U.S. COMMODITY FUTURES TRADING COMMISSION
Three Lafayette Centre
1155 21st Street, NW, Washington, DC 20581

CARLOS D. RIDAO,

Complainant,

v.

CITIGROUP GLOBAL MARKETS, INC.,

Respondent.

CFTC Docket No. 06-R060

ORDER OF DISMISSAL

On September 29, 2006, the Office of Proceedings received the complaint of Carlos D. Ridao.[1] In it, he sued[2] as "an attorney-in-fact for [24] individual Argentine investors who had commodity futures accounts with Respondent Citigroup Global Markets, Inc.,"[3] accounts "that he managed."[4] On November

[1] Reparations Complaint, dated September 26, 2006 ("Complaint").

[2] In the Complaint, Ridao holds himself out as the complainant and not merely as the agent of complainants. See, e.g., Complaint at 2-3 ("Complainant Carlos Ridao is a citizen of Argentina."). The pleading does not refer to the account holders as complainants. Moreover, Ridao and not the account holders verified the Complaint. Id. at 27.

[3] Id., Exhibit A. Below, we refer to this group as the "account holders." Between them, the account holders owned 16 relevant accounts, half of them joint accounts. Id., Exhibit C.

[4] Complaint at 1-2. Although the Complaint sometimes refers to Ridao as a trustee and to the creation of litigation trusts, it also (and more prominently) identifies him as the account holders' attorney-in-fact, appointed by powers of attorney that the account holders executed. Id. at 1-2, 4.

(continued..)

30, 2006, the Office of Proceedings forwarded the Complaint for a formal decisional proceeding.[5]

Upon review of the pleading, we issued a show cause order.[6] In it, we observed that Ridao was apparently litigating as the account holders' attorney-in-fact and that attorneys-in-fact are not considered to be real parties in interest.[7] Consequently, we directed Ridao to show cause why we should not dismiss his complaint without prejudice.[8] The complainant filed his response on December 20, 2006.[9] In it, he abandoned the earlier claim that he was a trustee of the account holders' causes of action but maintained that he can sue for the benefit of the account holders in this forum and his complaint should not be dismissed.[10]

(..continued)

Ridao charges "Citigroup and certain unknown floor brokers" with wrongfully causing the account holders to suffer losses totaling $1,807,581.43 by executing unauthorized trades and fraudulently reporting them. Id. at 3-4, 6. Ridao seeks punitive as well as compensatory damages. Id. at 3, 22-26.

[5] Notice and Order, dated November 30, 2006, at 1.

[6] Show Cause Order, dated December 8, 2006.

[7] Id. at 2-4.

[8] Id. at 6.

[9] Complainant Ridao's Response to the December 8, 2006 Order to Show Cause, dated December 20, 2006 ("Response").

[10] Id. at 1, 7-8.

A Complainant Must Be A Real Party In Interest

Ridao's argument begins with a modest proposition, that we should look to the Part 12 Rules to determine who can sue in reparations, and ends with a fairly radical theory, that any person can sue in reparations if he charges the respondent with a violation of the Act (or any regulation or order thereunder) and the respondent is a registrant.[11] In other words, he argues that there is no real party in interest requirement and the Commission has never adopted one.[12] Even if Ridao is right and the Part 12 rules facially permit a person who has no more than an indirect or ethereal stake in the outcome of a proceeding to sue in reparations, the Commission has considered its authority under Section 14(a) of the Act, 7 U.S.C. §18(a) and reached a different conclusion.

In Resolution Trust Corp. v. Gelderman, Inc., [1994-1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶26,621 at 43,643 (CFTC Feb. 14, 1996), complainant Resolution Trust Corporation was the receiver of a failed savings and loan bank and sued to recover losses sustained in an account owned by the bank's wholly-own subsidiary. At the trial level, the administrative law judge dismissed the complaint on grounds that the RTC lacked standing to sue (even though it had a substantial indirect interest).[13] On appeal, the RTC took

---

[11] Id. at 4 ("The more expansive language . . . , Section 12.13(a), 17 C.F.R. §12.13(a), states that **any** person complaining of an infraction of the CEA or any rule, regulation or order thereunder by any person who is a registrant may bring a reparations proceeding." (emphasis in original)).

[12] Id. at 4-7.

