



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

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PRIME TECHNOLOGIES, INC.,  
Complainant,

v.

LFG L.L.C.,  
Respondent.

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CFTC Docket No. 98-R184  
Judgment Officer McGuire

**INITIAL DECISION**

Prime Technologies ("PTI") seeks to recover from LFG the \$11,164.46 that it lost in a discretionary account, based on allegedly negligent conduct by LFG. PTI's account was traded by an individual named Ron Barback, who was not registered, and who had discretionary trading authority for the accounts of three other LFG customer but was not employed or compensated by LFG. Barback had met PTI's owner, Lee Stensaker, at a PC users group meeting where Barback made a presentation about his commodities trading system. Barback misrepresented his trading record and guaranteed profits, and convinced Stensaker to give him discretionary trading authority in exchange for payment of 25 percent of any profits. After PTI closed the account, the CFTC would bring an injunctive action against Barback for fraudulent conduct. Just before Stensaker funded the LFG account, LFG received an inquiry about Barback from the NFA. In response, LFG conducted a cursory

investigation and concluded that Barback had not solicited accounts on LFG's behalf and otherwise discovered no wrongdoing by Barback. About six weeks later, LFG received a letter from the CFTC Division of Enforcement asking for general information about Barback in connection with an investigation. PTI asserts that the NFA and CFTC inquiry letters put LFG on notice of "questionable practices" by Barback, and thus that LFG, first, should have taken "reasonable precautions" before opening the PTI account, such as "checking [Barback's] credentials," and second, upon notice of the CFTC investigation, should have promptly notified PTI and "suspended" trading by Barback. In contrast, while LFG does not dispute Barback's fraud, LFG denies that it violated any duty of care to PTI because Barback was not its agent, and because neither the NFA and CFTC inquiry letters nor its own inquiries revealed any actual or suspected fraudulent activities by Barback.

The findings and conclusions below are based on the parties' documentary submissions. As explained below, it has been concluded that PTI has failed to show that it is entitled to any recovery from LFG.

### ***Findings of Fact***

#### *The parties*

1. Prime Technologies, Incorporated ("PTI"), is an industrial engineering and manufacturing firm in Knoxville, Tennessee. Lee A. Stensaker is PTI's president. Stensaker filled out and signed the account-opening documents, received the account statements, and selected Barback to trade the account.

2. LFG, L.L.C. is a registered futures commission merchant with its principal place of business in Chicago, Illinois.

3. Ronald Barback, during the relevant time, was a resident of Knoxville, Tennessee. Barback held himself out to Stensaker as a "Futures Market Specialist." However, Barback has never been registered in any capacity.

Barback had discretionary trading authority for four LFG accounts, including the PTI account, during the relevant time. Barback received no compensation from LFG. For each of these accounts, the customer signed a Disclosure Document Exemption acknowledging that Barback was not required to provide a CTA disclosure document because he had advised 15 or fewer persons during the last year and because he did not hold himself out as a CTA. LFG would receive no complaints from these customers before March 1998, when Stensaker first complained about Barback

*Inquiry letters from the NFA and the CFTC, and CFTC injunctive action*

4. By letter dated April 18, 1997 – just before Stensaker funded the account – the National Futures Association informed LFG that it had received a "customer inquiry" from LFG customer Gary Haider, who asserted that Barback had "solicited a futures trading program to numerous individuals." The NFA noted that Barback was not registered, and asked LFG to respond to a series of questions about the LFG accounts traded by Barback in order to determine if "any NFA rule violations have occurred." The letter did not specifically describe or refer to any possible disclosure violations by Barback. In a response letter, LFG's compliance director Thomas Conroy: asserted that Barback was neither an agent or employee of LFG; stated that LFG believed that Barback was exempt from CTA registrations because he advised 15 or fewer individuals and did not hold himself out as a CTA; and reported that Barback had discretionary trading authority in four

LFG accounts and that Barback did not have a personal account with LFG. Conroy also stated that he had spoken to Barback and to two other customers (including Stensaker). According to Conroy, Barback and the two customers told him that they were all members of a PC users group in which Barback had discussed his trading program, but had not solicited new accounts on behalf of LFG.

5. By letter dated June 11, 1997 – while the PTI account was open – the CFTC Division of Enforcement asked LFG to provide various documents concerning the LFG accounts traded by Barback. This letter also did not describe or refer to any possible disclosure violations by Barback.

