



U.S. COMMODITY FUTURES TRADING COMMISSION

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OFFICE OF PROCEEDINGS

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ED REDMAN and JOAN C. REID,
Complainants

v.

DELONG, FRIEDMAN AND SUKENIK,
INC., GARY ROBERT FULLETT, and
ROYAL FUTURES GROUP, INC.,
Respondents

CFTC Docket
No. 97-R027

INITIAL DECISION

—Background

The complaint in this action is minimal and has never been supplemented by complainants, who failed to respond to respondents' discovery requests and never filed a verified statement. Attached to the complaint form are several typewritten sheets labeled "Statement of Facts." That "statement" actually consists of two sheets, one of which is merely a list entitled "Unauthorized Trading," containing several round-turn trades conducted by "broker" but without any details except date, bought/sold prices, and resulting trading losses. The other sheet is entitled "Excessive Trading," and it is reproduced here in its entirety:

07/03/96 -- 11/27/96

There were 454 unit transactions in this account in 22 weeks, generating \$5036.19 in Commissions and Fees.

Attached as exhibits to the complaint are a calculation of damages (seeking a total of \$10,616.76), a letter from the NFA informing complainant Redman that NFA records show that one reparations complaint was previously filed against respondent Fullett, and a sizable packet of account statements (the answer filed by respondents claims that there are 127 account statements in all). Complainants elected to have the case decided under the voluntary decisional procedure.

Respondent Royal Futures Group filed an answer that noted that the complaint was not in a form conducive to pleading (unlike the enforcement rules, the reparations rules do not provide for a motion for a more definite statement; *compare* Rule 10.23(3) *with* Rule 12.18). Nevertheless, Royal Futures denied the allegations of unauthorized and excessive trading

(demanding proof of both); denied the contention of 454 "units" traded; and challenged complainants' calculation of losses as deceptive insofar as the calculation exceeded complainants' overall out-of-pocket losses. In addition, in a section labeled as "Affirmative Defenses," the answer alleges that complainants' knew about each transaction and received account statements but never objected to any transactions, thereby ratifying all trading. The Royal Futures answer also alleges that complainants were sophisticated traders with prior trading experience. Royal Futures elected a summary decisional proceeding, and paid the appropriate filing fee.

A joint answer was filed by respondents DeLong Friedman and Sukenik ("DFS") and Fullett. That answer notes that both the customer account agreement and the confirmation statements explicitly informed complainants of the need to inform DFS of any errors or unauthorized trading, and contended that complainants never voiced any such objections. Respondent Fullett, in a separate section of the answer, avers having talked with complainant Redman 2-3 times daily and that Redman specifically authorized each of the trades listed by complainants. As to the allegations of excessive trading, respondents Fullett and DFS analyzed the issue as a churning charge, and denied having power-of-attorney control over the trading in the account.¹ Respondents also challenged complainants' damages calculation as inflated.

After the case was forwarded for adjudication, respondent Royal Futures served interrogatories and requests for admissions upon complainants. No replies were ever filed, and therefore the requests for admissions are deemed admitted. *See* Rule 12. 33(b). However, Royal Futures failed to file a motion to compel answers to the interrogatories.

No party submitted a verified statement.

Discussion

Unauthorized trading: Complainants have never provided any details regarding their allegations of unauthorized trading. Their failure to respond to interrogatories, and their failure to avail themselves of the opportunity to file a verified statement (*see* Notice of Summary Proceeding, Section D) has left their listing of unauthorized trades unsupported by any documentation or other evidence. Furthermore, their failure to deny the requests for admissions establishes that they have admitted the following: receiving, reading, completing and understanding all the account-opening documents (Admissions 1 through 11); receiving all daily and monthly account statements (Admissions 15 and 16); authorizing each trade that was executed (Admission 17); and failing to contact any respondent to complain about anything regarding the account (Admissions 18 and 19).

In contrast, respondents have filed specific denials of complainants' assertions, and have specifically provided details regarding each of the disputed transactions. In combination with the

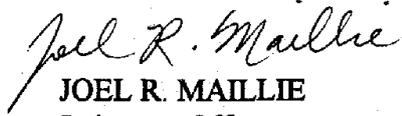
¹ Although they had denied churning because of the lack of control, respondents went ahead to challenge complainants' calculation of how many transactions occurred. Respondents contended that only 79 round-turn trades, in a total of 158 futures contracts, were made, and alleged that complainants' calculation was inflated because it was based on counting each grain contract as 5 "units" because they are "valued in units of 5." Thus, respondents asserted, the number 454 "units" traded was "meaningless."

admissions, respondents' un rebutted submissions establish by a preponderance of the evidence that the trades were not unauthorized. Furthermore, even if any particular trade was not authorized in advance, respondents' evidence supporting ratification has never been rebutted or otherwise addressed by complainants, who have been shown to have been sophisticated traders with full knowledge of all trades and their obligation to raise objections. Accordingly, it is determined that all trading was ratified.

Excessive trading: There is no cause of action under the Commodity Exchange Act for excessive trading, so this allegation is considered, as respondents analyzed it, as a churning charge. Respondents' evidence regarding this allegation is un rebutted, and consists both of their denials that they controlled the level of trading in the account and of their independent calculation of the level of trading. Complainants' failure to deny the requests for admissions establishes that no power of attorney existed over the account (Admission 23) and that complainants directed all trading in the account (Admission 22). Under the circumstances, complainants' simple contention that 454 "units" were traded cannot form the basis for a churning claim.

For the reasons stated, the complaint is **DISMISSED**.

Dated: January 30, 1998


JOEL R. MAILLIE
Judgment Officer