

**,UNITED STATES OF AMERICA  
Before the  
COMMODITY FUTURES TRADING COMMISSION**

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NORR DIVERSIFIED, INCORPORATED,  
Complainant,

v.

ALARON TRADING CORPORATION; and  
PAUL BRITTAIN, Jr.,  
Respondents.

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CFTC Docket No. 05-R041

OFFICE OF PROCEEDINGS  
PROCEEDINGS CLERK

**INITIAL DECISION**

*Introduction*

Norr Diversified seeks to recover \$12,225 in trading losses for respondents' alleged failure to follow its trader's instructions to liquidate four short CRB Index options positions in a diligent manner. In reply, respondents deny any violations, and assert that complainant initially had rejected their advice to avoid the thinly traded CRB Index options market; assert that when she decided to exit the market she placed unrealistic limit orders; and assert that once complainant accepted their advice to place market orders, respondents diligently forwarded the orders for execution.

The findings and conclusions below are based on the parties' documentary evidence, sworn statements and oral testimony. Alaron never produced a much touted recording of the relevant conversations.<sup>1</sup> Nonetheless, I found that Brittain's testimony was generally more plausible, more consistent, and more detailed, and thus more reliable

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<sup>1</sup> Adverse inferences have not been taken for Alaron's non-production, because respondents had not been asked to produce the recordings.

than Dr. Khalil's testimony.<sup>2</sup> As explained below, I have concluded that complainant has failed to establish any violations causing damages by respondents.

### **Findings**

1. Norr Diversified, Incorporated is a Nevada corporation, formed by Zeinab Khalil and others to trade various instruments, including futures and options.

Dr. Zeinab Khalil, a/k/a Kelly, opened Norr Diversified's non-discretionary, discount account with Alaron about nine years before the disputed trade, and was authorized to trade futures and options for Norr Diversified. Dr. Khalil, a resident of Alta Loma, California, is a retired professor who taught graduate level courses in finance, business management, organizational behavior and human resources. Dr. Khalil has a Bachelor of Sciences two Masters degrees and a Ph.D degree in these fields. At the relevant time, Dr. Khalil was 65 years old, and had over 14 years experience trading securities and over 11 years experience trading commodities.

2. Alaron Trading Corporation is a registered futures commission merchant located in Chicago, Illinois.

Paul Britain, Jr., is a registered associated person with Alaron, who acted as Dr. Khalil's account executive at the time of the disputed orders.

3. Khalil initially traded in consultation with Brittain. However, in late January 2005, Dr. Khalil, began subscribing to a newsletter that was not associated with respondents, and placed a series of short February CRB Index puts and calls less than two weeks before expiration. Khalil does not dispute Brittain's assertion that he had warned her against these trades, principally because the CRB was an illiquid market, with "three guys in the pit, one

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<sup>2</sup> The hearing was re-scheduled once because Dr. Khalil was traveling out of the country for an extended period, and another time because counsel for respondents forgot to enter the hearing in his calendar.

doing the cross-word puzzle and two playing cards,” but that Khalil pooh-poohed his advice. On February 11<sup>th</sup> the options expired and Khalil made a modest \$645 aggregate net profit.

4. Thus emboldened, Khalil, on February 11<sup>th</sup> and 14<sup>th</sup>, shorted a new series of April CRB Index puts and calls: two 274 puts, two 276 puts, three 290 calls, and three 290 calls. Around the same time, Khalil forwarded a check for \$3,000, which was reported as received by the February 18<sup>th</sup> confirmation statement.

After about a week, the market began to move against the positions. According to Brittain, Khalil initially insisted on placing limit orders under the bid, ignoring his advice that she would not get out with those orders unless the market did an unexpected drastic turnaround. After a couple of days, at around 7:45 a.m., on February 22<sup>nd</sup>, Khalil placed four orders to offset the four short CRB positions: buy one April CRB 292 call at 2.80 or better; buy three April CRB 290 calls at 3.70 or better; buy two April CRB 276 puts at .30 or better; and buy two April CRB 274 puts at .15 or better.

The order to buy the two 276 puts was filled at 9:57, and reported back to Khalil. At around 11:24 a.m., Khalil called Britain, and asked him to get her out of the three remaining positions as soon as possible. Brittain forwarded market orders to the CRB pit via its on-line trading system. The orders were filled, and reported back at 11:42. The 274 puts were filled at .15 (coincidentally Khalil’s preferred price), the 290 calls were filled at 9.00, and the 292 calls were filled at 7.50.

On February 22, the volume in the CRB 290 calls was five contracts, and the open interest was seven contracts, three of which were Khalil’s; and the volume in the CRB 292 calls was one contract (Khalil’s), and the open interest was five contracts.

5. As the result of key-punch error that incorrectly shifted the decimal point leftwards, the February 22<sup>nd</sup> confirmation statement reported that Khalil had paid \$1,770 in premiums, and made a \$3,880 aggregate net profit for the April CRB trades. The February 23<sup>rd</sup> confirmation statement corrected the error, and reported that Khalil had actually paid \$17,700 in premiums, and thus realized a \$12,050 aggregate net loss for the April CRB trades.

6. Khalil called Alaron to complain about the correction. Khalil also complained that the February 22<sup>nd</sup> and 23<sup>rd</sup> statements indicated that her account had not been credited for the \$3,000 deposit. Apparently, Khalil had lost track of the February 18<sup>th</sup> statement, which had confirmed receipt of the deposit.

7. On February 28<sup>th</sup> Alaron wrote a letter in which it explained the key punch error. In response, Khalil wrote a letter, in which she thanked Alaron for explaining the key punch error, but went on to assert that “My only concern is related to . . . how and when [Brittain] got a ‘9’ fill for the CRB [290 calls].” Khalil described her conversation with Brittain:

I contacted him two hours before the market open to get me out at the opening price or better. I am sure the market didn’t open at “9” or even close. In my view, Paul didn’t get me out ASAP at the least possible loss.

In response, Alaron refused to offer an adjustment.

8. Khalil next wrote a letter to the NYBOT compliance department, which responded:

Staff has reviewed pertinent records and interviewed relevant parties to determine the facts surrounding your complaint. In the course of our review, we found that there was no evidence of trade violations with respect to the execution of your orders.

Khalil subsequently filed her reparations complaint in which she alleged that respondents should have taken unspecified steps to assure better fills.

## Conclusions

Respondents were in a principal-agent relationship with complainant and thus necessarily stood in a fiduciary relationship with complainant. As fiduciary, respondents were bound to handle complainant's orders in good faith and with special care, as well as to disclose material information, whether or not complainant asked for it.<sup>3/</sup> Here respondents discharged their disclosure duty by warning complainant that the CRB Index option market was extremely thinly traded, and thus a very risky trading environment for traders outside the pit. However, complainant rejected respondents' advice not to trade the illiquid CRB Index, and rejected their advice not to place limit orders below the previous day's low if she wanted to exit that market. Once complainant placed market orders to exit the market, respondents promptly forwarded the orders to the pit. The fact that the CRB gapped up in a manner typical of illiquid markets does not create an inference of negligence or wrongdoing, and thus does not shift the burden to respondents to produce additional evidence around the circumstances of the disputed fills. Since complainant has otherwise produced no evidence that the market orders should have received better fills, the complaint must fail.

## ORDER

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

Dated March 29, 2007.

  
Philip V. McGuire,  
Judgment Officer

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<sup>3/</sup> See *Grist v. Shearson Lehman Brothers, Inc.*, Comm. Fut. L. Rep. (CCH) ¶ 24,962 (CFTC 1990).