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UNITED STATES OF AMERICA
before the
COMMODITY FUTURES TRADING COMMISSION

IN RE: SCOTT D. SEVERANCE, Complainant, v. MARK DAVID BATEMAN, FIRST OPTIONS OF CHICAGO, INC., and JOHN JOSEPH FISCHER, Respondents.	CFTC Docket No. 02-R078

INITIAL DECISION

Before: George H. Painter, Administrative Law Judge

Appearances: Scott D. Severance,
Pro Se

Elliot Samuels, Esq.
Attorney for Respondent Mark D. Bateman

and

Richard T. Reibman, Esq.
Robbins, Salomon & Patt, Ltd.
Attorney for Respondents First Options of Chicago, Inc.
and John J. Fischer

PRELIMINARY STATEMENT

On October 21, 2002, Complainant Scott D. Severance filed a complaint with the United States Commodity Futures Trading Commission alleging unauthorized trading, misrepresentation, breach of fiduciary duty[1] and failure to provide account information on the part of Respondents Mark D. Bateman, John J. Fischer and First Options of Chicago, Inc, in violation of the Commodity Exchange Act (hereinafter "Act") and Commission Regulations (hereinafter "Regulations"). All Respondents filed timely Answers and denied any wrongdoing in connection with the handling of Severance's account. Respondent Bateman also filed a counterclaim against Complainant Severance for losses Bateman allegedly incurred as the guarantor of Severance's account.

The case was heard on May 22, 2003 in Chicago, Illinois. The parties submitted simultaneous post-hearing memoranda on or around July 7, 2003. On August 18, 2003 the record was reopened to obtain a more complete audit trail of all trading done on Severance's account. The parties were invited to file supplemental post-trial briefs concerning the audit trail information. None was filed. This matter is now ready for decision.

FINDINGS OF FACT

The findings set forth below are based upon exhibits admitted into the record and the reliable testimony of witnesses. This court found the testimony of Complainant Scott Severance to be honest and reliable. In marked contrast, the court found the testimony Respondent Mark Bateman to be self-serving and unreliable. The testimony of Respondent John Fischer was also equally unconvincing. Fischer was reserved and evasive during testimony, gave vague answers and consistently claimed to not to remember crucial facts of the case.

[1] Although poorly stated in the Complaint, Severance alleged a breach of fiduciary duty on the part of First Options and Bateman.

1. Complainant Scott D. Severance ("Severance") had no knowledge or experience in commodity futures trading prior to the time in question.[2]

2. Respondent Mark D. Bateman ("Bateman") is a registered floor broker and floor trader, who has been trading in commodity futures since January 1995.[3] His trades are cleared by First Options of Chicago, Inc.[4] Bateman testified that he was an independent trader and traded only for his own account.[5] Although Bateman denied ever handling customer accounts as a floor broker,[6] he testified that he liquidated Severance's account with the full knowledge and consent of First Options of Chicago, Inc., but without the consent of Severance.[7]

3. Respondent First Options of Chicago, Inc. (hereinafter "First Options") is a registered futures commission merchant (hereinafter "FCM") with its principal place of business in Chicago, Illinois.[8]

4. Respondent John J. Fischer (hereinafter "Fischer") was a customer service representative at First Options during the time the events giving rise to this lawsuit occurred.[9]

5. Severance met Bateman through a mutual friend around the end of 1999 or the beginning of 2000.[10] Bateman told Severance that he would teach Severance how to successfully trade futures contracts under the condition that Severance invest $25,000 in an account with First Options, and split the profits equally.[11] Bateman would guarantee the account[12] and Severance would be liable for any losses.

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[2] *See* Complaint, 9/20/02, p. 2.
[3] Tr. at 58:18-59:7; *See also* Answer (12/3/02), ¶A.
[4] Tr. at 59:12-16.
[5] *Id.*
[6] *Id.*
[7] Tr. at 71:4-11; 72:6-15; 69:13-21.
[8] First Options "Proposed Findings of Fact & Conclusions of Law," ¶1; Exhibit 4.
[9] Tr. at 94: 9-14.
[10] Tr. at 8:15-16; 9:13-16; & 57:17-21.
[11] Tr. at 8:15-22.
[12] Tr. at 19-20 & 10:19-24.

