

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

YA-FENG WANG,
Complainant,

v.

MEI LI,
Respondent.

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CFTC Docket No. 00-R077

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COMMODITY FUTURES TRADING COMMISSION

INITIAL DECISION

Introduction

This case has been stayed several times for lengthy periods to allow Ya-Feng Wang ample time to hire an interpreter,¹ to travel to Asia, and to produce new evidence. Wang recently left a voice-mail message that confirms that he has no fresh evidence to produce. Accordingly, at long last, the evidentiary record is closed, the stay is lifted, and this matter is ready for disposition.

Wang's principal allegations are that Mei Li, an associated person with LFG, LLC, exaggerated her expertise and downplayed risks to convince Wang to open a discount account, and that Li refused Wang's request to close the account after the first two trades. In reply, Li denies any violations and asserts that Wang has grossly distorted the facts.² As explained below, it has been concluded that Wang has failed to show that he is entitled to an award.

This conclusion reflects the determination that Wang and Li both produced testimony that was too sketchy and self-serving to be found particularly compelling or reliable. Since Wang has

¹ Ultimately, Wang decided not to employ an interpreter for the hearing.
² LFG filed an answer denying any violations, but was dismissed out after filing for bankruptcy.

the burden to establish the alleged violations by a preponderance of the evidence, his failure to provide sufficiently credible testimony precludes him from prevailing.

Wang's oral testimony about Li's purported refusal to close the account was particularly unconvincing.³ Most notably, Wang failed to square his allegation that Li failed to follow his instruction to close the account with his own conduct which manifested an unabated trust in Li and an undiminished desire to continue trading. According to Wang, immediately after the first two trades had realized profits of \$400 and \$440, and immediately before the third trade would realize a loss of \$2,060, Li disregarded his request to return most of his account balance, which he testified that he made "primarily for safety." Despite Wang's purported desire to stop trading and Li's purported breach of trust, over the next few weeks Wang would approve numerous additional trades and would not complain to LFG about Li's conduct. When asked why he had continued to trade with an agent who had abused his trust by disregarding his instruction, Wang explained merely that he had hoped to recoup the \$2,060 trading loss through more trades. Thus, if Wang actually ever had an impulse to close the account, it was, at most, equivocal and fleeting.

Wang also failed to provide a plausible explanation for why -- while his account was open -- he never complained to LFG that Li had refused to honor his request to close the account. When Wang was asked at the hearing why he had not complained promptly to Li's supervisor, he asserted for the first time that Li had told him that she was the president of LFG. Thus, Wang testified, he assumed that she had no supervisor to whom he could complain. However, in his reparations complaint and subsequent written submissions, Wang had listed Li's various alleged

³ See pages 22-30 of the hearing transcript. In contrast, Li testified that Wang never asked to close the account, but that, if he had, she would have gladly obliged: "No. Never, ever he called [to say] he wanted to close the account. Never, ever. If he do [that], at that time, I'm so happy. So, I'm tired of [dealing with Wang] already. But, he never ask me to [do] that." Page 52 of hearing transcript.

misdeeds, such as her claim that she was one of the few successful and respected female brokers in a male-dominated field. But Wang never asserted, in any of his submissions, that Li had held herself out as a senior executive at LFG. Moreover, just a month after the Li's alleged refusal to close the account, Wang knew to address a letter to LFG's president, Mark Vaughn, in which Wang set out for the first time a detailed chronological version of Li's alleged misdeeds. Significantly, in that letter, Wang not only failed to mention any refusal by Li to return his money or to close the account, but Wang affirmed that he had had no problems with Li during the time that she supposedly disregarded his instruction: "Since last fall, until this Monday morning [when the last set of trades generated large losses], we were happy about this business."

Wang also never mentioned any refusal by Li to return his money or to close the account in a series of e-mails that he sent to LFG after Li had allegedly disregarded his instruction and before LFG would close the account. It was only after LFG had closed Wang's account and Wang had begun threatening to file a lawsuit, that Wang first mentioned in an e-mail that Li had discouraged him from withdrawing \$12,000, if he wanted to continue trading stock index futures. In that e-mail, Wang stated: one, that he had asked Li if he could withdraw the \$12,000, and trade with the \$840 in profits from the first two trades; and two, that Li had advised him that \$840 would provide inadequate margin to sustain trading the stock index futures.⁴ However, in subsequent e-mails to LFG, and in his pleadings and oral testimony in this proceeding, Wang transmogrified this straightforward advice into a brazen refusal to return the account balance or to close the account.

