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WILLIAM K. ARCHER, Jr., Complainant,	
v.	CFTC Docket No. 06-R018
TRADE STATION SECURITIES, INC., d/b/a TRADE STATION SECURITIES, Respondents.	

INITIAL DECISION

Introduction

This dispute arises from the disruption to Trade Station Securities' operations in southern Florida caused by Hurricane Katrina. A month earlier, William Archer had authorized his friend Nick Hosking to place on-line trades for his discount, non-discretionary, account. As the storm intensified in the Bahamas from a tropical depression to a category one hurricane, Hosking shorted an increasing number of September Treasury bond futures. By Katrina's Florida landfall on the evening of Thursday, August 25th, Hosking had accumulated five short September T-bonds, and incurred a margin deficit for the Archer account. Trade Station initially reported this margin deficit to Archer and to Hosking via Trade Station's on-line trading platform.

On the morning of Friday, August 26th, Trade Station Securities closed its main office in Plantation, Florida, and opened its back-up trading desk in Richardson, Texas. Also that morning, Trade Station called Archer's North Carolina home -- via its main Florida phone number -- and left a voice-mail message advising Archer that he had a margin call requiring prompt action. Trade Station asserts that its employee routinely concluded margin call messages by providing the toll-free direct line to its trading desk. After the Trade Station employee left the message on Archer's phone, he sent a similar e-mail message to Archer and to Hosking.

About half an hour later, Archer returned home, listened to the voice message, hit the return-call button on his phone, and reached Trade Station's general number. Since the switchboard was not manned, Archer's call was directed to a pre-recorded general queue, at which point Archer selected the extension for customer service, rather than for the trading desk, and received a message to the effect that the main office was closed Friday due to the hurricane and would re-open on Monday, but that service was being provided via e-mail. Archer repeated this process a second time with the same result. However, Archer did not try to contact Trade Station via e-mail, because he was not a regular user of e-mail.

In mid-morning, Trade Station bought back three September T-bonds, at a loss of $4,125, leaving Archer short two September T-bonds. A couple of hours later, Hosking checked on-line and noticed the liquidation, and called John Sendlowski at the Trade Station trading desk, via the toll-free line, to demand that the three short T-Bonds be reinstated. Sendlowski advised Hosking that the three September T-Bonds had been liquidated because Archer had not responded to the margin call, and that Archer could reinstate them when he wired additional funds.

Archer wired more funds on Monday August 29th, but he initially directed the funds to his Trade Station securities account. After a call from Trade Station, he approved the transfer of the funds to his commodities account, on Wednesday August 31st. Meanwhile, Hosking would continue to place additional unrelated trades with Trade Station. At the hearing, Archer and Hosking conceded that Trade Station had done nothing to discourage or prevent them from re-instituting the three short September T-Bonds. However, despite favorable prices, Hosking decided not to re-short the three September T-Bonds. The following week, on September 9th, Hosking liquidated the remaining two September T-Bonds, at a wash. In sharp contrast, if Hosking had re-instated the three September T-Bonds on August 31st, and held the five short September T-Bonds until a couple of days before the last trading day (September 21st), he could have made for Archer a profit of over $6,500.

Hosking asserted that he did not re-institute the three short September T-Bonds on August 31st, because he had been busy "trying" to get Trade Station to "rectify" its "error."[1] However, in reality, Hosking waited until September 18th -- 20 days after Trade Station's purported error, and three days before the last trading day for the September contract – to take the first affirmative action, by sending the first in a series of e-mails to Trade Station. In these e-mails, Hosking claimed that Trade Station had frustrated Archer's efforts to meet the margin call by calling him from a phone number which proved to be "inoperable" when Archer called Trade Station using the call-back function on his phone. Hosking implied that Archer had used the call-back function solely as part of a good faith effort to promptly deal with the margin call. Also, Hosking focused on the fact all that Archer could remember hearing when he had called Trade Station was a terse message to the effect that the office was closed, with no guidance on contacting a back-up trading desk. Similarly, in the reparations complaint – also prepared by Hosking -- Archer merely asserted that he had returned the call immediately "using the number that was left on my phone log." Subsequently at the hearing, Archer embellished his story and asserted, for the first time, that he had been compelled to use the call-back function because the message on his phone had purportedly instructed him to call Trade Station without providing a number.

[1] Hosking testimony, at pages 56-57 of hearing transcript.

