



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

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BARBARA ANN GOODRIDGE,  
Complainant,

v.

RB&H FINANCIAL SERVICES, LP.,  
TRADELINER BROKERAGE SERVICES, LLC.,  
ROBERT IAN GORRIE, and  
VICTOR JAMES SMITH,  
Respondents.

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CFTC Docket No. 99-R117

**INITIAL DECISION**

Barbara Ann Goodridge alleges that Victor James Smith fraudulently solicited her non-discretionary commodity options account, by guaranteeing that she would triple her money in a few weeks, by promising to limit any losses to a few hundred dollars, by downplaying the written risk disclosures, and by providing a deceptive disclosure of commission costs. Goodridge also alleges that Smith's supervisors – Robert Ian Gorrie and Brian Ozkan – facilitated Smith's fraud by disregarding her protests about Smith's conduct.<sup>1</sup> Respondents deny any violations.<sup>2</sup>

As explained below, it has been concluded that Goodridge has established violations by Smith proximately causing \$5,626 in damages, and has established

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<sup>1</sup> See pages 148-153 of hearing transcript, and factual description in support of complaint.  
<sup>2</sup> See pages 153-160 of hearing transcript; ¶¶ 1-12 of RB&H, Tradeliner and Gorrie joint answer; ¶¶ 1-11 of Smith answer; and Mears and Ozkan affidavit (filed January 4, 2000).

that Tradeline is liable for the violations of its agent, and that RB&H is liable as the guarantor of Tradeline. However, Goodridge has not shown a factual nexus between her financial losses and the conduct of Gorrie and Ozkan. These conclusions are based on a careful review of the parties' documentary submissions, and reflect the determination that Goodridge's testimony was generally more plausible and convincing than the testimony of Smith and Gorrie.

### **Factual Findings**

#### *The parties:*

1. Barbara Ann Goodridge is a resident of Sebastopol, California and a self-employed psychotherapist. In that capacity she principally teaches dance to the elderly. When she opened her RB&H account in 1998, Goodridge was 57 years old, and her annual income was a little over \$20,000, and her net worth was a little over \$100,000 – most of it equity in her home. Goodridge's investment experience was limited to the purchase of Bristol-Meyers and Ford stock in 1997, with no commodity futures or options experience. Goodridge regularly viewed financial broadcasts on cable television and was familiar with the S & P 500 index. When she responded to a Tradeline television commercial, Goodridge was only interested in a low-risk investment to replenish retirement savings that had been misappropriated by her ex-fiancé. [Pages 38-39 of hearing transcript; see pages 50-52, 68-72, 75-78, 123, 141, and 148 of hearing transcript.]

2. Tradeline Brokerage Services, LLC, became a registered introducing broker in 1996. Tradeline is no longer in business, and its February 1999 request to withdraw its registration is pending. [NFA records.]

RB&H Financial Services, LP is a registered futures commission merchant with its principal place of business in Chicago, Illinois. During the relevant time, RB&H guaranteed Tradeline's obligations under the Commodity Exchange Act. [NFA records; and introducing broker agreement and guarantee agreement (produced October 11, 1999).]

Victor James Smith, a registered associated person with Tradeline from January 1998 to May 1998, solicited Goodridge's account and acted as her account executive. Smith was previously registered as an associated person with M.G. Globe from September 1996 to January 1998, but is not currently registered. Smith described himself to Goodridge as a "senior broker." However, at the hearing Smith conceded that that was not his job title. [See pages 9, 92, 97-98, and 131-132 of hearing transcript.]

Robert Ian Gorrie, a registered associated person and principal with Tradeline since 1996, spoke to Goodridge when she complained about Smith's handling of her account. He was previously a registered associated person with Premex, Monex, Opportunities in Options, and Amerivest Brokerage Services.

*The solicitation*

3. Goodridge contacted Tradeline in response to a television commercial promoting options on S & P 500 Index futures. Smith introduced himself as a senior

broker and told Goodridge that Tradeline was now recommending unleaded gasoline options. Smith represented that predictable price changes based on a seasonal increase in demand could be reliably exploited to realize tremendous profits. However, Goodridge replied that she was not interested in that strategy because the news had recently featured stories about a glut in petroleum supplies. Goodridge told Smith that she was single, that her income was barely over \$20,000, that her son could provide only limited support in her retirement because he had a relatively low paying medical research job. Goodridge also told Smith that because her ex-fiancé had misappropriated a significant portion of her savings, her available funds were strictly limited to \$6,000, and her investment goal was to recoup the amount of the stolen funds, with limited downside risk. After a few conversations, Goodridge told Smith that options seemed inappropriate for her conservative investment goals. Smith asked her how she expected to recoup her losses on her own, and she replied "slowly and carefully" in the stock market. Smith then assured her that she should "not worry;" that he could much more quickly recoup her losses with minimal risk; that he would make trades that would generate a three-fold profit in a few weeks; that as soon as she made those profits he would "take them off the table" and send them to her; and that he would closely watch the market and limit any losses to a few hundred dollars by exiting the market at the slightest dip. Smith also told her that Tradeline charged a \$95 commission per trade, when in fact Tradeline charge \$95 per contract. After reviewing the account-opening documents, including the customer contract and risk disclosure statement, Goodridge told Smith that she had not yet signed the documents because the

customer contract seemed too one-sided and the risk warnings concerned her. Smith replied that "there is risk in everything," that the risk "only applies if you don't know how to trade," that these are "standard forms signed by everyone," and that "I can't help you make money until you sign the documents." Goodridge then decided to open the account. [See pages 3-16, 22-23, 48-60, 67-71, 78-80, 84-85, 86-90, 94, 100-102, and 141-142 of hearing transcript.]

