



U.S. COMMODITY FUTURES TRADING COMMISSION

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PAUL LEE,
Complainant,

v.

PEREGRINE FINANCIAL GROUP, INC.,
Respondent.

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CFTC Docket No. 98-R127

INITIAL DECISION

Appearances:

Paul Lee, Beckley, West Virginia, *pro se*.

Rebecca Wing, Esq., Chicago, Illinois, for Peregrine Financial Group.

This dispute arises from a simple and blatant act of deception by Paul Lee when he opened an account in his name with Peregrine Financial Group. Specifically, Lee did not inform Peregrine that he was incarcerated in a federal prison, as was the person to whom he gave discretionary trading authority, Keith Maydak. About three months after the account had been opened, a U.S. Secret Service official – who was investigating Maydak and Lee for suspected violations of U.S. Bureau of Prisons regulations governing telephone use by inmates – informed Peregrine that Lee and Maydak were both imprisoned at the Federal Corrections Institute at Beckley, West Virginia. Peregrine would later discover that

Maydak had been convicted for money laundering, telephone-access fraud, wire fraud and mail fraud, and that Lee had been convicted for drug trafficking and a violation of a prior parole. The Secret Service agent also informed Peregrine that a restitution order was in effect against Maydak, and that the U.S. Attorney was contemplating a restraining order against the transfer of the account balance back to Lee.¹ Peregrine then unilaterally liquidated all of the open positions in Lee's account, leaving an account balance of \$21,285.58. Shortly afterward, the following happened in quick succession: first, the U.S. Attorney issued a subpoena to Peregrine to produce documents related to Lee's account; second, Maydak mailed a letter in which he threatened a lawsuit and offered to settle all claims by Lee and Maydak in exchange for the return of "our funds," which Maydak asserted should be the full amount invested: \$28,557.50; and three, Lee's attorneys orally agreed to the terms of a release – prepared by Peregrine and forwarded to Lee for his signature – in exchange for the return of the account balance. However, Lee did not sign the agreement, which Peregrine discovered when it received the reparations complaint in the instant case, filed by Maydak.²

The parties do not dispute the basic facts. However, the parties sharply dispute their respective responsibilities arising from the factual circumstances. Lee's principal claims are: one, the nondisclosure of Lee's and Maydak's was not deceptive because the account application forms did not specifically ask if they were incarcerated, and because under certain unspecified provisions of the law a prison does not constitute the residence of a

¹ To date, Peregrine has not received a restraining order against the funds in Lee's account.

²The complaint form listed Maydak as the complainant and Lee as the co-complainant, and was signed by Maydak and Lee. Before the complaint was forwarded for adjudication, Maydak was removed as complainant for lack of standing. See Lenz letter dated April 22, 1998.

prisoner; two, that Peregrine improperly liquidated his discretionary account without giving him an opportunity to transfer the account to a different broker; and three, that Peregrine has improperly retained the \$21,285 account balance. Lee seeks to recover the entire \$28,557.50 that he invested.

In response, Peregrine denies all of Lee's allegations of wrongdoing; asserts that Lee's failure to disclose his and Maydak's incarceration was a "conscious deception" that "placed [Peregrine] at great risk and exposure"; asserts that Lee's has engaged in bad-faith and vexatious conduct throughout this proceeding; and asserts that it was justified in not immediately returning the account balance, because it had good reason to suspect the legality of Lee's funds in light of Lee's surreptitious conduct and in light of the anticipated freeze order. Peregrine seeks a finding that it acted properly in handling the account, and an award of attorneys fees and costs incurred in defending this matter. Peregrine also seeks extraordinary relief in the form of an order that would: one, permit Peregrine to retain the remaining funds in a segregated customer account for a period of two years so that Peregrine may access the funds for the sole purpose of indemnification for its costs and fees incurred in defending any additional law suit, or legal process or action, brought by either Lee, Maydak, or any other agent of Lee; and, two, if at the end of the two years, no claim is made upon the funds by third parties, permit Peregrine to release the balance of funds to Lee.

