



U.S. COMMODITY FUTURES TRADING COMMISSION

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

OFFICE OF
PROCEEDINGS

ROSTISLAV TUROVETS,
Complainant,

v.

ILYA LEVITIS, and
LIND-WALDOCK & COMPANY,
Respondents.

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CFTC Docket No. 97-R64

FILED
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PROCEEDINGS CLERK

INITIAL DECISION

By complaint filed April 8, 1997, Rostislav Turovets alleges that Ilya Levitis, a principal of I&L Global Consultants, Ltd. fraudulently induced him to open a discretionary account by promising "virtually guaranteed profits." Lind-Waldock and Levitis raised the statute of limitations affirmative defense. Levitis also served notice that he had filed for voluntary bankruptcy under Chapter 7 of the Bankruptcy Code. I&L Global Consultants, Ltd. failed to file an answer and was found in default. For the reasons set out below, it has been concluded that the complaint is barred by the statute of limitations.

Findings

Ilya Levitis, a resident of Brooklyn, New York, was registered from July 23, 1993 to September 30, 1995 as an associated person with I&L Global Consultants, Ltd. ("ILG"), a registered introducing broker and commodity trading advisor. On September 30, 1995, Levitis' registration was terminated in conjunction with the

termination of ILG's registration. According to Rostislav Turovets, a resident of Brooklyn, New York, Levitis promised "virtually guaranteed profits" and somehow "pressured" him to open the account with Lind-Waldock.

After receiving a call from Turovets, Lind-Waldock mailed an account-opening package. On April 12, 1994, Turovets signed the various account-opening document, and deposited \$5,000. On the account application, Turovets indicated that he was "self-employed" in the field of "engineering." [Exhibit A, Lind-Waldock's Answer.] Turovets also signed a "Managed Account Authorization" form which gave Levitis discretionary trading authority. [Exhibit A, Lind-Waldock's Answer.]

For each transaction, Lind-Waldock mailed to Turovets a confirmation statement. Lind-Waldock also mailed to Turovets monthly account statements. Each confirmation statement and monthly account statement reported the total liquidation value of the account, the existence of any open positions, the liquidation value for each open position, and the expiration date of any open option position. For each option expiration (on August 19 and December 19, 1994, and March 19, 1995) the confirmation statements reported "The following option positions have expired."

On April 21, 22 and 26, 1994, Levitis bought for Turovets' account a total of forty September 1994 Treasury Bond options. The July monthly account statement reported that they had lost over half of their value. On August 19, 1994, these options expired worthless for a total loss of \$2,659.

On May 10, 1994, Levitis bought for Turovets' account eight December 1994 Eurodollar options. Turovets paid a total of \$2,200 in premiums and \$59 in commissions. The August monthly account statement reported that as of August 30, 1994, these options had lost almost all of their value, with a liquidating value of just \$100. On December 19, 1994, these options would expire worthless.

On August 1, 1994, Levitis bought for Turovets' account one deep-out-of-the-money March 1995 Eurodollar option. Turovets paid a \$50 premium and a \$15 commission. The August monthly account statement reported that this option had dropped to its shelf value of \$25. The March Eurodollar option would expire worthless on March 14, 1995.

Thus, by August 30, 1994, the September T-Bond options selected by Levitis had expired worthless, and the two open positions were virtually worthless. On December 19, 1994, the December Eurodollar options had expired also expired worthless for a loss of \$2,659, and the single open position remained virtually worthless. As of December 19, 1994, the losses on the expired options had totaled \$4,918 on a \$5,000 investment.

Turovets has produced no evidence of any representations made by respondents between the purchase dates and expiration dates for the September 1994 T-Bond options, the December 1994 Eurodollar options, or the March 1995 Eurodollar option.

After March 14, 1995, Turovets continued to receive monthly account statements from Lind-Waldock that reported no open positions and an account balance of \$27.63 account. Turovets

claims that Levitis informed him that "the contract or contracts that they bought for my account were supposed to expire in the summer of 1995 and that I should ignore the [Lind-Waldock monthly] account statements." [September 15, 1997 affidavit.] According to Levitis: "When the summer of 1995 came and my account was worth \$27.63, I of course became very upset."