*Trading activity*

4. On March 2, 1998, Goodridge deposited \$6,000. On June 22, 1998, LFG would refund to Goodridge the \$374 account balance. Thus, her out-of-pocket losses totaled \$5,626.

5. On the morning of March 10, Smith called Goodridge before she had awakened. Smith told her that the silver and corn markets were exploding and that she had to "act now." Goodridge then accepted Smith's advice to purchase eight far-out-of-the-money May silver call options and nine far-out-of-the-money July corn call options. The purchase cost for these two transactions totaled \$6,362, which resulted in a debit balance of \$362. These would be the only trades in the account. Smith was unable to provide any explanation when asked why he had not recommended the purchase of fewer options to avoid generating a debit balance. Smith was similarly unable to explain why he had recommended so many far-out-of-the-money options instead of fewer closer-to-the-money options. [See pages 19-24, 64-65, 71-74, 104-108, 111, 120-121 of hearing transcript.]

Goodridge was charged a total of \$1,253 in commissions,<sup>3</sup> and \$122 in various fees. The resulting commission-to-investment ratio was 23%, and the commission-to-premium-paid ratio was 29%.<sup>4</sup>

6. When Goodridge received the trade confirmation statement, she was "shocked" to discover that the trades had cost more than the \$6,000 that she had deposited, and that the commissions for the two trades had totaled over \$1,000, rather than the \$190 that she had expected based on Smith's representation. Goodridge complained to Smith who assured her that the commissions were "standard" and that she would quickly recoup the costs with profits. Smith also asked her to send in additional funds. However, Goodridge refused because she had already told Smith that the \$6,000 represented all of her available funds and because Smith had not told her that the purchase costs could exceed \$6,000. [See pages 26-27, and 61-63 of hearing transcript.]

The silver and corn calls immediately dipped the next day, and steadily declined afterwards. By March 13, the silver calls had lost more than half of their value, and by March 19, the corn calls had lost over half of their value. However, Smith made no apparent meaningful effort to limit Goodridge's losses as he had promised.

On March 26, Goodridge's account received a commission credit that covered the debit balance. Also on that date, Smith called Goodridge and told her that she had to sell four silver calls to cover the debit balance. Respondents have

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<sup>3</sup> This total reflects a \$362 "commission credit" on March 26 to cover the account debit balance.

<sup>4</sup> These ratios reflect the burden of commission costs on potential profitability.

not explained why they redundantly covered the debit by crediting her account while also forcing her to liquidate four contracts. In any event, Goodridge then approved the sale which resulted in a \$400 credit. By April 1, the silver and corn calls both had a negligible liquidation value, and both would expire worthless. [See page 30, 103-105 of hearing transcript.]

#### *Goodridge's protest*

7. In mid-May, Goodridge called Tradeline and learned that Smith no longer worked there. Goodridge asked to speak to Smith's advisor, and was given to Brian Ozkan, a Tradeline branch office manager. Goodridge complained that Smith had promised to limit her losses, that Smith had overbought her account, that Smith had misrepresented the size of the commissions, and that Smith had not told her that he was leaving Tradeline. However, Ozkan abruptly responded in a hostile manner that he was an arbitrator for the National Futures Association,<sup>5</sup> that Goodridge was outright lying, and that Tradeline's lawyers would "go after" her if she continued to complain.<sup>6</sup> Later, Goodridge called and asked to speak to Ozkan's supervisor, Gorrie, who cavalierly attempted to deflect her protests with a variety of transparent ploys, such as recounting the story of a dance teacher who had stolen money from her students. In a subsequent conversation, Gorrie told Goodridge that he was no longer registered and no longer subject to CFTC jurisdiction.

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<sup>5</sup> On this record, it has not been determined whether Ozkan actually is, or was, an NFA arbitrator.

<sup>6</sup> Respondents submitted an affidavit by Ozkan in which he stated that he could not recall any conversations with Goodridge. Respondents did not produce Ozkan as a witness at the hearing.

## Conclusions

Barbara Ann Goodridge has established by a preponderance of the evidence that Victor James Smith violated Section 4c(b) of the Commodity Exchange Act and CFTC rule 33.10, proximately causing \$5,626 in damages; that Tradeline Brokerage Services is liable for Smith's violations pursuant to Section 2(a)(1)(A) of the Act; and that RB&H Financial Services is liable as guarantor of Tradeline.

