RECEIVED C.F.Y.C.

UNITED STATES OF AMERICA

Before the

144 APR 27 A 4: 33

COMMODITY FUTURES TRADING COMMISSION

PROCEEDINGS CLERK

SHARON JEAN DAWSON, Complainant,

VS.

CARR INVESTMENTS, INC., RODMAN & RENSHAW, INC., EDWARD CARR, JR., and JONATHAN LUBOW, Respondents. CFTC Docket No. 96-R101

INITIAL DECISION

Appearances:

On Behalf of Sharon Jean Dawson:

Linda Frazier, Esq. Two North LaSalle Street Suite 610 Chicago, IL 60602

On Behalf of Carr Investments, Inc., Edward F. Carr, Jr., Jonathan W. Lubow and Rodman & Renshaw, Inc.:

Jeffrey M. Henderson, Esq. Henderson & Lyman Attorneys at Law 111 West Jackson Blvd. 16th Floor Chicago, IL 60604

Before: Painter, ALJ

Procedural History

The original complaint in this matter was filed with the Commission in May 1996. Although complainant Sharon Dawson ("Dawson") was not represented by counsel, she requested that her family attorney, one Robert Pratt, be furnished with a copy of any communications from the Commission. The complaint charged wrongdoing on the part of respondents, with damages of \$700,000. The Commission's staff rejected the complaint as it was not in accord with Commission rules and procedures. An amended complaint was filed on June 5, 1996, with Peter Brooks listed as a co-complainant. Despite the magnitude of the claimed damages, complainant, representing herself, requested the voluntary decisional procedure. The Proceedings Office found the first amended complaint deficient, and complainant requested time to file a second amended complaint.

The second amended complaint, solely in the name of Sharon Dawson, was received by the Proceedings Office on July 18, 1996, and claimed damages in the amount of \$627,000. The voluntary decisional procedure was requested. The second amended complaint was accepted by the Proceedings Office and served on respondents Rodman & Renshaw, Edward F. Carr, Jr., Jonathan W. Lubow and Carr Investments, Inc.

Rodman & Renshaw filed its Answer to the second amended complaint on October 7, 1996, denied any wrongdoing, and upgraded the decisional process to a formal hearing by paying a \$200 fee. The Answer of Carr Investments, Edward Carr, Jr., and Jonathan Lubow was filed on October 23, 1998.

By letter dated November 26, 1996, James J. Sullivan, Esq., entered his appearance on behalf of Sharon Dawson in the instant case, and on behalf of Peter Brooks in a related proceeding.

On November 24, 1997 James Sullivan, at the direction of the Court, withdrew as counsel due to a conflict of interest between Sharon Dawson and Peter Brooks. On November 25, 1997, Linda Frazier, Esquire, entered her appearance on behalf of Dawson. James Sullivan continued to represent Brooks in a related case. Attorney Frazier requested and was granted time to file an amended complaint. On January 5, 1998, the third amended complaint was filed and served on respondents. Respondents filed answers and denied any wrongdoing.

Papers filed with the Proceedings Clerk on April 21, 1998, confirm that Rodman & Renshaw, Inc., filed Chapter 7 bankruptcy on March 18, 1998, docket number 98 B41901 (AJG) and that the case was consolidated with the bankruptcy petition of Rodman & Renshaw Capital Group, Inc., docket number 98 B 41902 (AJG). The petitions for bankruptcy were filed in the United States Bankruptcy Court, Southern District of New York. The complainant's claim against Rodman & Renshaw, Inc., was dismissed without prejudice in April 1998.

Commission records, maintained by the National Futures Association, show that at times relevant to the events at issue there were four registered entities with names beginning with

Rodman & Renshaw: Rodman & Renshaw Futures, Inc.; Rodman & Renshaw Futures Management, Inc.; Rodman & Renshaw Capital Group, Inc.; and Rodman & Renshaw, Inc., the futures commission merchant that carried the Dawson account. It has not been possible to determine the natural person principals of these entities.

The hearing on this matter took place in San Francisco, California in June 1998. During the trial of this matter, respondents failed to produce any underlying documents to support Exhibit R-18, which purportedly shows the deposit and withdrawal history of the account at issue. Furthermore, neither Carr nor Lubow were able to identify the person or persons requesting each and every deposit, transfer and withdrawal, or the account number, financial institution, and owner of the account receiving disbursements from either the account at issue or the Brooks account. On April 2, 1998, the parties were ordered to file accountings of all events relating to the account at issue, 24562, and in account 24528. In response to this order respondents were unable or unwilling to identify the person or persons ordering disbursements, transfers, and deposits to and from the complainant's account or Brooks' account. Complainant filed an accounting in which it was shown that complainant transmitted to Rodman & Renshaw via Carr Investments a total of \$690,735.66, and that complainant received back from respondents withdrawals totaling \$171,800. Complainant incurred a net loss of \$518,935. reason of her dealings with respondents.

