



U.S. COMMODITY FUTURES TRADING COMMISSION

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2007 JUN -5 P 1:26

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NUCCIA BIANCO,
Complainant,

v.

CYTRADE FINANCIAL, LLC; and
LUKE JOSEPH MORETTI,
Respondents.

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CFTC Docket No. 06-R015

INITIAL DECISION

Appearances

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Counsel for Complainant¹

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Introduction

Nuccia Bianco alleges that Luke Joseph Moretti, an associated person with Cytrade Financial, fraudulently induced her to open a non-discretionary account by distorting the relative risk and rewards of following his trading strategy. According to Bianco, during the month-long solicitation, Moretti implicitly guaranteed profits by representing that he had taught a commodity

¹ Bianco initially appeared *pro se* when she filed her complaint, but hired counsel when she was asked to produce a supplement to her complaint.

trading course at a two-year college and by taking her through a series of mostly profitable simulated trades, Moretti pressured her into opening the account by insisting that she was missing out on profits, and Moretti then rushed her through the account-opening documents and downplayed the significance of the written risk disclosures. Bianco also asserts that Moretti lulled her into approving more trades after a series of large losses by confidently assuring her that he would offset losing trades with trades that would realize triple profits.

In reply, respondents deny any violations. Respondents assert that Bianco's recollection is selective and faulty, assert that Moretti provided clear and ample explanations of the specific risks associated with his trading strategy, and assert that Moretti did not misrepresent his expertise, did not guarantee profits, did not pressure her by saying she was missing out on profits, did not rush her through the account statements, and did not downplay the significance of the written risk disclosure. Respondents also assert that Moretti accurately reported the entry and exit points of simulated trades that were based on actual trades which he was concurrently making, and assert that after a month of discussing and reporting simulated trades he indicated that he would not continue devoting as much time talking to her unless she decided to open an account, at which point she agreed to open the account. Finally, respondents deny that Moretti made any misrepresentations or false promises in connection with Bianco's decision to continue trading.

The findings and conclusions set out below are based on recordings of a small number of conversations produced by respondents, the parties' pleadings, documentary submissions, affidavits,² and oral testimony; and reflect my determination that Moretti's testimony was generally more reliable and convincing than Bianco's testimony. The testimony of the witnesses

² After both sides waived discovery, I directed both sides to produce a variety of documents and affidavits before the hearing.

for both sides suffered from a variety of inconsistencies, and diminished recollection.³ However, Bianco's testimony was particularly undermined by her inability to describe crucial conversations in any convincing detail,⁴ by her frequently defensive or argumentative answers, and by her attorney's persistent attempts to use elaborate leading questions during her direct testimony. Thus, as explained below, it has been concluded that Bianco has failed to establish by a preponderance of the evidence any violations causing damages by respondents.

³ In the hearing notice, I had advised the parties:

Neither side has produced a detailed description of the solicitation, the account-opening, the trade recommendations, and the course of dealing. As a result, both sides should be well prepared to produce detailed oral testimony regarding relevant matters such as: Bianco's investment experience; the internet promotion that generated the lead or referral for the Bianco account; the discussions between Moretti and Bianco that led to her decision to open the account, including matters such as Bianco's specific investment objectives and the specific trading strategies favored by Moretti; and the interactions between Moretti and Bianco in connection with each individual trade in the account.

Underlining in original.

This was not the first time that Bianco had been asked to provide a detailed description of conversations with Moretti. After Bianco had filed her complaint, the Director of the Office of Proceedings had asked her to supplement her complaint with a more detailed factual description:

In your [complaint] you provided a brief statement of facts. However, if possible, you should submit a revised statement of facts that includes a detailed chronology of your complaint which tells a complete story from start to finish so that both this Office and respondents will know exactly what it is you are complaining about. You should include details of conversations between you and Moretti and the date(s) or approximate date(s) of the conversations.

Underlining added for emphasis. In reply, Bianco, this time with the assistance of her attorney, merely produced two additional sentences of factual description:

The facts and circumstances surrounding my contact with the broker was basically the same for each and every trade. Moretti would call me either the day prior to, or the morning of, the trades and state that he had information that would lead him to believe that the trades were good deals and they should be made immediately if I wanted to make a lot of money.

[Bianco's Affidavit of Additional Facts.]

⁴ See, e.g., Bianco's testimony at pages 44-56 of hearing transcript.

Factual Findings

The parties

1. Nuccia Bianco, a resident of Brooklyn New York, was 72 years old when she opened her account with respondents. Bianco was, and still is, working as a bookkeeper for a printing company in Manhattan. Bianco had approximately 25 years of investment experience with securities. In addition, before opening her account with respondents, Bianco had lost about \$5,000 on a single options trade with Blue Fish Commodities.

