U.S. COMMODITY FUTURES TRADING COMMISSION
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WILLIAM L. OWENS, Complainant, v. LIT DIVISION OF FIRST OPTIONS, LAKE FUTURES, LTD., AND WILLIAM STEVEN KAISER, Respondents.	CFTC DOCKET No. 96-R126A

FINAL DECISION

The parties to this reparation proceeding have elected the voluntary decisional procedure.[1/] Their election of the voluntary

[1/] On July 8, 1996, complainant William L. Owens, appearing pro se, filed a complaint with the Office of Proceedings under the Commission's Rules Relating to Reparation Proceedings, 17 C.F.R. §§12.1 et seq., naming respondents William Steven Kaiser, Gregory Allen Imes, LIT Division of First Options (LIT) and LFG LLC named changed from Linnco Futures Group, Inc. (LFG). When Owens filed the complaint, he elected the formal decisional procedure and paid the required filing fee of $250. 17 C.F.R. §§12.25(a)(3), 12.26(c), and 12.300-315. On August 15, 1996, Owens amended the complaint to name Lake Futures, Ltd. (Lake Futures), the Introducing Broker for the account at LIT, as an additional respondent. Owens alleges that Kaiser opened and traded an unauthorized account introduced by Lake Futures and cleared by LIT, and improperly transferred the account's negative balance from LIT to LFG. In addition, Owens alleges that Kaiser opened and traded an unauthorized account while employed by LFG. The complaint seeks over $92,000 in damages. In the alternative, Owens alleges that Kaiser churned Owens' accounts at LIT and LFG, resulting in losses of nearly $90,000.

On November 12, 1996, the Court severed the proceeding as against LIT, Lake Futures and Kaiser during his employment at Lake Futures, and determined that the severed claim did not exceed $13,630.51. Order Severing Proceedings And Instituting Voluntary Decisional Procedure, dated November 12, 1996. All

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decisional procedure constitutes, among other things, a waiver of the following: the opportunity to request an oral hearing; the right to receive a written statement of the findings of fact upon which the Final Decision is based; and, the right to appeal this Final Decision to the Commodity Futures Trading Commission and/or the United States Court of Appeals.[2/]

On consideration of the complaint as amended, answers as amended, other pleadings and verified statements, depositions on written interrogatories, and documents obtained through discovery, the Court concludes that complainant has not proved facts sufficient to establish that respondents have violated any

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parties to the severed proceeding elected the voluntary decisional procedure. See Respondent LIT's Motion to Sever the Reparation Proceeding and Convert to Voluntary Decisional Procedure, dated October 7, 1996; Respondent Lake Futures' Motion to Sever the Reparation Proceeding and Convert to Voluntary Decisional Procedure, dated October 28, 1996; Respondent Kaiser's Response to Motion to Sever the Reparation Proceeding and Convert to Voluntary Decisional Procedure, dated November 5, 1996; Telephone conference between Owens and the Court, November 1, 1996.

At their discretion, the severed parties were permitted to submit final comments, other verified statements, and documentation authenticated by affidavit in support of their respective cases on or before January 15, 1997. Due to procedural delays, the Court extended the deadline to February 24, 1997. Order Compelling Discovery, dated January 13, 1997. Each severed party submitted additional documents into evidence. See William L. Owens' Final Comments, Statements, and Numerous Exhibits, dated February 20, 1997; Respondent Lake Futures, Ltd.'s Summary Argument, dated January 15, 1997; Final Comments Of Respondent LIT Division Of First Options, dated February 24, 1997; Verified Statements Of James Green, Gregory Allen Imes, William Steven Kaiser, Brian King And Marc Ben-Rubin, dated February 21, 1997.

2/ See, 17 C.F.R. §§12.00(b), 12.106(b)(1) and 12.106(d).

provision of the Commodity Exchange Act or any regulation thereunder resulting in actual damages proximately caused by such violation.[3/]

[3/] LIT carried two non-discretionary accounts on Owens' behalf. Owens admits to ownership of one of the accounts, but disavows the loss-laden account as unauthorized. He claims that respondent Kaiser opened and operated the disputed account without any written or verbal authority, improperly transferred a negative balance in the account to LFG, and, in the alternative, churned the account. Complaint, dated July 1, 1996 at ¶¶27, 31. Respondents, in contrast, contend that Owens fully directed the trading and transfers relating to both accounts, typically using the two accounts to isolate different speculative strategies. Answer Of Respondent LIT Division Of First Options, dated October 3, 1996 at 2; Amended Answer Of Respondents LFG LLC, Linnco, Gregory Allen Imes and William Steven Kaiser, dated October 2, 1996 at 1; see also Amended Answer Of Respondent Lake Futures, Ltd., dated October 30, 1996.

To resolve this conflict, the Court must assess each party's credibility in light of the record viewed in its entirety. Secrest v. Madda Trading Co., [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶24,627 at 36,696-697 (CFTC Sept. 14, 1989). This evaluation overwhelmingly favors respondents' version of the facts. Owens admits to receiving daily trade statements and monthly summaries indicating a steady flow of losses throughout the life of the challenged account. However, Owens did not undertake any measures to dispute his ownership of the account to anyone in a position of authority over Kaiser, nor did he reliably document his allegations of unauthorized trading. (Owens only offers what purports to be his contemporaneous notes attributing unsubstantiated statements of guilt to Kaiser: "Kaiser [said] to Imes, 'It's ridiculous to have all this money sitting dormant. We'll split the account, and I'll trade half.'") William L. Owens' Final Comments, Statements and Numerous Exhibits, dated February 20, 1997 at ¶4, and Exhibit 6D.

More importantly, Owens signed and inserted both account numbers on the account transfer form between LIT and LFG. Final Comments Of Respondent LIT Division Of First Options, dated February 24, 1997, Exhibit A (Account Transfer Form, dated November 14, 1994). Owens' uncontested signature and inscriptions conclusively demonstrate his acknowledgment of ownership and approval of the transfer.

With Owens' ownership and control of the nondiscretionary accounts hereby established, his alternative claim of churning fails as equally frivolous. Johnson v. Don Charles & Co., [1990-

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Accordingly, the complaint as severed in Docket No. 96-R126A is hereby **DISMISSED** with prejudice.

IT IS SO ORDERED.

Dated this 17th day of July, 1997

Bruce C. Levine
Administrative Law Judge

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1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶24,986 at 37,624 (CFTC Jan. 16, 1991).