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OFFICE OF PROCEEDINGS

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KAREN KING, Complainant,	*	
v.	*	CFTC Docket No. 97-R148
PTI SECURITIES, L.P., Respondent.	*	

INITIAL DECISION

Karen King claims that PTI Securities executed a sell order without canceling a previously placed good-until-cancelled ("GTC") stop loss order, and claims $9,937.50 in damages. PTI denies that it was obligated to cancel the GTC order and has counter-claimed for the $4,245.79 debit balance. After a careful review of the parties' documentary submissions, it has been concluded that King has failed to show any violations by PTI, and that King must pay the debit balance to PTI.[1]

Unless otherwise noted, the facts are not in dispute, dates are in 1997, and amounts are rounded to the nearest dollar.

[1] The documentary record consists of the parties' pleadings (with exhibits) and replies to a sua sponte discovery order.

Factual Findings

1. On May 20, 1997, Karen King signed the various documents to open an account that was introduced by PTI Securities and Options and carried by LIT Division of First Options of Chicago. These documents included an application, customer contract, a risk disclosure statement, and a power of attorney giving her husband, J.D. King, the discretionary authority to trade her account. On the account, Karen King represented that she was a school teacher, who had traded futures with Baron's Financial, and who had an annual salary income of $25,000, an annual investment income of $75,000, a net worth of $125,000, and $25,000 in available risk capital. [Exhibit C to Answer.]

J.D. King had also exercised discretionary trading authority in the Baron's Financial account. [Complainant's discovery reply, filed June 3, 1998.] Since J.D. King exclusively dealt with respondents, all references are to him.

2. On Tuesday July 15, 1997, at 10:30 a.m., King called PTI, and spoke to Dan Haugh:

> *King*: I called earlier about the coffee market I wanted to check out one thing right quick.
>
> *Haugh*: Sure
>
> *King*: I wanted to go bullish on September coffee, in the near term, wondering if it would make sense to do a covered call to go ahead and sell a call, say 190, and also to, at the same time, margin a long position, at the market, which is around 158,159.

King then placed three orders: (1) a market order to buy one September coffee futures contract; (2) a market order to sell one September coffee 1800 call option;

and (3) a day limit order to buy one September coffee 2100 call option at 40. PTI orally confirmed the fills on the two market orders. The limit order would not be filled. [Pages 1 to 3, Exhibit A to Answer.]

3. On Thursday, July 17, at 10:18 a.m., King called PTI and spoke with a different PTI broker identified as "Dan":

King: Do I still have a standing order to buy back the 210 call?

Dan: Hang on a second, I'll check.

Dan to Cliff: Do we have any outstanding coffee orders for account 12199?

Dan: No, I don't have any good until cancel orders.

King: I can't remember if they were day orders or good-until-cancel orders.

King then placed a good-until-cancelled ("GTC") stop order to sell one September coffee futures contract at 157.00. [Pages 4 to 5 of Exhibit A to Answer] This is the GTC order that Karen King alleges should have been automatically cancelled by PTI.

4. On Friday, July 18, at 12:20 p.m., King called PTI. The recording of this conversation establishes that King placed a market order to sell one September coffee futures contract, but did <u>not</u> enter the order as a cancel-replace order of the GTC order, did <u>not</u> cancel the GTC order, and otherwise did <u>not</u> clearly and specifically refer to the outstanding GTC order:

King: I need to go ahead and <u>liquidate that coffee contract</u>.

Dan: Ok, what is your account number?

King: It's 12199.

Dan: 12199, ok.

King: I'm long one September coffee.

Dan: Ok, you would like to sell one September coffee?

King: Yes.

Dan: And how do you want that, on the market?

King: 164.50 or better.

Dan: Ok, you would like to sell one September coffee at 164.50 or better.

King: Ah, no change that to market. I'm sorry, I want to change, I want to sell that at the market today.

Dan: Ok, you would like to sell one September coffee at the market.

King: At the market.

Dan: Ok.

King: Thank you sir.

[Emphasis added; page 6 of Exhibit A of Answer] This market order was then filled at 165.00 and reported to King, who gave no additional trading instructions.

5. On Monday, July 21, at 9:25 a.m., Haugh informed King that his GTC stop order to sell one September Coffee at 157.00 GTC had been executed. King immediately protested that "I sold that Friday at 165 even." [Page 7 of Exhibit A of Answer.] PTI then pulled the tickets and tapes of all conversations related to the GTC stop order and all subsequent orders.

At 10:26 a.m., Haugh informed King that PTI had reviewed the tapes and had concluded that PTI had executed the order according to his instructions and had not made an error:

Haugh: Ok JD. Thanks for calling back. Ok – regarding the coffee – let's see – on the 17th, which was a Thursday, you placed an order to sell one September coffee 157 even, on stop, good-until-cancelled.

King: Right.

Haugh: On the 18th, you sold one September coffee, at market; the stop was not cancelled.

King: I thought that automatically canceled the stop.

Haugh: No sir. We listened to the tape and there was no mention of canceling the stop. It is not incumbent upon us to cancel those stops automatically. We don't know what the client's intentions are.

King: OK, so I'm short one September coffee.

Haugh: Right. . . . I don't know what you intend to do with this, but I just thought I would throw that in.

King: I'll have to look at the charts. See, I didn't intend to go short. But I'll have to look at the charts and see. Let me look at it and I'll call you back. As of right now, I'm short 156 on September coffee.

Haugh: Correct.