The tape recordings of Bianco's conversations with Moretti reveal that Bianco was capable, alert, assertive and inquisitive. The recordings also show that, while she relied on Moretti's advice, she clearly expected him to explain his recommendations, she was actively engaged in trading decisions, and she was at least partially successful in temporarily absorbing Moretti's explanations about trades and the markets. [See recordings of conversations on June 10, and August 5 and 8, 2005 (produced as attachments to the joint answer); Bianco's account application (produced by Cytrade in response to *sua sponte* discovery order); and Bianco's testimony at pages 22-27, 40-42, 58-70, and 74-86, of the hearing transcript.]

2. Cytrade Financial, LLC, is a registered introducing broker located in Chicago, Illinois. Luke Moretti has been a registered associated person with Cytrade since September 2004. He started out in 1974 as a floor trader on the MIDAM, and has been registered since 1981. Bianco's complaint is the first and only ever filed against Moretti. Also, Moretti has taught commodity trading classes at a two-year community college, Kishwaukee College, in Malta, Illinois. In this connection, Bianco often amiably called Moretti "Professor." [See ¶¶ 3 and 11 of Answer; Moretti's testimony at pages 110-114, and 131, and Johnson's testimony at pages 170-171, of hearing transcript.]

3. Lubimir Georguiev, a resident of Fort Meyers Beach, Florida, played a minor role in the solicitation of the Bianco account. At the relevant time, he was Director of Research for Investor Analysis Group (“IAG”), a firm located in Merriville, Indiana. Georguiev operated a website geared to investors that offered virtual point-and-click trading in the “Atlas 35” trading program. Georguiev also provided leads to Cytrade, including the lead for Bianco.⁵

Moretti testified that Georguiev gave Moretti her phone number after she had visited the IAG website. Georguiev, in a short affidavit produced by respondents, asserted that he spoke briefly with Bianco, and that, after she expressed an interest in commodities, he gave her name to Moretti.⁶ Bianco testified that she had visited various websites after entering “commodities” into a search engine, and that “I probably did speak with someone [before Moretti first called her], but I do not remember . . . their name.” [Page 73 of hearing transcript.] Thus, it is reasonable to conclude that Bianco initiated a web search for “commodities,” linked to a website operated by Georguiev, and spoke to Georguiev, who in turn determined that she was interested in commodities, and gave her name and number to Moretti. [See ¶10 of Answer; Georguiev affidavit (dated November 21, 2006); Bianco testimony at pages 71-74, and 84-85; Moretti testimony at pages 115-120, and 142-147; and Johnson testimony at pages 170- 171 of hearing transcript.]

Cytrade tape recordings

4. Respondents produced, as exhibits to their joint answer, recordings of four conversations between Bianco and Moretti on: June 10 (track 2, CD A); August 5 (track 1, CD A); August 8 (track 1, CD B); and October 19, 2005 (track 2, CD B). In the June and August

⁵ Respondents assert that Georguiev received no compensation for referring Bianco.

⁶ Respondents did not produce Georguiev as a witness at the hearing, and did not produce a copy of his website homepage, or of any other documentation relating to the referral. Similarly, Bianco did not produce a copy of the IAG homepage that she had discovered in late 2004.

conversations, Bianco stated that she was unhappy with her trading losses, but did not complain that Moretti had failed to warn her about the possibility of losses. In the October conversation, Bianco complained to Moretti for the first time that “You did not put in front of me the fact that things could possibly go wrong,” and informed him that she would be suing him, because, “I’ve got nothing to lose.” In response, Moretti stated “Every conversation we’ve ever had is taped, and I never promised that you would not have a loser, that you would always be a winner.”

[Pages 2-4 of transcript of October 19 conversation.]

