

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

OFFICE OF PROCEEDINGS
PROCEEDING CLERK
JUL 16 11 15 AM '97

FILED

_____))
John C. Whitmore, Jr.))
 Complainant,))
))
v.)) CFTC Docket No. 97-R050
))
Concorde Trading Group, Inc.))
and Randall Lane McCullough))
 Respondents))
_____))

RULING ON RESPONDENTS' MOTION TO DISMISS

I. BACKGROUND

On December 28, 1992, Complainant John C. Whitmore, Jr. (Whitmore) opened account no. 44106-37128 with Respondent Concorde Trading Group, Inc. (Concorde), a futures commission merchant. Randall Lane McCullough (McCullough) was a broker and employee of Concorde and is a registered futures commission merchant. Whitmore closed account no. 44106-37128 on April 30, 1993.

On March 17, 1997, Whitmore filed a complaint with the CFTC Office of Proceedings alleging wrongdoing concerning account no. 44106-37128. Whitmore alleges that Respondents violated Sections 4c(b) and 2(a)(1)(A) of the Commodity Exchange Act (CEA), Commission Regulations 33.10 and 166.3, National Future Association Compliance Rules 2-2, 2-29, 2-30, and 2-4, and state and common laws prohibiting fraud, deceit, negligence, and breach of fiduciary duty. On June 27, 1997, Respondents filed a renewal of their Motion to Dismiss.¹ Respondents seek dismissal on the grounds that the complaint is barred by the statute of limitations. Whitmore argues that his complaint was filed within the six year statute of limitations for fraud and contract claims and should not be dismissed.

The Court Grants Respondents' Motion to Dismiss.

¹ Respondents also filed a Motion to Dismiss on May 2, 1997 and included a request for dismissal based on the statute of limitations as the third affirmative defense in their Answer to the Complaint filed on May 27, 1997.

II. DISCUSSION

The applicable statute of limitations for reparations complaints is two years. (Commodities Enforcement Act §14(a)(1), 7 U.S.C. § 18(a); 17 C.F.R. §12.13(a)). A party complaining of any violation of any provision of the CEA or any rule, regulation, or order issued pursuant to the CEA by any party registered under the CEA must file his complaint within two years after the cause of action accrues. *Id.* A cause of action accrues when the complainant discovers, or in the exercise of reasonable diligence should have discovered, the wrongful activity underlying his claim. (Jewell v. Trinity Financial Group, [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶26,405 at 42,803).

Whitmore filed his complaint on March 17, 1997. Therefore, a claim based on any action that accrued before March 17, 1995, is barred by the statute of limitations unless the complainant shows that special circumstances call for application of the doctrines of equitable tolling or estoppel. *Id.* All of the allegations of wrongdoing that Whitmore has levied against the Respondents concern actions connected with account no. 44106-37128. Whitmore closed account no. 44106-37128 on April 30, 1993. Thus, this is the latest possible date that he knew, or through the exercise of reasonable diligence should have known, of any wrongful activity concerning this account. This date is well before March 17, 1995. Furthermore, Whitmore has offered no evidence of special circumstances that would justify applying the doctrines of equitable or estoppel.

Whitmore argues that his complaint should not be dismissed because it was filed within the six year statute of limitations applicable for fraud and contract claims. However, the applicable statute of limitations for reparations complaints is the two year statute of limitations set forth in the CEA, which is discussed above, not the six year statute of limitations for fraud and contract claims that Whitmore suggests.

The complaint is dismissed with prejudice.

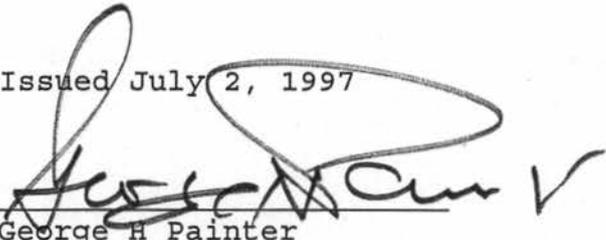
III. CONCLUSION

Whitmore filed a complaint on March 17, 1997, alleging wrongdoing involving account no. 44106-37128. Account no. 44106-37128 was closed on April 30, 1993. Any cause of action stemming from activities concerning this account accrued, at the latest, upon the closing of the account. Whitmore filed his complaint almost four years after he closed the account. Additionally, Whitmore has not shown any

special circumstances that justify applying the doctrines of equitable tolling or estoppel. Therefore, Whitmore's complaint is barred by Commodities Enforcement Act §14(a)(1), 7 U.S.C. § 18(a); 17 C.F.R. §12.13(a).

John C. Whitmore's complaint against Concorde Trading Group, Inc. and Randall Lane McCullough is dismissed with prejudice.

Issued July 2, 1997



George H Painter
Administrative Law Judge

Intern:
Michelle McMahon