U.S. COMMODITY FUTURES TRADING COMMISSION
Three Lafayette Centre
1155 21st Street, NW, Washington, DC 20581
www.cftc.gov

Office of Proceedings

Received
C.F.T.C.

2009 JUL 27 AM 8:53

Office of
Proceedings
Proceedings Clerk

DOROTHY WOERTZ and
HERBERT WOERTZ,
Complainants,

v. CFTC Docket No. 08-R035

PEREGRINE FINANCIAL GROUP, INC.,
d/b/a PFGBest.com,
Respondent.

INITIAL DECISION

Introduction

This dispute arises from PFG's determination to liquidate complainants' May silver futures contract on March 20, 2008, when a drop in the silver market triggered a margin call. According to complainants: "[Our] complaint is they should have informed [Mr. Woertz] of the margin shortage and given [Woertz] a chance to sell the silver back and not have such a large loss." In reply, PFG asserts that the customer contract authorized it to liquidate the account when necessary for its own and its customers' protection, and that it acted reasonably and consistently with the terms of the contract when it liquidated the contract in order to avoid further losses. As explained below, it has been concluded that complainants have failed to establish any violations by respondent.

Factual Findings

1. Dorothy and Herbert Woertz reside in Hemet, California. Since Herbert Woertz was solely responsible for all trading decisions in the Woertzs' joint non-discretionary account, all references are to him. Woertz, who was born in 1915 and has been retired for about fifteen years from his auto sales and repair business, started trading commodity futures in 1970.

After this case had been forwarded to my docket, I issued an order asking Woertz to supplement his complaint with an affidavit which explained such matters as: his silver trading strategy in March 2008; the names of the PFG agents with who he regularly dealt; his course of dealing with PFG between March 1, when he alleges that a PFG agent told him that he had adequate margin, and March 20, 2008, when PFG liquidated his under-margined silver contract; how he had monitored the silver position and the silver market; and whether he was aware of the turmoil and uncertainty in the precious metals markets in mid-March 2008. In reply, Dorothy Woertz submitted the following statement: "Herbert Woertz is ninety three (93) years of age and due to recent strokes and other health problems he is unable to remember and answer the questions you have asked about names, dates and times." Nothing in the record suggests that Woertz was suffering from such infirmities when he was dealing with PFG's trading desk.

2. PFG is a registered futures commission merchant ("FCM"), located in Chicago, Illinois.

3. In September 1998, the Woertz's opened a joint non-discretionary account with American National Trading Corporation. On August 23, 2007, complainants' account and account agreement was assigned and bulk transferred to PFG.

The customer agreement provided that PFG could "at any time, and from time to time, in its sole and absolute discretion, and without notice, liquidate [a futures position] … in order to satisfy any margin or account deficiencies …."

4. On February 29, 2008, Woertz purchased one May silver futures contract, at 19880. In his complaint, Woertz asserts that on March 1, he called PFG, and "asked if I had enough margin and was told that I had enough and not to worry."

PFG equity runs indicate that Woertz made trades on March 4, 7, 12, 14 and 18. On each of these dates, except March 7, the May silver contract had a positive liquidation value. On each of these dates the account was adequately margined. Unfortunately, due to his subsequent stroke, Woertz has been unable to provide any detailed description of his actions and conversations during this time.

On March 18, May silver closed at 19960, and Woertz's May silver contract was up $400. On March 19, May silver opened sharply down, dropped through the day, and closed at 18445. As a result, the silver contract was down $7,175, and the account was under-margined by $4,326. On March 20, PFG liquidated the May Silver future, at 17235, for a loss of $13,225, which left an account balance of $70. Woertz similarly has been unable to provide any detailed description of his actions and conversations during these crucial two days.

Conclusions

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 PFG misled them about their margin policy or that PFG liquidated the silver position in bad faith.

On this record, complainants have not shown that PFG acted in bad faith in liquidating the silver position without notice or that PFG deceived them about its margin policy. The customer agreement gave PFG the authority to liquidate the account without notice when the account was under-margined or PFG deemed it necessary to do so. Here, PFG determined that market conditions warranted liquidation without prior notice.

As for Woertz's assertion that PFG should have either liquidated the position more quickly or notified him more quickly that his account had become under-margined, in the absence of any evidence that he had specifically informed PFG that he was relying on it to provide such a special service, Woertz cannot shift to PFG his responsibility to monitor the account and market conditions. *See Grist v. Shearson Lehman Brothers, Inc.*, Comm. Fut. L. Rep. (CCH) ¶ 24,962 (CFTC 1990); *and Avis v. Shearson Hayden Stone, Inc.*, Comm. Fut. L. Rep. (CCH) ¶ 21,379 at page 25,831 n.7 (CFTC 1982).

ORDER

No violations having been established, the complaint is DISMISSED.

Dated July 27, 2009.

Philip V. McGuire
Judgment Officer