

UNITED STATES OF AMERICA
BEFORE THE
COMMODITY FUTURES TRADING COMMISSION

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OFFICE OF PROCEEDINGS

Mary Jo Loye,

Complainant

v.

Global Futures Holdings, Inc.,
Iowa Grain Company and David
Warren Sose,

Respondents.

CFTC Docket No. 98-R062

INITIAL DECISION

Appearances:

On Behalf of Complainant Mary Jo Loye:

Richard R. Lewinski, Esq.
Morris, Rowland, Prekel
Frederick, Lewis & Lewinski, PLC
2301 West Big Beaver Road
Suite 921
Troy, MI 48084-3316

On Behalf of Respondent Global Futures Holdings, Inc.:

On Behalf of Respondent Iowa Grain Company:

On Behalf of Respondent David Warren Sose:

Patrick G. King, Esq.
Henderson & Lyman
111 West Jackson Blvd.
16th Floor
Chicago, IL 60604

Before:

Painter, ALJ

PROCEDURAL HISTORY

Complainant Mary Jo Loye filed this complaint with the Commission on January 2, 1998, alleging that respondents violated the Commodity Exchange Act in connection with the solicitation, opening and handling of her account, resulting in monetary damages in the amount of \$60,000. More specifically, she claims that respondents failed to determine her true net worth and income at the time the account was opened; that respondent David Sose induced her to engage in excessive trading; that Sose wrongfully persuaded her to spread losing trades; and that respondent Sose's supervisors at Global Futures Holdings, Inc., and Iowa Grain Company failed to properly supervise the handling of her account. Complainant requested that her claim be handled pursuant to the Voluntary Decisional Procedure.

On February 13, 1998 respondents filed a joint Answer in which they denied any wrongdoing, and paid an additional fee to upgrade the action to a Formal Decisional Procedure. The Answer Iowa Grain filed includes what purports to be a counter claim, even though no debit balance existed on closing the account. Global, the respondent introducing broker, also filed a counter claim alleging bad faith on the part of complainant in filing the complaint. Global requested \$10,000 for anticipated legal costs. The counter claims of Global and Iowa Grain are nothing less than spurious, and are unsupported by any probative evidence.

The hearing on this matter took place in Cincinnati, Ohio on July 28, 1998. The parties have filed post-hearing briefs, and the matter is ready for decision.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Mary Jo Loye ("Loye") is a high school graduate, and since 1995 she has worked as a temporary secretary. (Tr. 10) In 1995 she invested \$5,000 in a corporate entity named Beaver Properties, and served as the vice president and secretary. (Tr. 12) From September 1994 to the time she opened the account at issue, Loye received account statements from Iowa Grain for a commodity account owned by Beaver Properties. She was at all times aware that respondent Sose was the account executive for the Beaver Properties account, and that respondent Iowa Grain was the futures commission merchant ("FCM"). Loye was also aware that the Beaver Properties account lost money every month from September 1994 to the time Loye opened her own account in August 1995. (Tr. 80-83) Loye's ownership interest in the Beaver Properties account was less than 1%. (Tr. 99) Loye solicited either Iowa Grain or respondent Global Futures to send her information on opening her own account with Iowa Grain, and she thereafter spoke with respondent Sose concerning her own account. (Tr. 85)

2. Iowa Grain was at all relevant times registered as a futures commission merchant. Global Futures was at all relevant times registered as an introducing broker, guaranteed by Iowa Grain. David Warren Sose was at all relevant times registered as an associated person employed by Global Futures. (Commission records.)

3. On opening her account, complainant personally checked the appropriate boxes to show her net worth and annual income. Considering the circumstances in this case, I find and conclude that respondents were under no duty to investigate the sources of complainant's net worth and income. (Account opening documents)

4. Trading on complainant's account commenced in August 1995. The last trade was entered in November 1996. Complainant initiated this action in January 1998. (Account Statements; complaint)

5. The testimony of complainant and Sose persuades me that complainant authorized each and every transaction on the account in question, and that at no time did Sose engage in high-pressure sales tactics.

6. Complainant admitted in her testimony that she did not want to take realized losses on certain cattle positions and that she authorized and approved of Sose's suggestions to roll the positions forward. (Tr. 54-57) She also maintained a spreadsheet on her account, with careful attention to each and every open position. Complainant's testimony makes it clear that she rolled live cattle positions forward to avoid taking realized losses. I find and conclude that it was not a violation of the law for Sose to advise complainant on how to roll the positions forward.

7. The account statements show that certain cattle positions were rolled forward by means of spread orders. Bidding in the spread pit is on the differential, and ordinarily the customer has the right to assign a price to the nearby leg, within the day's price range, but with the same differential. In the instant case, complainant was not given that option. Copies of all spread orders entered on the account were provided to complainant post hearing. Complainant has failed to show that she suffered monetary damages by not exercising her right to specify the price to be assigned to legs of the spread orders. I find and conclude that complainant sought to roll the positions forward, and thereby avoid realizing a loss, and that the manner in which respondents rolled the positions was in accord with complainant's instructions.