King: OK, well I did not understand. I thought that whenever I sold that contract, that cancelled my stop. Since I didn't have the contract anymore, I thought I didn't have a stop any more.

Haugh: No, sir. It's [our] policy if we know there is a GTC stop in we'll ask what your intentions would be on that stop, but we have no idea on a minute-to-minute, hour-to-hour basis or even day-to-day where those GTC stops are – or orders – are, I should say.

King : OK, where's the market right now?

Haugh: 158 even down 630.

King: Ok. Let me take a quick look at it, then I'll call you back and we'll talk about it.

[Pages 8-9 of Exhibit A of Answer.]

At 10:26 a.m., the price of the September coffee future was 158.19. A liquidation at this price would have realized a loss of $787.50. [*See* respondents' May 21, 1998 reply to Order dated May 20, 1998.]

At 11:07 a.m., King called PTI and placed a day limit order to buy one September Coffee at 156.00. [*See* pages 10-11 of Exhibit A of Answer.] King did not mention the GTC order.

6. On Tuesday, July 22, at 9:12 a.m., King called PTI and entered a day limit order to sell four September Coffee 1800 call options at 1.20. King again did not mention the GTC order.

At 1:40 p.m., Haugh notified King that it had filled the order to sell four September 1800 Coffee Calls at 1.20. Haugh also told King that PTI would be "monitoring [the coffee positions] fairly closely," because the account now had a margin deficit. [Page 13 of Exhibit A of Answer.] King then confirmed his intention to be short in September Coffee, and again did not specifically mention the disputed GTC order:

King: Well actually, you know, when I sold those calls at 180, I did that because I think there is a resistance point there at 178. It wouldn't surprise me if the market traded up into the mid 170's, but longer term I fully expected to trade 156 or I would liquidate that thing.

Haugh: Oh yeah, well, technically, I look at the market fundamentally and technically. I agree with you but that doesn't mitigate the fact that there is a margin call. And, there is some additional risk here. So...

King: Yeah, my biggest problem with this position is that for the next several days this is going to keep me from...certainly keep me from being able to trade the account. While I'm waiting for this thing to correct itself.

Haugh: Yeah, well I understand that.

King: Alright.

Haugh: Ok JD.

King: I appreciate it.

Haugh: All right. Bye.

[Pages 13-14 of Exhibit A of Answer.]

7. On Wednesday, July 23, at 8:55 a.m., Haugh informed King that he had to cover the $25,200 margin deficit. King replied: "Well, I'm not going to do it, . . I feel like you guys breached your fiduciary responsibility." King stated that although "most brokers would agree that, technically, clients are supposed to cancel GTC orders," he believed that it would be "pretty unusual" for a broker not to cancel a GTC, even in the absence of specific customer instructions. However, King never explained to Haugh the basis for that assertion.[2] Haugh then confirmed that it was King's intention not to wire the margin deficit, and advised King that PTI would close out the position."[3]

At 10:52 a.m. Haugh left a message with King that the price of September Coffee had continued to increase. At 11:30 a.m., King called Haugh, who informed him that PTI would liquidate the account, if the price of September Coffee hit

[2] Complainant similarly produced no evidence establishing that it is industry custom to cancel GTC orders in the absence of specific customer instructions.

[3] At 8:55 a.m., the price of September Coffee was 172.50. A liquidation at this price would have realized a loss of about $6,187.75.] [*See* pages 15-16 of Exhibit A of Answer.]

178.00, in order to avoid a debit balance. [*See* pages 17 to 18 of Exhibit A of Answer.]

At 12:09 p.m, Dan called King, who again reiterated his refusal to provide additional margin. During this conversation, the price of September coffee reached 178.00, and PTI placed orders to liquidate all positions in the amount. Dan then notified King that the liquidation was in process. [*See* pages 19 to 20 of Exhibit A of Answer, and July 25, 1997 letter from PTI to King (attachment to November 4, 1997 addendum to complaint.]

Conclusions

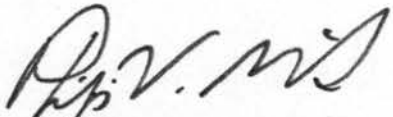
Complainant alleges that PTI recklessly violated its fiduciary duty when it failed to cancel automatically his GTC order. In support of this allegation, complainant asserts: that PTI brokers "ordinarily cancel stop loss when clients liquidate associated positions; that she "believe[s] it is PTI's corporate policy to inquire of the client about such if there is any doubt about the client's intentions; and that "since the brokers at PTI have canceled stop loss orders in similar situations in the past, or at least asked about them, I had no reason to believe [that PTI] would act in a different manner on this one occasion." However, complainant failed to produce any evidence that PTI specifically promised to provide such account management services, or that PTI had ever actually managed any open positions for her account. Furthermore, nothing in the record shows that Mr. or Mrs. King ever informed PTI that they were relying on PTI to provide such services or that PTI should otherwise have been aware of this reliance. *See Grist v. Shearson Lehman*

Brothers, Incorporated, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,962 (CFTC 1990); and *Avis v. Shearson Hayden Stone, Incorporated*, [1980-1982 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 21,379 (CFTC 1982). Here, when Mr. King placed a market order to sell one September coffee futures contract, he did not enter the order as a cancel-replace order of the GTC order, did cancel the GTC order, and otherwise did not advise PTI about the GTC order. In these circumstances, the complainant has failed to show that PTI had the obligation to cancel the GTC order or to monitor outstanding orders.

ORDER

No violations having been established, the complaint is DISMISSED.

Dated September 29, 1998.



Philip V. McGuire,
Judgment Officer