U.S. COMMODITY FUTURES TRADING COMMISSION
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Office of Proceedings

KEUNG B. and MAY T. MOY, Complainants v. MAN FINANCIAL, INC., Respondent	)	CFTC Docket No. 04-R019

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INITIAL DECISION

Complainants seek damages arising out of respondent Man's reporting of a January 2003 trade. Although complainants have demonstrated that respondent's less-than-ideal accounting for their trade was confusing, they have not carried their burden of proving that any confusion proximately caused any losses. The following decision is based entirely on undisputed facts set forth in the complaint (with its attached documents) and the tape attached to the respondent's answer.[1]

Complainant Keung B. Moy ("Moy") did the trading in complainants' account. He utilized respondent's on-line trading system. About twenty minutes before the close on January 23, 2003, Moy entered a "market on close" order to liquidate a one-contract short position in the Chicago Mercantile Exchange's March 2003 pork belly contract. Moy called twice to find out if his trade had been executed, and each time he was told it did not show up yet. During the second conversation, Moy was informed that "it's going to be filled" but probably had just not yet been punched in (*see* partial transcript of conversation, set forth at Exhibit 5 to Complaint and at page 5 of Answer).

Later that day, Moy checked for the fill on line, and found his market-on-close order in his account's "dead order file" with an annotation that it was "expired" (Exhibit A to Complaint). Early the following morning, when Moy received his confirmation statement for January 23 by email, it showed the March pork belly short position as open (Complaint at page 1 and Exhibit B to Complaint). Moy thus assumed that the oral reassurance he had been given was incorrect and therefore he "managed the risk" in his portfolio "accordingly" (*id.*). Moy has not explained how his

[1] Neither side took discovery or submitted a final verified statement. A hearing is not necessary since the dispositive facts are not in dispute.

day trade in the *May* pork belly contract, which actually resulted in a profit, was necessitated by his belief that his *March* contract remained open.

When the January 24 statement (Exhibit D to Complaint) was emailed to him on January 25 (Saturday), Moy saw that it reflected an execution of the pork belly liquidation "as of" January 23. This should have occasioned a sigh of relief in discovering he had indeed exited the March contract as he had planned, and perhaps a chuckle at his good fortune in the May contract he had not planned to trade before receiving the erroneous no-fill report.

However, Moy unfathomably chose not to believe the new statement (Complaint at page 2). Instead, Moy decided that the statement for the 24th must be *wrong* because it showed a trade on the 23rd that was not on the statement for the 23rd. He called Man on the following Monday (January 27) for clarification of the "discrepancy," and despite talking to two traders, an assistant supervisor, and the trade desk supervisor – all of whom told him that the trade was his – Moy continued to disbelieve the statement of January 24 could override the January 23 statement.[2]

As a result, he says, he made more transactions to "liquidate meat positions" on January 28 and January 29. Moy is seeking reparations for the "liquidated damages" allegedly suffered in his account as a result of those trades, as well as the loss he suffered when the "expired" order on January 23 was charged to his account on the 24th (Complaint at page 3).

As can be seen from the above recitation of the facts, there is no merit whatsoever to Moy's claim. Moy is simply a trader who received adequate and timely notice of the execution of an order he himself had placed, but who obstinately refused to accept that notice despite its ratification by at least four different employees in respondent's offices.

No violations having been shown, the complaint is DISMISSED.

Respondent is entitled to recover its costs of elevating this complaint to a Summary Proceeding. Accordingly, complainants Keung B. Moy and May T. Moy are ORDERED to pay reparations to respondent Man Financial, Inc., in the amount of $75.00.

Respondent also seeks attorney's fees and other unspecified expenses. Although the complaint is clearly frivolous, respondent's claim for such costs is DENIED because respondent, which has the burden of production and proof on this issue, never submitted any evidence justifying either the legal basis for the request or establishing the amount of any damages sought.

Dated: November 16, 2004

Joel R. Maillie

JOEL R. MAILLIE
Judgment Officer

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[2] Moy claims that there is further evidence that no trade took place because the monthly statement for January shows no listing of that transaction on January 23, ignoring the fact that the transaction is clearly shown on the monthly statement as a "purchase and sale" entered into the account on January 24 – obviously reflecting that the latter date is when the statement was sent to him showing the trade from the prior day.