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THEODORE TAK-LUNG LEE,
Complainant,

v.

LIND-WALDOCK & COMPANY,
Respondent.

CFTC Docket No. 99-R018

INITIAL DECISION

Lee's complaint arises from Lind-Waldock's determination to place his account on a liquidation-only basis after it had received information that he had a litigious history and that he had disavowed a debit balance in a previous account. Lee claims that Lind-Waldock acted unreasonably and seeks to recover \$5,000 in alleged lost profits. In response, Lind-Waldock asserts that it acted unreasonably and denies any violations.

The findings and conclusions below are based on the parties' documentary submissions. For the reasons set out below, it has been concluded that Lee has failed to show that he is entitled to any recovery.

Factual Findings

Lee, a resident of the state of Washington, transferred his self-directed trading account and accompanying open position from E.D. & F. Man International to Lind-Waldock on or about September 25, 1998.

Paragraph 5 of Lind-Waldock's Customer Agreement provided that Lind-Waldock could liquidate the account if Lee was unavailable.

On September 25, 1998, Lee traveled to Japan without informing Lind-Waldock or providing a forwarding address or telephone number. Lee would be out of the country until October 15, 1998. Lee never contacted Lind-Waldock during this time.

On or about October 8, Lind-Waldock received information from Compliance Data Central, Inc. ("CDC") that Lee had a litigious history with other firms and that he had disavowed a debit balance with at least one of these firms.¹ Lind-Waldock verified the accuracy of the report received from CDC, and chose to place Lee's account on "liquidation only" status, which meant that it would not accept new orders establishing new positions but would permit Lee to keep the positions that he had already established.

Jeff Kuntz, Lind-Waldock's supervisor of the "L" desk where Lee's account was assigned, tried to contact Lee at the number he had provided Lind-Waldock to inform him of Lind-Waldock decision to place Lee's account on liquidation-only status. However, Kuntz could not reach Lee because he was in Japan.

Upon his return, Lee called Lind-Waldock and learned of the trading restrictions. A few weeks later, Lee transferred his account to First American Discount Corporation. Lee does not dispute Lind-Waldock's assertion that he eventually made a profit of \$1,728 on two March Bond and two December Bond positions that he had transferred to First American.

¹ CDC is a New York company which offers subscribers access to a database containing, among other information, a history of litigation, debits, and arbitration's involving commodities, securities and other finance related issues.

Discussion and Conclusions

The record supports the conclusion the Lind-Waldock acted reasonably in protecting itself by placing Lee's account on liquidation-only status once it learned of his litigious history. Lind-Waldock acted diligently when it made numerous attempts to notify Lee of the trading restrictions of his account. Lee's decision to leave the country without informing Lind-Waldock thwarted Lind-Waldock's efforts to notify him and also underscores the reasonableness of Lind-Waldock's determination to limit its potential exposure by winding down its relationship with Lee. Furthermore, Lind-Waldock permitted Lee to continue to hold his open position for several weeks despite having a contractual right to offset them due to his unavailability. In these circumstances, Lee claimed that Lind-Waldock acted unreasonably and caused him damages based on missed profits due to the trading restrictions is without basis.

ORDER

No violations having been shown, the complaint is DISMISSED.

Dated July 15, 1999.



Philip V. McGuire,
Judgment Officer