After a careful review of the parties' documentary submissions it has been concluded: one, that Lee has failed to establish any violations by Peregrine; two, that Lee is entitled to a return of the balance in his account, less the amount of the attorneys fees award; three, that Lee has engaged in vexatious conduct through much of this proceeding,

which entitles Peregrine to an award of attorneys fees and costs incurred in defending against Lee's vexatious conduct; and four, that this forum may not provide the extraordinary relief sought by Peregrine.³ Accordingly, for the reasons set out below, the complaint has been dismissed, and Peregrine has been directed to return to Lee the account balance, less its award of attorneys fees and costs.

The parties:

1. Peregrine Financial Group, Incorporated ("Peregrine" or "PFG"), is a registered futures commission merchant located in Chicago, Illinois.

2. Paul Lee, during the relevant time, has been imprisoned at the Federal Corrections Institute at Beckley, West Virginia, on convictions for drug trafficking and a violation of a prior parole. According to Lee, he "was convicted of a drug-related conspiracy, of which appears to be a thought crime involving a very small amount of alleged contraband." [Lee's "amended" reply to request for admission number 2 (Exhibit B to Peregrine's Motion for discovery sanctions, filed November 19, 1998).]

In his account application, Lee represented that he was about 44 years old, that he had ten years experience trading futures, and that he had been employed for four years as a "retail buyer" by Chrissy's News of North Versailles, Pennsylvania. Lee directed that his account statements be mailed to him in care of Chrissy's News.

³ The findings and conclusions reflect the determination by the undersigned that the various declarations and verified statements by Maydak and Lee were undermined by patently self-serving and spurious assertions; and that certain crucial discovery replies by Lee (i.e., Lee's "amended" replies to requests for admissions 1, 2 and 3, and "amended" replies to interrogatories 9 and 12) were evasive and incomplete. See Notice dated December 14, 1998.

Lee stated in discovery that when he opened his account he received income from Chrissy's News and from: "commodities investments; stock investments; interest income; produce distribution; baked goods distribution; gambling; among other things." Also, Lee stated in discovery that he owned, among other things: 18 shares of Confidential Services of America ("CSA");⁴ a 1/128th interest in a house in McKeesport, Pennsylvania (that Lee identified in the account application as his and Maydak's residence, and that Maydak and Lee assert will be their joint post-release residence); 1/25th of a Jaguar vehicle; and a 13% interest in Anarchists International, Incorporated, which purportedly was the source of the funds deposited in Lee's account. [Lee's replies to interrogatories 9 and 11 (Exhibit B to Peregrine's Motion for discovery sanctions, filed November 19, 1998); see ¶ 11 of Lee's "Traverse" to Peregrine's Answer (filed July 13, 1998); Lee's response to document request 2 (filed August 21, 1998); ¶¶ 14-16 of Maydak's second Declaration (filed September 4, 1998); Lee's letter to CFTC dated September 21, 1998; pages 3-4 of account application (Exhibit A to Peregrine's Motion for discovery sanctions); Lee's reply to interrogatory 9 (Exhibit B to Peregrine's Motion for discovery sanctions); ¶¶ 9-10 of Lee's Verified Responses (filed December 28, 1998); and Sussman Affirmation (filed January 4, 1999).]

3. Keith Maydak, during the relevant time, has also been imprisoned at the Federal Corrections Institute at Beckley, West Virginia, on convictions for wire fraud, mail fraud, money laundering and access device fraud. Pursuant to a power of attorney signed by Lee,

⁴ Maydak is the controlling owner of CSA. See *Maydak v. Bonded Credit Company, Inc.*, No. 95-35511 (9th Cir. October 1, 1996) (copy of slip opinion produced as part of Exhibit B to Peregrine's Response to Lee's Response to Notice, filed January 11, 1999).

Maydak had discretionary trading authority to trade Lee's account. Neither Lee nor Maydak has stated how Maydak was compensated for trading the account.

In the account-opening documents, Maydak stated that he was about 27 years old, had six years experience trading stock options and commodity futures, and that his annual income was \$120,000 and his net worth was \$300,000. Maydak also effectively controls the Keith Maydak Foundation, which does business as Chrissy's News. According to the web site for the Keith Maydak Foundation, the principal stated goals of the Foundation are to get a new trial for Maydak and "see that the truth about his case came out," and to "eliminate the absurdly harsh . . . sentencing guidelines for the crime of money laundering." [(Exhibit B to Peregrine's Response to Lee's Response to Notice (filed January 11, 1999).)]

