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ROBERT WEST,
Complainant,

v.

GAIN CAPITAL GROUP, LLC
d/b/a FOREX.COM, and
GLENN HENRY STEVENS,
Respondents.

CFTC Docket No. 10-R017

## INITIAL DECISION

This dispute arises from Gain Capital's liquidation of a short two-lot Euro/Dollar forex position that it determined was under-margined. Gain Capital liquidated the position the day after Robert West, a first-time forex speculator, had funded his account and opened the positions. West, an emergency room physician who resides in San Antonio, Texas, alleges a variety of violations in connection with the liquidation of the two-lot position, and seeks to recover approximately $20,000 in lost profits. West also alleges that Glenn Henry Stevens, the firm's President and Chief Executive Officer, in a written mission statement on Gain Capital's website, fraudulently promised various warranties which his firm breached when it liquidated West's two-lot position.

Respondents assert that the liquidation was proper, assert that they have already compensated West for the $2,344 loss realized on the forced liquidation by returning his entire $5,000 investment, and assert that West is not entitled to recover speculative lost profits. Also, respondents deny that Glenn Henry Stevens' mission statement was deceptive, and otherwise deny any violations. As explained below, after carefully reviewing the parties' evidentiary submissions, I have concluded that West has established that an agent of Gain Capital failed to disclose to West that his account lacked sufficient margin to support a second Euro/Dollar lot, and therefore that West is entitled to recover $10,000 in lost profits on the first Euro/Dollar lot that Gain Capital also liquidated after it unilaterally determined that the account was under-margined.

**Factual Findings**

*The parties*

1. Robert West, a resident of San Antonio, Texas, was 59 years old when he opened his account with Forex.com. He is a resident emergency physician, and has a Juris Doctor degree. On his account application, West indicated that he had no experience with stocks and equities and one year to two years of experience with options, futures and forex. West's testimony, and the recordings of West's conversations with employees of Gain Capital Group, revealed him to be reasoned and intelligent, but clearly a novice who had yet to master basic forex trading mechanics and terminology. West was the only witness at the telephonic hearing. [*See* West testimony, at pages 5-10 of hearing transcript; and account application and recordings of conversations on February 7 and 8, 2010 (produced by respondents).]

2. Gain Capital Group, LLC doing business as Forex.com ("Gain Capital"), located in Bedminster, New Jersey, is a registered futures commission merchant and retail foreign exchange dealer. Forex.com caters to small retail speculators who can open an account with a minimum investment of $2,500, with trading leverage up to 100:1. [NFA records; and page 1 of amended joint answer.]

3. Glenn Henry Stevens, the President and Chief Executive Officer of Gain Capital, is registered as an associated person and a principal with the firm. Stevens did not appear at the hearing. [NFA records; and page 1 of amended joint answer.]

*The account-opening*

4. In early 2010, West decided that he wanted to "expand my portfolio." News of the financial crisis in the Eurozone piqued his interest in the foreign currency markets. Thus, West decided try retail forex, and linked to Forex.com's website from an advertisement at Yahoo.com. [*See* West testimony, at pages 10-13 of hearing transcript.]

5. The Forex.com website featured a mission statement and letter from the firm's CEO, Glenn Stevens. The mission statement provided, in pertinent part:

> [Forex.com] is committed to fair and transparent pricing and quality trade execution. Our service also offers professional charting, expert market research and commentary, and advanced trading tools, plus a wealth of education and training.

[Exhibit B, amended joint answer. *See* West testimony, at pages 13-19 of hearing transcript.]

6. Initially, West's communications with Gain Capital were strictly on-line, without any personal communication with a Gain Capital agent. On February 7, 2010, West opened, on-line, a self-directed forex account. West signed electronically an acknowledgment that he had read and understood various Gain Capital documents, including the Customer Agreement, the Risk Disclosure Statement, the Secondary Risk Disclosure Statement, and the Trading Policies and Procedures. [*See* second paragraph in statement of facts, at pages 1 and 2, joint answer; and West testimony, at pages 17-18 of hearing transcript.]

