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RAM L. YADAV, Complainant,	*	
v.	*	CFTC Docket No. 00-R21
FARR FINANCIAL, INCORPORATED, Respondent.	*	

INITIAL DECISION

Yadav claims that respondent placed an unauthorized trade in his account and seeks to recover the $4,482 loss on the disputed trade. Farr Financial denies that the trade was unauthorized, and asserts that Yadav mistakenly believed that the order was unauthorized because he had lost track of his order. Farr Financial also asserts that Yadav declined to liquidate the trade when he was advised that he had in fact placed the order and thus was responsible for the trade.

The findings and conclusions below are based on the parties' documentary submissions and oral testimony, and reflect the determination that Yadav's testimony was too vague, confused, and inconsistent to support his allegations. For example, Yadav could not specifically remember any of the crucial conversations on May 13 and 14, 1999, and could not convincingly identify even the approximate date when he first allegedly spoke to his broker to protest the disputed trade. Yadav's testimony about other relevant matters was also vague or confused, and

often was internally inconsistent or contradicted by reliable documentary evidence. In addition, Yadav often gave unresponsive answers, despite repeated warnings to listen carefully to the question and provide a responsive answer.

Factual Findings[1]

1. Ram Yadav, a resident of Mt. Laurel, New Jersey, has been employed for 30 years as a mechanical engineer. When he opened his account, he listed his net worth as $611,000 and his annual income as $69,000. Yadav had traded stocks for 12 years, options on stocks for three years, and options on futures for two years. Yadav decided to switch his account to Farr Financial because the commissions were lower.

2. Farr Financial is a non-guaranteed introducing broker located in Santa Clara, California.

3. On April 26, 1999, Yadav signed the account-opening documents, and on May 7, he deposited $5,000. Yadav initially testified that respondents did not provide a brochure explaining order-placement procedures, but subsequently conceded that he in fact did receive the brochure.

4. On May 13, Yadav began trading. Excluding the disputed trade on May 13, Yadav would make a series of day trades on May 13, 14, 17 and 18, and an overnight trade on May 18, 1999. Yadav testified that he did not maintain a systematic record of pending and filled orders, but rather wrote down the order numbers on "pieces of paper" that he discarded.

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[1] All dates are in 1999.

5. This dispute arises from a series of trades on May 13 in the June E-mini S & P 500 Index futures contract. Set out below is a summary of Yadav's trading activity on May 13:

Trade	***Fill Price***	***Order Ticket: Day; Time***	***Ticket #***	***Reported***
Buy 1	1368.75	12th 9:32 pm	173470	13th
Buy 1	1374.00	13th 7:10 am	2318	13th
Buy 1	1374.00	13th 10:21 am	2602	14th
Sell 1	1378.00	13th 8:16 am	2204	13th
Sell 1	1385.00	13th 8:?? am	2206	13th

Orders 2318 and 2602 were identical: buy one June E-mini S & P 500 future, at 1374. According to respondent, order 2602 was not keypunched on May 13, and was thus was not reported until May 14. Yadav claims that he never placed Order 2602.

6. Phone records show numerous calls on May 13 between Yadav and Farr Financial. As can be seen, Yadav spoke three different times just before the disputed order was placed at 7:10 a.m.:

Time (PDT)	*Duration (minutes)*
6:48 am	9.00
7:01 am	5.06
7:07 am	3.48
8:02 am	2.06
8:09 am	5.48
9:43 am	3.24
9:48 am	2.00
10:17 am	3.12

12:25 pm	8.48
12:52 pm	2.54
12:57 pm	9.54
2:01 pm	3.12
2:07 pm	3.00
2:15 pm	7.18
5:19 pm	8.24
7:54 pm	8.30
8:11 pm	3.54

Yadav testified that he could not specifically recall <u>any</u> of the conversations on the 13th, and could only generally recall that he placed several orders and had discussed market conditions.

7. At the market close on Thursday, May 13, Yadav assumed that he was flat. However, on the morning of Friday, May 14, he reviewed his account over the Internet, and noticed that his account had an open long E-mini position.

Respondent's phone records show that on May 14 Yadav made three calls: at 5:19 a.m. (8 minutes); 7:54 a.m. (8 minutes); and 8:11 a.m. (4 minutes). On the 14th, Yadav made one day trade. He also informed the Farr trading desk that he had not placed an order for the long E-mini contract that had been posted to his account.

8. The two sides gave dramatically different versions of what happened next. Yadav's testimony about his conduct on and after the 14th was hopelessly muddled and unconvincing. In his complaint, Yadav claimed that on the 14th he "<u>immediately</u> informed Mr. Brian McCoy [Yadav's account executive] . . . about the alleged unauthorized trade, [but] there was no response from him for <u>several weeks</u> even after calling several times and leaving messages." [Addendum to complaint; emphasis added.] In contrast, at the hearing, Yadav first testified that he merely left

a voice-mail message for McCoy, who then failed to call him for over three weeks. However, after being reminded that he had made several trades that day and that the phone bills showed calls during trading hours, Yadav testified that he had called the Farr trading desk on the 14th to place the orders, that he informed the trading desk that about the allegedly unauthorized trade, and that the trading desk told him to talk to McCoy. According to Yadav, he then left a message for McCoy. During the course of his testimony, Yadav shortened the time that McCoy had ignored his calls from three weeks to "about a week."

In any event, Yadav continued to trade, placing orders on the 17th and 18th. When asked why he continued trading with a firm that had refused to remove a disputed trade from his account and refused to return his calls, Yadav testified that he just assumed the disputed trade would be "settled" – that is, removed from the account. Yadav testified that he had based this assumption solely on his belief that he had not placed the order, rather than any statement or action by a Farr representative. [*See* pages 23-26 of hearing transcript.] Yadav also asserted that Farr liquidated the disputed E-mini position on June 25 without his approval or knowledge. However, this assertion was undermined by phone records that show three phone calls totalling over 30 minutes just before the liquidation order was placed.

In contrast, McCoy credibly testified that he spoke to Yadav several times between May 14 and 25, and that he told Yadav that he had interviewed the order desk personnel and had confirmed that Yadav had in fact placed the order at 7:10 a.m. He further testified that he had clearly advised Yadav that Yadav was

responsible for the trade, and that Yadav should promptly liquidate if he did not want to be exposed to additional losses. According to McCoy, just before Farr liquidated the then under-margined E-mini contract on June 25, Yadav told McCoy that he had refused to liquidate because he had believed that such action would "make it look like it was my trade."

Conclusions

Yadav has the burden of proof to show by a preponderance of the evidence that he did not place the disputed order. Here, where neither side has produced tape recordings of trading authorizations, where reliable phone records establish phone conversations corresponding to the disputed order, and where Yadav did not maintain a log of his orders, the success of Yadav's case turns on his insistence that he could not have made the trade because he simply could not remember placing the order. However, throughout his testimony Yadav exhibited a thoroughly confused and unconvincing recollection of crucial events and conversations, and thus precluded a favorable finding that would have to be based solely on his assertion that he could not remember placing the disputed order. In these circumstances, Yadav has failed to show that he is entitled to any recovery for his losses on the disputed trade.

Dated March 8, 2001.

Philip V. McGuire,
Judgement Officer