Maydak's claim that he has no financial interest in the Lee account is belied by the totality of his conduct during the life of the account and during this proceeding. Maydak traded the Lee account with no apparent compensation by Lee. Maydak made the first demand to Peregrine for the return of "our funds." Maydak filed the reparations complaint, and the Keith Maydak Foundation paid the filing fee. After he was dismissed as a complainant, Maydak continued actively to assist Lee by providing several declarations, by making legal arguments on Lee's behalf under the guise of his declarations, and by producing a copy of a prison regulation. Maydak has continued throughout this proceeding to make legal threats against Peregrine.⁵ See finding of fact 12, below. Also,

⁵ In support of its contention that Maydak is litigious, Peregrine produced a wire report about a case where Maydak had sued a bottler of olive oil for exaggerating the number of servings on the label. According to the wire report, the Pennsylvania Superior Court dismissed the claim: "We find this case extremely hard to digest. . . . Not every minor inconvenience is actionable." [Exhibit B to Peregrine's Response to Lee's Response to Notice (filed January 11, 1999).]

Maydak has attempted to circumvent adverse discovery rulings in the instant case with subpoenas in another closely related law suit. Soon after Maydak was dismissed as a complainant in the instant matter, Maydak initiated a law suit U.S. District Court against Peregrine, the U.S. Bureau of Prisons and various officials of the Treasury Department and U.S. Attorneys office. Lee later joined that suit as a co-plaintiff. Maydak and Lee claimed that the Treasury Department agent had violated various rights by disclosing his incarceration to Peregrine, and that Peregrine had inappropriately disclosed personal financial information to the U.S. Attorney. Two weeks after an adverse discovery ruling in Lee's reparation case, Maydak in the federal law suit had a subpoena served on Peregrine which contained requests that were virtually identical to those that had been stricken in the adverse ruling. [Compare Lee's motion to compel (filed August 14, 1998) and discovery ruling dated September 15, 1998, with Maydak's subpoena dated September 28, 1998 (Exhibit E to Peregrine's Motion for discovery sanctions, filed November 19, 1998).]

Maydak and Lee may not be cellmates, but they share mutual interests in addition to their joint venture in the Peregrine account and their coordinated participation in this proceeding and the related lawsuit. These mutual interests and enterprises include: the use of Chrissy's News as a point of contact for mail, telephone calls and fax communications; the co-ownership of the house in McKeesport that they both claim will be their residence upon release from prison; and the co-ownership in Confidential Services of America. In contrast to the total lack of any evidence that Lee compensated Maydak for trading his account, the evidence shows that Lee received benefits from Maydak in the form of payments by Chrissy's News and the right to reside eventually in the McKeesport house in exchange for a negligible ownership interest.

[See front and back of complaint form, and check for filing fee (mailed April 17, 1998); Lenz letter to Lee, dated April 22, 1998; Maydak's letter to Peregrine dated April 3, 1998 (Exhibit F to Answer); ¶ 11 of Lee's "Traverse" to Peregrine's Answer; Maydak's first Declaration (filed July 13, 1998); ¶¶ 2-3 of Lee's Verified Statement (filed September 4, 1998); Maydak's second Declaration (filed September 4, 1998); Maydak's subpoena dated September 28, 1998, and Maydak's letter to Wing dated October 26, 1998 (Exhibits E and F, respectively, to Peregrine's Motion for discovery sanctions, filed November 19, 1998); Lee's "amended" reply to interrogatory 10 (Exhibit B to Peregrine's Motion for discovery sanctions); ¶¶ 6, 8 and 9 of Lee's Reply to Peregrine's motion for discovery sanctions; ¶¶ 11, 17, 20 and 21 of Lee's Verified Responses to Notice (filed December 22, 1998); Maydak's third Declaration (filed December 28, 1998); Limited Power of Attorney, and Trader Information Form (Exhibits B and C, respectively, to Wasendorf Verified Statement, filed January 7, 1999); Peregrine's Response to Complainants' Response to Notice (filed January 7, 1999); and Peregrine's Motion to Leave for Supplement the Record, and attached exhibits (filed January 11, 1999).]

