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LARRY D. HART, Complainant, v. RB&H FINANCIAL SERVICES, LP., NEXTRADE, INCOPORATED, STEWERT REID WILSON, and ERIC KOUYOUMTJIAN a/k/a ERIC KAY, Respondents.	*	CFTC Docket 00-R103

INITIAL DECISION

Hart's principal allegation is that respondents converted $6,200 from his account in connection with two cotton calls, which he purchased on January 7, 2000, and offset on March 10, 2000. Hart's allegation is based on two assumptions: first, that the premium paid ($3,100) for the purchase of the cotton calls was essentially a deposit, and thus should have been re-credited to his account when the options were sold; and second, that respondents improperly charged another $3,100 debit when he sold the cotton calls on March 10th. In response, respondents assert that they properly debited Hart's account for the $3,100 premium paid for the purchase on January 7th, and properly credited $9,500 for the premium collected for the sale.

Although the parties offer different interpretations of the facts, they do not dispute the material facts themselves. Therefore, this case has been decided on the documentary record, without an oral hearing. [1] As explained below, a review of the record establishes that Hart has failed to show that he is entitled to any recovery.

[1] The record consists of Hart's complaint and addendum to the complaint (with attachments), reply to the answer, production in response to a discovery order, and final verified statement; and respondents' joint answer (with exhibits), production in response to a discovery order, and final verified statement.

Factual Findings

1. Larry Hart, a resident of Derby, Kansas, was 49 years old at the relevant time. Since 1990, he has been employed as a manager for Wichita Rehabilitation Services. Hart has a bachelor's degree in Psychology, and did Masters work in counseling. On his account application, he indicated that his annual income was between $50,000 and $100,000, and his net worth was over $100,000. Hart had traded commodity futures and options since 1995, with modest amounts of $5,000 or less. [*See* account application (Exhibit 1 to answer); and ¶ 4 of Hart's un-sworn statement.]

2. RB&H Financial Services, L.P. is a registered futures commission with its principal place of business in Chicago, Illinois. Nextrade, Incorporated is a registered introducing broker, guaranteed by RB&H and located in Irvine, California. Stewart Reid Wilson and Eric Kouyoumtjian a/k/a Eric Kay are registered associated persons with Nextrade. Wilson is the president of Nexttrade, and Kay was Hart's account executive. [*See* answer.]

3. On or about January 5, 2000, Hart opened a non-discretionary account with Nextrade. Hart would make a total of eight trades between January 5 and March 29, 2000, which would realize an aggregate net loss of $4,600. Three of these trades were option spreads, three trades were straight option sales, and two were futures trades.[2]

4. The dispute centers on the long leg of a July cotton call spread initiated by Hart on January 7, and liquidated on March 10.[3] The January 7th confirmation statement reported that, for this leg, Hart purchased two July cotton 55 calls, at a price of 3.10, and paid $3,100 in premiums, plus $183.08 in commissions and fees. [*See* transcript of trade authorization (exhibit 2 to answer); and Nextrade order ticket (exhibit 3 to answer).]

5. RB&H confirmation statements are divided into a "Confirmation" section and an "Open Positions" section. The Confirmation section reports each debit for each purchase, commission or fee, and each credit for each sale, on that date; and the Open Positions section reports the liquidating value of open option positions based on the settlement price that day and also reports the total net liquidating value of all open option positions, as well as the account value. The January 7th statement, among other things, reported in the Confirmation section that Hart's account had been debited $3,100 for the purchase of the two July cotton 55 calls; and reported in the Open Positions section that the 55 calls had closed up at 4.05, and thus had a liquidation value of $4,050. Statements dated January 13, 21, 26 and 31, February 29, and March 3, reported the ever increasing market price, and liquidating cash value, of the 55 calls. These statements also reported

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[2] All of the trades would be closed out by the end of March, with the exception of the first trade (a July cocoa option spread initiated on January 5), and a May frozen range juice call, which were held until expiration. The disputed cotton trade was the only long position that would be offset – the other two long positions would be held until expiration.

[3] As noted above, Hart allowed the long legs on the other two spreads to expire. Therefore, the disputed cotton purchase would be the only long option position that Hart would liquidate during the life of the account. As a result, Hart had no other offset of a long position to compare with the disputed cotton trade.

the decreasing and increasing values of other open option positions in an identical manner.

