

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

LINDA IANNOTTI,
Complainant,

v.

MAN FINANCIAL, INCORPORATED,
Respondent.

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CFTC Docket No. 03-R002

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COMMODITY FUTURES TRADING COMMISSION
WASHINGTON, DC 20541

INITIAL DECISION

Linda Iannotti's complaint arises from two futures trades, one involving the purchase of an August silver contract a week before the last trade date, and the other involving the liquidation of an August gold contract three days before the last trade date. Iannotti alleges that Man Financial, Incorporated mishandled an order "to purchase one contract of the 'active' month of silver" – *i.e.*, the September contract -- by mistakenly purchasing a silver future contract in the spot month – *i.e.*, the August contract. Iannotti also alleges that Man improperly forced her to liquidate the gold futures contract, which she argues was adequately margined. In reply, Man asserts that it bought an August silver contract because Iannotti's designated agent, her husband Frank Iannotti, had clearly given an order to buy an August silver contract. Man denies that it forced Iannotti to liquidate the gold contract, and asserts that it acted in good faith when it advised Iannotti to post additional margin to maintain the gold position over the weekend.

Both sides waived an oral hearing. Thus, the findings and conclusions below are based on the parties' documentary submissions.¹ The record consists principally of recordings of conversations between various employees of Man and Frank Iannotti, as well as various affidavits and business records.² As explained below, after carefully reviewing the record, it has been concluded that Linda Iannotti has failed to show any violations causing damages.

Factual Findings

The parties

Linda Iannotti, a resident of Orange, Connecticut, stated on her account application that she was 57 years old and was employed as a patient coordinator for Hand Therapy Associates. She indicated that her individual annual income was \$36,000, and that her individual liquid net worth (*i.e.*, exclusive of her residence) was \$15,000. Her investment experience was limited to trading stocks.

Frank Iannotti, Linda Iannotti's husband, traded for his wife's self-directed, discount account pursuant to a written authorization. Frank Iannotti also maintained a separate Man account in his own name. During one of the recorded conversations, Iannotti told a Man employee that he was 59 years old and had been trading futures since 1965. Since he exclusively dealt with Man, all references below will be to Frank Iannotti.

¹ The essential facts are not in dispute because Man produced a recording of all of the material conversations. I did schedule an oral hearing to give the parties an additional opportunity to supplement the evidentiary record. However, Iannotti filed a request to waive the hearing because she and her husband "do not feel that there is anything else we can add to this case that we have not already submitted." Man then informed my office that it did not object to a decision based on the documentary record. As a result, Iannotti's request was granted and the hearing was cancelled.

² The evidentiary record includes a tape cassette of recorded conversations from July 23 to July 26, 2002; respondents' summary of recorded conversations (Exhibit A to Pinkerton's affidavit); the COMEX Time & Sales reports for the August silver contract and the August gold contract; the desk order ticket for the disputed silver order; the account opening package for Linda Iannotti's account; Linda Iannotti's replies to Man's interrogatories; Frank Iannotti's two affidavits; Patrick Pinkerton's affidavit; Karl Ashford's affidavit; and Matthew Bim-Merle's affidavit.

Man Financial, Incorporated is a registered futures commission merchant located in Chicago, Illinois. Man Financial is a clearing member of all the major North American futures exchanges, including the New York Board of Trade.

Patrick Pinkerton is the manager of Man's discount futures trading center. Karl Ashford is the Man order desk clerk who handled the disputed silver order and who frequently spoke with Iannotti.

The silver trade

On July 23, 2002, at about 11:42 a.m., Iannotti called Man and placed two orders. The first order was a market order to buy one August gold future. This is the gold contract that Iannotti claims he would be improperly forced to liquidate. The second order was the disputed silver order. The recording of this conversation contradicts Iannotti's claim that he had placed an order "to buy one [silver] contract of the active month." Rather, the recording establishes that Iannotti never expressed an intention to buy a contract in the "active" month, and that Iannotti placed an unambiguous order to buy one August silver contract. The recordings of subsequent conversations establish that Iannotti had meant to buy a silver contract in the "active" month, which by July 23rd had shifted from the August spot contract to the September contract.

