



U.S. COMMODITY FUTURES TRADING COMMISSION

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ROBERT C. SCHAEFER,
Complainant

v.

FIRST INVESTORS GROUP OF THE
PALM BEACHES, INC., and
MICHAEL FREDERICK STARYK,
Respondents

CFTC Docket
No. 99-R048

INITIAL DECISION and REPARATION AWARD

Pursuant to the settlement reached between complainant and First Investors Group, the complaint is DISMISSED as to that respondent.

An oral hearing was held in this matter on November 10, 1999. Complainant participated in the oral hearing, but respondent Staryk did not file a notice of intent to participate and was not available at the telephone number he had filed with his answer.¹ Staryk thus waived his right to present evidence on his own behalf and to ask questions of complainant. Furthermore, the Notice of Oral Hearing explicitly warned that failure of a party to appear would result in sanctions, including an inference that the non-appearing party's testimony would have been favorable to the other side. Even without that inference, however, it is determined that Schaefer's testimony was credible and supported the complaint in all pertinent respects. Accordingly, the decision here is based primarily on that written complaint.² All dates are in 1998.

Basically, this case involves a claim by Schaefer that he was induced to trade options on futures contracts by misrepresentations made by Staryk regarding the economics of the unleaded

¹ Efforts to contact Staryk since the hearing at the number he provided also have proved unsuccessful. The number he filed with his answer was for a cellular telephone; local directory assistance informs the undersigned that Staryk's home number is unlisted.

² The complaint included a typed, single-spaced two-page narrative attachment dated December 4, 1998, and was supplemented with a similar one-page submission dated December 30, 1998. Citations to the complaint are to those two documents.

gas futures market. Schaefer's complaint portrays how Staryk called him in April 1998 to tout his knowledge about trading in unleaded gas, the good timing Schaefer would be showing if he traded then, and Staryk's own expertise, since he had traded this market since 1986 (Dec. 4 narrative at 1). Schaefer had previously turned down overtures by a less experienced solicitor from First Investors Group, and – impressed by Staryk's expertise – was convinced by Staryk's presentation to open an account with \$10,000 (id.).

In a compliance interview tape-recorded by the First Investors' compliance director, Schaefer was asked the usual questions about his understanding of risks and whether he had been given guarantees, etc.³ The compliance director also suggested that the trading on which Schaefer was about to embark was akin to going to Las Vegas and gambling – but without the free drinks. The complainant chuckled at the analogy, but his response to the question leaves no doubt whatsoever that he knew he was undertaking a dangerous financial venture. As discussed in footnote 4, complainant does not allege that he was unaware of risk in general.

On April 13, Staryk called Schaefer with the first trading recommendations, to buy 10 call options (.57 strike) in the July unleaded gas futures contract. According to the complaint, Staryk "recommended this buy based on historical data[,] and stated that after Memorial Day weekend prices of unleaded gas always go up due to the dramatic increase in seasonal driving. He convinced me that I couldn't go wrong based on these seasonal trends." (Id.). According to the December 30, 1998, elaboration filed by complainant, Staryk continued these statements the following day:

On 4-14-98 he called to tell me unleaded gas was at historical lows and there wasn't sufficient stocks to handle the increase in seasonal usage to keep prices from going way up. I've recently learned that these trends are factored into the markets each year and there was in fact a glut in stocks of unleaded gas. He told me I should buy as many positions as possible and that my investment could increase 7-8 times my initial investment. Staryks [sic] also threw in the statement that I should be able to buy any automobile I desire.

As a result of this solicitation, Staryk succeeded in inducing complainant to purchase additional options, 20 August calls with a .61 strike and 10 July puts with a .48 strike price. The total purchase price required complainant to deposit an additional \$20,543 into his account.⁴

³ The tape was submitted by First Investors in response to a Rule 12.34 discovery order prior to the settlement reached between that respondent and the complainant.

