UNITED STATES OF AMERICA
before the
COMMODITY FUTURES TRADING COMMISSION

John Y. Aboulghar,

Complainant,

v.

Richard Leyton Mulcahy,
R.J. O'Brien Associates,
Inc., RM Trading LLC,

Respondents.

CFTC Docket No. 06-R044

ORDER OF DISMISSAL

On March 23, 2007, Respondents Mulcahy, R.J. O'Brien Associates, and RM Trading LLC filed a Motion for Summary Disposition in this matter. In support of the Motion, Respondents allege that Complainant John Aboulghar's failure to respond to a margin call was the sole and legitimate basis for their liquidation of his account and their creation and pursuit of the resultant debit balance – the actions of which Aboulghar now complains. Respondents allege that they had ongoing contact with Complainant on April 20, 2006, the date of the margin call, and that despite their requests that he supply the required margin, and the accessibility of Complainant's account online, John Aboulghar failed to deposit the requisite funds.

Complainant alleges that Respondents failed in their duty to warn him of the margin call. Respondents indicate that Complainant had a non-discretionary account, and consequently, Respondents had no extensive duties with regard to the margin call. Despite the absence of a specific duty, Respondents allege that Complainant had the benefit of many phone calls from Respondent Mulcahy requesting the required funds. They indicate that Complainant possessed his own access to the online account statements, and that Complainant nevertheless failed to provide the margin. Respondents have provided telephone records indicating a number of calls to Complainant on April 20, 2006.

This matter already has received consideration by the Circuit Court of Cook County. That court took jurisdiction of what would have been Respondents' counterclaim in this matter – the debit balance resulting from the liquidation of Complainant's account. In order to satisfy the deficit resulting from the liquidation of Complainant's account, Respondent R.J. O'Brien

Associates ("RJO") filed a breach of contract action in the Cook County Circuit Court. The Circuit Court entered a default judgment in favor of RJO for the debit balance on December 11, 2006, in the amount of $34,608.56, after Complainant failed to make an appearance.

Complainant Aboulghar filed his reparations Complaint on June 1, 2006. In accordance with the Rules Relating to Reparations Proceedings, a reparations action commences upon service of the notification of the action on the parties. Rule 12.26, 17 C.F.R. § 12.26. Notice of this action was served upon Respondents on July 11, 2006, and consequently, the Circuit Court proceeding had priority in time. Nor is there any indication that Respondents had notice of Complainant's June 1, 2006 reparations filing when they filed their breach of contract action on June 2, 2006. It does not appear that Respondents filed the Circuit Court action in order to defeat a possible reparations claim.

Pursuant to Rule 12.310(a), 17 C.F.R. 12.310(a), applicable to formal decisional proceedings, a party may file a motion for summary disposition, including a statement of the material facts as to which the moving party contends that there is no genuine issue. An adverse party may not rest upon the mere allegations, but is required to serve and file a responsive statement setting forth the material facts as to which he contends a genuine issue exists. Although Complainant did not file a timely response to Respondents' Motion, on April 13, 2007, he responded to the Court's April 5, 2007 Notice of its intention to evaluate the impact of the Circuit Court determination on these proceedings.

In his April 5, 2007 Statement, Complainant alleges that he was never "served, informed or notified" of the Cook County Circuit Action, and that Respondents hid that proceeding from him as part of their pattern of premeditated deceit. Complainant does not provide additional information to address Respondents' assertions regarding the margin call and account liquidation.

Unlike securities trades, trades in futures and options are not long term "investments," with a genuine potential to raise the boats of all market participants. "The commodity markets are highly volatile and are thus trading rather than investing vehicles." *Booth v. Peavey Company Commodity Services,* 430 F. 2d 132, 134 (Eighth Cir. 1970). Futures and options trades in the retail market are not hedges but are more in the nature of wagers, with winners and losers emerging as the result of each trade. As a result, futures and options trading requires close daily attention from the individual traders. Complainant seeks from Respondents fiduciary responsibilities which are not inherent to the market in which he chose to trade.

In addition, this Court is not free to scrutinize and reject the related determination of the Cook County Circuit Court. Whatever the circumstances of service and notice may have been, Complainant was required to bring them to the attention of that court. This Court does not have any authority – equitable or otherwise -- to relieve Complainant of that determination.

As a result of the entire record before this Court, the Court finds that there is no genuine issue as to any material fact, and grants Respondents' Motion for Summary Disposition. Accordingly, this matter is DISMISSED.

So ordered.

Issued April 18, 2007

George H. Painter
Administrative Law Judge