



U.S. COMMODITY FUTURES TRADING COMMISSION

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NEIL GRINDELL,

Complainant

v.

CFTC Docket
No. 96-R086

COMMONWEALTH FINANCIAL GROUP, INC.,
ALLAN STEVEN ADER, CHARLES PAUL
HOFFECCKER (a.k.a. CHIP HOFFECCKER),
and MICHAEL JAMES RENDINA, JR.,
Respondents

INITIAL DECISION AND REPARATION AWARD

In this case, the complainant contends that he was defrauded into opening a futures options account through the combined efforts of Commonwealth employees Rendina and Ader. He also contends that respondents made trading recommendations without any apparent reasonable basis, and claims that those recommendations were made solely to maximize commissions. Finally, he alleges that respondent Hoffecker, the president of Commonwealth, failed to supervise his employees adequately.

Respondents deny any liability.

Discovery was taken by respondents and by the Judgment Officer. Among the materials produced by respondents in reply to the Judgment Officer's discovery order were five audio cassette tapes containing recordings of conversations between complainant and Rendina, between complainant and Ader, and complainant and Commonwealth's compliance department.

Despite the conflicting affidavits, no oral hearing is necessary in this case. Credibility determinations are based on the tapes, with reference to the other documents in the record. Respondents' own tapes reveal their shameless and vile behavior as they used virtually any means to part complainant from his funds. As shall be seen, respondents resorted to an intense tag-team effort involving at least three solicitors, whose persuasion techniques ranged from friendly discussion to outright personal ridicule. The substance of those solicitations included misrepresentations, fraudulent omissions, frequent references to misleading information taken out of context, and flat out lies.

The lengthy quotes from the tapes contained in this decision include several vulgarities. This language has been included verbatim, reluctantly, because only in the original context to which complainant was subjected can the intensity of respondents' pressure be fully appreciated. Other such instances have not been repeated here.

1. Rendina's solicitation: The initial solicitation conversation occurred on January 17, 1997, when Rendina placed a call to complainant as a follow-up to complainant's "request" for information regarding exchange-traded options in the gas market. Rendina's initial introduction includes a reference to "our program," which is deemed to be a reference to some type of radio or television commercial or infomercial used by Commonwealth to generate inquiries such as complainant's.

Rendina starts out by stating, "we're focusing in right now on what we believe to be tremendous seasonal situation that exists with the unleaded gas market." The reason "very simply," he says, is that "over the last seven years this market has a seven out of seven year track record if you're positioned in the right place at the right time." Rendina explains that the average low price during that time was about 47 cents per gallon, and the average high price was about 74 cents per gallon. Conceding that this amount might not seem "like a lot," Rendina points out that the leverage in the contracts means that a move of that amount could "literally bring you back over \$50,000."

Complainant says, "Could?" and Rendina confirms, "Exactly." He then goes on: "Now obviously, we're not naive enough to think we can pick the exact bottom and the exact top of the market" and then says, "but if we only catch ten cents of that 26 cent move, it can still bring you back 18 to 20 thousand with a limited and predetermined downside exposure."

Rendina again refers to the average high (this time calling it the average high over the past *eight* years), and says that the current price is 55 cents, so "obviously we believe that we've got a lot of upside potential here between now and March."

Promising to send additional information, Rendina refers to a disclosure document discussing risks. Complainant interrupts:

Complainant: What sort of risk would you consider it is?

Rendina: I'm sorry?

Complainant: How much of a risk would you consider it is, in your professional opinion?

Rendina: Well, I mean, the risk is very simply that if the market goes against you, you could lose all or any part of what you put into the market.

Complainant: But the track record doesn't indicate that?

Rendina: Well, I mean, that doesn't---just because the market's gone up seven out of seven years---

Complainant: Right. Absolutely.

Rendina: ---or eight years, that doesn't mean that everybody made money in that time. Number one. Obviously you have to be in the right place at the right time, number one. Number two: just because it's done it for eight straight years doesn't guarantee it's gonna happen again.

Complainant: Of course.

Rendina: But, I --- I mean, in --- in my [present or best] professional opinion, what do I think is going to happen? If I didn't think gasoline prices were going to go higher I wouldn't be wasting your time. I'd be finding a different market for my clients to make money.

Complainant: Right.