The trial of this matter took place in San Francisco, California on June 8 and 9, 1998. The parties have filed post hearing briefs, and this matter is ready for decision.

Findings of Fact

- 1. Sharon Dawson ("Dawson) was born in 1952. She is a middle aged, college educated individual who suffers from a severe hearing impairment and a speech impediment. At no time in her life has she been self supporting. Her father made the down payment on a condominium for her and provided her with a monthly stipend prior to his death in August 1992. Dawson inherited 1.2 million dollars from her father's estate. (Tr. 209-211)
- 2. Peter Brooks ("Brooks") married Dawson in 1988. (Tr. 212) Brooks is Harvard educated. Dawson testified that Brooks had never been gainfully employed to her knowledge, and had never been able to support a family. (Tr. 12-13) Carr described Brooks as a friendly "good looking guy." Lubow testified that Brooks and his first wife had developed a board game that Brooks hoped to market. This was confirmed by the testimony of Carr. (Tr. 422-423, 523-525).
- 3. Rodman & Renshaw was at relevant times a registered futures commission merchant, and carried commodity accounts for Peter Brooks (account number 24528) and Dawson (account number 24562). On March 18, 1998 Rodman & Renshaw filed for bankruptcy, which automatically stayed this proceeding against the bankrupt.
- 4. Carr Investments Inc. was at relevant times registered with this Commission as an introducing broker. Carr Investments introduced the Brooks account and the Dawson account to

Rodman & Renshaw. According to the testimony of Edward Carr, Carr Investments Inc. is now a defunct entity.

- 5. By Initial Decision issued August 5, 1986 Judge Arthur L. Shipe found that Carr represented to a customer that he could "almost guarantee success" on a gold put option. Judge Shipe determined that Carr had guaranteed profits with a limited risk contrary to 17 C.F.R 32.9. (Wood ward v. ITG, CFTC Docket 84-R477, August 5, 1986) On March 11, 1988, while Carr was employed by International Trading Group, a futures commission merchant, Carr was charged with making material misrepresentations in soliciting a commodity options customer. On August 2, 1989, the Western Regional Business Conduct Committee of the National Futures Association accepted an offer of settlement from Carr, and imposed a \$2,000 fine and a prohibition from applying for registration with the NFA for six months. (Ex. 13, p. 5) Carr Investments, Inc. was formed in March 1988. Carr was a principal of the firm, and served as its president and associated person. Carr has been registered with this Commission for a number of years. He served as an associated person and manager with International Trading Group, a futures commission merchant, and later as a manager with Chilmark Commodities, also registered as a futures commission merchant. International Trading Group and Chilmark are defunct entities. (Commission records)
- 6. On August 12, 1991 the Eastern Regional Business Conduct Committee of the NFA charged Carr Investments with using "promotional material which mentioned the possibility of profits without making equally prominent mention of the risk of loss in violation of NFA compliance rule 2-29(b)(3)." Carr Investments was fined \$3,000 and ordered to submit promotion material to the NFA for review prior to using such promotional material. (Ex. C-13, p. 4-5)
- 7. Respondent Jonathan Lubow was at all relevant times registered with this Commission as an associated person employed by Carr Investments, Inc. Lubow and Carr are now with a new company called Trader's Edge, also a registered introducing broker. (Commission registration records)
- 8. In October 1990, Lubow had a telephone contact with Peter Brooks, and in July 1991 Brooks opened account number 24528 with Rodman & Renshaw with a \$40,000 deposit. (Tr. 420-434) Carr Investments was the introducing broker, and Lubow served as his account executive. Brooks granted Edward Carr power of attorney over the account. After losing \$10,000 to \$15,000, the account became dormant. In May 1992, Brooks prevailed in an action against a securities broker and received an award of \$129,000. In that same month Brooks sent the award check to Rodman & Renshaw for deposit in his commodity account. The following month Lubow flew from New Jersey to California to play golf, but testified that he did not so much as telephone the client that had just invested an additional \$129,000 in his commodity account. (Tr. 443)
- 9. Peter Brooks did not disclose to Dawson prior to March 1993 that he had an account with Rodman & Renshaw, and that Carr Investments was the introducing broker. Dawson's father died in August 1992. His will was read in September 1992, at which time Dawson and Brooks learned that she was to inherit 1.2 million dollars. Brooks requested Carr to write a letter to

Dawson and solicit her to open an account through Carr Investments. (Tr. 520) Although Carr claims that he had never previously met or spoken to Dawson, even by telephone, he sent a letter to her October 22, 1992, in which he made the following representations:

"Upon funding your account with \$1,000,000 the following will occur. Ten one hundred thousand Dollar U. S. government backed 120 day Treasury Bilis will be purchased.we will search for overvalued options to write and collect premium. ...I am confident that we could generate a return between 18 and 23 percent per year for your account. The compound growth of the treasury bill will help enhance our profit objective. If these returns (which are not guaranteed) are realized you will be able to withdraw a minimum of \$10,000 per month without depleting the principal amount.
"Based on the projected returns it would be reasonable to expect a doubling of the net assets value of the account every 5 to 6 years.
"Peter (Brooks) has worked successfully with senior options specialist Jon LubowI welcome the opportunity to serve your investment needs." (Ex. C-5)

Carr testified that even though 80% to 90% of the customers of Carr Investments lost money, he did not apprise Dawson of this fact. (Tr. 204). His testimony flatly contradicts the import of his October 22, 1992 letter to Dawson.

