



U.S. COMMODITY FUTURES TRADING COMMISSION

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

Office of Proceedings



Stuart and Theresa Tolander,

Complainants,

v.

ADM Investor Services, Inc.,
Greg Alan Hostetler,
The Price Futures Group, Inc.,
and John Allen Scoville,

Respondents.

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CFTC Docket No. 20-R003
Served electronically

INITIAL DECISION
DENYING TOLANDERS' CLAIMS

On September 11, 2019, Complainants Stuart and Theresa Tolander filed a complaint against the following Respondents: (1) Price Futures Group, an Introducing Broker (IB); (2) Jack Scoville, an Associated Person (AP) of Price Futures; (3) ADM Investor Services, Inc. (ADMIS), the Futures Commission Merchant (FCM) that held the Tolanders' account; and (4) Greg Alan Hostetler, the Chief Compliance Officer at ADMIS. They alleged that these Respondents fraudulently induced them to open an account to be traded by Diego Guerrero, an unregistered commodity trading advisor based in Colombia. The Tolanders invested \$200,000 in September 2016 with Guerrero and lost \$182,826.29 during

the historic market volatility of February 5, 2018.¹ On November 17, 2023, I dismissed ADMIS and Hostetler, and the case proceeded with Respondents Price Futures and Scoville. A merits hearing was held on September 25 and September 26, 2024.

After careful review of the documentary record, including my observation of the seven witnesses at the hearing, I have concluded that the Tolanders were introduced to Guerrero, a foreign resident, through two unregistered individuals Stuart Tolander met virtually on LinkedIn. The Tolanders opened a futures account, to be wholly managed by Guerrero, through Scoville and Price Futures. Guerrero's market bet turned the wrong way on February 5, 2018, and the Tolanders sought to recover their losses through this proceeding. But the Tolanders have not met their burden of proving fraud on the part of Price Futures or Scoville by a preponderance of the evidence. Their complaint is denied, and judgment is awarded to the Respondents.

I. Summary of Proceedings

A. The Parties & Witnesses

1. **Complainants Stuart and Theresa Tolander** are residents of Yucca Valley, California. They jointly maintained a speculative future and options trading account at now **non-party ADMIS**, a CFTC-registered FCM. *See* NFA Basic

¹ This is the damages amount claimed by the Tolanders in the Complaint. *See* Letter From OP To Tolanders (Feb. 5, 2020). Although their damages calculation varies throughout the litigation, I need not decide the correct amount of damages because I rule here in favor of the Respondents.

Research at <https://www.nfa.futures.org/BasicNet/-basic-profile.aspx?nfaid=uc3xQkxe240%3D>. Although both Tolanders owned the account jointly, Theresa Tolander did not review the documents she signed and, in relevant part, ceded control of the account to her husband, Stuart Tolander. Sept. 25, 2024 Tr. at 156-157. This Initial Decision therefore uses Tolander to refer exclusively to Stuart Tolander unless expressly stated otherwise.

2. **Non-Party Diego Guerrero**, a trading advisor operating out of Colombia, managed the Tolanders' account.² It was active from September 26, 2017 through roughly March 2018, though it began trading in December 2017. Respondents Ex. 1 (Account Application). As of October 30, 2017, the Tolanders had funded that account with \$200,000. Compl. Ex. 15 (October 2017 ADMIS Account Statement)³.

3. **Respondent John Allen Scoville (Jack)** is a resident of Chicago, IL and a CFTC-registered AP of Price Futures Group. See NFA Basic Research at <https://www.nfa.futures.org/BasicNet/basicprofile.aspx?nfaid=z%2BYLxWAIIBM%3D>.

² Guerrero was not registered as a commodity trading advisory (CTA) with the Commission. ADMIS reviewed Guerrero for at least the months of December 2017, January 2018, and February 2018 and determined that Guerrero was not required to register as a CTA. Hostetler Direct Testimony ¶ 4; Resp. Ex. 5 (ADMIS review of Guerrero).

³ Complainants filed duplicative hearing exhibits, assigning different exhibit numbers to the same documents, on different days during this proceeding, including on December 21, 2023, April 10, 2024, and September 23, 2024. All references to Complainants' exhibits refer exclusively to those received on September 23, 2024.

4. **Respondent Price Futures Group** has its place of business in Chicago, IL, and is a CFTC-registered IB. *See* NFA Basic Research at <https://www.nfa.futures.org/BasicNet/basic-profile.aspx?nfaid=IDA2YrSgRhk%3D>.

5. **Witness Ron Mark** is the President and Director of Risk Management of Respondent Price Futures.

6. **Non-Party Witness Ovi Taut** is the owner of a flooring company who met Stuart Tolander through LinkedIn to discuss trading strategies. He is not registered with the CFTC in any capacity.

7. **Non-Party Witness Zuhair Hussein** is a retiree who met Stuart Tolander through LinkedIn to discuss trading strategies. He traded Tolander's money for some period of time after they met. He is not registered with the CFTC in any capacity.

