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DARRELL K. SUNVOLD, Complainant,	*	
v.	*	CFTC Docket No. 11-R013
PEREGRINE FINANCIAL GROUP, Inc., d/b/a PFG BEST, Respondent.	*	

INITIAL DECISION

Introduction

This dispute illustrates the potential pitfalls associated with on-line trading. The complainant Darrell Sunvold is a sophisticated trader with four decades of experience, and is a previously registered associated person with a commodity trading advisor. For over a year Sunvold had been routinely using respondent Peregrine Financial Group's on-line trading platform to place orders and to monitor his account. Sunvold thus had become accustomed to receiving real time on-line confirmations of fills, in contrast to the pre-electronic trading era when traders typically had to call trading desks to get confirmations during a trading session. This dispute arises from Sunvold's deviation from his normal practice of trading on-line, when he placed two stop orders telephonically with Peregrine Financial Group's trading desk on a Sunday night while he was travelling and away from his computer. During this phone conversation, Sunvold placed two buy stop orders to liquidate short December and March E-mini S&P futures positions. Both orders were promptly filled later that night.

In accordance with Peregrine's standard back office procedures, the confirmations of the fills on the two telephonically placed orders would not be reported on-line until 9:00 on Monday night. However, since Sunvold had long favored on-line trading and gotten used to its near instantaneous confirmation reports, his familiarity with the more time-consuming procedure for processing and reporting telephonically placed orders had faded. This lack of familiarity would contribute to Sunvold's mistaken expectation that the fills of his telephonically placed orders would be confirmed on-line before the close of the Monday trading session. This mistake in turn would lead to Sunvold's erroneous assumption that the lack of any on-line confirmation on Monday morning could only mean that Peregrine had failed to execute his orders.

Monday morning, Sunvold checked his on-line system and noticed that, although the market had traded through both stop prices, no fills had been reported on-line. Sunvold did not consult Peregrine's order desk. Rather, Sunvold assumed that Peregrine had failed to execute his orders and unilaterally placed a new set of buy orders. Later on Monday, these orders were filled, which left Sunvold with two uncovered long positions. The next day, Sunvold closed out this second set of positions for a loss of $4,175. Sunvold claims that Peregrine caused that loss by mishandling the first set of orders and not providing timely on-line confirmation of the fills on those orders.

In response, Peregrine asserts that Sunvold should bear sole responsibility for his losses. Peregrine asserts that it properly handled and promptly filled Sunvold's orders, and that Peregrine's trading desk could have confirmed the fills on the first set of orders if Sunvold had diligently consulted Peregrine's order desk, instead of unreasonably assuming the worst and rashly deciding to place the second set of orders. Peregrine further asserts that the customer agreement signed by Sunvold provided that he agreed that if he failed to receive an electronic

confirmation as to the placement of an order he would promptly "verify the status of such order independently by contacting Peregrine telephonically to confirm whether such order has been received." Thus, Peregrine argues, Sunvold is responsible for his losses, because he acted recklessly by unreasonably assuming that the absence of an on-line confirmation indicated that Peregrine had mishandled his first set of orders and by placing the second set of stop orders without first independently asking Peregrine's order desk to confirm the status of the first set of stop orders.

As explained below, after carefully reviewing the parties' submissions, it has been concluded that Sunvold has failed to establish that he is entitled to recover any damages.

Factual Findings

The parties

1. Darryl K. Sunvold, a resident of Willmar, Minnesota, has been a self-employed tax accountant for 20 years. Sunvold has over 40 years experience trading commodity futures, and was briefly registered as an associated person with a Commodity Trading Advisor in the mid 1980's. [*See* Account Application, Exhibit A to answer; and Sunvold's December 20, 2010 e-mail exchange with Peregrine's Paige Miller, Exhibit 1 to O'Meara affidavit, produced by PFG September 9, 2011.]

2. Peregrine Financial Group, Incorporated ("PFG" or "Peregrine"), a registered futures commission merchant based in Chicago, Illinois, carried Sunvold's non-discretionary account. [*See* NFA records, http://www.nfa.futures.org/basicnet; and Account Application, Exhibit A to answer.]

The agreement between Sunvold and Peregrine

3. Sunvold opened his self-directed, discount account on October 4, 2009. He executed various account-opening documents including the account application and the customer agreement. Paragraph 6 of that agreement states the following about the risks associated with Peregrine's BEST Direct internet order system:

> PFG does not guarantee that any order placed through this system will be filled or acted on...Customer is solely responsible for confirming Customer's own orders.
>
> . . . .
>
> Customer further agrees that all orders placed through BEST Direct are placed at Customer's sole risk.