7. The secondary risk disclosure statement provided, in pertinent part:

> Forex is an over the counter (OTC) market, meaning that the foreign currency trading that you are entering into is not conducted on an exchange. As a market maker, Forex.com is the counterparty in these transactions and, therefore, acts as the

buyer when you sell and the seller when you buy. As a result, Forex.com's interests may be in conflict with yours. . . .

If Forex.com elects not to cover its own trading exposure then you should be aware that Forex.com may make more money if the market goes against you.

[Underlining added for emphasis, original in all caps, Exhibit B, amended answer.]

8. At the relevant time, Gain Capital's practice was that, once it determined that an account was under-margined, it would, without prior notice to the customer, immediately liquidate all positions in the account, even when partial liquidation would remedy the margin deficit. [See ¶¶ 8 and 9, customer agreement; and page 5 of respondents' Opposition to Complainant's Motion for Summary Disposition.]

9. On February 7, 2010, West funded his account via two separate $2,500 credit card transactions, for a total of $5,000. In this connection, Gain Capital stated that it does not store credit card information imputed by customers and cannot automatically independently debit a customer's credit card to fund an account. According Gain Capital, a customer must either log into his or her password-protected account area, or contact Gain Capital's client services department to arrange for the deposit of additional funds. [*See* page 5 of respondents' Opposition to Complainant's Motion for Summary Disposition.]

10. On February 8, 2010, West called Gain Capital to ask for expedited processing of his deposit and to discuss his first order. This would be the first time that he spoke to an agent of Gain Capital, in this instance "Jonathan" of Gain Capital's client services department. West indicated that he wanted to trade the Euro/U.S. Dollar contract ("EUR/USD"). Not surprisingly for a novice trader, West revealed that he had yet to master basic terms and basic mechanics of trading forex:

*Jonathan*: Okay. No problem. Anything else I can assist you with?

*West*: Oh, I just want to make a forward. I basically want to short the Euro for against the Dollar.

*J*: Okay.

*W*: So I want to sell Euros and then buy them back again. Is that, can you do that up to like a year out?

*J*: Well, how it works it's not really based on the time frame. It's based on the price. So let's say —

*W*: I'll have to give you a price?

*J*: Right. So let's say the Euro right now is trading at 136.35, you know, if you bought it at that rate, you could put a price that you want to have the trade close out at.

*W*: Well it's not terms, at term recap, rebuy it so it's a, it's a price rebuy in dollars. Is that what you're saying?

*J*: Right. I mean if you enter at a certain price, we have to have a specific price to take you out. So let's say, let's say you bought it at 1.3630.

*W*: That's what, I understand. So I would, I would be, I'd be giving you a price at which I want to buy back in dollars.

*J*: That's correct.

*W*: Well, um, so you're thinking about in 30 minutes I can call you back?

*J*: Yeah.

[Recording produced by respondents.]

11. A couple hours later, after West's deposit had been posted, he called Gain Capital and spoke to Jonathan again to place his first order. During this conversation, Jonathan informed West that the margin requirement for one standard lot of the EUR/USD would be $1,367, and that each pip would be worth $10. When West mentioned that he was considering selling two lots, Jonathan advised him to limit himself to one lot, because while $5,000 should provide

adequate margin for one EUR/USD lot, it would not provide adequate margin for two EUR/USD lots:

*West*: I basically want to short the euro against the dollar, I want to sell euros and buy them back again

*Jonathan*: $5,000 is in your account,

*W*: I thought I had $2,500. OK.

*J*: You have two for $2,500.

*W*: On each deposit of $2,500, you can make a trade of, what, $100,000?

*J*: It depends on the currency pair.

*W*: I want to short the Euro for U.S. dollars.

*J*: Each standard lot for the Euro/Dollar has a margin requirement $1,367.10.

*W*: If I want to trade 100,000, how much margin would it require for that?

*J*: It would be $1,367.10, one thousand, three-hundred sixty-seven dollars and ten cents.

*W*: So I have a surplus.

*J*: You do, you do. So basically you just have to maintain. . . If you have $5,000 in your account now, your margin balance has to maintain $1,367.10. You need it to enter the trade, and you have to maintain it in order to stay in the trade.

*W*: . . . . I mean as long as you're trading you still maintain that margin?

