION

Introduction

Richard Bruggeman alleges that respondents defrauded him during the solicitation and trading of his non-discretionary options account, which was introduced first by FSG International, Incorporated and then by Empire Asset Management. Respondents deny any violations.

The findings and conclusions below are based on the documentary record and the parties' oral testimony. The findings and conclusions also reflect my determination that Bruggeman, in contrast to respondents, convincingly remembered important details of conversations with respondents and produced testimony that was generally more responsive and plausible.

As explained below, it has been concluded that Bruggeman has established that he is entitled to an award of $11,277 against Fisher, and that he is entitled to a separate award of $1,996 against Collazo, Empire, and Empire's guarantor, Broadstreet Financial Corporation.

Factual Findings

The parties

1. Richard Bruggeman, a resident of Mountainside, New Jersey, was 57 years old when he opened his account with FSG. Bruggeman has a junior college certificate and has been employed as an electrician by Kean University since 1994. On his account application, Bruggeman listed a $34,000 gross annual income, and a $40,000 liquid net worth.

Bruggeman had no investment experience and knew nothing about commodity options before attending what was billed as an investment seminar, but which was actually a sales promotion sponsored by FSG. Bruggeman's testimony established that, whatever he may have learned from his experience with respondents, he remains unfamiliar with the lingo of trading options and has yet to grasp a rudimentary understanding of the mechanics of trading options:

> Well, Harold Siegel [FSG's owner] had discussed at this seminar when he was kind of going through how commodities work. And he said that you can buy the other way. And it kind of protects you. If you're going down, you buy the other way. And I still don't understand it. But I do get the concept was that you bought the other way. And so what you're doing is you're protecting yourself. So, if it does go down or whatever, you're protected.

[Page 46 of hearing transcript; *see* pages 6-11 of hearing transcript.] In light of Bruggeman's, modest demeanor, lack of investment experience, and inability to articulate a meaningful understanding of the mechanics of trading options, Fisher's characterization of Bruggeman as an "exceptionally arrogant" individual who had "insisted on relying on his own research for most of his decisions" was highly implausible and unbelievable.

2. FSG International, Incorporated, located in Lauderhill, Florida, was a registered introducing broker from 1987 to 1991. Between 1989 and 1999, the National Futures Association initiated a series of three disciplinary actions against FSG which alleged fraudulent sales practices, which all concluded in sanctions against FSG, and which finally resulted in a

$500,000 fine and the termination of FSG's registration. Also, FSG has been named as a respondent in at least 60 reparations complaints, most of which have alleged fraudulent sales and trading practices. [CFTC and NFA records.]

FSG compensated its branch office managers, including Andrew Fisher, with a 3% to 5% override of gross commissions, and compensated its account executives with 40% to 50% cuts of the commissions charged to customer accounts. FSG failed to file an answer to Bruggeman's complaint, and was found in default.

Vision Limited Partnership, a registered futures commission merchant, carried the accounts of FSG's customers. Bruggeman did not name Vision as a respondent.

3. Broadstreet Financial Corporation, located in Coral Springs, Florida, was a registered futures commission merchant at the relevant time. Empire Asset Management, located in New York City, has been a registered introducing broker since 2000.[1] During the relevant time, Broadstreet guaranteed Empire's obligations under the Commodity Exchange Act. Broadstreet and Empire were owned and operated by a nearly identical set of individuals who had owned and operated FSG, including Harold Siegel, Carlos Mormeneo, and Sal Martarano. [NFA records.]

4. Andrew Fisher, a resident of Saddle River, New Jersey, solicited Bruggeman's account and acted as his first broker. During the relevant time, Fisher was a registered principal and branch office manager for FSG's New York City branch office. Fisher is currently a registered principal of Blue Fish Commodities, Incorporated.

Documents produced by Vision Limited show that in the calendar year before he solicited Bruggeman's account, Fisher had handled 92 FSG accounts, none of which had realized significant profits, and almost all of which had realized significant net losses. These 92 accounts had realized aggregate net losses of $543,578, and generated $328,063 in commissions. The

[1] Empire has withdrawn its membership, but the NFA has not permitted its registration to be terminated.

