



U.S. COMMODITY FUTURES TRADING COMMISSION

Three Lafayette Centre
1155 21st Street, NW, Washington, DC 20581

RECEIVED
C.F.T.C.

'99 OCT 29 AM 11 46

OFFICE OF PROCEEDINGS

OFFICE OF
PROCEEDINGS

ROSE SCOTT,

Complainant

v.

DANIEL GILBERT GOULD,
INTEGRATED BROKERAGE SERVICES,
INC., and LFG, L.L.C.,

Respondents

CFTC Docket
No. 99-R042

INITIAL DECISION

Complainant seeks reparations for losses occurring in her account on September 26, 1996. Respondents have raised the affirmative defense of the expiration of the two-year statute of limitations, which bars complaints filed more than two years after a customer's cause of action accrues. Complainant has never addressed the limitations issue in any filing despite respondents' vehement argumentation on this matter.

Accrual of the cause of action: In her first complaint addendum (dated November 8, 1998), her discovery responses (answer to interrogatory 7), and her verified statement (page 2), complainant explains her cause of action as being based entirely upon misrepresentations allegedly made to her by Gould regarding her trading results on September 26, 1996. Specifically, complainant alleges that she was led by Gould to believe that an order she had placed had been filled – resulting in her placing an additional order based on the supposed liquidation of the other open position – when in fact, *as she found out later that day*, the order had not been filled and she still had an open losing position. She contends that Gould misled her into believing she was showing profits when she instead was suffering losses. A subsequent trade to liquidate the position resulted in a loss charged to complainant's account despite her objection *that same day* to Gould's supervisor and her threat to complain to the National Futures Association and the CFTC (*see also* complainant's response to interrogatory 12). To buttress her contentions, complainant provided a time and sales record that she contends she obtained from the exchange “[o]n the date of this los[s], September 26, 1996” (complainant's response to interrogatory 19). Assuming all of complainant's allegations to be true, her cause of action arose no later than the day she threatened to file a complaint, i.e., the date of the alleged wrongdoing, September 26, 1996. That date means that the time to file a complaint would expire two years later, on September 26, 1998.

The first "complaint": The first document received by the CFTC filed by complainant was mailed, according to the envelope's postmark in the file, on September 25, 1998. That document must be considered within the two-year limitations period if it in fact constituted an acceptable complaint.

The document in question consists of only the CFTC complaint form, signed by complainant, naming as respondents the three respondents named here. In Box 3 ("If known, cite the specific portions of the Act, rules or regulations violated"), complainant wrote the following:

Misrepresentation. Untrue statement concerning a material fact which I relied on in making trading decision regarding commodity trading.

Box 4 ("Description of complaint") was left entirely unaddressed by complainant despite the explicit instructions to provide such information. That box instructs as follows:

Describe in detail, giving names, dates, and the facts which will show how the Commodity Exchange Act was violated and how you were injured by that violation. You must set forth this information on supplementary sheets which you must attach to this complaint form.

Similarly, Box 5 ("Amount of damages claimed") was left blank – again, despite instructions telling a complainant, "You must include an explanation of how you calculated the damages you have claimed."

The other factual information required on the form – addresses, telephone numbers, and answers to questions about other legal actions based on these facts and about bankruptcy – was properly provided by complainant. However, the complainant did not make a forum selection on the back of the form, where she signed it, although she did include a check to the CFTC for \$125, which would have been the proper amount for a summary proceeding.

As noted, the submission from complainant was postmarked September 25, 1998. It was timestamped as received on October 1. The following day, the Director of the Office of Proceedings wrote to the complainant informing her that the complaint form and check had been received, but that the complaint could not be accepted or assigned a docket number until the complainant provided a specific statement of facts and an actual value for damages claimed. The letter provided specific instructions regarding the types of details needed, suggested that account statements should be provided, and how damages would be measured for different types of alleged violations. The letter instructed complainant to file her reply by October 14 (with a verification of all facts alleged therein) and informed her that if nothing was received from her by then, the documents and check would be returned to her.

