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UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

TAGHLAB HAIDAR AL MAHMOUD,
Complainant,

v. **CFTC Docket No. 00-R099**

LINNCO FUTURES GROUP, L.L.C.
and JAD BUTROS DAMOUNI,
Respondents.

Appearances:

On behalf of Complainant:

Taghlab Haidar Al Mahmoud, *pro se*[1]

On Behalf of Respondent:

Mark S. Mandel, Esq.
Jones, Day, Reavis & Pogue
599 Lexington Avenue
New York, NY 10022-6070

Before:

Painter, ALJ

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[1] Attorney, Marwan Sakr, Esq., Attorneys & Counselors at Law, P.O. Box 2230/116, Beirut, Lebanon, filed Mahmoud's various pleadings and post-hearing brief, but did not appear at the trial in this matter.

INITIAL DECISION

I. Preliminary Statement

Complainant Taghlab Haidar Al Mahmoud ("Al Mahmoud") filed this complaint with the Commodity Futures Trading Commission ("the Commission" or "CFTC") on June 1, 2000, alleging misrepresentation and unauthorized trading by Respondents Linnco Futures Group, L.L.C. ("LFG") and Jad Butros Damouni ("Damouni").[2] The complaint was served on Respondents on August 21, 2000. Both LFG and Damouni filed timely answers, denying any wrongdoing.

A trial was held in Chicago, Illinois on April 11, 2001 and April 12, 2001. One day prior to trial, LFG faxed its Notice of Bankruptcy to the court, necessitating its dismissal without prejudice, pursuant to CFTC Rule 12.24(d)(2).[3] On April 30, 2001, the court denied a post-hearing memorandum filed by Damouni in support of his oral motion for a stay or dismissal. All parties have filed their post-hearing briefs, with Al Mahmoud subsequently filing a reply, and this matter is now ready for disposition.

II. Findings of Fact

The court found neither Al Mahmoud nor Damouni particularly credible witnesses. The credibility of Al Mahmoud's testimony is challenging to assess in light of

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[2] While not clearly plead in the complaint, the court considered these alleged misdeeds, as they pertain to Damouni, as allegations of violations of Section 4b of the Commodity Exchange Act, as amended ("CEA"), 7 U.S.C. § 6b (2001). It was not until later in the proceeding that Al Mahmoud specifically alleged LFG to have violated CFTC Regulations 1.33, 1.35(a), 1.37, and Sections 4b, 4c, 4g, 4o and 9a of the CEA. Similarly, it was not until later in the proceeding that Al Mahmoud specially alleged Damouni to have violated Sections 4b, 4c, 4k, 4o and 9a of the CEA.

[3] This was despite the fact that LFG gave notice of its intent to appear approximately four (4) weeks earlier and filed its Pre-hearing Memorandum approximately ten (10) days earlier.

his limited facility with English.[4] It is difficult to distinguish between his struggles with the facts and his struggles with language. But more than that, Al Mahmoud often seemed to exaggerate facts, casting doubt on his reliability. Furthermore, the lack of specificity endemic in Al Mahmoud's allegations, both written and at trial, undermines the weight the court could otherwise attribute to them. Damouni is only slightly more credible by virtue of his command of English and the fact that an attorney aided him in the presentation of his case. The affidavits submitted by both parties are even less persuasive than their testimony.[5] The following findings of fact were made from the available record:

1. Al Mahmoud is a Lebanese citizen. Al Mahmoud is unable to speak English fluently. (Trial Transcript ("Tr."). 3-4; Complaint)

2. Al Mahmoud is represented by Mr. Marwan S. Sakr, a Lebanese attorney whose offices are located in Beirut, Lebanon.

3. Mr. Sakr did not attend the trial held on April 11, 2001 or April 12, 2001. Al Mahmoud was accompanied by Mr. Alistair Wallace Gilbert, a non-Arabic speaking, non-attorney friend. (Tr. at 3-4, 9.)

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[4] It was discovered soon after the commencement of the trial that Mahmoud, unaccompanied by his attorney or an interpreter, spoke very little English.