Vision Limited records also show that when Fisher solicited Bruggeman's account, he was handling 39 active accounts, none of which had realized significant profits, and almost all of which had realized significant net losses. These 39 accounts had realized aggregate net losses of $206,081, and generated $200,995 in commissions.

The four trades recommended by Fisher for Bruggeman's FSG account would realize $11,277 in total net losses. Fisher's trades also would generate $4,060 in commissions, which would consume over a third of Bruggeman's investment with FSG, and which would result in commission-to-premiums-paid ratios of 23%, 30%, 33%, and 39%.

5. Angel Collazo became Bruggeman's broker when FSG ceased operations and Bruggeman's account was transferred to Empire. Collazo, a resident of Elmwood Park, New Jersey, was a registered associated person with FSG and then with Empire. Collazo currently is not registered.

The trades recommended by Collazo for Bruggeman's Empire account would realize $1,996 in net losses, and would generate $683 in commissions.

6. Robert Benitez was the branch office manager for Empire's New York City branch office. During the relevant time, Benitez, a resident of Brooklyn, New York, was a registered associated person with FSG and then with Empire. Benitez is currently not registered. Benitez failed to file an answer and was found in default.

7. Harold Siegel, a resident of southern Florida, spoke at the Adrienne Berg investment seminar attended by Bruggeman. At the conclusion of his presentation, Siegel would introduce Bruggeman to Andrew Fisher, who would complete the account solicitation and become Bruggeman's first broker. Siegel and his wife held significant ownership interests in FSG, Empire and Broadstreet.

Before forming FSG, Siegel had worked at several firms, including one notorious boiler room operation, Apache Trading Corporation. Between 1988 and 2002, the CFTC initiated an administrative enforcement action against Siegel, and the NFA initiated a series of four disciplinary actions against Siegel, which all alleged fraudulent sales practices and failure to supervise, which all concluded in sanctions against Siegel, and which finally resulted in the revocation of Siegel's registration. In addition, Siegel has been named as a respondent in 26 reparations complaints, most of which alleged fraudulent sales and trading practices. [CFTC and NFA records.] None of the parties called Siegel as a witness.

The Vision/FSG account

8. Bruggeman attended the Adrienne Berg seminar for a "learning type thing," because he was belatedly thinking of planning his retirement. Bruggeman credibly testified that Berg – a radio talk show host -- spoke " a little bit" about the advantages of investors "rounding out their portfolios" and claimed that she was considering rounding out her portfolio with futures and options. Berg introduced Harold Siegel as the owner of FSG, and stated that he would be giving an "overview" of how options work. In reality, Siegel's presentation was less an overview than a set-up for solicitations by FSG brokers, including Fisher, who were waiting in the wings.

According to Bruggeman, Siegel mentioned that with options "risk was involved." However, the clear message of Siegel's presentation was that FSG knew how to negate these risk with a proven "safe " strategy that "protected" customer positions funds "by doing puts and calls," and by "cutting any losses." Siegel claimed that based on FSG's knowledge of supply and demand factors in the sugar and gold markets, "now" was a "good time to make money" by buying sugar and gold options. Siegel claimed that sugar "could only go up," and underscored his claim by using examples of sugar option trades that all made large profits. Siegel otherwise never alluded to the reality that almost none of FSG's customers had ever realized the sort of profits portrayed in his examples and that FSG had almost never protected its customers from suffering substantial losses. Siegel concluded by introducing a handful of FSG agents who were available to talk to anyone interested in finding out more about trading options. Although Bruggeman had no portfolio in need of rounding out, he thought that the trading strategy touted by Siegel would be appropriate for his retirement funds, because it appeared to be safe with a reasonable chance to make a good profit.

