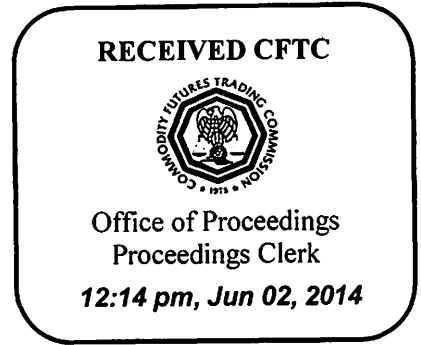




U.S. COMMODITY FUTURES TRADING COMMISSION

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Office of Proceedings

BRETT L. RETTURA,
Complainant,

v.

GAIN CAPITAL GROUP LLC,
d/b/a FOREX.COM, and
TRADESTATION SECURITIES, INC.,
Respondents.

CFTC Docket No. 11-R28

INITIAL DECISION

Introduction

Brett Rettura seeks to recover \$1,977 that he claims he lost on four open forex positions that were transferred as part of a bulk assignment from Gain Capital Group to TradeStation Securities.1 Rettura's complaint is not a model of clarity. Moreover, his subsequent submissions failed to provide meaningful clarification or substantiation.2 As can best be gleaned, the gravamen of Rettura's complaint is that respondents somehow misappropriated funds from his account in connection with the bulk assignment.

1 See page one of factual description of Rettura's reparations complaint: "General false use of margin and use of customer equity/liquidity/margin to open trades within their own market making capacity. Broker utilized customer margin in order to open trades during technology transition. . . . Trading accounts were closely monitored during transition. Improper margins were reported on the day of and the week or two after the transition. Inaccurate positions were reported for almost a week after the April 8th 2011 transition. These positions and margins were false due to the use of customer margin to open trades within their market making capacity. . . . The use of customer margin to open positions within their own market-making capacity cause[d] a net loss of -\$1977.10.

2 In this connection, Rettura failed to produce discovery replies, and as a result I have imposed adverse inverse sanctions imposed pursuant to CFTC rules 12.35(a), (b) and (c). See Order dated September 24, 2013, and bulleted items on pages 7-11 of respondents' joint final verified statement and closing arguments. The conclusions and findings below are based, in part, on these adverse inverse sanctions.

In response, Gain and TradeStation deny any violations, assert that the bulk transfer was handled in accordance with CFTC and NFA rules, and further assert that the forex positions on which Rettura's complaint are based had already suffered market losses by the time of the transfer. As explained below, after carefully reviewing the parties' documentary submissions, it has been concluded that Rettura has failed to establish any violations by Gain and TradeStation.

Factual Findings

The parties

1. Brett Rettura, a resident of Bethel Park, Pennsylvania, when he opened his TradeStation account, had an annual income between \$50,000 and \$99,000, and an approximate net worth and liquid net worth both between \$200,000 and \$499,000. Rettura had two to three years of extensive forex trading experience, averaging 101 to 500 trades per month. He also had traded options and futures for two to three years.

2. Gain Capital Group LLC ("Gain"), located in Bedminster, New Jersey, is a registered futures commission merchant and retail foreign exchange dealer. Up until April 8, 2011, Gain served as the clearing firm for TradeStation's forex business.

3. TradeStation Securities, Incorporated (TradeStation), located in Plantation, Florida, is a discount online broker-dealer that provides an electronic trading platform for retail forex customers.

When Rettura first opened his accounts with TradeStation, in 2010, it was a registered futures commission merchant that cleared its forex business through Gain. Soon before the bulk assignment in April 2011 that forms the basis for Rettura's claim, all of TradeStation's forex business was transferred from Gain to TradeStation Forex,

Inc. (n/k/a IBFX, Incorporated)(heinafter referred to as “TradeStation Forex”), an affiliated retail foreign exchange dealer.

The bulk transfer

4. Rettura maintained several accounts with TradeStation since May 2010.

In 2011, TradeStation took steps to self-clear its forex business under its affiliate, the newly registered TradeStation Forex.

TradeStation and Gain delivered to Rettura the NFA Rule 2-40 advance notice for firm-to-firm bulk assignment of forex accounts.³ On March 31, 2011, via email,

TradeStation notified its customers, including Rettura:

We are proud to introduce TradeStation Forex, Inc. (TSF"), a new subsidiary of TradeStation Group, Inc. ("TSG") and a new affiliate of your current forex broker, TradeStation Securities, Inc. ("TSI"). TSF, as a Retail Foreign Exchange Dealer, is registered with the Commodity Futures Trading Commission ("CFTC") and is a member of the National Futures Association ("NFA"). TSF will offer the same high level of service to which you have become accustomed through TSI.

