

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

OFFICE OF THE SECRETARY
PROCEEDINGS
JAN 23 11 20 AM '95
FILED

HARRISH and INDRA PAL, :
Complainants, :
 :
v. :
 :
REIFLER TRADING CORPORATION :
and BRADLEY C. REIFLER, :
Respondents, :
 :
REFCO, INC., :
Respondent and :
Counterclaimant. :
 :

CFTC Docket No. 95-R151

Appearances:

John M. Fedders, Esq. for Respondents and Counterclaimant.
Gary M. Sinclair, Esq., for Complainants.

Before:

Painter, ALJ

INITIAL DECISION

Complainants, husband and wife, filed this reparations claim with the Commission on September 15, 1995, alleging damages in excess of \$1,200,000 by reason of wrongdoing on the part of Respondents. Respondents, in their Answer, deny any wrongdoing. Refco has filed a counterclaim for a debit balance in the amount of \$347,787.50, plus accrued interest, costs, and attorney fees.

The record reflects that in June 1995 Refco filed a breach of contract action against the Pals for the debit balance in the U. S. District Court for the Northern District of Illinois. In

August 1995 the Pals and Refco agreed that the Pals would file a reparations complaint with this Commission, and Refco would withdraw its civil complaint in the U. S. District Court and file a counterclaim for the debit balance with this Commission. (Tr. 7)

During the course of the hearing it was agreed that the parties were free to consider as evidence of record portions of numerous audio tapes of conversations between complainants and respondents provided a transcript of the conversation was first served on the other party, with no resulting objections. Thus, Exhibits R-38 through R-40, appended to the post-trial brief of respondents, are admitted into the official record of this proceeding.

The hearing on this matter took place on August 21, 1996, in New York, New York. The parties have filed post-hearing briefs, including proposed findings of fact and conclusions of law. This matter is now ready for decision.

FINDINGS OF FACT:

1. Harrish Pal was born in India. He has a degree in structural engineering from a university in India, and in 1977 earned a Masters Degree in Business from the University of Maryland. Harrish Pal owns and manages real estate projects, and has a substantial net worth. He has held himself out as a financial consultant. (Tr. 10-12, 76, 80-82, 89, 107, 111-112; Exs. R-1, 2, 4, 12)
2. Indra Pal, wife of Harrish Pal, is a lawyer actively engaged in the practice of law. (Tr. 166-177) Indra and Harrish Pal had a

combined net worth between \$1.5 and \$2.3 million during the period 1993-1995. (Tr. 110-112)

3. Prior to the events at issue, complainants opened and traded non-discretionary accounts at Index Futures and First American Discount Corporation, and in so doing signed all requisite account opening documents, including acknowledgment that they had received and understood a risk disclosure statement concerning the risks involved in trading futures and options. (Ex. R-1-3, 4, 5-9)

4. Complainants opened a joint account with Index Futures in late 1990. Harrish Pal signed Indra Pal's name on these documents, a practice that was followed in executing the account opening documents for the account at issue. (Exs. R-2, 3, 11) In January 1994 Indra Pal personally signed her name on account forms for the account at issue. (Tr. 29) Complainants' allegations that respondents are responsible in some manner for forgery committed by Harrish Pal, or that respondents condoned forgery by Harrish Pal, are utterly without merit. To the contrary, in January 1995 respondents had Indra Pal personally sign account opening documents on detecting that she may not have personally signed the earlier papers. (Tr. 28-29, 176-179)

5. Complainants traded commodities at three different firms prior to the opening of the account in question. (Exs. R-1, 2, 4, 5, 9, 11, & 12) Complainants traded high risk contracts in non-discretionary accounts with other registered entities prior to opening the account in question.

