



U.S. COMMODITY FUTURES TRADING COMMISSION

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

OFFICE OF
PROCEEDINGS

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SEP 23 1 50 PM '97
FILED

_____)
ROGER KISSEL,)
Complainant)
v.)
COMMONWEALTH FINANCIAL) CFTC Docket No. 96-R078
GROUP, INC., and ALLAN STEVEN)
ADER, JR.,)
Respondents)
_____)

ORDER OF DISMISSAL FOR CAUSE

Pursuant to CFTC Rule 12.34, complainant was ordered to file replies to respondents' Interrogatories numbered 4 through 20, 22, and 24 through 30, and to file copies of documents responsive to respondents' Document Requests numbered 1 through 4, 6, and 8 through 10. (See Discovery Order Dated September 24, 1996.) The respondents were directed in the same Order to file copies of documents and tape recordings. The Order warned that failure to respond would result in dismissal of the complaint or default of the respondents, as appropriate.

Respondents provided copies of documents and tapes as ordered. Complainant, however, has never replied to the Discovery Order. The tapes submitted by respondents have been transcribed and reviewed to determine whether the information on those tapes provides sufficient answers to the questions directed to complainant. A review of the file reveals that the information sought by respondents is essential to determining the merits of complainant's case and of respondents' defenses. Without that information, no reliable decision on the merits is possible. Furthermore, it is determined that respondents would not be able to fairly defend themselves from complainant's allegations, including preparation for a possible oral hearing, without the information that complainant has inexplicably failed to submit. Therefore, it is determined that complainant's failure to respond to discovery requires dismissal of the complaint.¹

¹ A review of the transcribed tapes demonstrates that dismissal of the complaint here does not result in manifest injustice. Although the tapes include comments that might be considered overly emphatic of prospects for profit during the solicitation of complainant's account, it is clear that the complainant was not misled into disregarding the risk disclosures or the other discussions of risk. During the initial compliance review, the complainant is asked if he understands that his entire deposit will be at risk, and he expressly states his understanding that it is just like being in

Accordingly, pursuant to CFTC Rule 12.35, the complaint is DISMISSED WITH PREJUDICE.

Dated: September 23, 1997

Joel R. Maille
JOEL R. MAILLIE
Judgment Officer

Las Vegas. One might quibble, of course, that statistically an options investor conceivably has less chance of success than a gambler, but the odds are not the issue here. What is important is that the complainant's analogy was arrived at by himself (i.e., unprompted) and that it reveals his knowledge that any suggestions of possible success were in the context of his overall chances of losing his funds. Furthermore, the transcript does not reveal another facet of complainant's comment: complainant was chuckling when he mentioned Las Vegas, suggesting that he was not only well aware of the chances he was taking but also that he was ready, willing, and eager to take the gamble with his funds.