UNITED STATES OF AMERICA
before the
COMMODITY FUTURES TRADING COMMISSION

Obioha F. Dukes, Complainant, v. Marsha Eleanor Friedman, Stuart F. Schwartz, South Coast Commodities, Inc., and Worldwide Commodity Corporation, Respondents.	*	CFTC Docket No. 05-R045

INITIAL DECISION

Appearances:

On behalf of Complainant Obioha F. Dukes
Obioha F. Dukes, *pro se*
9144 Burnet Ave.
Unit #36
North Hills, California 91343

On behalf of Respondents South Coast Commodities, Inc., Worldwide Commodity Corporation, Marsha Eleanor Friedman and Stuart F. Schwartz
Vivian Drohan, Esq.
Drohan & Drohan LLP
150 East 58th Street
New York, New York 10155-0002

Opinion of Painter, Administrative Law Judge

PROCEDURAL HISTORY

On April 7, 2005, Complainant Obioha Dukes filed a complaint against Respondents South Coast Commodities, Inc., and Worldwide Commodities Corp., both introducing brokers, and their Associated Persons, Marsha Eleanor Friedman and Stuart F. Schwartz. Complainant alleges that Respondents fraudulently solicited and traded his account, and churned his account. Complainant alleges that Respondents' conduct violated 4b(a) of the Commodity Exchange Act, 7 U.S.C. § 6b(a), Section 4c(b) of the CEA, 7 U.S.C. § 6c(b), and Section 33.10(a) and (c) of the Commission's regulations, 17 C.F.R. § 33.10 (a) and (c), and resulted in damages in the amount of $33,035.88 and costs. (Complaint pages 2-3). Complainant estimates that he has been charged in excess of $23,000 in commissions (Complaint page 14, Transcript ("Tr.") Tr. 16), although he could not definitively understand the statements he received (Tr. 7, 9). Complainant also seeks lost profits.

Respondents' Answers deny all allegations of wrongdoing. However, Respondents intentionally failed to appear at trial.[1] The trial took place in Los Angeles, California on July 10, 2006. Complainant presented his testimony. Since Respondents had elected not to be available for cross examination by Complainant, the Court held Respondents in default and struck their Answers from the record. (Tr. 20).

As a result of Respondents' default, the findings and conclusions below are based solely on Complainant's reliable documentary submissions and testimony.[2] In light of Complainant's credibility regarding his lack of sophistication, and the high-pressure, fraudulent solicitation, control and churning of his account, the Court finds that Respondents fraudulently solicited his

[1] *See* July 6, 2006 letter of Respondents' counsel Vivian Drohan.

[2] The principal documents and items in the evidentiary record include, but are not limited to Dukes' Amended Complaint and exhibits, Dukes' Pre-Trial Memorandum, the Transcript of the July 10, 2006 Hearing before this Court, the available account statements, and the NFA BASIC details for the Respondents.

account, and churned it over the course of approximately three weeks for the sole purpose of generating commissions.

Factual Findings

The parties

1. Obioha Dukes ("Dukes") is a web applications programmer who recently immigrated to the United States from Nigeria. (Complaint pages 4 and 9). He resides at 9144 Burnet Ave., Unit #36, North Hills, California 91343. Dukes had once traded unsuccessfully in the stock market (Complaint page 5), but had never previously traded futures or options (Complaint page 5).

2. Worldwide Commodity Corporation ("Worldwide") was registered with the National Futures Association ("NFA") as an Introducing Broker ("IB") from November 20, 1998 until it withdrew on March 13, 2005, with NFA ID 0291471. Its business address was 700 N. Hiatus Road #203, Pembroke Pines, Florida 33026. Worldwide introduced its business through Universal Financial Holding Corporation until January 31, 2005. On January 31, 2005, Worldwide's assets were transferred to South Coast Commodities, Inc., which had the same ownership and utilized the same brokers.

Worldwide has been the subject of nine reparations actions, and along with South Coast Commodities, Inc., and broker Stuart F. Schwartz, is defendant in a Commission injunctive action. In its Complaint for Injunctive Relief, filed on October 26, 2005,[3] the Commission alleges that Worldwide, South Coast Commodities, and broker Stuart Schwartz, among others,

[3] *See* October 26, 2005 Amended Complaint for Injunctive and Other Equitable Relief and Civil Monetary Penalties pursuant to the Commodity Exchange Act, No. 2:04-cv-3641, United States District Court for the Eastern District of Pennsylvania.

violated Commodity Exchange Act ("CEA") Sections 4c(b), 7 U.S.C. § 6c(b), and Commission regulation 33.10(a) and (c), 17 C.F.R. § 33.10(a) and (c), by misrepresenting and failing to disclose material facts concerning the likelihood of realizing large profits from trading commodity options, the related risk of loss, and the poor performance record of Defendants' customers.