8. **Non-Party Witness Greg Alan Hostetler** is ADMIS's Chief Compliance Officer. *See* NFA Basic Research at <https://www.nfa.futures.org/BasicNet/basic-profile.aspx?nfaid=RQHvXit0tOg%3D>. Like ADMIS, Hostetler had no meaningful connection to the purported fraud and was dismissed by way of Order on November 17, 2023. *See infra* at ¶ 21.

B. Relevant Procedural History

9. The Tolanders filed their Complaint on September 11, 2019 and their Amended Complaint on December 19, 2019.

10. Respondents filed their collective Answer and Affirmative Defenses on March 6, 2020.

11. This case was forwarded to my docket on April 23, 2020 and discovery commenced.

12. On June 23, 2020, Complainants filed their Verified First Amended Complaint. Respondents filed their Answer and Affirmative Defenses to First Amended Complaint shortly thereafter on July 23, 2020. These are the operative Complaint and Answer used throughout this Initial Decision.

13. On January 28, 2021, I stayed all remaining deadlines pending settlement negotiations.

14. On March 11, 2021, the parties emailed this Office to restart these proceedings.

15. A Second Amended Scheduling Order was sent to the parties on March 17, 2021, which set deadlines for dispositive motions and the hearing.

16. Respondents filed their Motion For Summary Disposition on April 19, 2021, and Complainants filed their Response on May 7, 2021.

17. This case was stayed once again pending my decision on Respondents' Motion For Summary Disposition. Order (June 23, 2021).

18. On October 24, 2023, I denied Respondents' Motion For Summary Disposition for several reasons and set the case for a virtual status conference. *See* Order Denying Respondents' Motion For Summary Disposition at 2-3 (Oct. 24, 2023).

19. A virtual status conference was held on November 16, 2023, during which we discussed, among other things, dismissing ADMIS and Hostetler from this case and setting the hearing date.

20. On November 17, 2023, I dismissed Respondents ADMIS and Hostetler because an FCM cannot be held liable for an independent IB's acts unless there is an agency relationship between those two entities. I found no agency relationship and further found no meaningful allegations against ADMIS or Hostetler. Order Dismissing ADMIS And Hostetler And Setting Deadlines at 2-4 (Nov. 17, 2023).

21. A Prehearing Order was sent to the parties on March 7, 2024, setting the prehearing and hearing dates, and ordering the parties to submit their prehearing memoranda, exhibits and exhibits list, and hearing witness lists. Prehearing Order (Mar. 7, 2024).

22. The virtual Prehearing in this case was held on April 23, 2024.

23. The two-day virtual Hearing was held on September 25 and 26, 2024.

24. The parties were ordered to serve post-hearing briefs on this Office no later than December 6, 2024. Post-Hearing Briefs Order (Nov. 6, 2024).

25. The parties timely filed their post-hearing briefs, and this case is now ready for disposition.

II. Findings of Fact

1. The Tolanders opened their futures account, which was wholly managed by Colombian-resident Guerrero, through Scoville and Price Futures at ADMIS in September 2017. They funded that account with \$200,000.

2. The Tolanders were well off financially. At the time of their account opening in 2017, they had a net worth of \$2 million and a liquid net worth of \$1 million, as well as an annual income of \$150,000. Resp. Ex. 1 (Account Application). This liquid net worth figure may be in addition to, or include, roughly \$500,000 they maintained in a checking account as of September 30, 2017. Compl. Ex. 31 (Tolander bank statement). During the merits hearing, Tolander testified that he had roughly \$2.3 million spread across various brokerage accounts. Sept. 25, 2024 Tr. at 94-96.

3. Tolander was a sophisticated investor. He started out trading equities and acquired both his series 7 and series 63 licenses. He then moved through various financial services companies in the FinTech space. And he self-managed a brokerage account worth \$1.3 million. Sept. 25, 2024 Tr. at 73-95.

4. Moreover, in the account application for ADMIS, Tolander stated he had six to ten years of investment experience trading both futures and options, and equities. Resp. Ex. 1 (Account Application).

5. In 2017, Tolander met Zuhair Hussein through LinkedIn. Tolander Aff. Testimony at 2; Sept. 25 Tr. at 42. For a time, Hussein managed Tolander's money, but Tolander ended that trading relationship because Hussein did not follow Tolander's trading rules and started losing some of that account's profit. Sept. 25 Tr. at 29-30; 134.

6. Hussein then introduced Tolander to Ovi Taut, also through LinkedIn. Sept. 25 Tr. at 42. Hussein and Taut worked in the same "office," though it is

unclear where that was because Taut owns a flooring business and Hussein appears to be retired. Sept. 25 Tr. at 42; Taut Aff. Testimony at 1; Hussein Aff. Testimony at 1. The three of them—Hussein, Taut and Tolander—were having “direct, three-way conversations on the subject of commodities futures trading and markets.” Sept. 25 Tr. at 44-45.

7. It is undisputed that Tolander never met Taut or Hussein in person.

8. Rather, their conversations were all online, though the evidence is not clear about whether they were had over LinkedIn messages, text messages, or exclusively emails. Sept. 25 Tr. at 44-49; 101-102.