Turovets claims that "between the summer of 1995 and fall of 1996" he conducted a "due diligence research on this case," and that he contacted "several" attorneys who said that they could not assist him and referred him to the Securities and Exchange Commission. Turovets has not described his "due diligence research," and has identified, and has not stated when he consulted, the attorneys.

On November 12, 1996, Turovets wrote a letter to the SEC complaining about Levitis and ILG. On January 31, 1997, the SEC replied and informed Turovets that he should contact the CFTC. On February 6, 1997, Turovets called the CFTC, which mailed him a reparations complaint package the next day. On March 11, 1997, the CFTC received a joint complaint from Turovets and Samuel and Manya Kats. On March 19, 1997, returned the jointly filed complaint, informing Turovets and the Kats that they could not file a joint complaint because it involved separate complaints with non-related accounts. On April 11, 1997, Turovets filed his reparations complaint.

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. When fraud is alleged, a cause of action "accrues" when a complainant knows, or should have known in the exercise of due diligence, that wrongful conduct has occurred resulting in monetary damages. The determination of when a cause of action accrues turns on when a customer discovers those facts enabling him to detect a general fraudulent scheme, rather than when the customer grasps the full details of the scheme or determines the available legal remedies.^{1/} Here, the record indicates that by August 30, 1994 -- when the September 1994 T-Bond options had expired worthless for a \$2,659 loss, the December 1994 Eurodollar options had lost all but \$100 of the \$2,200 premium paid, and the March 1995 Eurodollar options had already dropped to their shelf value -- Turovets had reason to believe that Levitis' promise of guaranteed profits was probably not true. Turovets had no reason to believe otherwise when the December 1994 Eurodollar options expired worthless on December 19, 1994, bringing his losses to \$4,918 on a \$5,000 investment. Therefore, Turovets' cause of action accrued no later

^{1/} See, e.g., *Cook v. Monex 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).

than December 19, 1994.

The date that Turovets filed the complaint, April 11, 1997, is clearly past the two-year statute of limitations deadline, and the complaint is thus time-barred unless Turovets can invoke equitable estoppel or equitable tolling. Equitable estoppel focusses on any misleading actions by a respondent. To show that Levitis should be estopped from raising the statute of limitations, Turovets must prove that he reasonably relied on an action or representation by Levitis that forestalled him from filing a claim. Here, Turovets has failed to show that it was reasonable to rely blindly on Levitis' purported statements in the spring of 1995 that Turovets' options would not expire until the summer of 1995, when Lind-Waldock's account statements clearly showed that no such positions existed. Turovets has otherwise produced no evidence that Levitis or Lind-Waldock otherwise dissuaded or delayed him from initiating legal action, and has thus failed to show that Levitis or Lind-Waldock are estopped from asserting the statute of limitations defense.

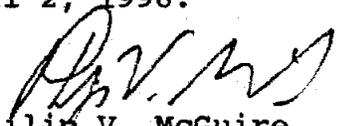
Equitable tolling focusses on the reasonableness of the complainant's action or inaction. The factors considered in determining whether a late filing is excused by principles of equitable tolling include the reasonableness of a complainant's continuing ignorance of the filing requirement and his diligence in pursuing his rights. Here, none of the actions mentioned by Turovets, conducting some sort of vague "due diligence research," and consulting on unspecified dates with unidentified attorneys,

and then still waiting almost two years to contact any sort of governmental agency, support a conclusion that Turovets acted diligently or otherwise excuse his late filing. Therefore, Turovets' claim is barred by the statute of limitations.

ORDER

For the reasons stated above, the complaint against Lind-Waldock is barred by the statute of limitations and is DISMISSED. Pursuant to CFTC rule 12.24(d)(2), the complaint against Levitis is DISMISSED.

Dated April 2, 1998.


Philip V. McGuire,
Judgment Officer