



U.S. COMMODITY FUTURES TRADING COMMISSION

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SYED NASIR S. SHAMIM,
Complainant,

v.

ROGELIO "ROGER" MORAITIS, and
TRADE STATION SECURITIES, INC.,
Respondents.

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CFTC Docket No. 11-R014

INITIAL DECISION

Introduction

This dispute arises from TradeStation Securities' liquidation of one long April gold futures contract mid-morning on January 4, 2011. TradeStation liquidated the contract fifty minutes after Rogelio "Roger" Moraitis, a TradeStation trading desk agent, had notified Syed Nasir S. Shamim via voicemail and email messages that his recently opened account was under-margined and subject to liquidation. Shamim, a novice trader, claims that the liquidation was unreasonable, principally because, several hours earlier, in the midnight hours, Shamim had courtesy copied his TradeStation sales representative Shamim's e-mail instructions to another firm, E*Trade Financial, to wire-transfer additional money to Shamim's TradeStation account. The fund transfer from E*Trade would not be posted to Shamim's TradeStation account until the afternoon of the January 4, several hours after the liquidation. Throughout the morning, Shamim had monitored his account on-line, but would not contact the TradeStation futures trading desk until

he received the report of the liquidation. Shamim seeks to recover the \$3,530 trading loss on the liquidation.

In reply, respondents deny any violations. Respondents assert that they clearly and accurately disclosed their margin policy, and assert that, consistent with that policy, they gave Shamim fair notice of the margin deficiency. Respondents also assert that the liquidation was reasonable for the following reasons: one, Shamim failed to provide adequate notice of his intention to add more funds, because he disregarded specific instructions -- provided by the sales representative, Winston Roberts, in an automatic "out-of-office" e-mail reply -- to directly contact the TradeStation futures trading desk in Roberts' absence; and two, even if Shamim had provided adequate notice of his intent to deposit additional funds, respondents were not obligated to wait indefinitely for the actual deposit, or to wait indefinitely for Shamim to reply to their voicemail and email messages, since a volatile and rapidly declining gold market compelled immediate liquidation to minimize losses.

Finally, respondents raise the affirmative defense of failure to mitigate damages, based on the fact that Shamim angrily rejected respondents' suggestion that he could re-establish his position after his funds had been posted to his account, later in the day on January 4, 2011. In addition, according to respondents, Shamim could have reinstated his position at a favorable price for several more days when the April gold contract continuously traded below the liquidation price.

As explained below, after carefully reviewing the parties' evidentiary submissions, I have concluded that Shamim has failed to establish any negligence or misconduct by Moriatis or TradeStation.¹

¹ I also have concluded that Shamim's complaints about the conduct of respondents' counsel are without merit.

Factual Findings

The parties:

1. Syed Nasir S. Shamim, a resident of Johnson, Illinois, was just shy of his 32nd birthday when he opened his non-discretionary discount account with TradeStation in December 2010. On his account application, Shamim indicated that he was the CEO of his own firm, TriState PC Services. Shamim also indicated on his TradeStation account application that he had three months experience trading futures, but no experience with stocks or options. [See account application, Exhibit A, joint answer.]

As described in more detail in the findings below, in a 17-day span -- from December 20, 2010, to January 5, 2011 -- Shamim would have a futures account closed by E*Trade after a difficult dispute (December 20), open a second futures account (December 24) which in turn would be quickly closed by TradeStation after a similarly difficult dispute (January 4), and open a third futures account with Interactive Brokers (January 5).

2. Trade Station Securities, Incorporated, located in Plantation, Florida, has been a registered futures commission merchant since 2003. [NFA records.]

At the relevant time, TradeStation's policy regarding margin deficits was to try to contact the customer before liquidation, as a courtesy, unless circumstances dictated an immediate liquidation. TradeStation set forth this policy on its Web site:

TradeStation may, in its sole discretion, and without prior notice to you, and at any time, impose a margin call and liquidate your account, in whole or part, to meet such margin call

[See ¶4 Moriatis' affidavit.] In this connection, paragraph 23 of the TradeStation customer agreement read as follows:

Margin and Other Collateral Requirements: “You agree at all times to maintain such margin in your account as TradeStation Securities may from time to time (at its sole discretion) require, and will meet all margin calls in a reasonable amount of time. You agree that, if requested to do so, you will promptly wire-transfer such funds. Market conditions permitting, TradeStation Securities may, but is not required to attempt to notify you a margin call and/or deficiencies and to allow a reasonable period for you to provide funds. Margin calls may be communicated orally, without subsequent written confirmation. You further agree that, notwithstanding anything in the Agreement to the contrary, in the event that the account(s) is undermargined, has zero equity or an equity deficit at any time or in the event that TradeStation Securities attempts to, but is unable to contact you due to your unavailability or due to a breakdown in electronic communications, TradeStation Securities shall have the right to liquidate all or any part of your positions through any means available, without prior notice to you.

[Underlining added for emphasis. Page 17, exhibit A, joint answer, and attachment to Shamim’s discovery production.]

3. Winston Gerard Roberts, now a resident of Citronelle, Alabama, was at the relevant time a registered associated person with TradeStation. Roberts worked as a sales representative in TradeStation's active trader sales department. [See ¶¶ 1-5 Roberts’ affidavit.]

Roberts would speak to Shamim, on or about December 24, 2010, when Shamim opened his non-discretionary TradeStation account. During the course of a lengthy recorded conversation, Roberts would patiently answer Shamim’s many questions about TradeStation’s margin policy, and would direct him to TradeStation’s web site and customer agreement for written explanations about TradeStation’s margin policy. As described in more detail in finding 6, the recording of this conversation establishes that Roberts would provide a clear and accurate disclosure of TradeStations’ margin policy. [Appendix 1 to joint answer.]

Roberts also was the TradeStation employee whom Shamim would notify by e-mail, at 2:17 a.m. EST the morning of Tuesday, January 4, 2011, that he had asked E*Trade to wire

transfer funds to TradeStation. At that time, Roberts was on vacation and had left an automatic out-of-office message with explicit instructions on whom to contact in his absence. This message is described below in finding 8. Roberts had no other dealings with Shamim. [See ¶¶ 6-7 Roberts' affidavit.]

4. Rogelio "Roger" Moriatis, a resident of Florida, works on TradeStation's futures trade desk. One of his responsibilities is to manage the firm's risk by monitoring customer accounts to ensure that they have sufficient margin. In this connection, at 10:01 a.m. EST, on January 4, Moriatis would notify Shamim via voicemail and email that his account was underfunded and subject to liquidation. About fifty minutes later, Moriatis would make the determination to liquidate the under-margined gold position in Shamim's account. [See ¶¶ 1-4 Moriatis' affidavit.]

*Shamim's frustrating experience with E*Trade Financial: December 13 to 20, 2010*

5. Just before Shamim contacted TradeStation to open an account, E*Trade Financial had placed his recently opened account on liquidation-only status, after a series of heated and ultimately unproductive phone and e-mail exchanges between Shamim and various E*Trade representatives.

On December 13, 2010, Shamim called the E*Trade trade desk to report that he had been unable to execute a sell order on his electronic trading platform. A review of a recording of this conversation reveals that the trade desk agent patiently tried to walk Shamim through the process in order to determine the source of the problem.

First, the E*Trade agent respectfully and methodically tried to determine if Shamim's first priority was to place an order or to get help with operating the trading platform. When Shamim did not express a prompt need to place a market order, the agent next suggested that

Shamim try to place a live order, but at a price “away from the market” so that it would not be filled, in order to trigger a reply message from the system that might help identify the source of the problem. However, Shamim sounded too agitated, frustrated and impatient to process the agent’s questions, suggestions or instructions. Thus, the agent calmly suggested that Shamim “slow down” and try again to place an order, which Shamim essentially ignored. The agent then politely suggested that if Shamim did not want to place an order himself via his on-line platform, the agent would “place an order” for Shamim at no charge. Shamim sharply replied that he wanted “to sell,” not buy. The agent calmly and respectfully noted that he had merely offered to place an order without specifying buy or sell, re-confirmed that he would place a sell order if that was what Shamim wanted, and again suggested that Shamim slow down. At this point, Shamim reacted in a sufficiently harsh and agitated manner to preclude any productive resolution. [See recording of December 13, 2010 conversation, Exhibit 3, respondents’ final verified statement.]

