

**UNITED STATES OF AMERICA
BEFORE THE
COMMODITY FUTURES TRADING COMMISSION**

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Barbara Goldsmith,)
)
Complainant)
)
v.)
)
Terrence V. Baptie, J. Robert)
Collins, Michael E. Hermanson,)
John A. Hermanson, Gregory J.)
Parks, Rosenthal Collins Group,)
LP d/b/a Professional Services)
Division,)
Respondents.)

CFTC Docket No. 98-R070

INITIAL DECISION

Appearances:

On Behalf of Barbara Goldsmith:

Philip T. Reinstein
Reinstein & Sherman
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Northbrook, IL 60062

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Attorney at Law
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Park Ridge, IL 60068

On Behalf of Terrence V. Baptie, J. Robert Collins, Michael E. Hermanson, John A. Hermanson, Gregory J. Parks and Rosenthal Collins Group, LP d/b/a Professional Services Division:

John J. Muldoon, III
Muldoon & Flynn, P.C.
216 West Jackson Blvd.
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Chicago, IL 60606

BEFORE: PAINTER, ALJ

PRELIMINARY STATEMENT

Complainant filed this claim with the Commission on January 23, 1998, alleging that respondents caused her monetary damages in the amount of \$95,010.95 by making unreasonable margin calls and by wrongfully liquidating her account when she did not meet the calls. Respondents filed timely answers and denied any wrongdoing.

Prior to the hearing the complainant settled all issues with respondent Steven Sweet, and all allegations against him were dismissed.

The hearing took place on October 6, 1998 in Chicago, Illinois. The parties have filed post-trial briefs, and the matter is ready for decision.

FINDINGS OF FACT

1. Barbara Goldsmith, the complainant, has traded commodities for a number of years through registered entities such as Jack Carl 312 Futures, Saul Stone, First American Discount Corporation, and LFG. On or about July 21, 1997, complainant was notified that the Professional Services Division of LFG would become the Professional Services Division of Rosenthal Collins Group (RCG) another futures commission merchant, and that her account would be transferred to RCG on or about July 31, 1997 unless she objected. At the time, complainant's account was traded through Lincco Futures Group (LFG). She did not object and on August 8, 1997, her account was transferred to Rosenthal-Collins. On the day of transfer, complainant increased her S&P puts from 100 to 200. The employees and officers of Professional Services, including Sweet, Parks, John Hermanson, and Michael Hermanson, were associated with RCG on and after August 1, 1997.

2. Steven Sweet was the first witness called by complainant. Sweet testified that he had known Barbara Goldsmith and her husband, Morton Goldsmith, for several years, first when he was associated with Jack Carl Futures. Sweet testified that while working with LFG he solicited Morton Goldsmith to open an account with that firm. Sweet testified that Morton Goldsmith was interested in "minimum span margin" and that LFG "ceded" to this request. However, Sweet also testified that neither complainant nor her husband ever requested modification of the customer agreement, including the margin provisions set out in paragraphs 9 and 10. The account was opened in October 1996 in the name of complainant. Morton Goldsmith, complainant's husband, was designated as the person to manage the account, with full authority to make all trading decisions. Steven Sweet acknowledged that he was unaware that the account at issue was margined pursuant to the "minimum span margin" up through August 12 or 13, 1997. This Court finds and concludes that conversations between Steven Sweet and Morton Goldsmith did not modify, and were not intended to modify, the written customer agreement on margin.

3. Gregory J. Parks, a risk manager at RCG, was employed by LFG prior to August 1, 1997. Parks was familiar with the account at issue, and he testified that exhibit C-6 showed a margin call of \$75,650 on August 12, 1997, and that the call was e-mailed to Morton Goldsmith, the manager of the account at issue, at 6:54 a.m. on August 13, 1997. Parks further testified that on the afternoon of August 12, 1997, he was instructed by Terry Baptie, his superior, to inform Morton Goldsmith that RCG was raising the margin for the account to \$2,000,000.

4. Terrence Baptie, witness for respondents, testified that he was manager of the risk management of RCG at relevant times, and first became aware of complainant's account on August 12, 1997 when he noticed the 200 short S&P puts. He notified Bob Collins, the general manager of Rosenthal-Collins, of this fact. Collins directed Baptie to have the margin for the account increased by \$2,000,000 or have the account transferred to another firm. Baptie relayed this order to Greg Parks and possibly to Mike Hermanson, the head of the Professional Services Division.

5. Baptie was concerned that Morton Goldsmith held power of attorney, while the account was owned by his wife, Barbara Goldsmith. On that same day, August 12, 1997 Baptie telephoned the number for Barbara Goldsmith. He was unable to reach complainant, and left a message on the answering machine that the margin had been increased to \$2,000,000 and left his own number with a request that he be contacted. He did not get a return call.

6. Goldsmith testified that he was aware at all times that RCG could terminate or liquidate an account to protect RCG. He also testified that late in the evening on August 12, 1997, he received a call from Parks to the effect that RCG did not want the complainant's account. Early on August 13, Baptie was told that efforts were underway to have the account transferred to Lincco, but Lincco informed Baptie that they would not take the account. When informed that American Financial would accept the account, Baptie checked with Spike Trading, the firm that cleared American Financial trades, and was told that Spike Trading would not take an account of that size.

