

EXHIBIT D

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SIGNATURE <i>Pamela A. Wegner</i>	
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NA FORM 13040 (10-88)

TRANSCRIPT OF PROCEEDINGS

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HONORABLE STANLEY J. ROSZKOWSKI, one of the judges of said court, in his courtroom in the United States Courthouse, Chicago, Illinois, on Wednesday, October 20, 1982, at the hour of 11:00 o'clock a.m.

PRESENT:

MR. CONSTANTINE J. GEKAS,
Regional Counsel;
MS. ADRIANNE, S. HARVITT, Attorney;
MR. STEPHEN T. BOBO, Attorney,

on behalf of Commodity Futures Trading Commission;

HON. TYRONE C. FAHNER,
Attorney General, State of Illinois, by
MR. ROBERT H. MC FARLAND,
Assistant Attorney General,

on behalf of the State of Illinois;

FRIEDMAN & KOVEN, by
MR. PAUL HOMER and
MR. HERBERT L. ZAROV

MELVIN P. KUBISAB - OFFICIAL COURT REPORTER

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

COMMODITY FUTURES TRADING)
COMMISSION, and TYRONE C.)
FAHNER, Attorney General)
of the State of Illinois,)

Plaintiffs,)

vs.)

HERITAGE CAPITAL ADVISORY)
SERVICES, LTD., JEFFREY W.)
WEAVER, and WARD A. WEAVER,)

Defendants.)

DOCKETED
MAR 11 1983

No. 82 C 5955

TRANSCRIPT OF PROCEEDINGS had before the
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on behalf of the State of Illinois;

FRIEDMAN & KOVEN, by
MR. PAUL HOMER and
MR. HERBERT L. ZAROV

1 Q Did you get a receipt for these checks?

2 A Yes -- well, we got a letter from Jeff
3 acknowledging the receipt of \$14,000.

4 MR. BOBO: I would like to show you now what we
5 have marked for the record as Exhibit 9.

6 Let the record reflect that opposing counsel
7 has had a chance to examine this exhibit.

8 BY MR. BOBO:

9 Q Can you identify Exhibit 9?

10 A Exhibit 9 is the letter of receipt for the \$14,000
11 investment.

12 Q Who is it from?

13 A It's from Jeff Weaver.

14 Q Is it on letterhead stationery?

15 A Yes, it is.

16 Q What does the letterhead say?

17 A Jeffrey Weaver, 1900 Spring Road, Oak Brook,
18 Illinois.

19 Q What is the date on the letter?

20 A March 16, 1981.

21 Q Basically, what does the letter say?

22 A That he received \$14,000 in checks from LaGrange
23 Federal, Barrington Bank and Heritage Bank of Bolingbrook
24 for deposit on the purchase of a United States Treasury Bill,
25 and it gave the date that it would be purchased and the

1 maturity date, and also that he would be doing the transac-
2 tion in his name.

3 Q Now, Exhibit 9 has two pages, does it not?

4 A Yes.

5 Q What's the second page?

6 A The second page is a copy of the envelope that
7 the letter came in.

8 Q Did Jeff Weaver keep you informed of the progress
9 of your investment?

10 A Yes, as the maturity dates came, we would get a
11 letter that would indicate what the investment was, what the
12 rate of interest was for the period of time and how much the
13 check -- on some of them, how much the check was, the
14 interest that we had earned for that month.

15 Q Do I understand that you were getting some sort
16 of check every month?

17 A Yes, we were receiving monthly interest checks.

18 Q Was there an option concerning receipt of monthly
19 interest checks at that time?

20 A At that time, no. It wasn't until about September
21 that we had the option to roll the interest over and keep it
22 in the account.

23 MR. BOBO: Mrs. Smith, let me show you what we have
24 marked for the record as Exhibit 10.

25 Let the record reflect that I have just shown

Udell -- direct
cross

MR. MC FARLAND: I have no further questions,
your Honor.

THE COURT You may cross.

MR. GEKAS: No questions on behalf of the CFTC,
your Honor.

MR. HOMER: Just a few questions.

CROSS EXAMINATION

BY MR. HOMER:

Q I want to try to go back, I am not quite sure as
to the means of investment and some of the statements that
were made.

