



U.S. COMMODITY FUTURES TRADING COMMISSION

Three Lafayette Centre
1155 21st Street, NW, Washington, DC 20581

**OFFICE OF
PROCEEDINGS**

VIA FEDERAL EXPRESS

December 31, 2001

Mr. Walter Howard Elbert
31967 Albany Street
Hayward, CA 94544

Mr. William Clark Zaleski
18437 Stewart Ave.
Homewood, IL 60430

Michael J. Conti, Esq.
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1942 W. Bradley Street
Chicago, IL 60613

Re: Walter Howard Elbert v. Integrated Brokerage Services Inc., LFG LLC,
and William Clark Zaleski , CFTC Docket No. 00-R112

Dear Parties:

Enclosed is a copy of the decision in your reparations case. This decision will automatically become a Final Order of the Commission thirty-five (35) calendar days after the date of this letter unless a Notice of Appeal¹ and proof of service² is mailed by you or another party to the Commission within 20 days of the date of this letter.

The Right to Appeal

As provided in Commission Regulation 12.401, any party may appeal this decision to the Commission. To file an appeal, you must mail to the Office of Proceedings an original and one copy of both a Notice of Appeal and proof of service, along with the \$50 filing fee. Copies **must** also be provided to all other parties. The documents and the fee **must** be mailed to us within twenty (20) calendar days of the date of this letter.

This 20-day reply deadline already includes a 5-day grace period (added to the 15 days provided in the CFTC Reparations Rules) to allow time for this to reach you through the mails. The CFTC Reparations Rules do not allow for additional delays. Therefore, in order for your appeal to be

¹The requirements for a Notice of Appeal are found in the CFTC Reparations Rules at 12.401.

² The requirements regarding proof of service can be found in the CFTC Reparations Rules at 12.10(2).

considered, you must mail your appeal documents and the filing fee to us within 20 calendar days of the date of this letter, regardless of when you actually received this letter. For your convenience, we have enclosed sample formats for the Notice of Appeal and proof of service.

Summary of the Appeal Process

If you choose to appeal, you must mail an original and one copy of your brief to the Office of Proceedings within thirty (30) calendar days of the date you mailed your Notice of Appeal. Copies must be provided to all other parties. If you do not file a brief, your appeal will not be considered and the initial decision will stand.

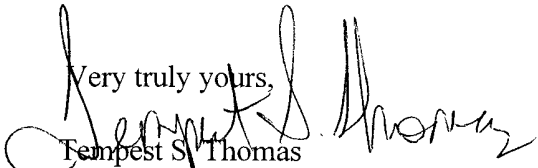
The other parties are allowed, but not required, to file an answering brief to your appeal brief. Any party who decides to file an answering brief must mail it to the Office of Proceedings and to all other parties within thirty-five (35) calendar days of the date indicated on the proof of service attached to the appeal brief. This 35-day answering deadline includes a 5-day grace period (added to the 30 days provided in the CFTC Reparations Rules) to allow time for appeal briefs to reach the other parties through the mails.

After briefs by all the parties have been filed, an appeal is ready for decision by the Commission. As a general rule, reparations appeals are decided on a "first in, first out" basis. The time required for deciding appeals varies from case to case and is largely dependent on the complexity of the issues presented. Most appeals are decided within six to nine months after briefs have been filed. When the Commission reaches a decision, all parties will be notified by the Office of Proceedings.

If There Is No Appeal

If there is no appeal and the decision becomes a Final Order and the respondent loses, the respondent has fifteen (15) calendar days, or such time as provided in the Order, whichever is longer, within which to make full payment of the reparation award. The respondent then has an additional fifteen (15) calendar days to mail to the Office of Proceedings documentary proof that the award has been satisfied. If the losing party is registered with the Commission and does not satisfy the reparation award within the required period, the registration of the losing party is automatically suspended from registration and the party is prohibited from trading in the contract markets until the award is satisfied. If the complainant wants to collect the award and the respondent refuses to pay, the winning party may request a certified decision package from the Office of Proceedings which must be taken to federal district court for enforcement of the award as provided by Section 14 (d) of the Commodity Exchange Act. The Commission does not have the authority to pursue the collection of the award.

For more detailed information concerning your appeal rights, you may consult Sections 12.10, 12.11, and 12.400 through 12.408 of the CFTC Reparations Rules.

Very truly yours,

Tempest S. Thomas
Proceedings Clerk

Enclosures

Several months after the case was forwarded for adjudication and the Notice of Proceeding was served on the parties in November 2000, it was discovered that the copies of that Notice sent to complainant and Zaleski had both been returned as undelivered and placed in the file without being brought to the undersigned's attention. Since the returns showed that neither party ever had learned that discovery had begun, the Notice of Summary Proceeding was re-served and a new discovery schedule was issued; the documents were served by overnight courier to ensure timely delivery (*see* Order dated March 9, 2001). LFG served its discovery requests on April 2, 2001.

Subsequently, on April 6, 2001, a conference call was held with complainant and respondent LFG's representative to discuss the schedule issued due to the service and delivery problems.² During the conference, complainant stated that he had no recollection of having filed a complaint or paying a filing fee (he thought he remembered sending something to the FBI and suggested maybe they sent it in) and that he did not have copies of any documents he had sent here. Furthermore, complainant did not have the original Notice of Summary Proceedings sent in November 2000, or the one sent overnight delivery in March 2001, or even the original "complaint Packet (including the CFTC Reparation Rules) previously sent to him. When it was learned through Federal Express's tracking service that someone had signed for the March 2001 delivery using the name "N. Elbert," complainant identified the signature as that of his wife and, after checking with her, stated that she did not remember receiving any package.

