



U.S. COMMODITY FUTURES TRADING COMMISSION

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ARTHUR V. ROSSETTI,
Complainant

v.

AMERICAN FUTURES GROUP, INC.,
and JOHN JOSEPH SANTICERMA,
Respondents

CFTC Docket
No. 96-R034

INITIAL DECISION

Complainant seeks reparations for alleged misrepresentation by respondent Santicerma, who is said to have falsely promised to ensure that complainant would not receive a margin call. According to complainant, Santicerma represented his "realistic investment risk" as being \$1,000-1,500" and claimed to have a track record with a 67% success rate. Complainant also contends that Santicerma falsely assured him he was making money on a heating oil options transaction when in fact the price was declining.

Complainant opened a futures account with a \$5,000 deposit in October 1993. The first transactions occurred on October 11, 1993, consisting of a purchase of five heating oil call options in the January 1994 heating oil futures contract. These options declined in value for the next ten days. On October 21, 1993, complainant made a small day trade in two December Treasury bond futures contracts, gaining approximately \$420. By this time, the heating oil options, which had been purchased for nearly \$5,110 (including \$975 in commissions), had declined in value to \$2,100.

On October 25, 1993, complainant again day-traded two T-bond contracts, gaining approximately \$295. At the time, his heating oil options had declined to \$1,260 (less than a fourth their original premium value). Three days later, another T-bond day trade resulted in a net loss of \$867. The heating oil options were then worth less than \$800. The monthly statement for the end of October shows a total account value of \$466.70.

On November 1, complainant deposited an additional \$2,500 into his account, and the next day an adjustment was made in his favor of \$250. Six days later, complainant went short two T-bond contracts. By that date, November 8, the heating oil options were worth only \$525.

On November 11, complainant made yet another deposit, this time of \$2,000. On the following day, he liquidated the T-bond position, at an overall loss of about \$457. This is the only statement showing any increase in the heating oil options, which by the end of the day had increased in value slightly, to \$672.

The heating oil options were sold on November 17 at a premium of \$420. On the same day, complainant bought four calls in the March T-bond contract. The total cost of these options was \$3,842. (including \$780 in commissions). By the close of the day's trading, the options had fallen nearly \$700 in value.

The four calls were liquidated on November 19, 1993, with complainant receiving proceeds of only \$1,372. No additional trading occurred in the account. A check for \$1,878.82 was sent to complainant, meaning that his overall loss on his total investment of \$9,500 was \$7,621.18.

The complaint form sent by complainant to the CFTC Office of Proceedings is dated December 18, 1995. In view of complainant's allegations of misrepresentation by respondent Santicerna, a complaint sent that date would be barred by the statute of limitations since complainant clearly was aware by the time he closed his account in November 1993 that he had been misled regarding the use of his funds.

However, a cover note attached to the December 18 complaint indicates that complainant had previously mailed a request for reparations. Although the note is addressed mistakenly to the Division of Enforcement, it is clear that complainant had intended at some prior point to file a complaint. According to the note, a prior check for a summary proceeding had been returned to him as inadequate.

A review of the Commission's correspondence files (copies of the relevant documents are included with the parties' copies of this decision) demonstrates that complainant had mailed a Division of Enforcement questionnaire to the Office of Proceedings. The questionnaire has an attached narrative identical to the one included with the December 18 complaint. It is notarized November 16, 1995, and was accompanied by a check for \$100 made payable to the Commodity Futures Trading Commission. Although the complainant does not refer in the November 16 narrative to a reparations action using these terms, he does mention that he is filing a "complaint." The envelope (on which a postmark date is illegible) was a standard envelope made available as part of the reparations complaint packet, but it was an old envelope used before the Commission's 1995 move to a new address. The envelope was thus addressed to the old CFTC address and was not received until November 18, 1995.

On November 29, 1995, the Office of Proceedings returned complainant's submission to him, explaining the reparations filing fees and the need to use a reparations complaint form. New rules, forms, and checklists were enclosed. That letter notified the complainant of the need to return his proper complaint and filing fee by December 11, 1995, but the relevance of this date is unknown. The letter does not notify the complainant of the two-year statute of limitations.

Complainant's December 18 note submitted with his new complaint discusses two checks he claims he had written, each in the amount of \$100, to cover the filing fee. However, the Commission's files only show a single check for \$100 and it is determined that only one \$100 check was received. Although that would not have been enough to pay for a summary proceeding, but the amount of the check would have been more than sufficient to initiate a voluntary proceeding. Accordingly, with that filing fee in hand, it was improper to reject the proposed complaint for failing to pay the proper fee simply because the check fell between two levels of filing fees. A letter requesting clarification of the choice of proceeding, rather than rejecting the complaint, should have been sent to complainant.

Thus, complainant's complaint will be deemed filed as of the date of the notarized narrative, i.e., November 16, 1995.

Even using that date, however, it is clear that most of complainant's claims are still barred by the statute of limitations. All transaction up to that date were known to him by then. Furthermore, although he claims that he was in the dark regarding the declining value of his heating oil options, the narrative reveals clearly that he knew before November 16, 1993, that Santicerma had been hiding the truth. This is apparent from the fact that complainant says he made *two* more trades after learning of the heating oil debacle, each in an effort to recoup some of his losses, and that he liquidated the heating oil positions at some point thereafter. The statements show that complainant's final two transactions were initiated on November 11 and November 17. The heating oil options were sold on November 17. Therefore, it is determined that complainant was aware of the truth regarding the heating oil prices (even if he was somehow unaware of the statements revealing this information all along) no later than November 11, 1993. Thus the heating oil claim is barred by the statute.

As to the last transaction, the two-day purchase of 4 T-bond calls from November 17 to November 19, this trade occurred within the two-year window and thus may be considered here. However, the complainant has not alleged that any additional information was withheld from him regarding these transactions. It appears that these trades were his own knowing attempt to trade to recoup his losses. He knew by then that Santicerma could not limit his losses, and he certainly knew that Santicerma had previously misled him. Under the circumstances, complainant has not demonstrated that any violations led to these losses.

For the reasons stated, the complaint is DISMISSED.

Dated: June 30, 1997


JOEL R. MAILLIE
Judgment Officer