Smith fraudulently induced Goodridge to open an account with Tradeline and to approve the silver and corn option purchases by misleading Goodridge about the relative risks and rewards of trading with Tradeline. Smith essentially guaranteed that he would help her recoup money lost to her ex-fiancé by tripling her money in a few weeks, falsely promised that he would limit her losses to no more than a few hundred dollars if the options unexpectedly "dipped," and deceptively assured her that trading commodity options was an appropriate vehicle for replenishing her meager retirement funds. Smith fraudulently undermined the effectiveness of the written risk warnings by stating that they were meaningless "standard forms signed by everybody," that "there is risk in everything," and that the risk did not apply to traders like him who knew how to trade successfully. Smith also misled Goodridge by grossly understating the amount of commissions, and by obscuring the detrimental effect of the substantial commission load on profit potential:

Because the size of a firm's commissions and fees affects the profit potential of an investment, it affects the kinds of representations that can be made about profitability. . . . All else being equal, customers of a firm with a high commission or fee structure will have a more difficult time making a profit than those who employ a less expensive

firm. As a result, the firm charging higher commissions and fees is more limited in what it can claim regarding profit potential.

*Johnson v. Fleck*, [1990- 1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶24,957, at 37,502 (CFTC 1990) (Chairman Gramm concurrence). Here, where the high commissions not only severely limited profit potential, but materially undermined the viability of the silver and corn trades, Smith not only was constrained from making the sort of profit projections that he made, but also was obligated to provide a fair and accurate disclosure of the total amount of commissions. See *Swickard v. A.G. Edwards & Sons*, [1984-1986 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶22,522, at 30,522 (CFTC 1985) (“Half of a truth may obviously amount to a lie if understood to be the whole.”) quoting Prosser & Keeton, *The Law of Torts*, 738 (1984); cf. CFTC rule 33.7(f), 17 C.F.R. § 33.7(f) (requiring disclosure of all material information for an options customer). Thus, Smith’s bold predictions of large profits without any meaningful balancing disclosure of risk, and without a fair and accurate disclosure of the costs, was fraudulent. *Levine v. Refco*, [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶24,488 (CFTC 1989). The intentional nature of Smith’s misrepresentations is underscored by the blatant and pervasive nature of the misrepresentations and omissions, and his knowledge of Goodridge’s limited investment inexperience and low risk tolerance.

Smith’s decision to invest what was for her a significant sum of money was consistent with her testimony that she relied on what she had learned from Smith: that is, that she was likely to make quick and large profits with minimal accompanying risk. The fact that Smith acknowledged receipt of the written risk

warnings does not alter the conclusion that she relied on Smith's representations, and does not otherwise bar recovery on a fraud theory, where the overall effect of Smith's oral representations substantially outweighed and vitiated the written risk warnings. See *Scheuffler v. Stuart*, [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶27,171, at 45,577 (CFTC September 30, 1997); *Levine v. Refco*, *supra*; *Hannay v. FCCB*, [1986-1987 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 23,936 (CFTC 1987); *Dunn v. Murlas* [1986-1987 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶23,357 (CFTC 1986); *O'Hey v. Drexel Burnham Lambert, Inc.*, [1984-1986 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 22,754 (CFTC 1985); and *Chicoine v. Rosenthal*, [1980-1982 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 21,075 (CFTC 1980), *aff'd in part and remanded on other grounds sub nom. Rosenthal v. CFTC*, 678 F.2d 727 (7<sup>th</sup> Cir. 1982).

The proper measure of damages for Smith's fraud is Goodridge's out-of-pocket losses: \$8,543.

Goodridge has also produced compelling evidence that Brian Ozkan and Robert Gorrie breached their supervisory obligations by disregarding her protests about Smith's fraud. Particularly damning was her unrebutted convincing testimony that Ozkan responded to her protest, not with a promise to investigate, but with a menacing rebuke that Goodridge was lying, that Tradeline's lawyers would "go after" her if she pressed her complaint, and that he was an arbitrator for the National Futures Association. However, Goodridge's showing that Ozkan and Gorrie inexcusably disregarded and discouraged her protests about Smith, by itself, is insufficient to support a finding of a factual nexus between her financial losses and

their misconduct, because the liquidation value of the options was negligible by the time that she lodged her protests with Ozkan and Gorrie..

### ORDER

Barbara Ann Goodridge has established that Victor James Smith violated Section 4c(b) of the Commodity Exchange Act and CFTC rule 33.10; that these violations proximately caused \$5,626 in damages; that Tradeline Brokerage Services, LLC is liable for Smith's violations pursuant to Section 2(a)(1)(A) of the Act; and that RB&H Financial Services, LP is liable as Tradeline's guarantor.

Accordingly, Victor James Smith, Tradeline Brokerage Services, LLC, and RB&H Financial Services, LP are ORDERED to pay to Barbara Ann Goodridge reparations of \$5,626, plus interest on that amount at 6.197% compounded annually from March 3, 1998, to the date of payment, plus \$50 in costs for the filing fee. Liability is joint and several.

Goodridge has failed to establish violations causing damages by Robert Gorrie. Accordingly, the complaint against Robert Gorrie is DISMISSED.

Dated April 21, 2000.

  
Philip V. McGuire,  
Judgment Officer