



U.S. COMMODITY FUTURES TRADING COMMISSION

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OFFICE OF
PROCEEDINGS

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COMMODITY FUTURES TRADING COMMISSION

JAMES F. CORNILLIE, and
DEBRA BOEGH JENSEN,
Complainants,

v.

ALARON TRADING CORPORATION,
GREENSTREET DISCOUNT CORPORATION,
PHILIP G. COUNTS, and
BARRY S. ISAACSON,
Respondents.

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* CFTC Docket No. 97-R59
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INITIAL DECISION

James Cornillie and Debra Jensen's complaint arises from respondents' decision to liquidate their joint non-discretionary account because they had not disclosed Cornillie's incarceration for bank robbery and because Cornillie could not be readily contacted by telephone due to restrictions on phone use imposed by the prison authorities. Cornillie and Jensen claim that the account was liquidated without adequate notice and without their consent, and also claim that respondents provided inaccurate price information and churned their account. Respondents assert that the account liquidation was justified under the terms of the customer contract and authorized by Cornillie. They further contend that complainants declined an offer to reinstate the liquidated positions in a new account in Jensen's name, and deny that they provided inaccurate prices or controlled the trading in the

account. For the reasons set out below, it has been concluded that complainants have failed to show any violations by respondents.

The findings and conclusions below are based on the parties' documentary submissions. Unless otherwise noted, dates are in 1996, and amounts are rounded to the nearest dollar.

Factual Findings

1. James Cornillie, serving a sentence for bank robbery in the federal corrections facility in Jessup, Georgia, had two years experience trading futures and options on futures, and ten years experience trading stocks and stock options, before complainants opened their Greenstreet account. Debra Jensen, a resident of Oshkosh, Wisconsin, had no previous investment experience.

Jensen would not speak to respondents until after the joint account was closed, when she refused their offer to reinstate the liquidated positions in a new account in her name. Cornillie exclusively made the trading decisions and spoke to respondents during the life of the account. [See Exhibit A to joint Answer; Cornillie letter to CFTC (filed May 6, 1997); tape recording of two September 16 and five September 18 conversations (produced December 10, 1997); and tape recording of four September 17 conversations (produced October 10, 1997).]

2. Alaron Trading Corporation is a registered futures commission merchant located in Chicago, Illinois. Greenstreet Discount Corporation, also located in Chicago, is a registered introducing broker guaranteed by Alaron. Barry Isaacson is a registered associated person and principal of Alaron and Greenstreet. Philip

Counts, also a registered associated person with Alaron and Greenstreet, acted as complainants' account executive.

3. On or about August 5, 1996, Cornillie responded to an Alaron advertisement which stated that Alaron charged a \$15 commission for self-directed discount accounts.¹ After talking to Counts, Cornillie decided to open a full-service account, which charged a \$35 commission, rather than opening a discount account. [See pages 5-6 of complaint; and ¶ 6 of Joint Answer.]

Recordings of several conversations on September 16, 17 and 18 establish that although Counts did not recommend specific trades, he did provide considerable market and trading advice to Cornillie. [See tape recording of four September 17 conversations (produced December 10, 1997); and tape recording of two September 16 and five September 18 conversations (produced October 10, 1997).]

4. The customer account agreement provided that Alaron relied on the information provided by complainants to open the account. [Paragraph 23 of the customer contract ("The customer represents, warrants and agrees that . . . all of the information contained in the Customer Agreement is true, correct and complete."); see NFA rule 2-30 (Alaron not required to verify information provided by customer).]

Complainants concealed Cornillie's incarceration when they filled out and signed the account application signed September 3, 1996. Cornillie indicated that

¹ Cornillie did not produce a copy of the ad, and did not describe it in detail.

he was "self-employed" and indicated that the nature of his business was merely "manufacturing," but did not indicate that he was incarcerated.² Cornillie would later admit to Counts that this concealment had been deliberate. During a conversation on September 18 – after respondents had experienced considerable difficulty in contacting him and had begun to suspect that he was "having trouble" – Cornillie admitted to Counts: "I was afraid that letting you know [about my incarceration for bank robbery] would kind of give – would kind of put me in a bad position." [See Exhibit A to joint Answer; Cornillie letter to CFTC (filed May 6, 1997); and tape recording of September 16 and 18 conversations.]

5. On September 12 and 13, Cornillie initiated a total of three short heating oil option trades (involving one October 70¢ call, one October 68¢ put, and one October 69¢ put), and two long heating oil option trades (involving two October 74¢ calls, and three October 66¢ puts). The trade confirmation statements reported the trade prices in dollars. [Exhibit 2 to respondents' verified statement.]

