

UNITED STATES OF AMERICA
before the
COMMODITY FUTURES TRADING COMMISSION

Rudolph Kodras

Complainant,

v.

20/20 Trading Company
Man Financial, Inc.
Sharief Deona McDowell, &
Vision Financial Markets LLC

Respondents.

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CFTC Docket No. 08-R049

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ORDER OF DISMISSAL

Procedural History

On March 30, 2009, Respondents 20/20 Trading Company and Sharief McDowell filed a Motion for Summary Disposition. Respondents assert, among other things, that the Complainant failed to file his claim within the requisite statute of limitations. On May 27, 2009, Complainant filed an Opposition to Respondents Motions for Summary Disposition. And on June 12, 2009, Respondents filed a Response to Complainant's Opposition. On June 29, 2009, Respondent Man Financial filed a Motion for Summary Disposition, also asserting that Complainant is time barred from pursuing his Complaint.

Parties

Complainant Rudolph Kodras (“Kodras”) is a retired, self-designated experienced investor. Respondent Sharieff McDowell (“McDowell”) was the associated person who initially handled Kodras’s account. McDowell was affiliated with Respondent 20/20 Trading Company (“20/20 Trading”), a guaranteed introducing broker. 20/20 Trading was guaranteed by the futures commission merchant (“FCM”) Man Financial Incorporated, (“Man Financial”), when Kodras first opened his account with Respondents. In April of 2006 Vision Financial Markets (“Vision”) took over the role of FCM for 20/20 Trading (Vision Financial Mot. Summ. Disposition, April 9, 2009). However, Kodras’s account remained with Man Financial until its closure in August of 2006. *Id.*

Kodras’s principal allegation is that Sharieff McDowell fraudulently induced him to open a futures account with assurances of profits. In reply, McDowell and the other Respondents deny any violations, and raise the statute of limitations defense.

Discussion

Regulation 12.13 states that any person complaining of violation of the Commodity Exchange Act, (“CEA”), “may, at any time within two years after the cause of action accrues, apply to the Commission for a reparation award by filing a written complaint which satisfies the requirements of this rule.” 17 C.F.R. ¶ 12.13 (a) (2009). The statute of limitations begins to run “when a customer discovers those facts enabling him to detect the general outlines of any violations, rather than when the customer groups the full details of the violations or determines the available legal remedies.” *Breselow v. ED&F Man, Inc.*, [2003-2004 Transfer Binder] COMM. FUT. L. REP. ¶ 29,732 (CFTC Mar. 30, 2004); *citing Cook v. Money International, LTD.*, [1984-1986 Transfer Binder] COMM. FUT. L. REP. ¶ 22,532 (CFTC 1985),

reconsideration denied [1986-1987 Transfer Binder] COMM. FUT. L. REP. (CCH) ¶ 23,078 (CFTC 1986); *Martin v. Shearson Lehman Brothers/American Express*, [1986-1987 Transfer Binder] COMM. FUT. L. REP. (CCH) ¶23,354 (CFTC 1986); *see also Marraccini v. Conti-Commodity Services, Inc.*, [1986-1987 Transfer Binder] COMM. FUT. L. REP. (CCH) ¶ 23,793 (CFTC 1986). Typically, claims under the CEA must be brought within two years of the time the complaining party knew or should have known that the claim existed. *See Premium Plus Partners, L.P. v. Davis*, 2005 U.S. Dist. 6158 (N.D.Ill. Mar. 28, 2005).

In December of 2005 Kodras contacted McDowell with the purpose of opening a trading account at 20/20 Trading (20/20 Trading Mem. Supp. Summ. Disposition, Ex. A, Aff. of McDowell Mar. 31, 2009). Kodras's account was a self-directed, non-discretionary account (20/20 Trading Mem., Ex. C). On December 6, 2005 Kodras prepared the requisite forms in connection with opening his account with Respondents. *Id.* These forms included the risk-disclosure statement, the account agreement, and the customer account application. *Id.* Man Financial also provided an additional "enhanced risk disclosure" form, based upon Kodras's advanced age and retiree status (Man Financial Answer, Ex. F, Mar. 30, 2009). In the forms, Kodras represented that he was an experienced investor, who understood the risks associated with trading futures, and had traded futures for five years, options for ten, and securities for twenty (20/20 Trading Mem., Ex. C). Kodras also opted to receive his daily and monthly statements via email (Man Financial Mot. Summ. Disposition, ¶ 5, June 29, 2009). These statements were sent promptly, and were clearly reviewed by Kodras during the entire life of the account.

Kodras began trading in his account in mid-December of 2005. *Id.* Within the first month of trading Kodras had suffered losses, and had expressed his unhappiness with these

losses to Respondents (20/20 Trading Mem. Ex. B). In his initial Complaint Kodras acknowledges that he was aware of a \$40,000 loss he suffered his first month of trading, and that he spoke with McDowell about the loss (Compl. Sept. 3, 2008). Kodras spoke with McDowell the following month, after a \$100,000 loss, stating he “questioned her trades.” *Id.*

Such communications were confirmed by McDowell, who stated that she had a number of conversations with Kodras during the life of the account (20/20 Trading Mem., Ex. A, Aff. of Sharief McDowell). According to McDowell’s uncontested affidavit, they frequently discussed the “holdings in his account, the profits and losses associated therewith, the commissions charged there, and a strategy for commodities trading.” *Id.* ¶ 7. She recalled two particular conversations that occurred on March 8, 2006 and April 11, 2006, in which she and Kodras discussed his losses. *Id.* ¶ 8, 9.

