



U.S. COMMODITY FUTURES TRADING COMMISSION

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

OFFICE OF
PROCEEDINGS

GERALD VILLACRES,
Complainant,

v.

ROBERT JOSEPH PELAEZ,
COMMODITY PROGRAMS, INC., and
FIRST OPTIONS OF CHICAGO, INC.
Respondents.

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* CFTC Docket No. 96-R134

INITIAL DECISION

Gerald Villacres alleges that certain trades in his account were unauthorized and seeks to recover \$1,706.84 in damages. Respondents deny that any trades in Villacres' account were unauthorized.

By Notice dated July 24, 1997, a telephonic hearing was scheduled for September 23, 1997. However, Villacres refused to participate in the hearing.^{1/} As a result, adverse inferences are taken that had Villacres given testimony it would have been generally unconvincing and unreliable, and would have failed to cure the numerous inconsistent and implausible assertions that

^{1/} See Order to Show Cause dated September 23, 1997. In response to the Order to Show Cause, Villacres claimed that he had notified my office in August that he would not be participating in the hearing. However, the case file contains no reference to such an unusual call. Villacres' response also included a request that this case be assigned to a different judge, which is hereby DENIED.

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riddle his written submissions.^{2/}

The findings and conclusions below are based on the parties' documentary submissions, and reflect the adverse inferences based on Villacres refusal to participate in the hearing. Unless otherwise noted, all dates are in 1996.

Factual Findings

1. Robert Joseph Pelaez is a principal and associated person with Commodity Options, Incorporated, an introducing broker that was guaranteed by LIT Division of First Options of Chicago ("First Options") at the time of the disputed trades.

2. Gerald Villacres is the owner of JG&S Associates, a sole proprietorship located in Flushing, New York. On the account application, Villacres described the nature of JG&S' business simply as "investment."

Before opening an account with Vision Limited in 1995, Villacres had traded commodities for five years with Iowa Grain and Quantum. Villacres has an undergraduate degree, and in 1995 had an annual income between \$50,000 and \$75,000, and a net worth between \$250,000 and \$500,000. [Account application, produced April 23, 1996 by Vision Limited Partnership ("VLP") in response to a subpoena. See Notice issued May 1, 1997.]

3. On April 13, 1995, Villacres opened a corporate account, in the name of JG&S, with Vision Limited Partnership acting as the futures commission merchant and Commodity Programs, Incorporated

^{2/} The Hearing Notice placed the parties on notice that any failure to participate in the hearing would expose the non-participating party to these sanctions.

("CPI"), acting as the introducing broker. [See letter from Villacres to CPI dated April 20, 1995, VLP's April 23, 1996 subpoena production.]

On or about August 1, 1995, when CPI became guaranteed by First Options, Villacres' account was transferred to First Options. First Options routinely mailed to JG&S' New York address the confirmation and monthly account statements that reported and summarized the trading activity in the account.

4. In February 1996, Villacres began placing trades that had been recommended by a monthly newsletter sent to him by Pelaez. The first four of these four trades, all completed by March 22, realized an aggregate net profit of about \$765. [Pelaez-CPI joint answer, and Villacres' September 20, 1996 submission.]

Between March 20 and 25, Villacres moved to Arizona. [See Page 1 of complaint; page 4 of Villacres' September 20, 1996 submission; Villacres' response to Order Compelling Discovery, filed March 1, 1997; page 1 of CPI-Pelaez joint answer; and page 2 of first Option's answer.] The March 22 confirmation statement was the last statement sent to JG&S's Flushing, New York address.

All subsequent account statements were sent to JG&S's new Arizona address. Villacres' unsubstantiated assertion that he never received the April and May account statements sent to the Arizona address was insufficient by itself to establish nonreceipt, and was contradicted by his initial protest to Pelaez in which he effectively acknowledged receipt of the April 3, 1997 confirmation statement, and was further and fatally undermined by his refusal to

produce any reliable supporting testimony.

5. Set out below is a summary of the trading activity after Villacres moved to Arizona:

<i>Date in</i>	<i>Date out</i>	<i>Position</i>	<i>Net profit/(loss)</i>
Mar. 29	Apr. 3	short cocoa	\$ (380)
Apr. 3	Apr. 11	long Eurodollar	(600)
Apr. 26	May 2	long hog/short belly	(2,080)

Each of these trades corresponded to recommendations in the CPI newsletter. [Exhibit 3 to the CPI-Pelaez joint answer.] Also, each of these trades was reported on the daily confirmation statements and the monthly account statements mailed by First Options to the correct Arizona address.

6. Significantly, CPI's phone records establish phone calls between CPI and Villacres for each of the dates in April when trades were made: April 3 (2.7 minutes); April 11 (1.1 minutes); and April 26 (0.5 minutes). [Exhibit 5 to the CPI-Pelaez joint answer.]

In response to CPI's production of its phone records that established a call on each trade date, Villacres produced an unsworn and unconvincing version of these calls. According to Villacres: (1) on April 3, he authorized Pelaez to liquidate the cocoa position, but Pelaez never called him back with the trade results; (2) on April 11, "after attempting to contact him for a long time," Pelaez called Villacres "only to say he was very busy," put him on hold and did not call back after the line went dead; and (3) on April 26, when Pelaez returned one of Villacres "several

calls," Villacres told Pelaez "that I was not going to tolerate being treaty [sic] this way," and Pelaez hung up. Villacres claims that: "at no time during these brief telephone calls did I authorize any trades All I wanted [was] to know the results of the cocoa trade and to close my account ." [Emphasis added; Villacres' September 20, 1996 submission.] Villacres' explanation for the April phone calls appears implausible in light of the fact that each call precisely coincides with a date of a trade, and is contradicted by the fact that in his June 14 and 20 letters Villacres failed to mention any instructions to close the account and effectively acknowledged receipt of the April 3 confirmation statement (see finding 8 below) which had reported the result of the cocoa trade and the initiation of the Eurodollar traded. Finally, Villacres' refusal to participate in the hearing, and the resulting adverse inferences, support the conclusion that any oral testimony by Villacres concerning the April phone calls would have been similarly unconvincing.