6. In April 2000 Severance moved from Ann Arbor, Michigan to Chicago, Illinois to trade commodity futures, though he had never traded them before. Severance relocated to Chicago based on Bateman's representations that he could successfully trade commodity futures.

7. Bateman required Severance to open his account with First Options, where he had already established a relationship with Fischer and where he cleared his trades.[13] Severance opened an account with First Options on or about April 13, 2000.[14] An investor and personal friend of Severance's lent him $24,000 and he invested $1,000 of his own funds in order to take part in the business venture with Bateman.[15] Bateman guaranteed the account for $100,000.[16]

8. The Third Party Guarantee Agreement stated, "This is a continuing guarantee and shall remain in effect until it is terminated by the Guarantor by providing written notice to the Clearing Member. Such termination shall be effective only as to claims which arise out of transaction[s] entered into by Lessee after receipt of the notice of termination."[17]

9. The escrow document guaranteeing Severance's account provided that it could not be used for margin purposes.[18]

10. It was orally agreed that Bateman would receive one half of all the profits generated in Severance's account, and not be liable for losses.[19] Severance would shoulder all the losses.[20] The two never got around to committing their oral agreement to writing.[21]

11. Severance took a class on how to use the Globex trading system and Bateman helped to set up a Globex screen up at Severance's home.[22] Bateman wanted to restrict Severance's

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[13] 17:8-15; 11:8-16; 59:12-16.
[14] Tr. at 11:8-20.
[15] Tr. at 9:19-24; 36:1-8.
[16] Tr.8:18-20; *See* "Third Party Guarantee" signed by Bateman 5/30/00.
[17] *See* "Third Party Guarantee" signed by Bateman 5/30/00.
[18] *See* "Escrow Document" signed by Bateman on 4/24/00.
[19] Tr. at 13:23-14:8.
[20] Tr. at 10:1-15; 20:24; 14:7-8; *See also* Complaint.
[21] *Id.*

trading to one large Nasdaqs or five minis and assured Severance that he would set up the account in such a manner as to prevent Severance from trading outside these parameters.[23] Such restrictions were never placed on Severance's account.[24]

12. Severance had the sole authority to trade his account and there was no power of attorney authorizing Bateman to trade Severance's account.[25] On First Options's individual new account form Severance checked the answer "no" in response to the question "Do any other persons or entities control the trading of this account?"[26]

13. Severance did not receive daily confirmations of his trades from First Options.[27] Severance complained to First Options about his failure to receive any confirmations or account statements prior to October 11, 2003.[28] However, Bateman received the daily confirmations from First Options via e-mail.[29]

14. Although Fischer never affirmed that he assured Severance he would always have the opportunity to put more money into his account, he testified that it was possible he may have made such promises to Severance.[30]

15. Fischer testified that he did not recall Severance's request for confirmations or account information, nor a follow-up e-mail from Severance, sent a couple of weeks after October

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[22] Tr. at 11:22-12:9.
[23] Tr. at 17:20-22 & 18:11-12.
[24] Tr. at 18:9-15.
[25] Tr. at 16:16-21.
[26] First Options New Account Form, Individual Account, First Options and Fischer Exhibit 5.
[27] Tr. 29:1-10.
[28] Tr. at 27:23-28:14; 29:3-10; 30:8-18; 104:4-10.
[29] Tr. 67:17-19.
[30] Tr. at 101:1-23. Fischer was reserved and evasive during testimony, and gave vague answers when asked about his communications with Severance concerning his ability to add more money into the account and Severance's request for the daily confirmations.

11, 2000, informing Fischer that he was not receiving the daily confirmations.[31] Fischer did not attempt to rebut Severance's testimony that he was not receiving daily confirmations.