4. Anarchists, International, Incorporated purportedly was the source of the funds deposited in Lee's account. Lee asserts that he owns 13% of Anarchists, International. [See Lee's amended reply to interrogatory 12.] In this connection, Lee submitted an unsworn "Affirmation" by Michael Sussman of Great Neck, New York, which raised more questions than it answered:

I am the Director of Anarchists, International ("AI"). I do not intend to testify in this proceeding. . . . In late 1997, Mr. Lee asked AI to fund his commodity account at PFG with \$30,000. Because AI was under obligation to reimburse Mr. Lee for indemnifications, investments, a note loan and a sale of physical assets, AI agreed to Mr. Lee's request. However, due to

ongoing financial problems, AI did not have the owed funds available. Therefore, AI asked an affiliate to pay Mr. Lee, an agreement that AI would reimburse. . . . It is my understanding that the payment was made through a liquidation of shares in a group of Chinese stocks via Tiger Funds. On information, the liquidating instruction transmitted funds through Anglo Irish Bank. . . . The records of the bank are not available, nor has AI ever had them available to it.

[Sussman Affirmation; underlining added for emphasis; paragraph numbers in original deleted (filed January 4, 1999).]

5. Chrissy's News is a d.b.a. for the Keith Maydak Foundation. Chrissy's News paid the filing fee for the reparations complaint by a check signed by "Christine Maydak, Sec." In the account application, Lee and Maydak identified Chrissy's News as their employer, and stated vaguely and tersely that the nature of Chrissy's News' business was "retail."⁶ Lee designated Chrissy's News to receive his account statements and to receive phone calls.⁷ Although Lee represented to Peregrine that he had been employed by Chrissy's News for four years, when asked in discovery to describe his relationship with Chrissy's News, he denied that he was employed by Chrissy's News, and at the same time vaguely and tersely stated that he "receives payments from Chrissy's News." Lee also simply refused to describe Maydak's relationship with Chrissy's News. [See complaint; Lee's amended replies to interrogatories 4, 9, 10, 13 and 17 and Lee's replies to requests for admissions 1, 2 and 3 (Exhibit A to Peregrine's Motion for discovery sanctions, filed

⁶ The web site for the Foundation did not mention any "retail" activities as that term is traditionally understood.

⁷ Lee similarly also designated Chrissy's News as the service address for the instant proceeding.

November 19, 1998); and ¶ 26 to Lee's Supplemental Verified Statement (filed December 22, 1998).]

The account opening:

6. On or about November 6, 1997, Lee submitted an Account Application to Peregrine.⁸ [Exhibit to complaint, Exhibit A to answer, and Exhibit A to Wasendorf verified statement.] With his signature, Lee attested and agreed that the information provided in the account application was "complete and accurate." In paragraph 15 of the customer agreement, Lee agreed and warranted that "all of the information provided in the information portion of this booklet is true, correct and complete." [Emphasis added; Exhibit B to Answer.] However, in fact, Lee had concocted a false and duplicitous profile by stringing together half-truths, technical truths, exaggerations and one outrageous omission. Lee listed his employer's as Chrissy's News; listed his "account-mailing address" and "street address" as c/o Chrissy's News, 500 Lincoln Highway, N. Versailles, Pennsylvania; listed his "account residence address" at 613 Cross Street E. McKeesport, Pennsylvania; and listed Chrissy's News' two phone numbers as the numbers to contact him. Lee also exaggerated his financial status, as noted in finding 7 below. Most significantly, Lee did not disclose that he was incarcerated.

On November 18, 1997, Lee granted trading discretion over his account to Keith Maydak, by submitting various signed discretionary account documents. [Exhibit to

⁸ Neither side has explained how Lee obtained the account application documents; and neither side has referred to any other written or verbal communications during the account-opening.

Complaint, Exhibit B to Answer, and Exhibit B to Wasendorf Verified Statement.] Lee gave the McKeesport address as his "agent's address," and gave Chrissy's News' toll-free telephone number as his agent's number. Lee also did not disclose Maydak's incarceration.

Maydak completed a Trader Information Sheet on which he stated that he was employed as a "data base manager" for Chrissy's News. [Exhibit C to Wasendorf verified statement.] With his signature, Maydak attested that the information provided was "complete and accurate." However, Maydak similarly did not reveal that he was incarcerated.

