U.S. COMMODITY FUTURES TRADING COMMISSION
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OFFICE OF
PROCEEDINGS

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ALBERT RAY PEACOCK,
Complainant,

v.

WILLIAM EDWARD PRESTON,
JOE TAPIAS, JR., LFG, L. L. C., and
TRADE CENTER INCORPORATED,
Respondents.

CFTC Docket No. 99-R049

INITIAL DECISION

This dispute arises from an order placed by Albert Ray Peacock to sell a Japanese Yen futures contract at 73.50. Respondents placed the order as a limit order (*i.e.*, "at 73.50 or better"), which was filled 32 ticks better, at 73.82. Soon afterwards, the Yen position lost considerable value as did the two other open positions in Peacock's account. Rather than meet an expected margin call, Peacock liquidated the Yen position for a loss of $4,546, and also liquidated the two other positions for a loss of $3,476, which left a debit account balance of $879. Peacock alleges that before placing the Yen order he essentially told his broker, William Edward Preston, that he did not want to enter the Yen market unless the market traded at 73.50. Peacock acknowledges that he did not specifically ask for a stop order or market-if-touched order, but argues that Preston improperly got him into the market by placing the order as a limit order. Peacock seeks to recover his losses on the liquidation of all three positions. In response, respondents assert that Peacock is responsible for his losses because after discussing his views he clearly placed the order as "at 73.50," and because Preston correctly treated as a limit order and read back at least twice to Peacock the terms of the order as "at 73.50, or better." Respondents also raise the affirmative defense of ratification, assert that the damages claimed in excess of the amount lost on the Yen trade are speculative, and counterclaim for the debit balance of $878.85.

The findings and conclusions below are based on the parties' documentary submissions and oral testimony, and reflect the determination of the undersigned that while Peacock's testimony was heartfelt, his recollection of crucial conversations was simply too confused and unconvincing to support his allegations. The fact that Peacock had to be reminded repeatedly to listen more carefully to questions and to provide responsive replies especially undermined the reliability of his testimony, since this dispute centers on the precise words spoken by Peacock and Preston when discussing market prices and the terms of the order. Therefore, it has been concluded that Peacock has failed to show that he is entitled to any award. It has also been concluded that Trade Center is entitled to its counterclaim for the debit balance.

The parties

1. Albert Ray Peacock, a resident of McDonough, Georgia, is a "final inspector" for the American National Can Company, where he had been employed for 33 years at the time that he opened his account. During the relevant time, he worked on the night shift, 6:30 p.m. to 6:30 a.m. Peacock has a high-school education. On his account application, Peacock indicated that his annual income was between $50,000 and $100,000, his net worth over $100,000, and his liquid net worth between $30,000 and $50,000. Before opening his LFG account, Peacock had traded commodity futures and options with two other firms for about two years. During this time, Peacock became familiar with limit orders, stop orders and market-if-touched orders. [Pages 6 –9 of hearing transcript.]

2. Trade Center Incorporated is a registered introducing broker located in Laguna Beach, California. LFG, LLC is registered futures commission merchant and the guarantor of Trade Center, with its principal place of business in Chicago.

Scot Rob Hicks, registered since 1989 and associated with Trade Center since 1995, acted as Peacock's account executive until about Friday August 28, 1998, when he left on a vacation. Peacock did not name Hicks as a respondent. [*See* page 16 of hearing transcript.]

William Edward Preston acted as Peacock's account executive while Hicks was on vacation, from Monday August 31, 1998, to the close of the account. Preston first became registered on July 23, 1998.[1]

[1] Peacock initially identified Preston as "Eddie" or "Eddie Russ." *See* Peacock's letters dated September 18 and 28, 1998, and addendum to complaint dated January 5, 1999.

Joe Tapias, Jr. is a registered associated person and principal of Trade Center.

Opening the account

3. On March 24, 1998, Peacock signed an account agreement to open a discount, non-discretionary commodities futures and options account with LFG. In exchange for discounted commissions – $40 per round-turn trade per contract – Peacock did not have the benefit of a full service broker to monitor his trades. However, LFG did agree to monitor the "Aberration" trading system recommended by LFG, and to advise Peacock on selecting trades generated by that system. [Pages 10-12 of hearing transcript.]

4. On March 31, 1999, Scott Hicks sent Peacock an "order placements procedures letter." This letter described, and emphasized the importance, of the order placement process:

> Even the best trading plans can go unrewarded if the order is not placed properly. . . . This may seem very simplistic, but the business of placing orders is detail oriented and the penalty for a lapse of concentration can be substantial. . . . [After you place the order,] your broker or clerk will then read this order back to you. THIS IS THE MOMENT WHERE A POTENTIAL ERROR CAN BE AVERTED. . . . If you did not hear them repeat the order, make them say it again, it's your money so do not be bashful when asking them to go over it again.