[13] Resolution Trust, [1994-1996 Transfer Binder] ¶26,621 at 43,643.

a position similar to that of Ridao and argued that, because Section 14(a) referred to "[a]ny person complaining of any violation" of the Act or Commission regulations, "anyone even indirectly affected by a violation, such as the stockholder of a corporation," could sue in reparations.[14] The Commission rejected this proposition, explaining,

> The apparent suggestion is that Congress by this broad language intended to make the reparation forum available to anyone even indirectly affected by a violation, such as the stockholder of a corporation. Such a broad reading, however, would require us to overlook the presence of the words "actual damages proximately caused." The plain meaning of these words lead us to conclude that in fact the right of action created here is to be confined to the person who actually suffered the loss. For this reason, we cannot agree that the doorway to the reparation forum is as wide as the RTC contends.[15]

More recently, the Commission wrote, "Commission precedent . . . suggests that the named account holder normally has exclusive standing to claim losses

---

[14] Id. at 43,645.

[15] Id. (emphasis added). Finding the RTC to lack standing under the Section 14(a) or the Financial Institutions Reform, Recovery and Enforcement Act of 1989, Pub. L. No. 101-73, 103 Stat. 183 (1989), the Commission affirmed the dismissal of the complaint. Id. at 43,647.

In addition to his text-based argument, much of Ridao's response rests on the proposition that the Show Cause Order adopted Federal Rule of Civil Procedure 17's real party in interest requirement. Response at 3, 6-7. The idea is reasonable but wrong. As explained in the above-quoted portion of Resolution Trust, the real party in interest requirement we apply stems from the standing limits that Congress embedded in Section 14(a). To develop our thinking on procedural issues, we and the Commission have drawn on federal sources and other authorities. However, federal court rules and interpretations thereof do not bind us (unless the Commission says they do). In re Global Minerals & Metals Corp., [2003-2004 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶29,555 at 55,386 n.18. (CFTC Aug. 4, 2003).

caused by a registrant's fraudulent inducement or related violative conduct."[16] Ridao has presented no authority indicating that the Commission's view on this has subsequently changed.[17]

---

[16] Brooks v. Carr Invs., Inc., [2002-2003 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶29,027 at 53,459 (CFTC May 9, 2002).

[17] Instead, Ridao points to cases that predated Resolution Trust. For example, he cites Keller v. Scoular-Bishop of Missouri, Inc., [1986-1987 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶23,128 (CFTC June 26, 1986), for the proposition that an investment advisor's association with a customer's account that the advisor does not own is close enough to confer standing to sue to recover wrongfully caused losses of a customer. Response at 6-7. Keller was a consolidated proceeding in which the advisor and customer both sued the same respondents and the Chief Administrative Law Judge consolidated the proceedings. Keller, [1986-1987 Transfer Binder] ¶23,128 at 32,334 n.1. Keller is distinguishable from the current proceeding because: (1) the advisor (Keller) and the customer (Myrick) in Keller each filed their own complaint, (2) Keller and Myrick each owned their own account and (3) Keller and Myrick each sued on their own behalf, alleging unauthorized trading and seeking a ruling that they were not responsible for the deficit balances in their accounts. Keller, [1986-1987 Transfer Binder] ¶23,128 at 32,334-35; Keller v. Scoular-Bishop of Missouri, Inc., [1984-1986 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶22,477 at 30,118-20 (ALJ Jan. 17, 1985). Thus, although the Commission questioned whether either complainant had standing (because they were seeking what amounted to declaratory relief), neither the respondents nor the Commission questioned Keller's standing to sue in the capacity that he did, as an account owner. Keller, [1986-1987 Transfer Binder] ¶23,128 at 32,334 n.1. True, the Commission stated "For all practical purposes, [the advisor] is the real party in interest in both these claims." Id. at 32,335 n.4. However, this statement took place in the context of deciding whether Keller ratified unauthorized trades made for the benefit of Myrick's account. Thus, we do not take Keller to mean that an investment advisor generally who exercises a limited power of attorney in the form of trading control over an account in which he has no ownership interest is a real party in interest. Even if we read Keller in the manner that Ridao proposes, Resolution Trust would have overturned it sub silentio.

Ridao also draws our attention to Dunn v. Murlas Commodities, Inc., [1986-1987 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶23,357 (CFTC Nov. 12, 1986). Response at 6. He describes the pertinent ruling in the parenthetical statement, "father trading representative was real party in

(continued..)

Third Party Standing

Despite its preference that the actual account holders sue to obtain compensation for the harm they suffered, the Commission permits third party standing in rare cases when a complainant has demonstrated[18] that it would be prudent to let the case proceed.[19] "Two factual elements determine whether third party standing is appropriate: the litigant's relationship to the person whose right he seeks to assert and the third party's ability to protect its own interests."[20] Ridao argues that his attorney-in-fact relationships with the

---

(..continued)

interest as FCM agent dealt exclusively with father trading as representative on the telephone and FCM account statements were mailed to the father as trading representative." Id. This description is a bit naughty because Ridao omitted one important fact, the father "opened [the account in question] jointly with his minor son" and was not merely a trading advisor acting pursuant to a power of attorney. Dunn, [1986-1987 Transfer Binder] ¶23,357 at 32,986. Thus, at most, Dunn sheds light on whether both owners of a joint account must sue. See Dong v. Concorde Trading Group, Inc., CFTC Docket No. 01-R089, 2005 CFTC LEXIS 110, at *12-13 (CFTC October 14, 2005).