Maydak and Lee explain that they did not disclose their incarceration because the Peregrine forms did not specifically ask whether they were incarcerated, and because under their interpretation of certain unspecified provisions of Federal law a prison is not considered a residence. [See ¶ 16 of Maydak Declaration (filed July 13, 1998); ¶ 6 of Lee's Declaration (filed July 13, 1998); ¶¶ 10-11 of Lee's Traverse to Peregrine's Answer (filed July 13, 1998); ¶¶ 14-15 of Maydak's second Declaration (filed September 4, 1998); ¶ 9 of Lee's Verified Response to Notice (dated December 22, 1998); ¶ 26 of Lee's Supplemental Verified Statement (filed November 10, 1998); and Maydak's letter to Wing dated October 26, 1998 (Exhibit E to Peregrine's Motion for discovery sanctions, filed November 19, 1998).]

7. In Paragraph 16 of the Customer Account Agreement, Lee represented and warranted that the financial information disclosed to PFG in the account application was an accurate representation of his current financial condition. In this connection, Lee stated in the account application that his total estimated annual income was over \$100,000, that his

net worth was over \$1,000,000, that his liquid assets were over \$200,000, and that he had over \$100,000 in risk capital. However, Lee's incomplete and deliberately vague "amended" reply to interrogatory 11 indicates that these figures were grossly inflated.

8. Paragraph 6f of the customer contract provided that: "In the event of any other circumstances or developments that PFG deems appropriate for its protection, and at PFG's sole discretion, it may sell any or all commodity futures contracts held for Customer." Paragraph 25 of the customer contract provided that: "Customer agrees to indemnify PFG any and all damages, costs and expenses, including attorneys fees, incurred by PFG arising out of Customer's failure to fully and timely perform Customer's agreements herein or should any of the representations and warranties fail to be true and correct." [Exhibit A to Answer.]

9. On November 19, 1997, Complainant funded his account with an international wire transfer of \$28,557.50 from the Anglo Irish Bank. [See ¶¶ 3-9 of Answer; Exhibit D to Answer; and ¶¶ 4-17 of Wasendorf Verified Statement (filed January 7, 1999).] On this record, the actual source of these funds cannot be determined, because Lee has blatantly refused to provide meaningful replies to related requests. The willfulness of this refusal is underscored by the fact that Lee has not shown that he made any effort to obtain more complete and responsive information from sources whose ready cooperation can reasonably be presumed: *i.e.*, Maydak, who obviously shares with Lee strong mutual interests; Anglo Irish Bank, which presumably is Lee's agent; and Anarchists International, of which Lee purportedly owns a significant share. Lee's refusal to provide a meaningful explanation for source of the funds underscores Lee's general lack of candor in his dealings with Peregrine, as well as the vexatious nature of his conduct during this proceeding. [See

¶ 10 of Lee's "Traverse" to Peregrine's Answer, and ¶ 10 of Maydak declaration (filed July 13, 1998); ¶¶ 8 and 10 of Lee's Motion for a Protective Order (filed August 17, 1998); ¶¶ 3-7 of Maydak's declaration (filed September 4, 1998); ¶¶ 1-4 of Lee's Verified Statement (filed September 4, 1998); Lee's amended reply to interrogatory 12 (Exhibit B to Peregrine's Motion for discovery sanctions (filed November 19, 1998); ¶ 6 of Lee's Answer to Peregrine's Motion for discovery sanctions (filed November 30, 1998); ¶¶ 9-12 of Maydak's Declaration (filed December 28, 1998); and ¶¶ 2-4, 8, and 14-16 of Lee's Supplemental Verified Statement (filed December 28, 1998).]

Trading the account:

10. Maydak directed the trading activity for fourteen weeks, from November 24, 1997 to February 23, 1998. Maydak's trading activity over these 14 weeks was concentrated and limited to three distinct time-frames: the first period during the first three weeks involved transactions on seven separate days ; the second period during the seventh through ninth weeks involved transactions on five separate days; and the third period during the thirteenth week involved transactions on two separate days. Peregrine sent all confirmation and monthly account statements to Lee in care of Chrissy's News. [See account statements, (attachments to addendum to complaint, filed May 26, 1998)]

Neither side has produced order tickets and phone records or described the oral communications between Peregrine and Lee and Maydak during this time. Also, Lee has not offered affidavits by employees of Chrissy's News who had knowledge concerning the forwarding of account statements and concerning any phone messages to Lee and Maydak. [See Lee's amended reply to interrogatories 3 and 13.]