Rendina: And I mean that with all sincerity. Now I have nothing to gain by you losing money uh---except for the small commission fee we charge up front which is \$200 round turn.

Complainant: Right.

Rendina: I mean --- uh, I get a very small portion of that. In order for me to be successful, and to continue the lifestyle I've grown accustomed to, I need to show you results so that number one, you're going to stick with me in the future; number two, you're going to refer people to me. You know. So, in --- in all reality, I think we can see eighteen cents this year. Um, again, I'm not naive. I'm not saying I'm going to be able to get you eighteen cents. But if I can take ten cents out of there somewhere, or even five cents out of there somewhere, and all you do is double your money, I think you're going to be very pleased with me.

Complainant: Right.

Rendina: You know what I mean?

Complainant: Right. So --- So, in other words, if, if I, if I was to invest \$5,000 you're the one that watches ---

Rendina: Right.

Complainant: And advises me on what would be a good time to sell?

Rendina: Exactly....

What follows thereafter is a discussion of how Rendina would provide complainant with the types of research and market-tracking facilities that Commonwealth has but that complainant obviously could not afford to personally own. The recommendations from the in-house advisor would be passed on by Rendina, with complainant retaining "ultimate" decision-making power.

When complainant asks if there is a minimum time to be in the market, Rendina explains that Commonwealth believes the market move will take place by April, and therefore complainant would want to be out of the options by then, but liquidation could occur at any time before then also if complainant needed his money.

Rendina then launches into a discussion of leveraging:

Rendina: The way this market works, Neil, very simply so you understand, is you make your money not necessarily on the amount that you invest. You make it more so on the amount of the product that you leverage. Okay? For example, let's say you liked what you saw and you decided you wanted to take an opportunity on \$5,000. What that allows you to do is first of all purchase five options in the unleaded gasoline market. Okay? Each one option's approximately \$1,000. Each \$1,000, or each option allows you to leverage 42,000 gallons of unleaded gas.

Complainant: Right.

Rendina: That's the size of the option that's established by the New York Mercantile Exchange where this market's trading.

Complainant: Okay.

Rendina: Now, every time the market was to move just one penny in the direction in which you were trading, you would stand to profit as much as one percent of the amount that you're leveraging?

Complainant: Right.

Rendina: Which in this case could be as much as \$420.

Complainant: Right.

Rendina: Four times five, on a \$5,000 investment. As much as \$2,100 for every one penny move.

Complainant: Right. You were saying today it is up a penny---

Rendina: It was up a penny and a quarter, so you would have been able to pick up as much as \$2,100 to \$2,400.

Complainant: Right.

Rendina: Okay. Now, obviously then, again, that --- that just puts the profit in perspective. A ten cent move, ten cents, 2,100 could bring you back as much as \$21,000.

Complainant: Right.

Rendina: Okay, now ---

Complainant: Now, now, there's \$200 up front. What about when it's time to get out?

Rendina: There is no commission when you sell. All the profits, proceeds, principal--everything goes into your segregated account. That's what "round-turn" means.

Complainant: Right.

Rendina: Now, anytime you have that type of potential for profit there's going to be risk involved. Okay?

Complainant: Okay, I understand.

Rendina: And, and like I said the risk is completely predetermined and limited, first of all, to the amount that you invest. In other words, no matter what happens, if the market went a hundred percent against you, you could still never be required to put any more money into it than what you start with.

Complainant: Right.

Rendina: Okay. Now having said that, I also want you to know that [unintelligible phrase] we're not here to take five grand and roll the dice for you to make twenty or lose five. Okay? It's not an all or nothing situation.

Complainant: Right.

Rendina: Because this market's not immediately liquid to you. If it's going against you, you don't like the way it's going, get out. It's --- you know, it's just that simple. We -- We take it one step further and we'll tell you, by utilizing [stop orders]....[explanation of stops and analogy to stocks] So, you know there's different strategies like that you could utilize as you move along. It's just a matter of being in the right place at the right time is what it boils down to.

The next part of the conversation is a discussion of how Rendina is available to his clients for information and how different clients may contact him more or less frequently depending on their schedules and investment interests. Rendina emphasizes that his information is more up-to-date than using the newspaper, which he describes as being "a day late and a dollar short 'cause you're always using yesterday's quotes."

