



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

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VICTOR CAVALLARO,  
Complainant,

v.

ANGUS JACKSON, INCORPORATED OF  
FLORIDA a/k/a ANGUS JACKSON, INC.,  
Respondent.

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CFTC Docket No. 06-R055

**INITIAL DECISION**

Victor Cavallaro alleges that his account was churned between September 16 and December 11, 2003. In response, Angus Jackson, Incorporated has denied any violations, and has raised the affirmative defense that Cavallaro's complaint is barred by the statute of limitations. As explained below, after carefully reviewing the parties' documentary submissions,<sup>1</sup> I have concluded that Angus Jackson has established that the complaint is barred by the statute of limitations.

**Factual Findings**

Victor Cavallaro, a resident of Philadelphia, Pennsylvania, stated on his account application in June 1998, that he was employed as a machinist and that he had 12 years experience in futures, options and securities.

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<sup>1</sup> The documentary record includes: Cavallaro's complaint (including three addenda to complaint), replies to respondent's discovery requests, response to order compelling production, and affidavit dated December 3, 2007; and Angus Jackson's answer and response to order compelling production, Nicole Kuchera's statement, and Martin Beddick's affidavits.

Angus Jackson is a registered introducing broker located in Fort Lauderdale, Florida. From June 1998 to spring of 2001, Mike Rose acted as Cavallaro's principal contact at Angus Jackson. From spring of 2001 to early January 2004, Gary Votto acted as Cavallaro's principal contact at Angus Jackson. Respondent has not produced an affidavit by Rose or Votto.

Angus introduced the Cavallaro account to First Options of Chicago until December 1, 1999, when the account was transferred to E.D. & F. Man International.

According to Angus Jackson, Ward Onsa was the third-party account controller who initiated trades in the Cavallaro account pursuant to a grant of discretionary trading authority from Cavallaro. Angus Jackson states that Onsa has never been employed by, or registered as an associated person with, Angus Jackson. However, it appears that it was Mike Rose of Angus Jackson who recommended Onsa to Cavallaro. Apparently Onsa and Cavallaro never directly communicated with each other. Respondent has not produced an affidavit by Onsa.

Onsa's trading strategy for the Cavallaro account from August 1998 to July 2002 involved a mixture of short-term NYSE Index and e-mini S&P 500 futures and options trades. According to Angus Jackson, the overall trading strategy involved "reducing the capital exposure in Cavallaro's account through the return of capital on a regular basis." In this connection, monthly account statements confirm that, from August 1998 to September 2002, First Options and E.D. & F. Man remitted to Cavallaro forty-nine monthly checks that totaled \$216,500.

Angus Jackson is silent on why no trading occurred in Cavallaro's account from September 2002 to September 2003, and why trading resumed in September 2003. When trading did resume in summer 2003, it appeared to involve a different trading strategy: day trades; exclusively futures; and no remittances. It is possible that a different third party was making the

trades. In any event, Angus Jackson states that it has been unable to locate any written grant of discretionary trading authority signed by Cavallaro.

Cavallaro maintained his account with Angus Jackson from June 1998, to December 2007. During this time, of trading, Cavallaro received, read and understood the confirmation statements, and monthly account statements that reported the trading activity and results, commission charges, and deposits and remittances.

Trading activity in the Cavallaro account was concentrated in two periods, which ended two-and-a-half years before he filed his reparations complaint. The first period was from June 5, 1998, to July 26, 2003; and the second period was from September 16, to December 11, 2003.

Cavallaro made all deposits and received all regular remittances during the first period. Cavallaro deposited a total of \$205,000: \$25,000 on June 5, 1998; \$75,000 on August 8, 1998; \$50,000 on August 18, 1998; \$25,000 on September 29, 2000; and \$30,000 on November 17, 2000. Cavallaro received a total forty-nine remittance checks totaling \$216,500.<sup>2</sup> At the end of September, the account had a liquidating value of \$23,012. Thus, during this first period, Onsa's trading realized an aggregate net profit of \$34,512.

