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UNITED STATES OF AMERICA
BEFORE THE
COMMODITY FUTURES TRADING COMMISSION

1998 SEP 11 A 11: 13

Joseph McGough and Virginia McGough,)
)
Complainants)
)
v.)
)
James A. Bradford, The Hampton Group,)
Inc., Iowa Grain Company and Perry G.)
Wilson,)
)
Respondents.)

OFFICE OF PROCEEDINGS

CFTC DOCKET NO. 97-R116

Joseph McGough and Rose Marie McGough,)
)
Complainants)
)
v.)
)
James A. Bradford, The Hampton Group,)
Inc., Iowa Grain Company and Perry G.)
Wilson,)
)
Respondents.)

CFTC DOCKET NO. 97-R117

INITIAL DECISION

Appearances:

For the Complainants:

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Before: Painter ALJ

For the Respondents:

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Procedural Statement:

Joseph M. McGough and his wife, Virginia S. McGough, filed the claim identified as docket 97-R116 on or about August 8, 1997. Joseph M. McGough and his mother, Rose Marie McGough, filed the claim identified as docket 97-R117 on the same date. Joseph M. McGough is the only complainant that dealt with respondents, and hereinafter complainants shall be referred to as Joseph M. McGough or McGough.

McGough initially requested that these claims be decided pursuant to the voluntary procedural rules. Respondents upgraded the decisional process to formal status by paying the extra filing fee.

Respondents James Arthur Bradford, The Hampton Group, Inc., and Iowa Grain Co. filed timely answers and denied any wrongdoing. Respondent Perry G. Wilson, in a letter received by the Proceedings Clerk on October 31, 1998, stated as follows: "I will not be wasting any more of my time responding to any more of these complainants' frivolous allegations." Respondent Wilson is in default and is subject to judgment for the amount claimed by the complainants.

The hearing in these matters was held on May 4, 1998 in Los Angeles, California. At the opening of the trial, counsel for respondents moved for dismissal of the unauthorized trading charge. After some discussion, the Court dismissed all charges of unauthorized trading. (Tr.45) The only issues to decide in these cases are whether complainants were fraudulently induced to open and/or trade the accounts, and whether respondents fraudulently represented to McGough that certain hypothetical trades by respondent Wilson were in fact actual trades, thus inducing complainants to engage in a trading strategy that resulted in losses on the accounts. The participating parties have filed post-trial briefs with proposed findings of fact and conclusions of law, and these cases are ready for decision.

Findings of Fact:

1. Joseph M. McGough is a nuclear engineer, and since graduating from college in 1960 he has worked with various private companies, the Nuclear Regulatory Commission, and the Department of Energy. He was last employed by Lockheed in 1995. His employment was terminated when Lockheed downsized its operation in Nevada. (Tr. 15-18) McGough was 63 years of age at the time he opened the accounts at issue. (Ex. R-1) Although the account opening documents signed by McGough show that he had 20 years of experience in commodity trading, he testified that he had traded only in 1994 and 1995, and that he had been told to leave that space blank. (Tr. 21-22, 110-112) McGough testified that in fact he had traded in three different accounts prior to opening an account with Iowa Grain. Trading in the previous accounts was on a much smaller scale than the accounts at issue. (Tr. 120)
2. Respondent Perry Garth Wilson was registered with this Commission as a commodity trading advisor from August 1995 to March 3, 1997. (Commission Records) National Futures Association (NFA) files show that Wilson's employment history included employment with The Hampton Group Inc. from December 1994 to July 1995.
3. The Hampton Group, Inc., has been registered with the Commission as an introducing broker since at least December 1992. Prior to September 1994 it was guaranteed by Vision Limited Partnership. From September 1994 to February 8, 1997 it was guaranteed by Iowa Grain Co., a futures commission merchant. Its registration was withdrawn on February 8, 1997. (Commission records) The Hampton Group Inc. was at all relevant times owned by Gary James Kummer. (Tr. 169)

