UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

SCOTT D. SEVERANCE v. FIRST OPTIONS OF CHICAGO, INC., MARK DAVID BATEMAN, and JOHN JOSEPH FISHER	CFTC Docket No. 02-R078 OPINION and ORDER

Respondents First Options of Chicago, Inc. ("First Options"), a futures commission merchant ("FCM"); its employee, John J. Fisher ("Fisher"); and Mark D. Bateman ("Bateman"), a floor broker who guaranteed complainant's account, appeal an initial decision in favor of complainant Scott D. Severance ("Severance").

Severance alleged unauthorized trading against Bateman and First Options, based on the FCM's action permitting Bateman to liquidate positions in Severance's account under circumstances in which Bateman lacked authority to trade for Severance and no margin call had been issued. Severance also alleged that Bateman and Fisher fraudulently induced him to open his account.

The Administrative Law Judge ("ALJ") concluded that Fisher and Bateman fraudulently induced Severance to trade and that Bateman subsequently engaged in the unauthorized liquidation of his account. He found First Options liable for violating Regulation 166.2 (authorization to trade) by permitting Bateman to liquidate complainant's account. The ALJ awarded Severance $25,000 in damages, the amount of his investment.

On appeal, Bateman maintains that he did not engage in fraudulent inducement and that there was no connection between his closing of open positions in the account and Severance's

losses. First Options and Fisher assert that Fisher did not mislead complainant. The FCM also argues that it had the right to liquidate Severance's account in the exercise of its business judgment. It further maintains that Bateman, as the account's guarantor, properly liquidated positions in the account on behalf of First Options and himself.

Based on our independent review of the record, we affirm the initial decision in part, and reverse it in part.

Background

Many facts relevant to this matter are undisputed. Severance, who has degrees in business and engineering from the University of Michigan, was a business plan advisor and had worked part time as a salesman for a small internet company.

Bateman was a professional futures trader who lived in Chicago and had trading privileges at the Chicago Mercantile Exchange ("CME"). Although he was registered as a floor broker, he did no customer business and traded solely for his own account. Severance and Bateman met through a mutual friend at the end of 1999 or the beginning of 2000, and soon thereafter, Bateman agreed to teach Severance how to trade futures. The parties dispute whether Bateman or Severance initially proposed their arrangement.

Severance opened an account at First Options on April 13, 2000, using that firm because Bateman cleared his own trades through First Options and wanted Severance to trade there. Fisher, a customer service representative at First Options, facilitated the account opening process with Severance. Because Severance planned to begin trading with only $25,000, First Options required Bateman to execute a $100,000 Guaranty Agreement in its favor covering potential losses. Severance was aware of the agreement's general terms, but never saw the actual document until the hearing in this matter. Although Bateman guaranteed the account, he had no

authority to trade it. Severance took a one-day class on how to use the CME's Globex electronic trading system, and with Bateman's help, installed a Globex terminal in his residence.

On May 22, 2000, Severance funded the account with $25,000, $24,000 of which he borrowed from a friend. Bateman and Severance agreed that Bateman would teach Severance how to trade and would provide ongoing trading advice. Profits were to be divided between them, and losses would be borne solely by Severance. A contract was drafted, but never finalized or executed.

Bateman typically traded the NASDAQ 100 future, the S&P 500 future, and the e-mini versions of these contracts. Five "e-mini" contracts are the equivalent of one regular contract. He frequently took arbitrage positions in these contracts, trading a full-size contract against five e-minis. Bateman's arbitrage positions required lower margins than outright speculative positions, and reduced his risk of loss (and his potential gains). Bateman taught Severance his style of trading, and expected him to follow it.