Shamim followed up with a series of accusatory and demanding e-mails to various E*Trade employees, which culminated in E*Trade’s determination to terminate the agreement and place his account on a liquidation only status.

In a December 17th e-mail, Shamim instructed E*Trade: “Do not do a liquidation until and unless you have obtained explicit consent from me in electronic form.” By letter dated December 20, 2010, E*Trade’s associate general counsel confirmed the termination of the account agreement:

Dear Mr. Shamim:

I am in receipt of your emails, and I have been alerted to your attempts to engage senior management at E*TRADE in conversation about your account. E*TRADE has decided not to continue the account relationship with you. To facilitate the transfer of your account, E*TRADE will waive the ordinary transfer fees, if you promptly move your account to one of our many competitors. If the account is not promptly transferred, E*TRADE will send to you the remaining

balance after expiration of all open positions. The decision to close this account is final.

If you have a dispute related to your transaction activity, E*TRADE will address it in the appropriate forum. If you make a written complaint regarding a particular trade(s), it will be addressed by the compliance department after review of the relevant facts. If you are not satisfied with whatever conclusion the Compliance department may reach, you may also file a reparations claim with the CFTC. . . .

As to the allegations of discrimination, I have listened to the recorded call and did not hear any statement that ridiculed your accent, or insulted your speech. The statements made by our employees were neither biased nor prejudicial. I have also reviewed the emails that you sent to various employees and executives of our company. . . . Similarly, the correspondence exchanged does not reflect bias based on your accent or any other immutable characteristic.

Please address your concerns to my attention in the future.

[December 14 through 17, 2010 e-mails, and December 20, 2010 letter, Exhibit 4, respondents' final verified statement.]

Shamim opens a new account at TradeStation on December 24, 2010

6. In the immediate aftermath of his dispute with E*Trade, on or about December 24, 2010, Shamim contacted TradeStation to open a new non-discretionary account, and spoke to Winston Roberts. Shamim and Roberts extensively discussed liquidations. For example, Shamim indicated that he was concerned about the amount of time available to fund any margin call, and asserted, without specifically mentioning his E*Trade experience, that "other brokerages liquidate for no reason." Roberts urged Shamim to read the written explanation of TradeStation's margin policy on the firm's website, and emailed Shamim a PDF file and a web-link for the account agreement, so that Shamim could read the section of the customer agreement governing margin calls. Roberts reminded Shamim that his account would be self-directed, and thus that Shamim would be responsible for monitoring and managing his own account.

Roberts reiterated that TradeStation was not obligated to contact Shamim prior to liquidation. Set out below are pertinent portions of a transcript of the recorded conversation between Roberts and Shamim where Roberts described TradeStation's liquidation policy:

Roberts: We don't have an obligation to give you a call if the market is going against you...we'll liquidate you.

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Roberts: We don't have to inform you of a margin call. We try to do it as a courtesy.

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Roberts: [If] the market starts to move too far against you, we're going to liquidate.

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Roberts: They will try and call you as a courtesy; they're not obligated to call...

.

Roberts: ...they will try and call you & they'll give you to the end of the day."

Shamim: Is that a suggestion or is that the way it's going to happen?

Roberts: It's a courtesy and they're not required to do it."

Shamim: ...from talking to you, it looks like it's only a courtesy and, and it's going to be a problem.

Roberts: Margin calls must be met on the same day your account incurs a margin call.

Shamim: Well, no, okay, same day is fine. Listen, same day is fine...

Roberts: As a courtesy, he tries to either email you or contact you about your margin call.

Shamim: ...I mean, if you're not going to call or email, I'm not going to know, right?

Roberts: Right ...we're not going to watch the account for you.

[Appendix 1, joint answer.] As can be seen, Roberts clearly and repeatedly told Shamim that in the event his account became under-margined, TradeStation would unilaterally determine whether and when to liquidate his account, with or without notification.

7. After his initial conversation with Roberts, Shamim signed the various account-opening documents, including the customer contract, and transferred \$8,500 from his E*Trade account. Subsequently, Shamim called Roberts because he had tried unsuccessfully to place an order on his electronic platform. Roberts advised Shamim that he would not be able to trade until the next day, because his funds had not yet been posted to the account.² [Appendix 1, joint answer.]