The complainant then explains to Rendina how he has felt taken advantage of by a couple of his stock brokers and he did not want to have that same type of experience again. Rendina responds with, "Well, this is obviously different." The complainant again emphasizes having been taken advantage of, and Rendina assures him that he will not be expecting complainant to take Rendina's "word" for anything. Then Rendina goes on:

Rendina: Down the road, if we get into, you know, a different market, that you might not know as much about, you might need to take my word for it. But in this situation, I sincerely don't believe you need me to tell you that unleaded gasoline prices go up every spring. How old are you?

Complainant: Uh, 37.

Rendina: 37 years old. I'm sure you've seen on your own over the course of the last 20 years that you've been driving that you've seen unleaded gasoline prices every spring increase in value.

Complainant: Right.

Rendina: All I'm saying is, Hey, we're not trying to recreate the wheel here. I'm simply saying --- trying to show you how to take advantage of it.

Complainant: Right. I understand.

Rendina: You know? I, I mean, you know --- when you say that a broker takes advantage of you, there's a lot of ways that happens. A, they get in a situation where they say, hey, listen, uh, you know, do this or do that or

do this. I'm not saying that. I'm saying, listen, take \$5,000. Put it into a market that has a good track record. Try to get in at a low price like it is right now.

Complainant: What did you say it is right now? 55?

Rendina: 55. Wholesale price is 55 and like I said, last year for example, it was 18 cents, it peaked out at around 71 cents.

Complainant: Yeah, that was --- but did that have anything to do with the weather?

Rendina: No, this is gasoline ---

Complainant: Okay.

Rendina: --- not heating oil. Yeah. this is unleaded gasoline. Yeah. Uh, so, and like I said there'll be a chart in there that'll show you in black and white, for example, just going back the last uh, the last three years, went to respectively 79, [?], and 86, and uh, those are three pretty good years.

Complainant: Yeah, absolutely.

Rendina: You know, uh, those are good years. We also had years where it only went from 50 to 67, which is a 17 cent move, from 51 to 62, which is only 11 cent move, and from 41 to 59, which is 18. But like I said, I don't care if it goes twenty cents more. If it only goes five cents, five times as much as 2,100, makes you as much as \$10,000 in profit on a \$5,000 investment. I've gotta believe we're going to have established a solid foundation at that point. You know?

Complainant: Right.

Rendina: That's --- that's what my goal is. My goal is to be here for a long term, so that you'll appreciate what I'm doing when we stick together. Because the bottom line is, is I've got a wife, two children and one on the way.

Complainant: I --- I have two, and I just had one is three. So, we're basically in the same....

Rendina: Yeah, exactly. So, you don't looking [sic] for a quick buck any more than I am. You know....

Complainant: Right.

Rendina: You're looking for some type of relationship where, you know, two, three years down the road you've got your original investment back in your pocket, you're continuously getting profit checks, and you've still got some money working for you in the markets. That's what my goal is.

Complainant: All right. Send me some information...[discussion of addresses, registration, etc.]

2. Missing conversations. Although they acknowledged that such tapes were made and claimed they would continue to search, respondents did not produce any tapes of conversations between Rendina and complainant during two weeks following the solicitation until the first trading recommendation, during which time complainant decided to open an account.

Complainant has contended in the complaint that he informed Rendina that he was using money he had set aside for making a down payment on a house, but respondents deny that they were informed of this. It is possible that this issue was discussed during the missing conversations, but it is also possible that complainant's recollection was based on a subsequent conversation held with Ader. In view of the lack of tape recordings, no findings are made on this issue. There is certainly no indication that complainant has distorted any facts since the complaint otherwise is confirmed to a large degree by the tapes.

3. First trade and compliance review. On January 30, 1995, Rendina calls complainant with a recommendation to purchase five call options in the April unleaded gas options. They discuss prices and complainant agrees to the trade. During this conversation, Rendina discusses Paul Cissell, the in-house trading advisor, and tells complainant how "conservative" Cissell's recommendations are. The complainant asks for an additional explanation of how the prices relate to his proposed trade. The complainant also appears to be surprised to learn in this conversation that the \$200 commission is charged per option, but upon learning this fact he does not indicate reluctance to trade.