9. During the course of their online conversations, they discussed “what the market is doing and you know, going up and down, what’s going to hit, what number is going to hit, where it’s going to go . . . [and] stuff like that.” Sept. 25 Tr. at 48-49.

10. And in those conversations, Hussein first mentioned Diego Guerrero—the Colombian trader who Tolander would eventually hire to trade his futures and options account—and represented that Guerrero “is a good trader.” Sept. 25 Tr. at 48-49.

11. By August 2017, Tolander also spoke to Taut about Guerrero. Sept. 25 Tr. at 118.

12. On August 2, 2017, Taut shared, by way of email, the “results there for the account Diego [Guerrero] had at Price Futures.” Sept. 25 at 119 (discussing

Compl. Ex. 32 (Aug. 2 Email between Taut and Tolander re Guerrero trading results)).

13. In the email, Taut states in part:

Dear Mr. Stuart, It was a pleasure talking to you today! In the attached excel file you can see the summary of the results for the years 2016 and 2017 month by month. . . . I have photos of the trading platform for March, April, May and June 2017. More than 500 trades. All trades are available with the time, you can take any random trade you would like and check it as everything can be verified.

14. In a separate email dated September 6, 2017, Taut sent Tolander screenshots of the results and trades for August 2017. Compl. Ex. 32 (Sept. 6 Email Exchange); Sept. 25 Tr. at 126. That email also listed the following final results for August: Aggressive Scenario, 25.41%; Moderate Scenario, 12.71%; and Conservative Scenario, 6.35%. *Id.*

15. In response to this email from Taut, Tolander replies: “I’m inclined to go with the aggressive strategy but I am concerned about losing principal. What would you say is the minimum amount I could start with?” Compl. Ex. 32 (Sept. 6 Email Exchange); Sept. 25 Tr. at 126.

16. Taut responds, “If you are concerned with losing principal you can start with the moderate scenario at first then change to aggressive later on. It is [too] bad that past experience with Hussein wasn’t that good, hopefully it won’t influence your decision. I suggest that if you could start with close to 500k, if you feel comfortable enough, although the minimum you can start with is 200k. You can see he had excellent results so far, take some time and think about it.” Compl. Ex. 32 (Sept. 6 Email Exchange).

17. Taut himself only invested \$100,000 with Guerrero around the same time frame. He nonetheless told Tolander that Tolander needed a minimum \$200,000 investment. Sept 25 Tr. at 60-63.

18. Taut and Hussein also informed Tolander that Guerrero traded on behalf of a Swiss hedge fund. Sept. 25 Tr. at 136-37.

19. Scoville was not on any of these messages or emails between Taut and Tolander; or Taut, Tolander and Hussein. Sept. 25 Tr. at 128.

20. There is no evidence in the record that Scoville ever sent Tolander any written materials or trading results regarding Guerrero. *Id.*

21. Nonetheless, Taut and Hussein introduced Tolander to Scoville at Price Futures, representing that all trading with Guerrero had to go through them. Tolander Aff. Testimony at 2-3; Sept. 25 Tr. at 289.

22. When Tolander asked Scoville about Guerrero's trading performance and shared Taut's numbers over the phone, Scoville responded "that sounds right." Sept. 25 Tr. at 138. Tolander stated that Scoville said Guerrero was a "profitable trader," who was "highly successful." Tolander Aff. Testimony at 3.

23. Scoville recalled telling Tolander that Guerrero made a little and lost a little money. Resp. Ex. 13 (Transcript of Dec. 21, 2018 Call).

24. Scoville also told Tolander that Guerrero traded on behalf of a Swiss hedge fund. Sept. 25 Tr. at 140; Tolander Aff. Testimony at 3.

25. Tolander never provided Scoville the performance results for the Swiss hedge fund, nor does Scoville recall ever asking for it. Sept. 25 Tr. at 143.

26. Scoville told Tolander that Guerrero traded in small sizes and used stop losses. Sept. 25 Tr. at 150-51; Tolander Aff. Testimony at 3.

27. Tolander testified that “small sizes” can mean different things because “[s]ize is arbitrary.” Sept. 25 Tr. at 150-51.

28. Scoville informed Tolander that he (Scoville) would monitor the Tolanders’ account. Sept. 25 Tr. at 232; 291-92.

29. With regard to what Tolander understood monitoring to mean, he expected Scoville to have “automatic alerts on position sizes . . . all automated alerts based upon notification of certain thresholds or if something happened.” Sept. 25 Tr. at 232-222.

30. It is not clear exactly when Scoville made these representations to Tolander. Tolander was already contemplating investing and asking about a minimum investment amount in his virtual conversations with Taut, and there is no evidence regarding the precise time frame of Tolander’s conversations with Scoville.

31. In any event, the Tolanders signed the required ADMIS documents on September 26, 2017. Compl. Exs. 4-8 (ADMIS Customer Agreement & Risk Disclosures). The account was a discretionary account to be controlled by Diego Guerrero from Colombia. Compl. Ex. 12 (LPOA); Compl. Exs. 4-9 (ADMIS Account Agreement).