Wang's testimony about the circumstances around his decision to open the account similarly was too superficial, selective and implausible to be found reliable. Wang could recall almost nothing beyond his rote allegation that Li claimed that she had made money for a

⁴ Wang's \$2,040 loss on the third trade underscored the soundness of Li's advice.

prominent violinist⁵ and had made money for eighty percent of her customers. Wang's selective recollection of what Li said may have been a product of Wang's obsessive desire to recoup all of his previous trading losses. However, Wang's testimony that Li essentially guaranteed that he would recoup his losses was especially unconvincing and implausible when viewed in the overall factual context: *i.e.*, the fact that Wang waited two years before opening the account; the fact that it was Wang who initiated each conversation before he opened the account and before he made each trade; the fact that Wang chose to open an account in which he directed the trading and paid discounted commissions in exchange for minimal trading advice; the fact that Li was compensated by a salary rather than a cut of the commissions; the fact that Wang claimed he was concerned about "safety" when he supposedly asked Li to close the account after just two trades; and the fact that Wang rejected LFG's recommendation to convert his account to a discretionary account despite the fact that Li allegedly represented that 100% of her clients with discretionary accounts had enjoyed profits.⁶

⁵ Wang's allegation about the violinist has not been construed as an allegation that Li cherry-picked examples to distort the risks, because Wang also claimed that Li had mentioned one client who had lost a million dollars and another client who had lost \$300,000, in order to show "that she did not care whether to have me as a client or not." [Sic.]

⁶ In his oral testimony, Wang failed to add anything substantive to the sketchy descriptions in his written submissions. Wang otherwise failed to provide a remotely detailed or comprehensive description of what Li had said about the potential risks and rewards associated with trading a discount account with LFG. In his written submissions, Wang asserted that Li overcame his reluctance to open an account by claiming that 80 percent of her customers had profitably traded and by claiming that she had made large profits for a violinist touring with the Central Orchestra of the Peoples Republic of China: "When I thought about the number one violinist from China's Central Orchestra and the beauty of violin music, my spirit was lifted. . . . I was thinking: 'Even a violinist could make \$60,000 to \$70,000 at this. Why couldn't I, such a technical guy, make profits from the market?'" According to Wang, Li finally convinced him to open the account when she said "past is past, but present is present," which Wang interpreted to mean that his past losses were irrelevant to evaluating the risk of trading with her and LFG. In contrast, Li denies that she ever discussed the trading performance of her other customers, denies that she ever downplayed the risk of loss or exaggerated the likelihood of profits, and denies that she ever downplayed the relevance of Wang's trading experiences. As for the violinist, Li testified that at some point during her conversations with Wang she did mention an acquaintance who had become a musician after moving to Chicago ten years earlier and who had successfully traded futures for himself, but that she never stated or implied that the violinist had been her customer.

Factual Findings

Wang received a bachelor's degree in electrical engineering from Texas A & M. Wang also attended classes at the University of Illinois at Chicago and at DePaul University. After graduating, Wang earned a modest income working as an assembly technician at a series of electronics manufacturers in the Chicago area. At the time that he opened his LFG account, Wang was single and unemployed. Before opening his LFG account, Wang had lost several thousand dollars trading futures and options at a few firms.⁷ Wang's e-mails to LFG indicated that he was utilizing various outside sources for market information and trade selection.

After attending the Musical College of Shanghai, Li immigrated to Chicago, and eventually became a registered associated person in 1995. At the relevant time, Li was a salaried employee at LFG, a registered futures commission merchant. Thus, Li did not receive a cut of the commissions charged to the Wang account.⁸

Before Wang opened his LFG account, he had read an LFG advertisement in a Chinese language newspaper. Wang called LFG, and thereafter called Li about once a month, for almost two years, before he opened his account with LFG. Neither Wang nor Li could describe these conversations in any convincing detail. Wang and Li agree that they routinely spoke in Mandarin, and also agree that Wang and Li typically discussed the stock market and various stock market index futures markets. Wang testified that he principally made the calls for "entertainment." In contrast, Li viewed the conversations with trepidation because Wang had told her that he had sued his previous commodities brokers over trading losses and that he hoped

⁷ The number of firms with whom Wang previously traded cannot reliably be determined on this record. Wang indicated on his LFG account application that he had not previously traded futures, but indicated in his discovery replies that he had traded with three firms. Li asserted that Wang told her that he had traded with, and then sued, four firms. Wang and Li were not asked to address these inconsistencies.

⁸ LFG charged approximately \$35 per round turn, and collected a total of about \$600 in commissions.

to recoup his past losses. As a result, Li often encouraged Wang to consider relatively less risky investments, such as mutual funds, rather than trading futures.

After about two years of conversing with Li over the phone, Wang arrived at LFG's Chicago office and declared his intention to open an account.⁹ Wang signed a customer contract, risk disclosure statement and supplemental risk disclosure statement.¹⁰

Wang would trade for about six weeks. Wang and Li essentially agree that for each trade that Wang would call with his basic strategy and that Li would help him place the correct order to implement the strategy. Wang principally traded e-mini S & P 500 and e-mini Nasdaq index futures. With the exception of the last set of trades, Wang exclusively made single-lot day trades or overnight trades. According to Li, Wang sometimes disregarded her advise on using stop-loss orders. Nonetheless, most of Wang's trades generated modest profits, and after five weeks, Wang's account was up \$1,583.