Disputed liquidation on January 4, 2011

8. Roberts was on vacation between December 31, 2010, and January 10, 2011. Thus, he would be out of the office on the day of the disputed liquidation, January 4, 2011. Before he left, Roberts enabled the "out of office" feature on his email address, and left a detailed message. Set out below are pertinent portions of this message:

Thank you for contacting Winston Roberts with TradeStation Securities, Inc.

I will be out of the office starting **Friday, December 31st** and returning to the office on **Monday, January 10th**.

. . . .

- **Trade Desk:**
 - **Stocks & Options:**
 - Hours: Monday-Thursday, 7:30 am - 6:30 pm ET;
 - Friday, 7:30 am - 5:00 pm ET
 - Phone: 800-871-3563 or 954-652-7915

² In this connection, TradeStation's web site provided detailed instructions for electronic fund transfers. These instructions stated: "Deposited funds will be available for trading the next business day if received by 4:00 p.m. ET." [Exhibit J, joint answer.]

- Futures:
 - Hours: Open 24 hours from Sunday, 3:30 pm - Friday, 5:30 pm ET
 - Phone 800-837-8951 or 954-652-7930

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- **Technical Support:**

- Hours: Open 24 hours from Sunday, 3:30 pm - Friday, 8:00pm
- Phone: 800-822-0512 or 954-652-7670

.

PLEASE BE ADVISED THAT TRADESTATION SECURITIES DOES NOT ACCEPT ORDERS OR INQUIRIES REGARDING OPEN ORDERS VIA VOICE MAIL, FAX OR EMAIL.

Thank you,
Winston Roberts

[Bold-face and all-caps in the original, Exhibit H, joint answer.] As can be seen, TradeStation's futures trading desk was open in the after-midnight hours of January 4, when Shamim decided to wire additional funds. Thus, if Shamim had followed Roberts' explicit instructions, he could have directly contacted the trading desk at that time or any time before the liquidation at 10:51 a.m. EST. [See ¶¶ 8-9 Roberts' affidavit.]

9. On January 4, 2011, Shamim was long one March mini-Silver futures contract, and long one April Gold futures contract.³ The maintenance margin for both contracts was \$6,050.00. In the early after-midnight hours on January 4, April gold dropped precipitously. [Exhibits 1-D and 1-E, respondents' final verified statement.]

At 1:17 a.m. CST (Shamim's time), 2:17 a.m. EST, Shamim e-mailed a "time-is-of-the-essence" instruction to E*Trade to wire-transfer the account balance to his TradeStation account. Shamim sent a courtesy copy of this e-mail to Roberts, who had activated his automatic out-of-

³ In the recorded conversations, the parties sometimes referred to the March mini-Silver futures contract as "YIH11", and the April Gold futures contract as "GCJ11."

office reply. [See Exhibits G and H, joint answer.] However, Shamim disregarded Roberts' out-of-office message, and would not contact the TradeStation trading desk until after the liquidation at 10:51 a.m. EST. Also, the \$10,618 wire transfer would not be posted to Shamim's TradeStation account until 3:12 p.m. EST, several hours after the liquidation. [See Greenbaum to Shamim, 3:17 p.m. EST, January 4, 2010 e-mail, attachment to complaint.]

10. At 10:01 a.m. EST, Moriatis sent Shamim a standard margin call email:

From: FuturesMarginDepartment
Sent: Tuesday, January 4, 2011 10:01 AM
To: Contact@TriStatePCSecurities.com
Subject: TradeStation Margin Call

Your account is on margin call. Failure to meet the call may result in TradeStation liquidating all or part of your account, at any time, with or without notice to you. Please call our Futures trade desk at 954-652-7930 or 800-837-8951 immediately to make prompt arrangements to meet the call. There is no guarantee your account will not be liquidated, even if you take action to meet the call, unless and until the call is fully satisfied by clear funds in your account.

[Exhibit #1-E, respondents' final verified statement.]

At 10:09 a.m., Moriatis left a voicemail message on Shamim's answering machine:

Hello, this message is for Syed Shamim. This is the Futures Desk calling from TradeStation Securities. Your futures account is on a margin call. Failure to meet the call could result in liquidation of positions. If you have any questions you can reach us at 1 800 837-8951. Thank you.

[Exhibit #1-Appendix I, respondents' final verified statement.]

