UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

CAM TRONG NGUYEN, Complainant, v. JACK CARL FUTURES, d/b/a MAN FINANCIAL, INCORPORATED, and CHRISTOPHER MICHAEL SPIRITO, Respondents	* * * * * * * * * * *	CFTC Docket No. 01-R060

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INITIAL DECISION

Cam Trong Nguyen seeks to recover $15,200 that he lost as a result of a series of allegedly mishandled orders. Respondents deny that the orders were mishandled. As discussed below, it has been concluded that Nguyen has failed to establish by a preponderance of the evidence any violations causing damages.

Factual Findings

The parties

1. Cam Trong Nguyen, at the relevant time, was a 46-year old resident of San Diego, California, who was employed as a technical support representative for an electronics firm. Nguyen received a Bachelor of Sciences degree in Electrical Engineering from the University of Bridgeport. When Nguyen opened his Jack Carl account, he had traded futures for five years, traded stocks for eight years, and traded

stock options for six years. In addition, Nguyen had previously worked as a registered stockbroker for three years. [*See* account application (exhibit to answer); and Nguyen's replies to interrogatories 1, 9, 10 and 11.]

2. Man Financial, Incorporated is a registered futures commission merchant. Jack Carl Futures is the discount brokerage division of Man, offering execution and clearing services for customers with self-directed accounts.

Christopher Spirito was a registered associate person with Man during the relevant time. Spirito assisted Nguyen through the new account opening process, but was not involved in any of the disputed transactions.

The account opening

3. According to Nguyen, when he called Jack Carl to discuss opening an account, Spirito represented that Jack Carl "has a first-class location in the S&P 500 pit at the CME, standing between a Goldman Sachs broker and a Merrill Lynch broker, and is at arms length [sic] to the specialist, enabling first-class execution." As a result, Nguyen asserts, he assumed that any "slippages [would] rarely exceed one full point on stop orders." However, Nguyen never told Spirito, or any other Jack Carl agent, that he had interpreted this statement as a virtual guarantee against an arbitrary amount of slippage on stop orders.

Nguyen initially stated on his account application that his annual income was $30,000, and that his liquid net worth was $20,000. Soon after receipt of Nguyen's account application and $18,000 deposit, Man discovered that Nguyen had declared bankruptcy three years earlier. As a result, Man advised Nguyen that it would only allow him to risk $5,000, because it considered $18,000 to be too high of a percentage of his

liquid net worth. Nguyen then submitted new financial information that upped his liquid net worth to $45,000. [*See* Exhibit C to joint answer.]

Nguyen also alleges that Spirito promised that Nguyen would have direct floor access, but did not disclose, until after Nguyen had opened the account and deposited $18,000, that Jack Carl required a $100,000 minimum account balance for floor access. Nguyen asserts that Spirito's made his purported promise in bad faith, because Spirito had known "that my account balance would be about $30,000 only." However, this assertion was undermined by the fact that $30,000 would have represented two thirds of Nguyen's revised liquid net worth, and the fact that Nguyen never made any additional deposits beyond the initial $18,000. Spirito admitted that he could not remember this conversation and admitted that he probably did mention the availability of direct floor access to qualified customers, but asserted that he would not have promised direct access unless he had known that Nguyen was completely qualified for direct access.[1] The fact that neither Spirito's notes nor Nguyen's account-opening documents refer to an authorization for direct access supports Spirito's assertion that he never promised direct floor access for Nguyen. In any event, well before he had placed his first order, Nguyen knew that he would not have direct floor access.

The disputed trades

4. Respondents set up Nguyen to trade through a discount order desk and over the Internet through Jack Carl's electronic order entry system called "Electronic Trade

[1] According to respondents, customers may request direct telephone access to Man's order desks on the floors of the exchange for selected markets. Man considers such requests "on a case-by-case basis, provided the customer meets certain credit, risk and 'sophistication' standards, and executes a 'Floor Access Rider' that indemnifies Man from any liability or claims arising out of the customer's direct access to the trading floor to place orders rather than a discount order desk." [Joint answer.]

Center" ("ETC"). Nguyen began regularly trading S&P futures, placing most of his orders with the order desk. By the end of the fifth week of trading, Nguyen had realized about $8,000 in profits. Unfortunately, these profits would be wiped out by the losses on the disputed trades.

All of Nguyen's orders placed at the order desk or ETC were routed to the floor broker through the CME's TOPS order-entry system. Jack Carl selected independent floor brokers in the S&P pit to fill customer orders. Jack Carl's S&P brokers received TOPS-routed S&P orders on their CUBS automated broker workstations.