Archer claims that Trade Station unreasonably hindered his ability to meet the margin call on Friday August 26th, by closing its office and failing to provide adequate guidance or means for contacting its back-up trading facility. Archer seeks to recover his out-of-pocket loss, plus the lost profits that he claims he could have reaped if the three contracts had not been liquidated and all five contracts had been held until just before the last trading day, when he would have received the most favorable interim price. Trade Station denies any violations, asserts that it provided adequate instructions and means for Archer to contact its trading desk, asserts that it acted reasonably and in good faith when it liquidated the three under-margined contracts, asserts that it gave Archer a reasonable opportunity to re-short the three contracts, and asserts that Archer could have realized a substantial profit, and thus mitigated his losses, if he had promptly re-shorted three September T-bonds when he had wired additional funds.

As explained below, after carefully reviewing the documentary evidence and the oral testimony of the parties and their witnesses, I have concluded that Archer has failed to establish any violations causing damages by Trade Station. This conclusion is based in part on my determination that the testimony of Archer and his witness, Andrew Hosking, suffered from inconsistencies and memory lapses, and thus was not sufficiently convincing and reliable to sustain Archer's allegations, particularly his allegation that Trade Station had hindered his ability to meet the margin call by failing to provide the correct phone number for the trading desk when its employee left the voice-mail message.

Factual Findings

The parties

1. William Archer, 68 years old at the relevant time, resides in Creston, North Carolina during the summer months, and resides in Port St. Lucie, Florida during the winter months.

Archer is a retired real estate developer of ample means. Archer has a bachelor's degree in engineering. Archer had traded commodity futures for about three years, before switching to Trade Station, at Hosking's recommendation, for the lower commissions. Archer owns a personal computer and had on-line access to current status reports for his account. However, Archer is old-school, and thus seldom checked the status of the account or reviewed e-mails from Trade Station, and never sent e-mails to Trade Station. Archer deliberately detached himself from the day-to-day details of trading, and relied on his personal friend, Nick Hosking, to select and place trades, to monitor the account, to provide updates every couple of days, and later to protest the liquidation and to prepare his reparations complaint. [*See* account application, and Archer's testimony at pages 5-13, and 26-33, of hearing transcript.]

Archer's detachment from the trading in 2005 may account for the fact that in 2007 Archer could recall very little of anything relevant, beyond the fact that he had a frustrating experience trying to reach a person at Trade Station to discuss the margin call. For example, Archer could not recall conversations with Hosking soon before and after the disputed liquidation, and could not remember why he had wired additional funds to Trade Station the next business day. Archer also was uncertain about the exact chronology of events, and appeared to be unfamiliar with the substance of his complaint, which incorrectly stated that on the next business day, August 29th, Hosking had begun a labor-intensive effort to get Trade Station to re-instate the three positions, when in fact Hosking did not begin his effort until September 18th. Thus, although Archer appeared to be sincere, his confusion and faulty recollection precludes me from finding that his testimony was sufficiently reliable and convincing to sustain his allegations.

2. Nick Hosking, 73 years old at the relevant time, is an architect who resides in Pompano Beach, Florida. Hosking, who testified that he had 20 years experience trading

commodity futures and options, traded Archer's account pursuant to a written power of attorney, and had an informal agreement with Archer under which they would share any profits in the account. Hosking placed almost all of the orders via an on-line trading platform. [*See* Hosking's testimony at pages 47-49, and 71-72, of hearing.]

Throughout his testimony, Hosking could recall little or nothing about such relevant matters as: his conversations with Archer about the disputed liquidation; his trading strategy that led to the margin call; the circumstances around the deposit of additional funds; his decision not to re-instate the three short September T-Bonds once Archer had deposited the additional funds; and his 20-day delay before sending the first e-mail demanding corrective action. Hosking claimed to remember literally nothing about his role in the most recent relevant event, *i.e.*, the preparation of Archer's reparations complaint, in which he mischaracterized the timing of his efforts to cure Trade Station's purported error. In addition, Hosking made inconsistent assertions about the chronology of events. For example, Hosking initially asserted -- in his statement attached to Archer's reparations complaint -- that he first learned about the liquidation in an e-mail received on Saturday August 27th. In contrast, at the hearing, he testified that he had quickly learned about the liquidation on Friday August 26th when he accessed the on-line account. Also, in his e-mail messages to Trade Station and in his statement attached to Archer's complaint, Hosking had described Archer's difficulties trying to reach a human at Trade Station, but made no mention that he had an identical experience. In contrast, at the hearing, Hosking embellished his story by asserting, for the first time, that he had experienced the identical problems as Archer trying to reach Trade Station at its regular number. This attempt to corroborate Archer's story was difficult to square with: one, the fact that Hosking testified that he had programmed into his phone a different number for Trade Station, the toll-free direct line to the trading desk, which had remained working throughout the hurricane; and two, the fact that Hosking frequently utilized e-mail when communicating with Trade Station, but sent no e-mails to Trade Station on a day when he supposedly wanted to contact them but could not get through by phone. Thus, Hosking's faded, implausible, and inconsistent recollection precludes me from finding his testimony to be reliable.