4. Iowa Grain Co. was at all relevant times registered with the Commission as a futures commission merchant. It was the guarantor of The Hampton Group from September 1994 to February 8, 1997. (Commission records).
5. On or before March 7, 1995, McGough received an unsolicited telephone call from one Brad Busby, an employee of The Hampton Group. Busby represented to McGough that The Hampton Group had a conservative trading program in T-bonds that was quite conservative and profitable. McGough executed the account opening documents for an account with Iowa Grain on or about March 7, 1995, and sent in a \$50,000 check to fund the account in the name of Joseph M. McGough and Virginia S. McGough. (Tr. 23-254; Ex. R-1) In late March 1995 Busby recommended a bond trade which was agreed to by McGough. The transaction, a day trade, resulted in a loss of \$248.99 (Tr. 27; Ex. C-5)
6. Busby left The Hampton Group sometime prior to April 18, 1995. (Tr. 139-140) The only trade made during the time Busby served as McGough's account was a T-bond day trade that resulted in a net loss of \$248.99. (Ex. C-5)
7. There was no trade activity from March 27, 1995 to April 18, 1995, when McGough received a telephone call from James Bradford of The Hampton Group. Bradford informed McGough that Perry Garth Wilson was a wealthy medical doctor who resided in the Caribbean, and that Wilson had developed a trading system for the S&P that was doubling his money every six months. Bradford then said that he wanted to put up to five or six accounts on the same trading system. He asked that if he ran the \$50,000 account of McGough's to \$60,000, would McGough close an account with another firm and deposit an additional \$50,000 in his Iowa Grain account. McGough agreed, provided he received prior notice of trades. (Tr. 25-31) At no

time did Bradford disclose to McGough that Wilson's trading was entirely hypothetical. (Tr. 31-32)

8. Bradford testified that Wilson had been trading with The Hampton Group since 1993, and that Wilson controlled several accounts, including joint accounts with some doctor friends. (Tr. 141-142) Wilson, according to Bradford, was a customer client of another salesman at The Hampton Group, one Jack Kessey who "...sat across from me." (Tr. 146) Bradford testified that he shared with McGough the successes of Wilson's trading in the S&P, and that he told McGough that he (Bradford) "...was truly enthused by how well this guy was trading, and I wanted Joe (McGough) to have a part of that." (Tr. 147)

9. Bradford faxed to McGough, and discussed over the telephone with McGough, several facsimiles purportedly transmitted to The Hampton Group by Wilson. Complainants' Exhibit 8 contains eight such facsimiles, which were provided to complainant during the discovery process. These facsimiles are laced with misinformation, and designed to mislead the gullible and unsophisticated. McGough was led to believe that Wilson had a trading system that was producing huge profits. The facsimile generated April 26, 1995 includes the following: "Jack-Day Orders for Perry Wilson for 4-26-95." McGough, of course, construed this as instructions from Wilson to account executive Jack Kesey to enter certain orders for Wilson's account. The facsimile goes on to claim "...[T]he track record since January 1, 1995 is 13 wins, 4 losses..." with a net profit "...after deducting commissions \$19,205..." To add more confusion, the facsimile has this line: "From the time I began paper trading this system in real time (October 25/94 to the end of 1994) the profit was \$18,605." There is not a shred of probative evidence in the record to show that Wilson's so-called instructions resulted in The Hampton Group or Iowa Grain entering a single order for Wilson's account. I find and conclude that Bradford

deliberately caused McGough to believe that Wilson was successfully trading contracts on the futures exchanges and making huge profits.

10. The April 26, 1995 facsimile appears to be directed to Jack Kessey, the person Bradford claims to have served as Wilson's account executive. Later facsimiles refer to "Jim," presumably respondent James Bradford. (Ex. C-8)

11. When asked why the facsimiles failed to disclose that the trading was hypothetical, Bradford testified that the facsimiles originally had a disclosure statement to that effect, and that the facsimiles included in Exhibit C-8 had been cropped or altered. (Tr. 158, 162) It is undisputed that each facsimile in Exhibit C-8 was produced in its present state by the respondents during the discovery process. The facsimiles in Exhibit C-8 are duplicated in respondents' Exhibit R-9. (Note: Exhibit R-9 appears in the respondents' exhibits directly under tab number 8)

12. Gary Kummer, the owner of The Hampton Group, testified that he was aware at all relevant times that Wilson was engaging in paper trading and that at no time did he, Kummer, disclose this fact to McGough. (Tr. 173)

13. Kummer denied that Wilson had ever been affiliated with The Hampton Group. However, he conceded that Wilson, in an application to the National Futures Association, claimed to have been an employee of The Hampton Group during the entire time the McGough accounts were open. (Tr. 179) Kummer also admitted that he had sponsored Wilson for the Series 3 commodities examination. (Tr. 181)

