



U.S. COMMODITY FUTURES TRADING COMMISSION

Three Lafayette Centre
1155 21st Street, NW, Washington, DC 20581

OFFICE OF
PROCEEDINGS

PAUL HANSEN,
Complainant,

v.

FIRST AMERICAN
DISCOUNT CORPORATION,
Respondent.

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CFTC Docket No. 96-R13

OFFICE OF PROCEEDINGS
PROCEEDING CLERK
JUL 31 8 33 AM '97
FILED

INITIAL DECISION

Paul Hansen's complaint arises from a series of orders that he placed to buy and sell Standard & Poors 500 Index futures. The parties do not dispute the essential facts, but disagree on who should bear responsibility for a series of mistakes by both Hansen and First American's order desk that created mutual confusion about Hansen's position in the market. For the reasons set out below, it is concluded that Hansen has failed to show that First American's conduct was the primary cause of the confusion, or that First American otherwise should be held responsible for any of Hansen's trading losses.^{1/}

^{1/} The findings and conclusions are based on the parties' documentary submissions, which include Hansen's complaint (with addenda and exhibits) and final verified statement, and First American's answer and final verified statement (with exhibits).

Factual Findings

1. Hansen maintained a discount account with First American Discount Corporation.^{2/} Hansen has not alleged that First American promised any special services beyond properly handling his orders and his money.

2. On July 12, 1995, the Standard & Poors 500 Index futures market was in a "fast market" condition. That morning Hansen had placed a series of 21 orders in the September Standard & Poors 500 Index futures contract ("S&P"). Hansen principally used buy orders with trailing stops, in hopes of capturing short-term profits in a "rally" market.

3. At about 11:00 a.m., Hansen and Brian Hoekstra, an associated person with First American, confirmed that he had three orders "working" and that upon their execution Hansen would be long one S&P. Hansen also placed a sell stop order on ticket number 487.

4. At about 11:15 a.m., Hansen called Hoekstra. Hansen cancelled order number 487, and replaced it with a sell order with a lower stop price, which was entered on ticket number 487A.

5. At about 12:37 p.m., Hoekstra called Hansen to review his various orders:^{3/}

^{2/} Neither side has produced any evidence about Hansen's previous trading and investment experience.^{2/} First American disregarded an order to produce Hansen's account application, which might have shed some light on this issue.

^{3/} The recording of this conversation was produced as Exhibit A to First American's final verified statement.

Hoekstra: Paul, I think you're confused here. I got you long three. We better go over all your tickets here. I think you're getting ahead of yourself. Right now, you've got three buy stops working, all filled; and one sell stop. You're long six here, selling two. I mean, you've gotten yourself all confused.

Hansen: I'm just assuming they're getting me out when my screen is telling me they are. Nobody's been calling me on anything.

Hoekstra: Well, when we get the fills we call you right away. What I am saying is that you have an overabundance of buys working here that haven't come back yet, but you don't have any sells.

Hansen: Okay. Tell me where I'm at then.

Hoekstra: You should be telling me where you are at. I'll read off all of your tickets to you. This is what you have done today. Okay?

Hansen: You can just tell me what's been exercised.

Hoekstra: I'm going to read all of your tickets to you. We gotta see if there's an error here, because somehow you've gotten very confused. Alright? I'll just read to you what I've got.

Hoekstra first reviewed, one-by-one, the stack of 17 orders that had been filled and reported back with the fill price. During this phase of the order review, it became clear that Hansen had lost track of his orders -- he had failed to account for order ticket number 472 (buying two S&Ps) and thus mistakenly thought that he was long one S&P contract, when he was actually long three, a mistake that was cleared up by Hoekstra. When Hoekstra confirmed that order number 472 had been filled (two S&P's bought at 559.90), Hansen replied, "472, I didn't have that number," and acknowledged, "that might be where I goofed up."

7. Hoekstra correctly reported that order number 520 (two S&P's bought at 559.75) had been filled and reported.

8. After finishing the review of filled and reported orders, Hoekstra reviewed the four orders that had been filled but not reported. About ten seconds after correctly reporting order number 520 as filled and reported, Hoekstra mistakenly reported order number 520 a second time, but this time erroneously stated that order 520 was filled but not reported:^{4/}

Hoekstra: 520, buying two at 9.50 stop. That's filled.

Hansen: At?

Hoekstra: Well, we don't have the fills back, but these are all . . .

Hansen: Did you say 520?

Hoekstra: Uh huh.

Hansen: Okay, let me cross that number out. 59.50, I got the wrong number here. Okay.

As can be seen, although Hansen was aware that he had just written in a fill price for order 520, he did not alert Hoekstra to the fact that he had already read order ticket number 520 as filled and reported. As a result of Hoekstra's double-listing of order 520, when he counted up all of the positions, he mistakenly told Hansen that Hansen was long five S&Ps, and Hansen concurred.

9. Hansen then asked Hoekstra if he had a ticket 560 working, which was the only one he did "not have checked off." When Hoekstra replied that he had no record of it, Hansen said "I know it's an 'at market,' [but] I don't know exactly about the ticket

^{4/} Hoekstra's mistake occurred because he still had the trading desk working order, or "pink copy," which had not been removed due to an inadvertent clerical error. Hoekstra affidavit, Exhibit B to First American's final verified statement.

number." Hoekstra then said that there was "no way" for such an order not to be filled, and Hansen replied the ticket number was "goofed up" and agreed to "cross it out" on his list as an error.

10. Hoekstra then advised Hansen: "You've gotta slow down here; you're getting yourself too excited; and you're going to get yourself in big trouble one of these days." Hansen said, "I can't understand how it happened." To which Hoekstra replied, "Because you're going too fast."

11. Hansen stated that he wanted to be long one, so he placed an order to sell four S&Ps.

12. Shortly afterwards, Hoekstra called Hansen to report that he was actually short. Hoekstra explained that he had just discovered the pink-ticket error on order 520. Hansen then decided to get flat, and thus cancelled order 487A and placed a market buy order.

13. However, in the meantime, the floor broker had filled order 487A before receiving the cancellation order, which Hoekstra promptly reported to Hansen. Hansen then placed a buy order which made him flat. At the end of the day, Hansen had lost \$5,094.

Conclusions

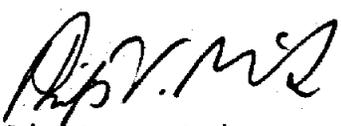
According to Hansen, First American's pink-ticket error on order 520 is the source of the confusion that caused his trading losses. However, Hansen has produced no evidence that this or any error by First American was the result of reckless or fraudulent conduct. More importantly, the evidence establishes that Hansen created the confusion by placing more orders than he could monitor

and that Hoekstra made a good faith effort to clear up Hansen's obvious confusion. The record also establishes that Hansen was aware that Hoekstra had repeated order 520, but failed to point that out to Hoekstra, which probably would have led to an earlier discovery of the pink-slip error. In these circumstances, Hoekstra's review of Hansen's stack of orders was handled in good faith and with due care, and Hansen must bear the responsibility for his confusion and any ensuing losses.

ORDER

No violations causing damages having been shown, the complaint in this matter is DISMISSED.

Dated July 31, 1997.


Philip V. McGuire,
Judgment Officer