On the following Monday, LFG filed a petition in bankruptcy (*see* Notice of Bankruptcy, dated April 10, 2001, and copy of Petition dated April 9, 2001). The accompanying letter from LFG's attorney included LFG's request to have that respondent dismissed pursuant to CFTC Rule 12.24.

Thereafter, the record was copied for complainant and over 15 documents were sent to him, including: his original complaint; the letters to him from the Office of Proceedings; the various supplements he had filed; the letter serving the complaint on respondents; their respective answers; the two Notices of Summary Proceedings; the March 9 schedule; and the CFTC's reparations rules and Q/A booklet. In view of the LFG bankruptcy petition, the parties were instructed to file any objections to dismissal of LFG under Rule 12.24(3).³ A new discovery and verified statements schedule was established, and complainant was reminded of the need to review all the documents and to comply with his obligations (*see* "Notice to Parties and Second Revised Schedule," dated April 20, 2001).

² Zaleski was not a participant because his answer did not include a daytime telephone number as required by Rule 12.18. He telephoned the undersigned three days later, in belated response to the messages that had been left at the number he had provided, and the conference calls' contents were explained to him. In his call to the Judgment Officer, Zaleski stated that he had fully discussed with LFG's attorney the settlement offer made by complainant and that he was not interested in settling at the amount sought by complainant. The cover letter accompanying LFG's Notice of Bankruptcy (discussed in the next paragraph of the text) discussed, among other things, LFG's attorney's conversations with Zaleski regarding the conference call.

³ No party has objected to dismissal of LFG as provided in Rule 12.24.

Despite all of these scheduling efforts, no party – except for LFG’s previously mentioned discovery request filed prior to its bankruptcy notice – and complainant did not respond to LFG’s request. Likewise, no party has filed a verified statement.

Discussion

The minimal allegations of the complaint and the supplements complainant later submitted are simply not enough to raise any substantial questions regarding respondent Zaleski’s conduct in this case. Complainant’s submissions, broadly read, portray him as a passive victim who unwittingly entered this risky endeavor as if Zaleski had been his sole source of information and as if Zaleski’s simple comment about profits to be made misled him. However, even complainant’s own submissions reveal that he had been a prior investor for many months before opening this account – the account documents attached to his complaint included not only statements from this account but also statements from another account (also an LFG account) with another introducing broker (Infinity Trading) with which complainant had been trading (and losing) since 1999. All told, those statements demonstrate that complainant suffered nothing but losses in both 1999 and 2000 (over \$1500 in the two years combined). Furthermore, in his account-opening documents complainant revealed a prior-trading history of two years.⁴ With this level of experience, it is not at all likely that Zaleski caused complainant to disregard the risk warnings or that Zaleski had the key to guaranteed profits.

Complainant’s statement that he and Zaleski decided that complainant should borrow on his credit card to make his investment does not establish any violation of the Commodity Exchange Act, even if the statement were to be treated as true. There is no law or regulation requiring that a commodity customer may not use third-party credit (as opposed to trading on margin with credit granted by the brokerage, which is subject to many rules not relevant in this circumstance) to open an account. A notice under the signature section at the bottom of page 2 of the account application states (in all capitals, not simulated here) that “all payments to LFG, whether by check or bank wire transfer, must originate from the beneficial owner of the account,” that “third party checks are prohibited,” and that “cash deposits, cashier’s checks, and money orders are not permitted.”

⁴ The discovery requests ignored by complainant included as attachments copies of the account-opening documents used in March 2000 to open complainant’s account. Among the questions that he never responded to were questions whether his signature on those documents were genuine. Moreover, a review of all the documents submitted by complainant (most of which have been hand-written) reveals an overwhelmingly similar handwriting to the handwriting used on the account forms – both sets of papers were printed using block letters and are dated in similar fashion. Since complainant did not dispute the matter, it is determined that there is sufficient evidence to conclude that these copies reflect genuine documents that were filled out by complainant.

It is unknown whether complainant’s trading experience was limited to the Infinity account whose statements were attached to the complaint. Those statements – all from LFG – begin in April 1999 (a year prior to his dealings with Zaleski) and do not show when the account was opened. In the account application, complainant stated not only that he had traded for two years, but also stated that he had trading experience with a different broker, Vision, whose name does not appear elsewhere in this proceeding. Question 12 of the unanswered LFG discovery requests sought information about prior trading experience. Zaleski’s answer stated that in the pre-opening conversations, complainant claimed to have traded with Infinity for two years and had lost \$20,000. As noted, complainant has not responded to Zaleski’s answer.

Complainant's narrative does not indicate what form his deposits took, but the account statements attached to the complaint show a check was used to make an initial deposit which was credited on April 4, 2000, when trading began; that a second check for \$5,000 was deposited on April 17 and returned for insufficient funds on April 24 (with a \$50 fee charged); and that a wire transfer for \$5,000 was credited on April 25 (*see* statement dated April 28, 2000). These statements suggest that complainant used checks and a wire transfer to fund his trading, and there is no indication that these were not drawn on his own account.

Conclusion

In view of the unopposed request for dismissal filed by LFG pursuant to its bankruptcy petition, the complaint against LFG is DISMISSED WITHOUT PREJUDICE in accordance with CFTC Rule 12.24.

For the reasons stated above, it is concluded that no violations have been proven by complainant. Accordingly, the complaint is DISMISSED WITH PREJUDICE as to respondents Integrated Brokerage Services and William Zaleski.

Dated: December 31, 2001



Joel R. Maillie
Judgment Officer