## U.S. COMMODITY FUTURES TRADING COMMISSION



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

To The Part of the

OFFICE OF PROCEEDINGS

JOHN A. KAROLL, SR., and

MARIE C. KAROLL,

Complainants

v.

CFTC Docket

No. 96-R123

MARTIN JAMES ALLAMIAN, JAMES

MANNING, and MARTIN JAMES &

COMPANY, INC.,

Respondents

No. 96-R123

## **ORDER OF DISMISSAL**

Complainants have filed a document that states, "The above matter is hereby withdrawn." In a conversation with the undersigned, complainants' attorney stated that a copy of the request to withdraw was faxed to respondents' attorney and that respondents' attorney had not been asked to stipulate to the withdrawal. Complainants' attorney asked if the order dismissing the complaint could be issued "without prejudice" to complainants' ability to refile their complaint in another forum. Counsel was informed that such language was available only under Rule 12.21, reflecting the Commission's policy that all parties should agree on whether a voluntary dismissal allows for refiling elsewhere. That policy is designed, as counsel was informed, to discourage a party who is clearly losing a case from forum-hopping in order to have additional "bites at the apple." In the absence of such a stipulation, as here, any other forum in which complainants might choose to file will have to determine for itself based upon the entire record whether the adjudication here had proceeded far enough to constitute a bar to refiling the same claim.

Because complainants have chosen not to proceed with their case, the complaint is DISMISSED with prejudice to refiling in reparations.

Dated: February 18, 1997

JOEL R. MAILLIE
JUDGMENT OFFICER