

## U.S. COMMODITY FUTURES TRADING COMMISSION

Three Lafayette Centre 1155 21<sup>st</sup> Street, N.W., Washington, DC 20581

## Office of Proceedings

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This case presents a simple allegation of mismanagement of a discretionary futures trading account and denial by respondents of any such misconduct. The parties have presented the case on the basis of the pleadings alone, with no discovery and no submissions of verified statements. A careful review of the pleadings reveals that there are no significant conflicts in the

statements. A careful review of the pleadings reveals that there are no significant conflicts in the sworn submissions that would require evaluation of sworn testimony in an oral hearing. Accordingly, the case stands ready for a decision.

Complainant's narrative (on which this decision is entirely based) sets out numerous instances of the mismanagement he claims occurred in the handling of his discretionary account. Most of these contentions arise simply from complainant's belief that respondents timed trades poorly. Those contentions would require evaluating the correctness of respondents' trading strategy with the benefit of hindsight, which is not a task that can be undertaken in reparations. If respondents made decisions that lost money, that is a risk that complainant chose to accept when he vested unfettered trading discretion in respondents. In the absence of clear evidence suggesting that respondents' trading decisions had no rational basis, no finding of mismanagement can be made.

<sup>&</sup>lt;sup>1</sup> For example, the April 25 (all dates are in 2001), entry: "Why wasn't this position closed for a profit? That was to be the format!" Similarly, May 7: "In and out at the same price. No open positions. There was no trade!" Likewise, on May 8 complainant quarreled with the fact that one of his short positions had been entered at the day's low price, and later he contends: "There was an opportunity to close [those] trades . . . at a profit!!!" It is noted that respondents admitted in their answer that they made some strategy decisions based on their market predictions that turned out to be simply wrong.

The complaint also alleges that respondents traded the account to guarantee his losses in such a way that they would profit from complainant's losses. However, complainant has not set out any proof of this theory, and except for the fact that respondents earned commissions from the trading, there is no evidence that complainant's contention has any basis beyond his suspicions and dissatisfactions with the results.<sup>2</sup> The record does not suggest any possible way that respondents could have obtained trading profits from complainant's losses.

The evidence presented by complainant establishes, at the very most, nothing more than the fact that respondents made what turned out to be several bad trades while trading complainant's account. It also establishes that after he realized that he did not like respondents' trading decisions, complainant revoked his trading authorization, stopped using respondents' services, and thus cut off all future earnings they could have received had he been a satisfied customer. That remedy, and not reparations, is the only recourse for a trader who trusts a broker, pays commissions, and then suffers losses from trading decisions that, although perhaps incorrectly timed, nevertheless cannot be attributed to violations of the Commodity Exchange Act.

No violations having been found, the complaint is DISMISSED.

Dated: December 4, 2002

JOEL R. MAILLIE Judgment Officer

Joel R. Maillie

<sup>&</sup>lt;sup>2</sup> There is no allegation or, independently reviewed, any substantial evidence of churning, which can be simply defined as excessive trading to generate commissions.