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

OFFICE OF
PROCEEDINGS

INDERJIT SINGH, and JAI SINGH, Complainants,	*	
v.	*	CFTC Docket No. 97-R68
JULIAN DENNIS GODWIN, AMERICAN FUTURES GROUP, INCORPORATED, CERES TRADING GROUP, INCORPORATED, and IOWA GRAIN COMPANY, Respondents.	*	

INITIAL DECISION

Appearances:

Robert Thompson, Esq.,
San Francisco, California,
for complainants

Patrick King, Esq., and Chris Burkey, Esq., Henderson & Lyman,
Chicago, Illinois,
for respondents Iowa Grain, Ceres, and Godwin

Gary Sinclair, Esq.,
Chicago, Illinois,
for respondent American Futures Group

Before: McGuire, Judgement Officer

The gravamen of Inderjit and Jai Singh's complaint is that Julian D. Godwin fraudulently induced them to open a non-discretionary commodity options account with American Futures Group and perpetuated the initial fraud throughout trading of their account. Godwin filed an answer denying the Singhs' allegations. American Futures Group filed an answer generally denying any violations and asserting that the written risk disclosure statement bars the Singhs' fraud claim. Before filing answers, Ceres Trading and Iowa Grain resolved the dispute with the Singhs, and executed a mutual general release.

The findings and conclusions below are based on the parties' documentary submissions and oral testimony, and reflect my determination that the testimony of the Singhs was generally more credible than the testimony of Godwin. Unless otherwise noted, dates are in 1995, and amounts are rounded to the nearest dollar.

Factual Findings

The Parties

1. Inderjit Singh holds a Master of Science degree in chemical engineering from the University of Nebraska, and has worked since 1989 as a chemical specialist for Ricoh. [Replies to interrogatories 1 and 2; and pages 55-56 of hearing transcript.] Since Inderjit Singh was solely involved in oral and written communications with respondents, all references are to him. [*See* Jai Singh affidavit filed December 12, 1997.]

Jai Singh, the wife of Inderjit, holds a BA degree from Punjab University, India, and has worked as a senior cost accounting clerk with a series of electronics firms. [Replies to interrogatories 1 and 2; and pages 14-15 and 24-25 of hearing transcript.] Other than signing the account-opening documents, Jai Singh had no direct dealings with respondents and did not review the account statements.

2. American Futures Group, Incorporated ("AFG") was a registered futures commission merchant until August 20, 1997, when its registration was suspended. On March 20, 1998, the National Futures Association expelled AFG from membership; and on June 2, 1998, the NFA placed AFG on its list of firms disciplined for sales practice fraud. On January 26, 1998, a default order was entered against AFG for its failure to respond to a discovery order.

3. Ceres Trading Group ("Ceres") is an introducing broker located in Singer Island, Florida and guaranteed by Iowa Grain Company, a futures commission merchant with its principal place of business located in Chicago, Illinois.

4. Julian Dennis Godwin was an associated person with American Futures Group from June 1993 to June 1995, and has been a registered associated person with Ceres since July 1995. Few, if any, of Godwin's AFG customers realized any profits. [*See* Godwin's reply to the Singhs' request for admission 10; and pages 141-142 of hearing transcript.]

The Account Solicitation

5. Respondents have produced no evidence contradicting the Singhs' description of a radio commercial that they heard in mid-January of 1995. According to the Singhs, the commercial exaggerated the profit potential involved in speculation on the price of sugar without any mention of the associated risk. [¶ 8 of compliant; ¶¶1(a) and 1(b) of supplemental reply to interrogatory 9 (filed November 11, 1997); and pages 15, 56-57, and 131-135 of hearing transcript.]

6. On or about January 23, 1995, soon after Singh had left a message at the toll-free number

6. On or about January 23, 1995, soon after Singh had left a message at the toll-free number mentioned in the commercial, he received a call from Godwin. According to Singh, Godwin discussed the commercial, and perpetuated the commercial's deceptive message by representing that fundamental supply and demand factors would drive up the price of sugar 20 to 40 cents, and that Singh could double or triple his investment by speculating in options on sugar futures with Godwin and AFG. Godwin assured Singh that he would "protect" Singh's investment, and downplayed Singh's concerns about his lack of knowledge or experience by promising to watch the account closely and to provide the necessary advice. When Singh asked if he could lose his money, Godwin replied: "No, no. you can double, triple, and even quadruple, your money investing now." Godwin emphasized that Singh needed to invest soon, and Singh agreed that Godwin should send him an account-opening package.