6. On August 27, 1997, the CFTC filed an injunctive complaint in the U.S. District Court for the Eastern District of Tennessee. The complaint alleged that Barback had misrepresented to prospective customers his performance record and the associated risks, and that he had guaranteed profits. On September 24, 1997, the Court issued a consent order of preliminary injunction. On March 24, 1998, the Court issued a consent order of permanent injunction, which enjoined Barback from violations of the Commodity Exchange Act, prohibited him from soliciting, accepting or trading new client funds, and ordered him to pay restitution to customers.

#### *Opening and trading the account*

7. Stensaker met Barback in February of 1997, when Barback made a presentation to Stensaker's PC users group. At some point, Barback gave Stensaker a business card identifying himself as a "Futures Market Specialist." Stensaker next visited Barback's home office where Barback convinced Stensaker to open a discretionary account by falsely

representing that he was making money for another client and by guaranteeing profits. Stensaker agreed to compensate Barback by paying 25% of any profits. Barback initially recommended that PTI open an account with Spike Trading, but then suggested that PTI open the account with LFG because its commissions were lower and because he could get a direct line to LFG's trading desk.

8. On April 7, 1997, Stensaker filled out the account application.<sup>1</sup> Stensaker signed a power of attorney giving Ron Barback control over the PTI account. Pursuant to the power of attorney, Stensaker acknowledged that "LFG neither endorses nor reviews [Barback's] recommendations or strategies." Also, Stensaker and Barback signed an Account Controller Disclosure/Exemption form, which stated that Barback is not required to provide a disclosure document to [PTI] because he is exempt from registration requirements as a CTA because "[Barback] has provided advice to 15 or fewer persons during the past 12 months and does not hold himself out to the public as a CTA." On or about April 22, 1997, Stensaker spoke to LFG representative Steve Firestone. Neither side has produced a detailed description of this conversation. Stensaker merely states that Firestone "left me with the strong impression that he knew Barback on very favorable terms." [Discovery reply dated November 15, 1998.]

9. As noted above, on April 18, 1997, LFG received the inquiry letter from the NFA concerning the Haider account. In response, LFG's compliance director, Thomas Conroy, contacted Barback and contacted two out of the three other customers whose accounts had been traded by Barback.<sup>2</sup> The record indicates that Conroy's inquiries were cursory.

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<sup>1</sup> PTI has not indicated whether Stensaker or Barback obtained the account application.

<sup>2</sup> The third customer did not return Conroy's call.

Stensaker does not recall the conversation, but does not deny that it occurred. According to Stensaker, he would have remembered the conversation and entered into his diary if it had seemed important or raised any concerns. Conroy merely asserts that he determined that Barback was a "friend" of Stensaker from a PC users group, and that Barback was not engaged in solicitation activities on behalf of LFG. However, Conroy did not describe in detail his conversation with Stensaker in detail: for example, Conroy did not state whether he expressly asked him why he had selected Barback to trade the account or to describe Barback's representations. In any event, Stensaker apparently did not volunteer any information indicating that Barback may have improperly misrepresented his trading prowess or guaranteed profits. Conroy similarly did not describe in detail his conversation with Barback, but merely asserted that he determined that Barback was a member of Stensaker's PC users group and that Barback had not engaged in solicitation activities on behalf of LFG.

10. On May 7, 1997, Stensaker deposited \$15,000, and trading began. On May 30, 1997, the account value had dropped to \$11,326. On June 11, when LFG received the CFTC enforcement inquiry, the account value had rebounded to \$14,464; and on June 24, 1997, the account value had climbed to \$16,088. However, by June 30, 1997, the account value had dropped to \$8,072. According to Stensaker, he closed the account on July 17, 1997, to stop continuing losses and because Barback had stopped returning his phone calls. LFG returned the \$3,912 account value. Therefore, PTI's out-of-pocket losses were \$11,088.

### **Conclusions**

The weight of the evidence does not establish that Barback was acting as an LFG agent when he convinced Stensaker to give him discretionary trading authority and when he recommended that Stensaker open the account with LFG. The Commission has held that "[w]hether one person is an agent acting for another turns not on any one fact or talismanic formula, but on an overall assessment of the totality of the circumstances in each case." *Berisko v. Eastern Capital Corp.*, [1984-1985 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 22,773 (CFTC 1985). However, the Commission has consistently cited the following matters as typical indicia of an agency relationship: sharing commissions, receiving compensation for bringing in new customers, using common office space, and distributing account applications. See, e.g., *Wirth v. T & S Commodities, Inc.*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,271 (CFTC 1992). Here, none of those factors, or equivalent factors, have been shown by Stensaker. Barback did not share commissions or receive any compensation from LFG, and initially recommended a different broker. Barback's ability to contact LFG's trading desk did not distinguish him from other LFG customers or rise to the level of using LFG office space. And, Firestone's confirmation that he knew Barback on good terms by itself did not constitute a representation that Barback had authority to act on behalf of LFG. In these circumstances, complainant has not shown that Barback had actual or apparent authority to act for LFG.