You said -- and I think I am correct -- that
the investment was to be made -- that you made was to be
made through or with Financial Partners; is that accurate?

A No. The investment -- my checks were to be made
out to Heritage Capital.

Q And then what would happen to them?

A Heritage Capital would invest in the program with
Financial Partners, and that was the program that was
described at the original meeting.

Q You said something about the program relying on
the expertise of Robert Serhant?

A The basis of the profits that had been realized
by other investors up to this point were derived through
Financial Partners, and it was explained that Mr. Serhant was

1 the one who had the knowledge of working the program in
2 Financial Partners.

3 Q Was it explained to you that the funds that you
4 were giving to Heritage were to be turned over for investment
5 by Financial Partners, is that correct?

6 A Could you repeat that question, please?

7 MR. HOMER: Would you read it?

8 (The pending question was read by the
9 reporter.)

10 BY THE WITNESS:

11 A They would be -- the funds that I was turning over
12 would go into an account with Heritage Capital and would
13 be invested in Financial Partners.

14 BY MR. HOMER:

15 Q And what would happen; what was your understanding
16 of the activities when Financial Partners got these funds?
17 What were they supposed to do? What was your understanding?

18 A That Financial Partners would be buying Treasury
19 Bills and using the discount rate to buy futures and then
20 working the spread.

21 Q Nobody told you at that meeting that anybody from
22 Heritage was going to actually purchase any of these
23 Treasury Bills or otherwise invest these funds, is that
24 correct?

25 A Correct.

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Q Nobody told you at this meeting that they were going to buy any bonds or other securities directly with your funds --

MR. MC FARLAND: Objection, your Honor.

BY MR. HOMER:

Q Is that correct?

MR. MC FARLAND: Objection, your Honor. It assumes a fact not in evidence. He is arguing the term of security in the question.

THE COURT: I think he can answer the question, if he knows.

Do you have any knowledge of that? Do you understand the question?

THE WITNESS: I am not exactly clear on the question.

BY MR. HOMER:

Q Did anybody tell you at the meeting that they would use your funds direct; that is, themselves to purchase a bond or like security?

A It was explained that they would -- they would set up an account and invest through Heritage Capital -- I'm sorry -- and invest through Financial Partners.

Q Did you pay any commission or like remuneration directly to Heritage?

A No. As my statements came out, the commission was

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(Witness duly sworn.)

WILLIAM FLETER,

called as a witness by the plaintiffs herein, having been first duly sworn, was examined and testified as follows:

THE COURT: Please be seated. State your name and spell it for the record.

THE WITNESS: William Fleter, F-l-e-t-e-r.

BY MS. HARVITT:

Q Where do you live, Mr. Fleter?

A At 1222 Surrey Court, Algonquin, Illinois.

Q And what is your business or occupation?

A I'm a golf club manager.

Q Which golf club is that?

A Inverness.

Q Are you married?

A Yes.

Q Do you have any children?

A Two.

Q Are you familiar with a firm known as Heritage Capital Advisory Services?

A Yes.

Q When did you first become familiar with that firm?

A About October, November of last year.

Q And how do you become familiar with that firm?

A Through a conversation I had with Mr. Weaver, Ward

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1 Weaver.

2 Q Where did that conversation take place?

3 A At the Inverness Golf Club.

4 Q Was anyone else present during that conversation?

5 A I think his wife was.

6 Q How long had you known Mr. Weaver up to that
7 point?

8 A About 18 years.

9 Q And in what capacity had you known him?

10 A He was a member of the club, and I also banked with
11 him. He was president of the Schaumburg State Bank.

12 Q Okay. Can you state what was said by Mr. Weaver
13 in that conversation and what you said to him?

14 A He had explained an investment thing that he was
15 involved with, and that if I was interested, I should get in
16 touch with his son, Jeff.

