



U.S. COMMODITY FUTURES TRADING COMMISSION

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Office of Proceedings

RICHARD SIMPSON,
Complainant,

v.

MF GLOBAL, INCORPORATED
d/b/a LIND-WALDOCK,
Respondent.

CFTC Docket No. 11-R001

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INITIAL DECISION

Introduction

Richard Simpson seeks to recover \$6,900 that he claims he lost as the result of an erroneous account value reported on respondent's proprietary electronic order entry system. According to Simpson, on August 25, 2010, M.F. Global Incorporated's on-line system incorrectly reported the minimum price fluctuation -- *i.e.*, the "tick" or "pip" -- of the Micro U.S. Dollar/Swiss Franc future contract as one tick equal to ten dollars when in fact one tick is equal to one dollar. This led to Simpson assuming that he was making a ten-fold greater unrealized profit than he actually was on an open short U.S. dollar-Swiss franc futures position. Simpson asserts that he reasonably relied on this erroneous report in believing that the account was adequately margined to support additional trades, and that, as a result, he overtraded his account. Simpson further asserts that, because his account lacked adequate margin to support additional trades, M.F. Global's on-line system should not have accepted his orders to buy and sell Mini crude oil futures.

MF Global, Incorporated's principal defense is that Simpson's claim is barred by a mutual release that was executed on August 26, 2010, the same day that the error was discovered and that the related dispute arose. In addition, MF Global asserts that Simpson's purported reliance on the erroneous report was not reasonable given his familiarity with the size of Micro currency contracts, given the patently gross disparity between the incorrect information provided by its on-line system and the correct information reported in its electronically delivered daily confirmation statements, and given disclaimers in the Electronic Order Entry and Account Access Agreement executed by Simpson when he opened his account. Finally, M.F. Global otherwise denies any violations of the Commodity Exchange Act or the Commission's regulations.

As explained below, after carefully reviewing the parties' documentary submissions, I have concluded that MF Global has established that Simpson's reparations complaint is barred and must be dismissed, because Simpson has already settled all claims against M.F. Global arising from the erroneous report by entering into a valid mutual release in exchange for payment of \$1,100.

Factual Findings

1. Richard Simpson, a Delaware resident, has significant experience trading currency and energy futures. He had traded currency and energy futures and options in a previous Lind-Waldock account from June 2006 to October 2008. [See monthly account statements, Exhibit F, Answer.]

2. MF Global, located in Chicago, Illinois, is a registered futures commission merchant. Lind-Waldock is a division of MF Global. [NFA records; see pages 1-2, Answer.]

3. On or about August 5, 2010, Simpson opened a new discount, non-discretionary account with Lind-Waldock (account number 550LJ604). The account documents signed by Simpson included a Customer Agreement and an Electronic Order Entry and Account Access Agreement. [Exhibits B and C, Answer.]

4. Simpson began trading on August 18, 2010. From August 18 to 26, 2010, Simpson actively traded each day using MF Global's Order Express proprietary electronic order entry system. Simpson exclusively traded Mini Crude Oil futures and Micro currency futures. [See Exhibit F, Answer.] Simpson does not dispute M.F. Global's assertion that each day he received electronically delivered confirmation statements that accurately reported trading activity and account status.

5. The erroneous report involved the Micro U.S. dollar-Swiss franc future contract. The Micro currency futures contracts traded on the Chicago Mercantile Exchange are deemed the equivalent of one-tenth of the CME's regular currency futures contracts. For the Micro U.S. dollar-Swiss franc futures contract, the unit of trading is \$10,000, and the minimum price fluctuation is in multiples of 0.0001 Swiss franc per U.S. dollar, equivalent to 1.00 Swiss franc per contract. [CME rule 34201, <http://www.cmegroup.com/rulebook/CME/III/300/342/01.html>.]

6. On August 25, 2010, Simpson actively bought and sold multiple Micro currency and Mini crude futures, and the account balance declined from a \$3,168 opening balance, to a \$2,715 ending balance. At the close on August 25, Simpson was short three October Mini crude oil futures, and short eight September Micro U.S. dollar-Swiss franc future contracts. The daily account statement reported that the crude trade was losing \$968, and that the account was under-margined. [See confirmation statement dated August 25, 2010 (Exhibit E, answer).]

7. M.F. Global does not dispute Simpson's assertion that on August 25, the account Order Express electronic order entry system had erroneously indicated that the open Micro Dollar-Franc futures trade had an unrealized gain that was ten times greater than it actually was, and that the account had a balance of \$5,674, when it was actually \$663. Conversely, Simpson does not dispute M.F. Global's assertion that the electronically delivered August 25th confirmation statement accurately reported the account status.

8. On August 26, 2010, Simpson offset the three short Mini Crude Oil futures for a net loss of \$1,895, and closed out all open Micro Dollar-Franc futures positions for a \$151 net profit. [See confirmation statement dated August 26, 2010 (Exhibit E, answer).]

9. Also on August 26, 2010, Simpson and MF Global executed a mutual release, and MF Global made a goodwill credit adjustment to his account for \$1,100. M.F. Global's Error Adjustment Form included the following explanation for the credit:

Order Express had an erroneous account value due to a bad price format in Micro Swiss. As a result, the customer was allowed to overtrade Mini Crude. What appeared on-line as a \$5,674 balance was instead a \$663 balance.

The mutual release provided, in pertinent part:

Richard Simpson upon receipt of \$1,100, hereby acknowledges, releases and forever discharges Lind-Waldock, MF Global . . . from any and all actions, causes of action, suits, judgments, damages, debts, applications, claims and demands of any and all nature . . . including . . . all matters arising out of his commodity futures account 550LJ604.

. . . .

It is further understood and agreed that this settlement is in compromise of disputed claims and causes of action and it is not to be construed as an admission of liability on the part of the parties released who have expressly denied any and all liability and all negligence in the matter.

[See Mutual Release dated August 26, 2010 (Exhibit A, answer); Error Adjustment Form dated August 26, 2010 (Exhibit D, answer); and confirmation statement dated August 26, 2010 (Exhibit E, answer).]

10. Simpson, who has not challenged the validity of the release, resumed trading into early October 2010.


Conclusion

M.F. Global has established by a preponderance of the evidence that on August 26, 2010, Simpson, and M.F. Global and its division Lind-Waldock, entered into a valid and enforceable, express settlement agreement under which Simpson released his right to sue M.F. Global and Lind-Waldock for any claim arising from his account, in exchange for payment of \$1,100 via an account credit, which Simpson unconditionally accepted. Thus, this agreement settled the entire controversy between Simpson and M.F. Global and Lind-Waldock, and extinguished Simpson's claim against M.F. Global and Lind-Waldock for any damages arising from the erroneous report on the preceding day, August 25, 2010. Accordingly, Simpson's complaint is barred as a matter of law, and thus must be dismissed.

ORDER

Richard Simpson's complaint is barred by the Mutual Release dated August 26, 2010. Accordingly the complaint in this matter is dismissed.

Dated September 9, 2011.


Philip V. McGuire,
Judgment Officer