8. Sose testified that on receiving an order from a customer, he would immediately prepare and time stamp an order ticket, and then turn the ticket over to Jay Shine, the president of Global. According to Sose, Shine would then telephone the order to an agent of Iowa Grain. (Tr. 106) Sose testified that he is no longer in the futures business, and now deals in art. (Tr. 106, 125) Sose's testimony was at times conflicting. For instance, he testified that at no time did he enter a spread order for complainant's account "...because the longs were already in ..." (Tr. 109) Later, Sose testified that on a couple of occasions he did enter spread orders. (Tr. 122)

9. Based on the testimony of the complainant and Sose, I find and conclude that complainant had full control of her account from the day it was opened to the day it was closed. I further find that complainant was not "high-pressured" by Sose, and that the account was not churned to generate commissions.

10. Complainant lost \$55,000 during the life of the account in question, including commissions. (Account Statements; complaint) Complainant has failed to show by the preponderance of the evidence that the losses she suffered were due to the unlawful conduct of respondents.

11. In September 1996, complainant opened a new commodity account with Vision L. P. At the time this matter was heard the account was dormant. (Tr. 89)

DISCUSSION

This complainant was not a total novice at the time she opened the account in question. For one year preceding the opening of her own account, she closely followed the trading in an account owned by Beaver Properties, a firm in which she owned an interest. Complainant was also vice president and secretary to the corporation. The Beaver Properties account was

introduced by Global and carried on the books of Iowa Grain. And, respondent Sose served as the account executive for the commodity account. Thus, the respondents were not strangers to complainant at the time she opened her own account.

There is no probative evidence of record to show that Sose high-pressured complainant into any trades, provided her with misleading or false information, or in any manner mishandled her account. There is no probative evidence of record to show that respondents committed wrongdoing by not investigating the source of her income and savings. This complainant was an officer of Beaver Properties, an entity that maintained a commodity account. This complainant observed the trading of the Beaver account for a year prior to opening her own account. There were occasions in the early days of her personal account that she could have exited the market money ahead. She did not do so. The evidentiary record in this case fails to show that the losses she sustained resulted from wrongdoing by the respondents.

It is troubling that Sose seemed unfamiliar with the means of rolling a position forward. He testified, inexplicably, that there was no need to enter a spread order to roll a position forward "...because the longs were already in." To roll a long position forward, a spread order is generally entered, with the nearby leg a "short" to liquidate the existing long position, and the deferred leg as "long" to reestablish the position in the deferred month. That being said, it is apparent that Sose did not personally enter any orders. He merely turned order tickets over to the president of the company, Jay Shine, for transmission to an Iowa Grain agent. This complainant has failed to prove that she sustained monetary damages by reason of unlawful conduct on the part of respondents.

Respondents Iowa Grain and Global Futures have complicated the issues in this matter by filing spurious counter-claims even though complainant owed no debit balance at the time the

account was closed. These so-called counter claims are for anticipated attorney fees and costs. I find and conclude that the counter-claims were filed with the intent to frighten the complainant into dropping her complaint. The counter claims of Iowa Grain and Global Futures are singularly without merit. That being said, the costs incurred by complainant in responding to these so-called counter claims were insubstantial and do not warrant an award of attorney fees against respondents Iowa Grain and Global.

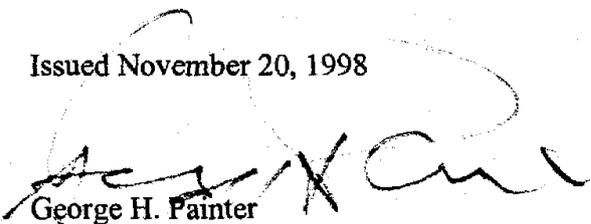
In post-hearing briefs respondents Iowa Grain and Global Futures argue that the customer agreement invalidates the two year statute of limitations of Section 14 of the Commodity Exchange Act; that the guarantee agreement is contrary to the will of Congress; and that an exculpatory provision in Iowa Grain's customer agreement insulates it from claims of fraud filed by customers introduced by an introducing broker. I find these arguments without merit.

ORDER

Complainant has failed to establish by the preponderance of the evidence that she sustained monetary damages by reason of unlawful conduct on the part of respondents. The complaint is DISMISSED WITH PREJUDICE.

Iowa Grain and Global Futures have failed to place any probative evidence in the record to support their counter-claims, and those claims are DISMISSED WITH PREJUDICE.

Issued November 20, 1998


George H. Painter
Administrative Law Judge