3. South Coast Commodities, Inc. ("South Coast") was registered with the NFA as an IB on January 1, 2005, with NFA ID 0346902, and a business address of 700 N. Hiatus Road #203, Pembroke Pines, Florida 33026. South Coast introduced its business through futures commission merchant ("FCM") Comtrust, Inc. ("Comtrust"), and was a successor corporation to Worldwide, sharing the same owners and APs. Since its inception, South Coast has been the subject of five reparations action, as well as a named defendant in the Commission's enforcement action against Worldwide, described above. (NFA BASIC records; October 26, 2005 Amended Complaint, *supra*).

4. Marsha Eleanor Friedman ("Friedman"), NFA ID 0073348, was an Associated Person ("AP") with Worldwide Commodity Corporation from January 2001 through February 2005, and was a South Coast AP from January 2005 through April 2005. Friedman had been a registered AP since 1986 with at least twenty two different firms, including several that have been closed as a result of having been found liable for sales solicitation fraud by either the Commission or the NFA. Friedman herself has been the subject of 13 reparations cases, one NFA arbitration, and was fined $4000 by the NFA during her association with Chicago Commodity Corp for the fraudulent solicitation and high pressure sales of commodity options. (NFA BASIC records).

5. Stuart F. Schwartz ("Schwartz"), NFA ID 0305094, during all relevant time periods was an AP with Worldwide (October 2000 through February 2005) and/or South Coast (January 2005 through August 2005). He has been the subject of four reparations actions (NFA BASIC Record), and was named as a defendant in the Commission's 2005 injunctive action against Worldwide based upon allegations of fraudulent solicitation involving his false promises of profit and material omissions concerning the possibility of loss and the historically poor trading records of Worldwide and South Coast customers. (NFA BASIC records; October 26, 2005 Amended Complaint, *supra*).

Solicitation and Account Opening and Management

6. Complainant Dukes' credible testimony and documentary evidence, as delineated below, establish that Respondents fraudulently solicited and managed his account:

A. On January 7, 2005, Dukes responded to Worldwide's CNN advertisement concerning commodity options in energy. AP Schwartz solicited Dukes' account with a seasonal pitch on opportunities in the commodity options energy market. (Complaint page 4).

B. Dukes was a new commodities investor with no relevant experience, and knew he would need to rely on the experience and recommendations of his commodity broker. (Complaint page 15). Dukes communicated his inexperience and reliance on the broker's expertise to brokers Schwartz and Friedman (Complaint pages 5, 6 and 7).

C. Dukes wanted to consult with his banker, whom he regarded as his financial adviser, concerning any prospective commodities trading, but Schwartz discouraged

him, telling him the banker would lack knowledge of the commodities markets and the current positive market outlooks. (Complaint page 5, Tr. 8-9).

D. Schwartz instructed Dukes on how to complete the application, telling him to "check all the boxes" so that Worldwide could trade his account in any market, even though Dukes was interested only in energy options. (Complaint page 5). Dukes informed Schwartz that he was interested only in a long term strategic investment in energy options. (Complaint page 10, Tr. 9).

E. Dukes invested $10,000 on January 11, 2005, when Schwartz told him he would double his investment in unleaded gasoline options. (Complaint page 5). Respondents opened Dukes' account on January 11, 2005. (January 11, 2005 account statement).

F. On January 11, 2005, without explanation, AP Schwartz referred Dukes to AP Friedman. On January 12, 2005, at 5:30 a.m. in the morning, Friedman called Dukes to inform him that she made big profits for her investors, including a German Lady for whom she had made $100,000 from a $40,000 investment. (Complaint page 6). She told Dukes that with a proposed trade of heating oil options, he would get all his money back with a profit in addition that would enable him to make additional investments with the "market's money." (Complaint pages 6-7.) Dukes invested an additional $19,160.00 for a trade in heating oil options on the basis of Friedman's promise that the trade would result in large profits. (Complaint 6).