For reasons not explained in the record, Severance did not begin trading his account until September 29, 2000. His first two trades were conservative and yielded modest profits of $10 and $300. During overnight trading on October 5, 2000, Severance traded more aggressively, taking a speculative position in four large NASDAQ 100 contracts that resulted in over $9,000 in profits. Despite this large profit, the size of the trade and its speculative nature alarmed Bateman. He sent Severance a long, angry e-mail, telling him that this was "not the kind of trading I agreed to guarantee," and stating that if Severance traded in that fashion again, he would terminate his Guaranty Agreement. Bateman Exhibit 4. He also told Severance that from then on, the account would be restricted electronically so that it could trade only one NASDAQ

100 contract at a time, or its equivalent in NASDAQ e-minis. *Id.; see also* Complainant's Answer to Bateman's Counterclaim at 2.

This restriction, however, did not go into effect, and at the close of trading on October 10, 2000, Severance's account contained the equivalent of two large NASDAQ contracts. The account's liquidating value had fallen to $6,575, owing to a market drop that day, and it had a margin deficit of $56,425. During overnight trading the NASDAQ 100 fell further, leaving Severance's account with a debit balance of $7,443 on the morning of October 11, and a margin deficit of $63,000. When Bateman learned of the account's status, and realized that his guaranty funds were at risk, he called Severance and insisted that he offset his positions. Severance refused to do so because he believed that the market would rebound.

Bateman then called First Options and spoke with an employee, Aaron Lopez, about liquidating the account and terminating his guaranty agreement. Lopez directed him to call "E-Global" to place the order.[1] Bateman did so, entering an order to "sell two at the market" and "get the account flat." Tr. at 72. First Options never issued a margin call to Severance or advised him that he faced liquidation. The firm recovered the $7,443 debit balance from Bateman's funds. Severance made no attempt to reenter the market.

Procedural History

In his Complaint, filed on September 25, 2002, Severance maintained that Bateman wrongfully liquidated open positions after "promis[ing] that if ever my account dipped down into his guaranteeing funds, that I would have the opportunity to attain funds to cover my position." *Id.* at 1-2. Instead, Bateman "panicked, overreacted and betrayed his verbal promise to allow me time to cover any losses." *Id.* at 4. Additionally, Severance alleged that Bateman used poor

[1] "E-Global" has not been identified on the record. Bateman testified that he assumed it was a brokerage firm. Tr. at 72.

judgment in liquidating his account when he did, because, as he had told Bateman, Severance "was confident" that the market was experiencing an "artificial low" due to the Israeli/Palestine conflict and would rally shortly. *Id.* at 4.

Severance claimed that Bateman falsely represented that he would teach Severance to use the Globex system as well as strategies to trade the NASDAQ futures contracts "profitably." Complaint at 1. He also alleged that Bateman failed to institute promised restrictions on his account to keep him from exceeding agreed-upon trading limits. *Id.* at 3.

As to the other respondents, Severance alleged that First Options "colluded with Bateman's unauthorized trading of my account." *Id.* at 3. Severance stated that during the account-opening process, Fisher personally "promised" him that First Options would not liquidate his account without asking him for additional funds, yet failed to issue a margin call or contact him before allowing Bateman to liquidate it. *Id.* at 4. He stated, "I was misled by [Bateman and Fisher] to believe that First Options would ask for additional funds, before they would simply allow Bateman to hijack my account." *Id.* at 4. Severance also held First Options responsible for the volume of his trading by failing to impose the one-contract restriction Bateman had said would be imposed. *Id.* at 4. In an amendment to his original complaint, Severance sought $32,970 in damages, the net liquidating value of his account on October 9 before its decline.

In their joint Answer, First Options and Fisher maintained that liquidating the positions in Severance's account neither caused his loss nor constituted unauthorized trading. They stressed that Commission case law has recognized the strong policy in favor of an FCM's right to liquidate accounts to control its risk exposure. Answer at 6. They stated that "[w]hen complainant refused to exit the position, Mr. Bateman took the necessary steps to liquidate the

position in the account, thus protecting himself and Complainant from the likelihood of even greater losses." Answer at 3. They stated further that it was "immaterial that the order to liquidate the position . . . was placed by Bateman because ultimately, First Options would have taken the same steps if Bateman had not already done so." Answer at 5. First Options also pointed out that its customer agreement contained a clause authorizing it to liquidate the account without prior notice whenever the FCM considered it necessary for its financial protection. Answer at 4.