32. The account specified limits on order sizes. The Account Set Up Sheet had the following commodities that could be traded: Soybeans, Euro Currency,

Gold, British Pound, Mini S&P, DAX, Mini Nasdaq, 5 Year Note, Crude Oil, and Mini Dow. In relevant part, the clip size limit for the Mini S&P, Mini Nasdaq, and Mini Dow were each set at 6, and the maximum lots allowed were 12. Resp. Ex. 14 (Account Set Up Sheet). The clip size referred to “the amount of size per trade” and maximum lots represented the “position size and/or aggregate.” Sept. 26 Tr. at 11-12. These limits are customized based on what the trader wants and what the clearing firm will allow. *Id.* So a trader under these rules could put in an order for 6 of each of these stock indices futures, and then 10 minutes later put in an order for another 6. But that trader could not trade beyond that 12-lot amount. Sept. 26 Tr. at 13-14.

33. Then in October 2017, as the Tolanders were funding their account and before any trading had begun, Tolander wrote an email stating: “I have not been very impressed in dealing with Jack [Scoville] and ADM up to this point.” Sept. 25 Tr. at 196 (citing Compl. Ex. 17 at Tolander 00138).

34. Although Tolander was not impressed with Scoville’s conduct, he valued Scoville’s reputation:

The more I worked with him, [I was not impressed]. He sent me the wrong paperwork. I tried to wire money in, and he had the wrong instructions sent to me. Just in many conversations with him, the more I got to know, I wasn’t impressed with quite a few things. **But I didn’t dispute the fact that obviously he’s a well-known person in the commodities market, gives his run down on the crops and does things, but I was not impressed with his setting up the account and communicating certain things very well.**

Sept. 25 Tr. at 248-49; 254 (emphasis added).

35. And Tolander testified it was this reputation that validated his intent to invest with Guerrero, as introduced by Taut:

Basically, what drove me to this whole operation was Ovi told me -- I was looking for a system that would basically allow my account to be mirrored by other people's trading that were successful in trading. I was told by the people you just mentioned[, Hussein and Taut,] that there was a Swiss hedge fund and others that had been with Guerrero, and these were the numbers that they were experiencing, and this is what he had been receiving. So I -- like I say, I'm not a futures expert. I don't know the performance numbers. You look at this relative to cryptocurrencies and a lot of that stocks, I mean, the numbers don't look crazy out of line to me. Maybe, obviously, you're a better analyst than I am. But -- but to me, it seemed like, okay, I'm verifying it. I knew ADM. ADM is a well-known firm, and I had heard of Price Futures. And Jack seemed to be legitimate. I looked on the website. It says they're in -- they -- one of their services they provide for you is risk management. So I'm thinking, these guys must be legit, they know what they're doing. So if I'm talking to him about it, I assume he knows what he's doing.

Sept. 25 Tr. at 136-37.

36. By November 2017, despite Tolander's concerns about Jack Scoville, he and his wife signed a Risk Management Agreement and a Trading Agreement directly with Guerrero. Compl. Exs. 33 & 34 (Tolander-Guerrero Agreements). Because Guerrero spoke Spanish, which Tolander could not speak, they communicated using a translator application. Sept. 25 Tr. at 66.

37. Neither of these agreements with Guerrero said anything about the size of the positions, or anything about the trading strategies to be employed. *Id.*; Sept. 25 Tr. at 179-180.

38. The Trading Agreement did state that the losses may exceed the principal amount invested, and that Guerrero would employ “risk-reduction strategies using stop losses,” but that Tolander would be responsible for repayment of all such losses. Compl. Ex. 34 (Trading Agreement ¶ 7.4).

39. The ADMIS documents and Agreements with Guerrero signed by Tolander made clear that investing in futures and options was risky. With regard to these risk disclosures about losing the entirety of his principal, Tolander testified: “I mean everyone knows these standardized contracts, there’s legalese and avoiding liability and stuff, so I mean that – I don’t think most people take it that seriously.” Sept. 25 Tr. at 246-47.

40. In the questionnaire accompanying the trading agreement, Tolander wrote that he expected 60% returns annually. Resp. Ex. 40 (Guerrero Trading Agreement and Questionnaire).

41. It is undisputed that Tolander never sent Scoville a copy of these agreements with Guerrero, and that neither Scoville nor Price Futures was a party to these agreements between the Tolanders and Guerrero. Sept. 25 Tr. at 183-184.

42. Tolander believed that that Guerrero and Scoville negotiated a commission between themselves. Sept. 25 Tr. at 261. There is no evidence in the record to support that belief.

43. Rather, the Trading Agreement between Guerrero and the Tolanders contained a commission structure. Resp. Ex. 40 (Guerrero Trading Agreement & Questionnaire). Scoville was never sent a copy of this agreement, nor was he a

party to that contract. Sept. 25 Tr. at 262-63, 298-99. The ADMIS Agreement had the code JSDG for Jack Scoville and Diego Guerrero to direct commissions to them from the ADMIS account, Sept. 25 Tr. at 294. The initials JSDG appeared on the face of the very document the Tolanders signed.

