



U.S. COMMODITY FUTURES TRADING COMMISSION

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SUSAN WATTERS,
Complainant,

v.

JEFFREY ROBERT KERR, and
LFG, L.L.C.,
Respondents.

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* CFTC Docket No. 98-R178
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INITIAL DECISION

Susan Watters' principal complaint is that the majority of the trades in her discretionary account were unauthorized because they were not in strict accordance with signals generated by a trading hot line. Watters seeks to recover \$11,704 in damages, based on the highest interim liquidation value of her account.

Respondents deny that Kerr promised to trade her discretionary account in strict accordance with signals generated by the trading hot line; assert that all of the trades in Watters' account were specifically approved or ratified by her designated agent, who is her husband; and otherwise 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 complainant has failed to establish any violations by respondents.

Factual Findings¹

1. Susan Watters, a resident of Lake Elsinore, California, has been employed as a tax preparer for twelve years. Before opening her LFG account, Watters had speculated in commodity options for about one year with Universal Commodity Corporation. Watters opened the LFG and UCC accounts in her name, but gave her husband, Richard Watters, discretionary trading authority in both accounts.

[Account application (Exhibit 1 to Answer); and pages 9-13 of hearing transcript.]

Richard Watters had discretionary authority to trade Susan's LFG account, and dealt with Kerr and LFG. [See pages 40-41 of hearing transcript; and Power of Attorney signed June 5, 1997 (Exhibit 1 to Answer).] Richard Waters had been employed as a sign painter, but during the life of the Susan Watters account, he was unemployed and on disability. [Page 14 of the hearing transcript.] At the hearing, he revealed for the first time in this proceeding that he had been taking various medications, including pain-killers and muscle relaxants, that had a variety of adverse affects, including headaches and drowsiness. However, Jeffrey Kerr credibly testified that Watters never told him that he was on a regimen of prescription drugs, and that Watters did not seem debilitated during their dealings. [Pages 60-61, 75-76, 90-91 and 94-95 of hearing transcript.]

2. LFG, L.L.C. is a registered futures commission merchant, with its principal place of business in Chicago, Illinois. Jeffrey Kerr, a registered associated person with LFG at the relevant time, acted as the account executive for the Watters account.

¹ Unless otherwise noted, amounts are rounded to the nearest dollar, and dates are in 1996.

3. In January of 1996, Richard Watters took the Larry Williams correspondence commodity trading course. Larry Williams is principally a technical trader, who taught several types of strategies. Watters was sufficiently confused or daunted by the variety of strategies that he decided that he needed an account executive to implement Larry Williams' hot line recommendations. [See pages 13-20, and 86-89 of hearing transcript.] In April of 1996, Richard Watters called LFG, and spoke to Kerr. Richard Watters told Kerr that he had taken Larry Williams' course and subscribed to Larry Williams' Bi-weekly market update, and that he was seeking a broker who would follow Larry Williams' hotline and strategies. Kerr told Richard Watters that he followed Larry Williams' daily hot line for advice on market direction as well as specific trades. Kerr also advised Richard Watters to subscribe to the Larry Williams' daily hotline, which Waters did not do. Waters conceded that he knew at this time that Kerr could not place all of the trades recommended by the hotline, because his investment of only \$5,000 was insufficient to cover the margin requirements of many of the trades recommended by the hot line. [See pages 20-32, 39-40, and 89-93 of hearing transcript.]

On May 1, 1996, Kerr sent Richard an introductory letter:

It was a pleasure speaking with you today about Larry Williams and the "Future Millionaire Course." As Larry mentions, it is important to work with someone who is familiar with the course and with his trading techniques.

Here at LFG, Linnco Futures Group, we are able to offer course members excellent execution along with specific help regarding trading strategy. In addition, I am available on a one on one basis to answer any questions you may have regarding the "Futures Millionaire Course." I can also assist you with any other future or option trading questions you may have.

Richard, as a client, you will be kept abreast of Larry Williams' market indicators such as Percent R and His Accumulation/-Distribution Index. This comprehensive assistance will help you to take advantage of market opportunities as they arise.

Enclosed please find information on LFG, Linnco Futures Group, as well as new account documents. In addition, I have enclosed material which I believe you will find useful.

[Emphasis added; exhibit to complaint.]

4. On June 5, 1996, Susan Watters opened the account in her name by signing various account-opening documents, including the first of two powers of attorney. This first power of attorney granted discretionary trading authority to Richard Watters and authorized LFG "to follow the instructions of [Richard Watters] in every respect." This first power of attorney contained no references to the Larry Williams hotline. [Exhibit 1 to Answer; see pages 31-32 of hearing transcript.]

On June 18, 1996, Susan and Richard Watters signed a second power of attorney titled "Order Placement Power of Attorney," which gave Kerr discretionary trading authority, and which but did not mention the first power of attorney:

The undersigned hereby authorizes Jeff Kerr (the "Agent") to execute or cause to have executed orders for commodity futures and options (collectively "Futures Contracts") in my account with LFG, L.L.C., ("LFG") generated by the Commodity Timing Hotline trading system (the "System"). I understand that all such activity by the Agent will be subject to all rules and regulations, and all amendments thereto, by which LFG, L.L.C., is governed. I further understand that the Agent's activity in following the system and placing orders is on a best efforts basis under normal market conditions.

