



**U.S. COMMODITY FUTURES TRADING COMMISSION**

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Office of Proceedings

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U.S. COMMODITY FUTURES TRADING COMMISSION

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MIGUEL ANGEL MEDEL, )	
Complainant )	
v. )	CFTC Docket
)	No. 01-R078
FIRST INVESTORS GROUP OF PALM )	
BEACHES, INC., and BRYAN OLDFORD )	
TIERNEY, )	Served by Federal Express
Respondents )	
_____ )	

**INITIAL DECISION ON SUMMARY DISPOSITION**

The parties' responses to the May 23, 2002, Order to Show Cause have been considered. Upon review of those responses, it is determined that complainant has not demonstrated that he suffered any losses as a result of the any actions taken by respondents in this proceeding. Nor has he demonstrated that discovery or an oral hearing would prove helpful or useful in uncovering any evidence that could be brought to bear on that issue.

As discussed in greater detail in the May 23 Order, which is incorporated in this decision by reference, this case appears to have been provoked by a simple accounting practice apparently commonly engaged in by respondents and other industry members. The essential facts are simple: complainant opened a futures/options trading account with respondents. According to complainant, he did so in reliance upon Tierney's alleged promises of substantial profitability. Later, he learned of CFTC and/or NFA cases involving the respondents and he decided to switch his account to another firm, Concorde Trading Group. The May 23 Order includes a copy of account statements demonstrating that at the time of the account transfer, complainant's account had risen several thousand dollars in the weeks it was open and thus was showing a profit of about nearly 20 % over his initial investment of \$17,000.

Unfortunately, after the transfer, complainant's trading with Concorde resulted in a loss of almost all of his funds.<sup>1</sup> Unfortunately also, the Form 1099 tax statement sent to complainant at the

<sup>1</sup> The ironies in this proceeding include more than just the fact that complainant in this case is suing a company that promised (allegedly) to make him money and then did make him money. He was frightened away from First Investors as a result of information calling that firm's legitimacy into question, and ended up losing his money

end of the year by First Investors accounted for the entire amount of the transfer as a loss. The statement sent to complainant by Concorde did not show a corresponding gain, however, because complainant lost all of that money by the end of the year.

Complainant initially filed a complaint against Concorde as a result of the losses there (CFTC Dockets No. 00-R098), and later filed this case because, as he admits in his filings, the 1099 from First Investors confused him into thinking maybe First Investors actually had lost his money.

The sole allegation complainant makes in his response to the May 23 Order that even gives pause regarding whether dismissal is appropriate is his claim that Tierney promised him even higher profits than he actually earned at First Investors Group. There is no allegation, however, that any additional profits ever belonged to, or under any imaginable circumstance, should have belonged to, complainant – if so, after all, such a loss would fall into the category of actual damages. The reparations program does not exist to allow customers who are solicited by inflated profit predictions to enforce those illegal predictions. Instead, jurisdiction is limited to losses proximately and *actually* caused by a registrant's violations of the law. Complainant's argument must fail on the grounds that he was not *actually* victimized by the conduct he complains of – even if, assuming *arguendo*, it is true as alleged in his other complaint that he did fall victim to a different scheme.

Nothing in this record providing any reason for further proceedings in this matter, the complaint is DISMISSED.

Dated: September 19, 2002

  
JOEL R. MAILLIE  
Judgment Officer

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to a firm, Concorde, that subsequently ceased doing business after having faced several Enforcement proceedings over the years and that has been charged with fraud in a substantial number of reparations matters.