



U.S. COMMODITY FUTURES TRADING COMMISSION

Three Lafayette Centre
1155 21st Street, NW, Washington, DC 20581
www.cftc.gov

Office of Proceedings

Servicios de Salud Mundial,
Complainant,

v.

Alberto Inocente Alvarez,
Enrique Jose Gallo,
Steven Alan Greenberg, and
Alberto Tarafa,
Respondents.

*
*
*
*
*
*
*
*
*
*
*

CFTC Docket No. 12-R004

Office of
Proceedings
Proc. No. 12-0004

2013 APR 24 PM 10:23

RECEIVED
CFTC

**ORDER
GRANTING SUMMARY DISPOSITION
and
DISMISSING COMPLAINT**

Before: Philip V. McGuire,
Commodity Futures Trading Commission,
Washington, D.C.

Appearances: Mario Ricardo Calderon, Sr.
President, Servicios de Salud Mundial, Guatemala City, Guatemala,
for complainant Servicios de Salud Mundial, *pro se*

Kevin M. Flynn, Esq.
Kevin M. Flynn and Associates, Chicago, Illinois,
for respondents Alberto Inocente Alvarez and Enrique Jose Gallo

Nicholas P. Iavarone, Esq.
The Iavarone Law Group, P.C., Chicago, Illinois,
for respondent Steven Alan Greenberg

James M. Koch, Esq.
Gardiner, Koch, Weinberg & Wrona, Chicago, Illinois,
for respondent Alberto Tarafa

Introduction

The principal complaint of Servicios de Salud Mundial (“SSM”), a corporation based in Guatemala at the relevant time, is that Raúl Alfonso Girón Galvez (“Girón Galvez”) -- an unregistered Guatemalan national with Mercado de Futures S.A. (“MDF”), an unregistered Guatemalan foreign introducing broker with discretionary authority to trade two managed accounts for SSM -- first, in fall of 2008, fraudulently induced SSM to open the accounts with Alaron Futures and Options by effectively guaranteeing profits with exaggerated claims of trading expertise, and second, from October 2006 to August 2008, concealed trading losses in the two Alaron accounts via misleading verbal reports by Girón Galvez and via misleading written reports issued by his firm MDF.¹ SSM claims that respondents facilitated Girón Galvez’s fraud, and seeks \$2,228,633 in damages.

SSM named as respondents: Alaron Trading Corporation d/b/a Alaron Futures and Options (“Alaron”), the Chicago-based futures commission merchant that cleared SSM’s two managed accounts during the relevant time;² Alaron principal and associated person Steven Alan Greenberg; Alaron associated persons Alberto Inocente Alvarez, Enrique Jose Gallo and Alberto Tarafa, who worked in Alaron’s Miami, Florida branch office; and Peregrine Financial Group, Incorporated d/b/a PFG Best (“Peregrine”), the Iowa-based futures commission merchant that purchased certain Alaron assets in May 2009, approximately eight months after active trading in SSM’s last Alaron account had ceased and about five months after the last account had

¹SSM filed its complaint on May 26, 2011, and filed three addenda to the complaint on June 28, August 11, and October 14, 2011.

² By Order dated December 4, 2012, the complaint against Alaron was dismissed based on Alaron’s petition under Chapter 7 of the Bankruptcy Code filed November 30, 2012 in the United States Bankruptcy Court for the Northern District of Illinois (Case No. 12-47432).

been closed.³ In their answers, the respondents denied any wrongdoing or liability, and raised a variety of defenses, including the two-year statute of limitations affirmative defense.⁴

After the conclusion of discovery, I determined that additional discovery and written testimony, and any oral testimony, would unlikely significantly further develop the evidentiary record concerning the factual circumstances which are material to the statute of limitations affirmative defense, and that the record supported the conclusion that no genuine issue may exist as to any fact material to the statute of limitations defense, and that respondents may be entitled to dismissal as a matter of law. Accordingly, pursuant to CFTC rule 12.310(d), I directed complainant to file arguments in opposition to summary disposition in respondents' favor, and directed respondents to file arguments in support of summary disposition in respondents' favor, on the statute of limitations affirmative defense.⁵ Both sides have filed their arguments, and this matter is ripe for ruling.⁶

As explained below, I have concluded that the complaint is barred by the statute of limitations and thus have dismissed the complaint.

