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HSIU CHU LIANG,
Complainant,

v. CFTC Docket No. 09-R015

FC STONE LLC,
Respondents.

INITIAL DECISION

Hsiu Chu Liang seeks to recover $8,370 in damages: $5,894 for an allegedly improper debit to her account, and $2,476 for "dishonest practices and wrongdoing." FC Stone denies any violations or liability, and raises a variety of affirmative defenses. As explained below, after carefully reviewing the parties' submissions, it has been concluded that Liang has failed to establish any violations causing damages by FC Stone.[1]

Factual Summary

1. Liang opened a non-discretionary account through Global Merchant Center, Inc. ("GMC"), an independent (non-guaranteed) introducing broker ("IB"). Michael Chen, the president of GMC, solicited Liang and selected trades for her approval. GMC was referred to FC

[1] By Order dated March 26, 2010, respondents Michael Chen and Global Merchant Center, Incorporated were found in default, and ordered to pay to Hsui Chu Liang reparations of $5,894, plus interest and costs This default by Chen and Global Merchant Center did not establish any liability by FC Stone. Liang has filed a motion to vacate the default on the mistaken assumption that the default resolved FC Stone's liability. It did not. This initial decision resolves FC Stone's liability. As explained in a cover letter which will accompany this Initial Decision, Liang may appeal this Initial Decision to the Commission. Accordingly, because she lacks standing, Liang's motion to vacate the default order is denied.

Stone by Spike Trading Services, LLC ("Spike"), a guaranteed IB, which cleared trades through FC Stone. Brian Suelzer ("Suelzer"), an associated person of Spike, served as liaison between Spike and GMC and Chen. FC Stone functioned as the clearing firm for Liang and other GMC clients.

2. In her opening account documents, Liang instructed FC Stone to send her confirmation and month-end statements to the e-mail address that she continues to use today.

3. Liang opened her account in July 2007 with a deposit of $20,000. Chen's trading was generating positive returns. By the end of November 2007, the cash balance was $26,449, and the account liquidating value was $17,746.

4. On December 14, Chen sent to FC Stone a "Commission Adjustment Request" for $5,894 for Liang's account, which had the effect of wiping out Liang's gains. FC Stone does not dispute Liang's assertion that Chen made similar requests for other customer accounts. On December 24, 2007, Liang's account was debited $5,894 for a "comm. rebate," which was reported on the December 24th confirmation statement, and the December monthly statement. Liang would not complain about that charge during the remaining three months of Chen's life.

GMC and its clients negotiated commission charges, rebates, and other terms. Those terms were then communicated by GMC to Spike and then ultimately transmitted to FC Stone for implementation. FCStone had neither the ability nor obligation to participate in those negotiations. In this case, Chen sent an explicit written instruction to Spike requesting that a commission rebate "correction" be entered in Liang's account. And because GMC had an agreement under which it was permitted to retain all commissions it collected above a fixed sum, it alone profited from this charge. Neither FC Stone nor Spike received any of the "correction" debited to Ms. Liang's account on December 24, 2007.

5. At the end of December 2007, the cash balance was $22,998, and the account liquidating value was $12,295. Subsequently, FC Stone sent Liang a Form 1099 reporting that she had realized losses of $7,705.46 in her trading account during calendar year 2007, which represented a loss of over 35% of her deposited funds. Liang claims that Chen had assured her losses would not exceed 20%. However, Liang would never complain about this promise to FC Stone or Spike until well after Chen's death on March 31, 2008.

6. At the end of March 2008, the cash balance was $28,565, and the account liquidating value was $9,128.

7. On April 3, 2008, Spike sent an e-mail to all GMC clients with open positions in their accounts, notifying them of Chen's death, asking for instructions on open positions and the disposition of any cash balances. Liang claims she did not receive that e-mail, although it was sent to an e-mail address she provided. In any event, she received and responded to a follow-up e-mail on April 16. On April 17, she informed Suelzer that she wished to assume control of her account and, on April 20, she asked him to provide the balance that would remain if her open positions were liquidated. She did not complain to Suelzer about the December debit or her 2007 losses.

On April 21, when Suelzer reported that the net liquidity was $9,190, Liang authorized him to liquidate her open positions. On April 24, Liang wrote to "confirm" that she would "get back" $27,505.26. Suelzer wrote that same day to advise her she would receive $9,190. Liang then asked for an explanation of her losses. In reply, Suelzer explained:

> You are correct that on 4/21 the Opening and Closing account balance remain unchanged because there was no offsetting activity. But on this date the value of the account, if positions [are] covered is the line Net. Liq. of $9,221.30. Because this account was holding Short Options Positions you cannot look just at the Total Equity but also must include the Short Option Value to arrive at the actual value (Net.Liq.) of the account.

On May 1, 2008, Liang first complained to FC Stone about Chen's December commission rebate.

Conclusions

Liang essentially alleges that FC Stone should not have followed Chen's instructions to debit her account, because his request was inherently suspicious due to its size and due to his similar instructions for other accounts. Thus, her claim amounts to a charge that FC Stone failed to take adequate steps to protect her funds in violation of Section 4d of the Commodity Exchange Act, which requires a futures commission merchant to treat and deal with the money of its customer as belonging to that customer. However, Liang also had a responsibility to monitor her account and take necessary action to protect her interests if she detected unexpected, unusual or suspicious activity in her account. By waiting several months until after Chen's death to object, Liang deprived FC Stone of a reasonable opportunity to learn whether or not the charge was warranted and, if it was not, to take necessary steps to protect her funds. Since she failed to fulfill her obligation to review her statements and report any errors promptly, Liang must bear the costs of her own inaction.[2]

Liang appears to base her claim for the remaining $2,475.74 on the vague allegation that FC Stone is guilty of "dishonest practice and wrongdoing." However, she has not substantiated or further elaborated this claim. Moreover, the account statements show that all of Liang's trading losses occurred before Chen's death. FC Stone did not participate in any trading decision made before Chen's death, except to execute orders entered by GMC for Liang. The order to

[2] Before FC Stone had incurred the legal costs associated with filing its answer and conducting discovery, it had offered to settle with Liang for the amount of the December debit. Now that FC Stone has incurred those costs it may not be willing to settle for that same amount. However, both sides are still free to pursue some kind of settlement and are encouraged to do so.

liquidate the positions which were open upon Chen's death was executed in response to Liang's explicit written directions to Spike. FC Stone promptly and properly executed that order. Thus, FC Stone did not cause any of Liang's trading loss.

ORDER

Liang has failed to establish any violations by FC Stone. Accordingly, the complaint is dismissed.

Dated May 25, 2010.

Philip V. McGuire,
Judgment Officer