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 APR 27 P 12: 24

OFFICE OF PROCEEDINGS
PROCEEDINGS CLERK

GRAYCE R. WEBER, Complainant v. COMMODEX/COMMODITY FUTURES FORECAST (d/b/a "EQUIDEX INCORPORATED"), EQUIDEX BROKERAGE GROUP, INC., RONALD RAY GOODIS, and PHILIP GOTTHELF, Respondents	CFTC Docket No. 04-R074 Served via Federal Express

INITIAL DECISION

Respondents' attorney failed to participate in this proceeding beyond the pleadings stage due to his insistence that the complaint in this matter had been dismissed in its entirety (Bernstein letter dated September 6, 2005). As has been previously explained to Mr. Bernstein by the undersigned Judgment Officer in telephone conversations, the Director of the Office of Proceedings did not dismiss the complaint insofar as it relates to claims of Grayce Weber, the widow of Howard O. Weber, M.D. Instead, the Director only dismissed the complaint filed on behalf of Dr. Weber's estate by his son-in-law because of the son-in-law's failure to provide proof of his authority to represent the estate (letter dated March 17, 2005: "Therefore, respondents' request to dismiss this complaint as to The Estate of Howard O. Weber is granted.") Thus, as also has been explained to Mr. Bernstein, the complaint filed by Mrs. Weber remained in force as was reflected in the Notice of Summary Proceeding issued the same day. The stubborn refusal of Mr. Bernstein to accept this fact does not change the result.

However, although Mrs. Weber's complaint survived the original motion to dismiss, the evidence submitted with that motion to dismiss overwhelmingly demonstrates that the complaint is without merit. In summary, the complaint in this matter alleged that respondents unfairly took advantage of Dr. and Mrs. Weber's advancing ages and deteriorating physical conditions by selling them a subscription advisory service for trading commodities, and thereafter opened a trading account despite the couple's alleged unsuitability for trading such high-risk investments. Attached to the complaint was a letter from Dr. Weber's son-in-law, Kevin Duffy, directed to the respondents immediately after he stopped the trading in the account pursuant to a power of

attorney at the end of April 2003. That letter discussed the whole history of the Weber's interactions with respondents, beginning with the subscription and moving to the trading that Mr. Duffy strongly implies as having ceased only because he intervened in the alleged "scam."

The unrebutted motion to dismiss (to which Mrs. Weber was instructed to respond, but did not) establishes, however, that Mr. Duffy was deeply involved in the Weber's activities with respondents from the beginning. He participated in a trial subscription to the same advisory service at the same time the Webers did. He engaged in several conversations with the respondents about the trading during the life of the account, not only in the conversations that he portrays himself as engaged in at the end when he came to the rescue. Most tellingly, he obtained the power of attorney from the Webers while their account was still active and he himself directed the trading of that account throughout April.

Since neither the Commodity Exchange Act nor the Commission's regulations create any prohibition against "unsuitable" trading advice in the absence of evidence that a respondent has knowingly manipulated a debilitated customer into disregarding risk, the mere fact that the Weber's health was declining when they engaged in transactions with respondents could not entitle Mrs. Weber to damages in reparations. Furthermore, it is noted that although Mr. Duffy's letter and the complaint allege that Dr. Weber himself was suffering obvious mental infirmities when he opened the account, the complaint is barren of any suggestion that Mrs. Weber, the sole complainant here and a joint account owner, was similarly afflicted or incapable of consenting when she co-signed all documents establishing the account. Finally, although the complaint and the Duffy letter urgently contend that the Webers were helpless and victimized by respondents, the evidence is unrebutted that the Webers acted throughout with Duffy's own participation and advice. It belies his claim that the Webers were unsuitable for trading for him to continue trading the account when he took it over.

Accordingly, for the reasons stated, the complaint filed by Mrs. Weber is DISMISSED WITH PREJUDICE.

Respondents' claim for attorney fees was explicitly not requested as a counterclaim. Thus, it is only evaluated on the basis of whether the complainant engaged in abusive litigation tactics or other vexatious conduct, or whether the complaint was filed in bad faith. Here, there is no evidence that Mrs. Weber herself knowingly filed a false complaint. The only two suggestions of bad faith are unique to Mr. Duffy – who is not proven to have told his mother-in-law how involved he was, and who may have filed a claim as a representative of Dr. Weber's estate without authority. The dismissal of the estate's complaint ended any claim respondents may have wished to pursue for defending it. Therefore respondents' claim for costs and fees is DENIED WITH PREJUDICE.

As a final note, it is supremely ironic that respondent's attorney would vigorously maintain a frivolity/bad-faith claim against Mrs. Weber, a *pro se* litigant who can hardly be held liable for not knowing arcane commodity law (including the lack of a suitability rule). It was far more egregious – indeed, contumacious – for that attorney to insist that Mrs. Weber's complaint had been dismissed despite having been instructed several times by the judge that the claim

remained very much alive and under consideration. However, because no formal warnings were ever issued to counsel about the course he was pursuing, no sanctions will be taken against counsel for pursuing his foolish insistence of a disproven fact.

Dated: April 27, 2006

Joel R. Maillie

JOEL R. MAILLIE
Judgment Officer