Respondents represented that “All conversations between Bianco and Moretti were recorded,” and that recorded conversations of over one minute length occurred on 11 dates, in addition to the four conversations for which recordings were produced: June 7, 14, 16, and 21; July 1, 7, 14 and 29; and October 4, 6, and 10, 2005. [¶ 3 of Johnson affidavit dated November 10, 2006.] However, these two statements are difficult to square with the fact that Moretti and Bianco had been speaking since November 2004, and presumably had spoken, from November 2005 to October 2006, numerous times in conversations lasting over one minute. Both sides agree that the solicitation stretched over several lengthy conversations in November 2005, and both sides also agree that Moretti spoke with Bianco before each trade, and that he typically spoke with her at length each time. Trades occurred on 43 days: January 3, 4, 5, 13, 14, 21, and 27; February 1, 2, 4, 14, 25, and 28; March 5, 14, 17, 21 and 22; April 4, 5, 8, 13, and 14; June 7, 8, 17 and 20; August 11, 15 and 19; September 6, 7, and 9; and October 4, 5, 6, 7, 10, 11, 12, 13, 17, and 18, 2005. [See pages 125-126, 129, 136, and 156 of hearing transcript; ¶1 of Bianco’s Affidavit of Additional Facts (produced February 2, 2006); ¶7 of Bianco’s statement dated July 13, 2006; and ¶4 of Bianco’s statement dated November 22, 2006.] Thus, it is reasonable to conclude that if respondents in fact did routinely record all conversations between

Moretti and Bianco, they had created recordings of numerous significant conversations, many of which they have not produced.

Generally, such incomplete production of recorded conversations gives rise to legitimate concerns that damaging evidence has been withheld, and thus can be grounds for sanctions, such as making adverse inferences, or limiting or discounting oral testimony. However, in this case, such sanctions have not been considered, because neither complainant nor I had sought production of additional recordings during discovery,⁷ because Bianco asserted that one conversation with Moretti was pretty much like the other,⁸ and because nothing in the June and August conversations for which recordings were produced indicates that these conversations were out of the ordinary.

Solicitation

5. As noted above, in late 2004, Bianco was sufficiently interested in trading commodity futures and options to enter “commodities” into a web search engine. This led to Bianco contacting Georguiev, who in turn forwarded the lead to Moretti.

Bianco has produced confused and inconsistent versions about what next transpired. Most significantly, she has confused an on-line “point-and click” *virtual* trading system offered by Georguiev and IAG, with *simulated* trade results, based on entry and exit signals for trades that Moretti was currently recommending to his clients and which he verbally reported to Bianco, before she decided to open the account.

In Bianco’s initial complaint – filed *pro se* – she alleged:

I was contacted by Mr. Luke Moretti when I tried to open a fictitious account. For about a month, every morning he would call to report the profit of the so-called

⁷ This is an instance where a decision to “let the lawyers litigate the case” results in a less than fully developed evidentiary record.

⁸ ¶1 of Bianco’s Affidavit of Additional Facts; and lines 11-23, on page 56 of hearing transcript.

fictitious account, boasting that he was a professor, and had knowledge of futures and options.

Next, in an affidavit prepared by her counsel, Bianco alleged:

I first discovered Cytrade via the internet on a demo “virtual” GTS account. I had set up this account and began trading with \$10,000 make-believe money put in this made-up account. Cytrade and Moretti would then trade my account and consistently make profit. On a daily basis, Cytrade and Moretti would call notifying me of all the money I made in the made-up account, and telling me I was losing money every day by not . . . opening up an account with real money. Almost every trade in the fictitious account was successful.

[¶2 of Bianco’s statement dated July 13, 2006.] Bianco attached to her affidavit a copy of the Cytrade website that described the demo account. However, that website was dated March 6, 2006, well after she had closed the account. Also, that website offered a “GTS Demo software system” which allowed prospective customers to open a “10,000 virtual GTS account,” and “test drive the forex markets,” in order “to fully experience what it will be like when trading a real GTS online forex trading account.” [See Johnson testimony at pages 171-175 of hearing transcript, underlining added for emphasis.] At the hearing, Bianco conceded that her affidavit was substantially inaccurate, because it had been based on an incorrect website.

In any event, after receiving a lead from Georguiev, Moretti did call Bianco. Moretti credibly testified that he learned that Bianco had limited experience trading commodity contracts, and asked if she was planning to trade on her own or with the guidance of a broker. When she told him that she could not trade on her own, he told her that Georguiev’s virtual demonstration trading system would not be for her, because it was designed for those who traded with little or no broker assistance. Moretti offered to explain the Atlas 35 trading system which he followed, to discuss the trades that he was currently making, and to report the results.

Neither Bianco nor Moretti provided particularly detailed descriptions of the subsequent conversations that led to her decision to open the account. They both agree that for several

weeks, Moretti spent a considerable amount of time describing the trades that he had been recommending for his clients, they both agree that Moretti told her that he would enjoy explaining the trades since he had taught commodity trading at a community college, and they both agree that Moretti reported that a significant majority of these trades had realized profits. Moretti also credibly testified that he informed her that his trading strategy required a minimum \$35,000 deposit to support adequate diversification.