Fisher introduced himself to Bruggeman as the manager of FSG's New York office. Bruggeman told Fisher that he had no investment experience and had not grasped much of what Siegel had said, beyond that fact that FSG had a successful strategy for trading sugar options with built-in "protection" and a good chance of making profits. Fisher then assured Bruggeman that his impression of Siegel's strategy was correct, and that Bruggeman need not worry if he opened an FSG account, because Fisher would "keep a close eye" on the account and "educate" Bruggeman as he traded. Fisher, like Siegel, otherwise barely mentioned risk, and never alluded to the reality that almost all of his FSG customers had suffered substantial losses.[2] Fisher got Bruggeman's address and promised to deliver some written materials, which Bruggeman assumed would be of an informational or educational nature, but which would turn out to be the account-opening documents, including a customer contract, a futures risk disclosure statement, and a fee disclosure statement.

[2] When asked to describe everything that he said to Bruggeman about the specific risks associated with FSG's recommended trading strategies, Fisher merely replied that he always told prospective customers that, unlike futures, the risk of loss associated with the purchase of options was limited to the purchase cost. Fisher also indicated that he relied on FSG's tape-recorded account opening compliance review to provide a complete and accurate disclosure of risks and costs. However, Fisher did not produce a recording of the account-opening compliance review for the Bruggeman account. In addition, nothing in the record supports a presumption that FSG's account-opening compliance review was less deceptive or less defective than the compliance procedures typically used by those other firms that have been disciplined for fraudulent sales practices.

A few days later, Fisher and Bruggeman spoke. Bruggeman told Fisher that he had not read the account-opening documents, and had not had enough time to read them because he was very busy at work. Fisher encouraged Bruggeman to act quickly if he wanted to begin trading and instructed Bruggeman where to sign the documents. After Bruggeman had signed the documents, Fisher convinced him to start out with a minimum investment of $8,000.

9. Upon receipt of the signed account-opening documents, Fisher advised Bruggeman to purchase soybean options. Bruggeman hesitated and told Fisher that the most significant factor in his decision to open an account with FSG had been his understanding that FSG had a sugar trading strategy that was designed to protect its customers from losses. Fisher replied by convincing Bruggeman that the soybean trade was "even better" than Siegel's sugar trade, so he recommended that Bruggeman buy the January soybean call options and the January sugar call options. Fisher assured Bruggeman that both trades were "good trades," and promised to advise Bruggeman when to get in and out of the market. Fisher did not explain that he was recommending the purchase of out-of-the-money options rather than available in-the-money options.

These first two trades would cost a total of $7,864, and would generate almost $2,000 in commissions and fees. The commission-to-premium paid ratio for the soybean trade was 39%, and for the sugar trade was 30%. The soybean calls would expire worthless six months later for a total loss of $3,180. The sugar calls would be sold three months later for a $1,044 net premium collected. However, with the $1,200 cost for commissions and fees, the sugar trade would realize a net loss of $156.

Within a week after the purchase, the soybean options had lost about a quarter of their value, and the sugar options had gained about ten per cent but were still below their breakeven price. Fisher told Bruggeman that the sugars were up and "looked good" to make a large profit, and that the soybeans were "down a little" but should soon rebound. Fisher also said, without much elaboration, that it was "a good time" to buy December Treasury bond put options, and urged Bruggeman to send in more money. As with his first recommendations, Fisher did not mention that the T-bond puts were out-of-the-money. Bruggeman approved the purchase of four T-bond puts and sent in another $3,750, for a total investment of $11,750 with FSG and Fisher. The T-bond options cost a total of $3,943, including $880 in commissions and fees. The commission-to-premium-paid ratio for this trade was 23%. The T-bond options would expire worthless five months later for a total loss of $3,943.

About six weeks later, the soybean options were down approximately $1,400 (about 2 two-thirds of the premium paid), the sugar options were down approximately $800 (about a quarter of the premium paid), and the T-bond options were down approximately $1,100 (about a third of the premium paid). During this time, Fisher spoke to Bruggeman infrequently. When they did speak, Fisher reported that he still expected the three trades to reap good profits. Fisher did not report on the declining liquidation value of the options, did not discuss limiting losses, and otherwise did not discuss the possibility that the trades could well result in losses.