16. On September 29, 2000, Severance began trading the account, which held a total of $25,005.70 in funds.[32] Severance bought one December 2000 IMM Nasdaq 100 contract at a price of 3721.500 and immediately sold it at 3722.000, making a modest profit of a $10.00.[33] Unbeknownst to Severance, Bateman was the opposite trader in the transaction, bucketing Severance's trades by taking the opposite side of Severance's order into his own account.[34] On October 4, 2000, Bateman again took the opposite side of Severance's order.[35]

17. Severance alleged in his Complaint that Bateman had bragged to him about taking "the other side" of electronic trades with himself through the Globex trading system and of his ability to evade detection by regulators.[36]

18. On the morning of October 6, 2000, when Bateman discovered that Severance was long by four large Nasdaqs and had made over $9,000 overnight, he wrote Severance an irate e-mail reminding Severance of the trading restrictions they had agreed upon.[37] Severance's equity in the account increased to $34,627.48, the highest the account would ever reach, on October 7, 2000.[38]

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[31] Tr. at 103:17-105:13.
[32] Fischer and First Options' Consolidated Answer (12/13/02), p. 2; *See also* Account Statement 10/2/00-10/13/00. CME electronic audit trail 9/29/00.
[33] CME electronic audit trail 9/29/00 & Account Statement 9/29/00.
[34] *Id.* **Bucketing:** Directly or indirectly taking the opposite side of a customer's order into a broker's own account or into an account in which a broker has an interest, without open and competitive execution of the order on an exchange. Section 4b(a)(iv) of the Act makes it unlawful to take the other side of a customer's order without the customer's consent.
[35] CME electronic audit trail 10/4/00.
[36] Complaint at p. 3.
[37] Tr. at 65:2-18.
[38] *Id.*

19. After October 7, 2000, the balance in the account began to significantly decline. By October 10, 2000, the balance in the account had decreased to $6,574.86 due to a sudden 45-point market drop, resulting in a margin deficit of $56,425.15.[39]

20. On the morning of October 11, 2000, Severance's account had a deficit balance of $7,443.30.[40] When Bateman learned that the deficit had reached into his guaranteeing funds, he called Severance and directed him to liquidate the account to prevent further losses.[41] Bateman quickly became frustrated with Severance and terminated the conversation by hanging up the phone.[42]

21. Bateman thereafter called First Options and spoke with one Aaron Lopez (hereinafter "Lopez") about liquidating the account and pulling his guarantee.[43] Lopez told Bateman to call E-Global in order to close out the account.[44] Bateman called E-Global and instructed an E-Global employee to close out the account despite the fact that he did not have a power of attorney authorizing him to place such an order. [45]

22. Fisher testified that he generally authorized a guarantor to liquidate an account that was in deficit[46] and that it was appropriate for Bateman to liquidate Severance's account without contacting him because "it has been done in the past by guarantors and by my firm and myself."[47] This was the only statement Fischer asserted with certainty during testimony and the court deems the statement to be true.

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[39] Fischer and First Options' Consolidated Answer (12/13/02), p. 2; *See also* Account Statement 10/2/00-10/13/00.
[40] *See* Account Statement 10/2/00-10/13/00.
[41] Tr. at 69:18-19.
[42] Tr. at 70:16-21; 18:16-21.
[43] Tr. at 71:1-11.
[44] Tr. at 72:6-15.
[45] Tr. at 72:6-20.
[46] Tr. at 95:1-96:8.
[47] Tr. at 105:14-19.

23. On October 11, 2000, Bateman caused Severance's account to sell two December 2000 IMM Nasdaq 100 futures contracts through the CME's Globex system. The CME has identified the opposite trader to the transaction as Clayton Reed (KD6), who cleared the trade through First Options.[48] This unauthorized trade single-handedly caused Severance's account to lose $27,750[49] and was executed through Reed's account and not Severance's account.[50]

24. On October 12, 2000, Severance's account was still short one December 2000 IMM Nasdaq 100 contract and long five December 2000 IMM EMINI Nasdaq contracts.[51] First Options offset these positions on October 12, 2000, causing Severance's account to incur further losses in the amount of $18,910.[52]

25. There is no evidence in the record to suggest that First Options ever issued a margin call to Severance, or that it ever notified him of the status of his account during the time that it existed. Severance lost all of his funds. It appears from the record that First Options recovered the debit balance of $7,443 from the guarantee provided by Bateman.[53]