6. On March 10, Hart sold the two July cotton 55 calls, at 9.50, and collected a premium of $9,500. The March 10th statement reported in the Confirmation section that the account had been credited $9,500, and also recapped the net result of the trade in the "Options Offsetting Information" sub-section by reporting the premium paid for the purchase on January 7th ($3,100), the premium collected for the sale ($9,500), and the resulting net premium collected ($6,400).[4] A careful review of the March 10 statement establishes that respondents did not charge a second $3,100 debit in connection with this trade.

7. Nextrade phone records show that, after March 10th, Hart and Nextrade spoke on March 13th (15 minutes), twice on March 17th (4 and 8 minutes), on March 21st (5 minutes), on March 29th (5 minutes), and April 4th (55 minutes). Respondents did not produce phone bills for dates after April 6th; however, both sides indicate that conversations took place later in April. Neither side has described the post-March 10th conversations in detail. However, the parties' submissions indicate that they were unable to reach any agreement and lost patience with each other.

8. By letter dated April 27, 2000 and addressed to Nextrade, and by letter dated May 1, 2000 and addressed to RB&H, Hart complained, one, that the initial $3,100 "investment" on January 7 – that is the premium paid to buy the two options – had "decayed" or been "laundered" out of his account, and two, that on March 10, $3,100 had improperly been debited from his account, and thus claimed that he was entitled to a credit of $6,200. An exchange of more phone calls and letters ensued, but Hart and respondents failed to reach any resolution or understanding, and Hart filed his reparations complaint. [*See* letter dated March 31, 2000, from Hart to NFA (attachment to addendum to complaint); letter dated April 27, 2000, from Hart to Nextrade (attachment to complaint); letter dated May 1, 2000, from Hart to RB&H (attachment to complaint); letter dated May 19, 2000, from Nextrade to Hart (exhibit 7 to answer);[5] and letter dated June 7, 2000, from Hart to NFA (attachment to complaint).]

CONCLUSIONS

Hart's belief that he is entitled to a refund of the premium paid for the purchase of the two cotton calls is without merit. The premium paid by Hart when he bought the cotton call options was not a deposit, but rather was the "price" he paid to an option seller. This price was arrived at through open competition between a buyer and a seller

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[4]The RB&H statements reported all the other round-turn option trades in an identical manner.

[5] This 5-page letter, signed by Wilson, explained in considerable detail the mechanics of trading options – including how options are priced and traded – and explained in similar detail how to correctly interpret the RB&H account statements. Hart claims that he had never seen this letter until he had received respondents' reparations answer. Hart's subsequent submissions indicate that he would not have been swayed even if he had read it in May 2000. (*See* Hart's reply to the answer, reply to discovery order and final verified statement.) In this connection, Hart has not substantiated his assertion that the letter contained "inconsistencies and misrepresentations."

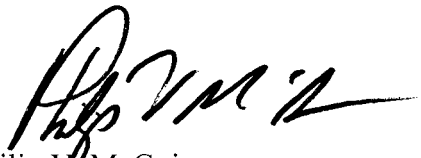
on the floor of the New York Cotton Exchange, who completed the transaction and recorded it. The seller's account was then credited the amount of the premium collected, and the buyer's account was debited the same amount for the premium paid. In other words, Hart acquired the rights conveyed by the call options (the right to purchase the underlying cotton futures), in exchange for payment of the premium. Thus, when Hart offset the two cotton calls, he was entitled to no more than the $9,500 premium he collected, which in this instance resulted in a net premium collected of $6,400. [*See generally* "Buying Options on Futures Contracts" (National Futures Association).]

Hart's insistence that respondents improperly double-debited his account on March 10th when he sold the cotton calls is simply not borne out by the account statement, which does not report a second $3,100 debit for the disputed cotton calls. Rather, the statement reports: a beginning account balance of $1,002; $13,600 in credits ($9,500 for the sale of two cotton 55 calls, $2,000 for the sale of 4 cotton 70 calls, and $2,100 for the sale of four cotton 60 puts); $8,933 in debits ($5,600 for the purchase of two cotton 60 calls, $2,600 for the purchase of two 65 cotton calls, and $733 in commissions and fees); and a closing account balance of $5,669. The $3,100 entry in the "Options Offsetting Information" section of the confirmation statement was merely part of a recapitulation of the round-turn trade, which set out the premium paid for the purchase, the premium collected for the sale, and the resulting net premium.

ORDER

No violations having been established, this matter is DISMISSED.

Dated February 4, 2002.



Philip V. McGuire,
Judgment Officer