

Complaints Section to provide a factual statement underlying his allegations with details and dates (*see* August 9, 1999 Lenz letter to complainant). In that addendum, complainant for the first time alleges that he and a friend visited Brandon after Brandon told them on the phone that they could purchase gasoline options with as little as \$1,100 and could “probably make \$5,000” (*see* Addendum dated October 1, 1999). When they visited Brandon, he allegedly discussed the possibility of making \$21,000 on a \$5,000 investment if prices rose to “\$46 a share [*sic*].”

If those statements were considered in isolation, they might suggest that Brandon improperly focused complainant’s attention on potential profitability and thus vitiated the importance of understanding the risks attendant to these markets. However, it is the total mix of information that is presented to a customer that is important, and for a customer to prevail in reparations he must show that any violations proximately caused his damages. Isolated statements about potential profits that do not vitiate the risk disclosures, and that do not induce a customer to disregard those risks, cannot be the basis for a recovery. Here, the compliance interview dispels any notion that complainant was misled into thinking he had better chances of making profits than he did of losing money. Three times he specifically asked whether he could lose more of his money than he was using to fund his purchases, and each time he was instructed that he faced the possible total loss of his funds. He asked if there was a possibility he could make money, and the interviewer says “yes” but goes on to specifically state that this would occur if the market moved the way they “hoped,” although there were no guarantees. The interviewer also explained that only “risk capital” should be used to make the investment, and he explained in detail what that term means. Revealing his knowledge of the market’s volatility, complainant also discusses the possibility of losing his funds in the first ten days after his options purchase. At another point in the interview, complainant specifically discusses certain prices as being the point where losses of a certain size might occur.

As to any statements Brandon allegedly might have made to induce complainant’s investment, complainant specifically denied that Brandon did anything to undermine complainant’s awareness that he was involved in a purely speculative endeavor: Brandon did not coach him on how to answer the questions, and he did not make any promises or guarantees to complainant. The interviewer suggested that if there were ever any such inducements, complainant should contact the compliance department immediately. Although complainant admitted not reading all the disclosure documents, the interviewer asked several times if complainant was comfortable with not having read them and whether he was fully aware of the risks. Complainant stated that he was.

Under these circumstances so indicative of a complete disclosure of the risks of trading, and complainant’s multiple comments demonstrating that he was fully cognizant of the possibilities of losing all of his money, the complainant’s two-sentence allegation of over-reliance on potential profits in the addendum does not plausibly set out a claim that he was fraudulently induced to open his account.¹

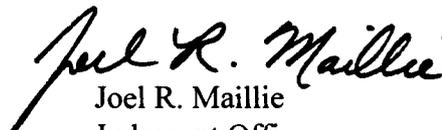
¹ That complainant did not read the disclosure documents is more troubling, but ultimately that was his choice. Had the compliance interviewer made no effort to discuss the importance of the risk disclosures and to

(2) Complainant's allegation that he was not told in a later purchase how many options he was purchasing is an allegation contained only in the July 9, 1999 narrative, and no details are provided. He did not repeat this allegation when, after being asked to elaborate on his claims, he submitted the October 1999 addendum. It is determined that the vague allegation in the July 9 narrative is insufficient to set out a *prima facie* case of any nondisclosure. Furthermore, the account statements attached to the complaint show that only a single option was purchased after the initial spread position complainant had assumed. It is exceedingly unlikely that complainant was deprived of the very same information that he submitted with the complaint.

(3) Finally, complainant's allegations (repeated in both the narratives) that Brandon refused to let complainant sell his options when he wanted to are so implausible for a number of reasons that these allegations could not be the basis of any reparations award, even if respondents had not filed their denials. First, the compliance interviewer repeated several times to complainant the importance of keeping in touch with Brandon (or, if he was unavailable, the compliance department itself) to keep track of prices so that he could sell if he wanted to. Second, the interviewer also repeated at least twice the statement that complainant alone had to make the decisions whether to buy or sell. Third, complainant himself discussed with the interviewer how to place orders to sell if the prices went to a certain place in even the first few days after the initial purchase.² Fourth, the interviewer made it very clear that if there were any dissatisfaction with Brandon, complainant should contact someone in compliance, but complainant did not do so. And finally, during the compliance interview, complainant specifically asked whether he had to stay in his options until they expired, and the interviewer expressly cured him of any incorrect assumption he had along these lines. The interviewer told complainant he could get out of his options "any time."

For the reasons stated, the complaint is DISMISSED.

Dated: December 29, 2000


Joel R. Maillie
Judgment Officer

ensure that complainant's failure to read them was his own decision, there might be grounds to determine whether Brandon had done anything to dissuade him.

² Complainant has not challenged the reasonableness of the recommendation to simultaneously purchase and sell call options when, as discussed in the compliance interview (tape attached to complaint), he was acting in reliance upon Concorde's analysis and expectation of a rise in call option prices. Midway through the interview, complainant engaged in a serious discussion with the interviewer about when he might place an order, or where he should place a stop order, to sell his options. The prices discussed were between the point where the long calls, but not the short calls he was obliging himself to deliver, would be in the money. The range discussed by complainant would have been the only place where taking the positions simultaneously would have made any sense, and thus the spread does not appear to be inherently at odds with complainant's goals. The account statements attached to the complaint demonstrate that the spread between the two positions, taken at 1.60 cents/gallon, doubled in the next month as prices of unleaded gas rose but not far enough to make the higher-priced call options substantially valuable (*compare* statement dated February 6, 1999, *with* statement dated March 5, 1999).