14. In a rather bizarre turn in the case, counsel for respondents recalled respondent Bradford to the stand, and had him identify Exhibit R-16, another version of the facsimile bearing the date April 26, 1995, and entered in evidence with Exhibits C-8 and R-9. The version identified as

Exhibit R-16, however, contains a disclosure paragraph typed in an entirely different font than any used on Exhibits C-8 or R-9. I find that any alterations, deletions, or additions to the facsimile documents were caused by one or more of the respondents and not the complainants. It is indeed strange that both sides placed in evidence identical copies of the facsimiles transmitted to McGough, and yet Bradford identified and sponsored a different version of the April 26 facsimile which contains a self serving disclosure statement. I find that Exhibit R-16 is a fabrication that was never transmitted to McGough, and infer that it was created after the accounts at issue were closed.

15. Account statements show a liquidating value of slightly more than \$60,000 for McGough's first account (60679) on April 27, 1995. On that date McGough purchased a T-bill for \$39,436.81. S&P transactions increased the net value of the account, including the T-bill, to slightly more than \$60,000.00. Pursuant to his understanding with Bradford that he would increase his account by \$50,000 if it attained a \$10,000 increase in value, McGough made an additional deposit of \$50,000 to account number 60679 on May 2, 1995.

16. On June 13, 1995 McGough opened a second account (69280) with his mother, Rose Marie McGough, as joint owner. On June 15, 1995, McGough deposited \$100,000 in the second account. (Ex. R-2)

17. At all relevant times, McGough believed without equivocation that the Wilson facsimiles described trades actually ordered for Wilson's account, and at no time had the slightest suspicion that the facsimiles depicted hypothetical trading. During the trial of this matter, McGough expressed surprise that Wilson's trades were fictional, or hypothetical, and he testified that he did not learn that the trades were hypothetical until so informed by his attorneys prior to the trial.

(Tr. 124, 136) McGough testified that prior to July 1995 he accepted nearly every recommendation based on Wilson's program, but often in smaller quantities. (Tr. 40)

18. Bradford testified that he solicited potential customers to "paper trade" commodities so that the risks would be fully explained. (Tr. 138) He continued as follows: "When it came to prospecting, my choice of prospecting happened to be paper trading." (Tr. 139)

19. Bradford testified without reservation that he shared with McGough the fact that, as a broker, he was "impressed" by Wilson's trading; that "Here's a guy trading the S&P and he's doing alright" and "This guy's got it together." (Tr. 146) He did not disclose to McGough that Wilson's trading was fictional.

20. Bradford conceded that the facsimiles showed that Wilson was paper trading, and when asked about the Wilson facsimile dated April 27, 1995, Bradford noted that all of the trades were paper trades, a fact not disclosed to McGough. (Tr. 152)

21. Bradford testified at one point that every page in Exhibit C-8 had been altered to delete the disclosure that the trades were hypothetical. (Tr. 158; also see finding number 14) I find and conclude that Bradford was at all times aware that the facsimiles transmitted to McGough (Exhibit C-8) did not contain a disclosure that Wilson's so-called trading was hypothetical.

22. McGough would never have followed recommendations by Wilson and Bradford had he been aware that Wilson was "paper trading" rather than engaging in actual trading. (Tr. 124) I find and conclude that McGough's consent to the trading that occurred on and after April 18, 1995, was predicated on false information he received from Bradford.

23. McGough's joint account with his wife, account number 6922 69679, sustained losses of \$94,298.24, which excludes the \$248.99 lost on the day trade made on April 18, 1995. I find and

conclude that these losses are directly attributable to the fraud perpetrated against McGough by providing McGough with false and misleading reports on Wilson's so-called trading system.

24. McGough's joint account with his mother, account number 6922 69280, sustained losses of \$88,656.61 and these losses are directly attributable to the fraud perpetrated against McGough by providing him with false and misleading reports on Wilson's so-called trading system.

25. Complainants' allegation that unauthorized trades were placed in the accounts is not supported by the weight of the evidence.