DISCUSSION

Scott Severance had never traded commodity options or futures prior to the time in question. In late 1999 Severance met Mark Bateman through mutual friends. Bateman, who Severance was led to believe was already a millionaire from successfully trading commodity futures, told Severance that he would teach him how to profitably trade commodity futures. As a further inducement Bateman told Severance that he would guarantee Severance's account up to $100,000 with the understanding that he and Severance would split the profits, and that Severance would pay

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[48] Respondents' Consolidated Pre-Hearing Memorandum (3/3/03) at ¶F.
[49] Account Statement 10/11/00.
[50] CME audit trail 10/11/00.
[51] Account Statement 10/11/00.
[52] Account Statement 10/12/00 & CME audit trail 10/12/00.
[53] Tr. at 71:1; 18:19-21; *See also* Complaint & Account Statement 10/2/00-10/13/00.

any losses. Bateman's representations and promises to teach Severance his trading strategies made such a forceful impression on Severance that he moved from Ann Arbor, Michigan to Chicago, Illinois to trade commodity futures. Severance secured a loan of $24,000 and put up $1,000 of his own funds to open a trading account at First Options, the futures commission merchant ("FCM") designated by Bateman. At no time did Bateman and Severance reduce their oral agreements to writing.

Shortly after relocating to Chicago Severance opened an account with First Options as required by Bateman. Severance alone had authority to trade the account. Both Bateman and Severance testified that Bateman had an established business relationship with First Options, having cleared his trades through First Options for a number of years. Severance then took a class to learn how to use the Globex trading system and Bateman helped him to set up a Globex screen in his apartment. Severance began trading on September 29, 2000 and his initial balance of $25,000 grew to $34,627.48, the highest the account would ever reach, on October 7, 2000.

Bateman received and reviewed daily confirmation statements of Severance's trades. By contrast, Severance did not receive confirmation statements, and was not aware of the actual status of his account during the time the account was open. The relationship between Severance and Bateman began to sour on October 6, 2002, when Bateman discovered that Severance was long four large Nasdaqs and had made over $9,000 overnight. Bateman wrote Severance an irate e-mail, reminding Severance of the trading restrictions they had agreed upon.[54] The relationship continued to deteriorate thereafter.

<u>§4b violations</u>

This case is comprised of a series of red flags, seriously undermining the legitimacy of Bateman's business agreement with Severance. Bateman misrepresented to Severance that he

[54] Tr. at 65:2-18.

would show him how to trade futures contracts profitably. There is no evidence indicating that anyone using Bateman's trading strategies could have made profits in the commodity futures market. Bateman also required Severance to open his account at First Options, where Bateman already had an established relationship with Fischer. The terms of their agreement were also inherently inequitable. According to the agreement, Severance would bear all the losses and split his profits equally with Bateman. Additionally, Bateman received daily confirmations of Severance's trades, while Severance did not receive any of the confirmations until his account was closed. The evidence also shows that Bateman took opposite sides of more than one of Severance's trades and that he had previously bragged to Severance about taking the "other side" of trades and avoiding detection by government regulators. Finally, Bateman unlawfully liquidated Severance's account to avoid liability for the guarantee. These facts add up to material misrepresentations intended to fraudulently induce Severance to enter into an inequitable agreement.

The deception did not stop at Bateman's actions but rather was colluded by the cooperation of Fischer and First Options, who misrepresented to Severance that he would always be allowed to put more money into his account whenever it fell below margin.[55] These promises operated to further induce Severance to open his trading account at First Options. Additionally, the Third Party Guarantee which Bateman signed clearly states that it "shall remain in effect until it is terminated by the Guarantor by providing written notice to the Clearing Member," and that "such termination shall be effective only as to claims which arise out of transaction[s] entered into by Lessee after receipt of the notice of termination."[56] Additionally, the Commission has recognized "the customer's right to damages in a margin call situation when the FCM misled its customer

[55] As an FCM, First Options has a fiduciary duty to its customers. Severance had a reasonable expectation, based on First Option's promises, that he would be allowed to put more money into his account to avoid an involuntary liquidation. Not only did First Options fail to honor its promises to Severance, it also breached its fiduciary duty to him when it wrongfully authorized Bateman to liquidate Severance's account.
[56] *See* Third Party Guarantee, 5/30/00.

concerning its margin or liquidation policies."[57] Thus, an FCM does not have a *carte blanche*, allowing it to liquidate a customer's account at will if it has led a customer to have a reasonable expectation that his account would be handled differently, as was the case in this instance.

