



U.S. COMMODITY FUTURES TRADING COMMISSION

Three Lafayette Centre
1155 21st Street, NW, Washington, DC 20581

OFFICE OF
PROCEEDINGS

OFFICE OF PROCEEDINGS

1998 SEP 18 P 2:54

RECEIVED
C.F.T.C.

_____)
KARL ALBERT CLEMONS,)
Complainant)
v.) CFTC Docket
IOWA GRAIN COMPANY, and STEPHEN) No. 97-R089
MATTHEW SHEETZ,)
Respondents)
_____)

INITIAL DECISION

Prior to the oral hearing held on June 9, 1998, respondent Iowa Grain settled with complainant, but respondent Sheetz and the complainant were unable to reach any agreement. For the reasons stated below, the complaint against Sheetz is dismissed as unproven.

The initial complaint, filed June 6, 1997, enumerated three charges: (1) that respondent Sheetz "purposefully misrepresented facts while handling" complainant's account; (2) that respondent Sheetz failed to sell complainant's options when requested to do so; and (3) that complainant's account "was apparently used to hedge or trade" without his permission. The third charge was dismissed summarily at the oral hearing because it was based on trades mistakenly placed in complainant's account which were reversed immediately (Transcript, page 73).

Allegations of misrepresentation: The gravamen of complainant's first charge is that Sheetz failed to inform him of when his account lost money despite promising to do so. This allegation was based primarily on two trades (all trading dates in this decision refer to 1996). According to complainant, in May 1996 he was dissatisfied with his trading results and fees experienced with Ceres Trading, an Iowa Grain introducing broker. When he called Iowa Grain to complain, the Iowa Grain employee with whom he spoke suggested he open an account directly with Iowa Grain and referred complainant to Sheetz as a good broker who could give better recommendations than Ceres had (complaint narrative, page 2; Transcript, page 12).¹

¹ As noted, Iowa Grain has settled with complainant. Complainant was questioned extensively regarding whether Sheetz had made any inappropriate claims of past trading success or special ability to make predictions, and admitted no such claims had been made (Transcript, pages 21-25). Because there was no indication that Sheetz was aware of any claims made by the other Iowa Grain employee, that issue has not been explored further in this proceeding.

After opening the account with a \$1,000 deposit, on May 28, 1996, complainant accepted Sheetz's recommendation to purchase two June 1996 Swiss franc put options (*id.*)² When complainant said he knew nothing about financial futures, Sheetz allegedly told complainant that "he would watch the situation carefully, and if the price started to fall, he would contact me and we would get out of the puts" (*id.*). The cost of these put options was \$1,108.84 (\$975 in premiums and the remainder in fees and commissions), leaving a deficit in complainant's account of \$108.84 (May 28, 1996 statement, attached to complaint). At the end of the day on May 28, the options had fallen in value to \$825 (*id.*). Sheetz called complainant two days later after a significant drop in value, and complainant accepted his recommendation to sell, receiving a total of \$221.16. After the sale, complainant thus had only \$112.31 left in his account, having suffered a *net* loss of \$887.69 (May 30, 1996 statement, attached to complaint).

According to complainant, Sheetz "misrepresented the facts and acted in an improper manner by failing to act according to what he had said earlier" (complaint narrative, page 2).

Sheetz's reply stated that he did not remember this particular trade but generally denies having failed to keep complainant informed, and points out that the position was only open for two days, which he suggests is not a long time for a position to be held (Sheetz answer, page 1).

The second trade where complainant alleges Sheetz violated the promise involved a single November 1996 soybean call option, purchased by complainant on Sheetz's recommendation on July 15, 1996. The option premium value dropped by nearly half with Sheetz never contacting complainant before he called Sheetz with instructions to sell the option (complaint narrative, pages 2-3). The trade resulted in a net loss of \$1,318.74 (July 15 and 18, 1996 statements, attached to complaint).

Sheetz did not dispute the facts of this second trade, but alleges in his answer that he tried to contact complainant twice by beeper while the trade was open, without receiving a reply (Sheetz answer, page 1).

