



**U.S. COMMODITY FUTURES TRADING COMMISSION**

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THOMAS PETTY,  
Complainant,

v.

INTERACTIVE BROKERS, LLC.,  
Respondent.

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CFTC Docket No. 09-R006

**INITIAL DECISION**

Thomas Petty's principal claim is that respondents did not exercise due diligence in permitting him to open a non-discretionary account:

I am a mentally disabled individual that does not understand the risks associated with futures trading and does not have mental capacity to trade them. [Respondents] did not use such lookout or verification as a person of ordinary prudence would have used under the same or similar circumstances by allowing a mentally disabled person to open a future trading account. . . .<sup>1</sup> They verify nothing. Everything is computerized and you have to wait on hold to speak to anybody there. I had nobody assigned to me. Everything is up to the computer. They were repeatedly informed anytime they spoke with me about me having a disability.<sup>2</sup>

Petty seeks to recover \$29,999 in damages. In reply, respondents assert that Petty never advised them that he suffered from any mental incapacity and never gave them reason to inquire further whether he was fit to trade or required additional disclosure. Respondents otherwise deny any violations. As explained below, after carefully reviewing the parties' documentary submissions, it has been concluded that Petty has failed to establish any violations.

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<sup>1</sup> Thomas Petty's description of complaint.

<sup>2</sup> Petty's amended statement of facts

## **Factual findings**

1. Interactive Brokers, a registered introducing broker headquartered in Greenwich, Connecticut, is a deep-discount online broker that provided electronic trade execution services to Petty. Interactive does not have brokers or account executives who solicit or handle customer accounts.

2. Thomas Petty, a resident of Royse City, Texas, was 49 years old when he opened his account with respondents. Petty dropped out of high school in the ninth grade, but subsequently received a high school diploma. He received an Associate of Arts degree in drafting and design from Eastfield College in Mesquite, Texas. When he opened his account, he was attending Texas A&M at Commerce with an intended major in business administration, and a GPA between 2.0 and 2.3.

Petty is divorced with three children who visit him on weekends, and lives by himself in a small home. Throughout his adult life, Petty has worked at a series of humble jobs at various firms, principally as a truck driver, none of which lasted very long. His income has always been modest. He had no previous experience trading derivatives before he opened his account.

3. The documents that Petty has produced in connection with his disabled status include: a “fully favorable” decision finding him mentally impaired,” dated February 23, 2007, by an administrative law judge with the Office of Disability Adjudication and Review of the Social Security Administration;<sup>3</sup> a summary of a neuropsychological evaluation, on April 22, 2003, by

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<sup>3</sup> Pages 1-11, Attachment 1 to complaint.

a licensed psychologist finding him not impaired;<sup>4</sup> and a summary of a 90-day evaluation conducted in 1979 by a State of Texas psychiatrist which found that he was not impaired.<sup>5</sup>

The 1979 report stated that Petty had been admitted to the hospital after being charged with a misdemeanor for resisting arrest, and stated that during the examination “[Petty] was very friendly and cooperative, but somewhat withdrawn,” that his “affect is normal, and affective response is appropriate,” that “there is no evidence of depression,” that he “does not have any evidence of thought disorder,” but that “insight and judgment are somewhat impaired.” The report diagnosed a “schizoid personality, not psychotic,” and concluded that he was “competent to stand trial.”

In the 2003 report, the psychiatrist concluded that Petty did not have a severe mental impairment. She indicated that Petty had approached the Texas Rehabilitation Commission (“TRC”) in connection with his efforts to obtain additional student loans, and that the TRC in turn had referred Petty to the psychologist. The psychologist stated that Petty recalled suffering a serious closed-head injury when he was eight years old, recalled that he had repeated ninth grade and then left school, stated that his emotional issues were limited to occasional problems with anger control and fatigue, and stated that his cognitive issues were limited to a life-long difficulty with short-term memory loss. The psychologist observed:

[Petty] presented a neat and adequately groomed appearance. He was ambulatory, and his gait was normal. . . . His hearing was normal. He was cooperative during testing, but rapport was somewhat difficult to establish. He was relatively quiet and made little to no eye contact. His affect was flat. He had no word-finding difficulty in casual conversation. His attention to task appeared to be good. . . . He was persistent on tasks, and his motivation to perform well appeared to be at a fairly high level.