*J*: As long as you're trading...well, you won't maintain it. How it works is that if you enter a trade, say you have a required margin of $1,367.10, that's what your required margin is going to be, even though your margin balance is going to read $5,000. You always have to remember: if a trade goes against you, your margin balance has to stay above $1,367.10.

*W*: So right now I'm in the green, so let's trade 100,000, and see how this works. I want to sell100,000 Euros, and buy back in US Dollars.

*J*: OK, so you said you want to do Euro versus Dollar, correct?

*W*: Sell Euros to buy back Dollars.

*J*: So that means you're speculating the Euros are going to go down in price?

*W*: Correct.

*J*: And you want to sell one standard lot.

*W*: Which is 100,000, right?

*J*: That's correct. I got you in at a rate of 1.3677.

*W*: OK. So I have to give you the price I want to buy it back at, correct?

*J*: Correct.

*W*: I want to buy it back at 1.2677.

*J*: So to confirm: I'm doing a single limit at 1.2677. Is that correct?

*W*: Yes.

*J*: Your limit is too wide. It has to be within one and a thousand points.

*W*: You're losing me on this. 1.36 to 1.25, that's ten points.

*J*: No. that's 10,000 pips though.

*W*: Ahhh. So my limit must be . . .?

*J*: Between 1 and 1,000.

*W*: OK. So I can only buy it at 125?

*J*: Yes. <u>It wouldn't even most likely get close to that price for some time, probably a year</u>.

*W*: What's the duration of the transaction?

*J*: <u>You can stay in as long as you wish</u>.

*J*: If you move it [*i.e.*, the limit price] from 1.2677 to 1.2678 you be within the 1,000 points.

*W*: OK, let's do that.

*J*: OK, so I set the order at 1.2678.

*W*: Very good. I think were done for now. Just to clear up, that'll take $1,376 out of my margin account.

*J*: It's not that it's going to take it out. You could look at it like that.

*W*: You can only trade on that 10%?

*J*: Exactly.

*W*: I want to figure out what's going to happen with my surplus money. Is it going to sit in my account, until I choose to make another trade, is that right?

*J*: No. Let's say your margin is $1,367.10. You have five thousand [dollars] in your account. So your position is you only have $3,632.90 to risk to the market. For your position, each movement of points up or down [*i.e.*, "pip"] is going give or take away $10 out of your account.

*W*: Should I choose to make another trade in the same account, what are my restrictions based on my amount in my account?

*J*: So if you entered the trade at 1.3677, let's say the price goes up one point to 1.3678, you're going to lose ten dollars so your margin balance would go from $3,632 to $3,622.

*W*: OK. I understand. My question <u>should I choose to make another trade, using the same account, what are my restrictions based on the amount in my deposit account?</u>

*J*: <u>It would have to be basically the same you would just double your margin requirements. But you most likely wouldn't want to do that because that would take you pretty close to getting out of the trade.</u>

*W*: I see. So if it gets up to where it's $5,000, you get taken out of the trade?

*J*: Correct.

*W*: I see what you are saying.

*W*: OK. Well, this is my first experience, so I'll just see what happens.

*J*: You currently have a profit of 41.

*W*: That's good. So it's moving in my direction.

*J*: That's correct.

[Recording produced by respondents.]

12. Later that day, West called Gain Capital to place an order to sell a second EUR/USD lot. This time, West spoke to a different Gain Capital agent: "Matt." During this conversation, West again made it obvious that he was a raw novice who needed considerable assistance and who was making some incorrect assumptions about margin requirements. Notably, unlike Jonathan, Matt did not tell West that if he sold a second EUR/USD lot and did not add more margin, Gain Capital would likely liquidate both lots if the market made a relatively minor move of around 100 pips:

*Matt*: Okay, Robert, and how can I assist you today?

*West*: Well, I was, I was looking at shorting some Euros, what is the current exchange rate?

*M*: Current level on your US Dollar is 1.3681/83.

*W*: 1.3681, so it's about the same as it was earlier today.

*M*: It looks like you got in right around 1.3677. So it's right around that level right now.

*W*: So I put in, this is, I'm new to this, this system so I'm, I'm looking at, I think I put a ten-point spread on my previous order, and I think I still have a balance on my account, correct?