44. There was no agency relationship between Scoville or Price Futures and Guerrero.

45. In January 2018, Scoville learned that he was overcharging the Tolanders' accounts for commissions—that it should have been \$9 per round turn instead of the \$20 per round turn listed. Resp. Ex. 35 (Email Exchange between Guerrero to Tolander (Jan. 17, 2018 through Jan. 29, 2018)). To remedy this, Scoville returned \$2,794 to Tolander's checking account from Scoville's own personal account.

46. This eyebrow-raising method of compensation was because "ADMIS won't allow commission adjustments after . . . two days of trading. . . . And I[, Scoville,] had already been paid out by Price. And so to avoid opening a can of worms I paid him out of my own account. And no, I shouldn't have done that, and I've . . . learned my lesson since then." Sept. 25 Tr. at 296-97.

47. Tolander monitored his account. Tolander logged into his account 150 times from the time his account was funded until February 5, 2018. Resp. Ex. 6 (login information). In other words, Tolander logged into his account roughly twice a day. Sept. 25 Tr. at 247-48.

48. The record reflects no complaints from Tolander with respect to Guerrero's trading until Friday, February 2, 2018.

49. On February 2, 2018, Guerrero had put less than the maximum lots allowed under the Account Set Up to go long on the S&P Mini, Mini DOW, and Mini NASDAQ—8 lots for each—in the Tolanders' account. Sept. 26 Tr. at 19. Although it was less than the maximum lots allowed, plainly Guerrero placed the entirety of his bet on one side of the market.

50. On Friday, February 2, 2018, Tolander writes to Guerrero: "Hi Diego, Are you playing these positions for the bounce? I'm not very comfortable with what I'm seeing." Resp. Ex. 16 (Feb. 2 through Feb. 6, 2018 Email Exchange between Guerrero and Tolander).

51. Guerrero responds the same day with his reasoning behind the positions. *Id.*

52. Tolander responds, again the same day, "I agree with your assessment of the market heading higher. It just struck me as quite a large position though. Is there a reason we don't wait until we see the 5% correction to go long?" *Id.*

53. Guerrero again explains his reasoning and states, "I hope this time the strategy works like the last year." *Id.*

54. Then Tolander replies, still on February 2, 2018: "Have a good weekend!" *Id.*

55. Scoville was not copied on any of these communications.

56. Tolander testified that he did call Scoville that Friday, February 2, 2018 but was informed he was not in the office. He did not email Scoville. Sept. 25 Tr. at 192-93.

57. Tolander later discovered that Scoville was not monitoring his account at that time because “he was in the hospital.” Resp Ex. 31 (June 27, 2019 Email Exchange between Tolander and Tom Price).

58. Had Guerrero liquidated the Tolanders’ positions the evening of Sunday, February 4, their losses would have been limited to an amount close to the open trade equity of these positions as of February 2—or around \$58,000. Sept. 26 Tr. at 25.

59. Then on Monday, February 5, 2018, the Tolanders’ account lost somewhere between \$183,000 and \$190,000 as Guerrero liquidated all open positions.

60. February 5, 2018—the markets experienced extreme volatility; the S&P 500 Index fell 4.1% in a single day and the Dow plunged 1600 points. Resp. Ex. 23 (Feb 5, 2018 CNN Article).

61. On Monday, February 5, 2018, Tolander writes:

Hi Diego,

To be honest, I am not impressed with what I’ve seen. There has been plenty of opportunities to be long and make money but you chose a time to me it made no sense to go long. The market was falling at the time you put our positions on.

I don’t agree with the timing or the size of these trades.

Id.

62. Guerrero wrote the same day:

Hello Stuart, today we had something historic, some falls in the stocks that nobody expected, there was a flash crash in the stock market, almost never seen, I only remember once in 2005 but smaller. I lost 180K of your account and I am very sorry, never I imagined this movement so deep in a matter of a few minutes. Today the market had a volatility that I had never seen it before. I am very discouraged because I also lost money from my account. I am very sad, this has never happened to me in the life I have been a trader. I am very sad. All my clients and I lost. We speak another day, please. I believe that the market can rise to the level where we had purchases in the coming days or weeks, but the accounts can not stand it anymore, and it takes a lot of money to support these positions.

Id. (emphasis added).

63. Tolander responds:

This is unacceptable. You and Jack both assured me that there were proper risk controls in place. There was no reason to have put on such large positions and the timing could not have been worse. Plus all of my correspondence with you stated that I did not like these large positions or the timing. Why did you continue to hold losing positions for so long?

Id.

64. Guerrero reiterates that “something historic happened with the indices,” and that “I never expected this type of movement in all the years that I have been a trader.” *Id.*

65. Although Guerrero used stop loss orders for every day there was trading activity in the Tolanders’ account, there were no stop loss orders for February 5, 2018. Sept. 26 Tr. at 16; Resp. Ex. 8 (Audit Log). Without having access to Guerrero—a resident of Colombia—there is no way of knowing why he did not employ stop loss orders.

66. On March 27, 2018, Tolander sent Guerrero an email asking what Guerrero was going to do to make him whole. He further states “I would like to get this resolved amicably but this depends on what you are planning to do.” Resp. Ex. 32 (March 27, 2018 Email Exchange between Tolander and Guerrero).