In his separate Answer and Counterclaim, Bateman argued that when he liquidated the account on October 11, 2000, he prevented Severance and himself from sustaining even greater losses, because First Options would not have allowed the positions to remain open with a negative funds balance and margin deficit. *Id.* at 4. Bateman maintained that he had advised Severance to limit his exposure to no more than one NASDAQ 100 futures contract or 5 e-mini contracts and not to engage in high risk transactions. Answer at 2. He insisted that in the discussions leading up to the formation of their business relationship, he "repeatedly" informed Severance that he reserved the right to "terminate their agreement" at any time, *id.* at 3, and did not agree to subsidize Severance's trading losses, *id.* at 4. Bateman also filed a counterclaim for $7,442.73, the amount of his funds that were used to cover Severance's losses.

In his response to Bateman's Counterclaim, filed on December 12, 2002, Severance largely reiterated his claims of misrepresentation and unauthorized trading. Severance Answer to Bateman Counterclaim at 4. He asserted that Bateman failed to explain "quite a few things about . . . computerized trading," and stated that the trading screens Bateman established for him had a "very chaotic layout" that he had difficulty using. *Id.* at 3. Consequently, Severance

stated, he had been unable to monitor his trading effectively, and was never sure of the status of his open positions.

Hearing

The ALJ held a hearing on May 22, 2003, at which Severance and Bateman each testified on his own behalf; Fisher testified on behalf of himself and First Options. The parties' testimony mirrored their pleadings. Severance insisted that both Bateman and Fisher had promised that he could add funds to his account if necessary. Tr. at 27. He maintained that he "specifically asked for clarification" from Fisher that he would have the opportunity to add funds to the account if there were a margin call or if funds were needed. Tr. at 33, 13, 15, 31-32. He asserted that he was "very ready to add more money to the account" but that Bateman and First Options did not afford him that opportunity. Tr. at 13. *See also* 15, 52.

Severance added that Bateman should not have taken him out of the market when he did because Severance was "very confident" that the market was only temporarily low because "the Israeli/Palestine war was out of whack." Tr. at 43. Severance also repeated his contention that Bateman told him that he was going to set up his account so that he could not trade more than one NASDAQ 100 or five e-mini contracts. Tr. at 54. Therefore, he said he was "surprised" when the account exceeded the promised restrictions on the morning of October 11, and "wondered if perhaps [Bateman] was trying to sabotage me." Tr. at 48. Severance insisted that he could not ascertain the number of his positions from his Globex screen because "[y]ou have to scroll up and down a small screen and look for ones that say 'rejected' and 'executed.'" Tr. at 49. He also testified that he received no account statements of any sort while his account was open.

Bateman testified that he attempted to teach Severance to trade as he did: using relatively low-risk arbitrage, trading the NASDAQ 100 futures contract against the e-minis. Tr. at 64. Bateman explained that because he had trusted Severance to trade as he had recommended and as he did himself, he was "shocked" on October 6, 2000 to discover that Severance had traded four long NASDAQ 100 contracts. Tr. at 65.

He stated that he e-mailed Severance, specifically telling him that that type of trading "is not what I do [and] this is not what I want to guarantee." Tr. at 65. Bateman testified that he informed Severance that if he did not trade as Bateman instructed, he [Bateman] would close the account "immediately without discussion." *Id.* Bateman stated that Severance replied via e-mail the next day and promised that he would not jeopardize Bateman's funds. Tr. at 65-66; *see also* Bateman Exh. 5.

Bateman acknowledged that he instructed First Options to put the account on a "one-lot" restriction, but that a "fault" in the Globex software system allowed Severance to exceed the limit. Tr. at 66-67.[2] He said that during their conversation on the morning of October 11, 2000, Severance never stated that he was ready to add more funds to his account. Tr. at 69. He acknowledged that he did not have power of attorney to trade Severance's account, but believed he had the authority to close the account in an "emergency." Tr. at 75.