[Exhibit A to respondents' final verified statement, emphasis in original.] The order placement procedures letter also described several different types of orders, including stop orders, limit orders, and market-if-touched orders, and how to use these orders to implement certain basic strategies. Significantly, the order placement procedures letter explicitly stated that an order placed at a specified price would be treated as a limit order, and would executed either at the stated price or at a better price. [*See* pages 12-16 of hearing transcript.]

Trading before the September 9

5. In May, Peacock made three trades that realized an aggregate net loss of $3,997. In June, he made two trades that realized an aggregate net loss of $3,856. In July, he made one trade that realized a net profit of $2,154. [*See* pages 16-17 of hearing transcript.]

6. In early August, Peacock stopped strictly using the Aberration trading system and began selecting his own trades with assistance from Hicks. [*See* pages 17-19 of hearing transcript.] Peacock also increased the frequency and volume of trades. August 1 through 28, Peacock made six trades that realized an aggregate net loss of $1,187. At the close on Friday August 28, Hick's last effective day as Peacock's account executive, the account had ten open positions and a liquidating value of $17,630. [*See* page 20 of hearing transcript.]

7. On Monday, August 31, Preston substituted for Hicks as Peacock's account executive, because Hicks was getting married. On Monday August 31, Peacock completed six round-turn trades that realized an aggregate net profit of $6,612. From Tuesday, September 1, to Tuesday, September 8, Peacock completed seven round-turn trades that realized an aggregate net loss of $7,583.[2] [*See* pages 20-25, 71-72, and 78-79 of hearing transcript.]

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[2] Of the thirteen round-turn trades completed between August 31 and September 8, four had been initiated with Preston's assistance or advice. All four lost money, for an aggregate net loss of $6,787.

Trading Activity on September 9

8. On Wednesday, September 9, at the open, Peacock's account had a $7,145 balance, and had two open positions: one short December CME Cattle futures contract and one short December IMM New Pound futures contract.

9. At about 9:40 a.m. CDT, 7:40 a.m. PDT, Peacock called Preston and discussed several trades and placed several orders before Peacock placed the disputed Yen order.

Peacock first gave an order to sell a December 1998 Deutsche Mark contract at 5700, then changed the price to 5775, and then cancelled the order before Preston had forwarded it to the floor. [Ticket no. 93154, time-stamped 9:45 a.m. CDT.]

Next, Peacock placed a stop order to sell one December 1998 Swiss Franc futures contract. Peacock was unsure of the price he wanted and changed the price for his Swiss Franc order before Preston forwarded the order to the floor. [Ticket no. 93155, time-stamped 9:45 a.m. CDT.] The December Swiss Franc traded above the order price all day, and thus the unfilled order expired at the end of the market session.[3] [*See* pages 25-33 of hearing transcript.]

[3] Just before the hearing, Peacock raised a new claim that the Swiss Franc order should have been filled. However, the CME Time and Sales report shows that the Swiss Franc never traded at or above the order price after Peacock had placed the order. [*See* Appendix.]

10. Peacock thereafter placed the disputed order to sell a December Yen future at 73.50. The December Yen had opened between 73.66 and 73.69, had traded at or below 73.50 from 7:31a.m. to 8:20 a.m. CDT, and was trading at 73.<u>86</u> when Peacock began discussing the December Yen.

Preston credibly testified: one, that he gave Peacock the correct current market price, which was 73.<u>86</u>; two, that Peacock placed the order "at 73.50"; and three, that Preston read back the order at least twice as "at <u>73.50 or better</u>."

In contrast, Peacock asserts that Preston incorrectly stated that the December Yen was currently at <u>76</u> – which Peacock interpreted to mean 76.00 and well above his 73.50 order price – and that Peacock told Preston that he did not want to be in the Yen market unless the market traded <u>at 73.50, or lower</u>.

Peacock did not want to get into the Yen market "unless the J-Yen was in a down trend and it seemed like it was going to continue in a downward trend," and chose the 73.50 price level "as being one that most likely would not be filled that day unless there was a tremendous drop in the market." [Peacock's final verified statement; *see* September 18 letter, and reply to interrogatory 7.] Peacock has acknowledged that he did not specifically place a stop order, which would have been the appropriate order to implement such a strategy. However, Peacock insists that his discussion of his Yen strategy before he placed the order should have made it clear to Preston that a limit order would not have been the correct type of order.