The oral hearing involved extensive questioning of complainant regarding why he alleged Sheetz had broken a promise to him (Transcript, pages 25-43). Complainant testified that Sheetz had promised not only to monitor the account, but also to get complainant out of trades "before I lost . . . all my money" (Transcript, page 25). With regard to the July 15 trade, complainant acknowledged that the options initially rose in price on the first day (Transcript, page 26), and admitted that he did not have any evidence to show that the options had fallen in value on either the

² Complainant mistakenly refers in his complaint to this transaction as *selling* two puts. A review of the statements attached to the complaint reveals that at no time did complainant ever engage in selling (i.e., granting) options.

16th or 17th (Transcript, pages 27, 29, and 38). He had been watching television on the 18th and called Sheetz when the announcers said the market was declining *that day* (Transcript, page 27).

Complainant eventually acknowledged that his goal in trying to get Sheetz to keep him informed was to avoid losing "a whole lot of money" which he said meant to him about half of his money (Transcript, page 36). He also admitted that he had not lost any more than that from the July 15-18 options position because he himself had taken action after discovering the market decline, but he called that a "fluke" (Transcript, page 37).

Based on the parties' testimony, as well as a review of the documentary evidence, it is determined that complainant has not provided any credible evidence that Sheetz violated any duty to keep him more informed of the markets during the two options positions discussed in this allegation. In both cases, complainant's charge stems merely from the fact that his trading lost money, but he has no evidence that the market made any moves that triggered Sheetz's promise to communicate. Complainant's testimony is found incredible with regard to his charge that Sheetz either made a promise to ensure he would not lose money or that he failed to communicate as promised. Complainant's burden of proof cannot be carried solely by evidence that the positions lost money several days after they were taken. Complainant was contacted by Sheetz when the market had fallen during the first transaction, and that telephone call allowed the complainant to retain some money from that trade -- but there is no indication that Sheetz should or could have acted more quickly. In the second trade, no violation can be found because there is no evidence of an intervening price decline (indeed, it went up at first) and, even if there had been, complainant contacted Sheetz in time to avoid losses greater than his targeted risk, and thus has no reason to complain.

Alleged failure to execute orders: The second charge leveled by complainant is based on the fact that when he called to liquidate some other options prior to expiration, Sheetz recommended that complainant hold onto his options instead. When the options expired worthless, complainant decided that Sheetz had made his recommendation intentionally to prevent him from liquidating. Complainant expressly alleged that Sheetz's recommendation was made with the specific intent to increase complainant's losses -- because, complainant believed, Sheetz and/or Iowa Grain must have owned the other side of his transaction and would gain all the money complainant lost.

Because the complaint on this issue is so illuminating of complainant's unreasonable expectations and conclusions, it is quoted here at length:

On August 29, 1996, I called Sheetz and asked for his advice on buying 825 Call Nov 96 Soybeans options. Sheetz told me that he thought it was a good buy. When I asked him if he was sure it was a good buy, he replied, "Karl, I wouldn't recommend that you buy [the] options if I didn't think they would make money." So, following Sheetz' recommendation, I bought 10 more 825 Call Nov Soybeans

... on August 29, 1996.

During the period of time from August 30 through September 26, I called Sheetz many times to learn the status of the options and to obtain his opinion on selling the options. Sheetz continued to recommend that I hold the options. After seeing the options continue to drop in value, I called Sheetz around the first of September. However, Sheetz informed me that he thought the options would make [sic] and be worth about \$60,000. He then stated that \$60,000 would not be a bad investment return on \$14,000 invested.

I watched as the options continued to lose value. Realizing that many investors were selling the soybean options, I called Sheetz on September 27, 1996, and commanded him to sell 14 soybean options. Again, Sheetz recommended that I keep the options, although their value had dropped to about \$2,000. Sheetz misled me to believe that the 14 options were going to be worth a lot of money right up to the expiration date. All 14 options were held and expired worthless on October 19, 1996, despite my repeated requests that Sheetz not keep the options until they expired. If he hadn't been working as a broker for many years, I might think he was downright incompetent; however, given his career status, I must conclude that his behavior was knowingly improper and that he purposefully misrepresented the facts to me.

