



U.S. COMMODITY FUTURES TRADING COMMISSION

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JOSEPH J. ROACH,
Complainant,

v.

CONCORDE TRADING GROUP, INC., and
BRIAN STANLEY EARLE,
Respondents.

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CFTC Docket No. 99-R36

INITIAL DECISION

Complainant alleges that respondents defrauded him by misrepresenting the relative risks and rewards of trading options on futures with Concorde. Respondents deny the allegations and raise the statute of limitations affirmative defense. For the reasons set out below, it has been concluded that the complaint is barred by the statute of limitations.

Factual Findings

On May 6, 1996, Roach signed the account-opening documents, including a risk disclosure statement. Roach reported on his account application that he had attended college, that he had no previous investment experience, and that he had an annual salary of \$25,000; and \$10,000 available in risk capital. He would lose a total of \$11,431.

Trading activity took place in Roach's account from May 10 to September 17, 1996. Seven out of ten trades would be unprofitable.

The May 1996 monthly account statement reported that the beginning account balance was \$12,000, that the trades in the account in May had realized aggregate net losses of \$7,573, and that by the end of the month the account liquidation value had declined to \$6,840. The June 1996 monthly account statement reported that the trades in the account in June had realized aggregate net losses of \$3,104, and that the account liquidation value had declined to \$3,710. The July 1996 monthly account statement reported that the trades in his account in July had realized aggregate net losses of \$624, and that the account liquidation value had declined to \$1,036. The August 1996 monthly account statement reported that the trades in his account in August 1996 had realized aggregate net losses of \$746, and that the account liquidation value had declined to \$515. The September 17, 1996 confirmation statement reported that the last option position in the account had been liquidated for a loss of \$429. Soon afterwards, Concorde returned the remaining cash balance of \$569. Thus, Roach lost all but that \$569 out of the \$12,000 that he had invested.

In early 1998, Roach received a questionnaire from the CFTC Division of Enforcement. An employee of the Division informed Roach that it was monitoring Concorde's compliance with a preliminary injunction. In July of 1998, Roach obtained a copy of the injunctive order which described fraudulent sales activities by Concorde. Roach was aware of the two year statute of limitations but assumed

that it had not begun to run until he had read the injunctive order. Roach did not file his complaint until November 16, 1998.

Conclusions

The statute of limitations set out in Section 14(a) of the Commodity Exchange Act requires that a reparations complaint be filed within two years after the cause of action "accrues." A cause of action accrues when a complainant knows, or should have known in the exercise of due diligence, that wrongful conduct has likely occurred resulting in monetary damages. The determination of when the cause of action accrues turns on when a customer discovers those facts enabling him to detect the general outlines of any violations, rather than when the customer grasps the full details of the violations or determines the available legal remedies.^{1/} Here, the record establishes that well before September 17, 1996, when the last option had been sold for a loss, Roach was well-aware of his trading losses and thus was well-aware of any deficiencies, discrepancies or deceptions in respondents' statements about risks and profitability. Upon receipt of the September 17, 1996, Roach knew that he had lost almost all of his investment. Therefore, September 17, 1996, at the absolute latest, Roach had enough information to form reasonable suspicions about respondents' statements about risk and profitability.

The date that Roach filed his complaint, November 16, 1998, is clearly past the two-year statute of limitations deadline, and Roach's claim will be time-barred

^{1/} See, e.g., *Cook v. Money International, LTD.*, [1984-1986 Transfer Binder] Comm. Fut. L. Rep. ¶22,532 (CFTC 1985), *reconsideration denied* [1986-1987 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶23,078 (CFTC 1986); *Martin v. Shearson Lehman Brothers/American Express*, [1986-1987 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶23,354 (CFTC 1986); and *Marraccini v. Conti-Commodity Services, Inc.*, [1986-1987 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶23,793 (CFTC 1986).

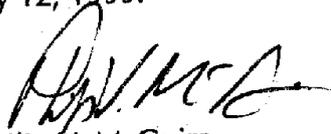
unless he can invoke equitable estoppel or equitable tolling. Equitable estoppel focuses on any misleading actions by a respondent. To show that respondents should be estopped from raising the statute of limitations, Roach must prove that he reasonably relied on an action or representation by them that forestalled him from filing a claim. Roach has produced no evidence that respondents made any false promises or otherwise dissuaded or delayed him from initiating legal action, and has thus failed to show that respondents are estopped from asserting the statute of limitations defense.

Equitable tolling focuses on the reasonableness of the complainant's action or inaction. The factors considered in determining whether a late filing is excused by principles of equitable tolling include the reasonableness of a complainant's continuing ignorance of the filing requirement and his diligence in pursuing his rights. Roach has produced no evidence to support a conclusion that he acted diligently or otherwise excuse his late filing, especially where he knew as early as early 1998 that Concorde's sales activities had been the subject of scrutiny by the Commission. Therefore, Roach's claim is barred by the statute of limitations.

ORDER

The complaint is barred by the statute of limitations, and thus must be DISMISSED.

Dated July 12, 1999.


Philip V. McGuire,
Judgment Officer