⁴ Complainant was examined extensively during the hearing as to why Staryk recommended buying *puts* in the July contract if the theory underlying the purchase of the call options was the singularly opportune expectation of a dramatic price rise in gasoline. He said that Staryk enthusiastically portrayed this as something he did not do for all of his clients and that this was just protection against the market falling in price. Schaefer has never contended that he did not know that trading options was risky, only that Staryk misrepresented the basis of the trades he was recommending and that Staryk explicitly represented that the risks could be minimized by relying on Staryk's recommendations (*see also* reply to Interrogatory 7). These explanations were credible. If Schaefer really had understood the consequences of what he was doing, he would have known that he was paying over \$2,000 in commissions and fees alone on the July puts that also essentially ensured that any price increase would be offset by

As occurs all too often in such cases, the alleged "investment" was disastrous for complainant. By the end of June 1998 he had lost almost all of his funds, and he finally stopped believing Saryk's lulling explanations and rationales as to why the market had not acted as he had so firmly predicted. Before that point, however, Saryk had again used allegedly favorable seasonal price movements to inveigle complainant into depositing more money to purchase natural gas options (December 4 narrative, page 2). Saryk left First Investors at about the same time as complainant lost faith (Saryk answer). By then, complainant's account was worth \$3,352.40, and he had lost \$22,639.10 (January 7, 1999, correction to December 30 narrative; *see also* June 30, 1998, statement).⁵

Based on the finding that complainant's narratives, as elaborated upon and discussed extensively in the oral hearing, are credible, and the adverse inference against Saryk that his non-availability renders his conclusory denials in the answer not credible,⁶ it is determined that Saryk's misrepresentations to complainant concerning the expected profitability arising from seasonal price fluctuations, as well as his statements regarding his expertise as a tool to help complainant lower the known risks of trading options, violated CFTC Rule 33.10.

substantial losses in the puts. First Investors charged its clients \$200 per option, so Saryk's motives for encouraging complainant to bet against himself are clear: complainant paid a total of \$4,000 in commissions on the July puts and calls, plus another \$4,000 in commissions on the August calls.

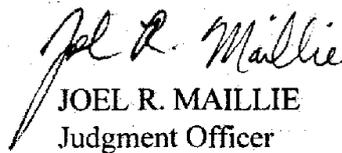
At another point, Saryk convinced complainant that it would be wise to sell his by-then losing calls and to purchase new calls that were more expensive simply because they expired three months later (May 14, 1998 statement). Complainant was unaware that he was merely purchasing time value and believed Saryk's representation that he was "cutting losses" by "repositioning" into options that were more expensive because they were more likely to make money. As complainant testified during the hearing when confronted with the increased expenses he had incurred by "repositioning," he still believed Saryk knew what he was talking about and may have "trusted him too much . . . blindly and foolishly" (Oral hearing tape 1, side 2).

⁵ Complainant kept trading with another First Investors broker. He was asked during the hearing why he continued trading options after becoming dissatisfied with Saryk due to the unleaded gas failure. He explained that after Saryk left he was satisfied that the successor broker was working properly without deceiving him. The first trade with the new broker made money, but by the end of 1998 complainant had lost an additional several thousand dollars. Complainant does not seek reparations for any losses after Saryk was replaced.

⁶ In the answer, Saryk generally denied any wrongdoing and focused on the fact that complainant had continued to trade after Saryk left First Investors. The one-page answer, however, provided no specifics as to his discussions with complainant or the facts underlying Saryk's denial of liability, as well as providing no specific denials of the factual statements alleged to have been made by Saryk in opening the account. Saryk took no discovery and did not submit a verified statement. As noted, he ignored the oral hearing notice.

Violations having been found, Michael Frederick Staryk is ORDERED to pay reparations to complainant in the amount of \$12,639.10, plus prejudgment interest (compounded annually at the rate of 5.997 % on the sum of \$22,639.10 from April 14, 1998, to November 10, 1999 and on the sum of \$12,639.10 from November 11, 1999, to the date of payment), plus costs of \$125.00.⁷

Dated: January 27, 2000


JOEL R. MAILLIE
Judgment Officer

⁷ The change in the principal amount for the calculation of prejudgment interest reflects complainant's entry into a settlement agreement with First Investors on the date of the oral hearing.