



U.S. COMMODITY FUTURES TRADING COMMISSION

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HERMAN D. GOLL,  
Complainant,

v.

JEFFREY DUANE COE,  
JEFFREY DUANE COE d/b/a  
COE COE COMMODITY, and  
R.J. O'BRIEN ASSOCIATES LLC,  
Respondents.

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CFTC Docket No. 10-R029

**INITIAL DECISION**

**Introduction**

Herman Goll claims that his introducing broker Jeffrey Coe mishandled a Silver futures trade and a Silver options trade, and seeks to recover over \$26,000 in damages. In reply respondents deny that Goll is entitled to any award. Respondents concede that the options trade had been mishandled by Coe, but assert that as soon as Goll revealed Coe's mistake -- selling instead of buying as instructed by Goll -- Coe immediately removed the erroneous short option from Goll's account and compensated Goll for what Goll had calculated at that time to be his lost profits. As for the disputed futures trade, respondents deny that it was mishandled, and assert that Goll never complained about it during the entire time that he continued to trade with Jeffrey Coe's firm Coe Coe Commodity for another year until it went out of business. Respondents raised no affirmative defenses.

As explained below, after carefully considering the parties' documentary submissions, I have concluded that Goll has failed to establish that he is entitled to an award.

**Factual Findings**

1. Herman Goll, a resident of Klemme, Iowa, does not dispute respondents' assertion that, when he opened his non-discretionary account in 2001, Goll represented on his account application that he had fifteen years investment experience in futures and commodity options, and stocks and bonds.

2. R.J. O'Brien Associates LLC, located in Chicago, Illinois, has been a registered futures commission merchant since 1977. R.J. O'Brien Associates, at the relevant time the guarantor of Coe Coe Commodity, cleared Goll's account.

3. Coe Coe Commodity, a registered introducing broker from June 1992 to August 2009, and located in Mason City, Iowa, introduced Goll's account on a fully disclosed basis. Coe Coe is no longer in business. Jeffrey Duane Coe, the sole proprietor of Coe Coe and a registered associated person with Coe Coe at the relevant time, acted as Goll's broker.

4. Goll does not dispute respondents' assertion that, on or around January 3, 2001, Goll contacted Jeffrey Coe to open a non-discretionary commodity futures trading account and executed an R.J. O'Brien Associates account application and customer agreement. [See ¶¶ 11 to 14 of respondents' answer.]

5. The limited set of account statements produced by both sides indicates that since at least November 2007 Goll had been trading Silver futures and options. The disputed Silver futures and options trades took place in September 2008. [See confirmation statement dated September 11, 2008, attachment to initial complaint filed August 31, 2010, and Exhibit A of respondents' answer.]

6. Goll produced a single itemized phone bill which identifies calls from Goll to Coe, but not from Coe to Goll. This bill shows that, between August 25 and September 22, 2008, he called Coe twenty-one times. This bill also shows no calls from Goll to Coe between September 3 and 11, 2008.<sup>1</sup>

7. On August 22, 2008, Goll bought one December '09 Silver future contract. On September 11, 2008, Goll would offset this contract by selling one December '09 Silver future contract for a gross loss of \$15,650. This December Silver futures trade is not in dispute. However, in his unverified supplemental pleading, dated February 26, 2011, Goll would misread the September 11, 2008 confirmation statement and misattribute the \$15,650 loss for this December '09 Silver futures trade as the loss for the March '09 Silver trade for which, as described below, the gross loss was actually \$7,800. [See ¶¶ 17 and 18 of respondents' answer; and confirmation statement dated September 11, 2008, attachment to initial complaint filed August 31, 2010, and Exhibit A of respondents' answer.]

8. At the open on September 8, 2008, Goll was long three Silver contracts: one December '08 Silver future contract which he had bought in November 2007, the one December '09 Silver future described above, and one October '08 Silver put.