Complainant asks about strike prices, and Rendina discusses what strike prices are. Rendina then informs complainant that the goal is to buy the options as close to the strike price as possible but to not "overpay" for them. He tells complainant that if he were to buy options with a strike price closer to the market, he would not be able to buy as many of them with the \$5,000 --- perhaps only two or three, rather than the five options he would be purchasing.

At that point, Rendina transfers the call to a member of the compliance department who discusses with complainant the information contained on the account opening documents, which were produced by respondents in reply to the Judgment Officer's discovery order. Among the information covered in that conversation, which was taped and produced, are complainant's income of \$25,000 to \$50,000, net worth (exclusive of his residence) of \$50,000 to \$100,000, and the amount of risk capital available for futures trading of \$5,000. The staff member obtains information about complainant's

three years of stock investments, which he had left blank on the form, as well as information about his lack of bond trading or previous futures investments.

After obtaining complainant's acknowledgment that he had read and signed the disclosure documents, including the risk and options disclosure statements, the staff member asks if complainant had any questions about those. Complainant says that "Mike" (obviously, Rendina) had answered any questions he had. The staffer asks if that meant that complainant's broker had "explained the risks" to complainant, and complainant says he had. The staffer then reiterates that complainant could lose all or part of, but not a penny more, than his investment. Complainant acknowledges understanding this information, and the staffer receives complainant's statement that losing this money would not change his lifestyle. At this point also, the staffer asks if complainant has received any inducements or promises of profits to answer the questions in a particular way, and the complainant denies such inducements. The staffer then states that only "disposable" income should be used to make an investment and warns that no decision to trade should be the result of high-pressure sales or promises of profits.

The compliance employee then generally reviews explains how to place orders and obtains complainant's permission to place the first order. He explains the cost per contract, and complainant confirms a 50 % stop loss order, which the staff member discusses with complainant in great detail.

The record reflects that complainant's order was executed and that he purchased five call options on January 30, 1995, at a total premium price of \$3,780, plus \$1,000 in commissions. An additional "processing fee" of \$125 was also included, which the fees disclosure indicates is a fee that would range up to \$25 per option for "transaction fees and floor brokerage charges."

Complainant's check for \$5,000 to open his account was deposited the following day, January 31, 1995.

3. Ader solicits complainant's second trade. The next day, on January 31, respondent Alan Ader calls complainant. He introduces himself and then informs complainant about that day's rise in the market. He asks if complainant is "sitting down" because the market has gone up "54 points" (100 points equal one penny). Ader tells complainant he is the top producer at Commonwealth, and asks complainant how much money he is interested in earning. Complainant says he doesn't really know.

Ader then emphasizes that complainant is a small trader, that he has just \$5,000 in the market, and asks what complainant would do if he earned a 10% return that day. Complainant says he would do nothing. Ader then says, "Let me teach you the other side of the coin." He discusses traders who buy ten, one hundred, and one thousand times as many positions as complainant. Ader goes on, "They're making the same 10% that you are, but they're not making \$500. One guy's are making five grand, the other guy's making fifty grand, the next guy's making 500 grand, and the guy above that's making five million."

Ader then informs the complainant that the large traders will get out of the market after making a profit of 10%, which will make the market drop. He says that the reason "most people" lose in the market is because of "greed." Ader extols himself as "very good" in teaching people the markets, and says he teaches that "if you're greedy, you're going to lose your money because you'll never know how to take profits."

At that point, Ader starts discussing that the way to make profits (like "the professionals") is to make money both directions, rather than trying to convert an investment of \$3-4,000 into \$50,000, which he says will "never happen." Ader refers to the trading history of the heating oil futures contract, and emphasizes how the market went down during the Gulf War as well as just recently when troops had massed on Iraq's borders. Discussing the stock market "crash" of 1987, Ader claims he made a quarter of a million dollars by buying when everyone else was selling off their stocks. Ader then discusses coffee prices and how prices will rise and fall.

"Most people," according to Ader, don't understand what he was discussing with complainant and how they could make their money work through investments. He refers to his heart attack and talks again about how he works teaching people, even people who aren't his clients, about how to make money in the markets.

