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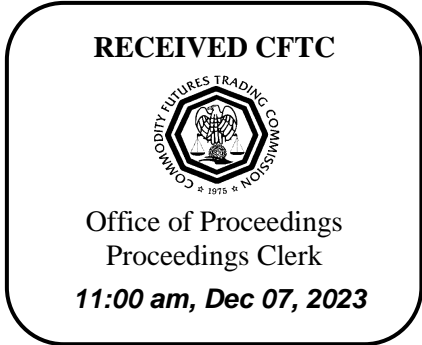
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Haskia Hasson,   *

                  *

    Complainant,   *

                  *

        v.   *   CFTC Docket No. 20-R017

                  *   **Served electronically**

OANDA Corporation,   *

                  *

    Respondent.   *

————————————————————   *

INITIAL DECISION AND ORDER
DENYING COMPLAINANT'S DISCOVERY MOTION,
GRANTING RESPONDENT'S MOTION FOR SUMMARY DISPOSITION,
AND DISMISSING THE COMPLAINT

Before: Kavita Kumar Puri, Administrative Judge
               Commodity Futures Trading Commission
               Washington, D.C.

Appearances: Haskia Hasson, *self-represented litigant*
               Torrance, CA
               For Complainant

               Ronald S. Betman, Esq.
               Ulmer & Berne LLP
               Chicago, IL
               For Respondent

On March 23, 2020, Complainant Haskia Hasson (Hasson) filed his

reparations complaint against Respondent OANDA Corporation (OANDA), electing

a Voluntary Proceeding. On June 29, 2020, OANDA filed its Answer along with a

$200 filing fee to elevate this matter to a Formal Proceeding instead. Hasson

claims he suffered $226,407.56 in damages when his OANDA accounts were

wrongfully migrated on November 23, 2018 to OANDA's new v20 trading platform,

and then when one of those migrated accounts was liquidated on January 2, 2019.[1]

OANDA counters that the account migration does not constitute a violation of the

Commodity Exchange Act (CEA), and the liquidation was triggered by insufficient

margin in the account. OANDA filed a Motion for Summary Disposition on January

28, 2021, and that Motion was fully briefed on February 16, 2021.

For the reasons discussed below, Respondent's Motion for Summary

Disposition is granted, and the Complaint is dismissed.

I.   Relevant Procedural History

1.   Hasson filed his reparations Complaint and exhibits on March 23,

2020, and the Complaint was served on OANDA on May 28, 2020.

2.   OANDA filed its Answer along with exhibits on June 29, 2020.

3.   Discovery commenced and the parties filed a series of discovery

requests, objections, exchanges, and motions.

4.   On September 10, 2020, I issued a Discovery Order to focus the

discovery process.

5.   On September 16, 2020, the parties filed a joint discovery report

confirming they resolved all of the discovery issues at hand, including those in

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[1] The parties use "v20" and "V20" interchangeably in addressing and discussing
OANDA's new trading platform, and this Initial Decision and Order does the same.

OANDA's Motion for a Protective Order except one—Hasson's insistence that OANDA produce responsive discovery documents dating back to 2011.

6. On December 3, 2020, the parties appeared at a virtual discovery hearing.

7. During that hearing, I resolved the pending discovery issues and then issued an Amended Scheduling Order and Discovery Order.

8. On December 18, 2020, Hasson filed a Motion to Strike certain discovery responses included in OANDA's Second Supplemental Document Production (Second Document Production). OANDA filed its Response on December 23, 2020.

9. On January 28, 2020, OANDA filed its Motion for Summary Determination (Mot. For Summ. Disp.) and accompanying documents. Hasson filed his Response on February 16, 2021, and OANDA filed its Reply in support of its original motion on February 25, 2021.

10. On March 1, 2021, I stayed all pending deadlines in this case until I resolved Respondent's Motion For Summary Disposition.

11. On April 4, 2022, Hasson filed, via email, what this Office construed as a Motion To Submit Additional Evidence. Hasson asked to submit "MT4 log files" that he contends "serve as a near real-time witness of each day's trading activities for each MT4 account." Mot. to Submit Add. Evidence at 1. (Apr. 4, 2022). He states he attempted to retrieve these files shortly after the December 4 Discovery Hearing but was unable to because he "lost unfettered access to [his] records." *Id.*

at 2. Hasson claims that after receiving an email from OANDA on November 12, 2021, he "retrieved an older computer from storage," and "downloaded entire directories of [his] MT4 files. . . . and transferred copies of the downloaded files to [his] main computer and hard drive." *Id.*

12.   On April 5, 2022, OANDA filed its Response to Complainant's additional evidence motion. On April 11, 2022, Hasson filed its reply.

