



to him. The parties were directed to provide additional information as to the events surrounding the evaporated profits and the liquidation order all sides agreed was placed by Mr. Tung.

Eventually, an Order of Dismissal for Cause dismissed the complaint of Mr. Tung for reasons not relevant here. The Commission reversed that decision and remanded to allow Mr. Tung to present his testimony in a telephonic Oral Hearing. The lengthy procedural history of those events is recounted in the Commission's Order of Remand, *sub nom. Dong v. Concorde Trading Group, Inc.*, [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 30,144 at pp. 57,575-76 (CFTC Oct. 14, 2005).

Since the remand, an Oral Hearing has been held in which both Mr. Tung and Mr. Ledo participated. Concorde did not appear.<sup>1</sup> The transcript from the March 1, 2006, Oral Hearing, revealed many technical problems (apparently stemming from cable connections) which had compromised the court reporter's ability to fully transcribe the hearing. Occasional gaps, static, and low-volume periods resulted in scores of "Technical Difficulty" or "Intelligible" notations and missing testimony. Careful review by the Judge and the Judge's paralegal, including repeatedly listening to the tapes at various volumes and comparing trouble spots on the tapes to the transcript, has achieved a reliable corrected transcript that has been certified by the Judge and placed into the docket file to replace the incomplete version.<sup>2</sup> Occasional skips of a second or two's duration remain, but no significant testimony has been lost. Therefore, the case is now ready for decision.

Throughout this proceeding, and during his testimony, Mr. Tung reveals himself to be a deeply intelligent, headstrong, and persistent individual whose careful attention to detail is severely undermined by an apparent inability to recognize when he has made a mistake in his memory, or when he has misunderstood something. For example, prior to the original Order of Dismissal, Mr. Tung continually referred to the Judge's request that Mr. Ledo reconsider withdrawing a settlement offer as an "order" to Mr. Ledo to do so (*see, e.g.*, Mr. Tung's "Motion to Notice Dated 9/9/02", faxed Sept. 12, 2002, pgs 1 and 2), and the Judge's efforts to help the parties settle the case were in part derailed by Mr. Tung's anger regarding Mr. Ledo's refusal to abide by the "order" that in fact, had never been given (*see* Order and Warning dated September 20, 2002, at pg. 3). During the hearing, at one point Mr. Tung denied he had ever placed the liquidation order himself (saying the respondents had done it on their own), and refused to accept that he had done so despite the Judge's assurances that the tape contradicted his assertion (Transcript, pgs. 33-41). During a break in the hearing, the Judge played back the taped order for all of the parties and, back on the record, asked Mr. Tung why he kept claiming the respondents had placed it "on their own" – at which point Mr. Tung made the following statement: "Yeah because when they bought it, they did it on their own. So, according to the tape, it was my voice, so it should be correct" (Transcript, pg. 43).

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<sup>1</sup> Concorde originally was to be defaulted, but having answered and participated in discovery, that firm's liability will be determined on the merits instead. Since a defaulted party has the right to file a motion to vacate (*see* Rule 12.23), it would be manifestly unfair to allow Concorde, by dropping out of the case, more chances to avoid finality than is allowed to Mr. Ledo, who has participated but may only appeal rather than seek reconsideration (*see* Rule 12.400 *et seq.*).

<sup>2</sup> With the permission of the reporting service, a copy of the annotated version of the transcript is being provided to each of the two participating parties for their use in further proceedings in this matter, if any.

Mr. Tung's insistence on repeating flatly incorrect statements, plus (as that example shows) his unconvincing self-contradictory statements when confronted with his inconsistencies,<sup>3</sup> severely undermined his testimony in numerous material respects. In this regard, I found Mr. Tung's testimony regarding the solicitation statements made to him about Mr. Ledo's alleged wealth to have been less credible than Mr. Ledo's denials. Mr. Tung alleged that Mr. Ledo solicited his account by referring a number of times to his own wealth, with Mr. Ledo allegedly claiming to own a convertible sports car and to have his family vacationing in expensive homes in France (*E.g.*, Transcript, pg. 76-77). Mr. Ledo credibly denied having accumulated any riches by that point in his life, and further testified that he had no family when he allegedly made those claims. In any event, although Mr. Tung stated that he inferred from Mr. Ledo's alleged claims of being rich that he could make Mr. Tung rich, too, Mr. Tung admitted that this inference was based solely on his own beliefs that "rich people know how to become rich" and that Mr. Ledo could teach him (Transcript, pg. 77-78).

