U.S. COMMODITY FUTURES TRADING COMMISSION
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ALIX M. MARR, Complainant, v. AMERICAN NATIONAL TRADING CORP., DONALD VERN ANTHONY, FRANK JOSEPH COLLINS and ROBERT ALLAN NICKSIC, Respondents.	CFTC Docket No. 03-R042

ORDER OF DISMISSAL

On June 27, 2003, the Office of Proceedings forwarded this case for a formal decisional proceeding.[1] On September 22, 2003, we set this matter to be heard on the merits and directed that, on or before October 24, 2003, each party file:

> (1) a notice of the party's intent to participate in the oral hearing; (2) a final list of the party's witnesses (including the party if the party intends to testify on its own behalf) stating, as to each listed witness, whether the witness is a hostile witness as to that party, and the name, address, title (if applicable) and business telephone number of the witness; (3) the direct testimony of each non-hostile witness the party intends to present (including the party's direct testimony if the party intends to testify on its own behalf) presented in documentary form, by affidavit, interrogatory or other document; (4) copies of all other documents that the party wishes to be received in evidence; and (5) a prehearing memorandum setting forth a detailed discussion of all

[1] Notice and Order, dated June 27, 2003, at 1.

> issues of fact and law that are material to the hearing.[2]

We later cautioned stated,

> Documentary proof and witness testimony must be submitted in accordance with the above-stated directives in order to be received in evidence at the oral hearing. Similarly, witnesses not listed will not be heard except in rebuttal. In addition, issues not set forth in a party's prehearing memorandum will be deemed to have been abandoned. Moreover, parties will not be permitted to present the direct testimony of non-hostile witnesses orally except for purposes of rebuttal.[3]

Finally, we warned, "Any failure to comply with this order may also subject the non-complying party to other consequences such as dismissal of the complaint or issuance of a default award as appropriate. See 17 C.F.R. §§12.312(b)(2), 12.35; cf. Fed. R. Civ. P. 16(f)."[4]

The deadline for prehearing submissions passed and, as of October 30, 2003, we had yet to receive a prehearing memorandum, witness list, or other related document from complainant Alix M. Marr. Consequently, my attorney advisor convened an on-the-record teleconference. During the teleconference, Marr admitted that she

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[2] Order, dated September 22, 2003, at 1-3 (footnotes and emphasis omitted).

[3] Id. at 4.

[4] Id. at 4-5.

had received the above-quoted order and that she had not filed a prehearing memorandum.

As a result of Marr's total failure to comply with our September 22nd order viewed in light of the admission that she had received the directive, we ordered her to show cause why the complaint in this matter should not be dismissed.[5] We directed her to make this showing in writing and ordered her to file it so that the Office of Proceedings received it no later than November 7, 2003.[6] To date, the Office of Proceedings has not received a submission from Marr in response to the show cause order nor have we received Marr's prehearing memorandum or a statement of her intent to participate in the scheduled merits hearing.

Because the record clearly demonstrates that Marr received the Order, dated September 22, 2003, but did not comply with it, because she has chosen not to explain her failure to comply and because it appears that Marr has abandoned the prosecution of her case, we **DISMISS** the Marr's complaint in this proceeding **WITH**

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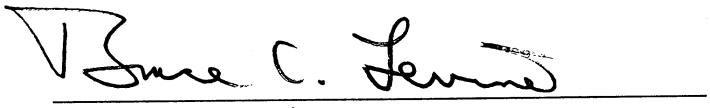
[5] Order, dated October 31, 2003, at 1-3.

[6] Id. at 3.

PREJUDICE.

IT IS SO ORDERED.

On this 10th day of November, 2003



Bruce C. Levine
Administrative Law Judge