

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

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STEVEN R. CASELEY,  
Complainant,

v.

LFG DIVISION OF REFCO, d/b/a REFCO LLC,  
JASON MICHAEL ROOSE, and  
U.S. COMMODOTIES, INCORPORATED,  
Respondents.

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CFTC Docket No. 02-R056

**INITIAL DECISION**

***Introduction***

Steven Caseley, a resident of West Des Moines, Iowa, alleges in his complaint that several trades in his nondiscretionary account were unauthorized, and alleges that Jason Roose disregarded his request to close the account. In response, respondents deny the alleged violations and assert that Caseley approved each trade in the account and never asked to close the account.<sup>1</sup>

Neither side produced much in the way of reliable documentary evidence or reliable oral testimony. As a result, the evidentiary record is unfortunately rather thin. Caseley did produce a complete set of monthly account statements and confirmation statements, plus an un-sworn statement by a Wal-Mart executive in which she asserted that Casely had been working in Sioux City, Iowa during portions of the relevant time. Respondents did produce copies of the desk order tickets for each of the transactions in

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<sup>1</sup> Caseley appeared *pro se*, and Refco's in-house counsel represented the respondents.

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the Caseley account.<sup>2</sup> However, the parties did not produce any documentary evidence, such as itemized phone records or contemporaneous notes, which could have reliably established the existence, or non-existence, of conversations between Caseley and Roose. Moreover, neither Caseley nor Roose could convincingly remember many meaningful details of their conversations and dealings. Roose offered few details about his trade recommendations or trading strategies. Similarly, Caseley recalled almost nothing of his conversations with Roose. Often, when asked a simple, straightforward question, Caseley hesitated and had to be prompted before providing a response. Caseley's testimony that he remained "utterly clueless" for months about the trading activity and that he meekly acquiesced when Roose arbitrarily refused to close the account could not be squared with the fact that Caseley is a college graduate who had run his own business before managing large discount retail stores. Since Caseley has the burden of proof, his inability to produce plausible, convincing or reliable testimony fatally undermined his case.

As explained below, after carefully reviewing the documentary record and evaluating the testimony of Caseley and Roose, it has been concluded that Casely has failed to show any violations causing damages by respondents.

### ***Factual Findings***

At the relevant time, Steven Casely worked as a store manager for Wal-Mart. Before that, he had worked as a manager of another large discount retailer, and before

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<sup>2</sup> Most of the tickets have time-stamps corresponding to when the order was placed, when the order was entered in the market, when the order was reported as filled, and when respondents assert that the fill was reported to Caseley. Respondents have not explained why some of the order tickets have handwritten notations for when the fill was reported to Caseley.

that had owned a small trucking company that hauled lumber products. Caseley, who has a bachelor degree in liberal arts, had no investment experience beyond real estate.

U.S. Commodities, Incorporated is an introducing broker, located in West Des Moines, Iowa, whose obligations under the Commodity Exchange Act were guaranteed by LFG Division of Refco, Incorporated d/b/a Refco, LLC, a futures commission merchant located in Chicago, Illinois. Jason Roose is a registered associated person with U.S. Commodities. Roose is a salaried employee whose income does not depend on the amount of funds in an account, the amount of commissions charged to an account, or the number of trades in an account. Roose's family owns U.S. Commodities.

In the wake of the September 11 attack, Caseley had decided that he needed to invest about \$60,000 in "something other than sitting in his bank." Caseley had read that gold "tends to hold its value better than anything." Caseley mentioned this to his Wells Fargo banker, who informed him that Wells Fargo did not deal in gold with its customers and suggested that Caseley consult a local firm, U.S Commodity, to explore trading gold options or gold futures.

Since neither Caseley nor Roose could recall many details of their conversations and meetings, the description of their conversations and dealings must necessarily be spare. On or about September 19, 2001, Caseley walked into the U.S. Commodities office, and informed "Fred" and Jason Roose that he was considering investing up to \$60,000 in gold. Neither Caseley nor Roose could recall what Caseley told respondents about his investment objectives or what Roose told Caseley about the risks and mechanics of the trading strategies that he would be recommending. Roose testified that he told Caseley that U.S Commodities could advise Caseley on trading gold options or

gold futures and that he suggested that Caseley start out with just \$10,000. Caseley then filled out a Refco customer application and signed a Refco customer contract and a standard risk disclosure statement.

Caseley maintained his account from September 19, 2001 to April 17, 2002. On September 20, Caseley deposited \$5,000, and on September 24, he deposited an additional \$5,000.

On September 20, Caseley approved the short sale of two December gold 285 puts. Caseley also approved the short sale of four March corn puts. Caseley testified that it was Roose who suggested that he try a trade in another market. In contrast, Roose testified that it was Caseley who introduced the idea. In any event, Caseley testified that he approved the corn trade.