7. On the morning of August 13, 1997, Morton Goldsmith met with Parks and offered a payment of \$75,000 towards the margin call. Parks declined to accept the payment, and demanded \$2,000,000. According to Morton Goldsmith, RCG was at that very time liquidating the account, and only 50 contracts remained open. Account statements of record confirm that 150 contracts were liquidated on the morning of August 13, 1999.

8. After the meeting with Parks, Morton Goldsmith met with John Hermanson, reputedly one of the owners of Professional Services Division of RCG. Morton Goldsmith testified that Hermanson expressed regret about the liquidation of the account, and indicated that he, Hermanson, would make it "right." Hermanson categorically denied that he had offered to make good any losses on the account. This Court finds Hermanson's testimony to be more credible than the testimony of Morton Goldsmith, and

concludes that Hermanson did not agree to make good any losses sustained by the account at issue.

9. On August 13, 1997, Morton Goldsmith transferred the remaining 50 contracts to another futures commission merchant. He was required to deposit \$250,000 in cash to margin the positions with the successor futures commission merchant. T-bill and cash on deposit with RCG was transferred later in the month.

10. Morton Goldsmith testified that at the close of business on August 12, 1997 the account at issue had an equity of approximately \$250,000, and that liquidation on August 13, 1997 reduced the equity by \$95,000.00.

11. On cross examination Morton Goldsmith conceded that he was trained in the law, and that he was aware at all times that the customer agreement, and any modifications thereto, had to be in writing.

12. Donald Kraft, an expert witness for complainant, testified that on August 1, 1997, complainant's account held 100 September 1997 750 puts, and that on August 8, 1997 complainant sold 100 September 1997 800 puts. Kraft testified that liquidation of 150 of the S & P puts resulted in an equity loss of \$95,000. Kraft testified that he did not know how much a customer had to put up with the futures commission merchant to trade futures contracts, and that "...I'm not sure who regulates the requirements..."

13. John Hermanson, witness for respondents, testified that he was unaware of the complainant's account until August 12, 1997. According to Hermanson, Morton Goldsmith was aware on August 12, 1997 the position was too large. Hermanson made an effort to have the complainant's account transferred back to LFG, but that firm did not want the account.

14. Hermanson testified that at the time LFG transferred complainant's account to RCG there was an understanding there would be only 100 lots, but that Morton Goldsmith then doubled the size of the account. Hermanson denied that he ever promised to make things "right" for Goldsmith. This Court is unable to find that an understanding existed to limit the account to 100 S&P contracts.

DISCUSSION

Morton Goldsmith is an attorney and an experienced commodity trader. In August 1996 he opened an account with LFG for his wife, Barbara Goldsmith, with control over the account vested in himself. Morton Goldsmith had total control over the account. Such circumstances may cause problems for the futures commission merchant handling a sizable account. The person trading the account is not financially responsible for any debit that may end up on the account. Granted, the owner of the account may be liable, but that person may also be judgment proof. Therefore, the manager of a controlled account may be inclined to take huge risks, with the prospects of making a

huge return. If the account wins, all is well. And if it loses, the account may end up with a massive debit balance that cannot be collected from the owner. Nothing in the present record suggests that Barbara Goldsmith may have been unable to pay any debit balance. Nevertheless, there is an added element of risk when the manager of the account is not liable for losses.

There were 200 short S & P contracts on the account on the day it was transferred from LFG to RCG. It is surprising that this did not catch the attention of the RCG people at the time of transfer. The risk to RCG became evident to Terrence Baptie and other RCG personnel, and on August 12, 1997 complainant and her husband, Morton Goldsmith were informed that an additional \$2,000,000 in margin had to be deposited immediately, or the account had to be transferred or liquidated. Morton Goldsmith, on August 13, 1997 offered \$75,000, which was refused, and he then offered to increase the margin to \$500,000, and that was refused. The account was being reduced as early as 8:36 a.m. on August 13, 1997, and by noon only 50 positions remained on the account. . Another firm finally accepted the remaining 50 positions.

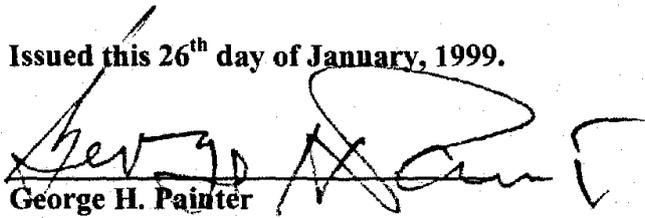
It is clear from the record that Baptie and personnel from the Professional Services Division tried unsuccessfully to find a firm that would accept the complainant's account. I find that respondents acted in good faith, and went beyond the call of duty to locate a successor firm to handle the account. Respondents gained nothing by terminating complainant's account other than the removal of a huge risk.

This Court finds that RCG acted prudently and within the law by demanding an increase in margin on August 12, 1997. Morton Goldsmith is free to speculate as he sees fit, in an account in his own name or his wife's name. To do so, he is required to meet any reasonable margin call. The margin increase in the instant case was entirely reasonable. As acknowledged by Morton Goldsmith, the customer agreement clearly provides that RCG had the right to increase margin requirements to protect itself. RCG exercised sound and legal business judgment by increasing the margin requirement on August 12, 1997.

ORDER

Complainant has failed to prove by a preponderance of the evidence that she sustained monetary damages by reason of wrongdoing on the part of respondents. This proceeding is **DISMISSED WITH PREJUDICE**.

Issued this 26th day of January, 1999.


George H. Painter
Administrative Law Judge