67. On December 21, 2018, Tolander and Scoville had a conversation about what happened. During that call:

a. Scoville stated: “I would have said that you know in the past that he . . . you know made money or lost little money but never where anything like obviously what happened so.”

b. Scoville also stated that with regard to monitoring the account: “I’m sure I would have said if I’ve seen anything I should have I seen anything that did look like it was you know anything that was not that you know cause me to a I would have taken action so but I didn’t really see anything for the first couple months you know I thought it was kind of as far as I could tell it was within lines of what the system was supposed to be doing and you know being in and out of the market quick in and out a lot of times and I didn’t really see anything about it so that I would’ve said that sort of thing.”

Resp. Ex. 13 (Transcript of Dec. 21, 2018 Call) (emphasis added)

68. On June 27, 2019, Tolander emailed Walter Tom Price of Price Futures stating:

Diego blew up the account in early 2018. He was trading too large of positions over many days that was not the strategy that he was supposed to be doing. Diego had provided years of trading history with nothing like this being shown.

Jack had assured me that he would monitor my account and if something looked wrong, he would ‘shut it down.’

As I tried to get ahold of Jack during this time, I couldn’t and subsequently found out that he was in the hospital and not monitoring my account.

I ended up losing \$183,000 in this experience. I am reluctant to get lawyers involved as I know things can be drawn out for years.

If you can help in resolving this, I would really appreciate it.

Resp. Ex. 31.

69. On July 8, 2019, Tolander had a call with Ron Mark, the President and Director of Risk Management at Price Futures. In that call, Tolander again requests that Price Futures (and ADMIS) do something to make him whole because he's spoken to "NFA . . . and the CFTC as well" to file a formal complaint and would "go through the whole process along with social media stuff too." Resp. Ex. 17 (July 8, 2019 Tr. at 1).

70. Ron Mark told Tolander that February 5 and 6 2018 experienced "the worst point decline in the history of the Down Jones," which "plunged almost 1600 points." *Id.* He also informed Tolander that the fact that Scoville "had to go to the hospital during this time period is out of anyone's control I mean who could have foresaw that." *Id.* at 3. He reiterated throughout the call that because Guerrero was given power of attorney to trade the account as he saw fit, Guerrero controlled the account—not Scoville or anyone at Price Futures. *Id. passim.*

71. Unable to resolve his complaints with either Price Futures, ADMIS, or Guerrero, the Tolanders brought their complaint here on September 11, 2019.

72. It is undisputed that the Tolanders' account never had a margin call. Sept. 25 Tr. at 234.

73. It is undisputed that the positions in the Tolanders' account never breached the size limits that ADMIS placed for the account. Sept. 25 Tr. at 234.

III. Legal Analysis

The Commodity Exchange Act (CEA) bars persons from cheating or defrauding, or attempting to cheat or defraud, other persons with regard to “any contract of sale of any commodity for future delivery, or swap.” CEA § 4b(a), 7 U.S.C. § 6b(a). *See also* CEA § 4c(b), 7 U.S.C. § 6c(b) (prohibiting any persons from entering trades such as options, puts and calls contrary “to any rule, regulation, or Order of the Commission”); 17 C.F.R. § 33.10 (prohibiting fraud in connection with commodity transactions). To establish fraud under the CEA, Complainants must prove by a preponderance of the evidence that Respondents made (1) a misrepresentation or misleading statement (2) with scienter that was (3) material. *See, e.g., In the Matter of Forex Global Solutions Inc.*, CFTC No. 13-20, 2013 WL 1496931, at *4 (CFTC April 9, 2013); *In re Staryk*, 1997 WL 778236 (CFTC Dec. 18, 1997). This same standard applies for fraudulent inducement or solicitation as well. *Beck v. Jonasson*, CFTC No. 08-R027, 2008 WL 5382300 at *2 (Dec. 24, 2008).

Determining whether a misrepresentation occurred requires “the Court to focus on ‘the common understanding of the information conveyed.’” *Modlin v. Cane*, CFTC No. 97-R083, 1998 WL 429622, at *8 (July 30, 1998) (internal citations omitted). A statement or omission is material if “there is a substantial likelihood that a reasonable investor would consider the information important in making a decision to invest.” *R&W Technical Serv. Ltd. v. CFTC*, 205 F.3d 165, 169 (5th Cir. 2000). Finally, scienter exists where a person knew his representations were false or made them with a reckless disregard for their truth or falsity. *Drexel Burnham*

Lambert Inc. v. CFTC, 850 F.2d 742, 748 (D.C. Cir. 1988). *See also CFTC v. Noble Metals Int'l, Inc.*, 67 F.3d 766, 774 (9th Cir. 1995). Complainants must support each element by a preponderance of the evidence and furnish sufficient “evidence to permit the court to estimate the damages proximately caused [by the fraud] with reasonable certainty.” *Beck*, CFTC No. 08-R027, 2008 WL 5382300 at *2.

A. The Tolanders have identified only one representation by Scoville that may be characterized as a misstatement or misrepresentation.

