



U.S. COMMODITY FUTURES TRADING COMMISSION

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WILLIAM J. RALPH, JR.,
Complainant,

v.

LIND-WALDOCK & COMPANY and
JEFFREY KUNST,
Respondents,

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CFTC Docket Number 00-R010

INITIAL DECISION

Ralph's claim for \$13,840 arises from his unsuccessful attempt, on Wednesday September 22, 1999, to cancel and replace a market order – which he had placed 80 minutes earlier – to liquidate a long gold futures position. Although the market order had been filled soon after it had been placed (for a small profit), the fill would not be reported by Lind-Waldock until the next morning. Relying solely on the absence of a fill report on September 22nd, Ralph assumed that the market order had been cancelled, that the day order to cancel and replace the market order had expired, and that he was thus still long gold. The bulk of Ralph's damage claim is based on speculative profits that he claims he lost while out of the market. In reply, respondents assert that the market order was properly and promptly filled, and that the cancel-replace order was too late to be effective. Respondents also assert that the late fill report was the result of extraordinarily hectic

market conditions, and that Ralph acted unreasonably both by assuming that the market order had been cancelled and by taking no action for five days. After carefully reviewing the parties' documentary evidence, it has been concluded that Ralph has failed to establish any violations causing damages by respondents.¹

Factual Findings

1. William J. Ralph Jr., is a resident of Dedham, Massachusetts, and the owner of a wine store. When he opened his Lind-Waldock account – five years before the disputed trade – he indicated on the account application that he had over five years of experience with stocks and bonds, but no experience with commodity futures or options. However, he would trade commodity futures with Lind-Waldock for about five years before this dispute arose.²

2. Lind-Waldock is a registered futures commission merchant, with its principal place of business in Chicago, Illinois. Jeffrey Kunst, a registered associated person with Lind-Waldock, worked during the relevant time as the supervisor of the retail discount desk. Burt Schlichter acted as Ralph's account executive.

3. In March of 1994, Ralph opened a self-directed "Lind-Plus" account, by signing a standard Lind-Waldock "Customer Agreement" and a separate "Lind-Plus Agreement". The "Lind-Plus Agreement" provided, in pertinent part:

Thanks for your interest in Lind-Waldock's Lind-Plus program. The Lind- Plus division was designed to provide you with a more comprehensive level of service

¹ The record consists of the Complaint, with exhibits; the revised Complaint, with exhibits; the addendum to the Complaint; the Answer, with exhibits; Ralph's unverified statement (dated May 20, 2000); the affidavit by Burt Schlichter (dated July 7, 2000); and the COMEX *Time and Sales* report for the February 2000 gold futures contract for September 22 and 23, 1999 (produced by Lind-Waldock August 21, 2000).

² Neither side produced any evidence concerning their course of dealing during this five-year period.

than our regular discount service. Your account will be serviced by a team of two Lind-Plus representatives, who will be available to you each trading day.

Unless specifically requested, your Lind-Plus brokers will not call with trading recommendations or give their own personal view on the market. Nor will they have discretionary authority to place trades for your account. You will make all trading decisions for your account. Your brokers' role will be limited to providing personalized assistance to help you trade on your own, such as aiding with order placement, providing feedback on market news or trading strategies, or explaining government and economics reports. . . .

This Agreement supplements the . . . Customer Agreement.

[Emphasis added; Exhibit A to answer.]

4. Five years later, on July 30, 1999, Ralph signed an "On-Line Services Agreement" and an optional addendum titled "Direct-To-Floor Agreement" so that he could trade via Lind-Waldock's on-line order system and place orders direct to the trading floor. This agreement provided, in pertinent part:

[Ralph] understands that orders that [he] sends straight to the floor do not stop at an order desk to be reviewed. . . .

This Agreement supplements the Customer Agreement.

[Exhibit A to Answer.]

On-line system customers could access separate files or reports for "Working Orders," "Fills," and "Dead Orders." [See Exhibits 3 and 4, Ralph's unverified statement (dated May 20, 1999).]

5. On August 20, 1999, Ralph bought two February gold futures contracts, at 261.50. These contracts are the subject of this dispute.

6. On Wednesday, September 22, 1999, the February Gold future opened at 266. Ralph has not disputed respondents' assertion that gold trading that day was sufficiently "hectic" to disrupt the handling and reporting of orders, and has otherwise not produced

any evidence that would shift the burden to Lind-Waldock to produce reliable evidence showing extraordinary conditions in the gold futures market on September 22, 1999.

After the open on September 22, Ralph would place a series of orders via the Lind-Waldock on line order entry system to offset the long gold futures. This series of orders lies at the core of this dispute.

First, at about 9:32 a.m. EDT, Ralph placed an order (#2663) to sell two February Gold futures, at 266.70 or Better. [Exhibit C to answer.]