A material misrepresentation constitutes fraud in violation of §4b of the Act.[58] Bateman made material misrepresentations to Severance in order to induce him into moving to Chicago to trade commodity futures and unlawfully liquidated Severance's account to avoid his liabilities as a result of the guarantee. First Options and Fischer also materially misrepresented to Severance that he would be allowed to put more funds into his account to avoid an involuntary liquidation. The weight of evidence establishes that Bateman, Fischer and First Options fraudulently made material misrepresentations to Severance in violation of §4b of the Act.

The unlawful liquidation of Severance's account was as equally unjustifiable as the material misrepresentations made in this case. On the morning of October 11, 2000, Bateman reviewed Severance's account and discovered that it had a debit balance of $7,443.[59] He immediately called Severance and demanded that Severance exit the positions immediately. After the two spoke for a couple of minutes Bateman lost his patience and hung up the phone. Bateman then called First Options and spoke with one Aaron Lopez about withdrawing his guarantee and liquidating Severance's account. Lopez instructed Bateman to call E-Global and speak with a particular person there who could help him effectuate the liquidation. Bateman then called E-Global and ordered the liquidation of Severance's account. E-Global complied with Bateman's instructions. It is abundantly clear from the record that First Option's employees, Fischer and Lopez, permitted Bateman to trade Severance's account.

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[57] *Ahlstedt v. Capitol Commodity Servs., Inc.*, [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶27,131 at 45,290 (CFTC Aug. 12, 1997).
[58] *Wills v. First Financial Corp. of America*, [1984-1986 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶22,605 at 30,597 (CFTC May 31, 1985).
[59] Tr. at 68:4-11.

First Options had no cause to be alarmed over the status of Severance's account on October 11, 2000. Bateman's $100,000 guarantee ensured that First Options would not be financially harmed on October 11, 2000 by reason of the positions then on the account. Bateman could have terminated his guarantee as to positions not yet established but he had no authority to revoke his guarantee over existing positions. Nothing in the record suggests that he gave such a notice to Severance or First Options and the Respondents do not argue to the contrary.

Bateman did not have a power-of-attorney authorizing him to liquidate Severance's account and his unlawful liquidation of the account constitutes unauthorized trading in violation of §4b of the Act.[60] In the context of unauthorized trading the scienter requirement of §4b is met if the respondent "acted deliberately, knowing that his acts were unauthorized and contrary to instructions."[61] Bateman was cogently aware at all times that he did not have power-of-attorney to trade the account, and that Severance did not want the account to be liquidated. Bateman liquidated the account without any authority solely because he was at risk due to the guarantee agreement, which provided that he could not revoke the guarantee with respect to existing conditions. Bateman's sole interest in liquidating the account was to limit his obligation to guarantee the account. Thus, Bateman's unauthorized liquidation of Severance's account demonstrated a reckless disregard for his duties under the Act in violation of §4b of the Act.

Although Bateman did not have a power-of-attorney authorizing him to liquidate Severance's account, First Options, through Fisher and Aaron Lopez, permitted him to unlawfully close out Severance's account. Bateman operated, in effect, as a *de facto* agent of First Options.

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[60] Under §§4b(a)(i)(iii) of the Act a person may not attempt to cheat or defraud, nor willfully deceive another person in connection with any commodity futures transaction. 7 U.S.C. §6(b). Taking action contrary to an account holder's instructions without authority constitutes unauthorized trading under §4b of the Act. *In re Interstate Securities Corp.*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶25,295 at 38,955 (CFTC June 1, 1992) *citing Cange v. Stotler Inc.*, 826 F.2d 581, 589 (7th Cir. 1987).

[61] *Haltmier v. CFTC*, 554 F.2d 556, 558 (2d Cir. 1977).

