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JINMING CAO, Complainant, v. INTERACTIVE BROKERS, LLC, Respondent.	CFTC Docket No. 08-R16
TUO CAO, Complainant, v. INTERACTIVE BROKERS, LLC, Respondent.	CFTC Docket No. 08-R21
SHUHONG FAN, Complainant, v. INTERACTIVE BROKERS, LLC, Respondent.	CFTC Docket No. 08-R24
JINMING CAO, and SHUHONG FAN, Complainants, v. INTERACTIVE BROKERS, LLC, Respondent.	CFTC Docket No. 08-R25

INITIAL DECISION

This dispute arises from the exercise/assignment of expiring options on Euro futures on two separate occasions: the first on Monday July 9, 2007; and the second on Monday November 12, 2007. Complainants' principal claim is that they are entitled to lost profits that they claim they would have earned had the exercise/assignment occurred before, instead of after, the close of trading on Friday July 6, and Friday November 9, 2007. In reply, respondent essentially asserts that complainants' claims are without merit, and otherwise denies any negligence or wrongdoing in connection with the disputed trades. As explained below, after carefully reviewing the parties' oral testimony and documentary submissions, I have concluded that complainants have failed to establish that they are entitled to any award.

Factual Findings

The parties

1. Jinming Cao and Shuhong Fan, husband and wife, are residents of Hillsboro, Oregon. Tuo Cao, their son, is a resident of Belleview, Washington. Jinming Cao has a Master of Science degree in Computer Engineering from the University of Texas, and works as a software engineer. Shuhong Fan has a Master of Business Administration degree from St. Edwards University in Austin, and teaches Mandarin. Tuo Cao has recently received his Bachelor's degree in Computer Engineering from the University of Texas. When they filled out their account applications, Jinming Cao and Shuhong Fan indicated that they had ten years experience with stocks, options and futures, and Tuo Cao indicated that he had three years experience with stocks, options and futures. Jinming Cao's and Shuhong Fan's oral testimony indicates that they both also had traded forex contracts when they had resided in Singapore.

2. Between May 1, 2006, and October 15, 2007, the three complainants opened a total of fourteen "sub-accounts" with Interactive Brokers. Eight of these sub-accounts are the subject of complainants' reparations complaints: three were in Jinming Cao's name, one was in the name of Shuhong Fan, one was a joint account in the names of Jinming Cao and Shuhong Fan, two were in the name of Tuo Cao, and one was in the name of Tuo Cao's 401 K.

The three complainants appointed Shuhong Fan as their financial advisor, and executed Interactive Brokers' *Discretionary Trading Authorization/Power of Attorney for Financial Advisor Agreement.* Shuhong Fan placed the orders for all of the disputed trades through an electronic trading platform. Fan typically consulted regularly with her husband and son.

3. Interactive Brokers ("IB") is a discount, online broker, registered as a futures commission merchant, and headquartered in Greenwich, Connecticut.

Fan's primary responsibilities under the customer agreement

4. The IB *Customer Agreement* provided that the customer was solely responsible for knowing the terms of the options and futures contracts in the customer's account, and that the customer was responsible for monitoring the account to assure that the applicable margin requirements were met at all times. The agreement also authorized IB to liquidate any and all positions in the account, without notice or margin call, in the event that the customer failed to maintain sufficient margin.

Assignment of CME in-the-money options

5. As noted above, this dispute involves the exercise/assignment of CME options on July and November Euro futures. Regular trading hours for the CME Euro futures and options are Sunday through Friday, 5:00 p.m. to 4:00 p.m. central time.

If exercised/assigned, the CME Euro option contracts would deliver the underlying front-month Euro futures contract. Thus, the exercise/assignment of the July Euro option would result in the delivery of the September Euro futures contract, and the exercise/assignment of the November Euro option would result in the delivery of the December Euro futures contract.

CME options on Euro futures expire on the second Friday of the contract month. If an option at expiration is out of the money, it is "abandoned;" that is, canceled. If the option is on the money at expiration, it will be exercised. The CME is responsible for calculating whether an option is in or out of the money, and communicates to its clearing members, such as IB, which options should be exercised and which should be cancelled. Under its rules, the CME must provide the list of relevant options no later than the 45 minutes before the opening of regular trading hours on the following business day, *i.e.*, the Monday after the Friday expiration date. [*See* CME rule 261 A.]

6. According to IB, it is the customary practice of the CME to provide the list of expired in and out of the money options between 1:00 a.m. and 4:00 a.m. central time the following business day.

In addition, according to IB, its customary practice at the close of trading on an option expiration date is to conduct an independent, tentative calculation to determine whether options are in or out of the money, using the same criteria as the CME, and then to update customer accounts to reflect the exercise or cancellation of any options. IB then, early Monday morning compares its Friday night calculation to the CME's Saturday morning calculation. If this re-check reveals a discrepancy, IB revises the position information in the customer's account.