Discussion:

Complainant McGough, in the words of counsel for respondents, is in one sense a "rocket scientist" in that he did engineering work on space rockets. Hard sciences to the contrary, McGough has learned little about futures trading even though he has now traded through four different firms, including Iowa Grain. To illustrate, counsel for respondents suggested that McGough certainly was on notice that on May 23, 1995, one account lost more than \$40,000. McGough insisted that he was totally unaware of that fact. Re-direct examination disclosed that account statements sent to McGough showed a net liquidating value of \$80,686.66 on May 22, and a net liquidating value of \$74,822.38 on May 23, which could lead one to the conclusion that the account suffered only a loss of \$6,000, not \$40,000, on May 23. (Tr. 130-131) This little vignette provides a little insight into the pitfalls of reading futures statements. McGough has a long way to go to become an expert in commodity trading.

Complainants' initial complaint contains allegations that were not proven during the

course of the hearing, such as the claim that many unauthorized trades were entered on the accounts. This charge was thrown out during the early part of the hearing, as it was obvious McGough was mistaken in his allegations that trades were made at times that he was without telephone communication with Bradford, his account executive. I do not believe that McGough made these allegations in bad faith. He truly believed he had had no telephone conversations during that period of time. This flaw in his testimony does not make him an unbelievable witness.

Complainants' case turns on whether McGough was fraudulently induced to trade these accounts, on and after April 18, 1998, pursuant to trading recommendations made by respondent Perry Garth Wilson. The evidentiary record is loaded with undisputed evidence, including documents and testimony, that Bradford led McGough to believe that this "wealthy doctor" was actually trading the S&P contracts and making huge profits, and that Bradford intended to let McGough and a few other big traders in on the secret of Wilson's so-called success by sending McGough facsimiles of Wilson's trading instructions. As noted in the findings above, there is not a scintilla of probative evidence in the record to show that Wilson ever traded a single S&P contract. Nevertheless, Wilson's facsimiles were sent to McGough, and McGough relied on those facsimiles to trade his account. McGough, of course, believed that Wilson was actually entering trades. The testimony of Bradford and Kummer make it abundantly clear that the Wilson facsimiles were not instructions to place futures positions in Wilson's account, but instead a concocted hypothetical trading scheme designed to delude the gullible into believing the instructions were for actual contracts.

Of the persons who appeared and testified at the hearing, only McGough believed that Wilson's facsimiles represented actual trading. Bradford and Kummer were acutely aware that the facsimiles set forth hypothetical trading. Wilson, the respondent who deigned to file an answer to the complaint, placed nothing in the record to show otherwise. Respondent Wilson, described by Bradford as a wealthy doctor residing in the Caribbean, and a genius at trading the S&P contract, was, according to NFA files, employed by The Hampton Group Inc. from December 1994 to July 1995, the very time McGough's accounts were traded. The inference is made that the NFA gleaned this information from papers filed by Wilson, or from the fact that Kummer sponsored Wilson's application to take the Series 3 examination. The overwhelming weight of the evidence establishes that Wilson was neither a wealthy medical doctor nor a genius S&P trader. Rather, he was part and parcel of the scheme designed to separate McGough from his money.

Conclusions of Law:

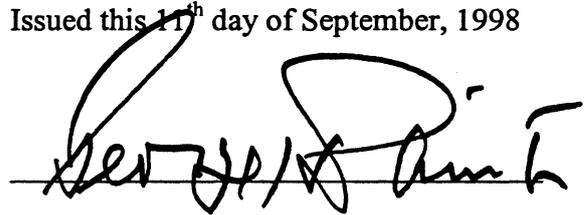
Complainants have established by the preponderance of the evidence that from April 18, 1995 to the date the accounts at issue were closed, respondents James Arthur Bradford, Perry Garth Wilson, and The Hampton Group, Inc., violated Section 4b (a) of the Commodity Exchange Act, 7 U.S.C. 6b (a), by fraudulently inducing complainants to trade futures contracts, by willfully making false statements to complainants, and by cheating and defrauding the complainants, all described in the findings above, and causing direct monetary damages to complainants in the amount \$182,954.85.

Respondent Iowa Grain Company was at all relevant times the guarantor of The Hampton Group, and is therefore jointly and severally liable for all obligations of The Hampton Group.

ORDER

Respondents James Arthur Bradford, Perry Garth Wilson, The Hampton Group, and Iowa Grain Co. are **ORDERED** to pay to complainants the sum of \$183,203.86, plus interest at the rate of 5.271% from the date the accounts were closed to the date this judgment is paid. Respondents are jointly and severally liable for payment of this award.

Issued this 11th day of September, 1998

A handwritten signature in black ink, appearing to read "George H. Painter", is written over a horizontal line.

George H. Painter
Administrative Law Judge