After about three months, the soybean trade continued to decline, but the sugar trade rebounded. Fisher advised Bruggeman to sell the sugar options for "a profit" and to use the proceeds to buy more January soybean calls. Fisher also answered in the affirmative when Bruggeman asked Fisher to aside his sugar profits and use the new soybean options to "protect" his other soybean options from additional losses. After the sugar options were sold, Bruggeman asked Fisher how much he had "gained," and Fisher replied that he had made a "$1,000 profit." In reality, when the sugar options were sold, it was the gross profit -- *i.e.*, the net premium collected – that was about $1,000. Since the cost of the commissions exceeded the net premium, the trade realized a net loss of $156.[3] Thus, the negative financial result for Bruggeman could not accurately or fairly be called a gain or a profit, as those terms are commonly understood.

With the premium collected from the sale of the sugar options, Fisher purchased for Bruggeman's account four more soybean options. This soybean option purchase cost a total of $4,413, and generated $1,110 in commissions and fees. The commission-to-premium-paid ratio for this trade was about 33%. These January soybean calls would expire worthless three months later for a total loss of $4,413.

When Bruggeman received the confirmation statement, he realized that the purchase had consumed almost all of his equity, including the purported profit from the sugar trade. Bruggeman called Fisher to complain and to express doubt that the new soybean calls actually "protected" his other soybean calls, since he recalled that Siegel had discussed using calls and puts to somehow protect each other. Fisher deflected Bruggeman's complaint by assuring him that the trade was "safe" and would "work out" and promising to keep Bruggeman "abreast" of any development.

A few weeks later Fisher called to report that all of Bruggeman's options had expired. At this point, Bruggeman complained that he had relied on Siegel's and Fisher's assurances that his funds would be protected and that any losses would be sharply limited. Fisher dismissed Bruggeman's complaint by noting that he had approved all of the trades and had signed a risk disclosure statement. Fisher then asked Bruggeman if he was interested in recouping his losses, but Bruggeman declined because he no longer trusted Fisher or FSG.

[3] The Vision account statements reported the net premium paid or collected, but did not report the net profit or loss. Thus, Fisher knew that Bruggeman either had to rely on Fisher to report the net results or to calculate the results himself.

After the last options had expired, Bruggeman's FSG account had a balance of $473. Thus, Bruggeman's aggregate net losses from trades recommended by Fisher totaled $11,277. Soon after the January soybean options expired in mid December, Bruggeman had called FSG and then Vision, asking that the account balance be returned. However, Bruggeman experienced a "runaround" from both firms and did not succeed in getting his money back. Around the same time, FSG ceased operations as a consequence of the last NFA disciplinary action, and Vision transferred Bruggeman's account to Broadstreet Financial Corporation and Empire Asset Management.

The Broadstreet/Empire account

10. In early January, Collazo introduced himself as Bruggeman's new account executive. Collazo explained that the account had been transferred to Empire, and asked Bruggeman if he was interested in "recouping his losses." Bruggeman replied that he had been trying to get the account balance returned and was not particularly interested in trading. Bruggeman explained how Siegel and Fisher had broken promises that FSG would closely watch his account and put him in low risk trades, and that Fisher had pushed him into trades that he had not really wanted. Collazo replied that Empire was a completely different firm than FSG, and that he was a good broker who took care of his clients. Collazo did not mention that Empire was owned and operated by the same people who had owned and operated FSG, did not mention that he had just left FSG, and did not mention that almost all of his FSG customers had lost money.

Collazo did not follow up on Bruggeman's assertion that Siegel and Fisher had falsely promised to protect his funds, and did not inquire about what Fisher had told Bruggeman about the risks and mechanics of trading options. Collazo otherwise made no effort to ascertain the extent of misleading or inaccurate information that Bruggeman might well have received from a firm that was being put out of business for fraudulent sales practices. Rather, Collazo emphasized that Empire was a much more reliable firm than FSG, and launched into a discussion of a downturn in the economy that ended with a guarantee that if Bruggeman bought T-bond calls Collazo would be "calling in a few weeks to report profits" that would recoup at least some of Bruggeman's losses with Fisher and FSG. Like Fisher, Collazo did not explain that he was recommending the purchase of out-of-the-money options.

