

UNITED STATES OF AMERICA
before the
COMMODITY FUTURES TRADING COMMISSION

JERRY EDWARD KELLY,

Complainant,

v.

GARY BERG &
ROYAL BERG

Respondents.

CFTC Docket No. 04-R040

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2004 DEC 17 A 11:42
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ORDER OF DISMISSAL

On November 17, 2004, Respondents learned from Complainant that Complainant had received (in June 2004) a substantial money payment in settlement of this matter from a third party FCM not named herein. The FCM agreed to and did furnish the Court and all parties with copies of the settlement agreement. Based on the information contained in the settlement agreement Respondents have moved to dismiss this matter in its entirety. For the reasons set forth below, Respondents' motion is **GRANTED** and this matter is **DISMISSED with prejudice**.

Reparation proceeding recoveries are generally limited to out-of-pocket expenses plus interest. In this case, Complainant seeks to recover a \$56,000 loss incurred trading natural gas options. In October of 2002, Complainant opened account #X2880 with a deposit of \$100,060.67. As of February 1, 2003, Complainant's trading had increased the value of his account to \$108,410.94. On February 24, 2003, his account suffered a loss of \$56,000. Four days later Complainant withdrew the balance of \$51,923.94 and closed his account.

On March 25, 2004, the instant complaint was filed. On June 18, 2004, Complainant accepted \$48,136.73 from the unnamed FCM and thereby released it from liability for:

all matters arising out of commodity futures trading account under the trading direction of Royal Berg, Inc., including but not limited to, Account # X2880

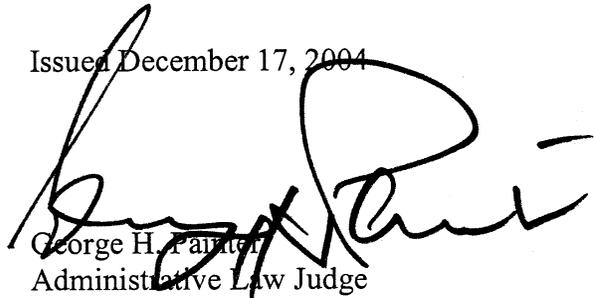
Thus, it is undisputed that Complainant received \$100,060.67, exactly the amount he initially invested in account #X2880. Complainant has been made whole by reason of the settlement and he is entitled to nothing more.

Finally, this Court is concerned that Complainant failed to reveal the substantial payment he received in a timely manner. Complainant's conduct in unnecessarily delaying resolution of this matter precludes his recovery of any interest or costs that might have been awarded had this matter been decided in his favor on the merits.

Accordingly, this matter is **DISMISSED** with prejudice and each side shall bear its own costs.

so ordered

Issued December 17, 2004

A large, stylized handwritten signature in black ink, appearing to read 'George H. Painter', is written over the typed name and title.

George H. Painter
Administrative Law Judge