As to Mr. Tung's claims that Mr. Ledo misrepresented the profits to be earned from trading futures and options, the testimony in this regard is also unconvincing. Mr. Tung made numerous statements during the hearing about urgent double-your-money messages left for him on his answering machine before he ever talked with Mr. Ledo, but he also had talked to other Concorde brokers prior to Mr. Ledo and it never appeared that Mr. Tung could claim with any certainty that Mr. Ledo's voice was the one he heard rather than another broker (Transcript, pgs. 74-76, 79).

According to Mr. Tung, Mr. Ledo and other brokers made claims of being able to "quadruple" his money, and the disclosure documents he signed to open the account did not dispel his belief that they could do so (Transcript, pgs. 83-84). Asked if had he realized that recommendations he might be given by such self-confident brokers could in fact turn out to be wrong, Mr. Tung stated that because they were "experienced" they "most likely" would not make mistakes -- their ability to make him "wealthy" was "what I paid Ledo for" (Transcript, pg. 85). Since Mr. Ledo was "a professional person" (*id.*), there was, in effect, "no chance of losing" (Transcript, pg. 86). The initial \$1,200 profit made in less than two weeks confirmed Mr. Tung's confidence in Mr. Ledo and his company (Transcript, pgs. 88-89).

Finally, in preparing this Initial Decision, the Judge has had the opportunity to compare Mr. Tung's testimony during the Oral Hearing to his complaint narrative. Although it was not apparent at the time, a careful comparison now reveals that Mr. Tung used his complaint narrative as a script while testifying (*compare* Complaint Narrative at ¶¶ 1-3 *with* Transcript at pgs. 73-76), rendering unreliable his apparent accurate recollection of details and dates. This occurred despite numerous and strong warnings at the beginning of the hearing that testimony was to be given based on memory alone, that documents were to be consulted only upon notice to the Court, and that consultation or prompting was to be avoided absolutely (Transcript, pgs. 5-11, 13).

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<sup>3</sup> Mr. Tung also has complained from the beginning about an extra \$20 fee rider charged by Concorde in addition to its usual \$195 commissions, contending that Mr. Ledo disclosed the fee but said it was supposed to be part of the \$195 (Complaint Narrative at ¶ 5; *see also* Tung letter to Ledo, dated April 29, 2001, submitted as exhibit to Concorde's January 11, 2002, discovery production). Confronted with an account-opening disclosure document he signed expressly acknowledging that the \$20 fee would be charged *in addition to* the base commission, Mr. Tung kept stating that Mr. Ledo said otherwise (Transcript, pgs. 60-61).

Upon consideration of Mr. Tung's testimony as a whole regarding the account solicitation, it is determined that his inconsistencies, his evasions, and his undivulged use of documents to assist his testimony together render him a non-credible witness. Without a credibility finding in his favor, Mr. Tung's solicitation case fails. Likewise, I find entirely not credible his claim that he still believed in Mr. Ledo's claims to be able to predict the market when he engaged in the later trading in his account – after, he says, Mr. Ledo lied to him about the commissions, stole the \$1,200 profit, and allowed the first position to virtually evaporate (Transcript, pg. 135).

However, Mr. Tung's suspect testimony regarding solicitation does not salvage Mr. Ledo's actions with regards to the lost profits claim, which involved Mr. Tung's effort to sell his May 2001 crude oil call option. As noted above, the Court early on notified the parties that this claim implicated a number of issues associated with what was said to Mr. Tung about having made a profit, how the liquidation was recommended to him, and how the liquidation order was carried out. During the hearing, Mr. Ledo's own testimony, which was highly credible, established that he recommended that Mr. Tung liquidate his position to capture the \$1,200 profit (Transcript, pg. 26). At his urging, Mr. Tung placed a limit order that, if elected, would have captured that amount of profit (Transcript, pg. 45).<sup>4</sup> Thereafter, the market did not reach the limit price and therefore Mr. Tung's order was never executed, but after the market fell Mr. Ledo did not provide Mr. Tung a new recommendation to capture a lower amount of profit (Transcript, pgs. 44-45).