(Complaint narrative, pages 3-4.)

Sheetz admitted that complainant approached him about the trade, but denied the \$60,000 statement or that he was responsible for Sheetz holding onto the options until expiration -- that was a joint decision made by both of them (Sheetz answer, pages 1-2). Sheetz denied that he had any discretion over the account (*id.*), a statement with which complainant agreed when he testified (Transcript, page 33).

During the oral hearing, complainant's suspicions were explored extensively (Transcript, pages 43-70). He acknowledged knowing that Sheetz was only giving his personal opinion any time he made a recommendation, and admitted that Sheetz did not make any claims to have any special predictive abilities (Transcript, pages 43-44 and page 69). Despite being challenged on his apparent tendency to infer bad faith when someone made a mistake or gave him bad advice (Transcript, pages 44-46),³ complainant continued to allege that Sheetz's recommendation was

³ As noted during the hearing, complainant accused the undersigned of intentionally disregarded his choice of hearing dates when the hearing originally was scheduled on a day inconvenient for complainant (Transcript, pages 44-46), and he later accused Iowa Grain's attorney of intentionally manipulating and delaying the proceeding when he and the attorney disagreed over the wording of the settlement papers (letter dated August 12, 1998).

intended to cause complainant to lose his money (Transcript, pages 46-47). That conclusion was based on his belief that an "experienced broker . . . should have known that these options . . . would not have made [money] at that late point in time" (Transcript, page 48). Eventually, complainant stated that he thought Sheetz would have done this to make money for Iowa Grain, which he believed would gain in profits any money lost by complainant (Transcript, pages 48-49). Complainant admitted, however, that he had no evidence for his suspicions (Transcript, pages 49 and 65-66). Although he originally stated that it was *not* his decision to retain the options when he called and was dissuaded from selling them (Transcript, page 54), he eventually admitted that what happened was that he went along with Sheetz's recommendation (Transcript, pages 55-56). He also admitted that he in fact placed no order to sell the options (Transcript, pages 56-57). Complainant also claimed, unconvincingly, that he did not know Sheetz could be wrong, despite already having lost so much money at that point on Sheetz's recommendations (Transcript, page 57). He acknowledged, however, knowing that Sheetz was merely expressing an opinion and that he had no evidence that Sheetz did not believe what he had said (Transcript, pages 58 and 68-69).

Complainant's charges of misconduct based on the recommendation to retain options that then lost money must be rejected as a matter of law. First, it is clear that complainant never placed an order. His decision to accept the recommendation to hold was complainant's willful and voluntary act, regardless of his attempt here to disavow the consequences of his own choices. Second, there is no evidence whatsoever on this record to support complainant's claims that Sheetz made his recommendation in bad faith.

Respondent Sheetz has asked for his attorney's fees in defending this action at the oral hearing. On this record, there might seem to be a good chance for a finding that complainant filed his complaint in bad faith, since he admitted having no evidence other than his own suspicions, *except* for one thing: a finding of bad faith requires a finding that the person acting in that fashion knows that his charges are unfounded. Extensive discussions during the oral hearing reveal that this complainant does not have even the slightest sense of why his suspicions or expectations are unreasonable. Indeed, he has exhibited cooperation in most respects in this proceeding except for his marked tendency to conclude that other people act intentionally against him. Complainant's beliefs regarding such matters are illogical, unreasonable, and unfounded, but he appears to actually hold those beliefs. Accordingly, the request for attorney's fees is denied.

Based on the settlement, the complaint against Iowa Grain is DISMISSED. For the reasons stated above, the complaint against respondent Sheetz is DISMISSED as unproven.

Dated: September 18, 1998


JOEL R. MAILLIE
Judgment Officer