Liquidating the Account:

11. On March 3, 1998, Timothy C. Christine, an agent with the U.S. Secret Service, advised Peregrine that Maydak and Lee were federal prisoners whom he was investigating for possible violations of their telephone privileges. Christine further advised Peregrine that a restitution order had been entered against Keith Maydak,⁹ and that the U.S. Attorney may be seeking a restraining order against the transfer of any funds from Lee's account.¹⁰ On March 4, 1998, Peregrine liquidated all of the open positions in Lee's account, which realized an aggregate net profit of \$424.60, and established an account balance of \$21,285.58. [See March 4 confirmation statement and March 1998 monthly statement (attachments to addendum to complaint, filed May 26, 1998).]

Aftermath:

12. On March 10, 1998, the United States Attorney issued to Peregrine a Subpoena to Testify Before Grand Jury that requested documentation concerning Lee's account. [¶ 13 of Answer.] By letter dated April 3, 1998, Maydak demanded the return of the entire amount invested:

[M]yself and Lee are in the process of commencing a civil action against Peregrine for invasion of privacy, breach of fiduciary duty, fraud, conversion, unjust enrichment, etc. More importantly, we are proceeding with a formal complaint for violations of Title 8, USC §§1 et seq. . . . [W]e will settle our claims for the return of our funds, i.e., along with the \$10,000 for your breach of duties, of which is a fraction of the compensatory damages which have occurred as a result of your unlawful conversion.

⁹ *United States v. Maydak*, CR 93-133.

¹⁰ As noted above, such a restraining order apparently has not been issued.

[Maydak's letter to Peregrine dated April 3, 1998 (Exhibit F to Answer).] This letter would be but the first of many threats by Maydak to entangle Peregrine in law suits. [See ¶¶ 2 and 11-12 of Maydak's first Declaration (filed July 13, 1998); Maydak's Subpoena dated September 28, 1998, and Maydak's Petition to enforce Subpoena (Exhibit A to Peregrine's Motion for Leave to Supplement Record; ¶¶ 2, 3, 6, 7 and 11 of Maydak's third Declaration (filed December 28, 1998); and Maydak's letter to Wing dated December 16, 1998 (exhibit E to Wasendorf Verified Statement, filed January 7, 1999).]

By letter dated April 10, 1998, Lee's attorney, Linda Ktsanes of Chicago, Illinois, demanded that Peregrine return Lee's account balance.¹¹ [Exhibit "E" to Answer".] Ktsanes and Peregrine's general counsel, Rebecca Wing, then reached an oral settlement, and Ktsanes asked Wing to prepare a release that reflected their agreement. On April 27, 1998, Wing forwarded a release, which provided in pertinent part:

For and in consideration of . . . \$21,285.58 . . . Lee, for himself, his agents (including but not limited to Keith Maydak) . . . [releases Peregrine] from any and all claims, demands, sums of money, actions, rights, causes of action, obligations, and liabilities of any kind or nature whatsoever that Lee may have . . . or hereafter may have or assert to have . . . against Peregrine

[Underlining added; Exhibit G to answer.] Upon receipt, Ktsanes advised Wing that the release was acceptable, and that she would forward it to Lee for his signature. [See 3rd to 5th paragraphs on 1st page of factual description to Complaint; ¶¶ 14-16 of Answer; ¶ 7 of Lee's Motion for a Protective Order (filed August 17, 1998); ¶¶ 5-11 of Lee's Verified Statement (September 4, 1998); and Lee's amended reply to interrogatory 3.]

¹¹ Lee did not retain Ktsanes to represent him in the reparations proceeding.

However, Lee did not sign the release, which Peregrine discovered when it received the reparation complaint, filed by Maydak on April 17, 1998. Peregrine's subsequent effort to renegotiate the terms of the release were rebuffed by Lee.¹² Lee asserts that he repudiated the agreement because he objected to the underlined language. In this connection, Maydak argues that Lee lacked the power to bind him as Lee's agent. [See 3rd paragraph of Lee's May 19, 1998 letter to Lenz; ¶¶ 16-17 of Maydak's second Declaration (filed September 4, 1998); ¶¶ 1-9 of Lee's Traverse to Answer (filed September 4, 1998); ¶¶ 9-15 of Lee's Verified Statement (filed September 4, 1998); Lee's Supplemental Verified Statement (filed November 10, 1998); Lee's amended reply to interrogatory 16; and ¶ 7 of Peregrine's Verified Response to Lee's Response to Notice (filed December 28, 1998).]