Ader discusses complainant's stop orders and explains the advantages of using trailing stops. Complainant apologizes for "being naive." He says that Rendina has asked him to call to teach complainant "the mechanics of making money." Ader warns complainant that the price of his options might rise too high for him to purchase any more of them, and says that for complainant to have only five of them is "crazy." Again, Ader talks about the advantage of having fifty options when the market was rising as it was while they are speaking. Ader then says that the fact that complainant thinks he has a lot of money at stake is the type of thing that "people like you" don't understand, i.e., that it is not a lot of money as far as the market is concerned.

Ader then emphasizes the need to take advantages of stops and how to use percentages to make profits. By having only five positions as the market was going up, Ader says, complainant limits his profits. Complainant asks what Ader is recommending, taking the money out or putting more money in? Ader talks about how complainant can purchase put options to protect himself. If he loses money on the puts, according to Ader, complainant would be making money on his call options. And if the market goes down, the put options would make money.

Acknowledging that he is a licensed broker, Ader says he cannot promise profits, but he claims that if the market has done something for ten years, there is no reason to think that 1995 would be different. Summer is the "driving season," according to Ader, when people drive, people use gas, and therefore the price of gas goes up in summer.

Ader checks on the price of complainant's options, notes that they are going up, and warns that complainant will "kick" himself when the market gets to a point where the options are profitable because he didn't have 50, or 40, or 30 options.

Ader then discusses how the "seasonal" gasoline trade may be new to complainant but it is not new to the markets and he claims how some people "live and die" for this trade, as well as the heating oil trade, "because they're so predictable." Ader notes that he can't use the word "guarantee" and must discuss "risk," but says that complainant would "have to read between the lines." He couldn't guarantee the profit, but says complainant has to "realize there's a certain track record for gasoline." Ader warns that the Clean Air Act will result in higher gas prices. He then commends complainant for being "wise enough" to inquire about gasoline options whereas his neighbor doesn't likely know about how to make money in these markets.

Complainant asks about selling his stocks to buy more options, at which point Ader describes the profit potential of the stocks as "pissing in the wind" compared to the leverage available in options. At this point the conversation is interrupted so Ader can take another call, and he promises to call complainant to "work out a trade" for him.

When Ader calls complainant back, he notes that the price has risen by 104 points. He describes the market as "on a tear" and recommends five put options, as protection, and ten additional calls. Complainant expresses reluctance, and notes that it would take time to liquidate his stocks, and Ader explains that complainant would have five to seven days to take care of payment. At this point in the market, Ader shouts about how the market has gone up by 114 and urges complainant to act as quickly as he can before the market runs "out of sight" and prevents complainant from getting into the market that day.

Complainant says he wants to find out how much his stocks are worth, and says he would be more comfortable if he was more knowledgeable. Ader says: "Talk to me straight. Knowledge is not going to make you money." He then explains that money is made by taking advantage of the market, not by knowing something with hindsight. He again emphasizes the need to act fast, because he could not predict what would happen if complainant waited too long. Complainant says he will call back after he has found out about his stocks, and Ader says he will keep the line clear to get complainant's order.

The tag team continues after that with a call from another Commonwealth employee, Linda Watson. She says that Ader has been yelling at her to call complainant and she talks about how exciting the market is being. Complainant says he still doesn't have the information he was seeking and admits he might just want to keep his current positions. Watson then tells complainant that she was merely helping Ader because he was so busy because clients were calling and the markets were "screaming." She tells complainant to call Ader back because if he were at the Commonwealth office, he would see the action on the screens and he would "see all the excitement going on."

Less than an hour later, complainant calls Ader. He tells Ader he will just hold his position. Ader emphasizes that he is older than complainant and he wants to give complainant his best advice. Complainant tries to interrupt, but Ader talks over the interruption and again emphasizes the massive movements in the gas markets and other markets as well. Ader denounces small stock investments as

not being enough to make money, at which point complainant says he doesn't expect to make "big money" in the gas options either because he doesn't have "big money to put in." Ader says he will "set [complainant] straight" because his "thinking is ass-backwards." He emphasizes again how he made a "fortune" during the 1987 stock decline.

Ader talks about complainant making a small amount of money, and predicts that complainant can make money every day by buying more positions, but emphasizes again that complainant cannot make money by waiting. Complainant again talks about not having enough money to take advantage of the markets Ader was discussing, but Ader says that complainant has the money but just has it positioned improperly by having it in stocks. He describes complainant's approach to his investments as "marrying" his positions, and says that that is the reason people lose money.