LFG, L.L.C., is authorized to follow the instructions of the Agent in every respect concerning my account with LFG, L.L.C., and, except as herein otherwise provided, the Agent is authorized to act with full power and authority for me as I might or could do if personally present with respect to such transactions, as well as with

respect to all other thing necessary or incidental to the furtherance or conduct of such transactions.

I have granted the Agent the power to direct the Order Placement in the commodity trading account which Linnco carries on my behalf based on the System. I am fully aware that LFG, L.L.C., neither endorses nor reviews the recommendations or strategy of the System. I hereby authorize and direct LFG, L.L.C., to accept and enter all orders and instructions for the account pursuant to the directions of the Agent.

[Emphasis added (produced February 19, 1999); see pages 32-39, and 89-90 of hearing transcript.]

5. Paragraph 15 of the Customer Agreement provided that Susan Watters had an affirmative duty to report all differences, errors or mistakes in her account to LFG at the first opportunity. [Exhibit 1 to answer.] In this connection, each confirmation statement contained the following language on its face:

Please report any differences immediately. The failure to immediately exercise your right to have errors corrected will be deemed your agreement that this statement is correct and ratified.

The reverse side of each statement contained the following language:

Please report any and all errors or mistakes in your statement immediately to the LFG Customer Service Representative at ["800" number]. Unless mistakes or errors are reported to the LFG Customer Service Representative desk, all information contained on the statements will be deemed to be correct and conclusive.

[Exhibit 6 to answer.]

6. On June 10, 1996, Susan Watters made an initial a deposit of \$5,000; and on March 11, 1997, would invest an additional \$1,000. Later, Susan Waters would withdraw the \$204 account balance. Thus, her out-of-pocket losses would total \$5,796.

7. Trading in the account began June 14, 1996, and ended August 11, 1997. During this time, Susan and Richard Watters regularly reviewed the account statements. Richard Watters exclusively dealt with Kerr, speaking to him about two or three times each week. Watters and Kerr discussed each trade, sometimes before, sometimes after, Kerr placed the order. Watters never complained about or questioned Kerr's trading activity. [See pages 39-48, 58-59, 62-63, 67-78, and 90-95 of hearing transcript.]

8. Susan Waters' identified 51 out of 89 trades as not strictly according with signals generated by the Larry Williams hot-line. About half of these trades lost money. However, overall, the allegedly unauthorized trades realized an aggregate net profit of about \$3,000. For purposes of evaluating the alleged deviations from the hot-line signals, the trading activity can be divided into two periods: the first period from June 14 to October 23, 1996, when less than half of the trades were allegedly unauthorized; and the second period from October 25, 1996 to August 11, 1997, when almost all of the trades were allegedly unauthorized. For the first period, Susan Waters alleged that 10 out of 36 trades deviated from Larry Williams hotline signals. According to Susan Waters, five of these ten allegedly improper trades (August 26, September 11, and October 8, 17 and 23) were initiated in accordance with a Larry Williams hotline signal, but were exited either at a different time or a different price than the hot-line had signaled. For the second period, Susan Waters alleged that 41 out of 53 trades deviated from Larry Williams hot line signals. [See Attachment 4 to complainant's discovery replies.]

However, while these trades may not precisely match the hotline price and time signals, the record does not support the conclusion that any of these trades were not approved by complainant's designated agent, Richard Waters. As to the allegedly unauthorized trades during the first period, Kerr credibly testified that he discussed each of these trades with Richard Waters. Also, complainant admitted that she had no idea how much greater her profits, or how much less her losses, would have been had Kerr precisely followed the hotline signals when exiting these trades. [See pages 45-57 of hearing transcript.] As to the other allegedly unauthorized trades, Richard Waters conceded that from the beginning he had given Kerr discretion to "use his own judgment" in picking trades, and also that he had occasionally approved non-Larry Williams trades with Kerr. In this connection, Kerr credibly testified that Richard Waters often asked him to recommend other trades in addition to the hot line trades. Most significantly, Kerr also credibly testified that he used his best efforts to adapt the hotline recommendations for the Waters small account. For example, he profitably traded NYFE Index contracts rather than S & P 500 Index contracts, because the Waters account had insufficient margin to trade the S & P contract. [See pages 54-57, 59-61, and 77-84 of hearing transcript..]

Conclusions

Complainant has failed to show that Kerr's discretionary trading authority was strictly limited to making the precise trades recommended by the Larry Williams hot line, and has failed to show that Kerr made any of the trades without proper authorization. Complainant's designated agent, her husband, gave Kerr the

discretion to exercise his best judgment in selecting trades pursuant to the power of attorney. Kerr acted consistently with these instructions when he adopted the hotline recommendations to the small size of the Watters' account. Kerr also followed Richard Waters instructions to recommend trades that were not generated by the hotline. Finally, the conduct of Susan or Richard Waters during the entire life of the account – specifically, failing to question any of the trades, and depositing additional funds in order to continue trading – is patently inconsistent with unauthorized trading activity. In these circumstances, the complaint must fail.

ORDER

No violations having been shown, the complaint is DISMISSED.

Dated May 26, 1999.


Philip V. McGuire,
Judgment Officer