



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

Three Lafayette Centre  
1155 21st Street, NW, Washington, DC 20581

OFFICE OF  
PROCEEDINGS

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OFFICE OF PROCEEDINGS  
PROCEEDINGS DIVISION

ROSE LEONG,  
Complainant

v.

JOSEPH B. DILIBERTO and TAIYO GENERAL  
USA, INC.,  
Respondents

CFTC Dkt. No. 96-R088

**INITIAL DECISION**

This case involves complainant's dissatisfaction with respondents' handling of an order that she claims she had placed that should have resulted in liquidation of her coffee futures contract at only a 75-point loss rather than the 575-point loss that actually occurred. She seeks the value of the difference.

Respondents submitted a tape of the conversations that occurred between complainant Leong and DiLiberto. Complainant has suggested that the tape's conversations are out of order, but a careful listening to the tape reveals no indication that the tape is unreliable. Accordingly, the following findings reflect the contents of the tape. All events occurred on February 2, 1996.

At the beginning of the tape, complainant talks with DiLiberto about placing an order to buy one March coffee contract. When she first places her order, she states that she wants to place sell orders 75 points above and 75 points below her purchase price. However, she wants to know exactly what price she receives on her purchase, so after giving the order to DiLiberto, she and he agree that he will call her back with the execution price. No other orders are placed in this initial conversation.

DiLiberto then makes another call and inquires to another person (unidentified on the tape but presumably someone at the trading desk) about the execution price. The unidentified person informs DiLiberto that the order has been executed at 128.50. He calls complainant and informs her of the price. She complains about how she wanted a lower price, but he points out that she placed the order when the market was at 128.75. DiLiberto says the market fell to 128.00, then rose to 128.30, and then hit her price. Complainant says she had wanted a price of 128.25. DiLiberto asks her if she wants to put in a stop. Complainant says she does, and she says that she wants it at "100 below." DiLiberto confirms the order at "100 below." Then she asks what it is

trading at now. DiLiberto informs her it is trading at 128.00 and complainant says she should have waited "until now to buy." Complainant says she hopes she doesn't get stopped out, and DiLiberto agrees.

Instead of hanging up, complainant asks a question that sounds like an inquiry about her order. It is clear that she says something about 127.00. DiLiberto clearly then confirms a stop at 127.00. Complainant says she wants stops at 127.50 and 129.50. DiLiberto informs her that the market has already hit that price. Complainant asks if that means she is "out" and DiLiberto informs her "not yet." DiLiberto then appears to dial another number, and complainant says "No, no, wait, Joe." There is some distortion and noise at this point (while the tones are being dialed). DiLiberto tells complainant to "hold on, Rose" but when he tries to get her attention again she is no longer on the telephone.

DiLiberto then calls complainant again, and the telephone is answered by an answering machine. Complainant answers when he starts leaving a message. DiLiberto and complainant argue for a moment about whether she had given him an order, and complainant says she has not been stopped out yet. DiLiberto tells her that she has, but complainant says "No. I didn't ask for it." DiLiberto says "All right, you haven't done anything yet." Complainant then asks about the current price. DiLiberto informs her it is trading at 127. He asks if she wants to hold or what. Complainant then says, "I want you to hold on. Hold on." DiLiberto repeats, "Hold."

A long pause ensues, following which complainant suddenly asks DiLiberto at what price she was stopped out. DiLiberto, by now clearly losing patience, emphatically informs her that she has *not* been stopped out. Complainant asks what he had put the stop in at. He says he didn't, and tells her the price is 126.50, 126.40. He then tells her that she had told him she had "no order" and asks her what she wants to do. Complainant says she had placed her order at 75 points. DiLiberto objects, and points out that she "canceled that" while he was on the phone with her.

The rest of the tape involves a series of conversations in which DiLiberto repeatedly informs complainant of current prices and telling her she does not have the liquidation at a 75 point loss as she thinks. He asks continuously what she wants to do, and complainant says each time that she should be out already. DiLiberto repeats several times his understanding that she had told him to "hold" and that he had done so. Complainant says she wants out at 127.50 stop. DiLiberto says that means a market order and tells her that the current price is 127.10. Complainant asks him to wait, and then starts claiming again that she should have been out at 127.50. DiLiberto asks for instructions a number of times, but complainant continues to talk about the 127.50 price at which she "should have been out." DiLiberto eventually shouts about the need for instructions, tells her he cannot hold her hand, and asks for instructions. He tells her he has her on tape saying, "Hold." Complainant then tells him to listen to the tape and hangs up on him.

DiLiberto calls back, and complainant asks if he has listened to the tape. The two argue some more about the order. Complainant objects that she never would "go over 100" and insists

that she should be out already. DiLiberto repeats that she did not place an order, and complainant objects to the fact that he sounds angry. Complainant says she wants "127.50 out" and DiLiberto immediately asks if that means she wants to sell at 127.50 or does it mean she wants to be out. He asks her what she means. Complainant says it means she bought one at 128.50 and she sold it back at 127.50. DiLiberto informs her, "No, you did not," and again asks for instructions. Complainant insists, "That was my order." DiLiberto says, "Rose, you did nothing." Complainant states that this is the fourth phone call, and DiLiberto responds that he is calling because he wants to find out what she wants to do. He points out that it is her money that she is losing money and tells her the market is 125.75. Complainant says, "Joe, I have to work. I can't be arguing with you. That is my order" and says it was placed at "75 below and 75 above." While complainant is saying those numbers, DiLiberto says, "No, no, no, you did not place an order, Rose." Complainant says, "You hear the tape and then you call me back. Good-bye." She then hangs up on him again. The tape contains no further conversations.

According to the Answer submitted by respondents, when complainant disavowed the fill at 127.50, DiLiberto covered the short contract that would have belonged to complainant. Also according to the Answer, DiLiberto obtained permission to liquidate later in the day from another person (not identified in this record) who held power of attorney to authorize trades in complainant's account. The liquidation occurred at 122.75.

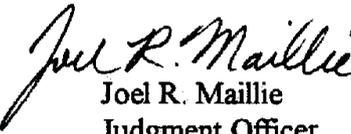
### Conclusions

The tape recording clearly establishes that complainant disavowed the liquidation at 127.50 and specifically instructed him to "hold" after confirming that she was not stopped out. When DiLiberto was taking steps to place an order for complainant, she can be heard telling him to "hold," just as he emphasized in his subsequent conversations with her. DiLiberto's position in these conversations was absolutely consistent and was correct: complainant had an open position and needed to give instructions about what to do with it. That complainant refused to accept responsibility for her decision to cancel the order to liquidate is not respondents' fault. Nor should respondents, who covered the position they had taken when complainant disavowed it, be held responsible for complainant's several changes of mind about whether she wanted to be out of the market. Complainant's stubborn refusal to accept the reality of her position, highlighted by her hanging up on her broker twice while he was begging for instructions to protect her money at risk in a declining market, led to any losses beyond her initial expectations.

The unreasonableness of complainant's position in this matter is highlighted by her insistence that she had placed orders at 75 points above and below the market, when in fact the only orders she arguably placed (which she then disavowed) were at 100 points below and above her entry price. Complainant may have confused her expression of strategy when she initiated the position with her own perception that she had placed actual orders. That confusion is not, however, the basis for reparations for losses attributable solely to her own indecisiveness and her subsequent stubbornness in refusing to listen to DiLiberto's entreaties for instructions.

Respondents have not been shown to have committed any wrongdoing. Accordingly, the complaint is DISMISSED.

Dated: June 10, 1997

  
Joel R. Maillie  
Judgment Officer