

UNITED STATES OF AMERICA
Before The
COMMODITY FUTURES TRADING COMMISSION

RICHARD DIX LEPPERT	:	
v.	:	CFTC Docket No. 99-R148
LMB TRADING GROUP, INC., THOMAS GLOVER, and UNIVERSAL FINANCIAL HOLDING CORP.	:	OPINION AND ORDER

Respondent Universal Financial Holding Corp. (“Universal”) appeals from a Judgment Officer’s decision ordering it to pay \$4,439 plus interest and costs due to misconduct respondent Thomas Glover (“Glover”) committed while working for respondent LMB Trading Group, Inc. (“LMB”). The Judgment Officer concluded that LMB was responsible for Glover’s fraudulent solicitation of complainant Richard Leppert (“Leppert”) pursuant to Section 2(a)(1)(A) of the Commodity Exchange Act (“Act”) and that Universal was responsible for LMB’s misconduct in light of their guarantee agreement.

Universal contends that the Judgment Officer erred in concluding that it was LMB’s guarantor. Universal further claims that the evidentiary record does not support a finding of liability under either an agency or aiding and abetting theory. Leppert’s *pro se* response does not address Universal’s argument about the existence of a guaranteed relationship between Universal and LMB but does argue that there is an independent basis for affirming the award against Universal.

As explained below, we vacate the award against Universal and dismiss the complaint against it.

DISCUSSION

In his Initial Decision, the Judgment Officer focused primarily on Leppert's relationship with respondents Glover and LMB. He concluded that Glover violated Section 4c(b) of the Act and Commission Rule 33.10 by falsely assuring complainant that he would provide a level of advice that would ensure large profits while limiting risk. *Leppert v. Glover*, [1999-2000 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 28,157 at 50,104 (June 8, 2000) ("I.D."). The Judgment Officer held that LMB's employment relationship with Glover justified holding it responsible for his wrongdoing pursuant to section 2(a)(1)(A) of the Act.

The Judgment Officer's primary finding concerning Universal was that "[p]ursuant to a guarantee agreement, Universal guaranteed the obligations of LMB arising under the Commodity Exchange Act." I.D. at 50,103. He apparently based this finding on Universal's admission in a post-hearing motion that "LMB Trading is a Guaranteed Introducing Broker of [Universal]." On appeal, Universal contends that the admission was a typographical error. Our independent review of the relevant registration records indicates that Universal did not have a guarantee relationship with LMB during the period at issue. Consequently, we cannot affirm the Judgment Officer's award against Universal based on a guarantee agreement.¹

At the hearing, Leppert provided limited testimony in support of a claim that Universal breached a fiduciary duty by failing to contact him and offer advice about his

¹ We note that Universal did not make the misstatement about its alleged guarantee of LMB until after the Judgment Officer conducted the telephonic hearing in this case. In these circumstances, there is no basis for concluding that the misstatement adversely affected Leppert's presentation of his case against Universal.

open option position after LMB ceased doing business.² Leppert acknowledged that he contacted Universal during the time at issue, but did not indicate that he sought advice about liquidating his position or informed Universal of his alleged difficulty in understanding the written account statements that Universal provided to him. In these circumstances, the record does not establish that Universal breached any duty it owed Leppert under the Act.³

CONCLUSION

The record does not establish any basis for holding respondent Universal liable for the damages suffered by Leppert. Accordingly, we vacate the Judgment

² The record shows that LMB ceased doing business on May 21, 1999. Its May 25, 1999 letter to Leppert indicated that Universal would handle “[a]ll future transactions concerning your account,” but noted that Leppert had the “option to choose any available broker.”

³The record shows that the value of Leppert’s position had declined to about \$325 at the time LMB ceased doing business. Consequently, even if the record showed that Universal breached a duty it owed complainant under the Act, Leppert’s damages would be limited to this amount.

Officer's award against Universal and dismiss Leppert's complaint against this respondent.

IT IS SO ORDERED.⁴

By the Commission (Acting Chairman NEWSOME and Commissioners HOLUM, SPEARS, and ERICKSON).

Jean A. Webb
Secretary to the Commission
Commodity Futures Trading Commission

Dated: May 10, 2001

⁴ Under Sections 6(c) and 14(e) of the Commodity Exchange Act, 7 U.S.C. §§ 9 and 18(e)(1994), a party may appeal a reparation order of the Commission to the United States Court of Appeals for only the circuit in which a hearing was held; if no hearing was held, the appeal may be filed in any circuit in which the appellee is located. The statute also states that such an appeal must be filed within 15 days after notice of the order and that any appeal is not effective unless, within 30 days of the date of the Commission order, the appealing party files with the court a bond equal to double the amount of any reparation award.