[18] The complainant bears the burden of demonstrating the propriety of third-party standing. Resolution Trust, [1994-1996 Transfer Binder] ¶26,621 at 43,645.

[19] Id.

[20] Id. (citation omitted). Resolution Trust adopted the standard that federal courts consider when determining the prudence of third-party standing. Id. The federal courts have a "reluctance to exert judicial power when the plaintiff's claim to relief rests on the legal rights of third parties." Warth v. Seldin, 422 U.S. 490, 501 (1975). In Resolution Trust, the Commission seemed no less reluctant.

(continued..)

account holders obligates him to press their cases.[21] He is unpersuasive.

As discussed in the show cause order, the account holders empowered Ridao to litigate on the account holders' behalf[22] but the authorizing instruments do not obligate him to do so.[23] In addition, there is a potential conflict of interest between Ridao and the account holders.[24] Thus, although the record does not refute the theory that Ridao would adequately press the account holders' cases if given the opportunity, it does not strongly support the idea that the account holders would receive his undivided loyalty. Moreover, Ridao does not argue that the account holders are unable to protect their own

---

(..continued)

In federal courts, a complainant seeking third party standing must allege a personal injury. Resolution Trust, [1994-1996 Transfer Binder] ¶26,621 at 43,645. However, this requirement stems from Article III mandates and, thus, does not apply here. Indemnified Capital Invs., SA. v. R.J. O'Brien & Assocs., 12 F.3d 1406, 1409 (7th Cir. 1993); Resolution Trust, [1994-1996 Transfer Binder] ¶26,621 at 43,645.

[21] Response at 12.

[22] Show Cause Order at 3-4.

[23] Ridao presents no authority in support of the proposition that he is obligated to zealously "act" in the account holders' interests. Response at 12.

[24] Ridao claims that he controlled the account holders' trading when they incurred the losses in question. Complaint at 2, 8. Consequently, it is possible that he is at least partially responsible for the account holders' alleged injuries. If it meant revealing his role in the causing the account holders' losses, Ridao's zeal in protecting their interests would have a tendency to wane (even if his vigor in trying to hold the respondent liable did not). If presented with this possibility, Ridao would argue that he is not the least bit responsible for the account holders' losses and that may be so. However, absent admissions that the respondents have not (and would be unlikely to) make, it would take a full-blown evidentiary hearing to resolve the issue.

interests and the record does not give us sufficient reason to question their capacity. For these reasons, Ridao has failed to demonstrate that third party standing would be appropriate in this case.

Requiring the Account Holders to Sue Furthers The Objectives of Part 12

Ridao argues that requiring the account holders to sue in their own names would increase their litigation costs and undermine the reparations program's objective of providing an expeditious forum.[25] It is true that the account holders would incur greater costs if they litigated in their own name rather than by proxy in a pseudo class action. However, the additional costs they would have to bear are precisely those costs that the Commission expects complainants to shoulder.[26] In addition, permitting those who are personally injured to litigate by proxy would undermine the goal against which the Part 12 Rules balance expedition, accurate fact finding.[27] Moreover, we have permitted

---

[25] Response at 11-12. Ridao also argues that requiring the account holders to file 16 separate complaints (one for each account) would "drastically" increase the Commission's reparations docket. Id. at 12. If this characterization is true, it reveals the power of small numbers rather than demonstrating a high likelihood that the Commission's two administrative law judges and one judgment officer would need to produce heroic efforts to handle the account holders' cases in addition to their other work.

[26] For example, 17 C.F.R. §12.13(b)(2) operates to weed out some frivolous complaints by requiring a complainant to verify his pleading. Here, the account holders have not verified Ridao's complaint.

[27] For example, Ridao tells us that the account holders would subject themselves to the full spectrum of reparations discovery as though they are parties. Response at 10 n.7. However, they also reserve the right to object to discovery requests. Id. This reservation, combined with our lack of jurisdiction, means that the account holders would not be the equivalent of

(continued..)

parties to conduct consolidated proceedings when the multiple complainants lodge claims arising from the same core facts.[28] Thus, the additional costs associated with the account holders litigating in their own names may be less that Ridao thinks.