*M*: Well you still do have a balance on your account. You have an available balance of roughly $3,400. You actually have more than that, but I'm rounding down. And it looks like you put, you actually put a 1,000 point difference on, on your order rate. So you put in, you bought at 1.3677 and you have a, you have an order to close at 1.2678, so that's 1,000 points away.

*W*: Okay. So I think what I'd like to do is put in an order to sell another 1,000 or another unit you call them, is that what they call them, units?

*M*: Yeah, it'd be, it'd be either a lot or a contract.

*W*: A contract. Um, for a shorter period which means a, less of a margin, so maybe like a five point spread?

*M*: So did you want to put an order in, or did you want to place a trade?

*W*: Put an order.

*M*: You want to put an order in to sell . . .

*W*: Right.

*M*: . . . another 100,000?

*W*: Yes.

*M*: So you'd be short 200,000.

. . . .

*M*: Yes, you currently have an open position, where you're actually gaining --

*W*: Right. I want to keep that, I want to keep that open.

*M*: Okay. So you want to keep that open.

*W*: I want to place a second, I want to place a second, a second contract.

*M*: So did you want to buy at the market, or did you want to place an order to execute at a future rate to, to sell again?

*W*: I wanted to sell, sell, I want to short, I wanted to short the Euro to, to sell now at the current rate and buy back in US Dollars at a five dollar spread, which we agreed was, was what a 500 point spread, is that what you said?

*M*: Right. It would be a 500, a 500 point difference. So you want me to sell another contract at the current market level right now at the current market rate, is that correct?

*W*: Right.

*M*: Okay. That was filled at 1.3684. . . .

[Underlining added for emphasis, recording produced by respondents.]

13. Matt and West next set the limit order for both lots, and discussed the amount of available margin. However, Matt never told West that his account was now thinly margined:

*Matt*: And now you want me to put in an order to close that trade when it gets to 500 points --

*West*: Below.

*M*: — below this one?

*W*: Buy back in dollars. Makes sense?

*M*: It does. Actually you already have, you already placed an associated order, so I wouldn't be able to, I wouldn't be able to, excuse me, I wouldn't be able to put two associate orders with one open position. So I can —

*W*: I'm sorry, you're losing me. I'm new to this system, so go through this again now. So you're saying I have to wait a day or something to do this?

*M*: Well, what happened is you associated the 1.2678, the one where you have it at 1,000 points. You associated with your open trade.

*W*: What do I --

*M*: You associated it with your open trade. So your open position, the trade that you have where you sold 100,000.

*W*: That was this morning, correct?

*M*: Yes.

*W*: Okay. I associated that with what now?

*M*: You have, you have a limit to sell at 1.2678, so —

*W*: Correct.

*M*: — you already have an order directly connected to this contract.

*W*: This contract being the one we're talking about right now?

*M*: Yes.

*W*: Well I wanted to have two separate contracts.

*M*: Yeah, that's actually not permitted in, in the U.S. The NFA actually prohibits doing that.

*W*: Okay. So we can just cancel that then? I didn't know that was, I thought you could have two different contracts.

*M*: What I could do, if you wanted to, is I could put in unassociated orders, so that they're not directly linked, but they would still close out the trade if those levels are hit.

*W*: <u>There you go. That sounds like what I want to do</u>.

*M*: Okay. So I'm going to, I'm going to remove your current order which is for 1.2678. I'm going to remove that, and then I'm going to put in two orders that are not associated with the open position, so once they trigger, they will still execute and close you out of the trade. But if you decide to go in and manually close the open trade, you have to make sure you remove the unassociated orders.

*W*: Is there a penalty for closing before you reach your, your, your limit?

*M*: There is not.

*W*: There is not. You can, you say you just basically benefit from whatever position you have at the time you close it?

*M*: Correct.

*W*: Okay. Yeah, just, just leave the one this morning in place because I think I, I was already ahead on that one, so I, I really don't want to change that one, but I wanted that —

*M*: Well, you --

*W*: Go ahead.

*M*: — yeah, you have two, right now you have two open, open trades.

*W*: Right.

*M*: One for 100,000, and another for 100,000.

*W*: Right.

*M*: The order that you placed earlier this morning is directly linked to that first order, that first trade that you placed. Because of that —

*W*: (Indiscernible.)