Fisher testified that he worked for First Options as a customer service representative during the relevant time. Tr. at 94. He stated that although he did not specifically recall Severance telling him that he deemed it important to be able to add more funds to the account if necessary, he may have had such a conversation. Tr. at 101. Fisher further testified that in the past, First Options had liquidated accounts without notice to the account holder, and that it had

[2] According to Bateman, the Globex software did not recognize that one regular NASDAQ contract and five e-minis on the same side of the market were "fungibl[e]" (equivalent), and therefore allowed both positions. Tr. at 67.

allowed guarantors to enter liquidating orders. Tr. at 105, 95. Fisher maintained that if Bateman had not liquidated the positions on October 11, 2000, First Options would have done so.

The Initial Decision

The ALJ issued an initial decision finding Bateman, Fisher and First Options liable to Severance. *Severance v. Bateman,* [2003-2004] Comm. Fut. L. Rep. (CCH) ¶ 29,651 (ALJ Nov. 25, 2003) ("I.D."). He made credibility rulings in favor of Severance and adverse to Bateman and Fisher. He found Severance's testimony "honest and reliable," Bateman's "self-serving and unreliable," and Fisher's unconvincing, because he was "reserved and evasive during testimony, gave vague answers and consistently claimed not to remember crucial facts of the case." I.D. at 55,804-05.

The ALJ concluded that Bateman engaged in unauthorized trading in violation of Section 4b because he did not possess power of attorney to trade the account. *Id.* at 55,805. He also found that the agreement between Severance and Bateman was "inherently inequitable" because they were to divide the profits but Severance would bear all the losses. *Id.* at 55,807. He held that Bateman's undertaking to show Severance how to trade profitably was a "material misrepresentatio[n] intended to fraudulently induce Severance to enter into an inequitable agreement." *Id.* at 55,807-08. The ALJ also held, *sua sponte*, that Bateman acted as a commodity trading advisor ("CTA") toward Severance and therefore was liable for fraud committed by a CTA under Sections 4o(1)(A) and (B) of the Act, as well as under Section 4b. *Id.* at 55,808-09.

The ALJ found further that First Options permitted Bateman to act as its *de facto* agent and trade Severance's account without authorization, in violation of Commission Rule 166.2. *Id.* at 55,808, 55,810. He also concluded that the FCM violated Commission Rule 166.3 by failing

to supervise the handling of Severance's account. *Id.* at 55,809-10. Separately, the ALJ found that Severance failed to receive his trading statements from First Options and was "unaware of the actual status of the account during the time the account was open." *Id.* at 55,807. Accordingly, the ALJ also held First Options liable under Commission Rule 1.33(b)(1) for failing to provide Severance with confirmations and monthly account statements. *Id.* at 810.

The ALJ concluded that Fisher, in violation of Section 4b of the Act, misrepresented to Severance that he would have the opportunity to put more money into his account to avoid an involuntary liquidation, and that First Options was liable under Section 2(a)(1)(B) for Fisher's conduct. *Id.* at 55,809.

The ALJ awarded Severance $25,000 in damages, representing the amount he initially deposited in his trading account. He imposed joint and several liability for the award against all respondents. *Id.* at 55,810. He denied Bateman's counterclaim for the debit balance resulting from the liquidation of Severance's account. *Id.* at 55,809-10.

First Options, Fisher and Bateman appealed to the Commission. First Options and Fisher argue that liquidation was justified because Severance's account "had a negative balance of over $7,400, was grossly under margined and [held] a speculative position that very well could have resulted in far greater losses." First Options' App. Br. at 11. First Options contended that Bateman "acted at [its] direction for the very limited purpose of liquidating the account," and performed nothing more than a "ministerial function." *Id.* at 13.