13.   Both Hasson's Motions to Strike and to Submit Additional Evidence are currently pending before me, as is OANDA's Motion for Summary Disposition.

II.   Findings of Fact

a. *The Parties*

14.   Complainant Haskia Hasson (Hasson) is a resident of Torrance, CA, and an experienced forex trader and software developer. *See generally* Compl. Hasson first opened his forex trading account with OANDA on March 17, 2011. Compl. at 1.

15.   Respondent OANDA Corporation (OANDA) is registered with the Commission, among other things, as a Retail Foreign Exchange Dealer (RFED) and has been since October 2010. *See* NFA Basic Research at https://www.nfa.futures.org/BasicNet/basic-profile.aspx?nfaid= tDw0VT6Nt%2F8%3D. OANDA was Hasson's RFED during the relevant time— September 2016 through January 2, 2019.

b. *Hasson's Account Opening Documents And Customer Agreement*

16.   Hasson opened his forex trading accounts with OANDA on May 17, 2011. Compl at 1.

17.   That same day, Hasson reviewed, signed, and "printed to pdf" the

necessary account opening documents, including the FX Trade Customer

Agreement, Registration Acknowledgment Agreement, and Risk Disclosure

Statement (2011 Customer Agreement). Compl. at 3; Kavanaugh Aff. ¶ 4.

18.   The 2011 Customer Agreement notified Hasson that OANDA was not

required to provide him with time to respond prior to a margin closeout:

> **Margin Requirements.** You agree to deposit and maintain in
> your Account sufficient funds to meet OANDA's Margin Requirements,
> <u>and acknowledge that OANDA is not required to provide you with time
> to respond prior to a Margin Closeout when in its sole discretion
> OANDA deems it necessary to take immediate action</u>.

OANDA-HASSON 004355 (emphasis added).

19.   The same Agreement allowed OANDA to modify the Agreement

unilaterally and notify Hasson through email or its website. OANDA-HASSON

004367. Additionally, the Agreement informed Hasson that:

> YOU AGREE THAT USE OF OANDA'S SERVICES PROVIDED
> HEREUNDER AFTER A POSTED MODIFICATION TO THIS
> AGREEMENT OR TO THE SERVICES MEANS YOU ACCEPT THE
> MODIFICATION, WHETHER OR NOT YOU ACTUALLY KNOW OF
> IT.
>
> *Id.*

20.   OANDA used various electronic means—such as email, its online

forum and its website—to inform customers about upcoming market closures,

trading halts, and "material changes to the Customer Agreement and Risk

Disclosure." Compl. at 6, and Compl. Exs. 5 ,7, 27-28, 37-38; Answer at 1; Resp.

Statement Of Material Facts at 2-3.

21.   To that end, OANDA, on May 9, 2017, sent Hasson an email notifying him that it was making changes to the 2011 Customer Agreement, effective that same day, and posted a similar notice to its website. Compl. at 7; Ex. 34 (attached to Compl); Kavanagh Aff. ¶¶ 9-10. The email contained a link to OANDA's website, which provided "the full details regarding the changes." Ex. 34 (attached to Compl).

22.   The 2017 Customer Agreement stated:

> **Margin Requirement.** You agree to deposit and maintain in your Account sufficient funds to meet OANDA's Margin Requirement. You acknowledge that not having sufficient funds to meet OANDA's Margin Requirement could result in Margin Closeout. You agree to monitor the funds in your account to ensure there are sufficient funds to meet OANDA's Margin Requirement. **Nothing in this Agreement shall be taken to mean that OANDA is required to provide you with time to respond prior to a Margin Closeout when in its sole discretion OANDA deems it necessary to take immediate action**. In the event of a Margin Closeout OANDA may close all of your Open Positions.

> OANDA-HASSON 004324 (emphasis added).