Bruggeman indicated that he was obviously interested in recouping his losses, but was only interested in low-risk trades. Bruggeman also emphasized that he felt burned by his experience with FSG and that even if the trade was low risk he still would want to get out before the options dropped more than 50%. Collazo reassured Bruggeman that there was no need to worry, because the trade was sure to make money. Collazo stated that rather than use a stop-loss order, he would closely watch the account and get Bruggeman out of the market well before the options could lose half their value. When Bruggeman asked what commission Collazo would charge, Collazo replied that the commission for a trade would be about $270. Bruggeman then agreed to invest an additional $2,100, and approved the purchase of three June T-Bond calls. Bruggeman paid a $1,875 premium and $683 in commissions.

When he received the confirmation statement, Bruggeman realized that he had paid much more for commissions than Collazo had represented. Bruggeman called Collazo several times, but Collazo was never available and never returned the calls, even when Bruggeman complained to the manager, Robert Benitez. When Bruggeman received the January monthly account statement, he became even more upset when he realized that the options had lost about two-thirds of their value without any call from Collazo. Bruggeman complained to the NFA. Shortly afterwards, Benitez and Collazo called Bruggeman. They advised Bruggeman to sell the options and promised to reimburse him sufficient funds to round up his loss to fifty percent, and Bruggeman sold the options for a net loss of $1,996. Benitez then mailed a draft of a release to Bruggeman. Bruggeman did not immediately sign the release, and shortly afterwards Benitez advised Bruggeman that he was withdrawing the settlement offer.

Conclusions

Fisher's fraudulent solicitation and trading advice

The preponderance of the evidence establishes that Andrew Fisher, in violation of Section 4c(b) of the Commodity Exchange Act and CFTC rule 33.10, intentionally defrauded Bruggeman during the solicitation, the account-opening, and the trading of his FSG account by providing a deceptively imbalanced picture of the relative risks and rewards of following FSG's trading advice and by pushing the purchase of out-of-the-money options in order to generate excessive commission income. Harold Siegel's claim that FSG could consistently pick safe and profitable option trades, and Siegel's use of sample trades that consistently made profits, grossly misrepresented the underlying reality that almost all of FSG's customers had never enjoyed the sort of profits or the sort of safety portrayed by Siegel. Fisher perpetuated this deceptive message when he represented to Bruggeman that Siegel's trading strategies were "good," and when Fisher represented that he had an even better trade. Fisher further deceived Bruggeman when he assured him not to worry about the possibility of loss and promised to closely watch the account and tell Bruggeman when to get out. Fisher otherwise never alluded to the underlying reality that almost all of Fisher's FSG customers had suffered substantial losses, and thus reinforced Bruggeman's mistaken belief that his funds would be "safe" and "protected." Fisher also failed to disclose that the trades recommended by FSG would generate substantial commissions that would consume a substantial portion of his investment and significantly hinder potential profitability. It is "rudimentary" that these sort of misrepresentations and omissions about profit potential and risks are material. *In re JCC,* [1994-1994 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 28,059 at 41,576 n.23 (CFTC 1994), *affirmed* 63 F.3d 1557 (11th Cir. 1995).

By principally compensating its account executives and branch office managers with a cut of the commissions, FSG supplied Fisher with the necessary motivation to convince Bruggeman to approve trading strategies that emphasized FSG's and Fisher's interests over Bruggeman's interests. The fact that Fisher quickly urged Bruggeman to invest more of his retirement money and that Fisher later deceptively reported that the sale of the sugar options would realize a profit indicates that he was pushing trades to generate commissions. As part of his commission-generating scheme, Fisher recommended trades in positions that were out of the money ("OTM"), even when comparable in-the-money ("ITM") positions were available. These trades significantly increased respondents' commission income, because FSG charged Bruggeman commissions based on the number of contracts traded, rather than the value of the position, and more OTM options could be purchased since the premium for an OTM option is substantially lower than the premium for a comparable ITM option.