They contend that neither Fisher nor any other First Options employee made any binding promises to Severance regarding liquidation that were at odds with the customer agreement he signed, stating that an account could be liquidated without notice. As to damages, First Options and Fisher urge that no proximate cause exists between Severance's losses and the actions of

First Options or Bateman. They maintain that Severance's losses were caused by his own conduct and already had been incurred when it allowed Bateman to issue the liquidating order.

In his separate appeal brief, Bateman asks the Commission to reweigh the evidence and find that he did not engage in fraud, misrepresentation or unauthorized trading. Like the other respondents, he argues that there is no connection between his conduct and Severance's losses. Bateman did not appeal the denial of his counterclaim.[3]

Severance filed an answering brief disputing respondents' reading of the record and urging that the initial decision be affirmed.

Discussion

Unauthorized Trading

Bateman and First Options are liable for unauthorized trading. The core of Severance's dispute with First Options is that the FCM permitted Bateman, who had neither actual nor apparent authority to trade for Severance, to liquidate positions in the account. Neither respondent disputes that this occurred. Instead, they have argued at all stages of this proceeding that they were justified in light of the sudden market drop that consumed all of Severance's equity and left Bateman vulnerable.[4]

[3] First Options and Fisher moved for leave to reply to Severance's answering brief. The proposed reply brief submitted with their motion maintains that a number of Severance's factual assertions are belied by the record and that others constitute new, non-record factual allegations. In turn, Severance filed a motion for leave to make an "answering reply" to First Options. In this proposed filing, he denies that he alleged any new facts and argues that the ALJ's finding that Fisher was not credible should stand. Neither pleading is contemplated under the Commission's Part 12 Regulations and neither contains any material, relevant arguments that might affect the disposition of this matter. Accordingly, both pleadings are stricken.

[4] Bateman made statements at the hearing indicating that he believed he had a right to enter a liquidating order, despite several warnings from the ALJ that such testimony was not helping his case. *See, e.g.*, Tr. at 40-41. 74.

First Options' conduct is a *per se* violation of Commission Regulation 166.2.[5] The FCM could not confer authority to liquidate a customer's account on a person who was not an official or even an employee of the firm, despite his status as the account's guarantor. Because First Options' conduct is a clear violation of Regulation 166.2 and CEA Section 4b, the finding of unauthorized trading is affirmed as to it without reaching the issue of whether a margin call should have been issued. *Cange v. Stotler, Inc.*, 826 F.2d 581, 589 (7th Cir. 1987) (unauthorized trading falls within Section 4b's prohibition and occurs when trades are executed without the customer's permission); *Slone v. Dean Witter Reynolds, Inc.*, [1994-1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,283 at 42,433 (CFTC Dec. 16, 1994) (allegation that FCM liquidated open positions without specific authorization states a cause of action under Commission Rule 166.2 and Section 4b of the Act).

Bateman's conduct violates Section 4b. His undoubted financial interest in Severance's account did not vest him with authority to enter orders for it. *See In re Interstate Securities Corp.*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,295 at 38, 955-57 (CFTC June 1, 1992) (individual who enters orders with neither actual nor apparent authority to trade is liable for unauthorized trading); *accord, Wheeler v. Investment Managers Commodity Corp.*, [1984-1986 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 22,770 (CFTC Oct. 30, 1984). It is

[5] As relevant here, Commission Regulation 166.2 provides:

> No futures commission merchant . . . may directly or indirectly effect a transaction in a commodity interest for the account of any customer unless before the transaction the customer, or person designated by the customer to control the account—
>
> (a) Specifically authorized the futures commission merchant . . . to effect the transaction . . . .

irrelevant that First Options allowed Bateman to enter a liquidating order, or that it ratified his action afterward,[6] because the firm had no power to let Bateman enter the order in the first place.

In light of our holding that Bateman violated Section 4b of the Act by engaging in unauthorized trading, we decline to reach the ALJ's *sua sponte* holding that Bateman also engaged in fraud under Section 4o as a CTA, and our decision does not rest on that finding.