6. In early 1996 these complainants initiated an arbitration

proceeding against Index, a futures commission merchant, claiming, inter alia, that Index forced them to move the account to Refco, Inc. (Ex. R-3)

7. Complainants executed a customer agreement with Refco in March 1993 (Ex. R-21). In November 1993 Complainants opened the account in question through Reifler Trading Corporation (hereafter "RTC"), an introducing broker. (Exs. R-15-21)

8. From October 1993 through 1994 Complainants engaged in the sale of short naked options in various commodities, and realized profits of over \$75,000 in 1993, and \$1,300,000 in 1994. (Exs. R-27, 28) Harrish Pal was afforded a desk at the RTC offices, and he frequently entered instructions for trades for his account while at the RTC offices. Contrary to allegations set forth in the Complaint, affording such accommodations to Harrish Pal did not violate the spirit or the letter of the law. Pal testified that he was not forced to visit the RTC office, and neither was he forced to enter any trades. (Tr. 64, 103-105)

9. Complainants continued to be heavy traders in 1995, and the transactions of January 1995 fill 89 pages. (Attachment to complaint) The evidence adduced at trial fails to show that respondents wrongfully induced or encouraged Harrish Pal to increase his trading volume. Brad Reifler testified that no one at Reifler Trading gave Pal advice on trading strategy or trading ideas. (Tr. 198) I reject as untrue Pal's allegation that the respondents unlawfully urged him to trade coffee and that he knew nothing about coffee at that time. (Complaint at paragraph 12; Tr.

35) Exhibit R-9 shows that Pal traded coffee before the account at issue was opened. (Tr. 100) Harrish Pal admitted in his testimony that, beginning in February, Brad Reifler urged him to "lighten up the position.."(Tr. 54) and it is abundantly clear from the telephone conversations on March 3 and 6 that Reifler continued to urge Pal to reduce his exposure to risk. (Exs. R-39-40)

10. In the second half of February 1995, Complainants had over 1,500 contracts on their account, primarily in the currency markets. (Tr. 205-208) Contrary to allegations in the complaint, Harrish Pal was at no time pressured to increase his positions. There is persuasive evidence of record establishing that, beginning in late February 1995, RTC urged Harrish Pal to reduce the positions on the account at issue. (Exs. R-39-40)

11. Complainants had more than a dozen maintenance margin calls on their account prior to March 1995, and these calls were met. (Tr. 139) The allegation in the complaint that respondents "prolonged margin calls" is little more than frivolous. Being undermargined is not a violation of the Commodity Exchange Act on the part of the complainants or the respondents. In the case at bar, complainants were at times undermargined, and respondents made reasonable and rational efforts to persuade complainants to maintain proper margin in the account at issue.

12. Bradley C. Reifler testified that in a week's time, from February 27 to March 3, 1995, Complainant's account dropped from a net value of \$1.2 million to \$540,000. On March 3 Reifler urged Harrish Pal to "...lighten up, get to the sideline." However,

according to Reifler, Pal did not want to lighten up his positions. (Tr. 214-215) Reifler's testimony was credible.

13. On March 6 Reifler again urged Pal to lighten up his account. However, Pal did not wish to reduce the exposure to risk. (Tr. 215-218) In a telephone conversation taped at 7:25 am on March 6, 1995, the following exchange took place between Brad Reifler and Harrish Pal:

Reifler: "... you don't have enough money to hold all these positions. So you must lighten up.that's the first thing so they just don't liquidate you."

Pal: "Let me ask you the firstSuppose somebody don't... Somebody say forget it....he don't show up, what you gonna do?"

Reifler: We liquidate them and then we sue you for the money. (Ex. R-39)

14. In a later conversation on March 6 (Ex. R-40) Brad Reifler reminded Pal that the account was a non-discretionary account, and that he, Reifler, had repeatedly asked Pal to lighten up his exposure. Harrish Pal does not come off well in the transcript of this conversation. He was vague and evasive in responding to requests for instructions and he made an implausible effort to blame respondents for the status of his account.