Second, at about 9:40 a.m., Ralph placed an order (#2868) to cancel and replace Order #2663, and to sell two February 2000 Gold futures, at the market. [Exhibit D to answer.] This market order (#2868) was filled at 266.20 (for profit of about \$850), but would not be reported back to Lind-Waldock's desk until the morning of the next day, Thursday September 23. As a result, the fill would not be reported by Lind-Waldock until September 23.³

Third, at 11:02 a.m. – approximately 1 hour and 20 minutes after placing the market order – Ralph placed an order (#4471) to cancel and replace the market order (#2868), and to sell two February gold futures, at 266.70 Or Better. [Exhibit E to answer; see ¶ 2, Schlichter affidavit (produced July 7, 2000); and ¶¶ 6 and 7 of Answer.]

At the end of the day, Ralph assumed – on his own – that the cancel replace order (#4471) had expired, because "I showed no working orders on my account." As a result he

³ The trade was reported by Lind-Waldock the next day on the confirmation statement dated September 23rd. Thus, it is not unreasonable to assume that Lind-Waldock also reported the fill over the on-line system. In this connection, Ralph has not produced a copy of a screen print-out from September 22, 23, 24 or 27, 1999.

decided to wait and see "how the market opened in the morning." [Emphasis added; ¶¶1 and 2 of Description of Complaint.]

Ralph has not explained why he only checked the "Working Orders" file, and not the "Fills" or "Dead Orders" files on September 22, which may have reported the fate of his orders. He also inexplicably would not check the "Working Orders," the "Fills" or the "Dead Orders" files on September 23 or 24. [See ¶2, and Exhibits 3 and 4, Ralph's unverified statement (dated May 20, 2000).]

7. Although Ralph would follow the market each day as it trended upwards, he would not check his account via the on-line system until Monday September 27.

On Thursday, September 23, the February gold opened at 265.8, traded between 265.3 and 268.9, and closed at 268.3. According to Ralph, the "market looked strong to me so I did not re-enter the sell order." [¶3, complaint.] On Friday, September 24, the February gold traded between 265.3 and 268.9.

On Monday, September 27, the February gold traded between 278.8 and 288. Also on this day, Ralph checked his account via the on-line system, and finally realized that the market order had been filled, and that he was out of the market. Ralph sent a series of e-mail messages to the Lind-Waldock Technical Support Department, which advised him to contact his trading desk.

The next day, Ralph spoke with the desk supervisor, Jeff Kunst, and demanded an adjustment. Kunst expressed a lack of sympathy because Ralph had waited five days before contacting Lind-Waldock, and advised Ralph that if he wanted an adjustment for lost profits, he must first re-enter the market, and then "work out" the "alleged error

subsequently.” Ralph then re-entered the gold market, but exited the next day with a loss of about \$1,600. [¶¶ 4-6, Complaint.]

Conclusions

Ralph has failed to show by a preponderance of the evidence any intentional or reckless violations by respondents causing damages. Ralph’s complaint springs from the folly of his unilateral attempt to cancel a market order via the internet more than an hour after he had placed it. Upon receipt of Ralph’s market order, Lind-Waldock had been obligated to fill it promptly at the prevailing price, which it did. See *Mai T. Do v. Lind-Waldock*, [1992-1994 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,910, at 40,965 (CFTC 1993). And once Lind-Waldock filled the market order, Ralph’s cancel-replace order was too late to be effective. In support of his assertion that he acted reasonably in assuming – on his own – that the market order had not been filled, Ralph argues:

Anyone with even a cursory knowledge of the futures markets is aware that situations often arise in active markets which legitimately delay or prohibit timely execution of a market order. Lind-Waldock and its representatives should be well aware of these situations.

[¶ 2, Ralph’s unverified statement (dated May 20, 2000).] However, Ralph has produced no evidence supporting this proposition, and has otherwise produced no evidence showing market conditions in the gold ring that would have precluded or delayed the execution of market orders. Ralph has also produced no evidence of any action or statement by Lind-Waldock upon which a reasonable trader could have relied to conclude mistakenly that the market order had not been filled. Thus, the absence of the fill report for Ralph’s market order, by itself, supported the plausible and reasonable conclusion only that the order had been filled and not timely reported, rather than Ralph’s tenuous and unreasonable

assumption that the order had not been filled. *Compare Mai T. Do., id.,* (customer reasonably relied on broker's mistaken assumption that order could not be filled).

Ralph has similarly produced no evidence that Lind-Waldock somehow caused or is responsible for his failure to monitor his account for five days, or that Lind-Waldock acted improperly by advising him to re-enter the market when he insisted on an adjustment based on price movements over the previous five days. In these circumstances, Ralph's claim must fail.

ORDER

No violations causing damages having been established, the complaint in this matter is DISMISSED.

Dated September 21, 2000.



Philip V. McGuire,
Judgment Officer