The Tolanders claim that they relied upon various statements made by Scoville that turned out to be false. First, that Guerrero was a profitable trader. Second, that Guerrero used stop loss orders as part of his trading strategy. Third, that Guerrero traded in small sizes, going in and out of the market. Fourth, that Guerrero traded on behalf of a Swiss hedge fund. And finally, that Scoville would be monitoring the Tolanders’ account and would shut it down if something looked wrong. Of these statements, only the last can be construed as a misstatement.

i. Guerrero was a profitable trader.

The Tolanders have not proved, by a preponderance of the evidence, that Scoville misrepresented Guerrero’s trading profitability. Scoville never provided any data or written results regarding Guerrero’s trading history. That information regarding profitability was provided by Taut. And so there is no documentation evidencing any misrepresentation by Scoville.

The testimony regarding these representations is shaky. Tolander testified that Scoville said “that sounds right” when Tolander discussed the trading results he received from Taut with Scoville. Sept. 25 Tr. at 138-140. There is nothing in

the record to suggest that Scoville was looking at, or had access to, those results during that discussion. At other points in his written testimony and cross-examination, Tolander said Scoville told him Guerrero was “profitable” or “highly profitable,” Tolander Aff. Testimony at 3, though Scoville testified he would have said that Guerrero “made a little money and lost a little money,” Sept. 25 Tr. at 289.

On balance, this conflicting testimony is insufficient to meet the preponderance of the evidence standard for two reasons. First, the Tolanders have not proved that this statement was untrue when made. It may be that Guerrero was a largely profitable trader in the past, which would make a statement about his past profitability true. There is no evidence in the record that Guerrero was on balance an unprofitable trader—only that he was unprofitable in the future, on February 5, 2018, when the market crashed.

Second, the Tolanders cannot prove by a preponderance of the evidence that the statement was made in its most extreme iteration at all. Tolander’s testimony and Scoville’s testimony create a dispute of material fact: Tolander insists Scoville touted Guerrero’s profitability unreservedly while Scoville insists he had a more balanced approach to representing Guerrero’s profitability.

But Tolander’s testimony is not any more credible than Scoville’s. Tolander exaggerated, made sweeping generalizations, and conflated facts with assumptions during his testimony and correspondence. For example: Tolander (1) opined that no one took risk disclosures and cautionary language in their account agreements seriously, Sept. 25 Tr. at 246-47; (2) represented a commission-sharing agreement

between Guerrero and Scoville as a fact despite the lack of evidence to substantiate his assumption, Sept. 25 Tr. at 261-64; (3) testified he had no agency over checking the “speculative” box on his account agreement with ADMIS—stating that Scoville made him do it, Sept. 25 Tr. at 153, despite his clear financial sophistication; and (4) wrote, in a complaint letter to Tom Price, that Guerrero was “trading too large of positions over many days,” even though clearly “many days” was the course of one weekend, Resp. Ex. 31. Although none of Tolander’s statements in isolation are necessarily problematic, when aggregated they render Tolander an unreliable narrator.

Thus this statement about profitability is not actionable for two reasons: First, there is no evidence that it was not true when made. Second, there is insufficient evidence in the record to show that any statements regarding Guerrero’s profitability were exaggerated or guaranteed.

ii. Guerrero used stop loss orders.

Even assuming Scoville represented that Guerrero always used stop loss orders, there is no evidence in the record that this was a false statement when made. Indeed, Guerrero had placed stop loss orders for every day of trading activity throughout the life of the account except on the day in question February 5, 2018. Resp. Ex. 7 (Tolander Daily Account Statements). Scoville had no way of predicting what Guerrero would do and there is no evidence to suggest he could.

This underscores a central problem in this case—the Tolanders are suing Scoville for fraud essentially for misleading them about the future actions of Guerrero (because they have introduced no evidence that the statements were

untrue representations of past conduct). And there is simply no evidence that Scoville had any reason to know his representations about Guerrero were erroneous, simply because they proved erroneous in the future. And there was no evidence of an agency relationship between Scoville or Price Futures and Guerrero. So Scoville could not, after all, control Guerrero's actions to retroactively render his statements true.

iii. Guerrero traded small sizes and was in and out of the market.

Even assuming Scoville represented this was Guerrero's trading strategy, there is no evidence in the record that it was untrue. And Tolander himself testified that "small size" is a relative term that depends on the situation. Sept. 25 Tr. at 146-148. It is undisputed that the Tolanders never had a margin call and never breached the size limits imposed during the account set up. Thus there is no objective way to judge whether Guerrero's positions were small or not. This is particularly true because Tolander effectively signed off on the February 2, 2018 positions he now deems "too large" by engaging in a conversation about them with Guerrero—his actual trader—but not pushing to unwind them.

iv. Guerrero traded on behalf of a Swiss hedge fund.

This is not demonstrably false. Moreover, it was information provided to Tolander first by Hussein and Taut.

v. Scoville would be monitoring the Tolanders account.

Scoville admits he told the Tolanders he would be monitoring their account to generally make sure it looked good. He also admits he did not do so on the dates in

question. This is a potential misstatement made by Scoville, and it is the only basis on which to proceed to the next factors in the fraud analysis.