Here, Fisher's recommendation to purchase of out-of-the-money options could not be justified for Bruggeman who had articulated a trading objective to pick only trades with a minimal risk of loss and a reasonable chance of profit. First, the value of a low-priced option is almost always less responsive to price changes in the underlying commodity or asset. Second, the total premium value represents the amount of risk, regardless of the number of contracts. And third, the profit potential of an OTM option, as measured by its delta, is lower than that of an ITM option of the same type. *See Ferriola v. Kearse-McNeill,* [1999-2000 Transfer Binder]

Comm. Fut. L. Rep. (CCH) ¶ 28,172, at 50,154-50,155 (CFTC 2000). For these reasons, the Commission has emphasized that "when customers are paying commissions on a per-contract basis, an account executive seeking to serve his customer's interests will purchase the lower-cost ITM position." *Id.*, at 50,155. Thus, Fisher's assurances that Bruggeman need not be concerned about the risk of loss when he convinced Bruggeman to buy OTM options failed to reflect the reality that the strategy of buying OTM options, compared to buying comparable ITM options, was significantly more risky and less likely to realize meaningful profits.

Fisher's promise that the trades were safe and had a good chance to be profitable was deceptive also because it failed to reflect the detrimental effect of FSG's burdensome commissions on profit potential. Here, the commissions and fees charged to Bruggeman's account consumed a third of his investment and resulted in commission-to-premium-paid ratios of 23%, 30%, 33%, and 39%, which represented formidable barriers to profit potential. Thus, Fisher's representations that the recommended trades were safe and likely to be profitable were materially deceptive.

The intentional nature of Fisher's fraud is underscored by Fisher's knowledge that Bruggeman was an inexperienced and unsophisticated novice of modest financial means who relied on him to provide fair and reasonable trading advice, Fisher's knowledge that Bruggeman was investing retirement funds and thus understandably concerned about losses, Fisher's knowledge that Bruggeman believed Siegel's false message that FSG only recommended safe trades, Fisher's blatantly false and deceptive claim that his recommended soybean trade was even better than Siegel's sugar trade, and Fisher's disingenuous report that the sale of the sugar options had made money for Bruggeman.

Collazo's fraudulent solicitation and trading advice

The preponderance of the evidence also establishes that Angel Collazo, in violation of Section 4c(b) of the Commodity Exchange Act and CFTC rule 33.10, intentionally defrauded Bruggeman when he took over as account executive by providing a deceptively imbalanced picture of the relative risks and rewards of following his trading advice and by also pushing the purchase of out-of-the-money options in order to generate excessive commission income.

Collazo had enough information to know that Bruggeman had not received fair and accurate explanations of the relative risks and rewards of trading options. Collazo not only was aware FSG was being put out of business for fraudulent sales practices, but also knew that Siegel and Fisher had falsely promised to recommend only safe trades. Nonetheless, Collazo did nothing to cure the bad mix of information that Bruggeman had received from Siegel and Fisher. For example, Collazo did not inquire further into what Siegel and Fisher had told Bruggeman about the risks and mechanics of trading options. Rather, Collazo falsely represented that Empire was a completely different firm than FSG and that he was a good broker who took care of his clients, when in fact Collazo had just left FSG where most of his clients had lost money, and when in fact Empire was owned and operated by virtually the same people who had owned and operated FSG.

Collazo fraudulently guaranteed profits when he claimed that, if Bruggeman bought the recommended T-bond calls, Collazo would be "calling in a few weeks to report profits" that would recoup at least some of Bruggeman's losses with Fisher and FSG. Collazo also falsely reassured Bruggeman that there was no need to worry about losses, because the trade was sure to make money. Collazo's unrestrained promise to recoup a significant portion of Bruggeman's losses was deceptive because it failed to reflect the fact that Empire's burdensome commissions significantly hindered profit potential and the fact that he recommended OTM options that were more risky than comparable ITM options. In this connection, Collazo also misrepresented the amount of commissions that would be charged. Finally, Collazo assured Bruggeman to get him out if the market unexpectedly dropped, which Collazo's subsequent conduct proved to be a false promise.