On January 25, Godwin called Singh to confirm that he had received the account application. Godwin again reassured Singh that he would watch the account, stating "That's why I'm here."

The next day, Godwin called Singh who informed him that he had not yet signed the account application. Although Godwin neither downplayed nor emphasized the importance of the account-opening documents, Singh did not examine them closely because he believed Godwin's assurances about the likelihood of tremendous profits. Godwin again emphasized that the fundamentals supported a significant price rise, and assured Singh that he would make money. Singh credibly testified that Godwin did not balance his solicitation with discussions about risk or any references to the losses experienced by his other customers, that Godwin asked no questions about the Singhs' investment objectives beyond making the profits mentioned in the radio commercial, and that Godwin did not explain the basic fundamentals of trading options. The Singhs then signed and mailed the account application – including a standard options risk disclosure statement – but did not send any money.

On January 31, Singh faxed a note to Godwin stating that he was not ready to commit funds to any investment at that time because of "a personal loss due to recent rains," but that he would probably re-consider in the near future. Singh delivered this message by fax rather than by phone because he was concerned Godwin would successfully convince him to change his mind.

[Inderjit Singh affidavit (filed December 12, 1997); ¶¶1(a) and 1(b) of Singh's supplemental reply to interrogatory 9 (filed November 11, 1997); Singh's reply to Godwin's document requests; and pages 30-39, 57-65, 84, 95-96, 105-107, 113, 143-147, 161-162, 173-175, 184-190, and 196-199 of hearing transcript.]

7. In mid-February, Godwin called Singh and urged him to invest at least $5,000, because "time is money and now is the time to make money." However, Singh continued to hesitate.

A couple of days later, on or about February 17, Godwin called Singh and urged him to begin trading as soon as possible with as little as $2,500, because "right now is the time to jump into sugar and make money," with the fundamentals indicating a 30 to 40-cent price jump. Godwin repeated his theme that "time is money and the time is now," and assured Singh that the $150 commission secured the services of a full-service broker that would provide expert advice and expert advice on selecting trades and when to enter and exit the market. Godwin again assured Singh that Singh's lack of knowledge and experience did not matter because Godwin would provide the expertise. Singh then sent in $5,000 to begin trading. [¶¶1a-1b of Singhs' supplemental reply to interrogatory 9 (filed November 11, 1997); pages 20, 23, 25-26, 65-67, 143-144, 169-170, and 173-175 of hearing transcript.]

Trading Activity and Trading Advice

8. The Singhs would deposit a total of $10,000 ($5,000 on February 22; $3,000 on March 14; and $2,000 on March 17) and receive back $21 (on October 12), for a net out-of-pocket loss of $9,979. [See Singhs' Statement of Damages.]

9. Set out below is a summary of the three option purchases – all involving 1995 sugar call options – authorized by Singh:

bought	*expired*	*qty.*	*contract*	*price*	*premium*	*comm./fees*	*net loss*
02-27	06-09	9	15¢ July	34¢	$(3,427)	$(1,486)	$(4,913)
03-14	09-09	4	13¢ Oct.	48¢	(2,150)	(660)	(2,810)
03-16	06-09	5	11¢ July	30¢	(1,680)	(825)	(2,505)

10. For each trade, AFG conducted a scripted compliance that consisted of a series of questions which sought a yes or no answer from Singh, rather than any narrative explanation statement. The review covered terms such as "commission-to-premium ratio" and "expiration." However, Singh's testimony established that he did not understand many of these terms or their significance, principally because

Godwin had not explained them. Singh also credibly testified that Godwin never discussed limiting losses or the possibility of liquidating options before expiration. [Pages 68-71, 93, 119-120, 132-133, 147, and 167-168 of hearing transcript.]

11. According to Singh, he called Godwin almost every day from February 27 to March 6. During these conversations, Godwin did not discuss the correct value of the options and did not instruct Singh how to monitor independently the price of the options. Rather he continually assured Singh that market fundamentals still supported a price run-up. [Pages 26-27, 48-54, 67-78, and 148-150 of hearing transcript.]

12. On March 6, Godwin recommended that Singh buy more options, representing that "now is the time to buy more options, because the fundamentals still supported a run-up in sugar prices to as high as 70 cents." However, Godwin did not inform Singh that the July 15-cent calls had declined about $800 since their purchase. Singh then sent a second check for $5,000. [¶2b of Singhs' supplemental reply to interrogatory 9 (filed November 11, 1997); and pages 79-85, 113-123, and 150-155 of hearing transcript.]