The recording of the 11:42 a.m. conversation also shows that Ashford did not inject any false or inaccurate information, and that it was Iannotti who propelled the conversation toward the mistaken purchase of an August contract. Iannotti did this primarily by peppering Ashford with new questions before Ashford could provide complete answers to previous questions. Iannotti first asked Ashford if August was the "active" silver month, and Ashford replied "I'm not sure, let me think." Before Ashford could answer Iannotti's first question, Iannotti interjected that his screen showed that silver was trading at 493 and ½, and Ashford replied that

his screen showed that the August silver had last traded at a lower price than that -- 492 even.³ Before Ashford could confirm the latest price for the September silver, Iannotti interrupted with a question about the margin requirements for the August silver contract. Finally, as soon as Ashford answered Iannotti's margin question, but before Ashford could finish trying to answer Iannotti's first two questions, Iannotti abruptly instructed him to place a market order to buy one August silver contract, which Ashford promptly did:

Iannotti: I got another order. What's the active month in the silver? Is that August also?

Ashford: I'm not sure. Let me check. --

Iannotti: Four ninety-three and a half according to --

Ashford: Four ninety-two even, I have the last on the August silver. --

Iannotti: August silver is what?

Ashford: Four ninety-two even.

Iannotti: Four ninety-two?

Ashford: That is correct.

Iannotti: All right. And what's the maintenance [margin] on that? Is that \$13.50 also?

Ashford: Correct.

Iannotti: Okay. Buy one --

Ashford: Hold on. Go ahead.

Iannotti: Buy one August silver, at the market.

Ashford: 65126. Buying one singular August silver. Correct?

³ It appears that Iannotti was using a quote service that reported the current price of the most actively traded silver contract, but that did not clearly identify the contract month that was being quoted. Since the last trading day for the August contract was fast approaching, Iannotti would have had reason to think that trading volume had shifted from the expiring August spot contract to the September contract. Thus he would have been unsure whether he was looking at the prices for the August silver contract or the September silver contract.

Iannotti: That's correct.

[Underscoring added for emphasis.]

When Iannotti called back fifteen minutes later to get the fill prices, the Man order desk told him that they did not have any fill reports, because trading in the gold and silver markets was heavy and hectic. Iannotti then specifically asked for the latest prices for the August silver and August gold, and was told that the August silver had last traded at 497 even. Iannotti did not question that price, and did not ask about the price for the September silver.

At about 12:45 p.m., Man informed Iannotti that the silver order had been filled at 497. Iannotti immediately complained because his screen reported that the highest price during the past hour had been 492:

Iannotti: And what about JB1-2054?

Ashford: You bought an August silver. \$497 even.

Iannotti: What do you mean \$497? The high was \$492.

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Ashford: What are you talking about sir? Are we looking at the same thing? August silver?

Iannotti: Yeah. What do you have?

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Ashford: Well, call us tomorrow. We'll do a time and sales on it, and then we'll talk to the floor.

Iannotti: It's got to be a mistake. I know, because when I put the order in, the highest it was at that point was \$[4]92, and it went right to \$488.

Later that day, Iannotti and Ashford continued their conversation:

Iannotti: It couldn't possibly have been \$497. I mean. That's unbelievable. I mean. The active month is August, right? [sic] I mean. They couldn't have bought the spot month?

Ashford: What month is that?

Iannotti: Well, the active month is September. . . . Did they screw up and buy the spot month? . . . I don't know who I gave the order to, but I said, 'I want the active, I want August.' [sic] . . .

Ashford: They got you August.

Iannotti: August? How could they get me August? August is the spot month, isn't it?

Ashford: That's what you asked for.

Iannotti: Oh my God. I asked for the – in other words, you got me down as buying August at \$497? . . .

Ashford: That's correct.

Iannotti: The active month is September? Right? . . . I asked for the 'active' month.

Ashford: No. You placed the order as August. . . . I remember those two orders. You had a gold, and a silver. And you said 'August.'

Iannotti: I didn't say, 'I want the active month'? . . .

Ashford: We'll have to listen to the tape tomorrow, sir.

[Underscoring added for emphasis.] As can be seen, it was Iannotti who tended to confuse the August and September contracts, and it was Ashford who accurately recalled the orders that Iannotti had placed.

The next day, Ashford told Iannotti that he had listened to the tape. Ashford reported that the tape confirmed that Iannotti had definitely instructed Man to buy one August silver, before Ashford had an opportunity to provide the price for the September contract or to determine whether August or September was the "active" contract. Ashford also told Iannotti that since he

was trading through the discount desk, it was Iannotti's responsibility to know what contract month he wanted before he placed an order. Ashford concluded by saying that he would try to get an adjustment for Iannotti.

