



U.S. COMMODITY FUTURES TRADING COMMISSION

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JOHN MICHAEL SKINNER,
Complainant,

v.

GOMBOS INTERNATIONAL, INC. and
RAYMOND MICHAEL RANELLUCCI,
Respondents.

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* CFTC Docket No. 99-R027

INITIAL DECISION

John Skinner's principal allegation is that the first two trades in his account were unauthorized. Respondents deny any violations.

The findings and conclusions below are based on the parties' documentary submissions and oral testimony. For the reasons set out below, it has been concluded that Skinner is not entitled to an award.

Factual Findings

The Parties

1. When he opened his account, John Michael Skinner was a 52-year old resident of Cromwell, Connecticut, employed as a psychological counselor for the Connecticut Department of Mental Health with an annual income of about \$70,000 and a net worth of about \$200,000. Skinner has bachelors and masters degrees in psychology. Skinner had invested in stocks and bonds for about 25 years and had traded stock options and

commodities for about three years.¹ Skinner had been tracking the S&P 500 index when he was first contacted by respondents. [See pages 7-13, 59-64 and 101-102 of hearing transcript; and Exhibits A, B, C and D to Answer.] Skinner's testimony showed that he is intelligent, articulate, and assertive. However, the reliability of his testimony was undercut by internal inconsistencies.

2. Gombos International, Incorporated is a registered introducing broker. Gombos introduced Skinner's account to Vision Limited Partnership, a registered futures commission merchant.

Raymond Ranellucci has been registered as an associated person of Gombos International since May 1998. Donald Gombos is Gombos' chief executive officer and Ranellucci's supervisor. Donald Gombos testified that he obtained Skinner's authorization for each order discussed below. [See pages 107 to 109, 120 to 122, and 184 to 186 of hearing transcript.]

Gombos and Ranellucci were well prepared and articulate witnesses whose recollection of crucial conversations was not overwhelmingly convincing, but was more plausible and convincing than that of Skinner.

Opening the account:

3. In late July or early August of 1998, Ranellucci obtained Skinner's name and number from a telemarketing firm and cold-called Skinner. Skinner told Ranellucci that he

¹ Respondents' assertion that Skinner was "an extremely savvy and sophisticated investor with a solid understanding of the both futures and options" was belied by the fact that they required him to execute an additional risk disclosure statement that was intended for clients with limited trading experience or limited financial resources. See ¶17 of answer, and account application (produced February 15, 1999).

had been tracking the S&P 500 index and had previously traded S&P 500 index futures. However, Ranelluci told Skinner that he was advising clients to trade heating oil and sugar options, rather than S&P 500 futures or options.² Thus, before he opened the account, Skinner knew that Ranelluci would not necessarily be recommending S&P 500 index trades. [See pages 13-20, 31-32, 110-112, 114-117, 122, 186-192, 212-213, and 237 of hearing transcript.]

On August 10, 1998, Skinner opened the account with respondents by executing a Vision customer account agreement and application, and depositing \$5,000. [See pages 94-96 of hearing transcript.]

Trading the account

4. Respondents would execute three trades for Skinner's account: the purchase on August 12, 1998 of five May sugar calls; the purchase on August 14, 1998 of five December heating oil calls; and a day trade on August 18, 1998 in the September U.S. Dollar Index futures contract. The sugar and heating oil options would expire worthless, and the day trade would lose money, for a total out-of-pocket loss of \$4,875.

² Skinner gave inconsistent testimony concerning precisely when Ranellucci informed him that he preferred heating oil and sugar over the S&P 500 index. During his direct testimony, he testified that Ranellucci downplayed the S & P 500 before Skinner had received the account opening package. In contrast, during cross-examination, he testified that Ranellucci downplayed the S&P 500 after Skinner had mailed the signed account opening package and his check, but before the first trade.