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<sup>4</sup> Pages 13-19, Attachment 1 to complaint.

<sup>5</sup> Page 12, Attachment 1 to complaint.

In the February 2007 decision, the administrative law judge concluded that Petty was disabled under sections 216(i) and 223(d) of the Social Security Act. Under that Act, disability is defined, in pertinent part, as the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment, or combination of impairments, that can be expected to last for a continuous period of at least 12 months. The ALJ relied on: one, the written report by another expert, based on an evaluation in April 2003; a second evaluative report dated May 2006; as well as the oral testimony of a medical expert who testified that Petty's ability to perform basic work functions was significantly limited as the result of cognitive disorder, personality disorder, and paranoid personality disorder.

4. In November 2007, Petty submitted an on-line account application to Interactive. Petty claims that he had a phone conversation with an Interactive employee, whom Petty asked for help with the account application, and whom Petty told that he was "disabled." However, Petty has neither identified the employee nor described exactly what Petty explained about his disability. Respondent denies that any conversation took place.

Petty represented in his application for a non-discretionary account that he had "extensive" knowledge of stocks, options and commodities, and that his investment objective included "growth" and "trading." He further represented that he had made 100 stock trades, and between 26 and 50 commodity trades, per year. He also indicated that he was almost 50 years old, that his liquid net worth was between \$75,000 and \$100,000, indicated that his net income was between \$50,000 and \$100,000, and listed social security as a source of funds "other than regular income." He did not indicate that he was mentally disabled or otherwise incapable of trading commodity futures and options.

5. Petty transferred over \$20,000 in cash, and a handful of stock positions, from his Fidelity account, and opened with an aggressive day-trading strategy in gold, silver, heating oil and natural gas futures. After about a week of losing trading, Petty advised Interactive via fax and e-mail that he was unhappy with Interactive's on-line trading platform, and asked that the account be closed and the funds transferred back to Fidelity. An Interactive customer service representative e-mailed Petty that he first had to contact Fidelity to initiate the transfer in accordance with industry account transfer ("ACAT") rules. However, Petty did not do this. Rather, he continued day trading futures in his Interactive account. On December 7, 2007, Petty stopped trading.

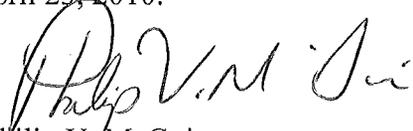
### **Conclusions**

Generally, commodity brokers are only required to ascertain a prospective customer's investment experience, risk tolerance, and estimated annual income and net worth, before determining the proper disclosure to give the customer. In appropriate circumstances, mental disability will be a relevant factor in assessing the nature and extent of a broker's disclosure obligations. See *Fermin v. First Commodity Corporation of Boston*, Comm. Fut. L. Rep. ¶ 23,905 (CFTC 1987). However, here Petty has produced no reliable evidence that he made respondents adequately aware of the nature and extent of his mental disability during the account opening or any other point in the life of the account. Thus, respondents were under no obligation to inquire further into his suitability to trade, to refuse to open the account, or to stop trading. Petty's listing social security in the account application as a source of income did not provide adequate notice to Interactive that Petty's disability was the sort that would have rendered Petty unfit to understand the risks of trading or to make trading decisions. In these circumstances, Petty's claim must fail.

**ORDER**

No violations causing damages having been shown, the complaint in this matter is dismissed.

Dated April 23, 2010.

  
Philip V. McGuire,  
Judgment Officer