



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

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

RECEIVED  
C.F.T.C.

1999 SEP 30 A 10:08

OFFICE OF PROCEEDINGS  
PROCEEDINGS CLERK

OFFICE OF  
PROCEEDINGS

---

PING LU,  
Complainant,

v.

LLOYD STEVENS & CO., INC.,  
Respondent.

---

\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*

CFTC Docket No. 98-R185  
Judgment Officer McGuire

**INITIAL DECISION**

Ping Lu's principal allegation is that Adrian Pascal Easterbrook, an associated person with Lloyd Stevens, fraudulently solicited his managed account by misrepresenting the performance history of the trading system recommended by Easterbrook, by deceptively downplaying risk, and by falsely promising to monitor the account closely. Lu seeks to recover \$4,743.50 in out-of-pocket losses.

Easterbrook failed to file an answer and was found in default. Lloyd Stevens filed an answer generally denying the allegations. In support of its general denials, Lloyd Stevens produced an affidavit by its owner, Steven Paul Schinke, who claimed that he had never observed Easterbrook make the alleged misrepresentations. However, the fact that Schinke may have overheard some of Easterbrook statements during certain unspecified conversations by itself is insufficient to rebut Lu's allegations.

After a careful review of the parties' documentary submissions, it has been

concluded that Lu has established violations by Easterbrook causing \$4,743.50 in damages, and has established Lloyd Stevens' liability for Easterbrook's violations.

### **Factual Findings**

#### *The parties*

1. On his account application, Ping Lu stated that he was forty-five years old, that he was employed by the Department of Surgery of the University of Miami Medical School, and that he had an annual income between \$100,000 and \$250,000 and a net worth between \$25,000 and \$100,000. Lu had invested in stocks and bonds for four years, but had no experience with commodity options or futures.

2. Adrian Pascal Easterbrook was a registered associated person with Lloyd Stevens and Company from February 5, 1996 to January 31, 1997. He previously was associated with Transforex Capital Partners. He is not currently registered. Easterbrook failed to file an answer, and by Order dated September 15, 1998 was found in default.

3. Lloyd Stevens & Company ("LSC") was a registered introducing broker, commodity trading advisor and commodity pool operator located in New York City. Steven P. Schinke was the president of LSC.

On April 16, 1998, the National Futures Association issued a one-count complaint against LSC. The NFA complaint alleged that LSC used deceptive, misleading and unbalanced promotional material. Specifically, the complaint alleged that LSC used promotional letters and advertisements that were replete with dramatic profit claims but failed to disclose that the performance results were

hypothetical, failed to include the required hypothetical disclaimer and failed to include a balanced discussion of the risk of loss. The complaint further alleged that LSC's profitable performance claims were dramatically better than the losing performance experienced by the overwhelming majority of LSC's actual customers and that the negative performance was not disclosed.

In August 1996, NFA conducted an audit of LSC. At the time of NFA's audit, LSC introduced approximately 25 customers accounts, most of which were managed accounts, that were traded by outside CTAs. According to the NFA, LSC offered approximately fifteen different trading programs and used magazine advertisements, promotional letters, and an Internet advertisement to promote these trading programs. Almost all of the promotional material NFA reviewed included dramatic profit claims and spectacular rates of return for the trading programs offered by LSC. The overriding message of LSC's promotional material was that LSC was extraordinarily skillful in selecting CTAs and that its managed futures programs had enjoyed phenomenal profits for a number of years. In reality, LSC had then been in business for less than two years and had only opened approximately 20 managed accounts, the vast majority of which had lost money. The few customers who actually made a profit had made very small profits, with the highest return no more than 14%. Thus, according to the NFA, LSC's promotional material that touted dramatic and consistent profits was misleading.

Schinke submitted a settlement offer on behalf of LSC in which, without admitting or denying the allegations in the Complaint, LSC and Schinke agreed to settle this case. The NFA accepted the offer of settlement, and issued a Decision

that, among other things, ordered LSC to permanently withdraw from NFA membership.