However, as time went on, Wang expressed an intention to trade more aggressively, insisted that Li provide more input into selecting trades, and began monopolizing Li's time to the detriment of her other customers. Thus, LFG advised Wang that it was increasing the commissions for his account because his "style of trading" did not "conform" to LFG's discounted rates for truly self-directed accounts. Li also urged Wang to execute a power of attorney, so that LFG could select the trades for his account without Wang having to call so often.¹¹ In response, Wang returned to LFG's office, ostensibly to sign a power of attorney or to agree to pay a higher commission rate. However, Wang just sat in the office for a couple of

⁹ Wang claims he decided to open the account after Li told him that most of her customers were making money trading stock index futures. In contrast, Li asserts that Wang showed up without warning and eager to begin trading stock index futures based on information that he had received either from a friend or from a newsletter.

¹⁰ Neither side has produced any documents, or any written or oral testimony, which described the services promised by LFG or Li to Wang if he opened a discount account.

¹¹ Li and LFG conceded that, since they believed that Wang was a cheapskate, they assumed that he would rather close the account than pay higher commissions.

hours to “watch Li trade,” and then left without signing a power of attorney or agreeing to pay an increased commission rate.

A short while later, Wang called Li, and placed orders to buy a total of three stock index futures, disregarding Li’s advice that he was taking on too much risk.¹² After the market quickly went against Wang’s positions, he agreed to liquidate two of the positions. The third position was stopped out early the next day. After the liquidations, Wang’s account was down \$8,208.

Wang next sent a series of increasingly desperate and fragmented e-mails in which he asked Li to take control of his account and recoup his losses. For example, he e-mailed the following:

I thought about today’s trading and felt terrible. It is so hard to make profits and bring losses back. Remember? My account lost \$2100 last December, but it took me one month of effort and hard work to bring the loss back. I do not see any easy way to bring the loss back. Do you mind to provide your home phone number so I can give you a call at home, since you are very busy during work [hours].

LFG then informed Wang that it had closed his account and returned the account balance.

Afterwards, Wang sent e-mails threatening legal action and proposing various settlements, such as an agreement not to sue in exchange for free trading software.

Conclusions

Wang’s allegation that Li fraudulently induced him to open the account is evaluated under Sections 4b and 4c(b) of the Commodity Exchange Act. In order to prevail on this charge, Wang must prove by a preponderance of the evidence that Li (i) made a misrepresentation or omission; (ii) of material fact; (iii) intentionally or recklessly; and (iv) on which Wang justifiably relied and which proximately caused Wang’s damages. *Bishop v. First Investors Group* [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶27,004 at 44,840-42 (CFTC

¹² Li and LFG claim that Wang e-mailed a message to Li just before placing the order for the first trade. However, since respondents never produced this e-mail, no weight has been given to their assertions about the content of the e-mail.

1997). Whether a misrepresentation has been made depends on the “overall message” and the “common understanding of the information conveyed by a reasonable potential investor.” *Hammond v. Smith, Barney*, [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶24,617 at 36,657 & n.12 (CFTC 1990). Here, Wang’s testimony was simply too superficial, selective and implausible to support findings that Li actually misrepresented her expertise or that Li otherwise conveyed a false or deceptive message about the relative risks and rewards of opening a discount account with LFG, under the weight of the evidence standard. *See McDaniel v. Amerivest Brokerage Services*, [1999-2000 Transfer Binder] Comm. Fut. L. Rep. ¶ 28,264, at 50,589 (CFTC 2000).

Wang’s allegation that Li disregarded his instruction to close the account is evaluated under Section 4d of the Act. Section 4d compels a futures commission merchant to treat and deal with a customer’s money as belonging to the customer, and thus to follow customer instructions regarding his or her money and property. *Lee v. Lind-Waldock & Company*, [1999-2000 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 28,173 at 50,159-50,160 (CFTC 2000). Here, the record indicates at most that Li may have advised Wang that he had to keep at least \$12,000 in his account to maintain adequate margin for single-lot trading of stock index contracts. Consistent with such advice, Wang chose to keep the account adequately funded and to continue trading stock index futures and, in the process, made steady, albeit modest profits. However, Wang’s conduct – making several trades over about a month without registering any complaint about Li – was not consistent with an intention to cease trading and not consistent with a refusal by Li to honor a request to return his funds. Wang’s testimony failed to reconcile the profound inconsistencies between his conduct and his allegations, and was much too unreliable to support a finding that he ever actually asked Li to return his funds or to close the account.

ORDER

Wang has failed to establish any violations causing damages. Accordingly, the complaint in this matter is DISMISSED.

Dated June 14, 2004.

A handwritten signature in black ink, appearing to read "Philip V. McGuire". The signature is written in a cursive style with a large initial "P".

Philip V. McGuire,
Judgment Officer