



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

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THEODORE R. ROBERSON,  
as Custodian for Cecil B. Roberson,  
Complainant,

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CFTC Docket No. 97-R078

MICHAEL JOHN LEIGHTON,  
TRADELINER BROKERAGE SERVICES, L.L.C.,  
and RB&H FINANCIAL SERVICES, L.P.,  
Respondents.

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**INITIAL DECISION**

Roberson claims that two trades in his account were unauthorized – the purchase of a pork belly put on August 7, 1996, and the initiation and expansion of a U.S. Dollar Index option delta-neutral strangle between October 16 and December 12, 1996. Also, pursuant to CFTC rule 12.204(c), Roberson produced sufficient evidence to raise the issue whether Leighton had misrepresented the relative risks and rewards of trading the delta-neutral strangle. Respondents deny that the disputed trades were unauthorized or that Leighton misrepresented the risks of trading a delta-neutral strangle, and raised the affirmative defenses of ratification and accord and satisfaction. Based on a careful review of the parties' documentary submissions, and an evaluation of the relative credibility of the parties' oral

testimony, it has been concluded that Roberson has failed to establish any of the alleged violations.

### ***Factual Findings***

#### *The Parties*

1. Theodore R. Roberson, a resident of Brockton, Massachusetts, was 74 years old at the time that he opened a custodial account for his son, Cecil.<sup>1</sup> On the account application Roberson indicated that he had retired from his job as an inspector for Gillette Company, and that he had an annual income between \$20,000 and \$50,000, with a net worth of over \$100,000. Roberson “truly enjoyed” trading commodities in the past. [Page 3 of factual description to complaint.] In 1987, Roberson had maintained an account with Murlas Commodities, but lost almost all of his investment. When Roberson threatened to initiate legal action, Murlas agreed to return about half of his losses. In 1996, Roberson opened an account introduced by Collard Financial Services and carried by LFG. Roberson had taken the Ken Roberts futures course, and in June of 1996, he took the Paul Judd options course, which provided a list of suggested brokerage firms including Tradeline.<sup>2</sup> Roberson also subscribed to several telephone and fax

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<sup>1</sup> According to Roberson, the purpose of the account was to generate funds for his son’s college education, in addition to the funds that he had already saved for this purpose. See pages 9-10 of hearing transcript.

<sup>2</sup> Roberson’s testimony that Paul Judd and Tradeline were located on the same premises was contradicted by the fact that Tradeline is located in Irvine, California – in southern California – whereas the area code for Paul Judd is “408” which encompasses San Jose and Santa Cruz in northern California. [See document titled “Option Information Line” (Roberson’s response to respondents’ request for production of documents (filed September 30, 1997); and p. 92 of hearing transcript.)]

“hotline” quote services, and to a computer network quote service. [Page 1 of Leighton’s answer; ¶¶ 5, 6, and 14 of RB&H’s and Tradeline’s joint answer; page 1 of factual description to complaint; and pages 9-19 of hearing transcript.]

2. Tradeline Brokerage Services is an introducing broker located in Irvine, California, and guaranteed by RB&H Financial Services, a futures commission merchant located in Chicago, Illinois. Michael John Leighton was a registered associated person with Tradeline from June 1996 to February 1997.

#### *The Account Opening*

3. In late June 1996, Roberson contacted Tradeline, and soon afterwards opened an account with a check for \$1,500 made out to RB&H. The account began with a transfer from the Collard/LFG account of the \$791 balance and a September silver call option.<sup>3</sup> [See pages 19-24, and 64-66 of hearing transcript.]

4. Paragraph 14 of the RB&H customer agreement,<sup>4</sup> titled “customer’s duty to object to errors,” stated: “Confirmations of trades, statements of account, . . . sent to RB&H shall be conclusively deemed accurate and complete unless objection is made immediately by telephone to an RB&H officer or compliance supervisor at the telephone number appearing on confirmations and statements and confirmed in writing within five days from the date mailed to customer.”

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<sup>3</sup> This silver call would expire worthless on August 9.

<sup>4</sup> The RB&H customer agreement was produced as an exhibit to RB&H’s and Tradeline’s final verified statement.

Paragraph 8 of the agreement, titled "margin calls," authorized RB&H to demand margin payments within one hour. [See page 26 of hearing transcript.]

Paragraph 3 of the agreement, titled "amounts payable by customers," provided that customers were to make all payments for margins calls and options purchases to RB&H.