15. Harrish Pal testified that by March 7, 1995, complainants' account carried more than 2,000 positions. (Tr. 74)

16. When asked why he did not reduce the size of his account, as requested by Reifler, Harrish Pal testified as follows: "We

discussed it, but he (Reifler) never put it through me. I was thinking in my mind to reduce it; I never went into the action of that." (Tr. 39)

17. Complainants allege that respondents should have liquidated the account when "...they took over control on March 6, 1995." The evidence shows conclusively that respondents did not take over the account until it was force liquidated by reason of complainants' failure to meet margin calls. In a recorded telephone conversation on March 6, 1995, Harrish Pal said "No" when asked by Brad Reifler "Do you want me to get you out of the market?" Complainants controlled the account on that date. (Ex. R-40, p.5) Complainants further allegation that respondents promised not to liquidate the account (Complainants' Post Hearing Brief, p. 8-11) is without any support in the record. Nothing in the evidentiary record suggests that complainants would not be required to meet margin requirements. It is abundantly clear from the testimony of Brad Reifler and the transcripts of telephone conversations in the record (Exs. 38-40) that complainants were urged to reduce their risk and maintain proper margin. The account was lawfully liquidated on March 7 solely because complainants failed to meet margin calls or reduce the risk.

18. Harrish Pal testified that on March 7, 1995, he simply walked out of the Reifler offices when informed of the amount of his indebtedness. (Tr. 146) More than 1,500 positions were force liquidated on that day. (Tr. 148) When asked whether he had any objections to the manner in which the account was liquidated,

wrongdoing on the part of respondents, but rather because the complainants failed to reduce positions or deposit sufficient margin to maintain the account.

Respondent Refco has filed a counterclaim for the \$347,787.50 debit balance, plus interest as prescribed by the customer agreement, plus attorney fees and costs. Refco is clearly entitled to judgment for the debit balance, plus interest at the current rate of 5.61% from March 7, 1995 to the date the award is paid. Based on provisions of the customer agreement, respondent Refco seeks attorney fees and other costs. Section 14 of the Act, 5 U.S.C. 18, does not empower this Commission to adjudicate private contractual agreements between parties, with the exception of debit balance counterclaims. See CFTC v. Schor [1986-1987 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 23,116 (July 7, 1986) Regulation 12.314(c) permits the award of interest on any judgment and, when appropriate, reasonable costs and attorney fees. Generally, attorney fees and other costs are awarded only when the losing party acts in bad faith during the course of adjudication. While I find the instant case to be singularly without merit, I do not find bad faith in the prosecution of the claim. See Cohl v. Floor Broker Associates [1982-1984 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 22,110 (May 12, 1979) Accordingly, respondent Refco's request for award of attorney fees and costs is denied. Nothing in this Initial Decision shall preclude Refco from seeking redress in another forum. Interest on the judgment shall be the rate determined by the equivalent coupon issue yield for the current 52

Harrish Pal expressed no specific objections. (Tr. 151)

19. Respondents had a lawful vested interest in liquidating the Complainants' account in the most fair and efficient method possible, and took every precaution to minimize losses. (Tr. 22)

20. Force liquidation of Complainants' account resulted in a debit balance of \$347,787.50. (Ex. R-31; Account statements; Tr. 229) A mere eight days later, Harrish Pal opened another account with First American in his name alone. (Ex. R-29) Harrish Pal invested \$187,500 in this account at a time when he owed a huge debit balance to Refco. (Tr. 56) The First American account, opened March 15, 1995, was force liquidated in September 1995, resulting in a debit balance of slightly under \$1,000. (Ex. R-30) That debit has not been paid to date.

DISCUSSION:

Complainant Harrish Pal is an intelligent, college educated businessman who, prior to the time the account at issue was opened, had traded commodity futures contracts and commodity options with three other firms. His wife, Indra Pal, is a lawyer. I find that while she had virtually nothing to do with the commodity trading strategies employed by her husband, she was a willing partner to the account at issue and consented to having her name on the account. She personally signed the account opening documents, albeit a few days after her husband first signed her name.

