



U.S. COMMODITY FUTURES TRADING COMMISSION

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Office of Proceedings

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ROSEMARY GIACOMAZZA, and
SALVATORE GIACOMAZZA,
Complainants,

v.

GLOBAL ASSET MANAGEMENT
ALLIANCE, LLC, and
JOSEPH TSALIK,
Respondents.

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CFTC Docket No. 12-R30

INITIAL DECISION

Introduction

Rosemary and Salvatore Giacomazza seek to recover the \$190,051 in damages based on losses, in 2006 and 2007, with a long defunct forex firm, Forex Liquidity LLC. Complainants claim that Joseph Tsalik -- who owned the firm that introduced their account to Forex Liquidity, Global Asset Management Alliance LLC, and who held the power of attorney to trade their forex account -- breached a purported guarantee to return their principal after five years of forex trading with Forex Liquidity. As explained below, after reviewing the parties' documentary submissions, it has been concluded that the Giacomazzas' claim against Tsalik and his firm is barred by the statute of limitations.

Factual findings

The parties

1. Rosemary and Salvatore Giacomazza, residents of Troy, Michigan, were born in 1941 and 1938, respectively. On their joint account application filled out in September 2006, they indicated that they were retired and had 28 years' experience trading securities but no experience with exchange-traded derivatives or forex.

In support of their complaint, the Giacomazzas produced: (1) The managed account investment prospectus for Global Asset Management Alliance LLC ("GAMA"), dated September 28, 2005, but displaying purported portfolio performance through the first eight months in 2006; (2) a GAMA account-opening package that contained various disclosures and agreements with Forex Liquidity LLC ("FXLQ"), signed by the Giacomazzas on September 28, 2006; (3) a separate agreement with GAMA, also signed by the Giacomazzas on September 28, 2006; (4) two e-mails, dated October 11, 2006, from FXLQ, confirming receipt of their \$236,000 wire and activation of their FXLQ discretionary forex account, introduced and managed by GAMA; (5) an incomplete summary of purported trading activity in the FXLQ account from October 2006 to July 2007, reporting an equity balance of \$110,115 (representing a loss of \$125,885); and (6) an account summary from GFT, a registered futures commission merchant, reporting that on August 4, 2008 the \$45,979 account balance in the FXLQ account was transferred by the FXLQ receiver to GFT, and that the account was dormant until February 1, 2012, when the Giacomazzas requested the withdrawal of the \$45,979.

The Giacomazzas did not produce any other documentary evidence (such as contemporaneous notes, written correspondence, or phone bills) relating to their

communications with Joseph Tsalik before or after the funds were transferred from FXLQ to GFT.

2. Global Asset Management Alliance LLC (“GAMA”), located in Chicago, Illinois at the relevant time, was a registered commodity trading advisor from January 2006 to March 2008. GAMA acted as the introducing broker and trading agent for the Giacomazzas’ managed account carried by Forex Liquidity LLC.

3. Joseph Tsalik, a resident of Brooklyn, New York and Nice, France, was a listed principal and registered associated person with GAMA. He has not been registered since 2008.

4. Global Capital Strategies, LLC, located in Flint, Michigan, was identified as the marketing agent for GAMA. The Giacomazzas identified Anthony Rogalski as the “referral agent.” Neither Global Capital Strategies nor Rogalski has been registered. On this record, the exact relationship between GAMA and FXLQ cannot be reliably determined.

5. Forex Liquidity LLC (“FXLQ”), located in Santa Ana, California, during the relevant time, was a registered futures commission merchant and forex dealer member of the National Futures Association (“NFA”). On this record, the exact relationship between GAMA and FXLQ cannot be reliably determined.

In December 2007, the NFA Executive Committee issued a membership responsibility action (“MRA”), based on failure to maintain minimum net capital, which prohibited FXLQ from engaging in new business, placing order other than for purposes of liquidation, or disbursing any money without NFA’s prior approval. Also in December 2007, the CFTC brought an injunctive action against FXLQ in the U.S.

District Court for the Central District of California. The Court issued a statutory restraining order, froze FXLQ's assets and appointed a receiver.

6. GFT, based in Grand Rapids, Michigan, was a registered futures commission merchant at the relevant time. In August 2008, the receiver for FXLQ would transfer \$45,979 from the Giacomazzas' FXLQ account to an account in their name at GFT. That account would remain dormant until 2012, when the Giacomazzas requested the return of their funds.