23.   OANDA's website included two additional notices regarding margin closeout. *See* OANDA-HASSON 004369-004370. The notices stated in relevant part "[i]f your Margin Closeout Value falls to less than half of your Margin Used, all open positions will be automatically closed using the current fxTrade rates at the time of closing. . ." and "[i]n a fast moving market, there may be little time between warnings, or there may not be sufficient time to warn you at all." *Id.*

c. *The Migration Of Hasson's OANDA Legacy Accounts To The v20 Platform On November 23, 2018*

24. On September 14, 2016, OANDA sent its customers, including Hasson, an email announcing its new trade execution engine, which it called v20. Compl. Ex. 26. OANDA would thus be disallowing use of TradeStation's platform—which was the platform Hasson had been using—once the migration of their accounts to the v20 platform occurred. Compl. Ex. 45.

25. On January 2, 2017, Hasson "funded a test v20 sub-account" to determine if there were any issues with the v20 platform. Compl. at 7.

26. Two days later, on January 4, 2017, Hasson emailed OANDA a "trouble ticket" indicating "that there [were] no [a]ccount [s]tatistics for [his] newly created account." *Id*.

27. On January 5, 2017, Hasson and Greg Gumz (OANDA's Senior Relationship Manager) had a brief email exchange in which Hasson informed Gumz that due to issues he encountered with the v20 platform, he had "closed all of [his] trades on the V20 account." He further asserted that the lack of "Account Statistics" in the v20 accounts would keep him "from starting up again until some later date." Compl. at 7; Ex. 31.1 (attached to Compl).

28. Gumz responded to Hasson that same day stating "[w]ith v20. . . we appreciate the feedback and as a result of v20 not having account statistics, you're not using it. . . . [t]he feature parity will come, but like most software now days, releases are done in parts." *Id*.

29.   Roughly five months later, on May 16, 2018, Hasson had a telephone conversation with another of OANDA's Senior Relationship Managers, Sven-Erik Paloheimo. Compl. at 8.

30.   Hasson informed Paloheimo that he was aware his accounts could be migrated, and that he might find that migration unsuitable. *Id.*; *see also* Compl. Ex. 40 (attached to Compl).

31.   Paloheimo informed him that the migration of Hasson's legacy accounts to the v20 platform would probably happen near the end of the year and that there would be notice. *Id.*[2]

32.   On September 1 and October 12, 2018, OANDA emailed Hasson and informed him that Hasson's OANDA Money Transfer services would be closed on October 15, 2018. Compl. at 8-9; Compl. Exs. 41, 42.

33.   On October 15, 2018, Hasson emailed Paloheimo several assumptions and concerns he had with respect to the v20 migration. He also identified the date on which *he* believed OANDA should proceed with the migration as Saturday, December 1, 2018. He "hoped" that Paloheimo could "relay [his] concerns before next month's action." Compl. Ex. 43.

34.   Paloheimo responded the next day, stating he "had forwarded [Hasson's] email to one of [OANDA's] project managers." Compl. Ex. 44 (attached to Compl).

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[2] Hasson's evidence of this call consists of notes he took during the phone call between himself and Paloheimo. OANDA never rebuts Hasson's contentions.

35.   On November 2, 2018, TradeStation emailed Hasson and notified him that it would be "discontinuing the free platform access that was provided as part of [Hasson's] forex account transfer to OANDA." Compl. Ex. 45. It also noted that the change would become effective on November 30, 2018. TradeStation underscored that Hasson could continue to access its platform by opening a TradeStation brokerage account. *Id.*

36.   On November 4, 2018, Hasson forwarded the November 2 TradeStation email to Paloheimo and stated the following:

> It appears that the product manager is taking my recommendation to migrate to V20 on Dec 1.
>
> I'm not happy to lose my TradeStation platform - when this platform has level II data (it hasn't since the OANDA transfer) it provides the best scalping platform that I've ever used in my trading (using a personally modified indicator). I was hoping that with the V20 migration that the OANDA data feed would resume a level II data stream, but I guess that this is now out of the question. I'll probably contact TradeStation this week to see what type of forex data stream will be provided after Nov 30. I'm guessing that they won't have level II forex data. But if they do I would be willing to open a brokerage account just to get the forex data. If you have any insights on what will happen after Nov 30, I'd appreciate a heads-up.

Compl. Ex. 45.