11. Moriatis waited almost another hour for Shamim to respond. However, at 10:51 a.m., with no word from Shamim, Moriatis decided to meet the call by liquidating the gold contract at the market. [See ¶¶ 6-7 Moriatis' affidavit.]

Aftermath

12. Soon after the liquidation, Shamim called the TradeStation trading desk, and spoke to Greg Russell. Shamim opened by threatening legal action if the matter was not resolved to his satisfaction. Russell explained that Shamim's account had been on margin call, that the funds had not yet been received, and that as soon as the funds were received, Shamim could re-establish the gold position. Shamim angrily asserted that he had earlier e-mailed Winston Roberts that the funds were forthcoming. Russell explained that Shamim should have notified the trade desk, rather than Roberts who did not work on the trade desk. Russell then explained that the trade desk had to liquidate the gold position because gold had quickly dropped \$40. An audibly agitated Shamim replied, "No shit gold is down \$40, you son of a bitch." Shamim followed with a sequence of grittier curses, which assured that this conversation would conclude with no positive resolution. Subsequently, TradeStation placed the Shamim account on liquidation-only status. [See recording of conversation, Appendix I, joint answer; and January 5, 2011 email exchange between Greenbaum and Shamim, attachment to complaint.]

13. On January 5, 2011, Shamim opened a new account with Interactive Brokers, which is the subject of another reparations complaint filed by Shamim. [*Shamim v. Interactive Brokers LLC*, CFTC Docket No. 11-R016.]

Conclusions

Initial and maintenance margins are instituted for the protection of futures commission merchants, and reflect the amount of risk a futures commission merchant is willing to accept for a customer's position. For this reason, it is well established that when an FCM determines that a customer cannot pay a margin call, the FCM's duty to protect the financial position of the FCM's other customers, and right to protect the FCM's own financial position, supersede any duties the

FCM owes to the defaulting customer. *Lee v. Lind-Waldock & Co.*, Comm. Fut. L. Rep. ¶28,173 (CFTC 2000). Thus, an FCM has considerable discretion to set and enforce its margin policies, absent evidence of fraudulent or bad faith conduct. Therefore, in order to establish wrongdoing by respondents, Shamim must show by a preponderance of the evidence either that respondents misled him about their margin policy or that they liquidated the gold contract in bad faith. *Baker v. Edward D. Jones & Company*, Comm. Fut. L. Rep. ¶21,167 (CFTC 1981).

On this record, Shamim has not shown any deception by respondents concerning their margin policy. The customer agreement signed by Shamim authorized respondents to liquidate open positions under certain conditions, including unmet margin calls. During the account opening Roberts clearly and repeatedly disclosed that TradeStation could legally liquidate under-margined positions with or without prior notice, and that any notice would be provided strictly as a courtesy. Roberts also pointed Shamim to written language in the TradeStation website and TradeStation account agreement that set out TradeStation's margin policy and practice.

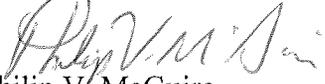
Shamim also has failed to show that respondents acted in bad faith, or contrary to TradeStation's margin policy, when they liquidated the under-margined gold contract after Shamim had failed to respond promptly to Moriatis' margin call notices. Here, in the very early hours of January 4, 2011, Shamim was aware that his account was in danger of becoming under-margined when he e-mailed his wire-transfer request to E*Trade. However, Shamim failed to provide TradeStation adequate notice of his intention to add more funds when he disregarded Roberts' specific instructions to contact the TradeStation futures trading desk, and Shamim failed to follow up diligently on his 2:17 a.m. wire-transfer request any time before the 10:51 a.m. liquidation. Moreover, Shamim failed to reply promptly to Moriatis's mid-morning voicemail and email messages notifying him of the margin deficit and asking him to act

promptly. In these circumstances -- Shamim idling silently in the face of a volatile and rapidly declining gold market -- respondents were not legally obligated to wait longer for a reply by Shamim or for the eventual deposit of additional funds. *See Sherwood v. Madda Trading Co.*, Comm. Fut. L. Rep. ¶ 20,728 (CFTC 1979). Thus, respondents' liquidation was reasonable and in good faith.

ORDER

Complainant has failed to show any violations causing damages. Accordingly, the complaint is dismissed.

Dated January 6, 2012.


Philip V. McGuire,
Judgment Officer