In Paragraph 6 of the customer agreement, Sunvold agreed that, in the event he failed to receive electronic confirmation as to the placement of an order, he would promptly "verify the status of such order independently by contacting Peregrine telephonically to confirm whether such order has been received." [Exhibit A to answer]

Disputed orders

4. Sunvold typically entered his orders through Peregrine's on-line trading platform, PFG BEST Direct. Sunvold would log onto his computer, and transmit his orders and receive confirmations of fills via the internet. [¶ 12 of answer.]

However, over on the weekend of November 20 and 21, 2010, Sunvold was traveling and did not have ready access to the PFG BEST Direct system. Thus, during the evening of Sunday November 21, Sunvold deviated from his normal practice and telephoned PFG's order desk to place the two orders that form the basis of his dispute with Peregrine.

In this connection, trades that are telephonically placed with Peregrine's trading desk are reported on Peregrine's BEST Direct on-line order entry platform after night processing for the

trading session that the two telephonic orders were placed and filled. As a result, Sunvold's two orders that he placed the evening of Sunday, November 21st would not be reported on BEST Direct until after night processing at approximately 9:00 p.m. on Monday, November 22nd. [¶17 of answer.]

Since Sunvold had been typically placing trades electronically for over a year, he had seldom if ever telephonically placed trades via the Peregrine trading desk. Thus, Sunvold became accustomed to receiving on-line confirmations before the close of trading. Sunvold also had little or no experience with Peregrine's procedures for processing telephonically placed orders, which resembled standard procedures in place during the pre-electronic trading era. This faded knowledge or lack of familiarity apparently contributed to Sunvold's erroneous belief, during the morning of Monday November 22nd, that Peregrine had not filled the orders that he had placed the previous evening, simply because Peregrine had not yet generated an on-line confirmation.

5. On Thursday November 18, 2010, Sunvold had shorted two December E-mini S&P 500 futures and two March E-mini S&P 500 futures. [*See* November 2010 monthly account statement, attachment to complaint.] After the close on Friday, November 19, Sunvold realized that he "had a mess to work out of regarding a couple of S&P contracts." [First page of factual description of complaint.] That is, he expected that the market would move against both positions and decided to take steps to limit his losses.

6. At 5:00 p.m., Sunday, November 21, 2010, Sunvold placed the two stop orders that form the basis for the dispute. Sunvold called the Peregrine trading desk, confirmed that the market for the December and the March S&P 500 was up, placed a buy stop order for two December E-mini S&P 500 futures at 1205.00, placed another buy stop order for two March E-

mini S&P 500 futures at 1201.00, and confirmed that he had no other open positions. For each order, after the Peregrine order desk clerk confirmed the terms of the order and stated the ticket number, Sunvold replied: "Okay." Sunvold also confirmed that both orders would remain in force until the close on Monday, November 22. Sunvold concluded the conversation by indicating that he expected to be stopped out on both orders. [*See* Transcript of recording of November 21, 2010 conversation, Exhibit 3 to O'Meara affidavi produced by PFG September 9, 2011; and ¶¶13-14 of answer.]

7. Later on Sunday, November 21, at 7:19 p.m., Sunvold's buy stop order for two March E-mini S&P 500 futures at 1201 was hit and filled at the price of 1201.00. Four minutes later, at 7:34 p.m., Sunvold's buy stop order for two December E-mini S&P futures at 1205 was hit and filled at the price of 1205.25. These two trades closed out Sunvold's short positions, successfully limiting his aggregate trading losses (exclusive of commissions and fees) to $400. As noted above, these two trades would not be reported on Peregrine's on-line platform until around 9:00 p.m. on Monday November 22. [*See* November 21, 2010 order tickets, exhibit C to answer; and November 22, 2010 confirmation statement and November 2010 monthly account statement, attachments to complaint.]

8. According to Sunvold -- based solely on the fact that the market had traded through his order Sunday evening and that BEST Direct had not reported any fills during the morning of Monday, November 22nd -- he concluded that the Peregrine order desk had failed to fill his two stop orders placed the previous evening. However, although he believed that Peregrine had mishandled his two orders, Sunvold did not contact Peregrine's order desk during the day on Monday, November 22nd to discuss the purported mishandling of his two orders. Rather,

Sunvold unilaterally decided to work quickly out of the "jam" by placing two new limit orders on BEST Direct.