[5] For example, Mahmoud submitted the Declaration of Hassan Diab, purportedly a futures broker with World Investment Services ("WIS") during the relevant time period, containing this problematic piece of double-hearsay from an unidentified source: "All the deals undertaken by WIS during the day in Lebanon while the Chicago Market was closed, were done through Linnco Europe according to what I heard from WIS dealing staff." Not to be outdone, Damouni submitted the Affidavit of John F. Belom, Esq., purportedly corporate counsel for LFG at all relevant times. In paragraph 4 of his Affidavit, Mr. Belom characterizes WIS as a "non-guaranteed foreign independent introducing broker of LFG." That assertion, by itself, is unremarkable until one considers the context in which it was made. During discovery, Mahmoud specifically requested the production of the foreign broker agreement between LFG and WIS, as well as a copy of any guarantee agreement, neither of which LFG ever produced. The court is duly skeptical of any party who, after failing to produce a contract, attempts to construe its terms in a manner most favorable to that party.

4. Al Mahmoud was assisted by WIS in opening a non-discretionary account with LFG in May 1998. (Tr. at 131-132.)

5. WIS has been referred to, throughout, as a non-guaranteed foreign introducing broker ("IB") of LFG, which was at no time registered with the Commission. (Tr. at 113.)

6. At all relevant times, LFG was a registered futures commissions merchant ("FCM") and a member of the Chicago Board of Trade, the Chicago Mercantile Exchange and several, if not all, of the New York based commodities exchanges. (Tr. at 6; Commission records.)

7. From May 1998 to March 2000, Al Mahmoud frequently appeared in WIS's Beirut office to trade on his account. (Tr. at 86, 140-141, 148.)

8. Damouni "introduced" WIS to Republic New York Securities Corporation prior to "introducing" WIS to LFG. (Tr. at 96.) There is no provision in the CEA or Commission Regulations for associated persons to "introduce" unregistered introducing brokers to registered FCMs.

9. Damouni was an Associated Person ("AP") of LFG from April 1998 through April 2000. (Tr. at 30; Commission records.)

10. Al Mahmoud never personally contacted Damouni to place trading orders or had any communications with Damouni concerning his account at WIS. (Tr. at 72-74, 133.)

11. Damouni testified that he did not control LFG accounts, even those "introduced" through WIS. (Tr. at 95, 214.)

12. Al Mahmoud conducted his commodity trading at WIS through other WIS employees. (Tr. at 132.)

13. All of Al Mahmoud's trades were cleared through LFG. (Tr. at 14.)

14. WIS accounts were "introduced" to LFG on a fully disclosed basis. (Tr. at 89-90, 95.)

15. From at least 1994 to late 1999, Damouni owned 50% of the stock of WIS. (Tr. at 31-32, 53-59, Respondent Exhibit 3.)

16. Damouni received a portion of "clearing charges" from LFG for commissions generated by trades on WIS client accounts cleared through LFG. (Tr. at 44, 87, 209-213.) Damouni also received commissions from WIS as late as 1997, generated from the WIS accounts Damouni "introduced" to LFG. (Tr. at 62.)

17. LFG and Linnco Europe Limited ("Linnco Europe") are two separate corporate entities. (Tr. at 17.)

18. There is no probative evidence of record to support Al Mahmoud's claim that Linnco Europe cleared any of Al Mahmoud's trades.

19. Damouni has been the Chairman and CEO of Linnco Europe since April 1998. (Tr. at 12, 218.)

20. LFG filed for bankruptcy protection on April 9, 2001. (Tr. at 4.)

III. Discussion

Al Mahmoud is a Lebanese citizen. In May 1998, he opened a non-discretionary account with LFG through WIS, an unregistered Lebanese IB in Beirut, Lebanon. LFG

was the registered American FCM through which WIS cleared many of its trades.[6] As WIS is unregistered, it is beyond the jurisdiction of the Commission.[7] At the time the account was opened, Damouni was a registered AP of LFG and received from LFG a portion of the commissions generated by accounts he "introduced." See Finding of Fact No. 16. Additionally, Damouni was the beneficial owner of 50% of WIS stock as well as the Chairman and CEO of Linnco Europe.[8] Damouni claims to have "introduced" WIS and other foreign IBs to LFG.

