



U.S. COMMODITY FUTURES TRADING COMMISSION

Three Lafayette Centre
1155 21st Street, NW, Washington, DC 20581
www.cftc.gov

Office of Proceedings

JON B. STRAUB,
Complainant,

v.

ALBERTO JESUS JIMENEZ, and
ROBERT WARREN MEDDOFF,
Respondents.

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CFTC Docket No. 06-R016

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INITIAL DECISION

Jon Straub alleges that Robert Meddoff and Alberto Jimenez, associated persons with Executive Commodity Corporation, fraudulently induced him to open an account and approve a series of high-risk trades designed to generate excessive commissions. Meddoff and Jimenez filed a joint answer generally denying any violations and raising the statute of limitations defense.¹ Straub's plausible and convincing oral testimony substantiated his allegations that Meddoff and Jimenez had misrepresented and omitted various material facts, including the specific risks associated with the dubious trading strategies recommended by respondents, and the poor past performance record of customers of Executive Commodity Corporation. However, Straub failed to establish that he had exercised reasonable diligence in pursuing a legal remedy after he had closed his account, and, as result, it has been concluded that his claim is barred by the statute of limitations.

¹ The joint answer was the same form answer that respondents' law firm has been filing for several years. Executive Commodity Corporation was defaulted after it ceased to participate in the proceeding.

On May 30, 2003, Straub agreed to open an account with respondents with a deposit of \$5,000. Straub deposited an additional \$21,000 on June 4, and \$18,750 on June 5, for \$44,750 in total deposits. Respondents would return \$15,259 on June 27, and \$1,422 on July 10. Thus, by July 10, 2003, Straub had effectively committed \$20,569. Straub credibly testified that he committed these funds based on Meddoff's and Jimenez's guarantees that he would make huge profits if he followed their advice.

By the end of July 2003, respondents had charged \$15,000 in commissions, which consumed almost three quarters of Straub's investment. Not surprisingly, the July 2003 monthly account statement reported that the account value had dropped to \$2,000.

On August 28, 2003, respondents returned the \$3,740 cash balance. On September 5, 2003, the last options in the account expired worthless. Straub would have no contact with respondents until after he filed his reparations complaint on December 13, 2005.²

In early July 2004, Straub injured his back which resulted in excruciating pain that severely limited his mobility. For about three and a half months before his injury was correctly diagnosed and partially remedied with surgery, Straub was prescribed a combination of potent pain-killers, and anti-depressant and anti-anxiety drugs. His miseries were compounded by the fact that his wife initiated divorce proceedings. However, during this difficult and challenging time, Straub was able to perform basic and essential tasks such as opening and reading the mail, talking on the phone, and using his personal computer.

In June of 2005, the CFTC Division of Enforcement contacted Straub and asked him to answer a questionnaire about his experience with Executive Commodity Corporation. On July 11, 2005, Straub filled out the questionnaire, and in his replies made it clear that he thought that Meddoff and Jimenez had not fairly or accurately disclosed the risks associated with the trading

² This case was re-assigned to my docket after Judge Maillie retired.

strategies that they had recommended. At some point, a Division of Enforcement attorney gave general advice to Straub on where he could seek private remedy. On this record, it cannot be determined if that attorney warned Straub about the two-year statute of limitations. In any event, Straub would not file his reparations complaint until December 13, 2005.

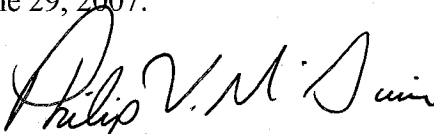
A cause of action accrues, and the two-year limitations period under Section 14(a)(1) of the Commodity Exchange Act begins to run, when a complainant discovers the wrongful conduct underlying his claim, or in the exercise of reasonable diligence, should have discovered the wrongful activity. *McGough v. Bradford, et al.*, Comm. Fut. L. Rep. (CCH) ¶ 28,265, at 50,601-50,603 (CFTC 2000). A determination of when wrongful activity should have been discovered is based on the particular facts and circumstances of the case, including: one, the relationship of the parties; two, the nature of the wrongful activity; three, the complainant's opportunity to discover the wrongful activity; and four, the actions taken by the parties subsequent to the wrongful activity. *Id.* Here, although Straub found the account statements to be confusing, he was capable of comprehending that the account value, reported at the bottom line of each account statement, reflected the overall performance of the account. Thus, by July 31, 2005, Straub knew that the account value had declined to \$2,000. Upon receipt of the September 5, 2003 account statement, Straub knew that his account had declined to zero. Thus, soon after September 5, 2003, Straub knew that he had lost over \$24,000, and had good reason to suspect that Meddoff's and Jimenez's profit guarantees had been false. The fact that Straub complained about their guarantees in his July 2005 statement to the CFTC Division of Enforcement indicates that – several months before he would file his complaint -- he had come to the conclusion that respondents had been less than forthright in their dealings with him.

The date that Straub filed his complaint, December 12, 2005, is three months past the two-year deadline. Therefore, Staub's complaint will be barred by the statute of limitations, unless he can invoke equitable tolling. Equitable tolling focuses on the reasonableness of a complainant's action or inaction, and the proper focus of the analysis is objective rather than subjective. *See Reinhard v. Ace American, Inc.*, Comm. Fut. 1. Rep. (CCH) ¶24,375 (CFTC 1988) Straub has produced conclusory evidence about his medical condition and psychological state which indicates that he was seriously weakened and distracted for about three months in 2004. However, this evidence is insufficient to establish that Straub was incapacitated, and also does not explain his delay for the ten months before his injury, and, most significantly, does not explain his six-month delay after July 2004 when he was advised of his right to seek recovery of his losses in reparations. In these circumstances, Straub's combined health and marital crisis, standing alone, is not an adequate basis to toll the statute of limitations. Thus, Straub's claim is time barred.

ORDER

Respondents have established that complainant did not timely file his complaint and that there is no basis for application of equitable tolling. Thus, it is concluded that the complaint is barred by the statute of limitations, and the complaint is hereby dismissed.

Dated June 29, 2007.


Philip V. McGuire,
Judgment Officer