Under Commission regulation 166.2 an FCM, may not directly or indirectly effect a transaction in a commodity interest for the account of any customer unless, before the transaction, the customer specifically authorized the FCM to effect the transaction. An FCM may close out an account which fails to respond to a margin call, or appears unable to meet a margin call. Nothing in the record shows that First Options made a demand on Severance for additional margin. First Options authorized Bateman, who had no power-of-attorney, to control and liquidate Severance's account, all in violation of Regulation 166.2.[62]

Liability as Commodity Trading Advisor

Additionally, as a result of their agreement, Bateman acted as a commodity trading advisor (hereinafter "CTA") to Severance.[63] Bateman showed Severance how to operate the Globex trading system and advised Severance on strategies to profitably trade NASDAQ futures contracts in exchange for one half of profits accrued to Severance's trading account. A person is a CTA if that person:

> (a) engages in the business of advising others, either directly or through publications or writings, as to the value or the advisability of trading in futures contracts or options on futures contracts
>
> (b) for compensation.[64]

Under Section 4o of the Act it is unlawful for any CTA, whether registered, required to be registered, or exempted from registration,[65] to:

> (A) use the mails or any means or instrumentality of interstate commerce to "employ any device, scheme, or artifice to defraud any client . . . or prospective client" or

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[62] 17 C.F.R. §166.2.

[63] Bateman's misrepresentations and unauthorized liquidation of Severance's account constitutes a breach of fiduciary duty. As a CTA, Bateman had a fiduciary duty to not mislead Severance and to act in his best interests with respect to the trading account. Bateman's taking the opposite side of Severance's trades and unauthorized liquidation of the account was a conflict of interest and therefore a breach of fiduciary duty.

[64] 7 U.S.C. §1a(5)(A).

[65] *CFTC v. Savage*, 611 F.2d 270,281 (9th Cir. 1979).

(B) "engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client . . . or prospective client."[66]

Although §4o(1)(A) requires scienter,[67] §4o(1)(B) does not. Bateman used the telephone and Internet to communicate with Severance about the account. The evidence also shows that Bateman unlawfully liquidated Severance's account and willfully deceived Severance about the handling of his account, thereby establishing §4o(1)(A) liability. Bateman's unlawful liquidation of Severance's account and material misrepresentations to Severance regarding their agreement, without more, also makes him liable under §4o(1)(B) of the Act.

Failure to Supervise

First Options failed to diligently supervise the handling of Severance's account in violation of Regulation 166.3. Under Regulation 166.3 a Commission registrant is required to:

> "diligently supervise the handling by its partners, officers, employees and agents . . . of all commodity interest accounts carried, operated, advised or introduced by the registrant and all other activities of its partners, officers, employees and agents . . . relating to its business as a Commission Registrant."[68]

Any reasonably diligent FCM would have kept Severance apprised of the trading activity in his account. A diligent FCM would also not authorize a person without a power of attorney to liquidate a customer's account. Instead of performing its duty to diligently supervise the handling by its employees of Severance's commodity interest account, First Options chose to keep Severance in the dark about his account. He never received any account statements or daily confirmations of his trades until weeks after his account had been liquidated. Severance's account was also liquidated without his prior knowledge or consent after he had been lead to believe by Fischer, a

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[66] 7 U.S.C. §6o.
[67] *In re Commodities Int'l Corp.*, [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,943 at 44,564 (CFTC Jan. 14, 1997).
[68] 17 C.F.R. §166.3.

First Options employee, that he would be allowed to put more funds into his account to avoid an involuntary liquidation.

Accordingly, First Options violated Regulation 166.3 in that it failed to diligently supervise the handling of Severance's account.

Failure to Provide Confirmation Statements

Although Bateman received daily confirmations of executed trades for Severance's account via e-mail,[69] Severance did not receive them. Severance testified that he did not get the confirmations until several weeks after October 11, 2000, when he requested them from Fischer.[70] First Options never offered any proof that it did in fact send these confirmations to Severance. Such proof, if it existed, probably would have been readily available from its business records. Regulation 1.33(b)(1) requires that each FCM provide its commodity customers, no later than the next business day after a transaction, "written confirmation of each commodity futures transaction caused to be executed by it for the customer." Accordingly, First Options failed to provide confirmations of Severance's trades in violation of regulation 1.13(b)(1).