- 10. Dawson testified that she received her inheritance in December 1992 and then purchased her home for \$350,000, leaving \$850,000 in her account with Wells Fargo. (Tr 221-223) Dawson testified that Brooks described Carr as a conservative investor, and he recommended that she meet with Carr and Lubow. Dawson testified that she first met Carr and Lubow before receiving a letter from Carr dated October 22, 1992 and that she met with them again in February and March 1993. This is contrary to the testimony of Carr and Lubow who testified that they met with Dawson for the first time in March 1993. Carr and Lubow were not credible witnesses. Because one's memory is sometimes fallible, it is possible that Dawson did not meet Carr and Lubow until March 1993. Although not crucial to the decision, I accept as true the testimony of Dawson that she first met Carr and Lubow at about the same time she received Carr's letter in October 1992, and again in March 1993.
- 11. Carr and Lubow arrived in California on March 4, 1993, and had breakfast with Brooks on the morning of March 5, 1993. Dawson was not present at the breakfast. During this private meeting Brooks explained that Dawson was a Mormon; that they should avoid alcoholic beverages around her; and speak clearly and not cover their mouth while talking as Dawson was severely hearing impaired. Lubow testified that the four (Carr, Lubow, Dawson and Brooks) had lunch on March 5, 1993 at which time no business was discussed, and a dinner on the same day in which Car gave a five minute explanation of options. (Tr. 450-454)
- 12. Brooks, Lubow and Carr decided that on March 6, 1993, Brooks and Lubow would play golf while Carr visited with Dawson. Carr and Dawson agree that they were together for up to three hours alone. Dawson testified that the meeting with Carr took place at her new home, and that Carr had never been in her condo. Carr testified that the meeting took place in the condo.

Dawson testified that Carr assured her that her account would be handled just as explained in his letter of October 22, 1992. (Tr.221) Carr testified that the letter was never mentioned. Carr testified that he went over the customer agreement with Dawson, page by page, but that at no time did he put pen to paper. (Tr. 535) Dawson testified that she saw the account opening documents for the very first time on March 8, 1993, when Brooks informed her that they should be executed and transmitted to Carr. (Tr. 230) I find that Carr, while alone with Dawson on March 6, 1993, assured her that the letter of October 22, 1992 would be followed, and at no time discussed any risks associated with commodity trading. Neither did he present Dawson with the account opening documents. And certainly Carr did not disclose to Dawson that 80% to 90% of his clients lost money.

- On or about March 8, 1993, Brooks asked Dawson to sign the account application forms. (Tr. 230) Dawson and Brooks executed forms for account 24562. Power of attorney was vested in Brooks, Lubow and Carr, with each to have veto power over decision making. Dawson did not sign the Carr Investments Account Agreement, which apprises a customer of the risks involved in futures trading and in the writing of options in particular. Her name was signed by an unknown person. (Ex C-6) Carr acknowledged that the signatures on the account opening documents were not signed by the same person. (Tr. 97) By agreement signed on April 16, 1993, Dawson vested power of attorney solely in Edward Carr, with the proviso that "All trades are subject to approval by client and/or Peter S. Brooks (emphasis added) It is thus clear that all parties were cogently aware that Dawson was the de facto and de jure owner of the account. (Ex.C-7) Carr testified that Dawson requested the change in power of attorney because "She said she's uncomfortable with her husband on power of attorney." (Tr. 102) Thus, as early as April 16, 1993, Carr was on clear notice that Dawson owned the account, that she lacked confidence in Brooks, and relied on Carr to keep her advised and informed as to her account. The backup withholding document, used for W-9, W-8 and 1099-B certifications, contains only the name of Sharon Dawson Brooks, aka Sharon J. Dawson. (Ex. C-6, p. 18) Carr testified that Dawson and Brooks sent the signed applications to Carr Investments, Inc. (Tr. 95)
- 14. Despite Carr's testimony that the account at issue was a joint account, he made it clear in a secretly recorded telephone conversation with Dawson that there was an account for Sharon Dawson, and an account for Peter Brooks. At one point Carr made this statement to Dawson: Sharon, two things. From the first time Peter (Brooks) said I want you to wire money from Sharon's account to my account. We said, Peter, we could ...we can...it's a joint account we can do that but to make things safe let's get a signature.... (Ex. C-15, p. 12; Tr. 155-156) Respondents Carr and Lubow manipulated Dawson into including Brooks 'name on the account at issue in order to give the gloss of compliance with rules requiring that the customer be informed of the status of her account. Carr and Lubow, with the help of Brooks, deliberately and knowingly withheld vital information from Dawson from the opening of the account in March 1993 until December 1995, as confirmed in telephone conversations between Carr and Brooks, and Carr and Dawson. (Ex. C-15, C-25) These conversations were secretly taped by Carr.
- 15. Dawson testified that the account application contains patently false information, entered by Brooks, concerning employment income. More specifically, she testified that Brooks at no time earned \$57,000 a year, and that she had never earned \$37,000 per year as a school teacher. (Tr. 231-232)