G. Dukes did not understand his account statements but despite repeated efforts was unable to get an explanation from Friedman or any other Worldwide staff. (Complaint pages 7, 9).

H. On January 19, 2005, Friedman called Dukes and claimed the oil market was not doing well because of striking Nigerian workers. (Complaint 7-8). She told him she needed

to protect his failing trades "in the other direction" by buying crude oil puts. She claimed the new trade would make money to cover any losses in the two open positions. Friedman "broker-guaranteed" the additional trade of $13,930.00 to ensure that Dukes quickly entered into the touted trade. (Complaint page 7).

I. Worldwide's compliance section would not approve the third trade because of Dukes' inadequate net worth. Friedman instructed Dukes to alter his data to indicate that his net worth was about $500,000.00 in inheritable family money. She dictated the exact words that Dukes needed to fax to the Worldwide compliance department. (Complaint page 8, Tr. 13-14). On January 18, 2005, Duke forwarded to Respondents two dictated statements. The first read "This is to advise you that I have invested to date approximately $29,000, and I intend to invest an additional $14,000 for a total of $43,000. This is my risk capital and do *(sic)* not hold Universal Financial Holding Corporation responsible for any potential pure or realized loss." (January 18, 2005 communication from Dukes to Respondents, attached to Complaint as Appendix 8). The second January 18, 2005 statement read "This is to advise you that my net worth is a minimum of $500,000 in inheritance, which consisted of various investments owned by my family." (January 18, 2005 communication from Dukes to Respondents, appended to Complaint as Appendix 8). Dukes' handwritten notes reflecting the statements dictated during his conversations with Friedman also are appended to his Complaint.

Churning

7. Complainant Dukes testified and produced documents, as follows, to establish that Respondents churned Dukes' account:

A. On January 21, 2005, Friedman called Complainant to tell him the market took a "big hit" because of a government report published in order "to squeeze out the little guy." Friedman recommended that Dukes stay in the market. (Complaint page 9).

B. By the end of January 2005, Dukes had invested approximately $43,090.00, encompassing all of his life savings but for $4,717.00. (Complaint page 9).

C. Throughout January, Dukes continued to ask Friedman for help with his statements but received none. In reviewing one statement at this time, he saw a natural gas options trade that he never authorized. (Complaint 9).

D. On January 28, 2005, Friedman informed Complainant that his account would be transferred to South Coast because Worldwide had been sold. She told Dukes that everything would remain the same. (Complaint 9). In fact, trade commissions increased from $200 per round turn to $240 per round turn. (*See, e.g.,* 2/9/05 account statements from FCM Comtrust). Dukes became uneasy and began to research some of Respondents' assertions, discovering for example, by calling relatives in Nigeria, that there was no news of striking oil workers in Nigeria. (Complaint 9).

E. On February 1, 2005, Friedman called Dukes claiming the Oil market was "dead in the water," and that all South Coast customers would be moved into the financial market. Friedman claimed that "S&P was flying," and recommended the sale of the unleaded gasoline position in favor of a position in S&P options. (Complaint 10). In fact, Respondents sold Dukes' natural gas position, also without authorization, in order to buy the new S&P 500 position. (Complaint 10; *See, e.g.,* 1/24 and 1/25/05 account statements; 2/2/05 Comtrust account statement (natural gas trades reversed and trades canceled). *See also* Comtrust 2/2/05 statement

indicating that certain S & P trades were "confirmed in error," although an S & P options position was retained in the Dukes account through 2/8/05).

F. On February 4, 2005, Friedman told Dukes to sell his positions in crude oil, heating oil and S&P 500 options in order to purchase Euro Currency options because the dollar was stronger. Friedman persuaded Dukes to go forward by telling him that she was helping him recover from the "big hit" his account had taken. (Complaint 10).

G. On February 9, 2005, Friedman told Dukes he had made $3000 and to retain the profit he should sell the Euro Currency options and buy U.S Treasury Bond options. Dukes replied that he had sought long term strategic investments and did not want to pay additional fees or commissions. Friedman promised him that "Bonds are flying.....I have to get you in this trade to get you something decent." (Complaint 10).

H. In his discussion with Compliance concerning the trade, Compliance told Dukes he had made $500 and not $3000. Dukes was concerned and asked Friedman to explain the differential. Friedman responded that she had forgotten to indicate the effect of fees and commissions on the profit. (Complaint 11). Dukes did not want to trade anymore but Friedman refused to back out of the ongoing trading. (Complaint 11).

