



U.S. COMMODITY FUTURES TRADING COMMISSION

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SYLVIA THATCHER, and
LAUREL ZIPF,
Complainants,

v.

FX SOLUTIONS, LLC,
Respondent,

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CFTC Docket No. 07-R55

INITIAL DECISION

Introduction

Complainant's principal allegation is that FX Solutions failed to execute an order, which in turn triggered margin calls and liquidations that resulted in losses totaling \$8,750. In response, FX Solutions denies that complainants actually placed the order and assert that even if the purported order had been placed and executed, the margin calls would not have been avoided. As explained below, after reviewing the parties' documentary submissions and oral testimony, I have determined that complainants are not entitled to an award.

Factual Findings

1. Sylvia Thatcher and Laurel Zipf are retirees who live in south Texas during the cold months and travel in their RV during the warm months of the year. Marijo "Mary" Zipf is their daughter. Since it is Mary who had previous experience trading forex, who had suggested that her parents open a forex account for her to trade on their behalf, and who placed the trades for

their account, all references are to Mary Zipf. I found the testimony of Mary Zipf, Sylvia Thatcher and Laurel Zipf to be sincere. [See FX Solutions “Application Details” filled out electronically for Sylvia Thatcher and Laurel Zipf (pages 7-8, and 10-11, of respondent’s reply dated June 5, 2008); FX Solutions “Account Application” (page 14 of respondent’s reply dated June 5, 2008); “Signature Section” for FX Solutions account-opening package of (page 15 of respondent’s reply dated June 5, 2008); Sylvia Thatcher and Laurel Zipf affidavits dated June 5, 2008; and Sylvia Thatcher testimony at pages 31-34, Laurel Zipf testimony, at pages 34-49, and Mary Zipf testimony, at pages 4-14, of hearing transcript.]

2. FX Solutions, located in Saddle River, New Jersey, is a foreign currency brokerage firm registered as a futures commission merchant. [See NFA records; ¶ 1 Answer; and FX Solutions “Company Profile,” produced as attachment to complaint.]

Kristin Zales is an “Integration Coordinator,” for FX Solutions. I found the testimony of Zales to be plausible and reliable. [See Zales’ testimony at pages 49-54, and 66-68, of hearing transcript.]

3. Frank Strano referred complainant’s account to FX Solutions. Strano was not registered at the relevant time. Strano assisted Mary Zipf during the account opening; for example, he told her which documents her parents needed to sign to open the account. Strano also gave Mary Zipf the password so that she could place trades for her parents’ account on-line, and Strano was Zipf’s primary contact for the FX Solutions account. FX solutions did not call Strano as a witness. [See FX Solutions “Application Details” filled out electronically for Sylvia Thatcher and Laurel Zipf (pages 7-8, and 10-11, of respondent’s reply dated June 5, 2008); FX Solutions “Account Application” (page 14 of respondent’s reply dated June 5, 2008); and Mary Zipf testimony at pages 10-12, and 27-28, of hearing transcript.]

4. Following Strano's instructions, complainants signed the various account-opening documents, including an acknowledgement that they had read and understood various account-opening documents, including a risk disclosure statement and customer contract. This acknowledgment did not mention any power of attorney. [See "Signature Section" for FX Solutions account-opening package of (page 15 of respondent's reply dated June 5, 2008); and Zale's testimony at pages 58-60 of hearing transcript.]

Laurel and Mary Zipf offered confused, and ultimately unconvincing, testimony about signing a power of attorney. Moreover, complainants failed to produce any power of attorney, as requested at the hearing. However, Laurel and Mary Zipf convincingly testified that FX Solution's agent, Strano, understood that Mary would be the trader. [See Mary Zipf testimony at pages 27-28, 43-48, 74-78, and 85-86, and Laurel Zipf testimony at pages 42-43, of hearing transcript; and ¶ 2 of Answer.]

On the application, complainants indicated that the account would be leveraged 100:1. However, at the time of the disputed liquidations, the account would actually be leveraged at 400:1. In this connection, FX Solutions states that its customers can choose the amount of margin as they trade. [¶ 9 of Answer.]

5. The FX Solutions' Customer Agreement provided that FX Solutions reserved the right to liquidate positions without notice in the case of any margin shortfall. According to FX solutions, its margin policy is that if account equity falls one cent below the "used margin", all of the customer's positions will be liquidated. [See Customer Agreement (pages 49-53 of respondent's reply dated September 24, 2008).]