At 10:35 a.m., Sunvold entered a limit order to buy two December E-mini S&P 500 futures at 1186.75, good till cancelled, which would be filled at 11:28 a.m. at that price. At 11:09 a.m., he entered another limit order to buy two March E-mini S&P 500 futures at 1182.50, good till cancelled, which would be filled at 11:26 a.m. at that price. [See order tickets, Exhibit D to answer.]

9. According to Sunvold, he did not realize until early morning on Tuesday, November 23, that he now had two long December, and two long March, E-mini S&P 500 futures positions. Sunvold became understandably frustrated and upset that he had to work his way out of a new "jam" which he assumed to be not of his own making. [*See* Sunvold letter to Peregrine's Julie Kaneyuki, dated December 2, 2010, and Sunvold e-mails to Kaneyuki, dated November 23 and 24, 2010, attachments to complaint.]

10. On Tuesday, November 23, Sunvold liquidated the two long positions for an aggregate trading loss of $4,175.60. [*See* November 22, 2010 confirmation statement and November 2010 monthly account statement, attachments to complaint.] Sunvold immediately complained to PFG about what he perceived to be the gross mishandling and inexcusably delayed reporting of his two orders: "The blame goes 100% to the night crew order desk and those that post those orders way too late." [Sunvold e-mail to Peregrine's Paige Miller, dated December 20, 2010, Exhibit 1 to O'Meara affidavit, produced by Peregrine September 9, 2011. *See* Sunvold letter to Peregrine's Julie Kaneyuki, dated December 2, 2010, and Sunvold e-mails to Kaneyuki, dated November 23 and 24, 2010, attachments to complaint.]

11. In response to his complaint, Peregrine took the position that Sunvold should have first consulted with Peregrine's trading desk before placing the second set of trades that realized the loss of $4,175.60:

> The orders in question were executed on Sunday evening, as is referenced in the trading log that I provided in my e-mail dated 12/9/2010. Just because the order wasn't immediately reflected on your trading platform doesn't mean that the order was not properly executed. In addition, you called the trading desk to place the orders Sunday evening. If you did not see the orders reflected on your platform, you have the responsibility to contact the trading desk to inquire about their status rather than assume they were not placed.

[Paige Miller's December 13, 2010 e-mail to Sunvold, Exhibit 1 to O'Meara affidavit, produced by Peregrine FG September 9, 2011.]

Conclusions

The weight of the evidence supports the conclusion that Peregrine diligently handled, executed and reported Sunvold's two stop orders that he placed the evening of Sunday, November 21, 2010. Approximately two-and-a-half hours after Sunvold placed the two stop orders with Peregrine's trading desk, both orders were filled at or near the order price. After the close of the trading session on Monday evening, in accordance with routine procedures for processing orders telephonically placed with its trading desk, Peregrine timely reported the fills.

The weight of the evidence also supports the conclusion that Sunvold, particularly in light of his experience, acted imprudently by placing the second set or orders on Monday November 22, 2010, without first consulting Peregrine's trading desk. Peregrine never guaranteed that telephonically placed orders would be immediately reported on its on-line trading platform. Similarly, Sunvold never informed Peregrine that he expected Peregrine to confirm on-line immediately any fills of orders placed telephonically with Peregrine's order desk. Moreover, nothing on the record indicates that Peregrine otherwise should have been aware that Sunvold

possessed such an expectation. Thus, Sunvold was merely imputing his own expectations to Peregrine, and could not reasonably shift to Peregrine such an obligation. *See Grist v. Shearson Lehman Brothers, Inc.*, Comm. Fut. L. Rep. (CCH) ¶ 24,962 (CFTC 1990); and *Avis v. Shearson Hayden Stone, Inc.*, Comm. Fut. L. Rep. (CCH) ¶ 21,379, at page 25,831 n.7 (CFTC 1982).

During the morning of Monday, November 22, 2101, when Sunvold noticed that the market had traded through his stop prices, but that no fills had been reported on-line, all he needed to do was what he had agreed to do when he signed the customer agreement: consult the Peregrine order desk about the status of those two orders. Had Sunvold first taken this simple and prudent step, he would have learned that his two stop orders had in fact been filled, and that he had successfully limited his loses. Thus, he would have avoided the losses that resulted from his decision to place the second set of stop orders. Unfortunately, Sunvold chose instead to act unilaterally, to assume unreasonably that Peregrine had mishandled his first set orders, and then to place the second set of orders. In these circumstances, Peregrine cannot be held liable for Sunvold's losses.

ORDER

Darrell Sunvold has failed to establish any violations causing damages. Accordingly, the complaint against Peregrine Financial Group, Incorporated, doing business as PFG BEST, is hereby dismissed.

Dated September 20, 2011.

Philip V. McGuire,
Judgment Officer