

limitations. The Order also directed complainant to indicate whether additional discovery would be necessary to develop the evidence on this issue.

The response submitted by complainant to the Order to Show Cause is set out here in its entirety:

I sold my business in December 1994. All of my business and personal records were filed in the purchased party's warehouse. The letter dated Oct. 25 was includ[ed]. This letter was uncovered by me when I was asked by the Commodity Futures Trading Commission attorney Maura J. Condon asked me for information on this case and had agreed to testify. The note was found in Oct. 1997 and that should be the date of discovery.

[signature]

P.S. If there are any questions about validity of discovery date contact Maura Condon[,] Division of Enforcement.

(Complainant's submission, dated April 16, 1998; grammar and spelling in original.)

Attached to complainant's submission was a copy of an October 10, 1997, letter to him from CFTC attorney Condon notifying him that the trial in which he had agreed to be a witness (*In re Albino*, CFTC Docket No. 95-11) would be held in February 1998. Ms. Condon's letter provided information to complainant about fees and expenses and asked him to contact her by October 17, 1997, to confirm receipt of the letter and to discuss any questions he might have about his appearance.

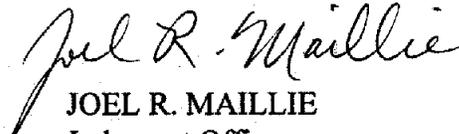
Complainant's submission does not include a certificate of service on other parties, and it appears that he did not serve it upon respondent Albino despite the direction to do so in the Order to Show Cause. In an August 10, 1998, telephone call with the Assistant Director of the Office of Proceedings, respondent Albino stated that she had not received a copy of complainant's submission. A copy was then sent to her by this Office.

Upon review of the facts regarding the timeliness of complainant's filing of his complaint, complainant has not shown any convincing reason why his complaint should not be considered untimely filed beyond the two-year limitations period, nor does the record remotely suggest that evidentiary discovery or an oral hearing would uncover any such reason. As noted in the Order to Show Cause, complainant threatened to sue respondents over the same dispute in February 1994. There could be no clearer indication than a litigation threat that he was aware of the possibility of wrongdoing, and therefore his complaint should have been filed within two years, by February 1996. The October 25, 1994, affidavit confirms this conclusion for it reveals that complainant was well aware not only of the general possibility that he had been victimized, but also of numerous specific facts underlying the cause of action he finally asserted over three years later.

Complainant's *ex parte* submission in reply to the Order to Show Cause could well be disregarded since he apparently violated the instruction to serve opposing parties, but even if considered it contains nothing to suggest that complainant's delays were attributable to any conduct of respondents that would have extended the February 1996 deadline or otherwise tolled the limitations period. In particular, complainant's suggestion that the limitations period should be considered to have begun only after he was contacted regarding the CFTC *Albino* trial date is unpersuasive. The October 10, 1997, letter from Ms. Condon does not address complainant's reparations case and cannot fairly be interpreted as having notified him of any facts associated with his dispute of which he was previously unaware. Indeed, clearly the timing of the complaint (two months after Ms. Condon's letter) suggests that the notice of trial date may have reminded complainant of his dissatisfaction with Ms. Albino, but complainant's forgetfulness does not overcome the period imposed by law for his complaint to have been filed.

For the reasons stated, the complaint is DISMISSED.

Dated: August 26, 1998


JOEL R. MAILLIE
Judgment Officer