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DENIS HANLON, and JUANITA HANLON,
Complainants,

v.

SMITH BARNEY, INCORPORATED,
RICHARD MACMILLAN,
Respondents.

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* CFTC Docket No. 97-R86
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INITIAL DECISION

The Hanlons allege three separate claims concerning their joint nondiscretionary Smith Barney account. The first claim involves an allegedly mishandled trade order in June of 1995. The second involves a dispute over interest payments and charges. And the third involves two allegedly mishandled trade orders in November of 1995. The Hanlons claim damages of \$508 for the first claim, \$215 for the second,¹ and \$807 for the third. Respondents deny any violations, and raise various affirmative defenses, including ratification. Based on a careful review of the parties' documentary submissions, it has been concluded that the Hanlons have failed to establish by a preponderance of the evidence any violations causing damages.

¹ The Hanlons also presented two alternative calculations of damages for the third claim: one for \$760 and the other for \$2,100.

The June 1995 Order

On June 6, 1995, Hanlon² placed an order to exercise two silver July \$4.75 calls. The resulting futures position would be liquidated on June 21, 1995, for a \$6,513 net profit.

On June 21, 1995, Hanlon decided to close out the option position that he "temporarily forgot" had already been exercised. Hanlon asserts that he instructed MacMillan "to close out, i.e., to sell two July 1995 calls," which he argued would be confirmed by respondents' order tickets. In contrast, respondents assert that Hanlon merely placed an order "to sell two July calls," without specifying the year or without referring to his strategy. Respondents' assertion is supported by the order tickets which merely identified the contracts as July calls. (Both sides agree that Hanlon also placed an order to buy two silver December (1995) \$5.25 calls.)

In any event, because, the July 1995 silver option contract had expired on June 9, 1995, the trading desk assumed that the order was for the nearest available July call –the July 1996 call – and filled the order accordingly. Five to fifteen minutes later, Hanlon realized his error, and called to cancel the order. According to respondents, when Hanlon was told that the order had already been filled, Hanlon accepted MacMillan's explanation without protest, and authorized the liquidation of the position, resulting in a loss of \$598 (\$100 net premium paid, plus \$408 in commissions and fees). In contrast, Hanlon claims Macmillan promised to credit the \$400 in commissions. Despite subsequently receiving several

² Because Dennis Hanlon was responsible for all trading decisions and was involved in all of the oral and written communications with respondents, all references are to him.

confirmation and monthly account statements, Hanlon claims that "[this] dispute, which complainants thought was resolved when it occurred was discovered five months later to be uncorrected." [Emphasis added, Complaint.] During this five-month period, Hanlon received numerous confirmation and monthly account statements which did not report the purportedly promised adjustment, but did not raise the issue of the purportedly promised commission adjustment with respondents.

By letter to MacMillan dated November 21, 1995, Hanlon complained about the matters that form the basis for the second and third claim in his reparations complaint. In a post-script to this letter, Hanlon stated "In a separate letter I will address the silver trades and commissions that took place on June 21, 1995," and briefly mentioned that MacMillan had promised to reverse the \$400 commissions charge on the "erroneous" trade. By letter dated December 15, 1995, Michael Grace of Smith Barney addressed the issues raised by Hanlon in the main text of his letter, but did not address the disputed June 21 trade, apparently because he was expecting "the separate letter" promised by Hanlon. However, Hanlon would not send this promised separate letter until December 29, 1995, when he sent two letters. In one letter addressed to Michael Grace, a Smith Barney managing director, Hanlon complained:

In light of your letter, one I found very inadequate, it is no surprise that you failed to address my letter's POSTSCRIPT regarding Dick MacMillan's June 21, 1995 statement that he was NOT charging commissions on the 4 ERRONEOUS silver call transactions. His offer, unconsummated, was not eleemosynary.

[All caps in original, exhibit to complaint.]. In the other letter, addressed to Smith Barney's Director of Compliance, Linda Frasier, he set out his version of the events on June 21 related above.

By letter dated March 8, 1996, Smith Barney replied that MacMillan could not recall any conversation about the commissions, and that in the absence of any timely protest by Hanlon, Smith Barney had concluded that "the [June 21] order was executed properly and that you ratified the trade and associated with it."