6. On September 16, Cornillie called Counts. Cornillie asked Counts if the the November 70¢ calls were trading at "point two cents," Counts replied that they were trading at "two ten." Cornillie then replied "Point two-one?" And Counts confirmed "Yeah." The official NYMEX price-change register for September 16 confirms that Count's quote was correct. [Exhibit C to joint answer.]

² In retrospect, the unusually sterile and impersonal address Cornillie gave on the account application – "30304-004/Unit F-1, 2680 Highway 301 South" – appears more typical of a prison than, say, a large apartment complex. However, the unusual nature of this address by itself was too ambiguous to put respondents on clear notice of Cornillie's incarceration.

Cornillie instructed Counts to place orders to add a short heating oil position (one October 67¢ call) and a long heating oil position (five October 70¢ calls).

Before accepting Cornillie's orders, Counts asked Cornillie to explain his strategy:

"Okay, now let me ask you, buddy, what are – by buying [the five October 70¢ calls], what are you hoping to for? A move up in – I mean, net-net, what do you want have happen to heating oil?" Cornillie then explained: "I want heating oil to go up in November; I don't want heating oil to run up continually actually."

Cornillie closed the conversation, stating, "I'll touch base with you at four, and maybe put in some opening trades."

7. On September 17, Cornillie called Counts to get the fills for the orders he had placed the previous day. During this conversation, Counts indicated that Cornillie was causing problems by not calling the correct number, and Cornillie revealed that he could not call respondents at the toll-free "800" number provided for their customers, but continued to dissemble about his incarceration:

Counts: Hey James. Do you have my direct line? It seems like you're popping all around.

Cornillie: Do you have a direct number?

Counts: 1-800 –

Cornillie: Not 1-800. I can't dial a 1-800 number.

Counts: You can't dial a 1-800 number?

Cornillie: No not at work.

[Emphasis added.]

Counts next suggested that Cornillie consider "paring" his positions. During this portion of the conversation, Cornillie stated that he had mistakenly assumed that Counts had quoted the price of the November 70¢ calls in cents rather than dollars, and as a result had bought too many of the 70¢ calls.

Cornillie then decided to reduce his exposure by selling three of the 70¢ calls:

Yeah, I mean we took a major hit on the 70's. Damn it. Like I said, it's a miscommunication. It's an \$840 mistake. You know, I don't know – it certainly wasn't what I thought I was buying. That's all I can really say about that. But you know, nevertheless, having looked in the paper, I knew that's not what I had gotten, point two three [for the] November 70's. It was impossible.

The liquidation of the three November 70¢ calls would realize a net loss of about \$690. Cornillie also decided to liquidate the two October 74¢ calls, which would realize a net loss of about \$490.

8. Cornillie called a second time on September 17 to get the fill prices on his orders. During this conversation Cornillie agreed with Counts' assessment that all of his trades, except for the first trade (short one October 70¢ call), were "going nowhere."

9. Cornillie called Counts a third and a fourth time on September 17. During these conversations, Cornillie continued to conceal his incarceration:

Counts: How come you can't call the 1-800 number?

Cornillie: Uh, it's a long story. But from where I work at, I can't do that.

Counts: Oh. . . .

Cornillie: Because I don't really leave where I work.

Counts: You don't leave where you work?

Cornillie: During the day.

....

Cornillie: Hey. Well, I just went through hell and high water trying to get ahold of you.

Counts: What? Did you call another line?

Cornillie: No. I called 8361, which is all I really can at this time. And it takes time for me to add and remove numbers from my authorized list. . . .

Counts: Wait a minute. I'm just curious. What do you mean by "authorized" phone numbers?

Cornillie: It's a long story. It's not really important for what we need to do right now.

Counts: All right.

Cornillie: Basically, where I work, you know, they just don't allow personal phone calls all the time.

Counts: Okay. Now wait a minute. I thought you were self-employed.

Cornillie: That's correct. . . . As a sub-contractor. . . . I make leather goods.

[Emphasis added.]

10. During the last conversation on September 17, after the market close, Cornillie indicated that although he was "concerned" and "averse" to exercising the October options which expired September 20, he still had not decided whether or when to liquidate the October positions. Cornillie also asked Counts for the closing prices for the October 66¢ puts and 67¢ call, and placed a market order to liquidate the 66¢ puts and a limit order to liquidate the 67¢ call. (Cornillie has produced no evidence concerning the price history of these options.) At the end of

this conversation, Counts warned Cornillie that the market could "gap" overnight – that is, that the next day opening prices could differ significantly from the previous closing prices.