37.   On November 5, 2018, Paloheimo responded to Hasson's email and verified that this was related to the v20 migration. He further confirmed that TradeStation's platform and OANDA's platform would not have reciprocal visibility. Compl. Ex. 46.

38.   On November 22, 2018, OANDA posted to its Forex Forum that "OANDA [would] be performing extended maintenance on the fxTrade and fxTrade

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MT4 servers for the time periods outlined below," including beginning on November 23, 2018. Compl. Ex. 49.

39.   On November 23, 2018, Hasson received a "flood of alerts" on his cell phone about this server maintenance. Compl. at 11.

40.   That same day at 6:36 pm PST, OANDA sent Hasson an email notifying him that "[t]oday we migrated your legacy account(s) to a new V20 account(s). . . . [and the] funds in your legacy account(s) and any open positions have been transferred to your new V20 account(s) as per the summary table below." Ex. 54.1 (attached to Compl).

41.   Although Hasson had nine accounts with OANDA prior to the v20 migration, which ultimately lead to eight new post-migration accounts, most accounts were dormant. Resp. Response and Objections to Compl. Req. For Docs. at 1 (Sept. 8, 2020); Resp. Mot. For Protective Order at 2 (Sept. 8, 2020).

42.   There are two accounts at issue here: accounts New A (previously Legacy A) and New B (previously Legacy B). Ex. 54.1 (attached to Compl.); Resp. Response and Objections to Compl. Req. For Docs. at 3 (Sept. 8, 2020); Resp. Mot. For Protective Order at 1, 4-5 (Sept. 8, 2020).[3]

43.   Hasson's initial reaction to the migration of his accounts "was to close [his] accounts at the market open and take legal action against OANDA. . . ." Compl. at 15.

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[3] Although the original account numbers were assigned a six-digit numerical identifier, I have reassigned them letters here in order to obfuscate them.

44.	Instead, Hasson created a "damage control plan" to begin "unwinding (closing) [his] new V20 accounts and discontinue any future trading in those two accounts." *Id.* at 15-16.

45.	Hasson attempted to "reduce [his] positions by 20% in the few trading weeks left in the calendar year [2018]" with his ultimate plan to "unwind the balance by the end of 2019." *Id.*

46.	By December 31, 2018, Hasson reduced his AUD/USD position in Account New B from over 2.1 million contracts to 1.9 million contracts. Resp. Statement Of Material Facts at 4.

### d.	*The Margin Closeout and Liquidation Of Hasson's Forex Account On January 2, 2019*

47.	Hasson's remaining 1.9 million AUD/USD contracts in Account New B were denominated in AUD. At market open on January 2, 2019, Account New B had a net asset value (NAV) of $71,275.83 AUD and a required minimum margin (RMM) of $57,000 AUD. *Id.* ¶ 11.

48.	These AUD/USD contracts were traded at a 33:3:1 leverage (or 3%). In other words, in an account denominated in Australian dollars, for every $1,000 AUD customers want to trade, they must deposit $30 AUD. The high degree of leverage makes trading these contracts highly volatile and susceptible to price fluctuations. Boyd Aff. ¶ 2.

49.	An extreme price fluctuation happened on January 2, 2019, when sixty minutes after the market opened, the Australian dollar dropped rapidly by 3% in

just two minutes to its lowest exchange value in 10 years. Boyd Aff. ¶ 10; Boyd Aff. Exs. B and C.

50.　　This extreme price fluctuation lead to margin problems for Hasson.

51.　　To be properly margined, the NAV cannot drop lower than the RMM. *Id.* ¶ 6. If the NAV of an account drops below the RMM, the account enters a margin call and the customer must satisfy the margin call before being allowed to open new positions or add units/contracts. *Id.* And to exit a margin call, a customer must raise the NAV above the RMM. *Id.*

52.　　If the NAV drops to less than 50% of the RMM throughout the trading day, OANDA's system **automatically** generates a margin closeout order. *Id.* ¶ 7.

53.　　OANDA's transfer feature does not allow for transfers of funds between accounts that would under-margin any account; the amount being transferred must be in the withdrawing account or the transfer will fail. Boyd Aff. ¶ 31.

54.　　On January 2, 2019, the NAV of Hasson's New B Account could not drop below an RMM of $57,000 AUD or it would be under margined. If it dropped below 50% of the RMM—that is $28,500 AUD—OANDA's system would automatically generate a margin closeout order. *Id.* ¶¶ 11-12.