Factual Findings

The parties

1. Alaron Trading Corporation d/b/a Alaron Futures and Options ("Alaron") was a registered futures commission merchant at the relevant time, based in Chicago, Illinois. Pursuant to the customer agreement between Alaron and SSM, Alaron cleared SSM's account, received

³ By Order dated July 16, 2012, the complaint against Peregrine was dismissed based on Peregrine's petition under Chapter 7 of the Bankruptcy Code filed July 10, 2012 in the United States Bankruptcy Court for the Northern District of Illinois (Case No. 12-27488).

⁴ See Tarafa's amended answer, Alvarez's and Gallo's amended joint answer, Alaron's and Greenberg's joint answer, and Peregrine's answer.

⁵ See Notice dated October 6, 2012

⁶ See Alaron's and Greenberg's Argument in Support of Summary Disposition, Alvarez's and Gallo's Argument in Support of Summary Disposition, Tarafa's Reply in Support of Summary Disposition, and SSM's Arguments in Opposition to Summary Disposition.

and held SSM funds, executed trades, and issued trade confirmation statements, monthly account statements and annual Summaries of Account Activity (Forms 1099-B). As described below, Alaron electronically delivered the trade confirmation statements and monthly account statements, and the annual 2006, 2007 and 2008 Forms 1099-B, to SSM at the e-mail address provided by an agent of SSM.

Steven Alan Greenberg at the relevant time was an Alaron principal and registered associated person.

Alberto Inocente Alvarez, Enrique Jose Gallo and Alberto Tarafa at the relevant time were registered associated persons with Alaron. Alvarez a branch office manager for Alaron in Miami, Florida, concedes that in 2007 he may have met an agent of MDF, but does not remember any details of that meeting.⁷ Gallo worked at the Alaron trading desk in Miami, and in that capacity took orders placed by MDF, which as described below was authorized to buy and sell for the accounts of SSM. SSM has made vague and unsubstantiated allegations that agents of Alaron helped lull SSM into opening the managed accounts by describing Girón Galvez as one of the “top three traders in Latin America.”⁸

Peregrine Financial Group, Incorporated d/b/a PFG Best (“Peregrine”), a futures commission merchant headquartered in Iowa, purchased certain Alaron assets in May 2009, about eight months after trading in SSM’s last Alaron account had ceased and about five months after the last account had been closed.

2. Servicios de Salud Mundial S.A. (Global Health Services) (“SSM”) is a Guatemala corporation that was based in La Nueva Guatemala de la Asuncion (Guatemala City) at the relevant time.

⁷ Tarafa asserts that this agent, the son of the representative for SSM in this proceeding, worked full-time for MDF at the relevant time. ¶9, Tarafa’s Reply in favor of Summary Disposition.

⁸ Complaint, pp. 3-4, 7 and 10.

Luis Eduardo Anleu Sanchez (Anleu Sanchez), a resident of Guatemala City who represented on the SSM account application that he was an economist, on or about September 25, 2006 signed and executed SSM's account-opening documents, including a standard risk disclosure statement, an Alaron customer contract, a personal guarantee, a consent to electronic transmission of statements, and a managed account authorization that gave discretionary trading authority to MDF.⁹ SSM has not produced an affidavit by Anleu Sanchez describing any factual matters about which he has first-hand knowledge.

3. As noted above, Mercado de Futures S.A. ("MDF"), a Guatemala corporation, was an unregistered foreign introducing broker. Jorge Marcilla Tello acknowledged the managed account authorization on behalf of MDF.¹⁰ SSM has not produced an affidavit by Marcilla Tello describing any factual matters about which he has first-hand knowledge.