- Dawson testified that she signed the forms at the spaces marked with an "x", and that she was not concerned with the disclosure statement as she relied upon assurances from Carr that her principal would be invested in T-bills. (Tr. 220, 232-233)
- 17. Believing that Carr would manage her money in a safe and prudent manner, and in accord with representations made in his letter dated October 22, 1992, Dawson wired \$200,000 to Rodman & Renshaw on or about March 31, 1993. (Tr. 234; Ex. C-31). Dawson believed that this money would be used to purchase two \$100,000 T-bills. (Tr. 234) Shortly thereafter, on April 16, 1993, Dawson removed Brooks and Lubow from any control over her account, and vested sole power of attorney in Carr. The new power of attorney form named only Dawson as the client. Dawson instructed Carr to keep her informed of events concerning her account. Dawson had no confidence in Brooks as he had lost a substantial amount of money through a securities firm. (Tr. 239-243; Ex. C-7) In June 1993, Dawson deposited an additional \$90,735.66 in her Rodman & Renshaw account. This was the proceeds from the sale of her condominium. (Tr. 249) The check for this deposit was clearly endorsed by Dawson, for deposit in her Rodman & Renshaw account 24562. (Ex. C-29)
- 18. During the life of account 24562, Dawson requested and received withdrawals totaling \$171,800. (Tr. 257-258; Ex. C-31[modified C-14]) Contrary to his testimony, Carr was cogently aware at all times that Dawson was dependent upon her inheritance for support and maintenance. (Tr. 154-156; Ex. C-12, Dawson letters)
- 19. Lubow, the purported account executive for Dawson's account, testified that he never had a telephone conversation with Dawson. (Tr. 57) Rather, he spoke to Brooks. (Tr. 48) Lubow further testified that on occasion calls with customers were taped, and that a time came when all calls with Brooks were taped. (Tr. 49) Carr, who held power of attorney over Dawson's account, testified that not once did he make an effort to contact Dawson and inform her of the status of her account. (Tr. 107)
- 20. Shortly after the Dawson account was opened, Carr received from Brooks a Letter of Authorization purportedly signed by Dawson. The letter contains the following statement: "...I have authorized Ed Carr...to transfer funds amounting to \$100,000 from my account number 245 24562 into my husband's account at Carr Investments number 245 24528. This transfer is to partially repay my husband for his financial and monitary (sic) assistance dating from 1985." The letter is dated May 27, 1993, and contains what appears to be an obvious stamp signature of Dawson. (Ex. C-7, p.2) Carr admitted in his testimony that the signature did not look genuine, and he called the questionable signature to the attention of Rodman & Renshaw personnel, who recommended that the signature be notarized. (Tr. 117) Carr made no effort to bring this matter to the attention of Dawson. From the date the account was opened in March 1993 until December 1995 Carr made certain that Dawson remained ignorant of what was happening with her investment.
- 21. On or about January 11, 1994, Dawson telephoned Carr and informed him that she was withdrawing \$100,000 from her Wells Fargo account for deposit in her Rodman & Renshaw account. She intended for the money to be invested in a third \$100,000 T-bill. (Tr. 254-255)

The endorsement side of the check contains her signature, but she testified that the account number above her signature had been entered at a later time. She further testified that Brooks later admitted that he had typed his account number above her signature. Brooks was not subpoenaed by either side to verify or rebut Dawson's testimony. (Ex. C-8; Tr. 255-257) By date of March 23, 1994 another \$100,000 check was drawn on Dawson's Wells Fargo account, and Brooks' account number was again typed above the endorsement. Two additional checks drawn on Dawson's Wells Fargo account on March 24, 1994, have Dawson's endorsement, and above the endorsement the typed account number of Brooks. Dawson testified that she informed Carr by telephone that the checks were being sent to Carr for the purchase of \$100,000 T-bills. Dawson believed that after March 1994 she had six \$100,000 T-bills on deposit with Rodman & Renshaw. (Ex. C-8; Tr. 257-258) Carr denied that he ever spoke to Dawson, during the time the account was active, about the account itself. (Tr. 106) I find that Dawson testified honestly, and that Carr ignored her instructions to invest her funds in T-bills.