*M*: Right. Because of that, I can't go in and set an individual order for the second part. So what we could do is we, you still have two, two contracts where you're short Euro U.S. Dollar. I could go in and place two orders to sell out 100,000 of each. So, I'm sorry, to buy back 100,000 of each so --

*W*: That was —

*M*: That way we can still have you closed out at the levels you want, but they would be unassociated. Which means that an associated order means that whatever happens to the, to the open position happens to those orders. If you were to close out the open the positions, then those orders are removed.

*W*: Right. <u>It's getting confusing. Well, since I'm new to the game, maybe I should just leave it the way it is</u>. You said I can always close it out prematurely at, at 130, at 132, for example, and not wait to 127. There's no penalty involved, right?

*M*: Exactly. You could prematurely close the positions at any time that you wish. There is no penalty for that, because this is an associated order, it's a directly linked order. That order would cease to exist once you do make that determination.

*W*: Okay.

*M*: So if it went in your favor —

*W*: So what —

*M*: — and you know —

*W*: I'll leave the morning order the way it is, and we'll just cancel the, the order I just gave you.

*M*: So you're short 200,000, you have an associated order for 1.2678 and we will not put in any additional orders.

*W*: Okay. That sounds good. So I have two orders now for the same amount then?

*M*: Yes. You, you sold, you are short 200,000 Euro U.S. Dollar.

*W*: Right.

*M*: And you can go in and you can buy back 100,000 at any point.

*W*: Right. With no penalty.

*M*: Correct. You would, you would just see the profit or loss from that trade reflected on your account. There is no penalty.

. . . .

*M*: So you're short 200,000, you have an associated order for 1.2678, and we will not put in any additional orders.

*W*: Okay. That sounds good. So I have two orders now for the same amount then?

*M*: Yes. You, you sold, you are short 200,000 Euro U.S. Dollar.

*W*: Right.

*M*: And you can go in and you can buy back 100,000 at any point.

*W*: Right. With no penalty.

*M*: Correct. You would, you would just see the profit or loss from that trade reflected on your account. There is no penalty.

*W*: So that leaves me a surplus of approximately $1,200 in the account or —

*M*: Well, you currently have approximately $2,100 worth of room in your account.

*W*: $2,100?

*M*: Correct.

*W*: Okay. That sounds good.

[Underlining added for emphasis, recording produced by respondents.]

14. For the next six weeks, West would monitor the EUR/USD market on Yahoo.com, where the price quotes indicated that the market was trending toward his limit price. However, West would not check his account on-line or communicate with Gain Capital.

15. Unfortunately for West, on February 9, 2010, the day after he had placed his first orders, the prices quoted by Gain Capital spiked around 200 pips, and Gain Capital unilaterally liquidated both EUR/USD lots, for 110 and 115 pip losses worth a total of $2,344.

16. About six weeks later, on March 21, West called Gain Capital and learned that the two EUR/USD lots had been liquidated. When he protested, he was passed to "Eric" of Gain Capital's "market strategist team." During this conversation, Eric revealed to West for the first time that his $5,000 deposit had <u>not</u> provided adequate margin to support two EUR/USD lots:

*Eric*: Yeah, Christie passed that information along to me. It looks like you had a position close out on the Euro.

*West*: How could it close out? I just placed it on the 9th. I mean I haven't, I had two positions actually.

*E*: Yeah, it was two lots. It [*i.e.*, the two-lot EUR/USD position] closed out on the 9th, it looks like —

*W*: That would be the day that I opened the account, I don't understand why it was closed.

*E*: Yeah, you, you opened it on the 8th. You funded it on the 8th and, let me see here, it looks like it was liquidated.

*W*: This is crazy. My credit card was charged $5,000 and I opened two positions on the 8th and the 9th.

*E*: Yeah.

*W*: And the instructions were to keep them, you know, keep them until the, the Euro dropped to 1.27, which obviously it's heading in that direction and you're telling me now that my account is closed.