On September 24, Roose purchased for Caseley's account two December gold 300 calls and two February gold 310 calls.<sup>3</sup> On September 25, Caseley approved the purchase of one January light crude oil 28 call. On October 4, Roose sold two more March corn puts for Caseley's account.<sup>4</sup>

On November 9, Roose liquidated the short December gold puts for a \$531 net loss. On November 12, the long December gold calls expired for a \$1,253 loss.<sup>5</sup> The February gold calls would expire on January 14, for a \$1,453 loss. Thus, the gold trades would realize an aggregate net loss of about \$3,237.

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<sup>3</sup> In his complaint, Caseley claimed that he did not authorize the purchase of the December and March gold calls, and at the hearing he testified that he could not remember discussing these purchases. However, Caseley's assertion that he did not approve this trade could not be squared with the fact that he deposited an additional \$5,000 on September 24th and the fact that he never protested these purchases.

<sup>4</sup> Caseley could not recall discussing this trade, but does not allege that it was unauthorized.

<sup>5</sup> Caseley testified that he did not recall discussing these November transactions, and testified unconvincingly that he could not comprehend the account statements beyond the ending balance.

As of November 30: the account had a cash balance of \$7,656; the six short March corn puts were losing \$150; the two February gold calls had a liquidation value of only \$120; and the January crude oil call was virtually worthless with a \$10 liquidation value. On December 14, the January crude oil call would expire for a loss of \$909. By the end of December, the six short March corn puts were losing \$1,800.

According to Roose, Caseley "frequently" visited the U.S. Commodities office September through December. According to Caseley, sometime after Thanksgiving, he told Roose that he wanted to close the account, because he did not understand what Roose was doing and was concerned with the decline in the value of the account. Roose then supposedly replied, without explanation, "you can't close the account." Caseley testified that he then told Roose something like: "Well, when it's done, I want it closed." In contrast, Roose testified that Caseley never expressed an intention to close the account. Also, Caseley did not dispute Roose's testimony that Caseley would not complain about the trading activity until April when the account became under-margined.

Roose and Caseley agree that Caseley told Roose that from early January to late March he would be in Sioux City starting up a new Wal-Mart store, and that Refco should continue to mail his account statements to his residence in West Des Moines. Caseley testified that he was "very busy" with the "big job" in Sioux City, and that he returned home approximately every other weekend. As a result, he decided to spend little time reviewing the account statements and focused on the aggregate value of the account, rather than the performance of the individual trades. Set out below is a summary of the account value at market reported in the monthly account statements for the Caseley account:

September	\$10,430	January	\$3,209
October	5,699	February	1,460
November	5,611	March	785
December	3,819		

As can be seen, the bottom line upon which Caseley focused deteriorated during his time in Sioux City. Also, as noted above, Caseley did not complain about the trading activity while he was in Sioux City.

Meanwhile, no trades were made in Caseley's account until February 22, when four of the six short March corn puts were rolled into four short May corn puts. Also two of the short March corn puts were assigned. On February 27, the two March corn futures were liquidated for a net loss of \$2,132.

By late March, Caseley had completed the job in Sioux City and had returned to Des Moines. On April 10, two of the four May corn puts were assigned, and on April 15, the other two of the four May corn puts were assigned. Also, on April 10, the account went short two July corn futures. Soon afterwards, the account became seriously undermargined, and by April 17, all of open corn futures positions had been liquidated. The corn trades realized an aggregate net loss of about \$6,312.

### *Conclusions*

In order to prevail, Caseley must establish by a preponderance of the evidence that respondents committed some violation that proximately caused his damages. Here, the fact that Caseley -- a college-educated man who manages a large retail store employing numerous people -- failed to complain about any unauthorized trades during six months of trading cannot be squared with his allegation that several trades were made

without his permission. Moreover, the fact that he deposited another \$5,000 to fund the second round of trades is consistent with an intention to approve additional trades. Thus, Caseley's unauthorized trading allegation must fail.

Similarly, Caseley's instruction to Roose -- "Well, when it's done, I want it closed" -- was not consistent with an intention to stop trading and close the account immediately. Since neither Caseley nor Roose has actually described the corn trading strategy as discussed and approved, it cannot conclusively be determined exactly what Caseley meant when he instructed Roose to continue trading until "it's done." On its face, this instruction does not necessarily restrict the trading of corn contracts after the expiration date for the March corn put options. Thus, Caseley has failed to show that the corn trades in February and April were inconsistent with his decision in December to maintain a trading strategy that involved holding the March corn puts. Accordingly, Caseley has failed to show that he is entitled to recover any of his losses after December.

#### **ORDER**

No violations having been established, the complaint is DISMISSED.

Dated May 3, 2004.

  
Philip V. McGuire,  
Judgment Officer