Fraudulent Inducement

Bateman. Severance's allegations of fraudulent inducement against Bateman fail on a number of grounds. The claim that Bateman undertook to teach him how to trade futures and how to use Globex, and then failed to instruct him sufficiently, is too vague to support a finding of misrepresentation. Nor can Severance recover on his claim that Bateman fraudulently misrepresented that he would have an opportunity to add funds to his account prior to liquidation. Apart from the fact that Bateman had no authority to liquidate (and thus no duty or capacity to demand more funds), Bateman did, in fact, contact Severance. He testified: "I kept begging him, 'Please, get out, just get out, you have to do the right thing, you are losing my money,' and he refused to do so. He just kept saying, 'No, no, no.'" Tr. at 69. "Never, never did he say, 'I can be there with money, with cash, in an hour,' nothing like that." *Id.*

Although Severance placed great stress on his claim that Bateman's promised restrictions on his trading did not take effect, the ALJ did not rest his initial decision on this issue. We believe he properly ignored this claim. Bateman testified, "I called First Options and said, 'I want this account put on a one-lot restriction.'" Tr. at 66. As noted above, however, Bateman was not Severance's broker and had no authority to trade or otherwise direct the account.

[6] First Options sent Severance an e-mail after the liquidation, advising him that it would have entered a liquidating order if Bateman had not. Tr. at 79-80. (Test. of Bateman).

Fisher. The ALJ found that Fisher falsely represented to Severance that he would be able to add money to the account in the event it were undermargined. Severance gave repeated direct testimony on this point and Fisher did not deny it, stating only that he did not remember making the statement, but may have done so. The record shows that Severance's account was liquidated suddenly, very early in the morning of October 11, 2001, without any apparent involvement by Fisher. Indeed, there is no record of any contact between Severance and Fisher after Severance opened his account in April. The link between Fisher's statement and the liquidation of Severance's positions—in which Fisher played no role—is too attenuated to support liability. Accordingly, the findings of fraudulent inducement against Fisher are dismissed for lack of proximate cause.

Other Issues

Failure to Supervise/Untimely Account Statements. The ALJ found First Options liable for conduct not charged in the complaint, including violations of Commission Regulation 166.3 (failure to supervise), and Regulation 1.33(b)(1) (failure to send monthly statements and daily trade confirmations). We vacate both findings, neither of which is material to the outcome of this case.

The ALJ made the failure to supervise finding *sua sponte*, without providing First Options with notice and the opportunity to defend itself on that issue. As to the finding that First Options violated Regulation 1.33(b)(1), we note that Severance testified that he received no trade confirmations until after the account was closed, Tr. at 27-29, but did not raise this issue in his complaint or any other of his extensive prehearing pleadings. Here again, First Options had no opportunity to defend.

Damages

The ALJ assessed damages of $25,000, the amount Severance initially invested to trade futures, based a finding of fraudulent inducement. In his complaint Severance requested damages of $32,970, but did not challenge the damage award on appeal.

Section 14 of the CEA authorizes recovery of "actual damages proximately caused" by a violation of the Act or Commission Regulations. *See also Ball v. Shearson Hayden Stone*, [1980-1982 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 21,184 at 24,877 (CFTC April 2, 1981). The Commission has stated that the damages formula in a wrongful liquidation case is calculated using either: (1) the value of the futures position at the time of the conversion, or (2) the position's highest intermediate value between notice of the conversion and a reasonable time thereafter during which the futures position could have been replaced had that been desired, whichever is higher. *Ahlstedt v. Capitol Commodity Services, Inc.*, [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,131 (CFTC Aug. 12, 1997). Among other authority, *Ahlstedt* relied on *Katara v. D.E. Jones*, 835 F.2d 966, 972 (2d Cir. 1987) ("*Katara*"). The Second Circuit's *Katara* case provides a fuller articulation of the measure of damages:

> Where a customer's position is involuntarily liquidated . . . application of the general duty to mitigate damages limits recovery to the additional amount required to repurchase the same contracts in the market within a reasonable time after liquidation. . . . That amount is measured by the difference between the contracts' liquidation prices and the highest intermediate prices reached by the identical contracts during a reasonable period after the wrongful sale.