Raúl Alfonso Girón Galvez ("Girón Galvez"), an unregistered Guatemalan national, is purported by SSH and Alaron to be a principal of MDF, and purported by SSH to be the mastermind of the alleged fraudulent scheme.

As described below, Girón Galvez and MDF generated monthly statements which were delivered to SSM without the knowledge of Alaron or its agents.

The account opening

4. On September 26, 2006, Anleu Sanchez, on behalf of SSM, executed Alaron account-opening documents to open two accounts through MDF and Girón Galvez: account number 50061336 (#1336) and account number 50061340 (#1340). As previously noted, the account-opening documents included a standard risk disclosure statement, an Alaron customer contract, a

⁹ See Exhibit A, Alaron's and Greenberg's joint answer.

¹⁰ See *id.*

personal guarantee, a consent to electronic transmission of statements, and a managed account authorization that gave discretionary trading authority to MDF.¹¹

Alaron and MDF account statements

5. As noted above, Alaron electronically delivered the trade confirmation statements and monthly account statements, and annual 2006, 2007 and 2008 Forms 1099-B to SSM at the e-mail address provided by Anleu Sanchez, the agent for SSM.¹² The Forms 1099-B were electronically delivered to SSM on December 31st of 2006, 2007 and 2008.¹³

SSM does not allege that the Alaron statements were inaccurate, but has made vague and unsubstantiated allegations that on an unknown date an unidentified individual misled an unidentified SSM agent into believing that the “Account Balance” on the Alaron statements, as opposed to “Net Liquidity,” reflected the “true” value of the account. SSM also has complained that certain trading strategies were abusive.¹⁴ Both allegations support the conclusion that SSM received the Alaron statements. The second allegation supports the conclusion that SSM’s agents possessed, at a minimum, a rudimentary ability to understand the key information reported in the Alaron statements.

6. MDF also sent to SSM monthly statements¹⁵ which significantly differed from the Alaron statements. First, the Alaron and MDF statements covered different time frames. The Alaron monthly statements covered the calendar month (*e.g.*, reporting the account balance on the first and last day of the calendar month). In contrast, the MDF monthly statements ran from mid-month to mid-month.¹⁶ Second, the Alaron monthly statements reported individual buys

¹¹ *See id.*

¹² *See* Declaration of Steven A. Greenberg, filed April 22, 2013.

¹³ *See* Exhibit A, Alaron’s and Greenberg’s joint answer.

¹⁴ Complaint, pp. 7-8.

¹⁵ *See* Attachment #4, SSM’s Arguments in Opposition to Motion for Summary Disposition.

¹⁶ The last MDF statement for account #1336 produced by SSM was for mid-June to mid-July 2008.

and sells of futures and options contracts during the month, reported the profit or loss for each trade during the month, reported the liquidation value for each open position, reported the total negative or positive liquidation value's for all open positions at month-end, and reported realized profits and losses for the month. In sharp contrast, the MDF statements did not. Rather, the MDF statements merely reported a balance at the beginning and end of the reporting period, and reported purported "Profit Generated by Account Operation" and "Gross Profit for Operation." Third, although the MDF statements reported "Increases in Capital" which matched up with deposits reported in the Alaron statements and appeared to have consistently captured most or all deposits, the MDF statements did not consistently capture most or all withdrawals. Finally, on this record, it cannot be reliably determined what purpose the MDF statements were supposed to serve. In any event, SSM received both Alaron and MDF statements, and thus was able to compare the two and notice the many significant discrepancies.

Account activity

7. Account #1340 was traded from October 2006 to January 2007. For account #1340, SSM made one deposit for \$199,985 (on October 19, 2006), made two withdrawals totaling \$17,000 (on November 15 and December 13, 2006), and transferred the \$159,322 account balance and all open positions to account #1336 (on January 31, 2007).¹⁷ In February of 2007, SSM closed account #1340. For account #1340, the Alaron year-end Summaries of Account Activity reported: a realized profit of \$33,087 for 2006, and a realized loss of \$56,336 for 2007.

