U.S. COMMODITY FUTURES TRADING COMMISSION



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Office of Proceedings

SUSAN M. ELLIOTT, Complainant,

v.

* C

JAY DE BRADLEY, GLENN TRASK MOORE, MALIK ILORI SIEVERS, and FARR INVESTMENTS, LLC, Respondents. CFTC Docket No. 11-R004

ORDER GRANTING SUMMARY DISPOSITION and DISMISSING COMPLAINT

Introduction

The gravamen of Susan M. Elliott's complaint, filed in October 2010, is that respondents misrepresented the risks associated with two managed futures accounts traded by two commodity trading advisors, Farr Investments LLC ("Farr") and Clarke Capital Management. Elliott also alleges that Glenn Moore — shortly after she had closed the Clarke account in early 2006, and shortly after her Farr account had experienced sharp losses in March 2007 and February 2008 — had lulled her with false assurances that Farr could recoup her losses. Elliott seeks to recover over \$136,000 in out-of-pocket losses from both accounts and has named as respondents: Farr Investments LLC, which became defunct in January 2010 around the same time that it closed

¹ On June 29, 2011, after an extended pleading phase, this case was assigned to the docket of Judge Levine. Six days later, on July 5, 2011, Elliott filed a motion to disqualify Judge Levine and sought interlocutory review by the Commission soon after he had promptly denied her motion. The matter remained pending before the Commission for six months until January 3, 2012, when the Commission determined that Elliott's motion had been mooted by Judge Levine's retirement in December 2011, and remanded this matter for assignment to my docket.

Elliott's then-dormant account; Malik Ilori Sievers, a principal and associated person with Farr; MF Global, Incorporated d/b/a Fox Investments ("MF Global"), a now-defunct futures commission merchant that carried Elliott's accounts;² and Glenn Trask Moore and Jay De Bradley, associated persons with MF Global.

In response: MF Global filed an answer; Bradley and Moore each filed an answer that was nearly identical to M.F. Global's answer; and Farr and Sievers filed a joint answer. All respondents raised the two-year statute of limitations affirmative defense. Bradley and Moore have filed a motion for summary disposition based on the two-year statute of limitations set out in Section 14(a)(1) of the Commodity Exchange Act. Since Farr and Sievers raised statute of limitations affirmative defense in their answer, they are deemed to have joined Bradley and Moore's motion. Elliott has filed an opposition to the motion, arguing that the statute of limitations did not begin to run until April 2010 when she met with an attorney who advised her that respondents' conduct appeared to be wrongful and actionable.

As explained below, respondents' motion for summary disposition has been granted, and the complaint has been dismissed on grounds that it is barred by the statute of limitations.

Factual Findings

The parties

1. Susan Elliott, a resident of Chicago, Illinois, was a retired former employee of True Value Hardware when she opened her account with respondents. On her account application, she indicated that she was self-employed as a home health care specialist, and that she had a Bachelor of Sciences Degree in Education and a Master's Degree in Human Resources

² On October 31, 2011, while this matter was pending on interlocutory review before the Commission, the U.S. District Court for the Southern District of New York granted the petition of the Security Investor Protection Corporations to place MF Global into liquidation. On January 11, 2012, after this matter had been assigned to my docket, I dismissed MF Global from the proceeding pursuant to CFTC rule 12.24.

Management and Development. When she opened her account in February 2005, she was fifty-seven years old and her investment experience had been limited to owning an annuity and making an annual selection for her retirement plan. [¶¶ 1 and 15 of Elliott's Revised Complaint; Farr Investments Client Questionnaire, Exhibit A, Elliott's Revised Complaint; and Man Financial's Account Application, Exhibit A, MF Global's Answer.]

2. MF Global, Incorporated, formerly doing business as Man Financial, Incorporated, was at the relevant time a Chicago-based futures commission merchant. Fox Investments was a division of MF Global. MF Global carried Elliott's Clarke and Farr accounts and timely provided Elliott with daily confirmation statements and month-end account summary statements, which accurately reported trading activity and account status, such as account balance, account liquidating value and monthly and year-to-date profits and losses. [¶1, MF Global Answer; and NFA records.]

By Order dated October 31, 2011, the U.S. District Court for the Southern District of New York granted the Security Investor Protection Corporations' petition to place MF Global into liquidation. [Notification by Trustee of M.F. Global, dated January 3, 2012.]

3. Jay De Bradley and Glenn Trask Moore were at the relevant time associated persons with MF Global and employed by Fox Investments. [NFA records.]

