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SUSANNE GRUNDLER, Complainant	)	
v.	)	CFTC Docket No. 05-R066
FIRST CAPITAL MANAGEMENT CORP., MARIO PATRICIO GONZALEZ, and INTERNATIONAL COMMODITY CLEARING, Respondents	)	

DEFAULT DECISION and REPARATION AWARD

In lieu of an answer, respondents in this matter filed a notice of satisfaction that was expressly contingent upon respondents carrying out their obligations under a settlement reached with complainant that provided for a series of six payments to the complainant (one for $2,000, followed by five payments of $1,800 each at monthly intervals). The agreement also stipulated that if the respondents failed to honor their obligations, the case would be treated as a default proceeding in view of respondents' failure to answer the complaint.

Complainant has notified the respondents' attorney and this Office that respondents have not made the payments as required. More accurately, respondents have sent four checks to complainant, three of which (the first, third, and fourth) have been returned unpaid due to insufficient funds. There is no indication that the fifth check, due by mid-May, was ever sent at all. On May 30 and 31, in a series of conversations with the Judgment Officer, respondents attorney was informed that a default would issue if respondents did not honor their agreement and prove that *cleared* funds in the amount payable through the fifth check had been wired to the complainant by June 5. Respondent Gonzalez was a participant in at least one of these conversations. Gonzalez indicated that he would not be able to make the payments and, unsurprisingly, no such proof has been submitted.

Accordingly, it is concluded that the contingencies reserved in the notice of satisfaction have not been met, and therefore it is VOID. It is further concluded that respondents have failed to file an answer to the complaint. As provided in Rule 12.22, respondents' failure to answer the complaint leaves them in default. Respondents default constitutes an admission of the allegations

of the complaint and a waiver of their rights to select a type of proceeding, to file counterclaims, to engage in discovery, or to participate in an oral hearing.

Taken as a whole, the complaint is deemed credible in its own right and therefore the allegations of the unrebutted complaint are deemed true as to the defaulting respondents. Those allegations establish that the defaulting respondents engaged in deception and misrepresentation with regard to their unauthorized trading in complainant's trading account in violation of Section 4b(a)(2)(C) and 4c(b) of the Commodity Exchange Act, and that the unauthorized trading itself violated Rule 166.2 of the Commission's regulations. Complainant lost $12,757.38 as a proximate result of the defaulting respondents' violations. She has received $1,800 in the single valid settlement payment made thus far, and that amount is deducted from her losses to arrive at the amount in the following award:

Violations having been established, respondents First Capital Management Corp., Mario Patricio Gonzalez, and International Commodity Clearing are ORDERED TO PAY REPARATIONS to complainant Susanne Grundler in the amount of $10,957.38, ***plus*** prejudgment interest compounded annually at the rate of 5.03% from December 1, 2004, to the date of payment, ***plus*** $125.00 in costs for the filing fee and $60 assessed in costs for the fees involuntarily incurred by complainant in attempting to deposit respondent Gonzalez's bad checks. ***LIABILITY IS JOINT AND SEVERAL.***

Any request to vacate this Default Decision failing to adhere STRICTLY to the requirements for motions to vacate set forth in CFTC Rule 12.23 will be summarily dismissed.

Dated: June 7, 2006

Joel R. Maillie

JOEL R. MAILLIE
Judgment Officer