5. Set out below is a summary of the five disputed trades.

Order JG1-5021, to sell one June S&P at 1321.70 stop, was reported to Jack Carl as filled at 9:16:07 a.m., and reported to Nguyen 10:03 a.m. According to the CME time and sales report, at *8:48:18 a.m.*, the June S&P traded at 1321.50, thus electing the stop. The order was filled at 1318.00. The time and sales report shows a print at that price 41 seconds later, at *8:48:59 a.m.*, with no upticks.

Order JF1-5054, to sell one June S&P at 1335.00 stop, was reported to Jack Carl as filled at 3:00:54 p.m., and reported to Nguyen at 3:14 p.m. According to the time and sales report, at *3:00:16 p.m.,* the June S&P traded at 1335.00, thus electing the stop. The order was filled at 1334.00. The time and sales report shows a print at that price five seconds later, at *3:00:21 p.m.*, with no upticks.

Order JG1-4016, to sell one June S&P at 1341.70 stop, was reported to Jack Carl as filled at 9:13:05 a.m., and reported to Nguyen at 9:20 a.m. According to the time and sales report, at *9:12:24 a.m.,* the June S&P traded at 1341.50, thus electing the stop. The

order was filled at 1340.50. The time and sales report shows a print at that price 23 seconds later, at *9:12:47 a.m.*, with no upticks.

Order JE1-1038, to buy one June S&P at 1355.10 stop, was reported to Jack Carl as filled at 11:03:07 a.m., and reported to Nguyen at 11:05 a.m. According to the time and sales report, at *11:02:20 a.m.,* the June S&P traded at 1355.50, thus electing the stop. The order was filled at 1358.00. The time and sales report shows a print at that price 28 seconds later, at *11:02:48 a.m.*, with no downticks.

Order JG1-3004, to sell two June S&Ps at 1355.10 stop, was reported to Jack Carl as filled at 9:05:50 a.m., and reported to Nguyen 9:08 a.m. According to the CME time and sales report: at *8:46:47 a.m.,* the June S&P traded at 1355.50, thus electing the stop; and, 18 seconds later, at 8:47:03 a.m., the June S&P went into a fast market. The order was filled at 1329.00. The time and sales shows a print at that price three minutes and three seconds later, at *8:49:50 a.m.*, in a fast market, and with no upticks.[2]

Discussion

In order to recover his trading losses, Nguyen must establish by a preponderance of the evidence that Jack Carl's floor brokers failed to exercise due diligence in the execution of the disputed orders. Nguyen asserts that, for each of the disputed trades, the slippage between the time that the market had hit the stop price and the time that the order had been executed was "excessive," and thus evidence of "reckless mishandling or fraudulent front-running" in the execution of his orders. However, since Nguyen has produced no evidence showing that the slippage on the disputed orders was patently or inherently excessive in light of the prevailing market conditions, the slippage by itself is

[2] Neither side sought to subpoena the floor brokers who filled the disputed orders. *See* respondents' replies to interrogatories 1 through 5.

insufficient to shift the burden to respondents to provide a more detailed justification for the manner in which the orders were handled. Thus, in the absence of any evidence that Jack Carl's agents failed to exercise due diligence in executing any of the orders, Nguyen's claim that Jack Carl mishandled his orders must fail.

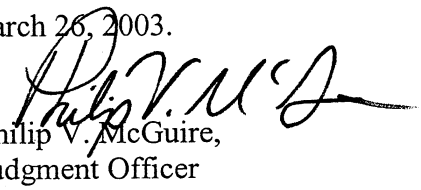
Nguyen also has not established any material misrepresentations by Spirito during the account opening. As noted above, his assertion that Spirito had promised him direct access was neither plausible nor substantiated. Even if he had established that Spirito had made such a promise, Nguyen could not have recovered any damages, because the issue of direct access was rendered irrelevant by the fact that each of the five disputed orders was a stop order that was resting in the market.

Finally, Nguyen has failed to show that it was reasonable for him to convert Spirito's representations about the prime location of Jack Carl's S&P order desk into an improper guarantee against an arbitrary amount of slippage on stop orders, because slippage on stop orders depends on market conditions and not the location of the desk. Moreover, respondents cannot be held to have assumed a special duty to limit slippage on stop orders to an arbitrary amount, where Nguyen never informed them that he hoped to hold them to that special duty.

ORDER

No violations causing damages having been established, the complaint is DISMISSED.

Dated March 26, 2003.



Philip V. McGuire,
Judgment Officer