Mr. Ledo admitted that Mr. Tung never specifically stated that he wanted to capture profits of at least \$1,200 or else not trade, but instead was simply taking Mr. Ledo's recommendation to liquidate, which itself was based on a general Concorde determination to advise its clients to liquidate in that market at that time (Transcript, pg. 50). Mr. Ledo was asked why, if liquidation was the goal, he didn't simply recommend a market order to accomplish liquidation. Mr. Ledo said that it was a Concorde policy not to place market orders, and to use limit orders only, because of a perception at Concorde that it had received poor fills on its market orders in the past (Transcript, pg. 46).

Significantly, Mr. Ledo admitted never having informed Mr. Tung that Concorde did not use market orders to accomplish liquidations of existing positions (Transcript, pg. 54). He did not have a good explanation when it was pointed out that the final liquidation of Mr. Tung's position later did, in fact, involve a market order (Transcript, pg. 55). Mr. Ledo also admitted that the failure to use market orders, plus other apparently shady activities on the part of Concorde's management had made him, and several other brokers, uncomfortable, resulting in his leaving to form his own company less than a year later (Transcript, pgs. 53-54). It is thus concluded that Mr. Ledo's nondisclosure to Mr. Tung occurred with full awareness (scienter) that the omission left Mr. Tung unable to make an informed decision designed to execute his goal of accepting Mr. Ledo's recommendation to exit the market.

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<sup>4</sup> I find credible Mr. Tung's repeated contention that Mr. Ledo and others at Concorde *did* congratulate him on earning a profit of roughly \$1,200, and most importantly, that he thought he was liquidating the position rather than merely hoping for the market to continue to move up. This claim is not contradicted by any reliable evidence in the record, and Mr. Ledo's weak denials in response are unconvincing in view of the continued references to "liquidation" as the goal.

Concorde's undisclosed refusal to use market orders resulted in Mr. Tung not having available his most effective trading tool to exit a trading position. Had his overall trading been affected by Concorde's policy – in other words, if he had had a series of limit orders that were unexecuted and if he had suffered losses as a result – Mr. Tung would be entitled to a return of those losses. Here, only the one trade designed to capture the profit appears to have been affected by the policy. Mr. Ledo, who recommended the liquidation to Mr. Tung but never apprised him that the recommended trade might not accomplish that goal, withheld critical information from his customer and thus is fully responsible for the effects of not disclosing Concorde's policy.

Based on the findings and discussion set forth above, it is concluded that respondents George Ledo and Concorde Trading Group, Inc., violated CFTC Regulation 33.10 by fraudulently withholding material trading information from Mr. Tung. The measure of damages for the violations is not merely the lost profit recommended to and sought by Mr. Tung, but instead the difference in value of the position had he been able to execute the liquidation at the best price of the day thereafter, rather than at the price of .10 obtained when Mr. Ledo did use a market order. As the parties were notified during the hearing (Transcript, pg. 115), the Judgment Officer has obtained from NYMEX the best price (which happens to have also been the settlement price) in complainant's options contract on March 7 after Mr. Tung's order was placed. That price was 1.23. Each percentage point in the price was worth \$10 (*see* April 6, 2001, account statement). 1.23 minus the actual liquidation price of .10 equals 1.13. For three contracts, the calculation would thus be  $(\$10) * 113 * 3 = \$3,390.00$ .<sup>5</sup>

Violations having been found, IT IS ORDERED that respondents George Anthony Ledo and Concorde Trading Group, Inc., pay reparations to complainant Hsue Tung in the amount of \$3,390.00, plus prejudgment interest compounded annually at the rate of 4.97 % from March 7, 2001, to the date of payment. LIABILITY IS JOINT AND SEVERAL.

All other claims presented by Mr. Tung are DENIED.

Dated: September 27, 2006

  
JOEL R. MAILLIE  
Judgment Officer

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<sup>5</sup> Whether Mr. Tung subsequently continued trading is immaterial. Respondents' actions deprived him of the amount of damages and they never corrected their omission, depriving him of any future use of his trading proceeds. How he would have used the money later is impossible to determine.