At the end of the trading session on Friday, April 8, 2011, TSI will cease to act as introducing broker for your forex account and, unless you object or otherwise transfer your account, it will be transferred to TSF as your new clearing firm and counterparty. This means that the relationship you once had with TSI introducing your forex account to GAIN will be discontinued at that time. You will be given sufficient advance notice of the conversion, at which point you will no longer be able to purchase or sell foreign currency contracts through TSI but will be able to conduct such trading at TSF, with TSF acting as counterparty once GAIN transfers your account to TSF. . . .

Tomorrow, you will receive a notice from GAIN explaining the reason for the transfer, the details of the transfer, and the name of the transferee, your new clearing firm and counterparty, i.e., TSF. This GAIN notice will also inform you that you are not required to accept the transfer, and will provide you with additional information with respect to the transfer. If you do not object to the conversion or otherwise transfer your account to

³ See NFA Interpretive Notice 9058. NFA rule 2-40(a) and the Interpretive Notice require compliance with CFTC rule 5.23.

another forex firm, your account will be transferred to TSF and you will thereafter be subject to the New Agreement. . . .

On March 31, and April 6 and 7, 2011, via email, Gain delivered the following notice to its customers, including Rettura:

Dear Client,

Foreign exchange ("forex") trades you make in your GAIN Capital Group, LLC account introduced by TradeStation Securities, Inc. are currently executed and cleared by GAIN Capital. In addition, GAIN Capital holds custody of the assets in our account.

TradeStation Group, Inc. recently established a new subsidiary, TradeStation Forex, Inc. (TradeStation Forex). . . . As a result, GAIN and [TradeStation] have made arrangements to transfer your account to TradeStation Forex on Friday, April 8, 2011.

If you desire to transfer your account to TradeStation Forex, then no action is required. Effective April 8, 2011 at approximately 5:00 pm ET GAIN Capital will transfer your account to TradeStation Forex and following such transfer you will be bound by the TradeStation Forex Customer Agreement.

In order to facilitate the transfer of your account, trading will be suspended in your account at 3:00 pm ET on Friday, April 8, 2011. In addition, your positions will be marked to the market, which will result in a gain or loss in your account. . . .

As explained in Gain's and TradeStation's notices, Rettura could have remained with Gain. However, by remaining silent and not opting out of the assignment, his accounts moved from Gain during the transition weekend, Friday April 8, 2011 through Monday, April 11, 2011.

5. During the transition weekend, forex positions held in customers' accounts, including Rettura's, were offset at Gain, then reinstated on the books of TradeStation Forex, at no additional risk or cost to customers. In connection with the offset Gain reported that four positions had a \$1,976 loss. However, Rettura's account was not

adversely affected because the identical forex positions were placed back in his accounts at Trade Station Forex. Moreover, TradeStation did not use Rettura's margin to do anything other than maintain the status quo.

6. Other than changing clearing firms, the only impact on Rettura's accounts was the realization of a loss that had been caused solely by his trading decisions and market forces. By maintaining the status quo during transition, Rettura was able to continue managing his open contracts at TradeStation Forex just as he had done at Gain.

Rettura's trades in dispute

7. On January 10, 2011: (a) Rettura sold, as an open order, 10,000 USD/CHF at a deal rate of .96431. (Contract A); (b) Rettura sold, as an open order, 10,000 EUR/USD at a deal rate of 1.29043 (Contract B); (c) Rettura sold, as an open order, 10,000 USD/CHF at a deal rate of .96423 (Contract C); and (d) Rettura sold, as an open order, 10,000 EUR/USD at a deal rate of 1.29052 (Contract D).

8. On March 31, 2011: Contract A had an unrealized loss totaling \$1,253; Contract B had an unrealized gain of \$4922; Contract C had an unrealized loss of \$1,252; Contract D had an unrealized gain of \$491; and Rettura's combined unrealized loss for these four contracts totaled \$1,523.⁴

9. Over the transition weekend April 8-11, 2011, Rettura's forex account was transferred, as described above.

10. On April 19, 2011, Rettura closed out the four forex positions for a net loss of \$1,639.

⁴ Amounts rounded to the nearest dollar.

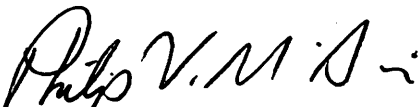
Conclusion

Rettura has not produced a scintilla of evidence that TradeStation and Gain acted improperly in connection with the transfer of his forex positions. Thus, Rettura must bear full responsibility for his losses on those positions.

ORDER

Brett Rettura has failed to establish any violations by respondents causing damages. Accordingly, the complaint in this matter is dismissed.

Dated June 2, 2014.


Philip V. McGuire,
Judgment Officer