Id. at 972. *Accord, Stiller v. Shearson Loeb Rhoades, Inc.*, [1982-1984 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 21,974 (CFTC Jan. 4, 1984).

What constitutes a "reasonable" time is determined on the facts and circumstances of a given case. *Katara*, 835 F.2d at 853 (collecting cases); *Schultz*, 716 F.2d at 140; *Ahlstedt*, ¶

27,131 at 45,291 (factors relating to reasonableness include "the trader's experience, capabilities and resources, the conduct of the broker, and the nature of the market involved").

Applying this measure of damages, we hold that in the circumstances of this case, a reasonable period of time for complainant theoretically to re-enter the market is two days, *i.e.,* through the close of trading on October 12, 2000. Severance was liquidated early on October 11, 2000, giving him the remainder of that day and all of the next to re-enter, and Globex is essentially a 24-hour market. Severance has litigated this case on the premise that he was "very ready" to add funds to his account, if he had been given the chance. Tr. at 13. For these reasons, the choice of a short re-entry period is warranted.

We have calculated the highest intermediate price of the contracts between their liquidation and the close of trading on October 12, 2000 and find that Severance is entitled to damages in the amount of $28,600.[7]

[7] Severance's positions—one large NASDAQ 100 and five e-minis—were sold at 3090. The high price of the large contract between October 11 and October 12, 2000 was 3205 (reached at the end of the day on October 11), resulting in damages of $11,500. The high price of the e-mini between October 11-12 was 3261, also reached on October 11, 2000, resulting in damages of $17,100.

Conclusion

Liability findings against Fisher are vacated and the Complaint is dismissed as to him. Bateman and First Options are jointly and severally liable to Severance for damages of $28,600, for the reasons discussed herein.[8]

IT IS SO ORDERED.[9]

By the Commission (Chairman JEFFERY and Commissioners LUKKEN, BROWN-HRUSKA, HATFIELD and DUNN).

Jean A. Webb
Secretary to the Commission
Commodity Futures Trading Commission

Dated: September 7, 2005

[8] The award of prejudgment interest at the rate established in the initial shall stand.

[9] Under Sections 6(c) and 14(e) of the Commodity Exchange Act ((7 U.S.C. §§ 9 and 18(e) (1994)), a party may appeal a reparation order of the Commission to the United States Court of Appeals for only the circuit in which a hearing was held; if no hearing was held, the appeal may be filed in any circuit in which the appellee is located. The statute also states that such an appeal must be filed within 15 days after notice of the order, and that any appeal is not effective unless, within 30 days of the date of the Commission order, the appealing party files with the clerk of the court a bond equal to double the amount of the reparation award.

A party who receives a reparation award may sue to enforce the award if payment is not made within 15 days of the date the order is served by the Proceedings clerk. Pursuant to Section 14(d) of the Act ((7 U.S.C. § 18(d) (1994)), such an action must be filed in the United States District Court. See also 17 C.F.R. § 12.407.

Pursuant to Section 14(f) of the Act ((7 U.S.C. § 18(f) (2004)), a party against whom a reparation award has been made must provide to the Commission, within 15 days of the expiration of the period for compliance with the award, satisfactory evidence that (1) an appeal has been taken to the United States Court of Appeals pursuant to Sections 6(c) and 14(e) of the Act or (2) payment has been made of the full amount of the award (or any agreed settlement thereof). If the Commission does not receive satisfactory evidence within the appropriate period, such party shall be suspended automatically. Such prohibition and suspension shall remain in effect until such party provides the Commission with satisfactory evidence that payment has been made of the full amount of the award plus interest thereon to the date of payment.