55.　　At 2:30 pm PST on January 2, 2019, Hasson began receiving alerts to "TRANSFER FUNDS NOW" to Account New B because of "large price movements[.]" Compl. at 20. At that time—2:30 pm PST—Account New B had an NAV of $66,890.18 AUD. *Id.* ¶ 11.

56.   Shortly after receiving the alerts, Hasson attempted his first fund transfer of $30,000 from Account New A to Account New B, but the transfer was unsuccessful. *Id.* at 20.[4] Account New A had between $10,000 to $12,000 in available funds to be transferred to Account New B. Boyd Aff. ¶ 31.

57.   From 2:30 pm PST through 2:36 pm PST, Hasson attempted to transfer funds from Account New A to Account New B to cover his losses and avoid a margin call. *Id.*

58.   By 2:36 pm PST the AUD rate dropped to 0.69208 and Account New B had an NAV of $53,245.57 AUD—below the $57,000 required margin amount. *Id.* ¶¶ 11-12.

59.   By 2:36:32 pm PST the AUD rate dropped to .68364 and Account New B had $23,743.43 AUD. *Id.* This brought the account value below 50% of the RMM (or $28,500 AUD), which triggered automatic closeout under the 2011 and 2017 Customer Agreements.

60.   At this point, 2:36:32, OANDA liquidated Hasson's account.

61.   At 2:37 pm PST, Hasson successfully transferred $5,000 from Account New A to Account New B. Compl. at 21; Compl. Ex. 72a.

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[4] The only proof of the attempts to transfer funds between his accounts from 2:30 pm PST to 2:36:32 pm PST are Hasson's contentions in the Complaint. *See* Compl. 20-21. I assume the truth of these attempts without actually making a finding of fact for purposes of resolving this Motion for Summary Disposition.

62. At 2:38:41 pm PST OANDA's system generated a Margin Closeout Notice which Hasson received at 2:38:43 pm PST. *Id.* ¶ 14; Ex. G (attached to Boyd Aff).

63. There was a delay in informing Hasson of the liquidation of his account. Approximately 2 minutes and 9 seconds passed from the time OANDA's system auto-generated the margin closeout order for Account New B (in other words when the account was liquidated) and when Hasson received the Margin Closeout Notice (or notice of the liquidation). *Id.* ¶¶ 14-15. Thus, his account was liquidated before he successfully transferred $5,000 into Account New B to cover his losses, though he received notice of that liquidation shortly after the transfer.

64. After that, there was a "trading halt" in the Australian dollar from 2:46:25 – 3:03:36 PM PST. *Id.* ¶ 17; Ex H (attached to Boyd Aff).

65. This litigation ensued.

III. Outstanding Discovery Motions

In addition to OANDA's Motion for Summary Disposition, Hasson has two pending motions before me, his Motion to Strike and Motion to Submit Additional Evidence. Both discovery motions have been fully briefed and both motions are denied.

In Hasson's Motion to Strike, he objects to OANDA's production of his "un-redacted scanned signature image. . . because a signature is highly privileged and its open release creates both a financial and personal security risk[.]" Motion To Strike at 1-2; *see also* OANDA-HASSON 004341. I am denying this Motion for two

reasons. First, I ordered discovery of the relevant document. Second, signatures are not privileged. Judicial systems (and other systems) rely on signatures—handwritten, electronic, and otherwise—to attest to the veracity of documents submitted and to evidence consent. Hasson's Motion to Strike is denied.

In the Motion to Submit Additional Evidence, Hasson asked to submit "log files" for his accounts, which he argued would show the "[b]id price and [a]vailable funds" for his accounts in real time. However, that information was already largely provided in another format and is unnecessary to the resolution of this case. Moreover, Hasson was in possession of the laptop that contained these logs prior to the close of discovery on December 17, 2020, and Hasson did not ask to produce this evidence until April 4, 2022. Mot. To Submit Add. Evidence at 2. Because Hasson's motion is untimely as it exceeds the close of discovery by more than one-and-a-half-years, and because the documents described are redundant and unnecessary to the disposition of this case, the motion to produce these documents is denied.