After again using examples of how people holding onto stocks lost money when other opportunities were available, Ader describes himself as having "the balls" to make money. He says that to make money "you hear something on the news, you don't twirl it around in your mouth and your head, you don't discuss it with the wife because what does she know?" Instead, "you go and you jump all over it."

Ader goes on:

That's what the world is all about. It's not created equal. We're not all equal. You can think all you want and bullshit all you want about these things, but unless you have the almighty dollar you don't exist. You know that. You're not a kid. [Complainant says: "I understand."] You see? So, when you're saying you don't think you're going to make money, well, I disagree 1000 percent with you 'cause I think you're going to make a shitload of money. But you're not going to make a shitload of money, you're going to make a tremendous percentage of your money---more money than you would make in a bank, I think, in a year or two years. And you're going to make that very short term. You're going to make that because right now the market's moving. And when the market starts to move, not you and not me are going to stop the trend from continuing. How many times did you hear the stock market hit a new high in '93? Thirty two times it was, right? [Complainant: "Right."] But you didn't make any money, blame yourself. But you couldn't stop the trend, the market hits a new high on Monday, then it falls off Tuesday and Wednesday. You don't hear about it. Thursday, it explodes again, another new high. Friday, another new high. Next Monday it falls off twenty points, it's no longer a new high. Tuesday, back to another new high. Well, that has to happen 'cause people have to take profits. ["Right."] And when there's more selling than buying the market falls off. And the smart guy bought the *shit* out of the market every chance he could, when he could have bought it cheaper than higher. And then the market --- in other words, you couldn't stop the steamroller from going. ["Right. I understand."] Same thing with any market. The coffee market. The cocoa market. All these markets --- lumber, you're hearing all these things on the radio. And the television. All these things are created by world events....

Ader thereupon launches into a discussion of current price swings in the gasoline futures markets, interspersed with comments about complainant's small number of options. He encourages complainant to use trailing stops. He eventually flatly predicts that the gasoline market will go to the 70 cent range, discussing the influence of "the big boys" who cause the market to make its moves. Complainant asks some questions about the relation between the market price and his strike price, and Ader explains the correlation, as well as predicting again how the market would move up beyond complainant's strike price during the seven weeks before expiration. Eventually, according to Ader, the market would get so high that complainant would not be able to afford to buy more options. He says that the complainant is "cautious" because "you think you have to know something." "Believe me," Ader says, you're not going to make one penny whether you understand it or not when you're making money."

The complainant then interjects that he just wasn't sure about it because he didn't know anything about options. Ader asks him how much he knows about his stocks. Complainant says, "I really would like to know as much as I can before I invest money in it." Ader replies, "Options give you leverage." Ader asks if complainant owns a house. Complainant replies that he did not, and that he is hoping to buy one in the summer.¹ Ader explains leverage in terms of the return on the increase in value of the house leveraged out of the down payment (in his example, the price goes up 30% in three weeks due to a public park project announced right after the complainant's purchase).

Ader then notes that complainant has never "made a killing" in the markets, and says that with the gas options complainant is "going to make a killing, but you're not going to be there to capitalize on it. You're going to be the \$2 better at the window...capturing the long-shot." Ader says that this is the "difference between guys who make money and guys who don't make money." Thereafter, he discusses how the option will "explode" as the market price goes through the strike price and the option gets into the money. This is followed by a discussion of international events and situations that caused Ader to believe the market would increase wildly.

Eventually, Ader asks how much complainant can put into new positions. Complainant informs Ader that he has learned that his stocks are not worth as much as he'd thought, and Ader tells him he has "to stop doing things that are ridiculous" and how he shouldn't buy "five dollar pieces of garbage in the stock market." Complainant asks what he could do with \$10,000, and Ader recommends buying puts as insurance against the market going down just as he would buy insurance to protect his house. Complainant listens to a rather extensive discussion of how to make money in puts. Then he thanks Ader because he has to get to work, and says he will think about it. Ader bursts out: "Don't think about it. Don't go crazy. You got five calls. Pick up four calls and two puts. Okay?"

¹ It is possible that this conversation is what led complainant to recall telling Rendina that he was using funds with which he planned to make his down payment. On the other hand, the extent of the fraud engaged in here by respondents, including the disparaging comments about complainant's reluctance to abandon the safety of his stocks, makes it entirely possible that respondents were quite willing to risk complainant's potential home purchase.

