U.S. CON DDITY FUTURES TRADING COMMIN ON



v.

Three Lafayette Centre

1155 21st Street, NW, Washington, PC 2058 ROCFEDINGS
PROCEEDING CLERA

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APR | | 53 PH '97

AAA & BROTHERS INTERNATIONAL FINANCIAL CORP.,

FILED

Complainant,

*

CFTC Docket No. 96-R145

PIONEER FUTURES, INC.,

*

Respondent.

ORDER DISMISSING COMPLAINT AND ENTERING AWARD ON COUNTERCLAIM

By Order dated March 3, 1997, the Court granted respondent Pioneer Futures, Inc.'s motion compelling discovery and awarded \$1,020.00 to Pioneer for its costs in filing the motion. 1 C.F.R. §12.30(b)(3) and (c). The Court's March 3, 1997 Order Compelling Discovery complainant directed AAA & Brothers International Financial Corp. to provide responsive answers and submissions to certain interrogatories, admissions, and document requests. In addition, the Order Compelling Discovery tentatively concluded that the complaint should be dismissed with prejudice and directed the parties to submit comments, other verified statements, and/or documents authenticated by affidavit

Order Compelling Discovery And To Show Cause Why The Complaint Should Not Be Dismissed And An Award Entered Against Complainant On The Counterclaim ("Order Compelling Discovery"), dated March 3, 1997, at 7-12. The Court's March 3, 1997 Order is attached as an Appendix to this Order, and its findings and conclusions are finalized and incorporated herein.

in opposition to or in support of the Court's tentative conclusion.² Without the compelled information, the Court explained, the complaint's deficiencies would remain uncured, and Pioneer would be entitled to dismissal as a matter of law.³

The Order Compelling Discovery also tentatively concluded that Pioneer was entitled to a favorable decision on its counterclaim based on an agreement wherein AAA & Brothers indemnified Pioneer for losses incurred by Pioneer as a result of actions taken by AAA & Brothers' agents or employees.

AAA & Brothers was ordered to submit comments on all these issues and make its required discovery production on or before March 24, 1997. Pioneer's comments were due on or before April 7, 1997.

Since the issuance of the March 3, 1997 Order Compelling Discovery, AAA & Brothers has not been heard from. It has not produced the required discovery materials, sought procedural relief from the Order's requirements, or otherwise contacted the Court concerning its nonfeasance. It has not challenged the Court's tentative conclusions that the complaint should be

² <u>Id.</u> at 12-14.

³ <u>Id.</u> at 7-14.

⁴ <u>Id.</u> at 14. The indemnification agreement is set forth in <u>AAA & Brothers International Financial Corp. v. Pioneer Futures, Inc., [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶26,925 at 44,491-44,492 (CFTC Dec. 30, 1996).</u>

⁵ Order Compelling Discovery, at 14.

dismissed, or that Pioneer is entitled to a favorable decision on the counterclaim. Under these circumstances, dismissal of the complaint and the entering of an award on the counterclaim is required. Accordingly, for the reasons set forth herein and in the Court's Order Compelling Discovery, the Court hereby DISMISSES the complaint with prejudice. Further, the Court ORDERS that, within 30 days of the date that this Order becomes final, complainant AAA & Brothers International Financial Corp. PAY \$5,520.00 to Craig B. Greenfield, Esq., for the purpose of disbursement to respondent Pioneer Futures, Inc. 7

IT IS SO ORDERED.

On this 1st day of April, 1997

Bruce C. Levine

Administrative Law Judge

See <u>Buckwalter v. Preferred Commodity Corp.</u>, [1994-1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶26,289 (CFTC Jan. 17, 1995).

Pioneer submitted timely comments in support of the Court's tentative conclusions, and in support of the \$4,500.00 that it claims under its indemnification agreement with AAA & Brothers. Letter from Craig B. Greenfield, Esq., Counsel for Pioneer, to the Court, filed March 27, 1997.

This sum includes the \$1,020.00 previously awarded to Pioneer under 17 C.F.R. §12.30(c). Order Compelling Discovery, at 12.