I. Friedman indicated she would return $3000 to Dukes, the amount of funds allegedly remaining from the trading. Approximately a week later, on February 16, 2005, Dukes received a statement indicating that, in fact, $690.12 would be returned. Dukes received that sum on March 1, 2005.

J. On February 22, 2005, Friedman advised Dukes to sell the U.S Treasury options for $300, while retaining the S&P 500 options trade. (Complaint 11). Dukes became uncertain of how to proceed, and called Schwartz for help. Schwartz responded that Dukes would have been

better served by remaining in the original heating oil options trade which he characterized as "somewhere in the money." (Complaint 12). However, Schwartz confirmed Friedman's recommendations concerning the Treasury and S&P options trades.

K. On March 4, 2005, Schwartz told Dukes the S&P options position was about to expire and that he needed to get out, effecting a return of $3,000. On April 6, 2005, Schwartz told Dukes a remaining position would expire for $97.

L. Dukes alleges that Respondents' commissions and fees exceeded ninety percent of his net worth. (Complaint 13). He estimates that the commissions and fees exceeded $23,000 (Complaint 14). A review of the account statements suggests that Respondents charged Dukes commissions ranging in total somewhere between $24,560 and $27,900. (Account statements).[4]

M. Dukes transmitted his application on January 10, 2005 and opened his account the following day. (January 11, 2005 Account Statement). The preponderance of trading in the account – the purchase of the sixth and final options position – was completed by February 9, 2005, less than a month later.

N. Complainant indicates that he invested $43,090.00 in commodity options trading through Respondents, that Respondents returned $10,054.16, and that he retained a position in U.S. Bond options that had the value of $93.78, for an out of pocket loss of $32,942.06. (Addendum to April 13, 2005 submission by Complainant to the Office of Cooperative Enforcement).[5]

[4] Since the account statements suggest that certain trades were reversed and confirmed in error, the final tally of commissions is unclear.

[5] Dukes' computation of his out-of-pocket loss varied slightly (within a Fifty Dollar range) over time. Consequently, the Court has utilized his most recent computation.

DISCUSSION

Dukes' credible testimony and documentation establish that

(I) Dukes was not a sophisticated investor;

(II) Respondents controlled the trading of Dukes' account;

(III) Respondents fraudulently solicited and managed the Dukes' trading account using high pressure and misleading sales tactics, while omitting material information, in violation of CEA Section 4c(b) and Commission Regulation 33.10;

(IV) Respondents churned Dukes' account in violation of CEA Section 4c(b) and Regulation 33.10;

(V) Worldwide and South Coast are liable for the conduct of Respondents Schwartz and Friedman pursuant to Section 2(a)(1)(B) of the CEA, 7 U.S.C. § 2(a)(1)(B).

I. Dukes was not a Sophisticated Commodity Trader

Dukes was a recent immigrant from Nigeria, with no commodity trading experience. He had relied on his banker for financial advice and had participated in one limited stock investment. There is no possible construction of facts or law that would render Dukes a sophisticated commodities trader. *Skinner v. Gombos International,* 2000 W.L. 15593.

II. Respondents Fraudulently Solicited and Managed the Dukes Account

Section 4c(b) provides "No person shall....enter into or confirm the execution of any

transaction involving any.....option....contrary to any....regulation of the Commission."

Commission Regulation 33.10 provides:

> It shall be unlawful for any person directly or indirectly – (a) to cheat or defraud or attempt to cheat or defraud any other person; (b) to make or cause to be made to any other person any false report or statement thereof or cause to be entered for any person any false record thereof; (c) to deceive or attempt to deceive any other person by any means, whatsoever – in connection with an offer to enter into, the entry into, the confirmation of, or the maintenance of any commodity option transaction.

As a result of Respondents' default, there are no statements on the record to contradict Complainants' credible and substantial testimony and records sustaining the Court's finding that Respondents fraudulently solicited and handled Dukes' account. The evidence demonstrates that Respondents used a seasonal pitch; high-pressure tactics, including factual misrepresentations of the existence and effect of world events; material false promises of doubling or obtaining high profits on Dukes' funds; and material misrepresentations of past trading success; while failing to mention Respondents' actual customer histories and the demonstrably high risk of loss.

