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ANITA BOWDEN, Complainant v. ALARON TRADING CORPORATION, MARK STEPHEN BEAIRD, SANDRA ZEHRA CIARAMITARO, and GEORGE DE MARCILLA (a.k.a. GEORGE LUIS GARCES DE MARCILLA), Respondents	CFTC Docket No. 97-R079

ORDER OF DISMISSAL WITH PREJUDICE

In this proceeding, complainant Anita Bowden and respondents engaged in extensive settlement discussions convened and mediated by the undersigned. Following an initial conference call, the parties expressly consented to continuing the settlement negotiations on an ex parte basis by transmitting offers to each other through the undersigned. Several offers were exchanged back and forth, finally resulting in all parties agreeing to a settlement of the case for $1,000. The complainant was expressly warned by the undersigned that her agreement to settle the case for that amount would end all disputes between her and the respondents and she was also informed that she would be considered to have an enforceable agreement from that point forward regardless of whether she would wish to back out of it later. Despite these warnings, the complainant agreed to a settlement for $1,000. She was informed that the respondents would be sending her a release to sign, and that following her return of the signed release, she would receive her check and the case would be dismissed thereafter.

Upon receiving the release, complainant contacted the undersigned and expressed displeasure with the confidentiality clause of the release. She was told to contact respondents' attorneys, who within several days informed the undersigned that they told her that she could cross out that section of the release if she did not like it. Complainant confirmed to the undersigned that she had been given this information. During this conversation, complainant expressed some reservations about the release based on conversations with unknown persons, but after lengthy discussions with the undersigned regarding the effect of the release she appeared ready to sign it.

Approximately a week later, respondents notified the undersigned that when they contacted complainant to ask about the release, she indicated uncertainty about whether she would sign it. Therefore, the undersigned contacted complainant, who in yet another lengthy conversation expressed reservations about the release. Pressed for details, complainant again objected to the confidentiality clause. When reminded that she had been told she could cross it out, complainant said there were other clauses she did not like. However, she could not remember what those clauses were and could not locate the one-and-one-quarter page agreement so that she could identify the offending terms. During the conversation, complainant continued *six* more times to object to the confidentiality clause, and each time she was reminded that it was not applicable. Undeterred, complainant started objected to the amount of the settlement, claiming that respondents had changed the agreed-upon sum. According to complainant, the original settlement was for $2,400, but she was reminded that the $2,400 number was her initial demand. In spite of this reminder, complainant contended that the respondents had changed their minds and that she should be given the same right.

In an attempt to forestall similar objections, complainant was then informed that she had agreed to $1,000 and that the oral settlement would be considered enforceable. She was warned that she could refuse to sign the release, but that an order of dismissal would be issued anyway so long as respondents paid her the settlement amount. She said she could just refuse to accept it, and she was told that would have no effect—she would just be refusing money but the case would still be dismissed. Taking a new tack, complainant then argued that the release improperly forced her to waive all claims in other forums against respondents. She contended that she had not known that she could not file elsewhere. The undersigned again reminded her that she had been expressly warned that the settlement resolved all disputes arising out of her account. Complainant then argued that the undersigned had changed *his* mind about having an oral hearing (the parties were informed in the first settlement conference that a hearing would be held despite an initial determination that no hearing was necessary; the change was explained as the result of recent Commission cases expressing a preference for oral hearings), and she did not know why she could not change her mind about settling. She tried to justify withdrawing from the agreement as based on a "technicality" and said that should release her from any agreement. At another point, complainant argued that the undersigned had badgered her into agreeing to the settlement by refusing to listen to her proffers of proof regarding aspects to her case that, during the settlement conference call, the parties had been informed were not legally relevant to the issues that would be covered during the oral hearing.

Complainant's insistence that the release was improper led to the undersigned offering her the opportunity to seek legal advice, and to have the chance to file an opinion from an attorney expressing why the agreement was unfair and should not be enforced. Complainant said that she would not hire an attorney but she knew why the agreement was unfair, although she again was unable to find it and was unable to identify any burdensome terms (other than her repeating the confidentiality clause objection and her odd view that it was unfair of respondents to insist that she drop her case). She contended that she would talk to her friends about the release. The

conversation ended with complainant being informed that respondents would be told that they could send her the money if she had not returned the release, and that the case would then be dismissed with an order disposing of the matter with prejudice.

On the approximate day set for complainant to return the release, respondents' attorneys notified the undersigned that they had learned that complainant was looking around for a lawyer. Complainant then called this Office and left a message asking when she was supposed to return the release, and stating that she wanted more time so she could have someone review it. The undersigned convened a conference call with complainant and respondents' attorney Fitzpatrick. All parties were informed of the contents of the prior conversations. Complainant said that she had been trying to get an attorney, pursuant to the undersigned's offer to allow her to challenge the agreement with appropriate legal assistance. She was asked how many she had contacted, and she said it had been just one, who was not retained because of the expense. Complainant then said she wanted more time to shop around, although she did not want to pay an attorney. She said she had other things to do, too. Complainant was then told that no additional time would be given unless she could explain what was wrong with the agreement. Again, she was unable to do so. Therefore, respondents were informed that they could send complainant the check; complainant was informed that the release need not be signed; both sides were told that the case would be dismissed upon receipt of proof that the check had been sent to complainant.

That has now been received. Complainant's lack of cooperation in following through on the oral agreement she had entered into will not serve to bar enforcement of that agreement. The agreement's terms included complainant's waiver of all claims against respondents arising out of the account at issue in this proceeding in exchange for payment of $1,000 by respondents to her. Respondents have complied with their part of this agreement. Accordingly, the complaint in this matter is DISMISSED WITH PREJUDICE.

Dated: April 3, 1998

Joel R. Maillie

JOEL R. MAILLIE
Judgment Officer