Elliott and her investment advisor, Jim Monti, met with an MF Global agent at an investment seminar in New Orleans in late 2004 or early 2005, and again in Chicago in early 2005, before deciding to open two managed accounts. Elliott asserts that the agent was Bradley, who does not remember ever meeting with Elliott, but does remember meeting with Monti in Chicago. In its answer, MF Global stated that, in January 2005, Bradley had met with Monti in Chicago, and had provided disclosure documents for several commodity trading advisor and

registered investment advisor trading programs. Bradley also signed a form letter, dated April 10, 2007, and addressed to all MF Global customers with accounts managed by Farr, including Elliott, which acknowledged then-recent massive losses in accounts managed by Farr. [Exhibit 1, Bradley and Moore's Motion for Summary Disposition; Exhibit M, Bradley Answer; ¶1 and Exhibit M, MF Global Answer; Bradley's replies to Elliott's interrogatories 3, 5 and 9, and replies to Elliott's requests for admissions 1, 7, 8, 9, 11 and 12.]

Elliott has made inconsistent and uncertain assertions concerning whether Moore was present at the New Orleans and Chicago meetings. [Compare Elliott's replies to Bradley and Moore's interrogatory 3, and ¶¶ 6-13 Elliott's Revised Complaint and first and second paragraphs, pages 1 and 2, Elliott's Response to Respondents' Motion for Summary Disposition.] Elliott also asserts that, after she opened the two accounts, she spoke to Moore on average every other month. [¶ 24, Elliott's Revised Complaint.] In contrast, Moore asserts that he never met with or spoke to Elliott in person, but did speak to Elliott and Monti several times between February 2005 and December 2007: In February 2005, around the time of the account opening, Monti and Elliott spoke to Moore, with Monti taking the lead and doing most of the talking. In early 2006, Monti and Elliott called Moore, and Elliott decided to close the Clarke account and transfer the funds to the Farr account. In March 2007, after the large loss in the Farr account, Moore spoke to Elliott and Monti, and Elliot decided to maintain the Farr account. Two to three additional times in 2007, Moore spoke to Elliott and Monti. Also, according to Moore, in late January 2008, Moore called Elliott to determine whether she wished to continue trading or close the Farr account, and Elliott again chose to continue trading. [Moore's replies to Elliott's interrogatories 3, 5 and 9, and replies to requests for admissions 1, 7, 8, 9, 11 and 12.]

4. Farr Investments LLC ("Farr"), located in Burlingame, California, was a registered

commodity trading advisor at the relevant time. [Page 5, Farr Financial, LLC Disclosure Document, dated October 15, 2004, produced by Farr in response to Elliott's Request for Production of Documents #7; and NFA records.] Farr traded on behalf of Elliott, from February 2, 2005 to October 13, 2009 pursuant to a Commodity Advisory Agreement and power of attorney. [Exhibits B-2, and B-6 to B-10, Farr and Sievers' joint Answer; Exhibits H and J, MF Global's Answer.] On January 20, 2010, by which time Elliott's account had become dormant, the NFA suspended Farr's registration for failure to pay a \$1.63 million arbitration award issued on December 10, 2009. [*In re Farr Investments* LLC, NFA case number 10-AWD-2.]

At the relevant time, Farr offered two trading programs, the Axel Conservative Growth program and the Axel Aggressive Growth program. Elliott would select the Axel Aggressive Growth program. [See pages 9-23 of Farr Financial, LLC Disclosure Document (dated October 15, 2004) and first page of Commodity Advisory Agreement, produced by Farr in response to Elliott's Request for Production of Documents #7.]

5. Malik Ilori Sievers was at the relevant time a Farr managing principal and associated person. Sievers never met or spoke to Elliott. In the aftermath of the dramatic losses in February 2007, Sievers sent a form ("To our family of clients") letter to Elliott discussing recent losses in Farr-managed accounts. Next, on January 8, 2010, after Elliott's account had been dormant for about three months, Sievers sent a form letter to Farr clients, including Elliott, informing them that due to trading losses Farr was "discontinuing the Aggressive Growth trading program," and that remaining funds would be returned. [See ¶14 and Exhibits G and H, Elliott's Revised Complaint; Exhibits A and B, Farr and Sievers' joint Answer; Exhibits H and J, MF Global's answer; pages 5-6, Farr Financial, LLC Disclosure Document, dated October 15, 2004, produced by Farr in response to Elliott's Request for Production of Documents #7; Sievers letter dated

January 8, 2010, Exhibit G, MF Global's Answer; and NFA records.]