Al Mahmoud traded through his LFG account from May 1998 until March 2000. At some point, Al Mahmoud became unhappy with the results of his trading and brought this complaint. He alleged that LFG and Damouni conducted unauthorized trades throughout the life of the account in collusion with Linnco Europe in an effort to defraud him. Al Mahmoud also alleged that LFG and Damouni failed to disclose the nature of Damouni's relationships with LFG and WIS before allowing Al Mahmoud to open his account with WIS. The combination of these two factors, Al Mahmoud claims, led to his trading losses.

At the trial, Al Mahmoud appeared, having failed to inform the court of his inability to speak and understand English on anything other than a basic level. Additionally, Al Mahmoud appeared without the aid of his lawyer, Mr. Sakr, who was unable to make the trip from Lebanon. Instead, Al Mahmoud was accompanied by Mr. Alistair Wallace Gilbert, a non-attorney, non-Arabic speaking friend. Mr. Gilbert was

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[6] It should be noted that if LFG was clearing trades for unregistered foreign brokers, it was in violation of Section 4d of the CEA, 7 U.S.C. 6d (2001).

[7] If WIS is, in fact, a foreign introducing broker, it was, at all relevant times, required to be registered with the Commission under Section 4f of the CEA, 7 U.S.C. Section 6f (2001).

[8] The issue of Damouni's divestment of his interest in WIS is further discussed below.

permitted to serve as a "hand-holder", i.e., a friend to assist with papers and in other respects, such as reading a paper described as a portion of Al Mahmoud's direct testimony. It soon became obvious to all parties involved that Al Mahmoud's inability to speak and understand English seriously impeded his ability to present his case and Damouni's ability to meaningfully cross-examine. It is difficult to say which party was harmed more, but the blame clearly lies with Al Mahmoud for not informing the court of his need for an interpreter or making the appropriate arrangements himself. Needless to say, Al Mahmoud's testimony was of little help in uncovering the truth behind his allegations.

Under the circumstances, it would be easy for the court to dispose of Al Mahmoud's claims on these grounds alone. *See Giarritano v. Chicago Mercantile Exch.*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,132 at 38,251 (CFTC Sept. 25, 1991), 1991 WL 192568, at *3 (C.F.T.C)(review procedure constitutionally defective if party precluded from exercising fundamental right of confrontation). However, the court prefers to follow the Commission's often-stated preference for decisions based on the merits. *E.g. Marlow v. Oppenheimer Rouse Futures, Inc., et al.*, [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 23,904 at 34,212 (CFTC Sept. 9, 1987), 1987 WL 106915, at *2 (C.F.T.C).

The court begins by addressing Al Mahmoud's complaint and pre-hearing filings. In almost every respect, Al Mahmoud's complaint fails to plead facts with any specificity.[9] However, as it is the court's responsibility to ensure the fair and orderly

[9] CFTC Rules Relating to Reparations state, in relevant part, a complaint shall include a "description of all relevant facts concerning *each and every* act or omission which it is claimed constitutes a violation of the Act," as well as a "description of all facts which show or tend to show the manner in which it is claimed

conduct of its proceedings, CFTC Rule 12.304, 17 C.F.R. § 12.304 (2001); *Judd v. The Churchill Group, Inc.*, [1992-1994 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,589 at 39,837 (CFTC Sept. 30, 1992), 1992 WL 275452, at *3 (C.F.T.C.), it must refrain from dismissing complaints on the basis of technical flaws in the pleading process. *Alexander v. First Sierra Commodity Corp. et al*, [1994-1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,467 at 43,058 (CFTC July 27, 1995), 1995 WL 447451, at *6 (C.F.T.C.).

This being said, it is difficult to get around the fact that Al Mahmoud's complaint and pre-hearing filings are short on specifics and long on hyperbole. For example, page 1 of Description of Complaint for CFTC Reparations Complaint Form ("Description") alleges, "A number of events arose last year where on about 20 occasions [WIS] carried out deals without my instructions." Al Mahmoud continues to assert that "The dealing tickets [in Complainant's possession at that time] were not signed by me and were not dated or time stamped and often had many adjustments. There are material discrepancies on many of them." However, when asked to identify the specific dealing tickets alleged to contain these material discrepancies, Al Mahmoud responded, "Numerous deals were done without [my] instructions, but [I do] not remember the dates and cannot identify each of them." Without reference to specific trades, Al Mahmoud's claims are merely broad assertions of unauthorized trading that fail to provide Damouni, or the court for that matter, with fair notice of the factual bases of the accusations.[10]

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that the complainant was injured by the alleged violations." CFTC Rule 12.13(b)(1)(iv), 17 C.F.R. 12.13(b)(1)(iv)(emphasis added).