The intentional nature of Crown's fraud is underscored by his knowledge that Bruggeman was trusting Collazo to provide fair and honest advice that he had not received from Fisher, by his disingenuous claim that Empire was a completely different firm from FSG, and by his blatantly false guarantee that the trade he recommended would quickly realize a large profit.

Reliance and proximate causation

Bruggeman's decision to open the FSG account and deposit additional funds was consistent with his testimony that he relied on Siegel's and Fisher's message that he could reasonably expect to make profits with minimal accompanying risk. The fact that he had no investment experience, that he was not familiar with the futures and options markets, and that he told Fisher he was primarily interested in avoiding or minimizing losses supports the conclusion that Bruggeman reasonably relied on Fisher's misrepresentations and omissions to his detriment. *See Ricci v. Commonwealth Financial Group, Inc.*, [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶26,917 (CFTC 1996).

FSG's written disclosures of general risks by themselves did not cure the false impression of low risk and guaranteed profits created by Siegel and Fisher, where the overall effect of their intentionally deceptive statements substantially outweighed and vitiated the written risk warnings. *Ferriola,* at 50,153; *Bishop,* at 44,841; and *Levine v. Refco,* [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶24,488, at 36,115-36,116 (CFTC 1989). Similarly, the mere fact that FSG conducted some sort of compliance review cannot be used to inoculate Fisher's fraud, in the absence of a recording of the review and in the absence of any evidence that the compliance review had been designed and conducted to discover or to cure the misrepresentations made by Siegel and Fisher. *See JCC, Incorporated v. CFTC,* [1994-1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,492, at 43,217-43,218 (11th Cir. 1995).

Bruggeman's decision to resume trading with Collazo, after suffering losses with Fisher and FSG, was consistent with his testimony that he relied on Collazo's representations that Empire was different from FSG, that Collazo made money for his clients, that Bruggeman was certain to make a quick and large profit with minimal accompanying risk, and that Collazo would quickly get Bruggeman out of a losing trade. Bruggeman's negative experience with Fisher and FSG do not bar finding that he reasonably relied on Collazo' misrepresentations and omissions to his detriment, where he was unsophisticated and still lacked meaningful investment experience, and especially where Collazo overcame Bruggeman's reluctance with a baseless profit guarantee and false claims about his expertise and Empire's integrity. *Ricci v. Commonwealth Financial Group, Inc.*, [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶26,917 (CFTC 1996).

The proper measure of damages for Fisher's fraud is Bruggeman's total out of pocket losses on the trades recommended by Fisher: $11,277. The proper measure of damages for Collazo's fraud is Bruggeman's total out of pocket losses on the trades recommended by Collazo: $1,996.

ORDER

Richard Bruggeman has established that Andrew Fisher violated Section 4c(b) of the Commodity Exchange Act, and CFTC rule 33.10, and that these violations proximately caused

$11,277 in damages. Accordingly, Andrew Fisher is ORDERED to pay to Richard Bruggeman reparations of $11,277, plus interest on that amount at 1.21%, compounded annually from June 17, 1999, to the date of payment, plus $125 in costs for the filing fee.

Bruggeman has also established that Angel Fernando Collazo violated Section 4c(b) of the Commodity Exchange Act, and CFTC rule 33.10, and that these violations proximately caused $1,196 in damages. Empire Asset Management is liable for Collazo's violations pursuant to Section 2(a)(1)(A) of the Act, and Broadstreet Financial Corporation is liable as the guarantor of Empire. Accordingly Angel Fernando Collazo, Empire Asset Management, and Broadstreet Financial Corporation are ORDERED to pay to Richard Bruggeman reparations of $1,996, plus interest on that amount at 1.21%, compounded annually from January 9, 2001, to the date of payment, plus $125 in costs for the filing fee.

Fisher is solely liable for the $11,277 award and the prejudgment interest on that amount. Collazo, Empire and Broadstreet are jointly and severally liable for the $1,996 award and the prejudgment interest on that amount. Fisher, Collazo, Empire and Broadstreet are jointly and severally liable for the $125 cost for the filing fee.

Dated March 10, 2004.

Philip V. McGuire,
Judgment Officer