IV. Legal Discussion

Under Commission Rule 12.310(e), summary disposition is appropriate when each of three conditions has been met: (1) there is no genuine issue of material fact; (2) there is no need for further factual development; and (3) the moving party is entitled to a decision as a matter of law. *Elliot v. Jay De Bradley et al.,* CFTC Dkt. No. 11-R004, 2012 WL 6087468 at *6 (CFTC Dec. 5, 2012); *Levi-Zegliman v. Merrill Lynch Futures, Inc.,* CFTC Dkt. No. 92-R125, 1994 WL 506234 at *6 (CFTC Sept. 15, 1994). The purpose of summary disposition "is to avoid the empty ritual of an

oral hearing." *Elliot*, 2012 WL 6087468 at *6 (internal citation omitted), and at this

stage:

> [T]he judge's function is not to weigh the evidence and determine the
> truth of the matter but to determine whether there is a genuine issue
> for trial. All reasonable doubts about the facts should be resolve in
> favor of the non-moving party. If reasonable minds could differ on any
> inferences arising from undisputed facts, summary judgment should be
> denied.

Id. Upon careful review of the record, I find there is no genuine issue of material

fact on which to hold a hearing, and there is no need for further factual

development because each of Hasson's claims are foreclosed as a matter of law.

A. <u>Hasson failed to establish that the migration of his accounts to the v20
platform caused him actual damages.</u>

In order to establish a violation of the Commodity Exchange Act (CEA) that

is cognizable in reparations, a complainant must allege a violation of the CEA

and/or any regulation promulgated thereunder that "proximately caused" the

complainant "actual damages." CEA § 14(a)(1), 7 U.S.C. § 18(a)(1). Hasson

contends the migration of his MT4 legacy accounts to OANDA's v20 platform

amounts to unauthorized trading and a failure to supervise. Compl. 13-15, 15-19.

However, he cannot show any actual losses associated with that migration.

Hasson argues that OANDA committed unauthorized trading by closing his

positions in Accounts Legacy A and Legacy B and reopening them as Accounts New

A and New B during the v20 platform migration on November 23, 2018. Compl. at

11-13. But no actual trades were placed during this migration and there was no

change in the underlying value of those migrated accounts. The new accounts

retained their legacy accounts' positions at the same values.[5]

Hasson himself admits this.[6] Because Hasson has failed to show any losses

occurred due to the migration, the migration itself cannot sustain a claim here. *See*

7 U.S.C. § 18(a); *see also*, *Muniz v. Lasilla, et al.,* CFTC Dkt. No. 87R395, 1992 WL

10629, *7 (CFTC Jan. 17, 1992) (finding complainants can only recover actual

damages proximately caused by a violation [of the CEA]); *O'Brien v. Forex Capital*

Markets, LLC, CFT Dkt. No. 17-R006, 2019 WL 5861955 (CFTC Oct. 16, 2019)

(dismissing complaint for failure to prove any violation of the CEA proximately

caused complainant's damages by a preponderance of the evidence).[7]

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[5] For example, Hasson's legacy account, Legacy B, was long 2,150,000 AUD/USD units, those positions were closed at an average price of 0.80067, and the account balance at the time of migration was $353,076.43 AUD (this account was denominated in AUD). OANDA-HASSON 000982; 003694. The same amount of positions were migrated and reopened at the same average price for his newly created v20 account, Account New B, which also held an identical balance to his old legacy account. OANDA-HASSON 000339.

[6] In his Complaint, Hasson admits he did not lose any actual money on the migrated trades themselves. Compl. at 15. Instead, he claims he lost money through finance charges, an inability to use his own databases, tax implications, and changes in his own trading strategies. *Id*. These losses are conjectural and are plainly not losses proximately caused by the migration.

[7] Because I find that Hasson has failed to show any damages with respect to the migration, there is no need to discuss any failure to supervise with respect to this claim. There is further no need to consider the breach of contract issue because this Office lacks jurisdiction over it. *See Wills v. First Financial Corp. of America*, CFTC Dkt. No. 82-R857, 1985 WL 56288 at *3-4 (CFTC May 31, 1985) (a mere breach of an agreement, absent some showing of fraudulent intent on the part of the breaching party, does not constitute a violation of the CEA).