The account opening

- 6. Elliott and her investment advisor, Jim Monti, first learned about MF Global and the Clarke and Farr trading programs at an investment seminar in New Orleans in late 2004 or early 2005. On or about February 2, 2005, in MF Global's Chicago office, Elliott and Monti met with Bradley and decided to open two managed accounts. Elliott asserts that Bradley showed her performance charts for the Clarke and Farr trading programs which showed that they had been outperforming the S&P 500, and alleges that Bradley undermined the written risk disclosures by representing that the trading programs were only "somewhat more risky" than stocks because the trading advisors employed sophisticated risk management techniques and representing that he had invested his own funds in the Clarke and Farr trading programs. [See second paragraph, pages 1 and 2, Elliott's Response to Respondents' Motion for Summary Disposition; and ¶¶5-15, Elliott's Revised Complaint.]
- 7. Elliott decided to open an IRA account with MF Global and executed and signed various account-opening documents, including: MF Global Customer Account Application, Customer Agreement, and Fee Payment Authorization; Fox Investments additional disclosure document; Discretionary Trading Authorizations and Powers of Attorney for Clarke and Farr; Commodity Advisory Agreements for Farr and Clarke; and CFTC rule 1.55 Risk Disclosure document and signature page. On February 24 and 25, 2005, Elliott funded two managed futures accounts to be traded by Clarke and Farr. [Exhibits A, B, C, D, E, F, H, I, J, K and L, Bradley's Amended Answer; and Farr's response to Elliott's Request for Production of Documents #7.

 See ¶¶ 13-16 of Elliott's Revised Complaint, and pages 2-7, MF Global's Answer.]

Trading activity

- 8. For the Clarke account, Elliott deposited \$123,000 in February 2005. The Clarke account enjoyed modest profits in June and July 2005, but afterwards realized limited losses. Elliott closed the Clarke account in February 2006, and withdrew \$90,528, for a net loss of \$32,472. [See complete set of account statements produced by MF Global.]
- 9. Elliott also opened the Farr account in February 2005, and deposited a total of \$118,528. The Farr account would be actively traded until January 22, 2008. The performance of the Farr account was relatively static until February 2006, after which the account accumulated steady gains until January 2007. In January 2007, the account balance peaked at \$154,402. Subsequently, the account balance gradually and steadily declined, with sharp drops in late February and early March 2007 (\$115,402 to \$65,823), and January 22, 2008 (\$34,437 to \$15,963). Thus, by late January 2008, Elliott had lost \$102,700, which represented 87% of the \$118,528 she had deposited in the Farr account, and 99% of what would be the total out-of-pocket losses in the Farr account: \$103,897. [See table of month-end to month-end marked-to-market account values, at pages 11-13 of Bradley's Answer.]

For the next twenty months, February 2008 to October 2009, the Farr account was lightly traded, with an average of between one and two option spread trades per month and an account balance fluctuating in a narrow range between \$17,844 and \$14,631. On October 21, 2009, the last spreads were closed out, leaving an ending account balance of \$14,631. Four months later, on February 26, 2010, the account balance was returned to Elliott. Thus, during this last lengthy period of light trading, Elliott realized an additional out-of-pocket loss in the Farr account of \$1,197 (based on the drop in account balance from \$15,963 to \$14,631), which represented 1% of her total out-of-pocket losses in the Farr account. [See complete set of account statements

produced by MF Global.] The conclusion that Elliott had a good idea how her accounts were performing is underscored by: one, the fact that she called Moore in <u>early 2006</u> to discuss what she described as the "disappointing performance" of the Clarke account; two, the fact that she called Moore in <u>early 2007</u> "to express her alarm" at recent dramatic losses in the Farr account; and three, the fact that she indicated in her <u>February 2008</u> complaint to the SEC that she was aware of the declining account balances in the Clarke and Farr accounts. [See ¶ 21-23, Elliott's Revised Complaint; and § B1, pages 8-9, and Exhibit 2, Moore and Bradley's Motion for Summary Disposition.]