*The solicitation*

4. Easterbrook called Lu in February of 1996, and said that he had got Lu's name from the Chicago Board of Trade from which Lu had requested a videotape on foreign currencies. Easterbrook represented that Lloyd Stevens offered several successful trading programs. When Lu told Easterbrook that he was aware of, and concerned about, the general high risks associated with futures trading, Easterbrook assured him that LSC's managed trading accounts involved much less risk, that he would select for Lu a trading program that had consistently generated profits with little corresponding risk, and that he would closely monitor the account.

By letter dated March 20, 1996, Mr. Easterbrook told Lu that "DS Capital Management is one of the best programs we offer." This statement was materially misleading for the following reasons: one, only two of LSC's managed accounts had used the DS Capital system and both had lost money; and two, LSC later admitted that it had been concerned about the high trading volume of the DS Capital system. [LCS's affidavit filed August 9, 1999; and Easterbrook's letter dated July 29, 1999.]

5. On April 30, 1996, Lu signed the account-opening documents, and on May 2, 1996, he deposited \$20,000. The account-opening documents included a managed account agreement and the DS Capital Management CTA disclosure document, dated July 12, 1995. While the disclosure document included a standard risk disclosure, it did not mention that the trading system featured high volume day-trading and short-term trading that generated substantial commissions,

and did not mention that the trading advisor had been named in three reparations complaints that alleged churning.

*Trading the account*

6. Lu's account was traded in May, June and August. The vast majority of the trades were either day trades or overnight trades. Trading realized a net loss of \$1,152 in May, a net loss of \$1,671 in June, and a net loss of \$1,921 in July. Commissions totaled \$3,451, which represented about 73% of Lu's losses.

7. By mid-May, Lu had become "uneasy" about the high trading volume and the adverse effect of the mounting commissions. Lu would raise these concerns throughout the life of the account. Each time, Easterbrook assured him that the trading system had been successful and that any losses would be temporary.

8. In late July, Easterbrook stated that LSC had lost confidence of the trading program. Lu asked Easterbrook to send an explanation in writing.

By letter dated July 29, 1996, Easterbrook reported for the first time LSC had been concerned about high volume of trades. More importantly, the letter contained the following falsehoods and deceptions concerning the performance of LSC's managed accounts using DS Capital's system that in reality had all lost money:

Ever since our firm established a relationship with DS Capital we have been impressed with the success of Mr. Delgado's [the trading advisor] trading program . . . . The skill of Mr. Delgado combined with our low roundturn rates allowed our clients to enjoy very good returns.

[Emphasis added.]<sup>1</sup> Lu subsequently rejected Easterbrook's suggestion that he try another advisor and closed the account. Lu's out-of-pocket losses totaled \$4,743.50.

### Conclusions

Respondent has produced no reliable evidence rebutting Lu's allegations that its agent Adrian Pascal Easterbrook made numerous oral and written material misrepresentations and omissions about the relative risks and rewards of opening and maintaining a managed account with Lloyd Stevens and Company. Lu's execution of the disclosure document did not insulate respondent from liability for fraud, especially where the disclosure document had failed to disclose that the trading system would generate high commissions and that the trading advisor had been named in several complaints alleging churning, and where Easterbrook had misrepresented the extent of the risk involved in trading with Lloyd Stevens. See, e.g., *Dunn v. Murlas Commodities*, [1986-1987 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 23,357 (CFTC 1986). The blatantly false and misleading nature of Easterbrook's misrepresentations and omissions underscores their deliberate nature. Therefore, Lu has established by a preponderance of the evidence that Adrian Pascal Easterbrook violated Section 4b of the Commodity Exchange Act, that these violations proximately caused \$4,743.50 in damages, and that Lloyd Stevens and Company is liable for Easterbrook's fraud pursuant to Section 2(a)(1)(A) of the Act.

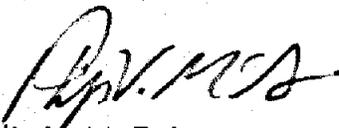
---

<sup>1</sup>The letter also contradicted Easterbrook's previous assertion that LSC had terminated trading, and indicated that the trading advisor had ceased trading to prevent further loss.

**ORDER**

Lloyd Stevens and Company is ORDERED to pay to Ping Lu reparations of \$4,743.50, plus interest on that amount at 5.285% compounded annually from May 2, 1996, to the date of payment, plus \$125 in costs for the filing fee.

Dated September 30, 1999.

  
Philip V. McGuire,  
Judgment Officer