Complainant's "addendum": The next entry in the record consists of two notes to the file from the staff member of the Complaints Section assigned to this case. The first note is dated October 27 and reflects an unsuccessful attempt to call complainant to ask her if she would

be pursuing her complaint. The second note, dated October 28, memorializes a conversation between the staff member and complainant, including complainant's request for additional time and a promise to reply to the October 2 deficiency letter by November 13.

Complainant then submitted by certified mail an unsworn one-page letter dated November 8 but postmarked November 13 (received November 19). This document, which she labeled an "addendum" to her complaint, finally provided some information regarding what she was complaining about, i.e., that "in September 1996" she had placed an order to buy, followed by an order to sell after receipt of a confirmation of the fill on the buy. She claimed (without explanation) that she lost \$7,000 on the trade and an additional \$7,000 in lost profits, although at the end of the "addendum" complainant then stated her "actual damage" as being \$20,000 – again, without elaboration.

A second deficiency letter written to complainant by the Director (November 25) requested verification of the factual allegations, a proper damage calculation, details regarding the alleged liability of LFG, L.L.C., and an election of procedure. Those deficiencies, and other mistakes, eventually were corrected in subsequent submissions over the next two months, and the complaint was finally deemed ready for serving on the respondents on January 22, 1999.

Discussion: As noted above, respondents challenge the timing of complainant's filing of her complaint. Further, as noted above, it is beyond dispute that the cause of action arose on September 26, 1996. The only way for complainant to prevail on this issue would be if it were to be determined that she had filed her complaint on time when she mailed the form and the check to the CFTC on September 25, 1998. Accordingly, the issue to be determined is whether filing a complaint is accomplished upon submission of a complaint form naming the respondents, but setting forth only a general allegation of misrepresentation without any dates or other details or any alleged damages, along with a filing fee.

Preliminarily, it is to be noted that the decision by the Director to reject the initial filing was a ministerial, not an adjudicative, determination. Thus, failing to assign the complaint a docket number and informing the complainant that the complaint would not be accepted until major problems were corrected has no dispositive effect. Whether the complaint form and filing fee constituted a proper application for reparations is a factual and legal issue independent of any determination of the matter by Commission staff. Their conclusions, set out in the Director's October 2 letter, are highly instructive as to the processing of complaints, but those conclusions do not create a "law of the case" as to whether complainant filed a proper complaint on September 25, 1998.¹

¹ Similarly, although Rule 12.13 requires a complaint to be in a form that meets a long list of requirements, these matters are often administrative in nature (i.e., a daytime telephone number, or a statement about a respondent's bankruptcy), or by reference include a number of requirements that could not possibly be used to determine whether a complaint is timely (i.e., whether a document is printed or typed only on one side or on white paper). Since the two-year limitation period is set out in the statute itself, Section 14(a)(1), the core issue is whether a customer has accomplished what is envisioned by the words of the statute, that is "appl[ied] for an order awarding...actual damages" attributable to an alleged violation within two years after the cause of action accrues.

Independently, however, it is concluded that the complaint form (and fee) filed by complainant on September 25, 1998, are insufficient to constitute a complaint for purposes of meeting the two-year filing period.²

As discussed in note 1, the core of a reparations complaint under the statute is that a customer is applying for a damage award based on alleged violations by a registrant. At a minimum, then, the application for reparations must identify three things: (1) the respondent(s) to be named; (2) the actions complained of, or at least enough to enable further specific inquiry; and (3) at least some amount of damages sought. Here, complainant provided the names of the respondents but none of the other two vital pieces of information necessary to begin the reparations process. Complainant here gave none of that information until the "addendum" was filed on November 13. Until that time, in fact, no money damages were alleged, and neither a year nor the month of alleged wrongdoing could even be ascertained.

For the reasons stated, the complaint is DISMISSED as filed beyond the expiration of the two-year statute of limitations.

Dated: October 29, 1999


JOEL R. MAILLIE
Judgment Officer

² Certainly, the use of the form alone cannot be considered a proper complaint – especially where, as here, the complainant has failed to provide two items that the form itself says "must" be included, i.e., a description of events and an amount of damages.