



U.S. COMMODITY FUTURES TRADING COMMISSION

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BEATRICE MARTINEZ,
Complainant

v.

CFTC Docket
No. 99-R054

FUTURES TRADING GROUP, INC.,
DAVID ALAN MAYER, and
CLIFFORD GRANT WEBER,
Respondents

FINAL DECISION

Beatrice Martinez filed this case by selecting a voluntary decisional proceeding to be conducted under Subpart C of the Commission's reparations rules, 17 C.F.R. Part 12. The respondents all agreed to that selection.¹ In this matter no party took discovery or filed a verified statement. The record consists only of the verified complaint (as supplemented by Ms. Martinez in reply to deficiency letters), and verified answers filed by FTG/Weber (jointly) and Mayer.

Upon careful consideration of the scant record made by the parties, it is concluded that complainant Martinez has established that respondent Mayer—using a combination of misrepresentations, nondisclosure, predictions of profit, and even false assurances as to the high ethics of his firm (Carrington Financial Corp.) that would be placed in receivership by federal court order in less than two weeks (*see* tape submitted with Mayer's answer, and page 2 of FTG/Weber answer)—fraudulently solicited her funds to open an account to trade options on heating oil futures. It is further concluded that respondents FTG and Weber recklessly failed to disclose the true risks of trading to Ms. Martinez, or to inform her that her account had been procured through fraud and

¹ In a voluntary proceeding, the parties submit their dispute on the papers only, waiving their right to present oral testimony. In addition, the judge is not authorized to conduct discovery on his own motion (*see* Rule 12.34), leaving the parties solely responsible for the development of the record. When the record is closed, the judge issues a Final Decision containing only a conclusion whether any violations have been proven, and, if so, a reparation award for any damages caused by such violations (*see* Rule 12.106(b)). The decision does not contain findings of fact or other evidentiary evaluations by the judge. The Final Decision is not appealable either to the Commission or to any U.S. Court of Appeals (*see* Rule 12.106(d)).

with a substantial misapprehension as to the likelihood of earning profits.² The nondisclosures and other frauds committed by respondents violated, among other provisions, Commission rule 33.10, and proximately resulted in her losses of \$5,267.

Violations having been found, respondents Futures Trading Group, Inc., David Alan Mayer, and Clifford Grant Weber are ORDERED to pay reparations to complainant in the amount of \$5,267, plus \$50 in costs as complainant's filing fee. LIABILITY IS JOINT AND SEVERAL.

Dated: February 8, 2000


JOEL R. MAILLIE
Judgment Officer

² Respondents FTG and Weber suggest that no reparations action can be brought by Ms. Martinez because they did not solicit her (joint answer at 3-4). Without citation to the law they purport to quote, these respondents argue that the "conduct alleged" by Ms. Martinez "was not 'in connection with' the making of a contract to buy or sell a commodity futures contract or option on a futures contract" and therefore they claim that Ms. Martinez has not alleged a violation "of the Commodity Exchange Act" by them.

The distinction sought by respondents is based on their misquoting the law. The Commission's antifraud rule with respect to options transactions expressly prohibits fraud and deception "in connection with an offer to enter into, the entry into, the confirmation of the execution of, or the maintenance of, any commodity option transaction." 17 C.F.R. 33.10 (emphasis provided). Thus, disclosure of material information is mandatory throughout the customer/broker relationship, and a second broker who "inherits" an options accounts but does not execute an order remains, contrary to respondents' argument otherwise, liable for fraud through nondisclosure.