3. Trade Station Securities, located in the town of Plantation in southern Florida, was a registered introducing broker from April 2001 to October 2003, and has been a registered futures commission merchant since October 2003. At the relevant time, Trade Station maintained its back-up trading desk in Richardson, Texas. Trade Station had used these facilities several times before Hurricane Katrina. When Trade Station shifted to its back-up facility, it revised the messages in its phone queue system, so that: one, a customer calling in on its general number who selected the extension for a non-vital office, such as *customer services*, would receive a recording that the office was closed, but that service was available via Trade Station's e-mail address, which was spelled out; and two, a customer who selected the extension for the *trading desk* would receive a recording to expect a long waiting time, but that a trading desk clerk would eventually answer the call. [NFA records; *see* Sendlowsik testimony at pages 95-96, and Walton testimony at pages 101-105, of hearing transcript.]

4. Hurricane Katrina was born as a tropical depression in the southeastern Bahamas on Tuesday, August 23, 2005. By 11:00 a.m. on Wednesday, August 24th, Tropical Depression Twelve had strengthened into Tropical Storm Katrina, and increased in strength as it tracked northwesterly through the Bahamas. On Thursday, August 25th, just before landfall at around 6:30 p.m. near North Miami Beach, Katrina strengthened to a category one hurricane, and spent seven hours over the tip of Florida, generating wind speeds of approximately 80 miles per hour

and wind gusts above 90 mph, and dumping five to fifteen inches of rain. After entering the warm waters of the Gulf of Mexico, Katrina rapidly intensified to a category five hurricane, tracked northward, and devastated the Gulf Coast from Mobile to New Orleans. [http://earthobservatory.nasa.gov/NaturalHazards/Archive/August2005/katrina.]

The T-Bond trade

5. On July 5, 2005, Archer opened a discount, non-discretionary, futures account and securities account with trade station. As part of the customer agreement, Archer agreed that Trade Station had the discretion to liquidate under-margined positions without prior notification. [*See* Hosking testimony at pages 71-72 of hearing transcript; and pages 1-2 of Trade station answer.]

6. From July 27th to August 8th, for Archer's account, Hosking placed a series of small day trades or overnight trades in the September Treasury Bond future, which realized modest three-figure profits and losses. According to Archer:

> We didn't really discuss [these trades]. I just knew he was trading bonds. That's all.

[Archer testimony at page 9 of hearing transcript; *see* Hosking testimony at pages 44, 48-50, and 72-73, of hearing transcript.]

7. On August 11th, Hosking shifted to a longer term, and more risky, strategy, by selling a September T-Bond, at 114-08, on August 11; selling a second, at 116-06, on August 19th; selling a third, at 116-05, on August 22nd; and selling a fourth, at 116-08, on August 23rd.[2] At the close on the 23rd, the four short T-Bonds had a negative liquidation value of $2,969, and the

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[2] The Treasury Bond futures contract trades at a minimum fluctuation, or tick, of one-thirty-second of a basis point. Each tick is worth $31.25.

account had a margin deficit of $170. In connection with this margin deficit, Hosking conceded: "I am sure that I was aware of it." [Hosking testimony, at pages 50-51 of hearing transcript.]

On Thursday, August 25th, Hosking shorted a fifth September T-Bond, at 116-26. On this record, it cannot be determined exactly when Hosking had placed the order for this fifth contract. However, his testimony indicates that he was not particularly concerned about the potentially adverse impact of shorting yet another position to an under-margined account in a rising market. [*See* Hosking testimony at pages 51-52 of hearing transcript.] In any event, at the close on the 25th, the five short T-Bonds had a negative liquidation value of $5,031, and the Archer account had a margin deficit of $3,788.

8. Although they generally recalled talking to each other about trading activity, neither Archer nor Hosking could specifically recollect their conversations about the shift from a modest short-term trading strategy to a more risky strategy of accumulating short positions in the face of a rising market and an increasing margin deficit. [*See* Archer testimony at pages 8-14, and Hosking testimony at pages 48-52, of hearing transcript.] Nonetheless, Archer's testimony that he was not aware that his account was becoming increasingly under-margined indicates that Archer and Hosking had not discussed the trade in any meaningful detail:

> I didn't pull it up. . . . I didn't even know about these positions. I leave this entirely to Mr. Hosking. I didn't know what was happening.