Dukes has met the burden of demonstrating that Respondents (1) made misrepresentations or misleading statements; (2) acted with scienter; and (3) that the misrepresentations were material. *See Commodity Futures Trading Commission v. R.J. Fitzgerald & Co., Inc.,* 310 F. 3d 1321 (11th Cir. 2002). Misrepresentations and omissions are material when a reasonable investor would consider them important in deciding whether to make an investment or not. *R.J. Fitzgerald, supra,* 310 F. 3d 1321, 1333. As an unsophisticated investor, Dukes understandably relied on Respondents' promises of high profits supported by Respondents' claims of past trading success.

Scienter may be established indirectly, and may be satisfied by indirect evidence of recklessness. *Ernst & Ernst v. Hochfelder,* 425 U.S. 185, 193 (1976). Friedman's directions

regarding falsification of Complainant's net worth, evidenced by Dukes' testimony and documentary evidence, demonstrate a profound disregard for the impact of Respondents' ongoing trading on Dukes, far exceeding the "recklessness" standard. [6]

Even in the presence of standardized warnings, Respondents' material false promises of trading success and false customer histories provide substantial basis for the Court's determination that Respondents fraudulently solicited Dukes' funds. *See Commodity Futures Trading Commission v. R.J. Fitzgerald & Co., Inc.,* 310 F. 3d 1321 (11th Cir. 2002); *Ferriola v. Kearse-McNeill,* [1999-2000 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 28,172 at 50,153 (CFTC 2000); *Bishop v. First Investors Group of the Palm Beaches,* [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,004 at 44,841-44,842 (CFTC 1997).

III. Respondents Churned Dukes' Account for the Purpose of Generating Commissions

Dukes testified and provided account statements that establish his charge that Respondents churned his account. Complainant met the requirements of law by his demonstration that Respondents controlled his account, traded his account excessively and without legitimate purpose, diverging from any meaningful trading strategy other than that of generating commissions. *See Fields v. Cayman Associates, Ltd.,* [1984-1986 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 22,688 at 30,928 (CFTC 1985); *Smith v. Siegel Trading Co.* [1980-1982 Transfer Binder] Comm. Fut. L. Rep. ¶ 21,105 at 24,452-53 (CFTC 1980).

When an associated person acts in an advisory capacity, his duties to that customer broaden substantially. *Siegel Trading Co., supra.* As a result, "a finding of control is

[6] In addition, Dukes has testified to Respondents' unauthorized trading of natural gas options. The account statements indicate that the natural gas options trades were reversed and cancelled, without providing additional explanation.

not dependent on the account being formally labeled discretionary but is based rather on who in fact was making the decisions." *Siegel Trading Co., supra, citing Newberger, Loeb & Co., Inc. v. Gross,* 365 F. Supp. 1364, 1371 (S.D.N.Y. 1973), citing *Hecht v. Harris, Upham & Co.,* 283 F. Supp. 417, 432-33 (N.D. Cal. 1968), *mod. as to damages*, 430 F. 2d 1202 (9th Cir. 1970). It is entirely clear from Dukes' testimony and the records in this matter that Schwartz and Friedman recommended trades and, with full disclosure of his absence of any relevant knowledge, Dukes deferred to Respondents' misrepresentations of their expertise and past success.

In making an assessment of where actual control lies, the factors include (1) a lack of customer sophistication; (2) a lack of commodity trading experience on the part of the customer and a minimum of time devoted by him to his account; (3) a high degree of trust and confidence reposed in the associated person by the customer; (4) a large percentage of transactions entered into by the customer upon the AP's recommendation; (5) the absence of prior customer approval for transactions; and (6) customer approval for transactions where it is based upon inaccurate or misleading information supplied by the AP. *Siegel Trading Co., supra, citing Carras v. Burns,* 526 F. 2d 251 (4th Cir. 1975). Nor does the absence of a written control agreement foreclose a claim such as Dukes'. *Siegel Trading Co., supra.*

The Court has determined that Dukes was not sophisticated, and had no relevant trading experience. He placed his trust in Respondents, who initiated all the trading in his account on the basis of fabricated and misleading information. Respondents fully exercised control over Dukes' account in satisfaction of the first element of the churning determination.

Respondents initiated in and out trading in the Dukes account, investing 90 percent of his net worth in seven different options positions and involving six different commodities in the course of three weeks. Dukes testified that he was seeking a long term position in energy options.

Instead, as demonstrated by the account statements alone, Respondents placed him in seven short term positions involving a large variety of unrelated energy and financial options.