MF Global's, Bradley's, Sievers' and Elliott's Written Communications

- 10. As noted above, for both accounts, MF Global timely provided Elliott with daily confirmation statements and month-end account summary statements, which accurately reported trading activity and account status, such as account balance, account liquidating value and monthly and year-to-date profits and losses. According to Elliott, she had difficulty understanding the statements and regularly called Moore and Bradley who adequately explained the basic information in the statements. Despite these rudimentary explanations, Elliott states that she never fully grasped more technical matters like the Farr program's strategies. In any event, notwithstanding her inability to grasp technical matters, Elliott was fully aware of basic, material facts like her account balance and her losses when they were reported. [See second full paragraph on 2nd page of Elliott's Response to Respondents' Motion for Summary Disposition.]
- 11. In the aftermath of the dramatic losses in the Farr account in early 2007, Bradley and Sievers issued letters to customers with accounts managed by Farr.

On April 10, 2007, Bradley sent Elliott a letter on behalf of MFG for customers who were participants in the Farr program:

We are writing to you regarding your individually managed futures account(s) with Farr Capital Management ("Farr"). We want to make sure you are aware that the accounts managed by Farr have recently exceeded Farr's worst historical drawdowns due partially to large volatility increases in the S&P 500. Farr's trading strategy is sensitive to volatility. While stock market volatility could decline in the coming days and weeks, there is also the risk that volatility will continue to increase and that further losses in these accounts will result.

We recommend you review your individually managed futures account(s) traded by Farr. If you need any assistance, or if you have any questions regarding any of the foregoing, please contact me at your earliest convenience. . . .

As can be seen, the letter clearly mentioned the fact of the losses, explained the cause (the negative impact of increased volatility), and warned Elliott that additional losses might occur and that Elliott should therefore review her accounts. [Exhibit M, Bradley's Revised Answer, and Exhibit 1, Memorandum of Law in Support of Respondents' Motion for summary Disposition.]

Also, sometime in April 2007, Sievers sent to Farr customers, including Elliott, a "To our family of clients" damage-control letter. [Exhibit G, Elliott's Revised Answer. See ¶ 25, Elliott's Revised Complaint, and page 3, Farr and Sievers' joint Answer.]

12. Soon after the dramatic losses in January and February 2008, Elliott drafted a complaint letter to the Securities and Exchange Commission:

"In 2005, I invested \$150,000.00 from my pension at True Value Hardware with Man Financial through Fox Investments as an IRA. At that time, \$123,000.00 went into a fund called Clarke which was supposedly earning around 20% a month. The rest went into Farr which was the more conservative, earning 2% a month. The Clarke investment never paid anywhere near 20% a month and consistently(sic) lost money. I eventually moved everything from Clarke to Farr. According to the statement dated February 19, 2008, the total equity is \$15,928.40. I feel this account has been totally mishandled and that I have been give poor advice all along. As [r]ecently as early January when the quarterly statement ending 12/31/2007 reported the account value as \$34,475.97, I called Glenn Moore at Fox Investments and asked what was going on. He told me that all of this was due to the volatility(sic) of the market and that there had never been such volatility(sic) before. I asked him if experienced traders should not have been able to forsee some of this and react accordingly. I was told they have now been directed to use a more conservative model. I was told by Glenn that they owed me a recovery and I could expect one in 3-4 years. (It was later pointed out to me that would mean a return of

44% a year.) He told me to sit tight; they expected things to begin to turn around in the first quarter of 2008. Like I said, my account now stands at \$15,000.00. The accountant who is doing my taxes suggested I contact the SEC. My sister, who is also a tax accountant suggested I get in touch with the Attorney General of my state. She feels this is more than mismanagement; that it is fraud. I hope you can help me. Please feel free to contact [me.]"

Exhibit 2, Moore and Bradley's Motion for Summary Disposition. *See* § B2, pages 9-10, Moore and Bradley's Memorandum of Law in support of Motion for Summary Disposition; page 5, Elliott's Response to Respondents' Motion for Summary Disposition; and pages 2-3, Moore and Bradley's Response to Elliott's Response to Respondents' Motion for Summary Disposition.]