5. The two sides present dramatically different versions of their conversations concerning the two options trades.

According to respondents, between August 10 and 14, 1988, Skinner accepted Ranellucci's recommendations to place a series of orders, which Skinner placed with Donald Gombos: first, on August 10, Skinner placed an order to buy ten January heating oil call options, at a price between 75 and 80, which was reported back "unable" to get filled during that day's trading session; second, on August 12, Skinner placed an order to buy five Sugar March call options which was filled and an order to buy five January heating oil call options which was reported as "unable" to be filled; and third, on August 14, Skinner placed an order to buy five December heating oil call options at a price of 55, which was filled. According to respondents, Skinner never complained about the heating oil or the sugar trades when he received the fill reports. [See confirmation statements and order tickets, and pages 123-143 and 193-210 of hearing transcript.]

In contrast, Skinner asserts: that he never placed any orders with Donald Gombos; that he initially discussed with Ranellucci buying just two or three sugar contracts and two or three heating oil contracts, but never gave approval to buy five contracts; and that he was surprised when Ranellucci reported that he had bought five sugar options and five heating options. Skinner testified that he was upset with these trades because they "went against my sentiment to almost exclusively trade the S&P," and because "nothing was ever finalized." Skinner also testified that when he asked Ranellucci why he had purchased so many contracts, Ranellucci "kind of ignored me and pishawed the whole thing" and "insisted that these were good trades." [Pages 42-44, 76-77 and 103 of hearing transcript.] Skinner testified that he did not ask to talk to Ranellucci's supervisor because he assumed

that the supervisor would just support Ranellucci; and that he did not ask to close the account because he was already out \$1,250 in commissions. Skinner did not describe any statements or actions by respondents that would have formed the basis for an assumption that the supervisor would disregard any complaints. [See pages 32-45, 76-78, and 80-81 of hearing transcript.]

6. Despite the fact that Ranellucci had supposedly disregarded Skinner's instructions and protests, on August 18, Skinner expressed an interest in day-trading the S & P mini futures contract. Skinner asserts that he spoke to Ranellucci, but respondents assert that he spoke to Gombos. In any event, both sides agree that Skinner elected not to deposit additional funds needed to cover \$3,000 the margin requirement for a S&P mini futures, and then accepted a recommendation to day-trade the U.S. Dollar Index. Skinner testified that Ranellucci was "very enthusiastic" but did not promise or guarantee profits. Skinner then placed an order to sell two December dollar index futures at the market and an order to buy two December dollar index futures market-on-close ("MOC") to cover the short day-trading position. Skinner lost a total of about \$790 dollars on this day trade. When this loss was reported to Skinner, he became upset and complained that respondents were not allowing him to trade S & P. When he subsequently threatened to sue respondents, Gombos placed his account on a liquidation-only basis. [See pages 67-72 and 149-167 of hearing transcript.]

7. By mid-September, Skinner's heating oil position was trading just above the break-even price, but the sugar position was steadily declining. Respondents twice advised Skinner to liquidate the heating oil position, but Skinner declined both times because he thought the market "still had legs," and he hoped to make greater profits that would offset

his losses on the sugar and dollar trades. Soon afterwards, the heating oil market reversed and by the end of October the heating oil options were virtually worthless. The heating oil and sugar options expired worthless. [Pages 82-93 and 157-167 of hearing transcript.]

Conclusions

Skinner alleges that the heating oil and sugar option trades were unauthorized because he had instructed respondents to limit trades to no more than three contracts, because the trades "went against his sentiment" to only trade S&P futures, and because "nothing was ever finalized." However, Skinner's conduct before and after the disputed trades were reported was simply not consistent with his allegation that the trades were unauthorized. Most significantly, Skinner conceded that he knew before the first trade that Ranellucci did not share his interest in the S & P 500 index, and was advising his clients to trade heating oil and sugar options. At this point, Skinner was free to take his money to another firm that would advise him on trading the S & P 500 index, rather than heating oil and sugar. However, Skinner chose to maintain the account with respondents. Skinner also chose to keep the trades after they were reported, chose not to protest the trades, and chose to place an additional trade. Consistent with this choice to keep the trades, Skinner disregarded respondents' recommendation to sell the heating oil options at a small profit in hopes of reaping greater profits. In these circumstances, Skinner has failed to show by a preponderance of the evidence that the disputed trades were unauthorized.

ORDER

No violations having been established, the complaint is DISMISSED.

Dated February 8, 2000.

A handwritten signature in black ink, appearing to read 'P.V. McGuire', written in a cursive style.

Philip V. McGuire,
Judgement Officer