U.S. COMMODITY FUTURES TRADING COMMISSION
Three Lafayette Centre
1155 21st Street, NW, Washington, DC 20581

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OFFICE OF PROCEEDINGS

WILLIAM V. NEVE, Complainant v. CHARLES AMATO and MARK PRESTON DINGLE, Respondents	CFTC Docket No. 96-R030

INITIAL DECISION AND ORDER OF DISMISSAL

Respondent Amato has settled with complainant and therefore the complaint against Amato is hereby DISMISSED. It should be noted that the complainant's attorney constructed the settlement agreement in such a fashion as to provide for ongoing "enforcement" of that agreement by the CFTC in the event Amato does not make payments as required. This provision of the settlement agreement, which would require the case to be kept on the active docket for as long as fifteen months, is not one that was made in consultation with or by permission of the undersigned Presiding Officer and is an unauthorized attempt by counsel to retain CFTC jurisdiction to enforce complainant's contract with Amato. In the event Amato reneges on the contract, complainant is free to seek any contract-breach remedies he may have. However, the agreement ends any dispute at the CFTC.

With regard to respondent Dingle, complainant's case is based entirely upon a theory of a breach of the duty to supervise diligently. The record, including the testimony at the oral hearing, establishes at most that Dingle became a supervisor some two weeks after Amato ceased working for Alpine. Complainant made no effort to discover what supervisory duties Dingle had, nor did he present any evidence that Dingle breached any of these duties. The only evidence on point came during questioning of Dingle by the undersigned. That questioning elicited the fact that Dingle may not have reviewed any telephone notes or records when he took over the supervision of complainant's account. There is no evidence regarding the status of the account when Dingle assumed supervisory duties or whether some unidentified action on his part would have prevented further losses by complainant.

Under the circumstances, it seems clear that Dingle could have done more to contact the complainant after becoming a supervisor. However, the complainant has the burden of proving by a preponderance of the evidence (1) that a supervisory duty existed; (2) that the duty was breached; and

(3) that the complainant was proximately damaged by the breach. Here, the evidence establishes the existence of a supervisory relationship (without any showing of particular duties), but only the mere possibility of a breach or of proximate cause. That is a far cry from being enough to establish liability on Dingle's part.

Accordingly, the complaint against respondent Dingle is hereby DISMISSED.

Dated: April 16, 1997

JOEL R. MAILLIE
Judgment Officer