U.S. COMMODITY FUTURES TRADING COMMISSION
Three Lafayette Centre
1155 21st Street, N.W., Washington, DC 20581

Office of Proceedings

RECEIVED
C.F.T.C.

2006 JUL 13 A 11:52

OFFICE OF PROCEEDINGS
PROCEEDINGS CLERK

JAMES D. FRAKES, Complainant v. JAMES MARK MURPHY, Respondent	)	CFTC Docket No. 06-R002

DEFAULT DECISION AND REPARATION AWARD

In the Warning issued May 17, 2006, respondent Murphy was notified that if he did "not file an answer fully complying with the requirements of Rule 12.18 by the June 16 deadline, a default order . . . will be issued soon thereafter." That Warning discussed extensively the efforts made to contact Murphy through his father (who was receiving mail for Murphy), and provided Murphy with references to CFTC Reparations Rules as well as contact numbers for the Office of Proceedings if he should need to obtain a copy of the complaint to file an answer.

Subsequently, on June 2, Murphy called this Office and notified the Judgment Officer that he wished to participate and, if possible, settle with complainant to avoid a default. He explained that he was unemployed but was trying to find a job, with an interview coming up that would provide an excellent opportunity to be hired. He also stated that the best address for contacting him was through his father's address, and acknowledged that he had received the original complaint served on him as well as the May 17 Warning. Murphy was granted additional time to explore his employment prospects so that he could try to settle the case.

Complainant was notified of these developments and, through the Judgment Officer, offered to settle Murphy's part of the case for either a lump sum, or, if Murphy wished to negotiate a payment schedule, for a slightly greater amount paid out evenly over a 12 month period.

Murphy called again a week later and was informed of complainant's settlement offer, which he agreed to consider but did not accept. At that time, Murphy stated that he was returning to his potential employer for final interviews the following week and would call the Judgment Officer soon thereafter. He has not contacted this Office since.

On June 19, the Judgment Officer called Murphy's father's house and this time spoke with Murphy's mother, who stated she was fully aware of her son's situation here. She stated that Murphy had indeed been hired and that she believed he was scheduled to start on June 30. Murphy's mother was requested to provide Murphy with notice that the deadline would be extended to July 10, but no longer: if no answer was received by that date, and if the Judgment Officer was not notified by that date that some settlement had been reached with complainant, a default decision would be issued.

As noted, Murphy, despite these extensions and the extraordinary patience of both the Court and the complainant, has not contacted the Court and thus has failed to fulfill his obligations. It is now time to issue the default.

Accordingly, the proceeding as to James Mark Murphy is considered as a Default Proceeding conducted under Rule 12.22 of the CFTC's Reparation Rules. By defaulting, Murphy is deemed to have waived the following: the right to file an answer to the complaint, including the opportunity to select a style of proceeding, to challenge the allegations of the complaint, or to raise affirmative defenses; the opportunity to take discovery; the right to submit evidence on his own behalf, including final verified statements; and the opportunity to participate in, or to cross-examine the complainant during, an oral hearing.

Taken as a whole, the complaint (as finalized in complainant's January 2, 2006 revision) is deemed credible in its own right and therefore the allegations of the complaint are deemed true as to Murphy. Those allegations establish, as pertaining to Murphy: (1) that respondent Murphy engaged in unauthorized trading between September and November 2003, resulting in trading losses in the amount of $5,406.94; and (2) that respondent Murphy failed to execute complainant's oral and written instructions in June 2004 to sell a soybean option when it was worth $1,250, resulting in complainant's loss in that amount when the option expired worthless.[1] These actions

---

[1] Frakes' claims against all the respondents he named, including Essex Futures, William Dean Katzelis, and Vision Limited Partnership, in addition to Murphy, are itemized in his Revised Statement # 2 (dated 11/19/05) as follows:

$5,406.94	Unauthorized trading, Sept – Nov 2003 (dropping a churning claim)
$1,250	Failure to sell soybean option, June 2004
$ 500	Murphy's failure to deposit $500 into Frakes' account
$1,000	Lost profits on an unexecuted Euro trade
$ 797	Respondent Katzelis' alleged "pocketing" of funds

In his third and final statement (dated January 2, 2006), Frakes withdrew the $1,000 lost profit claim and provided more details regarding the $1,250 soybean option claim. Commission staff inadvertently counted the $1,250 claim twice and failed to drop $1,000 claim, resulting in Commission records reflecting the claim as being for over $10,200. *See* letter dated January 9, 2006 The actual amount of his revised claim should have been $7,953.94.

Complainant's claim for the $500 not paid into his account as promised by Murphy is rejected because it is not an actual claim for *damages* arising from the alleged Commodity Exchange Act violations, but instead only for *reimbursement* that was not provided for losses that are covered by the damages awarded herein. In addition, the $797 claim was for conduct solely attributed to respondent Katzelis.

violated, among other provisions, Sections 4b(a)(2)(C) and 4c(b) of the Commodity Exchange Act. Complainant James Frakes lost $6,656.94 as a proximate result of Murphy's violations.

To avoid double compensation, settlements received from other respondents for joint and several liability are to be deducted from the damages for which a reparation award is issued. Here, other respondents have paid Frakes a total of $4,500 in a settlement, but $797 of that amount can be allocated solely to liability potentially facing one of those respondent but not Murphy. The following award thus reflects Frakes' losses of $6,656.94 minus the remaining $3,703 received from other respondents to settle the claims based on Murphy's alleged misconduct.

Violations having been established, respondent JAMES MARK MURPHY is hereby ORDERED TO PAY REPARATIONS to complainant JAMES D. FRAKES in the amount of $2953.94, plus $50.00 in costs for the filing fee. Because complainant filed his complaint as a voluntary proceeding, in which prejudgment interest may not be awarded, no prejudgment interest is included in the damage award.

Any effort to file a motion to vacate this Default Decision must fully comply with the requirements of Rule 12.23. An incomplete, unverified, or unserved motion received prior to the Default becoming final may not be considered timely and may not operate to stay the date on which the Default does become final.

Dated: July 13, 2006

Joel R. Maillie
JOEL R. MAILLIE
Judgment Officer