

UNITED STATES OF AMERICA  
Before the  
COMMODITY FUTURES TRADING COMMISSION

In the Matter of:

LARRY CELEHOVSKY,  
Complainant,

v.

97-R047

APEX CAPITAL et al.,  
Respondents.

OCT 17 2 23 PM '97

OFFICE OF PROCEEDINGS  
PROFESSIONAL STAFF

FILED

ORDER OF DISMISSAL

By Notice and Order issued July 10, 1997, this matter was scheduled for oral hearing, to commence at 9:00 a.m., October 2, 1997, in the United States Tax Court, San Francisco, California. The parties were ordered to advise the hearing clerk, in writing, of their intention to appear and participate.

Respondent Ing (U.S) paid \$2,000 from commissions held for respondent Schaller to settle its dispute with complainant. (Tr. 40) The complaint against Ing was dismissed by Order issued July 10, 1997.

Complainant's attorney, Robert Thompson, appeared at the hearing on this matter, and informed the court that his client, Larry Celechovsky, was in Prague, Czech Republic, and would not be present to testify. No witnesses were produced by counsel for complainant. Counsel for complainant requested permission to have his client testify from Prague via telephone. That request was denied. A similar request by respondents was denied much earlier.

Respondents moved for dismissal of the proceeding. That motion was taken under advisement, and counsel for complainant was informed that he could file a statement in opposition to the motion, provided he appended thereto a statement to the effect that 1) the complainant would agree to pay the cost of transportation, hotel accommodations, and meals for respondents Schaller and Clark to return to San Francisco at a later time or agree to have the matter heard in the vicinity of Fort

Lauderdale, Florida; and 2) complainant would provide clear and reliable evidence that he was prevented from attending the hearing in San Francisco on October 2 by reason of a medical emergency, and any circumstances that may have prevented him from timely informing the court and the respondents of his inability to participate in the hearing on October 2.

In an affidavit filed on October 14, 1997, complainant averred that his physician, on or about September 15, 1997, prepared a medical report to the effect that complainant should not be required to attend the hearing scheduled for October 2, 1997. Neither the complainant nor his attorney notified this court or the respondents that he had a disabling condition and would not be present for the hearing. According to the affidavit, complainant traveled to Prague, Czech Republic, on September 16, 1997, and he supposedly remains there.

In his statement opposing the respondents' motion to dismiss, counsel for complainant failed to indicate that his client would bear the costs of air fare, hotel accommodation, and other incidental expenses if a second hearing was convened. Neither did counsel for complainant state that he would appear at a hearing if it were set for trial in the Fort Lauderdale vicinity.

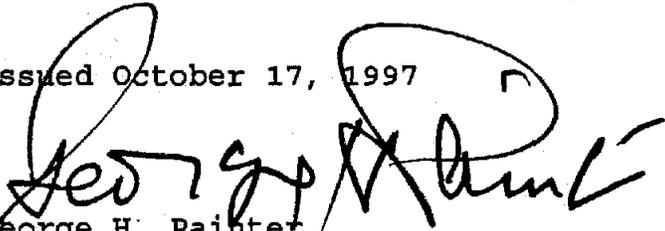
It was stipulated during the brief hearing on October 2, 1997, that the complainant did not, as alleged in the complaint, wire transfer \$126,000 to Ing (U.S). In fact, complainant transferred certain positions to Ing, which had a market value of approximately \$47,000. Complainant later withdrew \$27,000 from the account. (Tr. 26)

This complainant elected to depart the country on September 16, 1997, without informing the court or the respondents. His counsel was aware, at least one week prior to the hearing, that complainant would not be present at the trial, and this information was not transmitted to the court or the respondents. Counsel for complainant was informed that any statement opposing respondents' motion to dismiss should be accompanied by statement that complainant would bear the cost of reconvening the matter in San Francisco, or that he must agree to participate in a hearing in the vicinity of Fort Lauderdale, Florida. The statement in opposition to the motion to dismiss made it clear that the complainant did not agree to these terms.

Respondents have moved for reimbursement of costs incurred to participate in the hearing in San Francisco. That request is denied.

Complainant has failed to establish in open hearing that he sustained monetary damages by reason of wrongdoing on the part of respondents. This proceeding is DISMISSED with prejudice.

Issued October 17, 1997

  
George H. Painter  
Administrative Law Judge