Kodras had also discussed his account losses with 20/20 Trading and their FCM, Man Financial. On or before May 15, 2006, Kodras contacted Man Financial expressing concerns about his account (20/20 Trading Mem., Ex. D, Aff. of Brad Adatia, ¶ 6). After Kodras contacted Man Financial, Brad Adatia, the principal of 20/20 Trading, and took over communications with Kodras. *Id.* Adatia asserted to having a “number of conversations” with Kodras, between May and August of 2006. *Id.* ¶ 7. Adatia called Kodras on May 15, 2006, where Kodras again expressed his unhappiness with his account activity. *Id.* On June 9, 2006 Kodras called Adatia to discuss his account, asserting that his holdings had been “devastated.” *Id.* On July 3, 2006 they spoke again, this time regarding the liquidation value of Kodras’s accounts. *Id.*

On August 8, 2006, Kodras contacted Adatia requesting that his account be closed. Kodras’s remaining contracts were liquidated that day, with the exception of a corn option they

agreed to let expire on August 26, 2006. *Id.* The last trades actually initiated in the account occurred in April of 2006 (20/20 Trading Mem., Ex. D). In all, Kodras alleges to have traded and lost over \$300,000 (Kodras Opp'n Mot. 3, May 27, 2009).

Two years and ten months after the discussion that led to the opening his account, Kodras brought his claim to the CFTC (Compl., Sept. 3, 2008). The Complaint against Respondents was officially stamped "received" by the Office of Proceedings September 3, 2008. *Id.* Kodras alleged that his losses were caused by the "negligence, illegal and fraudulent activity of McDowell" (Am. Compl. ¶ 17, Dec. 1, 2008). Kodras claimed that McDowell fraudulently induced him into opening an account with promises of profits. *Id.* ¶ 9. Kodras alleges that McDowell induced him to liquidate his life savings to begin trading futures, and assured him that this investment advice was "sound and backed by" Respondents. *Id.* McDowell and Respondents denied making any fraudulent assurances or guarantees of profitability.

The record here clearly demonstrates Kodras knew of the losses, as early as February 2006, if not earlier. Considering Kodras's experience, the timely receipt of daily and month-end account statements, and his discussions with Respondents regarding the losses beginning in January of 2006, Kodras knew or should have known all of the facts, transactions and occurrences giving rise to his allegations more than two-years prior to his filing of the Complaint. The alleged fraudulent statements that induced Kodras to open his account occurred in December of 2005 (Compl. Sept. 3, 2008). He was aware of the substantial losses to his account after the very first month of trading, long before his account ultimately closed in August of 2006. *Id.* After losing nearly half of his initial investment by the second month of trading, Kodras was aware, or should have been, of any key facts that would enable him "to detect the general outlines of any violations." *Breselow v. ED&F Man, Inc.*, [2003-2004 Transfer Binder]

COMM. FUT. L. REP. ¶ 29,732 (CFTC Mar. 30, 2004). By May of 2006 Kodras was no longer even speaking with McDowell, having complained directly to the FCM about his trading losses (20/20 Trading Mem., Ex. D, Aff. of Brad Adatia, ¶ 6).

Furthermore, Kodras has failed to make any compelling justification that would support an equitable tolling of the statute. Kodras claims that the “fiduciary relationship” between him and Respondents prevented him from discovering the fraud until the close of his account (Kodras Opp’n Mot. 5, May 27, 2009). However, Kodras failed to allege any facts stating how such a fiduciary relationship was created, or what events occurred that would have prevented him from finding out the fraud after his first month of trading, when he first noticed and complained of losses. *Id*; *See, e.g. CFTC v. Heritage Capital Advisory Servs.*, 823 F.2d 171, 173 (7th Cir. 1987). Nor has Kodras alleged Respondents used false assurances or deceptive acts to keep him from closing his account or from filing a complaint. *See, e.g. Golberg v. Kidder Peabody & Co.*, 1997 U.S. Dist. Lexis 21562 (S.D.N.Y. 1997).

Kodras also claims that “health problems... coupled with his inexperience and lack of knowledge of trade commodities” prevented him from discovering the alleged fraud sooner (Kodras Opp’n Mot. 5). This court finds Kodras’s claim of “inexperience and lack of knowledge of trade commodities” to be disingenuous. *Id*. In his customer account application Kodras represented that he was an experienced investor, with a least five (5) years of previous futures trading experience (Man Financial Answer, Ex. D). Moreover, Kodras was a party to previous reparations proceeding before this Commission (*Rudolph Kodras v. Masoud Asadi-Saravi*, CFTC Docket No. 98-R144; 20/20 Trading Mot. Summ. Disposition, Ex. G).

Furthermore, Kodras failed to inform the court as to what exactly his “health problems” were, and how exactly these problems prevented him from filing a timely action. Even with

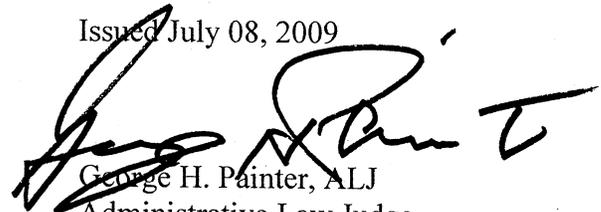
these so called "health problems" Kodras still managed open and trade in another futures account with Man Financial in March of 2007 (Man Financial Mot. Summ. Disposition, Ex. 2 & Ex. 3, June 29, 2009).

ORDER

For the reasons stated above, Rudolph Kodras's claims against 20/20 Trading Company, Man Financial, Inc., Sharief Deona McDowell, and Vision Financial Markets LLC for the losses he suffered are barred by the statute of limitations. Accordingly, Rudolph Kodras's claims against all Respondents are **DISMISSED**. This court will refrain from addressing the parallel proceedings Complainant has initiated in the Circuit Court of Baltimore City.

So Ordered.

Issued July 08, 2009



George H. Painter, ALJ
Administrative Law Judge