### *The Initial Trades*

5. Between July 31 and August 6, 1996, several undisputed trades involving futures and options were made for Roberson's account. One of these trades was a spread involving pork belly options. [See pp. 66-67 of hearing transcript.]

For each of these transactions, and for each of the subsequent transactions, Roberson received a confirmation statement. According to Roberson, the confirmation statements and the monthly account statements typically took about five days to arrive at his house by mail. Roberson's testimony that he could not adequately understand the account statements was not convincing since he conceded that he was at least able to ascertain from the account statements that contracts had been bought or sold for his account, and to understand the purchase cost of options and the account balance. [See pages 28-29 of hearing transcript; and ¶¶ 1 and 2 of Roberson's reply to Order dated October 31, 1997 (filed November 22, 1997).]

*The Disputed August 7 Soybean Trade*

6. On August 5, the account had a cash balance of about \$2,832, and just one open position – the nearly worthless silver call option that had been transferred from the Collard account. Also on August 5, Roberson mailed a check made out to RB&H for \$1,000, which was received by RB&H on August 8.

On August 6, Roberson took a single long February pork belly futures contract, leaving a cash balance of \$2,552. Roberson does not dispute this transaction.

7. On August 7, the February pork belly future was offset, and one February pork belly put option was purchased, leaving a cash balance of \$416. After the hearing, respondents produced a recording of a conversation establishing that Leighton clearly obtained Roberson's authorization to buy the put. Even if respondents had not produced this recording, the record would have supported their contention that the trade was authorized, because Roberson's testimony about the trading activity on August 7 was extremely confused, inconsistent and unreliable. [See pages 30-43 of hearing transcript.] First, he initially testified that he had instructed Leighton to "exit the futures position" and to "get me a put position," but then almost immediately contradicted himself by asserting that he had never discussed the sale of the future or the purchase of the option. [Pages 30-37 of hearing transcript.] Second, Roberson's assertion that he deposited the \$1,000 to meet a margin call was contradicted by the fact that no margin calls had been issued

at this time.<sup>5</sup> [See pages 38-41 of hearing transcript.] Third, Roberson gave completely conflicting testimony about whether he understood from the account statements how much he had paid for the option. [Compare testimony at pages 33 and 38 of transcript.] In contrast, Leighton's testimony that Roberson authorized the trades on August 7 was consistent and convincing, and supported by the recording. [See pages 67-68 of hearing transcript.]

8. Roberson also gave hopelessly inconsistent testimony about whether he protested the purportedly unauthorized trades on August 7. Roberson had initially asserted that he "bitterly" protested the trade "several" times but had decided to hold the put until expiration on Leighton's advice.<sup>6</sup> [¶ 5(b) of Roberson's reply to Order dated October 31, 1997 (filed November 22, 1997).] Roberson subsequently contradicted himself when he testified that he had never protested the trade to Leighton because he did not understand that he had the position in his account. [Pages 33-37 of hearing transcript.]

9. Both sides agree that in mid-October,<sup>7</sup> when Leighton recommended that he sell the soybean put for a profit, Roberson became upset when he realized that he could have made a greater profit if he had purchased a comparable futures contract. [See pages 1-2 of factual description to complaint; ¶¶ 1, 2 and 4 of

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<sup>5</sup> The first margin call would not be issued until three months later, on November 11, and that margin call for \$1,125 on the strangle was one that Roberson would not have to meet because the market corrected on November 13. See pages 76-77 of hearing transcript.

<sup>6</sup> Roberson also asserted that he did not complain to RB&H because he "really didn't know that RB&H had anything to do with it." ¶5(c) of Roberson's reply to Order dated October 31, 1997 (filed November 22, 1997).

<sup>7</sup> Between August 9 and September 6, six other round-turn trades were made for Roberson's account. At the close on September 6, the account had a cash balance of \$500, and one open position – the disputed soybean put.

Roberson's reply to October 31 order (filed November 21, 1997); page 2 of Leighton's answer; ¶ 10 of RB&H's and Tradeline's joint answer; and pages 36-43 of hearing transcript.] Both sides also agree that Roberson decided to hold the put. However, where Leighton testified that Roberson rejected his advice to sell the put, Roberson testified that Leighton never gave that advice. Roberson conceded, however, that he knew that he could have liquidated the put and also knew that the put was profitable for some time, before it eventually lost value and expired worthless. [Pages 36-38 and 69-70 of hearing transcript.]<sup>8</sup>

### *The Disputed Delta-Neutral Strangle*

10. In August, Leighton began an ongoing "dialogue" about a delta-neutral strangle strategy that involved shorting out-of-the-money puts and calls in the US Dollar Index.<sup>9</sup> [See pp. 43-47, and 70-71 of hearing transcript.] On or about August 23, Leighton faxed Roberson a note in which he made claims about the delta-neutral strangle strategy:

This is what I do successfully in the option market. I sell options in flat trading markets. This is the U.S. T-Bond Index December delivery. The price of the premium is above the value per point. You collect the premium per contract with margin requirement of approximately 75 to 100 percent return on investment in 84 days. . . . There's no promises, but I can tell you this business leverage [*i.e.*, the leverage business] is incredible.

