U.S. COMMODITY FUTURES TRADING COMMISSION
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THOMAS PETTY, Complainant, v. DALLAS COMMODITY COMPANY, INC., and ROSENTHAL COLLINS GROUP, LLC., Respondents.	* * * * * * * * * *	CFTC Docket No. 09-R005

INITIAL DECISION

Thomas Petty's principal claim is that respondents did not exercise due diligence in permitting him to open a non-discretionary account:

> I am a mentally disabled individual that does not understand the risks associated with futures trading and does not have mental capacity to trade them. [Respondents] did not use such lookout or verification as a person of ordinary prudence would have used under the same or similar circumstances by allowing a mentally disabled person to open a future trading account.[1]

Petty also alleges that respondents improperly permitted him to continue trading after he had "repeatedly" reminded them that he was disabled. Petty further alleges that respondents prevented him from placing trades and forced him to accept "losing positions." Petty seeks to recover $24,650 in out-of-pocket losses. In reply, respondents assert that Petty never advised them that he suffered from any mental incapacity and never gave them reason to inquire further whether he was fit to trade or required additional disclosure. Respondents otherwise deny any

[1] Thomas Petty's Description of Complaint.

violations. As explained below, after carefully reviewing the parties' documentary submissions, it has been concluded that Petty has failed to establish any violations.

Factual findings

1. Dallas Commodity Company, Incorporated ("DCC") is a registered introducing broker located in Dallas, Texas. Dallas Commodity's financial obligations under the Commodity Exchange Act are guaranteed by Rosenthal-Collins, a registered futures commission merchant headquartered in Chicago, Illinois. Thomas Petty's principal contacts at Dallas Commodity were Walter Otstott, Tim Powell and Phillip Layer.

2. Thomas Petty, a resident of Royse City, Texas, was 49 years old when he opened his account with respondents. Petty dropped out of high school in the ninth grade, but subsequently received a high school diploma. He received an Associate of Arts degree in drafting and design from Eastfield College in Mesquite, Texas. When he opened his account, he was attending Texas A&M at Commerce with an intended major in business administration, and a GPA between 2.0 and 2.3.

Petty is divorced with three children who visit him on weekends, and lives by himself in a small home. Throughout his adult life, Petty has worked at a series of humble jobs at various firms, principally as a truck driver, none of which lasted very long. His income has always been modest. He had no previous experience trading derivatives before he opened his account.

3. The documents that Petty has produced in connection with his disabled status include: a "fully favorable" decision finding him mentally impaired," dated February 23, 2007, by an administrative law judge with the Office of Disability Adjudication and Review of the Social

Security Administration;[2] a summary of a neuropsychological evaluation, on April 22, 2003, by a licensed psychologist finding him not impaired;[3] and a summary of a 90-day evaluation conducted in 1979 by a State of Texas psychiatrist which found that he was not impaired.[4]

The 1979 report stated that Petty had been admitted to the hospital after being charged with a misdemeanor for resisting arrest, and stated that during the examination "[Petty] was very friendly and cooperative, but somewhat withdrawn," that his "affect is normal, and affective response is appropriate," that "there is no evidence of depression," that he "does not have any evidence of thought disorder," but that "insight and judgment are somewhat impaired." The report diagnosed a "schizoid personality, not psychotic," and concluded that he was "competent to stand trial."

In the 2003 report, the psychiatrist concluded that Petty did not have a severe mental impairment. She indicated that Petty had approached the Texas Rehabilitation Commission ("TRC") in connection with his efforts to obtain additional student loans, and that the TRC in turn had referred Petty to the psychologist. The psychologist stated that Petty recalled suffering a serious closed-head injury when he was eight years old, recalled that he had repeated ninth grade and then left school, stated that his emotional issues were limited to occasional problems with anger control and fatigue, and stated that his cognitive issues were limited to a life-long difficulty with short-term memory loss. The psychologist observed:

> [Petty] presented a neat and adequately groomed appearance. He was ambulatory, and his gait was normal. . . . His hearing was normal. He was cooperative during testing, but rapport was somewhat difficult to establish. He was relatively quiet and made little to no eye contact. His affect was flat. He had no word-finding difficulty in casual conversation. His attention to task appeared to be good. . . . He was persistent on tasks, and his motivation to perform well appeared to be at a fairly high level.

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[2] Pages 1-11, Attachment 1 to complaint.
[3] Pages 13-19, Attachment 1 to complaint.
[4] Page 12, Attachment 1 to complaint.

In the February 2007 decision, the administrative law judge concluded that Petty was disabled under sections 216(i) and 223(d) of the Social Security Act. Under that Act, disability is defined, in pertinent part, as the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment, or combination of impairments, that can be expected to last for a continuous period of at least 12 months. The ALJ relied on: one, the written report by another expert, based on an evaluation in April 2003; a second evaluative report dated May 2006; as well as the oral testimony of a medical expert who testified that Petty's ability to perform basic work functions was significantly limited as the result of cognitive disorder, personality disorder, and paranoid personality disorder.