[Archer testimony at pages 13-14 of hearing transcript.]

The margin call, liquidation, and aftermath

9. On the morning of Friday, August 26th, Trade Station did not open its office due to expected wide-spread damage and disruption caused by Katrina. Trade Station implemented its

contingency plan and opened its back-up facility for vital functions in Richardson, Texas. [*See* Sendlowski testimony at pages 95-97 of hearing transcript.]

10. Also that morning -- at 5:59 a.m. CDT, before the CBOT opened -- Hosking placed a limit order below the market to buy five September T-Bond futures. This order would not be filled because, after the open, T-bond prices spiked up. [*See* Order #36499501 (Trade Station's pre-hearing production); and Sendlosky testimony at pages 90-92, and Hosking testimony at pages 62-63, of hearing transcript.]

11. The September T-Bond opened at 116-20, and began to climb. At a time undetermined on the record, John Sendlowski, a Trade Station trading desk representative, called Archer, who did not answer. Sendlowski offered plausible and convincing testimony that he left the same, well-memorized, message that he always leaves in this situation:

> Sir: Your account is showing on a margin call. If you do not take immediate action, the call could result in liquidation of the positions. Please give us a call at 800-837-8951. Thank you.

[Sendlowski testimony at pages 94-95 of hearing transcript.]

Subsequently, Sendlowski e-mailed a similar message to Archer and Hosking. [*See* Sendlowski testimony at page 97, and Hosking testimony at page 49, of hearing transcript.]

12. About half an hour later, Archer returned home, listened to the message, hit the return-call button on his phone, and reached Trade Station's general number. Since the switchboard was not manned, Archer's call was directed to the pre-recorded general queue. Since he had never handled a margin call situation before and since Sendlowski had asked him to call "us," Archer selected the extension for customer service, rather than for the trading desk, and received a message to the effect that the main office was closed Friday due to the hurricane and would re-open on Monday, but that service was being provided via e-mail. Archer repeated this

process a second time with the same result, and at some point erased the message on his phone with the toll-free number. Archer did not try to contact Trade Station via e-mail, because he was not a regular user of e-mail. Archer also tried unsuccessfully to contact Hosking by phone.

13. At 10:07 a.m. CDT, Trade Station bought back three September T-bonds, at 116-29, for a loss of $4,125, which left Archer short two September T-bonds. A couple of hours later, Hosking checked the on-line system, and noticed the buy-back of the three September T-Bonds. Hosking spoke to Archer and learned about his frustrations with Trade Station's phone system. Hosking called the trading desk at the toll-free number programmed into his phone, and spoke to John Sendlowski. Hosking could not remember this call. Sendlowski's notes for this call, time-stamped about two hours before the close, state:

> Client called in ranting about being liquidated. Client said our lines were down. Our 800 line was operational night and day. Client wants liq[uidated] positions put back in account. Client has not initiated wire because he is in Fl[orida]. . . . Placed order for him @ the desk [*i.e.*, a day limit order to liquidate remaining two contracts, which was not filled], no charge.

[Work notes dated August 26, 2007 (Trade Station pre-hearing production); *see* Sendlowski testimony at pages 97-100, and Hosking testimony at pages 54-57, of hearing transcript.]

14. On Monday August 29th, Archer wired more funds, but he initially directed the funds to his Trade Station securities account. After a call from Trade Station, he approved the transfer of the funds to his commodities account, on Wednesday August 31st. On that day, the September T-Bond traded between 116-25 and 117-09.[3] Meanwhile, Hosking would continue to place additional unrelated trades with Trade Station.

At the hearing, Archer and Hosking conceded that Trade Station had done nothing to discourage or prevent them from re-instituting the three short September T-Bonds. However, despite favorable prices, Hosking decided not to re-short the three September T-Bonds. The

[3] The three liquidated September T-Bonds had initially been sold at 114-08, 116-06, and 116-05.

following week, on September 9th, Hosking liquidated the remaining two September T-Bonds, at a wash. [*See* Archer testimony at pages 25-26 of hearing transcript.]

Set out below are the prices for the September T-Bond during its last four days of trading:

Date	*High*	*Low*	*Close*
Sep. 16	115-25	114-27	115-05
Sep. 19	115-12	115-00	115-08
Sep. 20	115-20	114-20	115-15
Sep. 21	116-09	115-18	116-05

As can be seen, during these four days, the September T-Bond traded well below prices that had prevailed in late August. Thus, if Hosking had re-instated the three September T-Bonds on August 31st, and held the five short September T-Bonds until September 19th – the day after his first written protest, and two days before the last trading day -- he could have made for Archer a profit ranging from $6,530 and $9,905.[4] [*See* Archer testimony at pages 20, 26, and 30-36, Hosking testimony at pages 56-60, and 75-80, of hearing transcript.]

