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INDIA MOSS-THOMAS,

Complainant,

v.

EAST COAST COMMODITIES,
KEVIN ALAN ROSENBERG,
SOUTH COAST COMMODITIES, INC. and
ALICE GORDON WELTON,

Respondents.

CFTC Docket No. 07-R007

ORDER OF PARTIAL DISMISSAL

Respondent Alice Gordon Welton has filed a motion for summary disposition.¹ Summary disposition is proper (and required) only if "the undisputed pleaded facts, affidavits, other verified statements, admissions, stipulations, and matters of official notice, show that:" (1) there is no genuinely disputed issue of material fact, (2) we need not further develop facts in the record and (3) the moving party is entitled to a decision as a matter of law.² Welton argues that she is entitled to a dismissal of the complaint because of

¹ Respondent Alice Welton's Motion for Summary Disposition in Her Favor, filed September 20, 2007 ("Motion"), at 1. In support of her request, Welton incorporated, by reference, proposed hearing exhibits that she filed on July 24, 2007. *Id.* at 3 n.4. See Respondent Welton's Exhibits, filed July 24, 2007 (designating her exhibits RX1-1, RX1-2, RX1-3 and RX1-4).

² 17 C.F.R. §12.310(e); Levi-Zeligman v. Merrill Lynch Futures, Inc., [1994-1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶26,236 at 42,031 (CFTC Sept. 15, 1994).

the deemed admissions that resulted when complainant India Moss-Thomas³ failed to answer discovery requests in a timely fashion.⁴ We agree.

By failing to deny and/or object to admission requests within the prescribed time, the complainant automatically admitted⁵ and conclusively established⁶ that Welton "did nothing wrong," the respondent "did not violate any section of the Commodity Exchange Act" and she "did not violate any Rule or Regulation of the . . . Commission."⁷ Because Moss-Thomas based her case

³ Moss-Thomas opposes the motion. Response to Respondent Alice G[.] Welton[']s Motion for Summary Disposition That I Totally Disagree With, filed October 4, 2007, at 1.

⁴ Motion at 7-10. The respondent served discovery requests, including requests for admissions, on April 5, 2007. Respondent Alice Welton's First Request for Discovery, filed April 5, 2007, at 9-13. Because Welton made service by mail, Moss-Thomas had 25 days in which to respond to the admission requests. 17 C.F.R. §§12.10(b), 12.33(b). The complainant filed (untimely) responses on May 3, 2007. Answer of India Moss Thomas to First Request for Production of Documents Received by Mail on April 10, 2007, at 4-7. Moss-Thomas did not request leave to late file nor did she move to withdraw her automatic admissions.

⁵ 17 C.F.R. §12.33(b) ("The matter is admitted unless within twenty (20) days after service of the request, the party upon whom the request is directed files and serves upon the party requesting the admission a verified written answer or objection to the matter."); Smith v. Betty, CFTC Docket No. 06-R048, 2007 CFTC LEXIS 63, at *19 (CFTC Aug. 15, 2007).

⁶ 17 C.F.R. §12.33(d) ("Any matter admitted under this rule is conclusively established and may be used as proof against the party who made the admission."); Smith, 2007 CFTC LEXIS 63, at *19.

⁷ RX1-3-3. We would not rest this order on admissions to purely legal matters. See Adventis, Inc. v. Consolidated Prop. Holdings, Inc., No. 04-1405, 2005 U.S. App. LEXIS 3547, at *10 (4th Cir. Mar. 2, 2005). However, parties may seek admissions to factual matters, even ultimate facts, as well as mixed questions of law and fact, and the application of law to facts. 17 C.F.R. §12.33(a); Adventis, 2005 U.S. App. LEXIS 3547, at *10; Jacobs v. Electronic Data Sys.

(continued..)

against Welton on allegations of fraud⁸ and then conclusively established that the respondent did nothing wrong and ran afoul of no law (a violation of which must be found in order to award damages in reparations),⁹ Welton is entitled to a judgment in her favor, as a matter of law, and additional fact finding would not produce a contrary outcome. Accordingly, we must grant her motion for summary disposition.¹⁰

Conclusion

For the reasons set forth above, we **DISMISS** the complaint, as it relates

(..continued)

Corp., CIVIL ACTION NO. 2:05:cv925-MHT (WO), 2006 U.S. Dist. LEXIS 91706, at *7 n.3 (M.D. Ala. Dec. 18, 2006); AMS Staff Leasing, NA, Ltd. v. Associated Contract Truckmen, Inc., Civil Action No. 3:04-CV-1344-D, 2005 U.S. Dist. LEXIS 28919, at *25 (N.D. Tx. Nov. 21, 2005). Cf. Oliver v. Geas, CIVIL ACTION NO. 1:03cv656-LG-JMR, 2006 U.S. Dist. LEXIS 58020, at *14 (S.D. Miss. June 20, 2006) (deeming admission that "the Defendants did not violate your constitutional rights in any way"). Whether Welton "did [something] wrong" is a matter of fact and whether she violated any law is a mixed question of law and fact. United States v. Hitchcock, No. 00-10251, 2002 U.S. App. LEXIS 15726, at *12 (9th Cir. Mar. 21, 2002); United States v. Diaz-Espindola, 928 F.2d 314, 317 (9th Cir. 1991); SEC v. Burns, 816 F.2d 471, 474 (9th Cir. 1987); Nuvest, S.A. v. Gulf & W. Indus., Inc., 649 F.2d 943, 949 (2d Cir. 1981).

⁸ Letter from Sammy Moss to the Commodity Futures Trading Commission, received November 20, 2006, at 3.

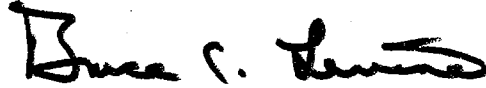
⁹ See 7 U.S.C. §18(a).

¹⁰ We need not consider Welton's other arguments in support of her motion. See Motion at 3-7.

to Welton, with prejudice.

IT IS SO ORDERED.

On this 11th day of October, 2007

A handwritten signature in black ink, appearing to read "Bruce C. Levine", written over a horizontal line.

Bruce C. Levine
Administrative Law Judge