Discussion and Conclusions

The prisoner status of a prospective customer, or the person who would be designated to trade that customer's account, is patently and unequivocally material to any commodity broker that may considering entering a contractual relationship with the prisoners. Incarceration in a federal prison implicates, among other things, issues of personal and financial integrity, not to mention the potential, and probably inevitable, problems involved in contacting the customer or the trader in volatile market conditions. Lee and Maydak may believe that their imprisonment is unjust, but before Peregrine exposed itself to tremendous financial and legal risk, it was entitled to know of their

¹²Lee also refused to participate in a scheduled settlement conference, because he did not want to devote his limited phone privileges for that purpose. According to Lee, Bureau of Prisons regulation 540.100 limits inmates to one phone call per month. (Lee's reply to Notice dated December 14, 1998.)

incarceration so that it could confirm matters such as whether Lee's funds were legitimate, whether it was reasonable to trust Lee and Maydak, whether Lee or Maydak could reliably be promptly and frequently contacted, and whether Lee's and Maydak's claims that they were the victims of miscarriages of justice were plausible and legitimate. Lee's and Maydak's quibbling rationale for not disclosing their incarceration only serves to underscore that Peregrine acted reasonably in its prompt determination to terminate its relationship and to liquidate the positions in Lee's account.

Lee's duplicity by itself would not have justified Peregrine's decision not to return the account balance immediately upon demand by Lee's agent, Maydak. But here Peregrine also had received apparently reliable notice of an imminent restraining order against the funds in the account. As a result, Peregrine was forced to balance its obligation to return Lee's funds with its obligation not to frustrate knowingly an imminent restraining order. In these circumstances, Peregrine did not act improperly in waiting a reasonable time before returning the funds once it became apparent that a freeze order was not forthcoming. Before a reasonable time had expired, however, Maydak intervened by filing the reparations complaint on behalf of Lee. Lee in turn hampered the ultimate return of his funds by refusing to participate in a scheduled settlement conference and by facilitating Maydak's vexatious conduct.

Lee has engaged in vexatious conduct throughout this proceeding: by seeking excessive, speculative and punitive damages; by threatening to bring collateral law suits; by producing disingenuous and evasive statements; by raising spurious arguments; and by attempting to circumvent discovery rulings. Lee's conduct, including Maydak's conduct on Lee's behalf, has forced Peregrine to incur unnecessary costs and has hampered efforts to

facilitate a return of the funds in Lee's account. In these circumstances, an award of attorneys fees and costs is warranted.

ORDER

Lee has failed to establish any violations by Peregrine. However, in the absence of any restraining order, Lee's status as owner of the account entitles him to a return of the account balance,¹³ less the award of attorneys fees.¹⁴

Lee has engaged in vexatious conduct throughout much of this proceeding, which entitles Peregrine to an award of attorneys fees and costs incurred in defending against Lee's vexatious conduct. The award amount, which is less than the total amount sought by Peregrine, reflects Lee's right to initiate this action to protect his interests, and is based on Peregrine's fees and costs incurred after it requested the settlement conference in which Lee refused to participate.¹⁵

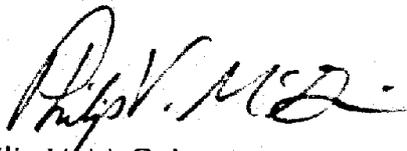
Accordingly, the complaint against Peregrine Financial Group is DISMISSED; and Paul Lee is ORDERED to pay to Peregrine Financial Group \$4,884 for attorneys fees and costs incurred in defending against Lee's vexatious conduct. Peregrine Financial may deduct this amount from the cash balance in Lee's account, before returning the remainder of the account balance to Lee.

¹³ Lee is not entitled to interest on the amount returned. See CFTC rule 1.29.

¹⁴ In order to facilitate the prompt return of his funds, Lee should forward to Peregrine's counsel written detailed instructions on how payment should be made.

¹⁵ The award of \$4,884 is based on 16.5 hours, billed at \$205 per hour. See Verified Statement of Rebecca Wing (filed January 7, 1999).

Dated June 16, 1999.

A handwritten signature in black ink, appearing to read "Philip V. McGuire". The signature is written in a cursive style with a horizontal line at the end.

Philip V. McGuire,
Judgment Officer