But do it now." He again mentions that complainant did not need to have the money for the purchase yet, and offers to continue "teaching" complainant if he would make this purchase.

The following day, February 1, complainant purchased ten calls at a 60 cent strike price for the May unleaded gas contract. The price, excluding fees, of these options was an additional \$8,400 in premiums and \$2,000 in commissions. The conversations relating to the actual purchase have not been produced by respondents.²

This purchase was made without sufficient funds in the account. Complainant sent a check for \$11,650, deposited to his account on February 7.

There is no indication that anyone at Commonwealth ever asked complainant about how this subsequent purchase, which more than tripled the amount he was at risk, related to his account-opening documents that stated he had only \$5,000 in risk capital for futures trading.

For unknown reasons, respondents on February 8 entered "fee adjustments" to complainant's account which cost him an additional \$550 beyond the \$3,000 he had already paid in commissions for his options.

5. Additional transactions. The above transcriptions demonstrate complainant's entitlement to his out of pocket losses for solicitation fraud. What follows is a shorter summary of the remaining transactions, which demonstrate that the account was churned.

On February 9, according to the complaint, Ader called complainant and advised him to liquidate his declining unleaded gasoline call options (resulting in a net loss to him of approximately \$7,595). Ader recommended options on the S&P index futures contract. According to the complaint, complainant told Ader he did not know anything about the S&P, but Ader said to trust him and Commonwealth. Again, Ader claimed he was very busy and pressured complainant to make a decision.

As a result, complainant purchased twelve call options for the March 1995 S&P index futures contract, 495 strike price. The cost to complainant was \$6,600 in premium, \$2,400 in commissions, and the "processing fee" of \$300, for a net purchase price of \$9,300. This purchase resulted in a net deficit in complainant's account of \$462.94. By the end of that day, the price of these options had risen and complainant's options were valued at \$7,500.

A commission adjustment of \$780 was granted to complainant on February 10. This reflected the difference in Commonwealth's commissions for lower-cost options (\$135 for options with a premium of less than \$600). The S&P calls had been valued at \$550 when purchased. A processing fee adjustment of \$184 was credited to complainant on February 14.

² Another set of six calls (in the July contract) is reflected on the February 1 statement, but that transaction is voided the following day.

Complainant was stopped out of the S&P calls, which the account documents shows occurred on February 16. This was likely due to the trailing stops discussed by Ader, since the purchase and sales statement shows that the liquidation netted premiums totaling \$8,400.

One week later, Ader recommended and complainant purchased nine new S&P calls at the exact same strike price of his original calls. By this time, the market had risen *above* complainant's liquidation of February 16, and the new calls cost him \$6,975 in premiums, a full \$200 per option commission, and the processing fee of \$225. Thus, the net result of the February 16 and February 23 transactions was that complainant had three fewer options than he had a week previously, with an additional net *cash* loss to him of \$600.

The nine S&P calls were liquidated at a net premium loss of \$3600 on February 27.

The following day, complainant purchased three more S&P calls, at a strike price ten points *higher* than the calls he had just sold the day before. Again, he paid the full commission price (\$600 total) and processing fees of \$75. He sold these at a loss on the premiums of \$1,650.

A final "last-gasp" transaction in unleaded gas occurred in April. That transaction resulted in the expiration of those options in June. Neither side has produced the daily account statements for that transaction, but the record includes a copy of an April 24 check showing a \$3,000 deposit by complainant.

Complainant received a check for \$119.79 when he closed his account at the end of June. Since he had deposited a total of \$19,650 in funding his account, his overall net loss was \$19,530.21.

Conclusions

The record, including the conversations quoted herein, demonstrates that complainant was victimized by numerous frauds in violation of CFTC Regulation 33.10 and Commodity Exchange Act section 4c(b). Among other things, Rendina and Ader emphasized a "track record" of seven, eight, or ten years of price increases in unleaded gas prices without mentioning to complainant that they were presenting him with no information about the related options market or whether that market had proven profitable. They presented the commission charge as being "small" when in fact the charges are substantial and operated to make it virtually impossible for complainant to earn a profit. They misrepresented "penny" moves in gasoline futures prices as translating directly into highly leveraged profits in options, when the numbers they used only actually occur once an option is in the money. Ader discounted risks by pointing out that although he had to mention it, and couldn't guarantee profits, complainant should "read between the lines" of what he was saying. Rendina and Ader both mentioned the risk of total loss, but each made it seem highly unlikely and both disparaged complainant's efforts to keep his money in less volatile stock investments. They both flatly predicted price rises based on past history without mentioning that the market likely already had factored that

history into its current prices. And, as the quotes above demonstrate, these are just a few examples of the many misrepresentations that occurred.