After about a month of almost daily, and sometimes lengthy, conversations with Bianco, Moretti indicated to Bianco that it was time to decide whether or not to open an account with him. Bianco told Moretti that she was ready to open an account, but that she wanted to commit just \$20,000. Moretti advised her that trading with \$20,000 would be more risky and less effective than trading with \$35,000, principally because trading would be less diversified.

On December 7, 2004, Moretti guided Bianco through an on-line version of the account-opening package, which included a Rosenthal-Collins customer contract and a standard futures and options risk disclosure statement. About a week later, Bianco received a hard copy of the account-opening package, and on December 20, Rosenthal-Collins received her check for \$20,000. [Page 1 of Bianco's Complaint; ¶1 of Bianco's Affidavit of Additional Facts (dated February 2, 2006); ¶¶ 2-5 of Bianco's Final Verified Statement; ¶5 of Answer; Bianco's testimony at pages 10-16, and 76-90, and Moretti's testimony at pages 119-123, and 143-160, of hearing transcript.]

Trading the account

6. As noted above, Moretti and Bianco consulted before each trade. Bianco testified that she monitored the status of her account on-line by focusing on the "bottom line," that is, the account liquidation value. In this connection, in January, the account liquidation value declined

from \$20,000 to \$17,783. In February, the account liquidation slightly recovered to \$20,760. However, for the next three months, the account liquidation value gradually declined, to \$17,448 at the end of May, and to \$12,303 at the end of June. [¶¶ 7, 14, 16, and 17 of Answer; and Bianco's testimony at pages 28-54, and 91-99, and Moretti's testimony at pages 125-133, of hearing transcript.]

During the first eight months of trading, from January 3 to August 19, 2005, Moretti followed trade signals generated by the Atlas 35 program, and placed 19 trades for Bianco's account. Set out below is a summary of the trading:

<i>In</i>	<i>Out</i>	<i>Trade</i>	<i>Net profit/(loss)</i>
1-03	1-04	buy 1 Mar. Wheat	\$ (203)
1-05	1-27	1 Apr./Jun. Hog spread	560
1-14	2-01	buy 1 Mar. FOJ call	(360)
1-13	2-14	buy 1 Mar. Soybean	(10)
1-05	2-21	sell 2 Mar. T-bond call	630
1-21	2-21	sell 1 Mar. T-bond call	253
2-25	2-25	1 Mar. Wheat	(317)
2-28	3-05	buy 1 Apr. T-note	(203)
3-14	3-21	sell 1 May Sugar	(440)
3-17	3-21	buy 1 May FOJ	(405)
3-23	3-31	buy 1 Silver call	240
3-22	4-04	buy 1 Aug. Cattle	530
3-22	4-04	buy 1 Oct. Cattle	(60)
4-05	4-08	buy 1 May Soybean	190
4-13	4-14	buy 1 Jul. Sugar	(260)
2-2,4	6-7,8	2 Jun./Aug. cattle spreads	(7,680)
6-08	6-17	buy 2 Jul. Hogs	(2,620)
6-20	8-15	buy 1 Sep. Crude put	(1,814)
8-11	8-19	buy 1 Oct. Crude put	(1,160)

Overall, these trades realized an aggregate net loss of \$11,136.

During the recorded conversation on June 10, Bianco opened by stating "I'm not going anywhere until you start making money for me." Moretti responded by advising her to hold the July Hog position for a few more days in anticipation of a market turn-around, but that if the market did not turn around, he wanted to limit her losses: "I'm going to say, 'adios, that's it, no more hogs'." [Pages 2-4 of transcript.]

8. Moretti did not put on any new positions in July and August, and by the end of August, after the crude oil losses, the account liquidation value would drop to \$8,964.

During the recorded conversation on August 8, Moretti patiently explained his strategy, frankly conceded that he should have advised her to sell the option a week earlier for modest profits, clearly discussed volatility in the crude oil market, and somewhat pessimistically explained the scenarios where her September crude oil option could gain or lose. Bianco also indicated that the losing was getting to her:

Bianco: I know that I am slowly strangling myself. Somehow I just cannot quit. I feel like I have it in me, like a habit, I gotta have it.

Moretti: Don't feel that way Nuccia.

Bianco: I'm never going to do this again.

Moretti: Well, nobody likes losing.

Bianco: I know I cannot put in more money.

Moretti: Well, I don't want you to. I want you to start taking something out. But we gotta win to do that.

[Pages 17-18 of hearing transcript.]

9. In early September, Moretti advised Bianco that since her equity had dropped, if she wanted to continue trading she should switch to a day-trading strategy. From September 6, to October 18, Moretti placed 23 trades, all but one of which realized net losses. These trades

