



U.S. COMMODITY FUTURES TRADING COMMISSION

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GEORGE BROGLIA,
Complainant,

v.

GREAT PACIFIC TRADING COMPANY,
SEAN PATRICK MCGILLIVRAY, and
MF GLOBAL, INCORPORATED,
Respondents.

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CFTC Docket No. 10-R003

INITIAL DECISION

This dispute arises from the substantial loss that George Broglia incurred when the Minneapolis wheat market spiked up drastically and locked limit-up for over a week in early 2008. Under these market conditions, it was impossible to buy back Broglia's two short wheat puts. Since the account had become under-margined, respondents mitigated Broglia's losses by buying synthetic longs. Once unwound, this trade realized a loss of about \$18,000, and generated an account debit balance of over \$11,000.

Broglia's principal allegation is that Sean Patrick McGillivray pressured him and failed to disclose adequately the risks associated with the recommended naked short option trade. Broglia also alleges that respondents gave him the wrong risk disclosure statement in violation of CFTC rule 33.7, and that McGillivray churned his account. Respondents deny any violations, and assert that Broglia is an experienced speculator who often rejected McGillivray's trade recommendations, who picked many of his own trades, and who had received adequate disclosures of the risks associated with granting options.

As explained below, after reviewing the parties' documentary submissions and oral testimony, I have concluded that Broglia has failed to establish by a preponderance of the evidence any violations causing damages. This conclusion is based on my determination that McGillivray's testimony was generally more plausible and reliable than Broglia's testimony.

Factual Findings

1. George Broglia, a resident of New Paltz, New York, was 50 years old when he opened his non-discretionary account with respondents. Broglia has a master's degree in psychology and was employed at the relevant time as a developmental therapist. Broglia's testimony revealed him to be intelligent, confident and assertive.

When he opened his account in May 2007, Broglia had eight years experience trading securities and four years trading options. A friend of Broglia recommended that he consider opening an account with respondents.

2. MF Global, Incorporated, located in Chicago, Illinois, is a registered futures commission merchant. Great Pacific Trading Company, located in Grants Pass, Oregon, is a registered introducing broker. Sean Patrick McGillivray is a registered associated person with Great Pacific Trading.

3. On May 3, 2007, Broglia opened on-line a non-discretionary account with MF Global. The MF Global account opening package provided to Broglia included a generic CFTC rule 1.55 futures and options risk disclosure statement, which specifically disclosed the risks associated with the sort of trade that would become the subject of this dispute:

Transactions in options carry a high degree of risk. . . . Selling ('writing' or 'granting') an option generally entails considerably greater risk than purchasing options. Although the premium received by the seller is fixed, the seller may sustain a loss well in excess of that amount. . . . The seller will also be exposed to the risk of the purchaser exercising the option. . . . If the option is on a future, the seller will acquire a position in a future with associated liabilities for margin.

Broglia signed an acknowledgment that he had received, read and understood the risk disclosure statement. [Exhibit A to Joint Answer.]

During the account opening, Broglia and McGillivray discussed trading strategies and negotiated a lower commission rate. Broglia did not reveal to McGillivray that he assumed -- wrongly -- that when shorting options his losses would be limited to the premium.

4. On May 21, 2007, Broglia made a deposit of \$5,000. From May to December 2007, Broglia traded a mix of futures and options, principally in grains, but also in crude oil, precious metals and currencies. Broglia bought and wrote options. On June 22, 2007, a long put expired and was exercised for a profit. Some of these trades were suggested by McGillivray, and some by Broglia, who often rejected McGillivray's advice. The trading realized a mix of profits and losses. Overall, trading during the first eight months was profitable: at the end of October the account was up over \$5,000; after losses in November, the account was still up by \$2,859; and by the end of the year, the account had partially rebounded and was up \$3,557.

5. On January 28, 2008, Broglia accepted McGillivray's recommendation to short two March Minneapolis wheat calls. McGillivray testified that the recommendation was based on a technical analysis that identified a "top formation" in the wheat market, and that he recommended the option trade because Broglia lacked sufficient margin to support a futures trade.

Unfortunately, on January 31, the wheat market spiked up drastically and locked limit-up for several days, which made it impossible to buy back Broglia's short wheat puts. Since the account became under-margined, respondents mitigated Broglia's losses by buying two call options with strike prices that straddled the strike price of Broglia's short call. Once unwound, this trade had realized a loss of about \$18,000, and generated an account debit balance of over \$11,000, which Broglia paid. Broglia does not dispute respondents' assertion that he would have lost considerably more if they had not bought the synthetic longs.

Conclusions

Broglia's claim that respondents provided the wrong risk disclosure statement is without merit. In 1994, the CFTC amended rules 1.55, 33.7 and 190.1 to permit registrants to deliver to customers a generic risk disclosure statement which will satisfy the risk disclosure requirements applicable to domestic and foreign commodity futures and commodity options transactions subject to regulation by the CFTC. Thus, the generic risk disclosure statement, which is set out in Appendix A for CFTC rule 1.55(c), may be used in lieu of the separate futures and options risk disclosure statements that would continue to be authorized by CFTC rules. *See* 59 Federal Register 34375 (July 5, 1994). Here, the MF Global risk disclosure statement provided to Broglia satisfies rule 1.55. Therefore, MF Global was not required to provide a separate rule 33.7 option disclosure.

Broglia's claim that McGillivray's recommendation to grant the two wheat options was irresponsible also is without merit. Generally, the Commission does not second-guess trades because such determinations do not lend themselves to clear-cut answers. To have a reasonable basis, the disputed trade need not be the ultimate or most preferable of available alternatives. *See Syndicate Systems, Incorporated v. Merrill Lynch, Pierce, Fenner & Smith, Incorporated*, Comm. Fut. L. Rep. (CCH) ¶23,289 (CFTC 1986). Here, McGillivray has shown that his recommendation to short the wheat market with an option was reasonable based on his technical analysis. Broglia's assertion that the naked short option trade recommended by McGillivray was inherently too risky is insufficient by itself to show that the recommendation lacked any reasonable basis, particularly where his losses were principally caused by market conditions.

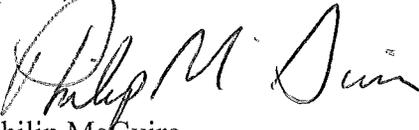
In this connection, Broglia had received adequate warning about the risks of this trade and has produced no convincing evidence that McGillivray down-played the risks of this trade or pressured Broglia into the trade. Broglia's claim of high-pressure tactics was particularly unconvincing given his assertive personality and given the fact that he had negotiated a lower commission rate, the fact that he had frequently rejected McGillivray's advice, and the fact that Broglia had previously sold options and had not complained in June 2007 when an option had expired and been exercised.

For the same reason Broglia's churning claim must fail. In order to show churning, Broglia must first show that McGillivray exercised *de facto* control over the trading in the account since the account was non-discretionary. *Ferriola v. Kearsse-McNeill*, Comm. Fut. L. Rep. (CCH) ¶28,172, at 50,154 (CFTC 2000) The facts that Broglia had negotiated a lower commission rate and that he had frequently rejected McGillivray's advice, coupled with his confident, assertive personality, weigh against finding that McGillivray controlled the trading in Broglia's account. Thus, the churning claim must fail.

ORDER

Complainant has failed to establish any violations by respondents. Accordingly, the complaint is dismissed.

Dated April 8, 2011.


Philip McGuire,
Judgment Officer