Bateman's Counterclaim

Respondent Bateman counterclaims for the losses in the amount of $7,442.23, which he claims was the direct result of Severance's trading. Regulation 12.19 states that a registrant may file a counterclaim "if it arises out of the transaction or occurrence or series of transactions or occurrences set forth in the complaint."[71] The counterclaim does not arise from the unauthorized liquidation and misrepresentation as alleged in the complaint, but rather it arises from the guarantee agreement and Bateman's business agreement with Severance. Bateman's counterclaim is, accordingly, dismissed.

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[69] Tr. at 67:17-19.
[70] Tr. at 29:3-10.
[71] 17 C.F.R. §12.19.

CONCLUSIONS OF LAW

1. Bateman violated §§4b(a)(i)(iii)[72] of the Act in that he fraudulently induced Severance to move to Chicago to trade commodity futures and open a trading account at First Options, and in that he liquidated Severance's account without proper authorization.

2. Bateman violated §§4b(a)(ii)[73] of the Act in that he made material misrepresentations to Severance in order to induce him to enter into an inequitable agreement.

3. Bateman violated §4o(1)(A) in that he acted as a CTA who knowingly used the mails or other instrumentalities of interstate commerce to perpetrate a fraud upon Severance.

4. Bateman violated §4o(1)(B) in that he acted as a CTA who used the mails or other instrumentalities of interstate commerce to engage in a course of business, which operated as a fraud or deceit upon Severance.

5. Fischer violated §4b(a)(ii)[74] of the Act in that he made material misrepresentations to Severance, causing him to believe that he would have the opportunity to put more money into his account to avoid an involuntary liquidation.

6. First Options is vicariously liable pursuant to §2(a)(1)(B)[75] for Fischer's violation §4b(a)(ii)[76] of the Act in that Fischer made material misrepresentations to Severance regarding the handling of his account.

7. First Options violated Commission regulation 166.3 in that it failed to diligently supervise the handling of Severance's commodity interest account by its employees.

8. First Options violated Commission regulation 166.2[77] in that it wrongfully authorized Bateman to liquidate Severance's account.

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[72] 7 U.S.C. §6b.
[73] *Id.*
[74] 7 U.S.C. §6b.
[75] 7 U.S.C. §2i.
[76] 7 U.S.C. §6b.

9. First Options violated Regulation 1.33(b)(1)[78] in that it failed to provide Severance with daily confirmations of his trades.

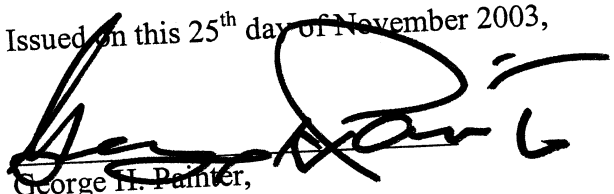
ORDER

The counterclaim filed by Respondent Bateman is without merit and it is hereby DISMISSED.

Complainant Severance has established by a preponderance of the evidence that Respondents Bateman, Fischer and First Options violated the Commodity Exchange Act in connection with the handling of his account, and that he sustained monetary damages by reason of those violations. Respondents are ORDERED to pay to Complainant Severance $25,000, the amount he deposited into his trading account before he began trading the account, plus interest,[79] at a rate of 1.30 percent from September 26, 2000 to the date of payment. Respondents are jointly and severally liable for the payment of this judgment.

IT IS SO ORDERED.

Issued on this 25th day of November 2003,



George H. Painter,
Administrative Law Judge

[77] 17 C.F.R. 166.2.
[78] 17 C.F.R. 133(b)(1).
[79] *Milanovich v. Siegel Trading Co., Inc.*, [1984-1986 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶22,341 at 29,606 (CFTC Apr. 16, 1984) *citing Ruddy v. First Commodity Corp. of Boston* [1980-1982 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶21,435 at 26,086, fn. 18 (CFTC Mar. 31, 1981) ("Prejudgment interest should 'be the rule, rather than the exception' in cases where the award was compensatory and involved the breach of a fiduciary duty").