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UNITED STATES OF AMERICA

Before the

COMMODITY FUTURES TRADING COMMISSION

Atul Mehta, Complainant v. Peter Edward Kligensmith, Mark Vansands Morrison and Spike Trading LLC, Respondents.	)	**CFTC Docket No. 98-R033**

INTIAL DECISION

Appearances:

Complainant Atul Mehta, *pro se*

On Behalf of Respondents Peter Edward Kligensmith and Mark Vansands Morrison:

Gary M. Sinclair, Esq.
Attorney at Law
39 S. LaSalle Street
Suite 1020
Chicago, IL 60603

On Behalf of Respondent Spike Trading, LLC:

Robert L. Byman, Esq.
Jenner & Block
One IBM Plaza
Chicago, IL 60611

Before:

Painter, ALJ

Preliminary Statement

Complainant filed this action with the Commission on or about November 18, 1997, alleging that respondents engaged in "unauthorized trading, churning, abuse in handling orders, cheating and defrauding," and that the wrongdoing of respondents resulted in losses of $35,780. More specifically, complainant alleges that on October 22, 1997, respondents Morrison and Klingensmith "forced" him to buy three December 1997 Mexican peso contracts; that Morrison and Klingensmith dumped peso positions from their personal accounts into his account; that on October 23, 1997 respondents placed a stop order at 1190 on the peso positions instead of a stop at 1200 which complainant had ordered, which forced complainant to enter market orders for the three contracts; that Klingensmith liquidated a losing S&P futures position from his account without authorization; and that he suffered damages in the amount of $35,620 by reason of wrongdoing on the part of respondents. Respondents filed timely Answers and denied any wrongdoing.

The day prior to the hearing the Court conducted a telephone conference in hopes of reaching a settlement. Complainant was informed that his claim was less than persuasive, and that the parties should consider settlement. On that day, respondent Spike Trading paid $3,000 to settle the dispute with complainant, ostensibly on grounds that the cost of sending an attorney and witnesses from Chicago to Washington would exceed that amount. Respondents Klingensmith and Morrison declined to settle, and they appeared and testified at the trial of this matter.

The parties were ordered to file post-trial briefs within 30 days after receipt of the transcript, or the date on which the transcript was received by the Proceedings Clerk. The

transcript shows that it was filed with the Proceedings Clerk on July 8, 1998. Complainant failed to file a post-trial brief of any kind and has apparently abandoned his claim. Respondents Klingensmith and Morrison filed a post-trial brief on August 6, 1998, including recommended findings of fact and conclusions of law. This matter is ready for decision.

Findings of Fact

1. Complainant was 27 years of age at the time he opened an account with respondent Spike Trading. He listed his occupation as a software consultant, and his income between $50,000 and $100,000 per year. He noted on his account application that he had traded futures and options for two years. (Ex. R-1)

2. On October 22, 1997, complainant purchased three long December 1997 Mexican peso futures contracts. Complainant admitted under oath that no one had "forced" him to take these positions, but that Morrison and Klingensmith violated the Act by recommending the Peso trades. (Tr. 11) Complainant's charge that he was unlawfully induced to purchase Mexican peso contracts is nothing short of frivolous.

3. Other than his testimony that Klingensmith hung up the telephone when complainant accused him of transferring losing Peso positions from Klingensmith's account to the complainant's account, there is no evidence in the record that trades were transferred as alleged. (Tr. 11) Respondent Klingensmith testified that there was no truth to complainant's allegation. (Tr. 46) There is no merit to complainant's allegations that positions from the personal accounts of Morrison or Klingensmith were transferred to complainant's account.

4. The record, including the account statements, office order tickets and floor tickets support the testimony of Morrison and Klingensmith that Mehta placed a stop order on the three

December 1997 Mexican peso positions; that the complainant entered market orders and liquidated two of the peso contracts on October 24, 1997; that on the same day complainant's stop order was hit, leaving him short two December 1997 Mexican peso contracts; that the two short contracts were liquidated later at complainant's direction, and produced a substantial profit. In sum, there is not a shred of evidence concerning the Mexican peso contracts to show wrongdoing on the part of respondents.

5. Complainant testified that on October 27, 1997, he telephoned an order to respondents from the Denver airport, directing the purchase of a long S&P contract. (Tr. 25) That contract was liquidated shortly thereafter at a profit. (Tr. 49) Complainant then placed an order for another long S&P contract, and it was filled at 9.325. (Tr. 53)

6. The market went against the position, and when Mehta next called the market was down 20 points. According to Morrison's testimony, Mehta directed Morrison to do what he thought best as he was to depart for Seattle. (Tr. 50-51)

7. The market continued to go against Mehta's position, and at 2:00 p.m. the account was under margin. (Tr. 54) Shortly thereafter, at about 2:15, the margin for the S&P contract was increased to $50,000. (Tr. 51, 55)

8. The market continued to decline, and Morrison then entered a stop order at 8.80. Concerned that the market could go limit down without a fill, Morrison replaced the stop order with a market order which was filled at 8.84. At the close, the market was at 7.74. (Tr. 52-54)

9. Mehta spoke with Morrison after the close, and was informed of the 8.84 fill, and of the 7.74 price on the close. At that time Mehta had no complaints, and he did not order the purchase of a long S&P contract. The next day the market dropped 30 points lower. Mehta inquired about buying back a long S&P, and Mehta was told that the margin was then $50,000. (Tr. 56-59)

Mehta did not wire the margin money or place an order for the purchase of an S&P contract. (Tr. 60)

10. Complainant acknowledged that he told Morrison he did not have sufficient funds available to margin a new position in the S&P futures. (Tr. 27)

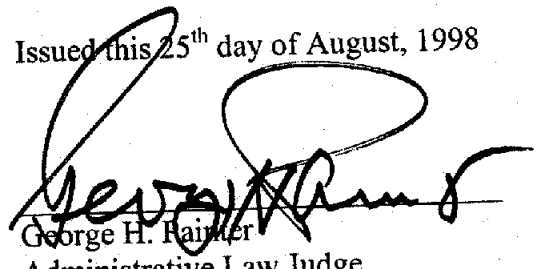
Discussion

Complainant has failed to show that he sustained monetary damages by reason of wrongdoing on the part of respondents. A review of the record in this case supports a finding that respondents Morrison and Klingensmith went beyond the call of duty to assist the complainant in his trading, and performed at all times in an honest and professional manner. The one person in this case who does not come off well is the complainant. It is to the credit of Morrison and Klingensmith that they elected to defend against these charges rather than settle at about the cost of airline tickets, attorney fees, and hotel costs. Complainant is entitled to no relief on this claim.

ORDER

Complainant has failed to establish by the preponderance of the evidence that he sustained monetary damages by reason of wrongdoing on the part of respondents. Accordingly, this proceeding is **DISMISSED WITH PREJUDICE**.

Issued this 25th day of August, 1998



George H. Painter
Administrative Law Judge