¹⁷ Amounts are rounded to the nearest U.S. Dollar.

Account #1336 was traded from October 2006 to August 2008. For account #1336, the Alaron year-end Summaries of Account Activity reported: a realized loss of \$39,241 for 2006; a realized profit of \$810,285 for 2007; and a realized loss of \$1,872,077 for 2008.¹⁸

From October 5, 2006 to July 31, 2008, each month, SSM typically made a five or six-figure deposit into account #1336. During roughly the same period, from October 20, 2006, to September 11, 2008, each month, SSM typically made a four or five-figure withdrawal.¹⁹ For account #1336, the Alaron year-end Summaries of Account Activity reported: a realized loss of \$39,241 for 2006, and a realized profit of \$810,285 for 2007. For January through July 2008, the month-end account balance ranged between \$1.826 and 2.132 million. From May 1 to August 1, 2008, the account balance was over \$2 million. However, a large Euro spread unwound on August 11, 2008 realized a loss of over \$1.945 million. Trading activity ceased on August 11, 2008. On September 11, 2008, \$91,295 was wired to SSM. On December 8, 2008, SSM closed the account, and withdrew the remaining \$25,001 account balanced. As previously noted, for account #1336, the Alaron year-end Summary of Account Activity for 2008 reported a realized loss of \$1,872,157.

Aftermath

8. SSM claims that in "late July 2009," it learned that an attorney from south Florida had begun advising other Guatemalans who had lost money with accounts managed by MDF that they may have a cause of action against Alaron and its agents. SSM further claims that after

¹⁸ See *id.*

¹⁹ Alaron produced monthly account statements for October 2006 to March 2007, and August 2007 to September 2008. See attachments to Alaron's and Greenberg's corrected answer, filed April 2, 2013.

“several months of research,” it would not be until December 24, 2009 that it became “completely sure about Alaron's wrongdoing.”²⁰

9. The Complaint for Reparations was filed on May 26, 2011, over two years and five months after SSM had received the Form 1099-B for 2008, and about two years and eight months after August 11, 2008, when the account was nearly decimated and active trading had ceased.

Conclusions

Summary disposition is appropriate when three conditions are met: one, there is no genuine issue as to any material fact; two, there is no need for further factual development; and three, the moving party is entitled to a decision as a matter of law. *See Levi-Zeligman v. Merrill Lynch Futures, Inc.*, Comm. Fut. L. Rep. (CCH) ¶ 26,236, at 42,031 (CFTC 1994). In appropriate circumstances, statute of limitations issues may be resolved on a summary basis, as long as there is no significant doubt as to whether the evidentiary record is sufficiently developed for reliable resolution of limitations-related issues. *See Cheney v. Greco*, Comm. Fut. L. Rep. ¶ 30,761, at 61,594 (CFTC 2008), and *Stoffel v. Interstate/Johnson-Lane Corp.*, Comm. Fut. L. Rep. ¶ 26,267, at 42,252-42,253 (CFTC 1995).

A cause of action for fraud accrues, and the two-year limitations period under Section 14(a)(1) of the Commodity Exchange Act begins to run,²¹ when a complainant discovers wrongful conduct resulting in monetary losses, or in the exercise of reasonable diligence, should have discovered the wrongful activity. *McGough v. Bradford, et al.*, Comm. Fut. L. Rep. ¶ 28,265, at 50,601-50,603 (CFTC 2000). A determination of when wrongful activity should

²⁰ Complaint Addendum dated June 27, 2011, p.3-4.