The account-opening documents

7. The account opening documents provided the Giacomazzas were facially misleading: the 13-page "Application Form package" featured GAMA letter head on the cover page, on the account application on pages 7 and 8 of the package, and on the power of attorney form, despite the fact that it was FXLQ, not GAMA, that was party to the various agreements on pages 1-6 and 11-13 of the package. The Giacomazzas signed a power of attorney giving GAMA discretionary authority to trade their FXLQ account, and also signed a separate account agreement with GAMA.

Deposits, transfers and refunds

8. On October 11, 2006, the Giacomazzas wired \$236,000 to FXLQ. FXLQ reported purported forex trading starting in October 2008, which initially was purportedly profitable but ultimately not profitable. By December 2007, when FXLC was put out of business, the reported trading activity ceased and the account value had dwindled to \$45,979.

9. On August 4, 2008, the receiver for FXLQ transferred the Giacomazzas' \$45,979 account balance to GFT. However, no trades would be made in this account,

which would remain inactive until February 1, 2012, when the \$45,979 balance was refunded to the Giacomazzas. None of the GFT documents refer to Tsalik or GAMA.

10. On July 13, 2012 -- four-and-a-half years after the last reported trade in the FXLQ account, and almost four years after the Giacomazzas' \$45,979 account balance was transferred to GFT – the Giacomazzas filed their reparations complaint.

Conclusions

A cause of action for fraud accrues, and the two-year limitations period under Section 14(a)(1) of the Commodity Exchange Act begins to run,¹ when a complainant discovers wrongful conduct resulting in monetary losses, or in the exercise of reasonable diligence, should have discovered the wrongful activity. *McGough v. Bradford, et al.*, 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 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 determination of when a cause of action accrues turns on when a customer discovers those *facts* enabling him to detect a general fraudulent scheme, rather than when the customer grasps the full details of the scheme or determines the available legal remedies. *See, e.g., Cook v. Monex International, Ltd.*, Comm. Fut. L. Rep. ¶ 22,532 (CFTC 1985), *reconsideration denied* Comm. Fut. L. Rep. ¶ 23,078 (CFTC 1986); *Martin v. Shearson Lehman/American Express, Inc.*, Comm. Fut. L.

¹ “Any person complaining of any violation of any provision of the 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 [damages.]”

Rep. ¶23,354 (CFTC 1986); and *Marracinni v. Conti-Commodity Services, Inc.*,
Comm. Fut. L. Rep. ¶23,7933 (CFTC 1986).

Here, it is reasonable to conclude that no later than August 4, 2008, when the receiver for FXLQ transferred the Giacomazzas' \$45,979 account balance to GFT, the Giacomazzas knew about their substantial losses, and knew that trading in the FXLQ account had ceased. As time passed, any reports from GFT confirmed that no trades were being made for the Giacomazzas. Since their financial losses suffered by August 2008 went directly to the heart of their allegation that Tsalik had guaranteed a return of their principal, it is reasonable to conclude that their cause of action against Tsalik and his firm for any violations in connection with the solicitation, and trading and handling, of the FXLQ account accrued as early as August 4, 2008, when they learned that the receiver had recovered \$45,979 of their total \$236,000 investment. Thus, the date that the Giacomazzas filed the complaint, July 13, 2012, is almost two years past the two-year (August 4, 2010) deadline, and the complaint is thus time-barred unless they can invoke equitable estoppel or equitable tolling.

Equitable estoppel focuses on any misleading actions by respondents. In this connection, the Giacomazzas have not produced any reliable evidence establishing any communications with Tsalik after August 4, 2008, let alone any false promises after that date to resolve the dispute, or that he otherwise said anything to dissuade or delay them from initiating legal action.

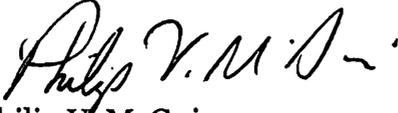
Equitable tolling focuses on the reasonableness of the complainants' action or inaction. The factors considered in determining whether a later filing is excused by principles of equitable tolling include the reasonableness of a complainant's continuing ignorance of the filing requirement and his diligence in pursuing his rights. In this

connection, the Giacomazzas have not produced any reliable evidence establishing that they acted diligently in investigating and pursuing their available legal remedies against Tsalik and his firm. The fact that the GAMA agreement contained a provision for return of funds after five years if certain conditions were met did not relieve the Giacomazzas from their duty to act sooner to diligently protect their legal rights. *See Martin, supra.* (For the statute of limitations period to begin running, the customer need not discover all the elements of the fraud, but only those facts enabling him to detect a general fraudulent scheme.)

ORDER

The record establishes that complainants did not timely file the complaint, and that no basis exists 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.

Dated May 27, 2014.


Philip V. McGuire,
Judgment Officer