7. According to Pelaez, Villacres did not express any displeasure until Pelaez informed him that the \$700 close-only stop order on the live hog-pork belly spread could not be immediately filled due to several days of up-limit moves. [Pelaez-CPI joint answer.] Neither side asserted a date, or approximate date, for this conversation.

8. On June 6, First Options issued a confirmation statement that erroneously reported the initiation of a bond spread in Villacres account. On June 7, First Options issued a confirmation

statement that removed the erroneous trade from Villacres account and cured the error.

Upon receipt of the June 6 statement, Villacres made his first written protest, by letter dated June 14, 1996:

Having been unable to speak to you despite my several calls and having run out of patience waiting for you to call me 'right back," I have no choice but to put this in writing.

As I indicated to you the last time we were able to speak, I have not instructed nor authorized the purchase of any commodities after the third of April, 1996.

During this time, I have not received any information, telephone calls or verifications that the purchases have been made in my account. Now, I have received your statement of June 6, 1996 showing that several transactions have been made in my account. This is to notify you that none of this [sic] transactions is valid nor authorized.

I am therefore, requesting that my account be reinstated to reflect the balance left in the account as of April 3, 1996.

[Emphasis added.] After receiving no reply from Pelaez, Villacres sent a second letter on June 20:

The only thing that I have received is a confirmation statement cancelling trades that you have performed on my account after April 3, 1996.

I would like to reiterate that I do expect to have my account credited in full reflecting a balance of \$1,271.40.

[Emphasis added.] The record contains no possible sources for Villacres' \$1,271.40 figure other than the closing account balance reported in the April 3 confirmation statement and the opening account balance reported in the April 11 confirmation statement.

9. On July 15, 1996, Villacres filed his reparations complaint. In his complaint, Villacres made assertions that either revised or contradicted assertions in his two previous letters to Pelaez, or that would be contradicted or undermined by his subsequent submissions.

First, Villacres now claimed that the "last authorized trade was made on March 29, 1996," rather than April 3, as initially asserted in the June 14 letter. In the complaint, Villacres claimed that on that date he "agreed to sell May cocoa," but "did not authorize any other trades after that date;" and in his September 20, 1996 submission, Villacres asserted:

The best way to summarize my claim [is] this: I claim that all trades made in my account after March 29, 1996 were not authorize [sic] by me. That is to say, anything that had happen [sic] in the account after March 29 I did not know. Nothing was supposed to have been traded in my account after March 29.

[Emphasis added.]

Second, Villacres increased his damage claim from \$1,271.40, which was based on the closing account balance on April 3, to \$1,706.84, which was based on the closing account balance on March 29. Villacres' subsequent explanation that he was now claiming the greater amount of damages, because he "had not been informed as of how the May Cocoa did" [page 2 of factual description of complaint] was contradicted by the fact that his June 14 and 20 letters had established that he had received the April 3 confirmation statement which reported the result of the cocoa trade.

Third, Villacres now claimed that the February monthly account statement was "the last statement received until May 16 to 31."

[Page 1 of factual description of complaint.] Consequently, Villacres was now asserting that he supposedly had not received the March 11, March 14 and March 22 confirmation statements sent to the New York address, or the March 29, April 3, 11 and 26 and May 2 confirmation statements and the March and April monthly account statements sent to the Arizona address. [See Villacres' supplement to the complaint, filed August 6, 1996 (reiterating that the February 29, 1996 statement was the last statement that he received).]

Fourth, Villacres' did not allege any delay in receiving the June 6 and 7 confirmation statements, which tended to undercut his assertions about non-receipt or delayed receipt of the confirmation statements for the disputed trades in April and early May, which were reported by confirmation statements sent to the same address.^{3/}

CONCLUSIONS

The preponderance of the evidence fails to support Villacres' allegations of unauthorized trading. Villacres' unsubstantiated and generally unconvincing assertions that he did not authorize the disputed trades were insufficient on their face as proof, and were fatally undermined by several inconsistencies, which Villacres

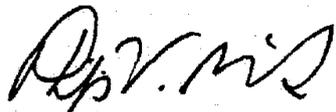
^{3/} Villacres also produced a copy of an account statement from a totally separate account with ING. According to Villacres, the ING account statement, dated May 16 and sent to a New York address, was forwarded and then received by him a couple of weeks later. Villacres never coherently explained why he had included this account statement with his complaint. [See Villacres' reply to question 10 in Order dated January 31, 1997, filed March 1, 1997; and Villacres September 20, 1996 submission.]

failed to cure when he refused to offer any supporting oral testimony. In contrast, respondents produced reliable evidence that established that Villacres and Pelaez spoke on each day that a trade was made, and that a confirmation statement for each trade was timely generated and mailed to the correct address. In these circumstances, Villacres' claim must fail.

ORDER

No violations having been established, the complaint is
DISMISSED.

Dated December 30, 1997.


Philip V. McGuire,
Judgment Officer