Cavallaro's account was dormant from July 26, 2002, to September 15, 2003, carrying an account balance of \$23,013. According to Cavallaro, he spoke to Votto three times while the account was dormant: September 2002, March 2003 and September 2003. Cavallaro recalls that Votto told him that Angus Jackson was looking for a new clearing broker. It is possible that Cavallaro has misremembered, and that Votto told him that Angus Jackson was looking for a new trader, because Angus Jackson never changed clearing brokers and when trading did resume it appeared to involve a different trading strategy.

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<sup>2</sup> Cavallaro received two remittance checks, in August and September, after trading had ceased in July.

The second period of trading lasted three months, from September 16, to December 11, 2003. During this second stretch of trading, Cavallaro received no remittances, and the account value declined from \$23,012 to \$1,032 for a decline of \$22,180. A total of eight day trades were made for the account, all of which involved e-mini S&P 500 futures, and which generated \$7,500 in commissions. Cavallaro's last conversation with Votto was in early January 2004, when, according to Cavallaro, he complained that his account had declined to a little more than \$1,000, and Votto had emphatically rejected Cavallaro's demand to pay him \$205,000. For unknown reasons, Cavallaro never asked for the return of his account balance. In late December 2007, after my prodding, Angus Jackson returned the \$1,032 account balance. Thus, overall, trading in Cavallaro's Angus Jackson account realized a net profit of a little more than \$12,400.

Ten days before he filed his reparations complaint, Cavallaro drafted an undated letter to Angus Jackson in which he complained that his account had been churned between September and December 2003, and threatened to file a reparations complaint in ten days unless Angus agreed to "settle my complaint." Angus Jackson claims to have never received the letter. On July 24, 2006, Cavallaro filed his reparations complaint. In his complaint, he stated that, about four months previously, an unidentified friend had reviewed his account statements and told him that his account had been churned, which is what prompted him to file the complaint.

### **Conclusions**

A cause of action accrues, and the two-year limitations period under Section 14(a)(1) of the Act begins to run, when a complainant discovers the wrongful conduct underlying his claim, or in the exercise of reasonable diligence, should have discovered the wrongful activity.

*McGough v. Bradford, et al.*, Comm. Fut. L. Rep. (CCH) ¶ 28,265, at 50,601-50,603 (CFTC 2000). A determination of when wrongful activity should have been discovered is based on the

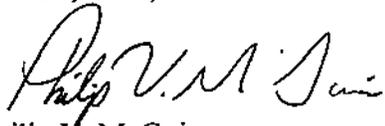
particular facts and circumstances of the case, including: one, the relationship of the parties; two, the nature of the wrongful activity; three, the complainant's opportunity to discover the wrongful activity; and four, the actions taken by the parties subsequent to the wrongful activity.

*Id.* Here, Cavallaro knew about the trading results and account status reported by the account statements, and thus was aware of the change in trading strategy in the fall of 2003, and upon receipt of the December 11, 2003 confirmation statement, knew that his account balance had declined to a little more than \$1,000, and that he had lost around \$22,000 since trading had resumed in mid September. After his conversation with Votto in early January 2004, Cavallaro knew that Angus Jackson was not interested in making any favorable adjustments to his account. In these circumstances, by early January 2004, Cavallaro was sufficiently aware of the pertinent facts to take legal action to protect his interests. Thus, Cavallaro's cause of action for any violations in connection with the trading and handling of his account accrued no later than January 30, 2004, when he was fully aware that he had lost most of the balance in the account and that Angus Jackson had no interest in settling any dispute. In the absence of any evidence that agents for Angus Jackson said or did anything to dissuade or delay Cavallaro from initiating legal action, Cavallaro's complaint, filed two-and-a-half years after the cause of action accrued, is barred by the statute of limitations.

#### ORDER

Respondent has established that complainant did not timely file his complaint and that there is no basis for application of principals of equitable tolling or estoppel. Thus, it is concluded that the complaint is barred by the statute of limitations, and the complaint is hereby dismissed.

Dated April 30, 2008,

A handwritten signature in cursive script, appearing to read "Philip V. McGuire". The signature is written in black ink and is positioned above the printed name.

Philip V. McGuire,  
Judgment Officer