Discussion and Conclusions

Under Commission rule 12.207, summary disposition is appropriate only when three conditions have been met: one, no genuine issue exists as to any material fact; two, no need exists for further factual development; and three, the moving party is entitled to a decision as a matter of law. *See Levi-Zeligman v. Merrill Lynch Futures, Inc.*, Comm. Fut. L. Rep. ¶ 26,236, at 42,031 (CFTC 1994). The Commission's summary disposition rule is patterned on the summary judgment provisions of Federal Rules of Civil Procedure 56, and the Commission is guided by federal case law in applying its rule. The Commission has stated that the purpose of summary disposition is to avoid "the empty ritual of an oral hearing," when it is clear that the nonmoving party's claims or defenses will fail. In re LeClaire, Comm. Fur. L. Rep. P26,282 at 42,429 (CFTC Dec. 12, 1994). At the summary disposition stage, the judge's function is not to

³ See, e.g., Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249-50 (1986) ("There is no issue for trial unless there is sufficient evidence favoring the nonmoving party for a trier of fact to return a verdict for that party. If the evidence is merely colorable, or is not significantly probative, summary judgment may be granted."); Matsushita Electronic Industries v. Zenith Radio Corp., 475 U.S. 574, 586 (1986) (In contesting a claim that there is no genuine issue of material fact, the nonmoving party "must do more than simply show that there is some metaphysical doubt as to the material facts."); and Secretary of Labor v. Lauritzen, 835 F.2d 1529, 1534 (7th Cir. 1987) ("The court should neither 'look the other way' to ignore genuine issues of material fact, nor 'strain to find' material fact issues where there are none. . . .").

weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial. All reasonable doubts about the facts should be resolved in favor of the non-moving party. If reasonable minds could differ on any inferences arising from undisputed facts, summary judgment should be denied. When more than one inference reasonably can be drawn, it is not for the trier of fact to determine the proper one. *Aboulghar v. Mulcahey*, Comm. Fut. L. Rep. ¶31,932, at 66,121 (CFTC Sept. 2, 2010).

In appropriate circumstances, statute of limitations issues may be resolved on a summary basis, as long as there is no significant doubt as to whether the evidentiary record is sufficiently developed for reliable resolution of limitations-related issues. *Chaney v. Greco*, Comm. Fut. L. Rep., ¶ 30,761, at 61,594 (CFTC 2008). In this instance, the parties have produced statements describing the factual matters underlying the limitations-related issues, *i.e.*, when Elliott discovered her losses and respondents' alleged violations, and the parties' subsequent conduct. After carefully reviewing the parties' submissions, I have determined that additional discovery and written testimony, and any oral testimony, is unlikely to flesh out, or clarify, the factual circumstances that are material to the statute of limitations defense.

A cause of action accrues, and the two-year limitations period under Section 14(a)(1) of the Act begins to run, when a complainant discovers the wrongful conduct underlying his claim, or in the exercise of reasonable diligence, should have discovered the wrongful activity.⁴

McGough v. Bradford, Comm. Fut. L. Rep. ¶ 28,265, at 50,601-50,603 (CFTC 2000). A determination of when wrongful activity should have been discovered is based on the particular facts and circumstances of the case, including: one, the relationship of the parties; two, the

⁴ Section 14(a)(1) of the Act provides: "Any person complaining of any violation of any provision of this Act or any rule, regulation, or order issued pursuant to this Act by any person who is registered under this Act may, at any time within two years after the cause of action accrues, apply to the Commission for an order awarding—
(A) actual damages proximately caused by such violation..."

nature of the wrongful activity; three, the complainant's opportunity to discover the wrongful activity; and four, the actions taken by the parties subsequent to the wrongful activity. *Id.* The customer need not discover all of the elements of the fraud, but only those facts enabling her to detect a general fraudulent scheme and prompt an investigation or consultation with a knowledgeable attorney. Thus, the statute of limitations does "not await a customer's leisurely discovery of the full details of the alleged scheme. *Martin v. Shearson Lehman*, Comm. Fut. L. Rep. ¶23,354, at 32,982 (CFTC 1986). *See McGough, supra*.

Here, after meeting Bradley at an investment seminar in New Orleans in late 2004 or early 2005, and again in MF Global's Chicago office in early 2005, Elliott relied on respondents' purported misrepresentations about limiting risk and decided to open the two managed accounts carried by MF Global. Elliott opened the Clarke account in February 2005 and closed it in February 2006. Elliott deposited a total of \$123,000, and withdrew a total of \$90,538 in early 2006, resulting in out-of-pocket losses in the Clarke account totaling \$32,472.

Elliott also opened the Farr account in February 2005, and deposited a total of \$118,528. The Farr account was actively traded until <u>January 22, 2008</u>. In January 2007, the account balance peaked at \$154,402. Subsequently, the account balance gradually and steadily declined, with sharp drops in March 2007 (\$115,402 to \$65,823) and January 22, 2008 (\$34,437 to \$15,963). Thus, by late <u>January 2008</u>, Elliott had lost \$102,700 in the Farr account, which represented 87% of the \$118,528 she had deposited in the Farr account, and 99% of what would be her total out-of-pocket losses in the Farr account: \$103,897.