[Respondents' discovery production, filed October 3, 1997.]

Hanlon asserts that Smith Barney should have known the status of his account on June 21, *i.e.*, that he had no open July option position to close out, and that it was unreasonable to assume that he would have traded options that were "over one year deferred," and with "assuredly no open interest." However, Hanlon has produced no reliable evidence that respondents were aware of his trading strategy, or agreed to monitor his account, to provide trading advice or otherwise to insure Hanlon for his own mistake in monitoring the trading activity. Here, the overall circumstances – including the order tickets written for the nearest July contract and Hanlon's five-month delay before complaining about the trade – support the conclusion that Hanlon was solely responsible for his error, that Hanlon initially accepted responsibility for the \$508 loss caused by his own error, and that Hanlon has failed to show that he is entitled to any award based on this trade.

Interest Credits and Debits

On August 17, 1995, Hanlon took delivery of three gold contracts, which created a debit of \$111,300. In order to cover partially the debit, \$40,115 was transferred from the Hanlons' security account to their commodity account on August 22, 1995. Hanlon re-delivered (*i.e.*, sold) the gold on August 28, 1995, and used the proceeds to cover the debit balance. From August 22 to 28, the account was charged \$95 in margin interest on the uncovered portion (approximately \$71,185) of the debit balance. Hanlon claims that this charge is "patently incorrect and impossible." However, the account statements confirm respondents' version of events, and establish that the margin debit was only partially covered between August 22 and 28. In the absence of any evidence that respondents' interest calculation was inaccurate or that the interest charge was not authorized by the terms of the customer agreement, the Hanlons' claim concerning this charge must fail.

The Hanlon account incurred another margin charge, for \$70, on October 2, 1995, when they again took delivery of three gold contracts into the account, which created a debit balance of \$111,124. On October 6, 1995, the Hanlons re-delivered the gold, and used the proceeds to cover the debit balance. On October 30, this charge was reversed as an accommodation. [See December 15, 1995 letter from Smith Barney to the Hanlons, Respondents' discovery production.] Thus, the Hanlons' claim for this amount has no basis and must also fail.

As a result of the two debit balances described above – from August 17 to 22, and October 2 to 6 – Smith Barney transferred funds from the Hanlons' money

market account to their commodity account. However, Hanlon had to complain before Smith Barney fully paid the interest on those funds for the time that the funds were in the money market account: August 29 to October 2, and October 7 to 16. [See Hanlon's letter to Smith Barney dated November 21, 1995, exhibit to complaint; Smith Barney's letters to Hanlon dated December 15, 1995 and March 8, 1996, respondents' discovery production; and page one of Smith Barney "Client Statement" for November 27 – December 31, 1995, exhibit to Answer.] Hanlon claims that he is also entitled to an interest credit for the period October 2 to 6, which he has estimated to be about \$50. However, as noted above, the funds had to be committed to cover the deficit in the commodity account during this time, and thus Hanlon was not entitled to an interest payment for this period.

The November 1995 Orders

On November 13, 1995, Hanlon called MacMillan's assistant, and asked if COMEX accepted limit price orders, on the close only. She replied that she did not know the answer, and offered to call the trading floor. However, Hanlon declined this offer, and instructed her to place two good-till-cancel ("GTC") limit price orders: the first to sell four December gold futures at \$386.40; and the second to sell two silver futures at \$5.24. The gold order was filled at \$388.10, and the silver order was filled at \$5.31, both prices better than the limit order prices.

Hanlon later complained that his instructions had been disregarded because the market had not hit the limit price for either order. MacMillan tried to explain to Hanlon that limit orders can be executed at the specified price or at a better price,

and that it appeared that Hanlon should have placed stop orders (which would have become market orders when the market hit the stop price). Hanlon then rejected MacMillan's offer to re-instate the original positions at no charge. Hanlon's claim concerning these orders must also fail because he has failed to show any violations where he asked for limit orders, and received properly filled limit orders.

ORDER

No violations having been shown, the complaint in this matter is
DISMISSED.

Dated June 9, 1998.



Philip V. McGuire,
Judgment Officer