- 22. By letter dated July 31, 1995, Dawson wrote to Carr that she had been informed by Brooks that her account "...was not in a growth phase..." and that she would try to stay within her budget. She went on to say that her bank account was overdrawn because some of Brooks' checks had been returned. She requested that her monthly allotment be increased from \$3,000 to \$3,500. (Ex. C-12) Carr neither wrote nor telephoned Dawson in response to the letter. (Tr. 259) This Court finds that Carr deliberately kept Dawson ignorant of the status of her account until after her entire investment was lost.
- 23. In September 1995 Carr sent a release form to Brooks, requesting that Brooks release Carr Investments and Carr from any liability for accounts 24528 and 24562. The form has a space for Dawson and Brooks to sign. (Ex C-26) In a series of telephone conversation taped by Carr, Brooks expressed a willingness to sign the release, but said he could not speak for Dawson. Carr sent Brooks a personal check for \$3,000 to sign the release. (Ex. C-27) Brooks did not return the signed release, and payment on the check was stopped. There followed an interesting colloquy between Brooks and Carr:

Brooks: I can't do anything without Sharon (Dawson) or her attorney ... I mentioned to Jon (Lubow) if Sharon takes a look at this she's gonna...

Carr: Well she doesn't have to, the whole purpose of it is for you to sign it.

Brooks: That defeats the whole purpose of us trying to work this thing out without showing it to her attorney....(Ex. C-25)

- 24. On or about November 9, 1995, Dawson requested, by facsimile, that Carr provide information on the status of her account and a check to cover her property taxes. She also requested that Brooks' name be removed entirely from her account. She expressed concern over Brooks' handling of his bank accounts. (Ex. C-12)
- 25. On receiving Dawson's facsimile of November 9, 1995, Carr did not telephone Dawson, but instead wrote her a letter in which he informed her for the first time that \$250,000 had been

withdrawn from her account and transferred to Dawson's Wells Fargo account or to Brooks' account, and that the account value was only \$27.55. This letter was sent by certified mail, and returned to Carr marked "refused." Carr took no action when the refused letter was returned. (Ex. C-12) Through cross-examination by counsel for respondents, it was established that 95% of the time Brooks retrieved all mail for Dawson. (Tr. 301-303) This Court finds that Carr was aware that Brooks would intercept and refuse the letter. Carr had no desire to inform Dawson of the status of her account.

- Dawson learned the awful truth about her account during a telephone conversation initiated by her and recorded by Carr on or about December 5, 1995. Carr informed her that \$250,000 had been transferred out of her account to Brooks' account. Dawson denied authorizing such transfers, loudly and at times profanely, and stated that she was supposed to have six \$100,000 T-bills in her account, which was to provide her \$3,000 per month income. Carr then said "We have told Peter (Brooks) on, I would say over 20 occasions to make sure he keeps you apprised on what the account is doing...." Throughout this rather lengthy conversation, Carr repeatedly referred to the account at issue as the account of Sharon Dawson. Carr informed Dawson that there was nothing left in her account. (Ex. C-12, pp. 8-22)
- During the active life of the account, Carr and Lubow carefully avoided disclosing to Dawson the status of her account, and cooperated in transferring money from Dawson's account to Brooks' commodity account, and in depositing checks made payable to Dawson into Brooks' account. I find that Carr and Lubow were cogently aware at all times that Dawson provided all of the \$690,735.66 deposited with Rodman & Renshaw, and that they deliberately failed to advise her of the status of the account until the account was worthless. Carr and Lubow were aware from the beginning of the account that some of Dawsons' signatures appeared not to be hers, and that others were clearly affixed by stamp. Carr and Lubow also knew that Rodman & Renshaw objected to the use of stamped signatures. I find that Carr and Lubow benefited at the expense of Dawson by permitting and enabling Brooks to deposit Dawson's checks into his commodity account; by wrongfully transferring money from Dawson's account to Brooks' commodity account; and by carefully concealing from Dawson all relevant information concerning her account. A major benefit, of course, were the commissions generated on accounts 24562 and 24528 which totaled \$271,222.08. (Account statements; Ex C-14)
- Dawson has placed valid and persuasive evidence in the record to establish that she transmitted to Carr Investments and Rodman & Renshaw the total sum of \$690,735.66. (Ex. C-31; Dawson testimony) Dawson has also placed in the record persuasive evidence that she withdrew, for living expenses, \$171,800 from Rodman & Renshaw over the life of the account. (Ex. C-14) Dawson suffered out-of-pocket losses of \$518,935.66, which is the difference betweens the amount Dawson transmitted to respondent Rodman & Renshaw and the \$171,800 Dawson withdrew from her account. (Account statements of record; Ex. C-31.)
- Lubow testified that during the active life of the Dawson account he instructed an employee by the name of Kathy to advise Rodman and Renshaw to make many disbursements and/or transfers from Dawson's account, and many transfers to and disbursements from Brooks' account, including 80 or 90 instructions placed at the request of Brooks. However, Lubow had

no notes or records concerning who requested each transfer, deposit or disbursement and he could not recall whether he wrote anything down. (Tr. 404-406)