4. In August 2007, Petty contacted DCC through a website and completed the account-opening forms on-line. He indicated that he was a graduate student of finance, understood risk, confirmed that he would be using risk capital, owned his residence, had a net worth between $50,000 and $100,000, and had investment experience. Petty would subsequently complete his course work and would be receiving a Masters degree in Finance from Texas A&M - Commerce.

In the course of a phone interview, Petty revealed to Walter Otstott that he had no previous commodities experience, and Otstott forwarded to Petty an additional risk disclosure for novice traders. The additional risk disclosure stated in pertinent part:

> You should be aware that commodity trading is considered a risky form of investment. . . . If you wish to continue with your investment, you acknowledge that the funds you have committed are purely risk capital and a loss of your investment will not jeopardize your style of living nor will it detract from your future retirement program.

Petty did not inform Otstott about any disability.

5. Petty deposited a total of $29,650 into his DCC account; $5,000 on August 23rd, $2,300 on September 19th, $8,500 on October 5th, $4,650 on October 10th, $9,200 on October 19th. Petty actively traded the account from August 24, 2007 to March 4, 2008, and lost most of the funds that he had invested.

6. Petty has not disputed respondents' assertion that they kept in frequent communication with him, and advised him when to post additional funds, and that he never complained to them about anything.

7. Petty was unable to provide a responsive reply when asked to specify when and to whom he disclosed his mental disability, to specifically identify what futures trades that he had been prevented from making, and to specifically identify the losing positions that he had been forced to accept.

Respondents produced an obviously incomplete set of e-mail communications with Petty. In two e-mail exchanges, Petty did mention that he was disabled.

Petty's first reference to disability was part of an e-mail exchange with Timothy Powell on September 6, 2007. At 11:53 a.m., Petty e-mailed:

> I don't think this arrangement of how orders are input and asking me [sic]. Either I am in charge of the inputs or you. I am disabled and cannot concentrate on what to do. Close account and send the balance. That will be best. Either you completely manage or me, but not both.

However, in a 2:20 p.m. e-mail, Petty appears to have quickly changed his mind about closing the account:

> Hi Tim:
>
> Is mini silver 50% of regular silver? Have a great day,
>
> Thomas Petty.

At 12:35 p.m., Powell e-mailed:

Hi Thomas:

Mini silver contracts are 1,000 ounces, versus 5,000 ounces for regular contract. So mini's are 1/5th the size of a full. We are filled at 1255.4 on one mini dec silver.

Do you prefer e-mail or phone? Thanks Thomas.

Best,
Tim.

At 2:59 p.m., Petty e-mailed:

E-mail. Let me have time to make a decision.

At 9:44 p.m., Petty e-mailed:

Hi Tim:

I would like to buy 1 sugar futures contract. I should not have sold it.
Have a great day.

Thomas

[Underlining added for emphasis.]

Petty's second e-mail mentioning a disability was on October 24, 2007:

Morning Tim:

Hi. I'd like to roll over the Crude Oil to Jan. The Nov. expired, which leaves me in the most active [month] which I do not like being in. Coffee, let's roll that into the next contract too.

December 1 Heating oil will need to be roled to the next contract. Soon Feb. needs to go to Feb, contract.

Explain: <u>I am disabled. Why? I am withdrawn and do not like crowds</u>.

Is there a charge to roll these over?

Regards.
Thomas Petty

[Underlining added for emphasis.]

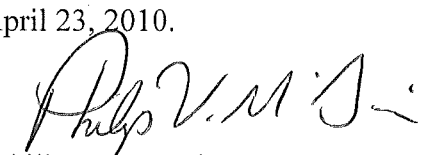
Conclusions

Generally, commodity brokers are only required to ascertain a prospective customer's investment experience, risk tolerance, and estimated annual income and net worth, before determining the proper disclosure to give the customer. In appropriate circumstances, mental disability will be a relevant factor in assessing the nature and extent of a broker's disclosure obligations. *See Fermin v. First Commodity Corporation of Boston*, Comm. Fut. L. Rep. ¶ 23,905 (CFTC 1987). However, here Petty has produced no reliable evidence that he made respondents adequately aware of the nature and extent of his mental disability during the account opening or any other point in the life of the account. Thus, respondents were under no obligation to inquire further into his suitability to trade, to refuse to open the account, or to stop trading. As for Petty's vague references to a disability in the two e-mails, neither reference informed respondents that Petty's disability was the sort that would have rendered Petty unfit to understand the risks of trading or to make trading decisions, and neither reference put respondents on notice to conduct further inquiry before allowing Petty to continue trading. In these circumstances, Petty's claim must fail.

ORDER

No violations causing damages having been shown, the complaint in this matter is dismissed.

Dated April 23, 2010.



Philip V. McGuire,
Judgment Officer