Respondents generated between twenty three and twenty eight thousand dollars of commissions in the narrow time period described, exhausting ninety percent of Dukes' net worth, while charging commissions equal to fifty four percent of his entire investment. The Commission has characterized commissions on options transactions as "high" when in excess of forty percent. *See Hinch v. Commonwealth Financial Group, Inc.,* [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,056 (CFTC 1997). While there is no "bright line" approach concerning the commission to equity ratio,[7] as computed on a monthly basis, the monthly commission to equity ratio in this matter lies between twenty seven and thirty three percent. The Commission has recognized that a monthly commission to equity ration in excess of 18 percent also may be indicative of churning. *See In re Lincolnwood Commodities, Inc.,* [1982-1984 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 21,986 (January 31, 1984).

In the contest of futures trading, the indicia of churning include high commission to equity ratios; high percentages of day trades; a broker's departure from a previously agreed upon trading strategy; trading in an under-margined account and reestablishment of a previously liquidated position in the same or a related future contract without any apparent trading strategy. *Murlas, supra, citing Lincolnwood, supra.* While these criteria cannot be precisely applied in the options context,[8] those factors that are applicable are prevalent in this case: there is a high commission to equity ratio; Respondents departed from Dukes' stated trading strategy; and Respondents implemented in and out trading for misrepresented purposes, even going so far as to

[7] The Commission has not firmly identified a commission to equity percentage as a "bright line" indicator, but uses it as a guide in determining whether Respondents' quest for commissions involved the decision to "wholly" turn "their backs on their customer's financial interests. *See in re Murlas,*[1994-1996 Transfer Binder), Comm. Fut. L. Rep. (CCH) ¶ 26,485 (CFTC 1985), *citing Fields, supra*

[8] *See Hinch, supra.*

re-establish a liquidated position within a two week period. Dukes has substantiated his claim that Respondents churned his account.

IV. Worldwide and South Coast are Responsible for the Acts of their APs

Schwartz and Friedman were APs acting within the scope of their employment when they solicited Dukes' account and churned it. Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B), provides that the "act, omission, or failure of any official, agent, or other person acting for any individual, association, partnership, corporation, or trust within the scope of his employment shall be deemed the act, omission or failure of such individual, association, partnership, corporation, or trust, as well as of such official, agent, or other person." Consequently, Worldwide and South Coast are liable for the full scope of their employees' conduct.

CONCLUSIONS OF LAW

Complainant has established by the weight of the evidence that:

(1) Respondents fraudulently solicited and managed the Dukes account in violation of CEA Sections 4b(a) and 4c(b), 7 U.S.C. §§ 6b(a) and 6c(b), and Commission Regulation 33.10 (a) and (c), 17 C.F.R. § 33.10(a) and (c).

(2) Respondents churned Dukes' account in violation of Section 4c(b) of the CEA, and Commission Regulation 33.10.

(3) Respondents Worldwide and South Coast are liable pursuant to Section 2(a)(1)(B) of the Act for the acts of their agents acting within the scope of their employment.

Respondents' violations of the Commodity Exchange Act and the implementing regulations resulted in direct monetary damages to Complainant Dukes in the amount of $32,942.06. Dukes opened his account and entered into trading directed by Respondents Schwartz and Friedman based upon their misrepresentations concerning profits and their historical success and their omissions of their accurate customer trading histories; Complainant was misinformed about the bases for the ongoing trading of his account, involving a trading strategy that related only to the generation of commissions for Respondents. Since his account was fraudulently solicited and traded, Dukes is entitled to judgment for the full extent of his losses.[9] *Pacific Trading Group v. Global Futures & Forex, Ltd.*, 2004 WL 2591468.

ORDER

Respondents Friedman, Schwartz, Worldwide and South Coast are ordered to pay to Complainant Dukes $32,942.06, the out-of-pocket losses sustained on his account, plus interest at the rate of 1.30% per annum from March 11, 2005 until this award is paid in full, and the $250.00 filing fee. Respondents are jointly and severally liable for the payment of this judgment.

Issued this 10th day of August 2006.

George H. Painter
Administrative Law Judge

Judith Hutchison
Attorney-Advisor

[9] Complainant seeks lost profits based on speculation concerning movements in the futures market for a variety of energy products. Since Complainant has been awarded the out-of-pocket costs of the purchased options, and the "lost profits" are speculative, the Court will not award them to Dukes.