



U.S. COMMODITY FUTURES TRADING COMMISSION

Three Lafayette Centre
1155 21st Street, NW, Washington, DC 20581

OFFICE OF
PROCEEDINGS

JOHN PRICE,

Complainant

v.

FIRST FINANCIAL TRADING LIMITED,
INC., KEVIN DAVID KATES, and
LFG, L.F.C.,

Respondents

CFTC Docket
No. 98-R079

OFFICE OF PROCEEDINGS

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DEFAULT ORDER AND REPARATION AWARD

The parties agreed in May 1998 to a settlement of this proceeding that was expressly contingent upon payment by respondent Kates (acting in both his individual capacity and his capacity as representative of First Financial Trading Limited, Inc.) to complainant of \$2,750.00, in three payments to be made as follows: The first check for \$875.00 was to be sent to complainant by respondent Kates along with a copy of the fully executed release, with the second check (also \$875.00) to be mailed on July 15, 1998, and the third (for \$900.00) to be mailed on August 15, 1998.

During the negotiations, which were mediated by the Judgment Officer, complainant was extremely reluctant to agree to the installment-payment settlement agreement without protection in the event respondent failed to make payments. Therefore, the parties agreed to two clauses that were essential to completion of the agreement. First, all payments by Kates were to be sent to Price by overnight or second-day delivery (with copies sent to the Judgment Officer), and second, the parties stipulated that "a default order for any unpaid amounts will be issued by the Judgment Officer if the respondent fails to make timely payments or to cure late payments within three days of being informed by complainant that a payment has not been received."

After the first payment was made, Kates informed the Judgment Officer by telephone in July that he was having financial difficulties and was having trouble meeting his obligations under the settlement agreement. He was informed that he should contact Price and try to work it out, but that Price was under no obligation to extend the payment schedule. Price has now filed a letter stating that Kates called him in July and agreed to send the second payment after a couple of weeks, and they expressed willingness to extend the payments. However, Kates never sent any additional

payments and has not returned complainant's calls. Price states that he has tried several times to contact Kates, and his wife talked to Kates' wife (who expressed anger at the people who are seeking to collect money from Kates), but Kates has never contacted him again.

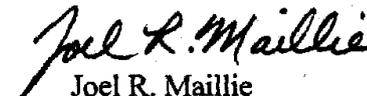
Under the circumstances, the default provision of the parties' agreement has now been triggered. Clearly, complainant has been prejudiced by the delays associated with Kates' failure to abide by the settlement and further delays may well result in the inability of Price to litigate the case in full and to obtain a collectable judgment on the merits. Thus, it is found that Kates is subject to the default to which he has consented.

Pursuant to the stipulation entered into by Kates on behalf of himself and his firm, respondents Kevin David Kates and First Financial Trading Limited, Inc., are in default and are ORDERED to pay reparations to the complainant in the amount of \$1,775.00. LIABILITY IS JOINT AND SEVERAL.

Kates should note that if he files a motion to vacate this default judgment it must be directed to the undersigned, *see* Rule 12.23, and it will be granted only upon proof that he has paid, or escrowed for complainant's behalf, all funds due under the settlement agreement. Mere allegations of financial distress will not be enough to obtain an order vacating the default judgment. That is a contingency for which he should have prepared when he obtained complainant's willingness to settle under a plan providing for deferred payments.

In a separate matter, respondent LFG, LLC has settled with the complainant and it appears that all terms of that settlement have been fulfilled. Accordingly, the complaint is DISMISSED as to that respondent.

Dated: September 2, 1998


Joel R. Maillie
Judgment Officer