This case can, perhaps, best be summarized by noting how Ader bluntly told complainant he should make no effort to become knowledgeable about his options investments. Having obtained complainant's trust, respondents violated it to a substantial degree. No respondent paid any attention to complainant's indication that he was willing to risk only \$5,000---and the result was his loss of nearly quadruple that amount.³

The record also reflects churning by the respondents, in that the respondents obtained *de facto* control over the trading and induced complainant into a series of ill-founded trades where the net result was that he had merely re-established his positions at a higher price and with additional commission charges of many hundreds of dollars. In addition, they engaged in several options transactions prior to the funds being available in the account, including the initial purchase, which is tantamount to undermargined trading in futures. Furthermore, respondents encouraged complainant to buy the maximum number of options possible, and to hurry because if the price rose he would not be able to buy as many (ignoring the fact that complainant's money would then be going into the equity of his account directly instead of being shifted into commissions). It is likely that it is only happenstance that the twelve option purchase occurred when the premium was only \$550, since that price was below the \$600 premium that would have supported Commonwealth's heavy commission charge of \$200 and resulted in an adjustment to complainant to the \$135 charge instead. In addition, each option included a \$25 "processing fee" to cover floor brokerage charges, which suggests that the exorbitant commissions charged by Commonwealth are remaining entirely in its, and its employees, pockets. In view of the total out of pocket losses suffered by complainant, however, a separate damage award for churning (which would be in the amount of total commissions, \$7,020, although it could also include the "processing fees" of an additional \$791) is unnecessary.

This case does not present a situation of a single employee engaged in frolic and detour. Instead, the entire Commonwealth operation with which complainant dealt clearly was designed to accomplish the type of fraud as occurred here. Ader was presented as the top producing broker in the firm, and according to the complaint, he represented numerous times that Hoffecker would stand behind what he was saying. Ader portrayed himself as "teaching" complainant in the same fashion as he did all his clients, indicating that the frauds engaged in here were routine for this "top" broker at the firm. Furthermore, the fact that several brokers, including the non-respondent Linda Watson, teamed up to pressure complainant into opening his account demonstrates the carefully planned and pervasive

³ The loss of complainant's last \$3,000 in April is more troubling, because by then he clearly was on notice of the risks. However, respondents have not demonstrated that complainant became aware of the numerous frauds they committed in the initial solicitations, including their distortion of prior track records. Under the circumstances, it is likely that if complainant had been aware of the full truth, he never would have entrusted any additional funds to respondents and paid their huge commissions. Therefore, the final \$3,000 is considered to have been part and parcel of complainant's overall experience, and is attributable to respondents' misconduct.

nature of the scheme. It started with a Commonwealth "program" and resulted in a calculated effort to shift complainant's assets from his stocks into Commonwealth commissions. Under these circumstances, especially where his top broker continually held himself out as speaking for Hoffecker (a representation unlikely to have been made by a person in that position unless true, and which, it must be noted, has not been denied by Hoffecker), there is little reason to believe that Hoffecker was not an integral part of the frauds involved here. Accordingly, it is determined that he is directly liable for the acts of his agents under Commodity Exchange Act section 2(a)(1)(A)(iii), as well as liable for failing to supervise them under CFTC Rule 166.2.

Reparation Award

Violations having been found, respondents COMMONWEALTH FINANCIAL GROUP, ALLAN STEVEN ADER, CHARLES PAUL HOFFECKER (A.K.A. CHIP HOFFECKER), and MICHAEL JAMES RENDINA, JR., are ORDERED to pay reparations to complainant Neil Grindell in the amount of \$19,530.21, plus prejudgment interest on that amount compounded annually at the rate of 6.06% from February 28, 1995, to the date of payment, plus costs of \$125.

Dated: May 22, 1997


JOEL R. MAILLIE
Judgment Officer