Dismissal Is An Appropriate Remedy

Ridao asserts that, even if he is not a real party in interest, we cannot dismiss his complaint because Rule 12.308(c)(1), 17 C.F.R. §12.308(c)(1), only permits us to dismiss a complaint that fails to state a cognizable claim.[29] We

---

(..continued)

parties for discovery purposes. The differences would be evident if disputes arose from the discovery directed to them.

If an account holder was a party and failed to properly answer an admission request, we could consider the request's factual premise to have been admitted. 17 C.F.R. §12.33(b)-(c). If the account holder was a party and refused to answer on the basis of a bogus objection, we could compel an answer. 17 C.F.R. §12.33(c). However, because the account holders are not parties, we cannot compel their compliance with any discovery. See 17 C.F.R. §§12.30(b)(3), 12.33(c). Instead, the respondents would have to petition the Commission to go to federal court to obtain an order compelling discovery. 17 C.F.R. §§12.31(b), 12.32(d), 12.313(f). Moreover, because our rules do not permit parties to serve admission requests upon non-parties, there is no right to petition the Commission to start a federal court action to compel answers. Compare 17 C.F.R. §12.31(b) with 17 C.F.R. §12.33. Thus, the account holders' offer of voluntary discovery still leaves them with greater latitude to withhold information than a party would have.

[28] See Sommerfeld v. Aiello, [1999-2000 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶28,271 at 50,644 n.14 (CFTC Sept. 29, 2000).

[29] Response at 8-9. He also argues that dismissal would be improper under Federal Rule of Civil Procedure 17. Id. at 9-10. To be more precise, he argues the (1) Rule 17 bars the dismissal of a complaint when the named plaintiff is not a real party in interest until there has been a reasonable time in which to substitute or join plaintiffs or the real party in interest has ratified the (continued..)

agree with Ridao that, if his complaint stated a cognizable claim, we should not dismiss it. However, the claim must be cognizable as it relates to the complainant.[30] Even if he charges a respondent with violations of the Act and Commission regulations, a complainant who does not claim to have been injured in a manner that we can remedy generally lacks standing and does not state a cognizable claim, and his complaint is subject to dismissal pursuant to Rule 12.308(c)(1).[31] Dismissal is not only authorized, it is the only remedy we

---

(..continued)

complaint, (2) ratification is the "the recommended course to take," and (3) "ratification of . . . this action is well established" in that the account holders authorized Ridao to sue on their behalf, they have been aware of his acts in this forum and there has been no objection. Id. at 10-11. Setting aside the inapplicability of this rule in light of the Commission's affirmance of the dismissal in Resolution Trust, we note that "[a] proper ratification under Rule 17(a) requires that the ratifying party (1) authorize continuation of the action and (2) agree to be bound by its result." Icon Group, Inc. v. Mahogany Run Dev. Corp., 829 F.2d 473, 478 (3rd Cir. 1987). Accord Mutuelles Unies v. Kroll & Linstrom, 957 F.2d 707, 712 (9th Cir. 1992); In re Vitamins Antitrust Litig., MDL No. 1285, Misc. No. 99-0197 (TFH), 2002 U.S. Dist. LEXIS 25789, at *22 (D.D.C. Feb. 7, 2002). In addition, "the acknowledgment, or other ratifying instrument, should identify this action particularly rather than provide a general authorization for litigation." Icon Group, 829 F.2d at 478. Although the record shows that the account holders authorized Ridao to litigate on their behalf, the complainant has filed no instrument in which the account holders authorize continuation of this specific proceeding or agree to be bound by its result. Thus, even if we permitted Rule 17 ratification, there is no document in the record by which the account holders provided it.

[30] Cf. Resolution Trust, [1994-1996 Transfer Binder] ¶26,621 at 43,644-47.

[31] See Murray v. Cargill, Inc., [1998-1999 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶27,561 at 47,557-61 (ALJ Mar. 4, 1999) (dismissing the complaint of a complainant that lacked standing pursuant to 17 C.F.R. §12.308(c)), aff'd [1999-2000 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶27,932 (CFTC Nov. 29, 1999).

have.[32] Thus, we are forced to choose between letting a case proceed even though the complainant lacks standing and requiring the real parties in interest to file new complaints. We opt for the latter.

Conclusion

For the reasons set forth above, we **DISMISS** his complaint **without prejudice**.

IT IS SO ORDERED.

On this 12th day of January, 2007

Bruce C. Levine

Bruce C. Levine
Administrative Law Judge

[32] We cannot compel Ridao to amend his complaint to add the account holders as complainants nor can we compel the account holders to join the Complaint. Ridao could have moved to amend the Complaint but did not. See 17 C.F.R. §12.307(a).