Also on September 8, 2008, Goll bought one March '09 Silver futures contract. Goll claims that this was an erroneous execution, because on an earlier date he had purportedly instructed Coe to sell one March '09 Silver futures, if the price of spot silver dropped below \$12 per ounce. On September 11, 2008, Goll would offset this contract by selling one March '09 Silver futures contract, for a gross loss of \$7,800. Goll does not dispute respondents' assertion

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<sup>1</sup> Goll filed this phone bill on February 7, 2012. Since he did not indicate whether he had served respondents, a copy of the bill is attached to respondents' copy of this decision.

that Goll would not dispute this trade until he filed his reparations complaint nearly two years later. [¶¶ 16, 17 and 18 of respondents' answer; and confirmation statements dated September 8 and 11, 2008, attachment to initial complaint filed August 31, 2010, and Exhibit A of respondents' answer.]

9. Both sides agree that on September 24, 2008, when Goll instructed Coe to buy one November Silver put option, Coe erroneously sold a November Silver put option, and that on October 13, 2008, Goll notified Coe of the error. Goll does not dispute respondents' assertion that Coe promptly transferred the short put option to his error account. On September 24, R.J. O'Brien had credited Goll's account \$968.59 for the premium collected on the sale of the put, and on October 13, R.J. Obrien had debited Goll's account \$968.59 for the transfer of the put to Coe's error account. Thus, Goll's account was not charged for the error. [See ¶¶ 19 to 22 of respondents' answer; and confirmation statement dated September 24, 2008, attachment to initial complaint filed August 31, 2010.]

Goll similarly does not dispute respondents' assertion that Coe and Goll verbally negotiated a settlement to reimburse Goll for the profits that Goll believed he had missed due to Coe's mishandling of the put order, and that as a result, on October 31, 2008, Goll's account was credited \$5,000, and on November 4, 2008, Goll's account was credited an additional \$4,950, for a total credit adjustment of \$9,950. [See ¶¶ 23 to 25 of respondents' answer; and October 31, 2008 monthly account statement and confirmation statement dated November 4, 2008, Exhibits C and D of respondents' answer.]

10. Goll would continue to trade with Coe until it ceased operation in August 2009.

11. On August 31, 2010, Goll hand-delivered his initial reparations complaint. His factual description of his complaint consisted of these three sentences:

I told Jeff Coe to sell a Mar. Sil. contract and he buys. I told Jeff Coe to buy a Mar. '09 Silver put option and he sold. I received a \$25,000 loss!!!

Goll attached copies of the September 8, 11 and 24, 2008 confirmation statements. His unverified annotation on the September 8 statement identified the March '09 Silver future trade on that date as the trade mentioned in the first sentence of his description. His unverified annotation on the September 24 statement identified the March '09 Silver put trade on that date as the trade mentioned in the second sentence of his description.

Goll did not explain how he had calculated the \$25,000 damage claim, and did not mention the fact that immediately after Goll had complained about the mistake on the put trade, respondents had removed the erroneous put trade and the related debit, and credited Goll's account a total of \$9,950 by November 4, 2008.

In his subsequent submissions, Goll also would never mention that Coe had removed the erroneous option trade from Goll's account, and although he would eventually reference the existence of the credit adjustments, he would never identify the dates or the dollar amounts of the credit adjustments and he would disregard these credit adjustments in his damage calculation.

12. On September 16, 2010, the Commission complaints specialist asked Goll, by September 30, 2010, to provide a more detailed factual description in support of his complaint, and to explain how he had calculated his damages. On November 23, 2010, the Commission complaints specialist advised Goll that he had missed the deadline, and extended the deadline to December 3, 2010.

By an unverified one-page letter dated November 29, 2010, Goll essentially refused to provide any of the requested information:

I think one or more of my ex-coreligionists may have contacted [Coe] and told him how to get a multi-million [dollar] judgment against me. I think [Coe] deliberately did the losing trades to make me try to call him a scandalous name . . . I can forgive [Coe] if he will help me lay this thing on the back or backs of the individual or individuals that I think may have help [sic] him do this!!