15. Hosking offered various reasons for why he did not re-institute the three short September T-Bonds on August 31st. At the hearing, when asked why he did not re-institute the three positions after Archer had added more funds, Hosking testified: "Well, to be perfectly honest with you, it never occurred to me. I was just so angry that I lost it." [Page 58 of the hearing transcript.] In the reparations complaint, drafted by Hoskings, Archer asserted that Hoskings had decided to liquidate the trade in order to focus on convincing Trade Station to undo what he considered to be a wrongful liquidation.

[4] The low end of the profit range is based on the low price on August 31st and the high price on September 19th, and the high end is based on the high price on August 31st, and the low price on September 19th.

However, in reality, Hosking waited until Sunday, September 18th -- 20 days after Trade Station's purported error – to take the first affirmative action, by sending the first in a series of e-mails to Trade Station. (Coincidentally, on Thursday, September 15th, the September T-Bond began to drop, and on Friday, September 16th, closed at 115-05.) In these e-mails, Hosking claimed that Trade Station had frustrated Archer's efforts to meet the margin call by calling him from a phone number which proved to be "inoperable" when Archer called Trade Station using the call-back function on his phone.

Hosking did not allege in any of these e-mails that Trade Station had compelled Archer to use the call-back function by failing to provide the toll-free number in the message left on Archer's phone. Rather, Hosking implied that Archer had used the call-back function solely as part of a good faith effort to promptly deal with the margin call. Also, Hosking focused on the fact that all that Archer could remember hearing when he had called Trade Station was a message to the effect that the office was closed, with no further guidance. Similarly, in the reparations complaint – also prepared by Hosking -- Archer merely asserted that he had returned the call immediately "using the number that was left on my phone log." Subsequently at the hearing, Archer embellished his story and asserted, for the first time, that he had been compelled to use the call-back function because the message on his phone had purportedly instructed him to call Trade Station without providing a number. [*See* Archer testimony at pages 33-40, and Hosking testimony at pages 66-70, of hearing transcript.]

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, supercede any duties the FCM owes to the defaulting customer. *Lee v. Lind-Waldock & Co.*, Comm. Fut. L. Rep. (CCH) ¶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, Archer must show by a preponderance of the evidence either that respondents misled him about their margin policy or that they bought back the three contracts in bad faith. *Baker v. Edward D. Jones & Company,* Comm. Fut. L. Rep. (CCH) ¶21,167 (CFTC 1981).

On this record, Archer has not shown any deception by respondents concerning their margin policy. The customer agreement signed by Archer authorized respondents to liquidate open positions under certain conditions, including unmet margin calls. Moreover, Archer's agent, Hosking, conceded that Trade Station could legally liquidate under-margined positions without prior notice.

Hosking, with Archer's implicit approval, engaged in a risky strategy of shorting additional contracts in a rising market, which incurred a significant margin deficit. Well before the close on August 26th, Trade Station left a phone message with Archer about the resulting margin call. This message included the toll-free direct line to the trading desk, a line which remained operational throughout the hurricane and its aftermath. Trade Station also e-mailed notice of the margin call to Archer, and to Hosking who became aware of the margin call and liquidation well before the close on Friday, August 26th. In these circumstances, Archer has failed to show that respondents acted in bad faith when they liquidated the three under-margined contracts after Archer or Hosking had not promptly responded to Trade Station's messages.

Regardless of the frustrations Archer encountered as he navigated Trade Station's phone queue, Archer's agent, Hosking, knew that Archer's account needed additional funds to support five short T-Bond contracts, and Hosking proved able to contact the trading desk, well before the close on Friday, August 26th. Archer did not wire the funds that day, but he did wire the funds the next business day, and he could have re-instituted the liquidated contracts at a more favorable price, but did not. Archer concedes that Trade Station did not discourage or prevent him from re-shorting the three contracts, and concedes that it was the decision of his agent -- who has two decades of trading experience -- to bail out of the trade, despite the fact that Archer had wired sufficient funds to support five contracts. In these circumstances, it is Archer and his agent Hosking -- not Trade Station -- who is responsible for missing what proved in hindsight to be an opportunity for profits.

ORDER

William Archer has failed to establish any violations causing damages. Accordingly, the complaint against Trade Station Securities, Incorporated is dismissed.

Dated July 20, 2007.

Philip V. McGuire,
Judgment Officer