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DOUGLAS CARPENTER, Complainant v. ROBERT WILLIAM MARSH and THE SIEGEL TRADING CO., INC., Respondents	)	CFTC Docket No. 03-R064

INITIAL DECISION

Respondent Marsh, who has known since last summer that he would be expected to represent himself once he was no longer represented by his former attorney (*see* Ruling dated August 5, 2004 at note 1), failed to participate in the February 17 oral hearing despite many warnings of the consequences (*see* Oral Hearing Notices dated November 23, 2004, and January 27, 2005). Accordingly, as warned in the Notices, it is concluded that the testimony of Marsh, had he participated, would not have been more credible than that of the complainant.[1]

Without Marsh in attendance, the sole purpose of the hearing was to examine complainant's credibility, particularly with regard to whether he relied on Marsh's alleged misrepresentations throughout the history of his trading account that is the subject of this proceeding. Examination of complainant by the Judgment Officer and by Siegel's attorney revealed no omissions, distortions, or other indicia of unreliability. Furthermore, his testimony was forthright and open, without hesitation or any other suggestion of dissembling. Explanations of what he termed his own "gullibility" in believing Marsh's lies were convincing. In sum, complainant testified credibly throughout the hearing and in so doing established the veracity of the claim set forth in the complaint.

Based on the complaint as supported by complainant's testimony, it is found: that Marsh contacted complainant in July 2001 to urge complainant to open an options trading account; that

[1] During the hearing, it was stated that a default likely would be issued as to Marsh. However, a review of the warnings provided to Marsh reveals that he was granted ample opportunity to appear and ample notice that failure to appear would result in a decision on the merits against him. Marsh will not be allowed to use his own disregard of his obligation to appear to secure a second chance to try to overcome complainant's case.

Marsh made grandiose claims about his own trading performance and how he would make complainant a great deal of money; that Marsh specifically lied to complainant by stating that complainant's losses during a prior Siegel trading experience (in 1997-1998) were solely due to inept traders trading his account back then; and that Marsh also specifically lied to complainant by stating that he would be able to trade better because he was an expert whereas the prior Siegel traders were inept.

It is further found that as a result of the overtures by Marsh, complainant deposited money into his old account, which for unknown reasons had never been closed. Siegel did not require and Marsh did not perform any new risk disclosure acknowledgements, instead relying upon the disclosures made in 1997.[2] Complainant wrote checks totaling $9,048.41 to margin four trades (between July 26 and September 10, 2001, all but one penny of which was lost in trading by the latter date. During this entire time, complainant testified (and it is so found), Marsh continued to hold himself out as an expert trader who could and would make complainant money despite initial losses.

It is specifically found that Marsh's misstatements and lies were intended to, and did, cause complainant to discount both his general understanding of the risks of trading as well as the lessons to be learned from his own unsuccessful trading venture. During the hearing, however, complainant admitted that he stopped believing Marsh by mid-September 2001 and that he engaged in additional trading through December in a desperate attempt to make some money while fully realizing the risk of loss. Consequently, losses after September 12, 2001, are not directly attributable to Marsh's and Siegel's frauds.

For the reasons set forth above, it is found that Marsh, employed by Siegel to solicit commodity futures options accounts, committed numerous violations of CFTC Rule 33.10, prohibiting fraud in connection with futures options. These violations proximately caused complainant losses in the amount of $9,048.40.

Violations having been found, respondents Robert William Marsh and The Siegel Trading Co., Inc., are ORDERED to pay reparations to complainant Douglas Carpenter in the amount of $9,048.40, plus prejudgment interest compounded annually at the rate of 3.05 % from the September 12, 2001, to the date of payment, plus $125.00 in costs (complainant's filing fee).

Dated: February 28, 2005

Joel R. Maillie

JOEL R. MAILLIE
Judgment Officer

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[2] Siegel unconvincingly relied on the tapes made in 1997 and the documents signed then – as well as complainant's prior trading losses – to try to defeat complainant's allegations regarding Marsh's conduct. That attempt by Siegel was, in a word, unconvincing since it did not address Marsh's distorted use of complainant's experiences as part of the fraudulent scheme to divert complainant's awareness away from the huge risks of trading.