[10] Mahmoud did succeed in specifying one trade, however. Mahmoud addresses eleven (11) S&P futures on Page 2 of the Description that he allegedly sold in February 1999 at a claimed profit of $83,250, which was never paid to him. However, Mahmoud failed to prove or even address at trial any fraud in relation to this transaction.

Al Mahmoud's complaint possesses similar problems with regard to the allegations of misrepresentation. On page 1 of his Description, Al Mahmoud claimed, "Jad Damouni and others committed fraud by failing to place all or even any of my orders in the market." No further evidence was presented in pre-hearing filings or at trial to support this claim. Without reference to specific trades, this allegation is no more than a general assertion of misrepresentation that denies Damouni fair notice of any factual basis.

Unable to make his case at trial, Al Mahmoud took the rather unorthodox step of submitting further evidence during the post-hearing period. Through a series of exhibits attached to his post-hearing brief, Al Mahmoud reasserted his claims of LFG's and Damouni's wrongdoing. It is there, and almost exclusively there, where Al Mahmoud finally directs Damouni to specific trades he claims were unauthorized or otherwise improper. In conjunction with his post-hearing brief, Al Mahmoud also filed a "clarification" of his trial testimony. This "clarification" purports to clear up any "misunderstandings" that may have resulted from Al Mahmoud's lack of facility with English. However, this "clarification" was submitted by Al Mahmoud's counsel, who did not even have the benefit of attending the trial he now attempts to "clarify." In short, both of these new filings improperly attempt to put further evidence in the record that cannot be subject to scrutiny.

The purpose of a post-hearing brief is to provide parties with a final chance to make arguments based on the record evidence entered both before and during the trial; it is not the chance to submit further, substantive evidence that cannot be tested at trial. It goes without saying that the rights of an accused to cross-examine witnesses and

scrutinize evidence presented against him are fundamental to our notions of due process and our system of laws, generally. As these filing are improper, the court will not consider them.

In his post-hearing brief, Al Mahmoud reaffirms his claim that he only received daily and monthly statements from LFG for the months of June and July 1998.[11] However, despite this, he continued to actively trade his account until March 2000, regularly appearing in person at the WIS office in Beirut to do so. In analyzing his statements, he claims that all transactions "missing" from the WIS statements and all cancelled transactions, each supposedly cancelled without his instructions, were "winning deals." He also points out a number of contracts that were allegedly sold when he ordered a buy and bought when he ordered a sale. Al Mahmoud attempts to buttress the veracity of some of these claims by arguing that the office order tickets and floor tickets that LFG failed to produce would prove the true nature of these alleged missing and unauthorized trades, if available. Simply claiming that certain losing trades (and lack of certain other presumably winning trades) are fraudulent is no proof at all of any wrongdoing. Further, while LFG's failure to produce a full set of office order tickets and floor tickets is clearly a violation of CFTC Regulation 1.35, 17 C.F.R. § 1.35 (2001), the mere fact that these tickets are missing does not prove those trades to be fraudulent.

The question then arises as to what this has to do with Damouni? Al Mahmoud provided no evidence or testimony to indicate that Damouni had any connection with any disputed transaction. In fact, Al Mahmoud admitted that he never personally contacted Damouni to place trading orders or had any communications with Damouni concerning

[11] Assuming this is true, LFG would be in violation of CFTC Regulation 1.33, 17 C.F.R. 1.33 (2001).

his account at WIS. Therefore the court finds that there is no proof that Damouni conducted unauthorized trades in Al Mahmoud's account.

Al Mahmoud's claim alleging misrepresentation on the part of LFG and Damouni is somewhat more meritorious. Al Mahmoud has claimed that Damouni was a 50% shareholder in WIS from at least 1994 through late 1999. Additionally, the record plainly shows that as of May 1998, Damouni was also a registered AP with LFG and the Chairman of Linnco Europe. Al Mahmoud contends that these various conflicts of interest directly caused his trading losses.