17 Q Did he explain to you what the investment was?

18 A He did not, no. Jeff did.

19 Q Okay. In the conversation with Mr. Weaver, did
20 he say anything else about --

21 A Just that I should check with his son.

22 Q Okay. Did you subsequently check with Mr. Weaver's
23 son?

24 A Yes.

25 Q When was that?

1 A Probably November or early December; around late
2 summer of last year.

3 Q Keep your voice up. I'm having trouble hearing
4 you.

5 A I'm sorry.

6 Q That was December of what year?

7 A Of '81.

8 Q Okay. And where did you speak to Jeff Weaver?

9 A At the Heritage Capital office, which was next-
10 door to the Schaumburg Bank.

11 Q Okay. Where is that located; do you know?

12 A Golf Road. I'm not sure of the address.

13 Q Was anyone else present other than yourself and
14 Jeff Weaver?

15 A No.

16 Q During that conversation, what did Jeff Weaver say
17 to you and what did you say to him?

18 A I asked him for an explanation of what the
19 investment was, and he gave me a book of -- that explained it
20 and along with it were some documents, some clippings from
21 the Wall Street Journal which described what Mr. Serhant
22 had done.

23 Q Okay. I would like to show you what was previous-
24 ly marked as Exhibit 41.

25 MS. HARVITT: I tender it to counsel. I believe

Fleter direct

1 you have seen it already.

2 BY MS. HARVITT:

3 Q Mr. Fleter, I would like you to take a look at
4 what has been marked as Exhibit 41 and ask you to identify
5 that.

6 (Said document was tendered to the
7 witness.)

8 BY THE WITNESS:

9 A This is one of the pieces of paper that they gave
10 me in the folder explaining what the T-Bill investment was.

11 BY MS. HARVITT:

12 Q Okay. Did you receive the other documents at that
13 same time?

14 A Yes -- you mean the ones I had in front of me?

15 Q Yes.

16 A Yes.

17 Q Okay. Did Mr. Weaver explain to you what the
18 investment entailed at that time?

19 A Basically, yes. He said that it was investing in
20 T-Bills, which was as was explained to me in the pamphlet,
21 they would invest in a 90-day T-Bill for a hundred thousand
22 dollars, which they only had to put \$97,000 down for, and
23 the 3,000 would be used for the futures market.

24 Q When you say they, to whom are you referring?

25 A I'm referring to Jeff Weaver.

1 Q Okay.

2 A You mean they -- who would invest it?

3 Q Well, I believe in your answer you stated "they."
4 I was asking you --

5 A This was the conversation with Jeff specifically.

6 Q Okay. Was it explained at that time how you
7 would get a return on your investment?

8 A That they gambled with the \$3,000 of the \$100,000
9 on the futures, whatever that spread would be.

10 Q Okay. Was anything else said by Jeff Weaver dur-
11 ing that conversation that you recall?

12 A No.

13 Q Were you given any indication at that time as
14 to the percentage of return on your investment that you
15 would be making?

16 A Well, from the letter here as you have read, it
17 said 48 percent -- they had mentioned 35 to 45 is what they
18 had said verbally.

19 Q Was it explained how your money would be invested
20 to purchase T-Bills and in the futures market?

21 A Well, since I didn't have the hundred thousand
22 dollars, they said that it would be pooled with all of the
23 investors so they could buy one \$100,000 T-Bill or as many
24 as they could buy with whatever they had from investors.

25 Q And who was it that told you that?

1 A Jeff.

2 Q Okay. Did you subsequently invest with Heritage
3 Capital?

4 A Yes, I did.

5 Q When did you invest?

6 A December of '81.

7 Q And how much did you initially invest with
8 Heritage Capital?

9 A \$10,000.

10 Q Did you receive a receipt for your investment?

11 A Yes, I did.

12 Q I would like to show you what has been marked as
13 Exhibit 42.

14 MS. HARVITT: I tender a copy to counsel.

15 BY MS. HARVITT:

16 Q Mr. Fleter, I show you what was marked as Exhibit
17 42 and ask you to identify that.

18 (Said document was tendered to the
19 witness.)

20 BY THE WITNESS:

21 A It's the receipt from my \$10,000.

22 BY MS. HARVITT:

23 Q How did you receive that receipt?

24 A I don't remember if I got it there or if it was
25 sent to me in the mail; I forget. One of the two.

Fleter - redirect

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Zimmerle - direct

1 In what state is that located?

2 A Illinois.

3 MR. MC FARLAND: Thank you.

4 THE COURT: You may step down.

5 (Witness excused.)