Later that day, Iannotti called the Man order desk and said, "Tell [Ashford] I want out of the trade." Man construed this as a sell order, and sold the silver contract. Iannotti subsequently protested to Pinkerton that he wanted the whole trade busted out of his account and did not want the account debited for the loss on the trade. Pinkerton informed Iannotti that since Man had not made any mistake, Man would not bust or adjust the trade.

The gold trade

After the close on Thursday, August 25, Ashford told Iannotti that he had three more trading days -- until Tuesday, August 30 -- to sell the August gold futures contract. Ashford also told Iannotti that the equity balance in the account was \$1,973,⁴ and that Iannotti had \$614 in excess margin.

During the morning of Friday, August 26, the price of the August gold future dropped. Also during this time, Iannotti called Man several times to get the prices for the August, October and December gold contracts. At about 10:47 a.m., Iannotti told Ashford that he intended to sell that day: "I got till Tuesday, but I want to get out today." [Underscoring added for emphasis.] Ashford replied: "You've got to get out today, sir, because your margin is below that anyway. There's a hold on your position over the weekend." Iannotti then placed a limit order to sell at 303.50. A few minutes later, Iannotti placed a cancel-replace order, at a limit price of 303. This order would be filled just before 12:00 noon, but the fill would not be reported until 12:36.

⁴ The account statements issued by Man indicated that the Linda Iannotti account had a slightly greater equity balance: \$2,173. However, this \$200 discrepancy would prove to be immaterial, principally because Iannotti's limit order to sell the gold contract had already been filled (but not reported) before Man had advised Iannotti that he needed to post additional margin.

At about 12:11 p.m. – before Man had received confirmation that Iannotti’s limit order had been filled -- Ashford advised Iannotti that, since the market would soon close, he either had to wire more money immediately or place a cancel-replace market order to sell the August gold. After Iannotti and Ashford argued a bit about whether the account was actually under-margined, Iannotti acquiesced and placed a cancel-replace market order. Soon after the market closed at 12:30, Man informed Iannotti that his limit order to sell at 303 had already been filled, and thus that he was out of the market. Iannotti chose not to re-enter the gold market the following Monday, and instructed Man to close the account.

Conclusions

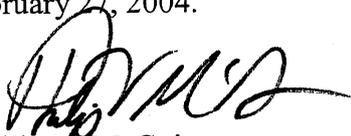
Linda Iannotti has failed to show by a preponderance of evidence that Man mishandled the order to buy a silver contract. By opening a discount account, Linda Iannotti agreed that her agent Frank Iannotti would be responsible for placing orders, a duty that included knowing what contract month he wanted before he placed an order. Here, Frank Iannotti had intended to purchase a silver contract in the most active month, and thus he was responsible for determining the active month before he placed the correct order. However, before Iannotti had learned definitively which month was the active month, he instructed Ashford to buy an August contract. Since Iannotti had never clearly expressed an intention to buy a silver contract in the “active” contract month, he could not reasonably expect Ashford to intuit a conflict between Iannotti’s intention and Iannotti’s order, and then to request further clarification, before accepting the order to buy an August contract. Thus, Iannotti has failed to establish any act or omission by Ashford that proximately caused Iannotti’s mistaken decision to buy an August contract.

Linda Iannotti also has failed to show by a preponderance of evidence that Man improperly forced the liquidation of the gold contract. Before Ashford first advised Frank Iannotti that Man would require additional margin to hold the gold position over the weekend, Iannotti had confirmed that the upcoming Tuesday was the last trading day for the August contract and had expressed an intention to sell the gold contract before the close on Friday. Consistent with his intention, Iannotti placed a series of limit sell orders, the last of which was filled a half hour before the close and twelve minutes before Ashford advised Iannotti either to post more margin or to place a cancel-replace market order. In these circumstances, Iannotti's allegation that Man used a bogus margin call to force the liquidation of the gold position is without merit.

ORDER

Linda Iannotti has failed to show any violations causing damages. Accordingly, the complaint against Man Financial, Incorporated is DISMISSED.

Dated February 27, 2004.



Philip V. McGuire,
Judgment Officer