- 30. Lubow testified that four \$100,000 checks were drawn off Dawson's Wells Fargo account and deposited in Brooks' account at Rodman & Renshaw; that there were 20 transfers from Dawson's account 24562 to Brooks' account 24528 on and after March 31, 1993. (Tr. 409) Lubow then testified that a total of \$215,500 was transferred from Brooks' Rodman & Renshaw account to an account at Great Western that he could not identify. Lubow could not identify the name of the person or persons requesting the transfers, or the identification of the account or accounts receiving the money. (Tr. 412) Lubow noted that on occasion money was transferred the "wrong way", that is, it went from Brooks' account to Dawson's account, and then had to be doubled back. (Tr. 415)
- 31. During the hearing on this matter respondents were unable or unwilling to place in the evidentiary record a reliable accounting of funds Dawson transmitted to Carr Investments for deposit with Rodman & Renshaw. Respondent's exhibit 18 is simply eyewash as it fails to show the identity of the person or entity requesting the action, or the owner of accounts receiving deposits, disbursements or transfers. By Order issued April 2, 1998, the parties were directed to make available to all other parties all statements for the account at issue and for the account of Peter Brooks. By Motion filed April 7, 1998 counsel for Rodman & Renshaw, Inc. moved to withdraw as counsel of record on grounds that Rodman & Renshaw intended to file for bankruptcy. By letter dated April 9, 1998 the attorney representing the Trustee of Rodman & Renshaw, Inc. reported that the firm had filed a Chapter 7 petition for bankruptcy, automatically staying all actions against Rodman & Renshaw.
- 32. This case was scheduled to be heard in San Francisco commencing on June 8, 1998, to be followed with a hearing in the companion case, Docket Number 96-R100. Counsel for Brooks notified the court and all parties in the case at bar that his client, Brooks, would not be able to attend as he was "...presently incarcerated serving a sentence for misdemeanor spousal abuse. He is scheduled for release on August 9, 1998."
- 33. Official notice is taken that on or about September 25, 1998 Brooks, the complainant in a related case (CFTC Docket Number 96-R100), moved to withdraw his complaint against respondents Rodman & Renshaw, Carr Investments Inc., Edward Carr and Jonathan Lubow on grounds that during the time relevant to Dawson's complaint all monies lost in accounts 24528 and 24562 were from the \$690,735.66 Dawson transmitted to Rodman & Renshaw through Carr Investments. In an attached affidavit, Brooks stated as follows: "While Sharon Dawson's account was labeled as a joint account, in reality it was her individual account and each of the Respondents knew it." Docket number 96-R100 was subsequently dismissed by the presiding judge. Respondents have requested review of the dismissal, and that matter is pending before the Commission.
- 34. On September 25, 1998 attorney Jeffry M. Henderson, on behalf of Rodman & Renshaw, Inc., Carr Investments Inc., Jonathan William Lubow and Edward Carr, Jr., filed a motion for more time to oppose Brooks' request for dismissal of his complaint. Whether attorney

Henderson included Rodman & Renshaw in his motion to extend time through inadvertence or by request is not clear from the record.

- 35. By order issued December 15, 1998 the parties were directed to prepare an accurate accounting of all deposits, disbursements, and transfers affecting Dawson's account number 24562, and Brooks' account number 24528. The parties were ordered to appear at a hearing in Chicago, Illinois on February 16, 1999 for the purpose of filing the accounting statements.
- 36. Complainant's accounting was accepted and entered into the evidentiary record as Exhibit C-31. Respondents' accounting was admitted as Exhibit R-18a. Exhibit R-18a fails to identify the person or persons who directed the transfers, deposits, and disbursements affecting the accounts, or the identity of the owner of the accounts that received the disbursements, deposits, or transfers. In sum, Exhibit R-18-a is essentially a worthless document. Commission regulations require introducing brokers to create and maintain complete and systematic records of transactions. 17.C.F.R 1.35. In the case at bar, respondents were unable to show with specificity who directed the entry of orders for disbursements, transfers, wires and checks, or the identity of the owner of accounts receiving transfers, wires and checks. This Court finds that respondents deliberately refused to file a accurate accounting as directed.
- 37. Complainant placed in evidence the expert witness testimony of Douglas Campbell. (Ex. C. 16) Campbell's opinion consists of only four pages. Campbell opines that respondents violated section 4(b) (obviously intended to read 4b) of the Act and Commission regulation 33.10. Campbell further opines that the account was churned. This Court finds that there is overwhelming evidence of record supporting the opinion of Campbell that respondents Carr Investments, Carr and Lubow violated section 4b of the Act and Commission regulation 33.10 in connection with the solicitation and handling of the account at issue, resulting in direct monetary damages to complainant in the amount of \$518,935.66. This Court declines to find that respondents churned the account, even though respondents generated over \$271,000 in commissions during the life of the account. (Ex. C-14)
- 38. Respondents Carr Investments, Inc., and Edward Carr appended to their post trial brief a document styled Expert Report of Martin Doyle. This expert failed to examine any of the actual checks he alluded to, and instead merely relied on the account statements. The statement does not take into consideration the October 22, 1992 letter by Carr, the cross-country flight of Carr and Lubow to meet privately with Brooks, the stamp signatures of Dawson, an obviously forged signature of Dawson, and the plethora of other highly relevant evidence in the record relating to the ownership of the funds invested. In sum, this Court has no confidence in the expert opinion of Doyle.