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<sup>8</sup> The phone bills also established phone conversations on August 13 (7.9 minutes), 16 (37.9 and 5.5 minutes), 22 (5.5 minutes), 27 (40.2 minutes), 30 (20.1 minutes); and September 4 (7.5 minutes)

<sup>9</sup> "Delta-neutral" strategy succeeds only in a sideways market, *i.e.*, a futures market that does not experience sharp moves toward the strike price, and is generally considered highly risky because the possible losses are unlimited while the profit potential is limited to the premium collected. See pages 75-76, and 87-89 of hearing transcript.

[Emphasis added; exhibit 6A to complaint.] As can be seen, the note contained no mention of risk, and the “no-promises” proviso was qualified by the exclamation about leverage that was implicitly limited to up-side leverage and not downside leverage. However, Leighton testified that “a majority” of his customers who had followed his advice on trading delta-neutral strangles had realized profits.<sup>10</sup> [Pages 71-75 of hearing transcript.] More importantly, Roberson testified that he did not rely on this statement and that he decided not to trade the strangle at this time, because he found it confusing and because he did not want to commit another \$10,000 as suggested by Leighton. [Pages 43-48 of hearing transcript.]

11. On October 14, Roberson made out a check to RB&H for \$3,000, which RB&H received on October 17.<sup>11</sup>

On October 16, a March U.S. dollar index strangle was initiated for Roberson’s account. Respondents could not produce a tape-cassette copy of the trade authorization for October 12, because they had already provided the original recording to the CFTC Division of Enforcement in connection with an investigation not related to this case. Since the issue of Roberson’s authorization of the strangle has been resolved based on the finding that his testimony was riddled with numerous inconsistencies and was generally unreliable, it is not necessary to obtain the recording. See Respondents’ production filed July 22, 1998.

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<sup>10</sup> Respondents were not asked by Roberson or the undersigned to substantiate this testimony with documentary evidence, such as equity runs, monthly account statements, or profit-loss summaries..

<sup>11</sup> According to Roberson, he sent in this check because he wanted to speculate on the Canadian dollar, the Australian dollar, and crude oil. However, he never placed orders for these contracts.

A summary of the dollar index strangle is set out below:

<i>Date</i>	<i>Trade</i>	<i>Contract</i>	<i>Premium</i>	<i>Commission/fee</i>	<i>Net profit/loss</i>
10-17	sell 3	86 puts	\$1,260	\$(240)	
11-27	sell 1	"	470	(90)	
12-12	sell 1	"	340	(90)	
01-17	buy 5	"	(100)	(25)	
			<u>\$1,970</u>	<u>\$(455)</u>	\$ 1,515
10-16	sell	90 call	\$ 1,050	\$(250)	
12-12	sell	"	340	(90)	
01-17	buy	"	(5,200)	(20)	
			<u>\$(3,800)</u>	<u>\$(340)</u>	\$(4,140)
11-27	sell	89 call	\$ 310	\$(90)	
01-08	buy	"	(1,180)	(5)	
			<u>\$(870)</u>	<u>\$(95)</u>	\$(965)

The aggregate net loss on the strangle was \$3,590.

According to Roberson, he never authorized any of the transactions on October 16, November 27 or December 12. Roberson testified that when he received the October 16 confirmation statement, he called Leighton to complain, but Leighton convinced him to maintain the strangle by representing that the strangle was "incredible" and would be profitable by Christmas. Roberson testified that he "didn't notice" the trades on November 27 or December 12 because he was "upset and confused," and "wasn't paying any attention." [Pp. 48-54, and 76-78 of hearing transcript.]

12. The strangle was briefly profitable, but in January the market went against the 87 and 90 calls. As a result, on January 7, 1997, a \$1,200 margin call was issued; and on January 8, the 87 call position was liquidated, resulting in a net loss of \$965. [See pp. 55-56, and 78-80 of the hearing transcript.]