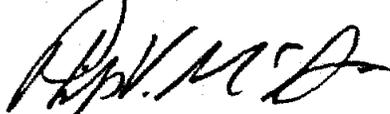
The weight of the evidence also does not establish that LFG breached its duty of care to PTI. The inquiry letters from the NFA and the CFTC did not mention any alleged disclosure violations by Barback or otherwise put LFG on notice of any fraudulent activities by Barback. Thus, in the absence of any customer complaints, the inquiries by themselves

did not create any obligation to notify PTI about the inquiries or to suspend Barback's trading activities. At most, these inquiries put LFG on notice that it should more closely monitor Barback's activity. Here, LFG did not ignore the inquiries and did contact Barback and Stensaker to determine the nature of their relationship. During the course of these conversations, LFG did not receive any indication of disclosure violations by Barback. In these circumstances, PTI has failed to show that LFG breached its duty of care to PTI.

**ORDER**

No violations having been shown, the complaint is DISMISSED.

Dated June 30, 1999



Philip V. McGuire,  
Judgment Officer

# **PRIME TECHNOLOGIES INC.**

**INDUSTRIAL ENGINEERING, TQM & MANUFACTURING SVCS.**

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ATTN: Appeals Commission, U.S. C.F.T.C.  
SUB: Docket #98-R184  
REF: Intention to appeal decision of Officer McGuire of 6/30/99

Jul, 13, 1999  
pg. 1 of 1

Dear Sir,

Prime Tech this day is appealing the decision of Judgement Officer McGuire based primarily on our contention that LFG was negligent in failing to properly notify Prime Tech. (before substantial losses had been incurred) that the trading activities of Barback were suspect in the least.

Judge McGuire concedes on our behalf in his opinion that:

- Barback was already under investigation as early as Apr. 18, 1997 (before the Prime Tech account was opened at LFG) as a result of serious complaints against Barback by other LFG victims.
- Judge McGuire twice states that both LFG and Conroy made no more than cursory inquiries when alerted to Barback's highly suspect behavior, and in closing agrees that LFG, "...should more closely monitor Barback's activity". This suggests negligent conduct on the part of LFG by any reasonable interpretation.
- Faced with the same indicators of suspect behavior by Barback that LFG was aware of, Spike Trading refused to deal with Barback. Is LFG exempt from the same standards accepted by its fellow trading companies?
- Indicia of a relationship does exist as Barback appeared to share at least an 'electronic' office with LFG as evidenced by his immediate accessibility to Mr. Firestone via direct phone line at all times. Even Mr. Firestone concedes that, "...he knew Barback on good terms". It was also Mr. Barback who "distributed" an LFG account application to us. We had no prior knowledge that LFG existed before this. These could certainly be considered, in the words of Judge McGuire, as "equivalent factors", and certainly suggests more than an arms length relationship between Barback and LFG.

It is suggested that Prime Tech may have been negligent in trusting LFG to act in its best interests, but once trust is lost, how can normal commerce continue? We plead that the court lend weight to the fact that Prime Tech, like most similar investors, is not sufficiently sophisticated in such matters and has to rely on those at LFG, who deal routinely in this arena, to afford at least the same degree of protection for customers as thier wall of disclaimers provides for them.

We have no new evidence to submit at this time. Nor do we request an oral hearing (although we will be glad to co-operate if such is felt to be necessary), but we do seek a redirected opinion based primarily on the fact that LFG acted negligently in failing to at least temporarily freeze our account, before serious losses were incurred, once having been notified that an NFA investigation of Barback was in progress; this in the face of serious complaints recorded against Barback by other current LFG customers.

We thank you for your careful attention to this matter and pray for a favorable outcome.

Sincerely,



Lee A Stensaker, Pres.  
Prime Technologies Inc.

cc: John F. Belom, Esq. LFG  
leglfg/LAS