Discussion

Sharon Dawson, the complainant, was in her mid 40's when the events at issue took place. Dawson suffers from a severe hearing deficiency and she has some difficulty with oral communication. Although college educated she has never held a job other than that as an

occasional substitute school teacher for the hearing impaired. She has never been self sufficient. Prior to his death in August 1992 her father provided her with a monthly stipend, made a down-payment on her condominium, and co-signed the mortgage on the facility. Dawson inherited about 1.2 million dollars from her father's estate. This case concerns what happened to the \$629,735 that Dawson was induced to invest with respondents.

Peter Brooks, according to the testimony of respondents Jonathan Lubow and Edward Carr, Jr., is an intelligent, Harvard educated, sophisticated investor, a "good looking guy" and very friendly, gracious and charming. Brooks may be good looking, charming and well educated, but nothing in the evidentiary record supports a finding that he is a sophisticated investor. Dawson testified that Brooks, in prior years, had inherited money from his parents, and lost most of the money investing in securities. In a dispute with the broker, Brooks prevailed and recovered \$129,000. He lost nearly all of this amount through the services of the respondents in the instant case.

Brooks and Dawson were married in 1988. In October 1990, Jonathan Lubow, an employee of Carr Investments, had a telephone contact with Brooks, and in July 1991 Brooks opened an account with Rodman & Renshaw with a \$40,000 deposit. Carr Investments, Inc., was the introducing broker and Lubow served as Brooks' account executive. The existence of this account was not disclosed to Dawson until years later. According to Lubow, Brooks lost approximately \$10,000 on the account up through May 1992. On May 6, 1992, Brooks deposited with Rodman & Renshaw a check for \$129,051.89, the proceeds of litigation referred to above. In March 1993, the month in which the account at issue was opened, Brooks' account had a value of \$22,000.

In June 1992 Lubow made a trip to California to play golf with three college friends. Even though Brooks was at that time his client, and had deposited \$129,000 in his account the preceding month, Lubow testified that he did not see or call Brooks during this golfing vacation. Two months later, in August 1992, Dawson's father died. In September 1992 there was a reading of her father's will, and Dawson and her husband learned that she would inherit 1.2 million dollars.

Without disclosing that he had been dealing with Carr for some time, Brooks praised Carr's conservative investment strategy to Dawson, and encouraged her to entrust her inheritance to his care. Brooks did not tell Dawson that Carr Investments had introduced his account to Rodman & Renshaw; that the account was still open; and that he had lost money in the account. Dawson agreed to meet with Carr.

On October 22, 1992, a mere four months after the death of Dawson's father, respondent Carr sent a letter to Dawson in which he made these statements: "Upon funding your account with approximately \$1,000,000, the following will occur. Ten, one hundred thousand Dollar U.S. Government backed 120 day Treasury Bills will be purchased. Utilizing our system....we will search for overvalued options to write and collect premium. ... There are no guarantees and past performance is not indicative of future results, but I am confident that we could generate a return between 18 and 23 percent per year for your account. ... If these returns (which are not guaranteed) are realized, you will be able to withdraw a minimum of \$10,000 per month without

depleting the principal amount." Carr then predicted a doubling of Dawson's net assets in 5 to 6 years. He further noted that "Peter (Brooks) has worked successfully with... Lubow" but did not disclose that Brooks had lost a substantial sum of money in his dealings with Carr Investments and Rodman & Renshaw. In ordinary parlance, the term "successfully" would not be used to describe the handling of Brooks' account. At no point in the letter does Carr disclose that Dawson could lose her entire investment or more. And, the letter implies that Dawson could expect to withdraw \$10,000 per month from her account without reducing the principal. In sum, the letter is laced with false, misleading and ambiguous statements deliberately designed to mislead an uninformed and unsophisticated investor. Sharon Dawson is the quintessential unsophisticated investor.

In March 1993 two men from New Jersey, Carr and Lubow, flew coach classs to California for the sole purpose of inducing Dawson to open a commodity account. Carr and Lubow first met privately with Brooks, who told them that she was very hard of hearing; that she was a Mormon; and that they should abstain from bad language and alcohol on meeting with her. There was a lunch that day, with Dawson present. No business was discussed. The lunch was followed with dinner during which Carr spent about 5 minutes explaining options to Dawson.