The liquidation of the 66¢ puts would realize a \$122 net loss. The limit order for the 67¢ call would not be hit.

11. On September 18, Cornillie called Counts. Counts reported that the market had shot up after the 66¢ puts had been sold, and when Cornillie complained, Counts explained that the market was very volatile that day. Cornillie then placed a market order to liquidate the 67¢ call, which realized a \$253 net loss.

During a subsequent conversation that day, Cornillie finally revealed that he was in prison:

Counts: Are you having any trouble? You still can't call my direct line?

Cornillie: Uh. I've got a – okay – the deal is with me – I'm in prison.

Counts: Okay. That's – you could have told me that. That's what I kinda thought.

.....

Cornillie: It's to do with taking money from a financial institution, but not market related.

Counts: Taking money from a financial – ?

Cornillie: Bank robbery.

Counts: I see.

Cornillie then placed an order to initiate a short position in 65¢ heating oil puts.

12. Afterwards, Counts unsuccessfully attempted to contact Cornillie. When Cornillie called to get the fill report on the 65¢ puts, Counts informed him that respondents had decided to liquidate the account (and not to fill the order for the 65¢ puts) because Cornillie had not disclosed his incarceration, because respondents had been unable to contact him, and because it was Alaron's policy to treat incarcerated individuals as unsuitable for trading, since, among other things, they are typically difficult to contact by phone.³ Cornillie replied "That's fine, go ahead." Later in the conversation, Cornillie stated that he wished that respondents could have been "more flexible." Counts replied that their determination to cease doing business with Cornillie and to liquidate all of the positions in the account was "not debatable," to which Cornillie replied "I understand."

The October 70¢ calls were liquidated for a \$291 net loss; the October 68¢ puts were liquidated for a \$207 net loss; the October 69¢ puts were liquidated for a \$459 net loss; and the November 70¢ calls were liquidated for a \$6 net profit.

Cornillie has produced no evidence concerning the price history of the October and November options after the forced liquidation and has produced no evidence of his trading strategy involving these options.

13. On September 23, Jensen called Alaron's General Counsel Cheryl Fitzpatrick, to complain about the account liquidation. Fitzpatrick offered to reinstate the two November 70¢ calls, but Jensen refused. [Fitzpatrick Affidavit, Exhibit 4 to respondents' Final Verified Statement.]

³ Paragraph 14 of the customer agreement provided that Alaron could at its discretion liquidate the account if Alaron "for any reason whatsoever deems itself insecure or if necessary for [Alaron's]

Conclusions

Complainants have failed to show that the account liquidation was not authorized. Most significantly, Cornillie replied, "That's fine, go ahead," when Counts informed him that respondents had decided to liquidate the account because Cornillie had concealed the patently material fact of his incarceration, and because of Alaron's policy to treat incarcerated individuals as unsuitable for trading. The reasonableness of this policy was confirmed by respondents' difficulty contacting Cornillie, and in repeatedly receiving his calls on phone lines not dedicated to customer calls. Furthermore, Cornillie's course of dealing with respondents was riddled with repeated deceptions and half-truths about his incarceration. The customer contract gave Alaron the discretion to liquidate a customer account in extraordinary circumstances where it deemed itself "insecure," or "if necessary" for Alaron's "protection." Although this power must be limited by a rule of reasonableness, it was not unreasonable for Alaron to conclude that Cornillie's disingenuous conduct had presented extraordinary circumstances. In the absence of any specific liquidation instructions by Cornillie, Alaron did not act unreasonably in liquidating the October options two days before expiration or by offering Jensen an opportunity to reinstate the November options.

Complainants also have failed to produce any convincing evidence supporting their allegation of false or deceptive representations by respondents concerning the commissions charged and the services rendered in their discount accounts and their assisted accounts. Neither have they shown that respondents

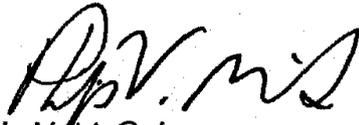
protection."

provided inaccurate price information or somehow caused Cornillie's misunderstanding of how heating oil option prices are quoted. Finally, complainants' churning claim must fail, because the record establishes that Cornillie, rather than respondents, was responsible for the initiation of all of the option positions in the account, and thus controlled the level of trading activity in the account.

ORDER

No violations having been shown, the complaint is DISMISSED.

Dated May 11, 1998.



Philip V. McGuire,
Judgement Officer