The Pals' disastrous trading of 1995 was preceded by very successful trading during 1994 when they made large profits on

writing options. Option writing is a profitable business provided the price of the underlying commodity stays within certain parameters. The grantor of an option pockets and keeps the premium earned if the option is not exercised. Should the price on the underlying commodity increase markedly, the grantor of a call option may lose far more than the premium received for a call option. And, the grantor of a put option may lose far more than the premium should the price of the underlying commodity decline markedly.

In January 1995 Pal wrote options at even a faster pace than he did in 1994. The account statement for the January transactions fills 89 pages. In late February the market went against the Pals. The Pals ignored Bradley Reifler's pleas in February and early March to reduce positions or deposit more margin money. The Pals ignored these pleas and, on March 7, the account was force liquidated. The Pals are solely responsible for the resulting debit balance of \$347,787.50.

The record in this case is devoid of any probative evidence to support complainants' allegations that they lost money by reason of unlawful conduct of respondents. Complainants lost money because the market went against their positions. There is no probative evidence in the record to show that respondents created an environment that induced Pal to trade excessively. Pal made his own decisions on trades and was not influenced by respondents. Respondents encouraged Pal to lighten positions on his account, not increase the positions. The account was liquidated not because of

wrongdoing on the part of respondents, but rather because the complainants failed to reduce positions or deposit sufficient margin to maintain the account.

Respondent Refco has filed a counterclaim for the \$347,787.50 debit balance, plus interest as prescribed by the customer agreement, plus attorney fees and costs. Refco is clearly entitled to judgment for the debit balance, plus interest at the current rate of 5.61% from March 7, 1995 to the date the award is paid. Based on provisions of the customer agreement, respondent Refco seeks attorney fees and other costs. Section 14 of the Act, 5 U.S.C. 18, does not empower this Commission to adjudicate private contractual agreements between parties, with the exception of debit balance counterclaims. See CFTC v. Schor [1986-1987 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 23,116 (July 7, 1986) Regulation 12.314(c) permits the award of interest on any judgment and, when appropriate, reasonable costs and attorney fees. Generally, attorney fees and other costs are awarded only when the losing party acts in bad faith during the course of adjudication. While I find the instant case to be singularly without merit, I do not find bad faith in the prosecution of the claim. See Cohl v. Floor Broker Associates [1982-1984 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 22,110 (May 12, 1979) Accordingly, respondent Refco's request for award of attorney fees and costs is denied. Nothing in this Initial Decision shall preclude Refco from seeking redress in another forum. Interest on the judgment shall be the rate determined by the equivalent coupon issue yield for the current 52

week Treasury Bill auction. Smith v. GNP Commodities, Inc., [1980-1982 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,124 (CFTC August 30, 1991)

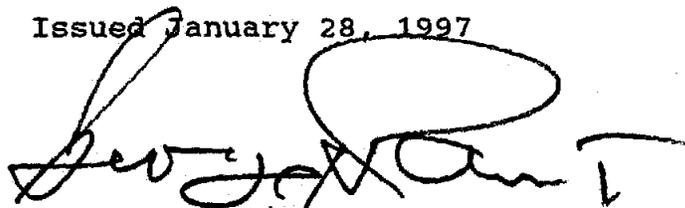
ORDER

Complainants have failed to establish by the preponderance of the evidence that they sustained monetary damages by reason of unlawful conduct on the part of respondents. Complainant's claim is **DISMISSED** with prejudice.

Complainants Harrish Pal and Indra Pal are **ORDERED** to pay Refco, Inc., the debit balance of \$347,787.50, plus interest at the rate of 5.61% from March 7, 1995, the date the account was force liquidated, to the date the award is satisfied.

Respondent Refco's claim for other costs and attorney fees is **DENIED**.

Issued January 28, 1997



George H. Painter

Administrative Law Judge