B. The margin closeout order and liquidation of Hasson's Account New B was authorized under the Customer Agreement.

With respect to liquidating Hasson's under-margined account, the Commission has long held that a broker may liquidate under-margined accounts pursuant to customer agreements to protect its own financial interest and that of its other customers. *Lee v. Lind-Waldock & Co.,* CFTC Dkt. No. 99-R018, 2000 WL 862615 at *4 (CFTC Jun. 26, 2017); *Baker v. Edward D. Jones & Co.,* CFTC Dkt. No. R 76-4, 1981 WL 26078 at *3-4 (CFTC Jan. 27, 1981). Moreover, the Commission has held that this duty "can supersede any duties the [broker] owes to the under-margined customer. *Lee v. Lind-Waldock & Co.,* 2000 WL 862615 at *5.

The Commission has summarily affirmed cases in which a broker has completely liquidated a customer's positions under an agreement that authorizes total liquidation without any notice when that customer's account has become under-margined. *Cost v. Goscenski*, CFTC Dkt. No. 07-R059, 2009 WL 613634 (CFTC Mar. 5, 2009), *summarily aff'd*, 2013 WL 1398995 (CFTC Apr. 4, 2013); *Glass v. Rosenthal Collis Grp.*, CFTC Dkt. No. 98-R124, 1998 WL 770585 (CFTC Nov. 5, 1998), *summarily aff'd*, 1999 WL 343406 (CFTC May 28, 1999). Federal courts have recognized the same. *Geldermann & Co. v. Lane Processing, Inc.,* 527 F.2d 571, 578 (8th Cir. 1975) (finding it enforceable for broker to liquidate customer's account without notice when the account became under-margined and liquidation occurred pursuant to contractual agreement).

For Hasson to successfully claim OANDA wrongfully liquidated his account, he must do so by a preponderance of the evidence and by proving OANDA either

misled him about its margin policy or that it acted in bad faith. *Baker v. Edward D. Jones & Co.*, 1981 WL 26078 at *4. He has failed to prove either.

With regard to notice, Hasson was put on notice of OANDA's margin policy on at least three different occasions, when: (1) he received, signed, and printed to .pdf the 2011 Customer Agreement; (2) he received the 2017 Customer Agreement and continued to used OANDA's service for more than one-and-a-half years after receiving the updated terms to the Agreement; and (3) OANDA posted its margin policy to its website during the relevant time. This record does not sustain a finding that Hasson was misled as to OANDA's margin policy.

With regard to bad faith with respect to the margin closeout, there is nothing in the record to suggest bad intent on the part of OANDA. OANDA's system automatically generated a margin closeout for Account New B under the terms of its Customer Agreement—after the account fell below 50% of the required margin. OANDA's adherence to its own margin closeout protocol (which it could implement without notice) cannot be construed as evidence of bad faith.

Hasson contends that his inability to transfer funds from Account New A to Account New B constituted bad faith on the part of OANDA because "OANDA's V20 funds management system [was] not propagating properly" and OANDA's "servers went down." Compl. at 20-21. But Hasson plainly tried to transfer money he did not have. Account New A had at most $12,000, but Hasson's early attempts to fund Account New B from it exceeded the $12,000 available (attempting to transfer first $30,000 and then $20,000).

Hasson was finally able to transfer $5,000 from Account New A to Account New B at 2:37 pm PST—24 seconds after the margin closeout because there was a lag between actual closeout and Hasson's receipt of that closeout notice. *Id.*, Ex. 51 (attached to Compl). In other words, Hasson's transfers were successful or unsuccessful in conformance with OANDA's margin transfer policies. Moreover— the Customer Agreements gave OANDA sole discretion and without notice the right to liquidate Hasson's account when OANDA "deem[ed] it necessary to take immediate action."

The record makes clear that during a volatile, fast-moving and turbulent period in the market for the Australian dollar, Hasson did not cover his at-risk position in time. OANDA then acted in conformance with its own Customer Agreement, and the prevailing law, when it liquidated Hasson's account.

CONCLUSION

After carefully and fully reviewing the evidence in this case, and for the reasons discussed throughout this Initial Decision and Order, I am (1) **DENYING** Complainant's Discovery Motions; (2) **GRANTING** Respondent's Motion for Summary Disposition; and (3) **DISMISSING** the Complaint.

Dated: December 7, 2023

/s/ Kavita Kumar Puri
Kavita Kumar Puri
Administrative Judge