²¹ Section 14(a)(1) of the Act provides: “Any person complaining of any violation of any provision of the Act or any rule, regulation, or order issued pursuant to this Act by any person who is registered under this Act may, at any time within two years after the cause of action accrues, apply to the Commission for an order awarding [damages].”

have been discovered is based on the particular facts and circumstances of the case, including: one, the relationship of the parties; two, the nature of the wrongful activity; three, the complainant's opportunity to discover the wrongful activity; and four, the actions taken by the parties subsequent to the wrongful activity. *Id.* The determination of when a cause of action accrues turns on when a customer discovers those *facts* enabling him to detect a general fraudulent scheme, rather than when the customer grasps the full details of the scheme or determines the available legal remedies. *See, e.g., Cook v. Monex International, Ltd.*, Comm. Fut. L. Rep. ¶ 22,532 (CFTC 1985), *reconsideration denied* Comm. Fut. L. Rep. ¶ 23,078 (CFTC 1986); *Martin v. Shearson Lehman/American Express, Inc.*, Comm. Fut. L. Rep. ¶23,354 (CFTC 1986); and *Marracinni v. Conti-Commodity Services, Inc.*, Comm. Fut. L. Rep. ¶23,7933 (CFTC 1986).

Here, it is reasonable to conclude that an agent working for SSM would have been able to comprehend the trading results and account status accurately reported by the Alaron account statements at the relevant time. Thus, SSM presumably knew the existence and extent of the reported catastrophic losses on August 11, 2008, which left the account almost totally dissipated. This information was confirmed and reinforced no later than December 31, 2008, when SSM received the Form 1099-B reporting over \$1.8 million in losses for 2008, and soon after SSM had withdrawn the relatively meager account balance. Since this substantial financial loss went directly to the heart of SSM's allegation that Galvez Girón had effectively guaranteed profits and had concealed trading losses, it is reasonable to conclude that SSM's cause of action against the U.S. respondents for any violations of the Commodity Exchange Act in connection with the solicitation, and the trading and handling, of SSM's account accrued as early as August 11, 2008, when SSM learned of any dramatic discrepancies between the Alaron account statements, which reported the near total losses, and Galvez Girón's verbal statements and MDM's written

statement, which purportedly falsely reported profits, and no later than December 31, 2008, when SSM received the Form 1099 re-confirming the massive losses in account #1336. Thus, even if the date most favorable to SSM – December 31, 2008 -- is determined to be the accrual date for SSM's claim, the date that complainant filed the complaint, May 26, 2011, is well over five months past the two-year deadline, and the complaint is thus time-barred unless SSM can invoke equitable estoppel or equitable tolling.

Equitable estoppel focuses on any misleading actions by a respondent. In this connection, SSM has not produced any reliable evidence establishing that respondents ever made any false promises after August 11, 2008 to resolve the dispute, or otherwise said anything to dissuade or delay complainant from initiating legal action.

Equitable tolling focuses on the reasonableness of the complainant's action or inaction. The factors considered in determining whether a late filing is excused by principles of equitable tolling include the reasonableness of a complainant's continuing ignorance of the filing requirement and his diligence in pursuing his rights. In this connection, SSM has not produced any reliable evidence establishing that SSM acted diligently in investigating and pursuing available legal remedies against U.S. registrants. The fact that a Florida attorney in 2009 contacted various customers of Girón Galvez to discuss legal action did not re-start the clock, but rather merely further alerted SSM to the fact that it had reason to conclude that it may well have been defrauded by Girón Galvez in 2006, 2007 and 2008, and thus that SSM must act diligently to investigate and pursue any legal claim. *See Martin, supra.* (For the statute of limitations period to begin running, the customer need not discover all the elements of the fraud, but only those facts enabling him to detect a general fraudulent scheme.)

ORDER

Respondents have established that complainant did not timely file the complaint, and that no basis exists for application of principals of equitable tolling or estoppel. Thus, it is concluded that the complaint is barred by the statute of limitations, and the complaint is hereby dismissed.

Dated April 24, 2013.

A handwritten signature in black ink, appearing to read "Philip McGuire". The signature is written in a cursive style with a large initial "P" and a long horizontal stroke at the end.

Philip McGuire,
Judgment Officer