13. On March 14 and 16, Singh accepted Godwin's recommendations to purchase four October 13-cent and five July 11-cent sugar calls, respectively. Again, Godwin did not discuss the continuing decline in the value of the July 15-cent calls, and continued to emphasize that market fundamentals supported a price run-up and eventual profits for Singh. [¶2c of Singhs' supplemental reply to interrogatory 9 (filed November 11, 1997); and pages 120-130, 135-138, and 155-159 of hearing transcript.]

14. Singh and Godwin spoke regularly through April and May. During this time, the value of all of the sugar calls steadily declined. However, Godwin never specifically discussed the declining value of the option positions. Singh was aware of the declining cash price of sugar, and when he expressed concern Godwin merely repeated his advice that fundamentals continued to support a price jump. [¶¶2d-2i of Singhs' supplemental reply to interrogatory 9 (filed November 11, 1997); and pages 39-48, 85-94, and 162-163 of hearing transcript.]

15. By the first week of May, all of the positions were almost worthless. The July calls expired worthless in June, and the October calls expired worthless in September. [*See* ¶¶2j-2k of Singhs' supplemental reply to interrogatory 9 (filed November 11, 1997); and pages 27-28, and 94-95 of hearing transcript.]

Conclusions

The preponderance of the evidence supports the Singhs' claim that Godwin and AFG fraudulently induced them to open an options account in violation of Section 4c(b) of the Act and CFTC rule 33.10. The Singhs were convinced to speculate on the price of sugar by a deceptive commercial that exaggerated the profit potential of sugar options while minimizing risk. Soon after Singh responded to the commercial, he received a call from Godwin, who discussed the commercial and essentially adopted, without any disavowal or correction, the commercial's misleading message of virtually risk-free profits. In these circumstances, it is not unreasonable to infer that Godwin and AFG were aware of the commercial's misleading message and relied on that message to convince the Singhs to invest in sugar options. *Scheuffler v. Stuart*, [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶27,171, at 45,577 (CFTC September 30, 1997). The fact that AFG supposedly did not produce or directly pay for the commercial is immaterial, since Godwin and AFG "clearly used the commercial's message and adopted the [commercial] for [their] own purpose." *Id.; see also Kelly v. Staryk*, [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶26,940, fn. 14 and accompanying text at 44,537 (Initial Decision December 31, 1996), *summ. aff'd.* (CFTC August 1, 1997).

Godwin's repeated representations about tremendous profits without any realistic risk disclosures, coupled with his assurances that he would protect the Singhs' investment and watch the account, only enhanced and compounded the appeal of the commercial's exaggerated and deceptive profit predictions. The Singhs' decision to invest what was for them a significant sum of money was consistent with their testimony that they relied on what they had learned from the commercial and from Godwin: that they were likely to make large profits with minimal accompanying risk. The fact that the Singhs acknowledged receipt of the written risk warning does not alter the conclusion that they relied on these misrepresentations, where the overall effect of the commercial and Godwin's oral representations outweighed and vitiated the written risk warnings. *See, e.g., Scheuffler*, at 45,577; *Hannay v. FCCB*, [1986-1987 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 23,936 (CFTC 1987); *Dunn v. Murlas* [1986-1987 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 23,357 (CFTC 1986); and *O'Hey v. Drexel Burnham Lambert, Inc.*, [1984-1986 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 22,754

(CFTC 1985). Similarly, the scripted compliance review cannot be used as "advance exoneration" of respondents' fraud, especially where Godwin failed to explain the material terms mentioned during the review. *JCC, Incorporated v. CFTC*, [1994-1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,492 (11th Cir. September 15, 1995).

ORDER

Complainants have established that Julian Dennis Godwin violated Section 4c(b) of the Commodity Exchange Act and CFTC rule 33.10, and that these violations proximately caused $9,979 in damages. Accordingly, Julian Dennis Godwin is ORDERED to pay to Inderjit Singh and Jai Singh reparations of $9,979, plus interest on that amount at 5.413% compounded annually from February 22, 1995, to the date of payment, plus $125 in costs for the filing fee.

Based on the mutual release, the complaint against Iowa Grain Company and Ceres Trading Group is DISMISSED.

Dated June 24, 1998.

Philip V. McGuire,
Judgment Officer