It seems clear to the court that Damouni did, in fact, have these conflicts of interest. Damouni testified that he requested that his Lebanese attorney[12] convey or transfer his interest in WIS to a Mr. Ramzi Abu Hamad in July 1994. However, Damouni proceeded to "divest" himself again of that very same interest in January 1997. In fact, Damouni entered Respondent Exhibit 3 into the record, which purported to, "...get rid and sell all *my* shares, all *my* stake in World Investment Services." (Emphasis added.) Damouni even testified that he was aware in 1997 that the WIS shares had not been transferred, Tr. at 61, and that he continued to be paid by WIS for a portion of the commissions generated by WIS accounts. Tr. at 62. Further, Al Mahmoud testified that a Mr. Issam Hobeichi testified in a Lebanese court that he had purchased the WIS shares from Damouni in December 1999. The record therefore indicates that no actual conveyance or transfer of Damouni's interest was made in any legal sense in either 1994 or 1997 and that Damouni maintained legal ownership of his stake in WIS until late 1999.

[12] Damouni testified that his Lebanese attorney, Mr. Samir Nasr, was also the attorney for WIS at that time. (Tr. at 58.)

However, the date of the actual sale or transfer of Damouni's interest in WIS is irrelevant in light of the fact that Al Mahmoud failed to show any nexus between Damouni's apparent conflicts of interest and Al Mahmoud's trading losses. To satisfy his burden of proof, Al Mahmoud needed to show that Damouni's 50% ownership interest in WIS, his receipt of payments from WIS and his receipt of payments from LFG constituted material information. Al Mahmoud then needed to demonstrate a nexus between the withholding of this material information and the losses he sustained. Al Mahmoud failed to do this in either his pre-hearing filings or at trial. The fact that Damouni may have had conflicting relationships with WIS and LFG is not, in and of itself, causally related to Al Mahmoud losses. *See Commodity Futures Trading Commission v. A. Francis Sidoti, et al.*, 178 F.3d 1132, 1138 (11th Cir. 1999)(failure to register, by itself, not a nexus for loss).

The issue of Linnco Europe and its alleged role in conspiring with LFG, WIS and Damouni to defraud Al Mahmoud is even more opaque. Notwithstanding the similarity in name between Linnco Europe and LFG, Al Mahmoud offered no compelling proof that Linnco Europe cleared any WIS trades associated with his account. Even assuming Linnco Europe did clear Al Mahmoud's trades (for WIS), Al Mahmoud still failed to prove that Damouni's relationship with Linnco Europe constituted material information and that there was some nexus between the withholding of that material information and the trading losses. *Sidoti*, 178 F.3d at 1138. Damouni's Chairmanship of Linnco Europe is not, by itself, causally related to Al Mahmoud's losses. Further, telephone records between the two corporations, even in conjunction with Damouni's Chairmanship of Linnco Europe, fail to prove any relationship between Linnco Europe and WIS as it

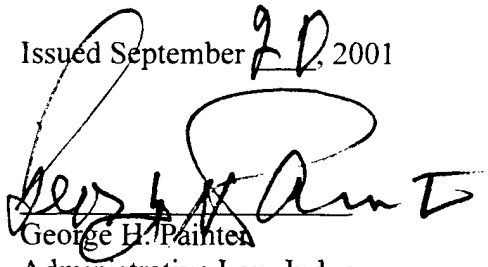
relates to Al Mahmoud's account. Therefore the court finds that while Damouni's various conflicts of interest were of questionable business ethic, there has been no documentary or testimonial evidence to show the materiality of Damouni's relationship with Linnco Europe or any nexus between that information and Al Mahmoud's losses.

ORDER

Complainant Al Mahmoud has failed to show by a preponderance of the evidence that he suffered monetary damages by reason of violations of the Commodity Exchange Act, as amended, on the part of Respondent Damouni. Accordingly, the complaint is DISMISSED.

So ordered.

Issued September 20, 2001



George H. Painter
Administrative Law Judge

David E. Vignola
Attorney-Advisor