P.S. You have the statements there! . . . If there are any questions to be asked they should have been asked when I was there!!

On February 7, 2011, the Commission complaints specialist repeated her request that Goll provide a detailed explanation of how he had calculated the \$25,000 damage claim. She also informed Goll:

Regarding the description of your complaint, you have not provided this Office with the details of how the named respondents caused, or are responsible for, your losses. So far, the few sentences that you have submitted are very general statements. If you want your complaint to proceed under the reparations forum, please provide this Office with a detailed written/typed description of your complaint that tells a story from start to finish so that this Office and the respondent(s) can understand the exact nature of your complaint.

In reply, Goll produced a second, unverified, letter dated February 26, 2011 in which he expanded somewhat his factual descriptions of the two disputed trades, and also mentioned for the first time that Coe had credited his account after he had complained:

I complained about the losses! Then they made adjustments!

Nonetheless, Goll did not identify these adjustments by date or dollar amount and did not factor these adjustments into his damage claim, in which he asserted that his lost profit on the erroneous Silver put trade was \$10,987, and that his loss on the March '09 Silver future trade was \$15,600.

On March 25, 2011, the Commission complaints specialist asked Goll to verify both of his supplemental statements. To assist Goll, she provided the specific language he should use for the verification. Goll did not respond.

On July 14, 2011, the Commission complaints specialist gave Goll an additional opportunity to comply with her instruction to verify both of his supplemental statements. Goll again did not respond.

On September 30, 2011, after attempts to contact Goll by phone had failed, the Commission complaints specialist sent Goll yet another letter in which she stated that if he did not verify his supplemental statements by October 14, 2011, the Commission would treat his complaint as voluntarily withdrawn.

On October 13, 2011, Goll called the Commission complaints specialist, essentially to inform her that he would not be verifying any of his supplemental submissions. Goll also repeated his assertion that she should have asked him for the additional information on the day that he had hand-delivered his complaint. Goll was unreceptive and hung up on the specialist when she was in the midst of explaining to him: one, why it was in his best interest to supplement his complaint with a more detailed factual description, because he has the burden to establish by a preponderance of the evidence any violations causing damages and had so far produced, at best, a barely cognizable claim with minimal reliable substantiating evidence; two, why it also was in his best interest to verify his written statements, because unverified statements are accorded less weight than verified statements; and three, why she could not provide this guidance instantaneously, because such guidance can be given only after a measured review of the submissions and a confirmation of the respondents' registration status, among other matters.

Notwithstanding Goll's refusal to verify his complaint supplements, on December 14, 2011, the Director of the Office of Proceedings properly served Goll's complaint, with the unverified supplements, on respondents.

## **Conclusions**

Goll has failed to establish by a preponderance of the evidence any violations by respondents proximately causing damages. In connection with the silver put which Coe erroneously sold, but then promptly transferred to his error account upon notification of the error, Goll has produced no reliable evidence that his lost profits due to this error were greater than the \$9,950 that respondents had promptly credited to his account. In connection with the disputed silver future, Goll has produced no reliable evidence that Coe mishandled any order for this trade. First and most significantly, Goll's contemporaneous conduct was not consistent with a genuine belief that Coe mishandled this trade: Goll had showed no hesitancy a few days later to complain immediately about Coe's mishandling of the put order and to gain swift and significant compensation, but in sharp contrast, would not complain immediately about the futures trade, but rather would wait almost two years. Second, Goll produced no contemporaneous notes or records in support of his assertion. Third, once he eventually complained, Goll was confused about the amount of the loss on this disputed futures trade. In these circumstances, Goll's complaint must fail.

**ORDER**

Complainant has failed to establish any violations causing damages. Accordingly, the complaint against respondents is hereby dismissed.

Dated May 3, 2012.

A handwritten signature in cursive script, appearing to read "Philip V. McGuire".

Philip V. McGuire,  
Judgment Officer