For the next twenty months, February 2008 to October 2009, the Farr account was lightly traded, with an average of between one and two option spread trades per month and an account balance fluctuating in a narrow range between \$17,844 and \$14,631. On October 21, 2009, the

last spreads were closed out, leaving an ending account balance of \$14,631. Four months later, on February 26, 2010, the account balance was returned to Elliott. Thus, during this last lengthy period of light trading, Elliott realized an additional out-of-pocket loss in the Farr account of \$1,197 (based on drop in account balance from \$15,963 to \$14,631), which represented 1% of her total out-of-pocket losses in the Farr account.

Elliott filed her reparations complaint on October 29, 2010, fifty-six months after she had closed the Clarke account, and thirty-two months after she had lost 87% of her investment in the Farr account and realized 99% of her total out-of-pocket losses in the Farr account.

Elliott, a well-educated individual, sufficiently comprehended the trading results and account status reported by the account statements. Thus, based on receipt of the trade confirmation statements and monthly account statements, Elliott knew before the end of February 2008: that for the Clarke account, Elliott had lost \$32,472 in one year, which represented a quarter of her \$123,000 deposits in the Clarke account; and that for the Farr account, Elliott had lost \$102,700 in three years, which represented 87% of her \$118,528 deposits in the Farr account, and 99% of what would be her total out-of-pocket losses in the Farr account: \$103,897.

Since these financial losses went directly to the heart of Elliott's claim that respondents had falsely exaggerated their ability to limit her risk, Elliott's cause of action against respondents for any violations in connection with the trading and handling of the Clarke accrued no later than late February 2006 when she closed the Clarke account, and Elliott's cause of action against respondents for any violations in connection with the trading and handling of the Farr account accrued no later than late February 2008, when she learned that he had lost 87% of her investment in that account. The conclusion that Elliott was fully aware of the scale of her losses by late February 2008 is supported by: the fact that she called Moore in early 2006, to discuss

what she described as the "disappointing performance" of the Clarke account; the fact that she called Moore in early 2007 "to express her alarm" at recent dramatic losses in the Farr account; and the fact that she indicated in her February 2008 complaint to the SEC that she was aware of the declining account balances in the Clarke and Farr accounts. The fact that Elliott had reason to suspect wrongdoing by respondents is supported by the fact that she represented in her SEC complaint letter that her accountant had told her that she had been a victim of fraud.

The date that Elliott filed her complaint, October 29, 2010, is clearly well past the twoyear deadline. Elliott's claim that respondents' purported lulling conduct dissuaded her from filing a complaint sooner is without merit. First, all or most of Moore's purported lulling conduct appears to have taken place before February 2008, when Elliott drafted her complaint letter to the SEC in which she described and questioned Moore's purported lulling conduct. Second, Moore's advice cannot fairly be characterized as lulling conduct where Elliott has produced no evidence: that she had ever promptly complained to respondents that they had misrepresented Farr's ability to limit risk, that respondents had ever made any false promises to resolve any dispute, or that respondents had otherwise said anything designed to dissuade or delay her from initiating legal action. See Distelman v. Shatkin, Arbor, Karlov & Co., Comm. Fut. L. Rep. ¶27,116 at 45,256 (CFTC 1997) (Statue of limitations tolled where respondent actively dissuaded complainant from filing an imminent reparations complaint with a series of bad faith promises to settle the dispute). Moreover, the mediocre performance of the Farr account over its final twenty months, from February 2008 to October 2009, should have disabused Elliott of any notions that Farr could realistically recoup her losses. In these circumstances, the delay from February 2008 to October 2010 was principally caused by Elliott's decision to wait until April 2010 to consult an attorney and then not file a complaint for

another six months, and she alone must bear responsibility for her dilatory actions. Therefore, the record supports the conclusion that there is no genuine issue as to any fact material to the statute of limitations defense, and that respondents are entitled to dismissal as a matter of law.

ORDER

Respondents have established that Elliott did not timely file her complaint and that there is no basis for application of principals of equitable tolling or estoppel. Thus, it is concluded that the complaint is barred by the statute of limitations, and the complaint is hereby dismissed.

V.M.Sim

Dated December 5, 2012.

Philip V McGuire, Judgment Officer