The disputed trades

7. Before the July 6, 2007 expiration, Fan had previously held options until they expired in the money, and were exercised. Fan does not allege that in these instances she was able to trade newly assigned futures on the same day that the corresponding options had expired. Fan also had previously faced margin call situations.

8. By Friday July 6, 2007, Fan had accumulated a total of 30 short July Euro 1.365 call options, spread over eight sub-accounts. At this point, the accounts held very little excess margin. In this connection, complainants have not offered a detailed explanation of their trading strategy leading up to the July 6th expiration.

That evening, IB determined that these options had expired in the money. Thus, at the open on Sunday July 8, IB assigned 30 short September Euro futures to the eight sub-accounts. Shortly after the open of regular trading Monday morning, IB determined that its initial calculation of Fan's options positions was incorrect, and revised Fan's futures positions. Log-in records indicate that Fan did not log into the account over the weekend. Complainants testified that Jinming Cao called IB to discuss the adjustment. However, none of the complainants could recall any details of this conversation. In any event, Cao testified that they decided to continue trading with IB, because they appreciated IB's "good service."

9. Similarly, by Friday November 9, Fan had accumulated a mix of 20 long and 10 short November Euro calls, at various strike prices, in a different mix of eight accounts. At this point, the accounts again held very little excess margin. In this connection, complainants again have not offered a detailed explanation of their trading strategy leading up to the November 9th expiration.

That Friday evening, IB determined that these options had expired in the money. Thus, at the open on Sunday November 11, IB assigned a total of 30 December Euro futures to the eight sub-accounts. Log-in records indicate that Fan did not log into the account over the weekend. Shortly after the open of pit trading on Monday, IB determined that its initial calculation of Fan's options positions was incorrect, and revised Fan's futures positions.

In addition, on Sunday evening, some of the accounts became under-margined, and IB e-mailed margin notices warning that liquidation was imminent. None of the complainants immediately replied to these notices. Thus, Sunday evening through Monday morning, IB liquidated a series of Yen and Euro futures positions in various accounts. Jinming Cao initiated an e-mail exchange complaining about the handling of these trades. Nonetheless, complainants would continue trading in their IB account.

Conclusions

Complainants have the burden to establish by a preponderance of the evidence a violation of the Commodity Exchange Act or a Commission regulation by Interactive Brokers that proximately caused their claimed damages. Complainants' principal claim, that Interactive Brokers denied them an opportunity to trade newly assigned Euro futures, first on Friday July 6th and second on Friday November 9th, is completely without merit. First, pursuant to CME rules and procedures, the options could not be exercised and assigned until after the market had closed on those Fridays. Thus, even if complainants actually had wished to do so, they simply had no futures to trade before the close on the expiration Fridays. Second, log-in records establish that complainants did not log into their account during the relevant time, which undermines their assertion that they had possessed any intention to trade on the option expiration Fridays. Third, complainants have not produced a scintilla of evidence that Interactive Brokers misled them about the CME's option exercise/assignment procedures. In these circumstances, complainants' claim that they are entitled to recover lost profits must fail.

Complainants' claim that the Euro and Yen futures positions were improperly liquidated to satisfy margin deficits is also without merit. Initial and maintenance margin provide a means for futures commission merchants to assure their financial integrity and contribute to the financial integrity of the entire marketplace. For this reason, the Commission has consistently upheld the right of a broker to liquidate a customer account when the account is under-margined or the broker otherwise deems liquidation necessary to protect itself or the customer, based upon its own good-faith business judgment. *Baker v. Edward D. Jones & Co.*, Comm. Fut. L. Rep. (CCH) ¶ 21,167 (CFTC 1981); *see also Gelderman v. Lane Processing, Inc.*, 527 F2d 571 (8th Cir. 1975). Therefore, in order to establish wrongdoing by respondents, complainants must show by a preponderance of the evidence either that Interactive Brokers misled them about their margin policy or that Interactive Brokers liquidated the Euro and Yen positions in bad faith. Here, complainants have not shown that Interactive Brokers acted in bad faith in liquidating the Euro and Yen positions or that Interactive Brokers deceived them about its margin policy. The customer agreement gave Interactive Brokers the authority to liquidate the account without notice when the account was under-margined or Interactive Brokers deemed it necessary to do so. Here, where complainants were experienced traders, where complainants' accounts had been thinly margined as the expiration date approached, and where Interactive Brokers had warned them that liquidation was imminent and then determined that market conditions warranted liquidation, complainants liquidation claim must also fail.

ORDER

Complainants have failed to establish any violations causing damages. Accordingly, the complaint against Interactive Brokers is dismissed.

Dated July 28, 2009.

Philip McGuire,
Judgment Officer