Unfortunately, Peacock undermined the overall reliability of his recollection of this pivotal conversation by providing, in his written submissions and oral testimony, a series of confused and contradictory descriptions of the precise terms of the order. In his first protest letter dated September 18, Peacock stated: "[W]e both agreed . . . to sell Dec Yen at a low price of 73.50 and <u>not a cent higher</u> because it would mean the Yen market had taken a direct move down . . . ." In his second protest letter dated September 28, Peacock stated that he told Preston: "to sell December Yen '<u>if it came down to 73.50</u>.'" In his reply to interrogatory 7, Peacock asserted that he told Preston that "market has to go come down to 73.50 even before I would sell . . . <u>OK place my order at 73.50</u>." In his final verified statement, Peacock asserted that he told Preston not to sell the J-Yen unless it fell to the 73.50 mark that day, and that Preston repeated the order to Peacock as "<u>sell the one DEC 98 J-Yen at 73.50</u>."

As can be seen from this string of examples, Peacock twice stated that the order was worded "at 73.50." Peacock asserts that since he did not use the terms "or better" or "limit order" the order should have been placed as a stop order rather than as a limit order. However, when asked whether he had specifically used the terms "stop" or "stop order" when he placed the Japanese Yen order, Peacock admitted that he could not definitely recall whether he had actually used the term: "[I]t's a good question, I believe it was." [*See* pages 33-45 and 55-59 of hearing transcript.]

11. Both sides agree that when Preston reported the 73.82 fill price, Peacock was perplexed that the order had been filled at a higher price than 73.50 because he thought that the market had not dropped through that price after he had placed the order. Preston and Tapias credibly testified that after they explained to Peacock that he had had been filled at 73.82 because he had placed the order "at 73.50" which

is treated as a limit order "at 73.50 or better," and after they advised Peacock to liquidate at a loss of about $200 if he did not want to be in the market, Peacock decided to hold the position. [See pages 46-47, 72-75, and 82-83 of hearing transcript.]

12. On September 10, 1998, the December Yen opened between 75.18 and 75.21, and closed between 75.36 and 75.40. Preston reported to Peacock that the Yen was losing money, but Peacock decided to hold the position. [See pages 47-49 of hearing transcript; September 18 letter; ¶ 3 of chronological account, complaint; and ¶ 22 of reply to answer.]

13. On September 11, the December Yen opened between 77.38 and 77.39. Preston told Peacock that he would likely face a margin call the next day because all three positions in the account were deteriorating; and Peacock decided to liquidate all of the positions.[4] [See pages 49-55 and 83-84 of hearing transcript.]

14. Peacock and respondents then exchanged a series of phone calls, faxes and letters, in which Peacock complained that his order should have written up as a stop order and thus not filled, and respondents attempted to explain why they had treated his order as a limit order and demanded that he pay the debit balance. [See pages 59-65 of hearing transcript.]

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[4]Peacock claimed that the December Pound "was starting to make a profit, and that "according to Trend in Futures, the December Cattle was supposed to be going down, so I should have started making a profit. ["Explanation for Amount of Damages," Complaint.] However, price data provided to the CFTC Division of Economic Analysis from the CME and CBT contradicts Peacock's assertions that the liquidation deprived him of profits. This data establishes: one, that the December Pound futures contract traded well above the sell price (166.20) until December 1 (hitting a high of 172.36), which likely would have triggered a margin call, traded close to 166.20 from December 2 to 9, then traded above 166.20 until expiration; and two, that the December Cattle futures contract traded well above the sell prices (61.60/59.95), each day until expiration, with the exception of December 7 and 8, and hit a high of 65.00 on October 9, which also would have likely triggered a margin call. [See Appendix.]

Discussion and Conclusions

Peacock contends "that Preston did not fully understand [Peacock's order to sell] the Yen, and that he knew that Peacock intended that the order be placed as a stop order at a price of 73.50, because Peacock would not accept any other price." According to Peacock, Preston's limited experience was a substantial contributing factor to the purported mishandling of his order. However, the weight of the evidence does not support Peacock's assertion that Preston placed an order inconsistent with Peacock's instructions. Here, Peacock's testimony about the precise terms of his instructions was too confused and unconvincing to cure the contradictions that ran through his written descriptions of the order. Peacock has produced no support for his contention that an order placed at a specific price can be executed at that specific price only, and has produced no evidence that respondents made such a representation to him. As stated in the instructional materials given to Peacock by respondents, an order placed at a specific stated price is a limit order. Thus, in these circumstances – where Peacock was familiar with the various types of order, where Peacock placed the order at a specific price and Preston read back the order as at that price or better, where respondents properly executed the order at a better price, and where Peacock decided to hold the Yen contracts after respondents advised him to liquidate for a nominal loss if he did not want to be in the market – Peacock has failed to show any violations by respondents.

ORDER

No violations having been established, the complaint in this matter is DISMISSED. Trade Center Incorporated has shown that it is entitled to its counterclaim for the debit balance of $879. Accordingly, Albert Ray Peacock is ORDERED to pay to Trade Center Incorporated $879, plus interest on that amount at 5.411% compounded annually from September 11, 1998, to the date of payment.

Dated October 27, 1999.

Philip V. McGuire,
Judgment Officer