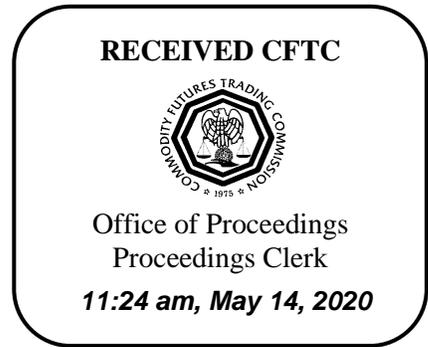




**U.S. COMMODITY FUTURES TRADING COMMISSION**

Three Lafayette Centre  
1155 21st Street, NW, Washington, DC 20581  
www.cftc.gov

Office of Proceedings



\_\_\_\_\_  
Chetan Joshi,

Complainant,

v.

Gain Capital Group LLC d/b/a  
Forex.com,

Respondent.  
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CFTC Docket No. 19-R011  
Served electronically

**INITIAL DECISION**  
**DISMISSING COMPLAINT**

On August 17, 2019, Complainant Chetan Joshi filed a reparations complaint alleging that his account underwent “forced termination, which would have liquidate[d] [his] position for approximately 20k.” Compl. (Aug. 17, 2019). Joshi further alleges that after repeatedly following up with customer service, he was informed that his account was terminated because of “some compliance issue.” *Id.* He seeks \$23,000 in damages due to the forced termination and alleged unlawful liquidation. Compl. Addendum (Sept. 30, 2020).

In its Answer, Respondent Gain Capital (Gain), doing business as Forex.com, cites Paragraph 22 of the customer agreement, which expressly authorizes it to terminate Complainant’s account in Forex.com’s “sole discretion.” Gain therefore requests that the case be dismissed for failure to state a claim. Because Paragraph

22, as presented in the Answer, appears to act as a complete bar to Joshi's reparations claims, I invited Respondent to file a motion for summary disposition for failure to state a claim no later than March 20, 2020, as a means of avoiding the undue burden of the litigation. Order (Feb. 21, 2020). I gave Complainant until April 3, 2020 to file his response. Respondent filed its Motion on March 20, 2020. Complainant filed no opposition to that motion.

### **Summary of Facts**

Joshi opened three accounts between December 2013 and January 2016 to trade foreign exchange contracts with Gain. He funded only one of those three accounts. Answer & Aff. Defenses at 2. When Joshi opened that account, he e-signed several documents, including Forex.com's Customer Agreement. Motion for Summ. Disp. Ex. A. Paragraph 22, entitled "Termination," states that:

**FOREX.com may, in its sole discretion, terminate this Agreement at any time, effective as of the close of business on the day notice is sent to Customer.** Termination by either party shall not affect any Contracts or other transactions previously entered into and shall not relieve either party of any obligations set out in this Agreement, nor shall it relieve Customer of any obligations arising out of any deficit balance.

Answer & Aff. Defenses at Ex. A (emphasis added).

On June 28, 2017, Joshi initiated an ACH deposit of \$1,000 into his only funded trading account at Gain. Answer & Aff. Defenses at 2. However, that deposit failed to clear and Gain was charged back the \$1,000. Throughout the month of July 2017, Gain attempted to get clarity from Joshi about why it was charged back for Joshi's ACH Deposit. Answer & Aff. Defenses at 2 & Exs. B & C. While Gain and Joshi were corresponding about the first chargeback, Gain was

notified of a second chargeback for an ACH deposit Joshi initiated on July 21, 2017. *Id.* As a result of this second chargeback, on July 28, 2017, Gain notified Joshi that his account would be placed in “reduce only” status, which meant that only liquidating trades would be accepted pending an adequate explanation of the chargebacks and a copy of Joshi’s bank statement. *Id.* & Ex. D. Joshi never provided a sufficient explanation or a bank statement (though Joshi did acknowledge the chargeback).

As a result, Gain’s compliance department determined that Joshi’s account should be terminated. On August 10, 2017, Gain sent Joshi a letter stating that his account would be terminated within fourteen days of that letter and that any open positions would be liquidated at that time. Answer & Aff. Defenses Ex. E. The account was liquidated on August 25, 2017, and Joshi sustained \$20,378.72 in trading losses upon termination and liquidation of his account. Answer & Aff. Defenses at 7 and Ex. E; Second Addendum to Compl. (Nov. 18, 2019).

### **Analysis**

According to Joshi, his account was closed “leading to the liquidation of open trades” that resulted in the trading losses he seeks here. Compl. And he states that he was not aware “of any such compliance policy which can allow them to trade on my behalf and liquidate the positions when the account was well funded.” *Id.*

However, Joshi did not dispute any of Gain’s proffered facts and never served any opposition to Gain’s motion for summary disposition. But more importantly, while the circumstances leading to the termination of Joshi’s account may be

relevant to show the good faith nature of Gain's conduct, they are not relevant to the contractual issue that lies at the heart of this matter: that is whether Gain was authorized to terminate Joshi's account within a fourteen day period. The contract speaks plainly to this very point—Gain was authorized “in its sole discretion” to terminate the business relationship between itself and Joshi as long as it gave notice at least on the day of its termination. Gain in fact gave Joshi fourteen days of notice, during which time Joshi himself could have liquidated his trades. Having failed to do so, and having assented to Gain's authority to terminate their relationship, Joshi fails to state a claim for relief under the Commodity Exchange Act or any of its regulations.

For these reasons, Joshi's reparations complaint is DISMISSED.

Dated: May 14, 2020

/s/ Kavita Kumar Puri  
Kavita Kumar Puri  
Judgment Officer