6 THE COURT: Call your next witness.

7 MS. HARVITT: Your Honor, the Commission would like to
8 call Frank Zimmerle as its next witness.

9 THE COURT: Mr. Zimmerle, raise your right hand to be
10 sworn.

11 (Witness duly sworn.)

12 FRANK ZIMMERLE,

13 called as a witness by the plaintiffs herein, having been
14 first duly sworn, was examined and testified as follows:

15 THE COURT: State your name and spell it for the
16 record.

17 THE WITNESS: Frank Zimmerle, z-i-m-m-e-r-l-e.

18 THE COURT: You may proceed, Counsel.

19 MS. HARVITT: Thank you, your Honor.

20 DIRECT EXAMINATION

21 BY MS. HARVITT:

22 Q Mr. Zimmerle, by whom are you employed?

23 A By the Commodity Futures Trading Commission.

24 Q And in what capacity are you employed at the
25 Commodity Futures Trading Commission?

1 A I am a staff auditor.

2 Q How long have you been a staff auditor for the
3 CFTC?

4 A Approximately eight years.

5 Q And can you tell the Court what a staff auditor
6 at the CFTC does?

7 A In the past eight years, I've performed various
8 audits: full financial audits, segregation audits, audits of
9 broker-dealers dealing in securities, leverage and forward
10 contract dealers, audit of exchange clearing houses. I've
11 reviewed financial surveillance programs of the exchanges
12 and various other audits similar as these.

13 Q What is the purpose of doing an audit?

14 A The general purpose of doing the audit is to --
15 for instance, a segregation audit is to determine a firm's
16 liability to its customers and to determine assets it has
17 set aside to pay those customers.

18 A full financial audit would go further than
19 that, and it would also include a verification of firm
20 assets and liabilities.

21 Q When you perform an audit, what kinds of books and
22 records do you examine?

23 A We would normally examine general ledgers, general
24 journals, cash receipts and disbursements journals, various
25 computer runs, bank statements, cancelled checks, deposit

Merle - direct

100

1 slips, various other firm-prepared records which summarize
2 their business.

3 Q Do you know how many audits you performed during
4 your tenure with the Commodity Futures Trading Commission?

5 A Yes. I've performed approximately 70 audits.

6 Q Okay. And of the 70 audits, were there any audits
7 of commodity pool operators?

8 A Yes, there were. There were about seven.

9 Q What is the difference between an audit of a
10 regular brokerage firm versus a commodity pool operator, if
11 any?

12 A They are basically the same in that you tie up
13 the liability to the customers, verify and reconcile assets
14 set aside for those customers.

15 There are differences in the regulatory end
16 of it and various recordkeeping requirements and reports
17 that have to be prepared in each case, but basically it's
18 nearly a reconciliation of the liabilities and the assets.

19 Q Prior to your tenure with the CFTC, did you
20 perform any audits?

21 A Yes. I worked for a CPA firm downtown Chicago. I
22 assisted only audits of two banks and with a financial
23 loan institution and, also, a manufacturing concern.

24 Q Okay. What was the name of that CPA firm?

25 A It was George Bagley & Company.

13-1

1 Q And are those documents which you located in
2 Mr. Missner's office?

3 A They are.

4 Q What analysis did you perform with those documents?

5 A I totalled up the individual commission billings
6 and arrived at a total of commissions billed for 11 months
7 ending August 31, 1982.

8 Q What is it that the company commission billings
9 indicated?

10 A The company's commission billings indicate that
11 total customer funds on deposit at Heritage times a percentage
12 which is normally computed to be 45-hundredths of one percent
13 was used to calculate the commission.

14 In addition, trades, apparently, were executed
15 through a firm called K & S Commodities, regular futures
16 trades. The total of P & S commission charges on those accounts
17 were listed out, and a portion of that amount was shown as
18 due to Heritage.

19 Q Directing your attention to the description that
20 you have written on Exhibit 29 -- the first one starts with
21 Heritage, Ltd. at the top of Exhibit 29 -- how did you come
22 up with those breakouts on your exhibit?

23 A Okay. Those are the breakouts as shown by the
24 company on the commission billings. Okay. For instance, the
25 October 1981 billing shows Heritage Capital Advisory Services