B. The Tolanders have not proved by a preponderance of the evidence that the monitoring statement was made by Scoville with the required intent.

Identifying a misrepresentation or misstatement is not the end of the legal inquiry. The Tolanders must prove, by a preponderance of the evidence, that the misstatement was made with scienter—knowing it was false or with reckless disregard for its falsity. The relevant questions are whether Scoville was generally monitoring the account, and whether there was any way for Scoville to know he would be unable to monitor the Tolanders account on February 2, 2018.

Scoville testified that he reviewed the equity runs for his customers' accounts every morning, and indeed began doing so with the Tolanders' account on December 1, 2017, when it first began trading. Scoville Aff. Testimony ¶ 13. He then states, uncontested, that on the morning of February 1, 2018, the Tolanders' account had no open positions and a cash balance of about \$188,000. *Id.* ¶ 14. Plainly he was generally monitoring the Tolanders' account, rendering his statement about monitoring true on balance.

However, it is undisputed that Scoville was in the hospital on February 2, 2018 and unable to monitor the Tolanders' account on that date. Scoville returned to the office on February 5, 2018. When Scoville saw the losing positions in the Tolanders' account on the morning of February 5, 2018, he called Tolander, and ultimately Guerrero liquidated the losing positions. *Id.* ¶¶ 15-16. There is no evidence in the record that Scoville could have foreseen being unable to check in for

medical reasons on February 2, 2018. And so there is no evidence tending to show that Scoville intended to lie or did not care whether he was lying. I find that Scoville's misstatement regarding monitoring the Tolanders' account was not made with the ill intent required to demonstrate fraud.

C. Even if Scoville had made the monitoring statement with scienter, the Tolanders have not proved, by a preponderance of the evidence, that this statement proximately caused their losses.

But even assuming *arguendo* Scoville did intentionally or recklessly lie when he told the Tolanders he would monitor the account, that misstatement did not proximately cause the Tolanders' losses. In order to successfully bring a claim in this Office, complainants must show "actual damages proximately caused by" a violation of the Commodity Exchange Act or its regulations. 7 U.S.C. § 18. But there are at least three reasons in the record demonstrating this lack of proximate cause.

First, Tolander did not expect him to monitor his account beyond "automatic alerts on position sizes . . . automated alerts based upon notification of certain thresholds or if something happened." Sept. 25 Tr. at 232-233. However the Tolanders' account never breached their size limits or received a margin call, so it is unclear whether Scoville's monitoring of the account would have made any difference.

Second, Tolander himself could have directed Guerrero to exit the positions and had the opportunity to do so. Tolander monitored his account daily and corrected at least one error regarding commissions as it arose. Indeed, Tolander had thorough correspondence with Guerrero on February 2 and February 3 in which

he expressed his dissatisfaction with the size and concentration of the positions. But Guerrero explained his strategy and ultimately Tolander did not object. He did not direct Guerrero to liquidate or otherwise hedge his positions. It is unclear what Scoville could have (or would have) done with respect to these positions that Tolander himself could not have done.

Finally, the day that the Tolanders lost their money—February 5, 2018—the markets experienced extreme volatility; the S&P 500 Index fell 4.1% in a single day and the Dow plunged 1600 points. As the emails and calls showed, this drop was unprecedented. So the question is whether Scoville’s purported misstatements about monitoring the Tolanders’ account caused the losses, or whether the extreme volatility of February 5, 2018 caused the losses. Put another way, would the Tolanders have experienced their losses but for Scoville’s failure to monitor their account? *See, e.g., Caremark, Inc. v. Coram Healthcare Corp.*, 113 F.3d 645, 648-49 (7th Cir. 1997), *quoting Bastian v. Petren Resources Corp.*, 892 F.2d 680, 683 (7th Cir. 1990); *Ray v. Citigroup Global Markets, Inc.*, 482 F.3d 991, 995 (7th Cir. 2007). The answer clearly is no. It is impossible to speculate what Scoville could have done that Tolander himself did not do, and plainly the losses were caused by the historic plunge of February 5, 2018 rather than any fraud by Scoville.

* * *

Tolander was introduced to Guerrero by Ovi Taut and Zuhair Hussein, both of whom he met on LinkedIn and who are not, it appears, registered trading professionals. They then introduced him to another unregistered trader, Diego

Guerrero, in Colombia with whom Tolander communicated using a translator application. Tolander then relied (as testified) on the fact that Price Futures and Scoville—both of whom are reputable and are registered—do business with Guerrero to validate the decision to invest with Guerrero. This investment decision appears to have been reached in his email exchanges with Taut and not Scoville. The fact of Price Futures and Scoville’s reputation does not amount to fraud. And trying to second guess a losing investment bet that Tolander was concerned about but did not make any attempt to unwind does not entitle the Tolanders to prevail on a fraud claim in pursuit of their losses.

CONCLUSION

The Tolanders have not proven that Scoville or Price Futures committed fraud. For these reasons, the Tolanders claims are DENIED and the case is dismissed with prejudice. Attorneys’ fees are not awardable to any parties.

Dated: March 21, 2025

/s/ Kavita Kumar Puri
Kavita Kumar Puri
Administrative Judge