The market continued to go against the 90 calls and a series of margin calls was issued: for \$1,200 on January 10, and \$2,225 on January 14 and 15. On January 17, the remaining positions were liquidated. The total net loss on the January 17 liquidations was \$2,626. [See pages 56, and 80-81 of hearing transcript.; introduction (pp. 1-3) and ¶6 of Roberson's reply to October 31 order (filed November 21, 1997); page 2 of factual description to complaint; pages 2-3 of Leighton's answer; and ¶¶ 11 and 13 of RB&H's and Tradeline's joint answer.]

13. On January 17, 1997, Roberson sent a check for \$3,000, that would be received by RB&H on January 20. However, the check had been received too late to satisfy the margin call, and – unlike Roberson's other checks – had been incorrectly made out to Tradeline rather than to RB&H.

#### *The Account Closing*

14. Soon after the January 17 liquidation, Roberson spoke to Leighton's supervisor, Robert Gorrie, several times. Eventually, as a result of these conversations, Gorrie agreed to refund a total of \$2,700 to Roberson (\$2,000 on February 26, and \$700 on March 5). Roberson and Gorrie gave vastly different versions of these conversations. Because Roberson's testimony was confused and often implausible, I credited Gorrie's more coherent and reliable testimony. [See pages 56-63, and 84, 89-91 of hearing transcript.]

According to Roberson, although this conversation took place just after the forced liquidations, Gorrie never mentioned the liquidations and Roberson complained that the strangle had been unauthorized. Roberson initially testified

that he demanded that Gorrie refund \$3,000, representing the amount that he had invested in October, and acknowledged that he had received \$2,700. However, when Roberson was asked to describe the circumstances around the separate payments (\$2,000 on February 26 and \$700 on March 5) he testified that he “didn’t know anything about the \$2,000,” and “didn’t even notice it” when it was reported on the confirmation statement dated February 25. In contrast, Gorrie testified that he explained the circumstances around the forced liquidations, and that when Roberson complained about the loss on the strangle, Gorrie promised to investigate. When Leighton told Gorrie that the trades were authorized, Gorrie informed Roberson that he believed that the Roberson was not entitled to a correction. However, when Roberson threatened legal action, Gorrie decided to “appease” Roberson and asked Roberson how much he wanted.<sup>12</sup> According to Gorrie, Roberson then replied that if he received a \$2,000 credit he would resume trading. When RB&H did not promptly credit the account, Roberson sent a letter to Tradeline in which he demanded that the account be credited, but also indicated that he wished to continue trading with RB&H:

I would like to know when the funds will be returned to my account so that I will be able to continue my trading. . . . I turned 75 years of age today. So, I don’t have time to wait around.

[Exhibit 23 to complaint.] Roberson’s letter did not mention any allegedly unauthorized trades. In a subsequent conversation, Roberson asked Gorrie

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<sup>12</sup> In their answers, respondents claimed that they agreed to credit the account because Roberson had displayed a good faith-effort to meet the margin call.

for an additional \$700 credit.<sup>13</sup>

Once the account was credited, Roberson changed his mind and merely closed the account.

### Conclusions

Roberson undermined his claims by giving testimony that was riddled with contradictions and that was generally unconvincing. In addition, numerous factors weighed against Roberson's claims: (1) the fact that Roberson was a somewhat knowledgeable and experienced investor who had previously traded commodity futures and options, who had purchased or completed several futures and options training courses, who received an independent quote service, and who understood the risks involved in trading commodity futures and options; (2) the fact that Roberson deposited additional funds at the time of both disputed trades; (3) the fact that Roberson made additional trades in August and September, and deposited additional funds in October despite the allegedly unauthorized trade in August; (4) the fact that Roberson did not complain to Leighton's supervisor until after the second forced liquidation, which was three months after the supposedly unauthorized strangle had been initiated; (5) the fact that Roberson failed to make any oral or written protest to RB&H; and (6) the fact that when Roberson promptly complained about the delay in crediting his account and expressed an intention to continue trading with respondents, he did not even mention any of the allegedly

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<sup>13</sup> Neither side has explained how Gorrie and Roberson arrived at the \$2,700 figure. However, it does correspond to the losses on January 17.

unauthorized trades. In these circumstances, it must be concluded that Roberson has failed to establish any violations by a preponderance of the evidence.

**ORDER**

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

Dated July 29, 1998.

  
Philip V. McGuire,  
Judgment Officer