6. On February 22, 2007, complainants funded the account with a deposit of \$10,000. From Tuesday February 27, to Thursday March 1, 2007, Zipf made a total of 31 trades, all

exclusively in the Euro-Dollar forex contract and almost all single-lot trades, with the exception of a couple of two-lot trades. For all but one trade, the profits and losses were under \$100. Twenty-nine out of thirty-one trades were reported as profitable, with the reported profits totaling \$1,920. The largest share of these profits was attributable to the last trade on March 1, which made a nice profit of \$410. On Friday March 2, Zipf made no trades, and the account had no open positions. [See Individual Customer Statement, February 21 to April 21, 2007 (pages 29-30 of respondent's reply dated June 5, 2008); individual customer statements for March 1, 2, 2-4, and 5, 2007 (pages 54-59 of respondent's reply dated October 10, 2008); ticket audit reports for March 1 trades (pages 60-73 of respondent's reply dated October 10, 2008); account transaction reports for March 1, and 2-5, 2007 (pages 74-75 of respondent's reply dated October 10, 2008); Mary Zipf's testimony at pages 14-18, and 87-91, and Zale's testimony at pages 86-87, and 91-94, of hearing transcript.]

7. On Monday March 5, 2007, Zipf would make fifteen trades. She also would begin making larger five-lot trades. This would be a contributing factor that led to the margin calls later in the day. Ten of the first twelve trades were profitable, with correspondingly larger profits and losses, netting an interim total of \$1,180. Another contributing factor that led to the margin calls was the fact that Zipf was highly leveraged at 400:1.

At 8:15, Zipf sold five lots at 191.82, and at 8:47 sold five more lots at 192.09. At 10:14:38, a one-PIP price movement caused the account equity to fall to \$4,773, which was below the account's "used margin" requirement of \$4,820. Thus, FX Solutions' margin system automatically liquidated all open positions in the account, for a loss of \$8,750. [See Mary Zipf testimony at pages 15-18, and Zale's testimony at pages 56-58, and 62-66, of hearing transcript;

fifth through seventh paragraphs of factual description of Complaint; and ¶¶ 3, 9-12, 25 and 40 of Answer.]

8. Zipf asserts that simultaneously she had entered an order to sell one of the lots, but that her “sell” order was not executed. Zipf has not specified the type of sell order that she had tried to place. Despite this problem, Zipf did not attempt to place an order via phone with the FX Solutions trading desk.

Zanes credibly testified that if Zipf had successfully placed a sell order, that it would accelerated, not avoided, the margin call. Zanes also testified that, given the volatility that day, if Zipf had successfully placed an order to close out some of the short positions, she probably would have merely briefly delayed the liquidation of all short positions.

Later that day, Zipf did complain to Spano, and then spoke to FX Solutions’ technical support staff. According to FX Solutions, Zipf did not explain what type of order she had tried to place and did not explain how her order would have prevented the margin deficit. FX Solutions also asserts that its staff confirmed that it had 100% internet connectivity, and determined that Zipf’s computer had poor internet connectivity on March 5, 2007. [See eighth through thirteenth paragraphs of factual description of complaint; ¶¶ 4, 13-16, and 29; log files for Zipf’s computer (pages 43-46 of respondent’s reply dated June 5, 2008); Zipf testimony at pages 15-27, and Zales’ testimony at pages 50-66, of hearing transcript.]

Conclusions

Complainants have the burden to show by a preponderance of the evidence that their trading losses were caused by a violation by respondent. Here, they have not specified the type of order that their daughter purportedly placed and have not explained how the order would have prevented the margin calls. Furthermore, complainants have not established any technical

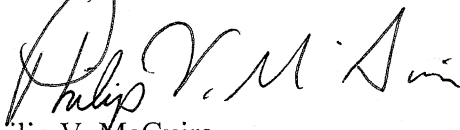
problems in FX Solutions software or hardware that prevented an order from being placed at the relevant time. In these circumstances, respondent cannot be held liable for complainants' trading losses.

ORDER

Complainants have failed to establish any violation causing damages by respondent. Accordingly, the complaint is dismissed.

Respondent has failed to show any bad faith conduct by complainants, or any other grounds to justify an award of attorney's fees and costs. Accordingly, respondent's demand for attorney's fees and costs is denied.

Dated March 31, 2009.


Philip V. McGuire,
Judgment Officer