The big sell was to take place the following day, March 6, 1993. Lubow and Carr visited Dawson's residence, either the condo or the new house. Brooks and Lubow then left to play golf, and Carr had three hours or so to make his pitch. Carr testified that he went over the account agreement with Dawson page by page, and explained all the risks. Dawson testified that Carr gave the same pitch as he did in his October 1992 letter, and that she never saw the account opening documents until March 8, 1993. This Court is persuaded that Dawson testified honestly. Carr's testimony is unbelievable. On March 8, 1993 Brooks prevailed upon Dawson to sign the account opening agreements.

The two men from New Jersey left California, this time on first class accommodations. The record establishes beyond peradventure that Carr and Lubow made the visit to California in furtherance of a scheme to induce Dawson to place her inheritance with them. Dawson opened the account because she relied on the contents of Carr's October 22 1992 letter, reiterated to her by Carr in that three hour meting on March 6, 1993. She actually believed that Carr would invest her principal in T-bills, and achieve a return of 18% to 23% per year by using earned interest to write options, and thus enable Dawson to receive monthly support payments without a reduction in the principal. It is clear from this record that Brooks, Lubow and Carr discussed with each other a scheme to induce Dawson to turn over the bulk of her inheritance to the likes of these respondents, and keep her in ignorance of what was about to happen in her account. Lubow testified that he never spoke to Dawson about her account. Even though he held power of attorney over the account. Carr virtually boasted that he never talked to her about the account until the account was worthless. Respondent Carr has a long history of making false and misleading statements to induce the unsophisticated to invest in futures and options, and he has been severely sanctioned for his bad acts. His previous acts pale in comparison with his outrageous conduct in the case at bar. Carr virtually guaranteed Dawson that her money would be safely tucked away in T-bills while he ran up huge returns for her by writing "over valued" options. That was never the intent of Carr and Lubow.

This Court finds that respondents Carr, Lubow, and Carr Investors, Inc., engaged in a scheme to cheat and defraud Dawson of her inheritance, all in violation of section 4b of the Commodity Exchange Act, as amended, and Commission regulation 33.10, 17 C.F.R. 33.10. Complainant has proven by the overwhelming weight of the evidence that she was lured into this scheme by promises and assurances, written and oral, that her principal was safe from any loss and that she could expect to receive up to 23% per year on her investment. This complainant believed from the time of her initial investment in April 1993 to December 1995 that her principal was safely invested in T-bills. There is a plethors of reliable, persuasive evidence in the evidentiary record establishing that Carr and Lubow took pains to ensure that she remained ignorant of the truth. In a telephone conversation with Brooks in September 1995, secretly taped by Carr, Brooks expressed concern that Dawson was going to be a problem if she or her attorney saw the release agreement Carr wanted Brooks and Dawson to sign. Consistent with his past policy of keeping Dawson in the dark, Carr responded: "Well she doesn't have to (see the release form), the whole purpose of it is for you to sign it."

Respondents argue that the account was a joint account, and therefore there was no duty at any time to inform Dawson of the true status of her account. This is nonsense. As naïve as she is in matters of finance, Dawson took the initiative, on April 16, 1993, to void Brooks' power of attorney over the account, and to vest sole power of attorney in Carr. That form defines Dawson and no one else as the client owning the account. Carr, Lubow, and Brooks knew very well that the investment was Dawson's alone.

Respondents argue that this claim is time barred. Respondents Carr and Lubow concede that at no time during the active life of the account did they provide complainant with any information concerning her investment, and the findings set out above show conclusively that they deliberately and wrongfully concealed from Dawson the status of her investment. It was not until December 1995 that Carr finally disclosed to her that her account was worthless. The two year statute of limitations set forth in Section 14 of the Act began to run in December 1995. Complainant filed and perfected her claim well within the two year statute of limitations.

Churning of an account constitutes a violation of section 4(b) of the Act. In the case at bar, the account was open from March 1993 to late 1995. In that period of time the respondents converted 40% of the complainant's investment into commissions. This Commission has generally held that commission charges in excess of 14% per month may be viewed as an indicia of churning. It is concluded that the record as constituted will not sustain a charge of churning. The findings set out above show conclusively that respondents mishandled the bulk of Dawson's investment by transferring funds from her account to Brooks' account, and by aiding Brooks in causing checks payable to Dawson to be credited to Brooks account.

Conclusion of Law

Respondents Carr Investments, Inc., Edward Carr, Jr., and Jonathan Lubow engaged in a scheme to cheat and defraud complainant in contravention of Section 4b of the Commodity Exchange Act, 7 U.S.C 6b, and Commission regulation 33.10 17 C.F.R 33.10, resulting in direct monetary damages to complainant in the amount of \$518,935.66.

Order

Respondents Edward Carr, Jr., Jonathan William Lubow and Carr Investments, Inc. are ORDERED to pay to complainant Sharon Jean Dawson the sum of \$519,935.66, plus interest at 4.918% per annum from March 1993 to the date the award is paid, plus the filing fee of \$200.00. Respondents are jointly and severally liable for payment of this judgment.

Issued this 27th day of April, 1999

Administrative Law Judge