*E*: Yeah. <u>You, you were way over-leveraged on the, on the trade</u>. Let me just take a look here --

*W*: <u>Way over leveraged on the trade?</u>

*E*: Yeah, <u>you were using over half of your account balance just to maintain the trade</u>. Let me see what happened here. Okay. Yeah, so you sold the Euro, right? What it looks like, you sold it here, and that day, on the 9th, <u>it spiked</u>

up, and, because you didn't have enough margin in the account, that position was closed out. When you get into a position, you're trading the account with 100 to 1 leverage. So when you're —

*W*: I had plenty, I had plenty of leverage in the account, I had $5,000 in the account.

*E*: Yeah, for two standards lots of Euro, I mean that's, that's not really giving yourself much room at all. Because you bought, you sold 200,000 Euro, which is equivalent, well let me see, on the 9th, on the 8th, so that same 200,000 Euro was worth in U.S. about 274,000 U.S. at 100 to 1 leverage, which is the leverage you have on the account. That means at about $2,700 of your account balance, well maybe even a little more than that, was being used to maintain that position. So if you had $5,000 in there, and $2,700 --

*W*: Well somebody just deducted $5,000 from my credit card. I mean, I don't know how much I had in there, but —

*E*: You, you had $5,000 in the account, you started the account with $5,000. So of that $5,000, right away $2,700 was being put aside to maintain that trade of 200,000 Euro. So that left you with a cushion of about $2,300. Which, if the Euro moves 1/100th of a cent, and you have 200,000 Euro, that's equivalent to a $20 change of your account balance --

*W*: Well, shouldn't somebody have notified me or something if they were going to liquidate my -- I mean how could it move, it didn't move that much in one day, I can tell you.

*E*: Well, I can. I can tell you how much it moved that day. It, on the 9th it had a high of 1.3839, [and] it had a low of 1.3645. So that was almost a 200 pip move there. You only lost on the trade about 110, 115 pits. So it moved over twice that amount than what you lost on there.

*W*: This is crazy.

[Recording produced by respondents.]

17. Gain Capital initially told West that it would not offer an adjustment. However, after West complained to his credit card company, Gain Capital reversed the $5,000 credit card charge. As a result, West received complete compensation for his out-of-pocket loss. [*See* appendix G of amended joint answer.]

## Conclusions

During his third conversation with Gain Capital agent Matt, West made it clear that he was a pure novice, relying on Matt and Gain Capital to provide basic guidance and help him properly implement his trading strategy. In these circumstances, Matt was well aware of West's reliance and was thus obligated to provide complete, accurate and meaningful disclosure of information material to a customer in West's place. This disclosure obligation extended to Gain Capital's margin practices, particularly where Gain Capital typically profited whenever a customer's lots were liquidated at a loss, and where Gain Capital followed a policy of: one, quickly liquidating losing positions well before account equity had been depleted, and two, liquidating all lots of a position even when partial liquidation would remedy a margin shortfall. *See Avis v. Shearson Hayden Stone, Inc.*, Comm. Fut. L. Rep. (CCH) ¶ 21,379 (CFTC 1982). Specifically, before accepting West's order to sell the second lot, Matt should have disclosed what another Gain Capital agent would disclose after the liquidation: that if West sold a second EUR/USD lot without adding more funds, he would be "way over-leveraged," without "really giving yourself much room at all." Matt also should have clearly disclosed that if it determined that the two-lot EUR/USD position was under-margined, Gain Capital would liquidate both lots, even if liquidation of just one lot would remedy the margin deficit. However, Matt, acting in his capacity as an agent for Gain Capital, recklessly failed to disclose these patently material facts.

The fact that another Gain Capital agent had previously advised West not to sell a second lot does not preclude finding that West reasonably relied to his detriment on Matt's omissions of these material facts, because West had made it obvious to Matt that he still did not clearly and adequately understand the liquidation risks associated with doubling his exposure. Similarly, Gain Capital's pallid written disclosure that conflicts of interest "may" exist which in actuality did exist does not preclude a finding of reliance. Matt's omission of patently material facts constituted a reckless violation of Section 4b(a)(2)(A)of the Commodity Exchange Act, and Gain Capital is liable for its agent's violation pursuant to Section 2(a)(1)(B) of the Act.

Gain Capital has already completely compensated West for his out-of-pocket losses by refunding his $5,000 deposit. This leaves the question whether West is entitled to recover speculative damages on lost profits. Section 14(a)(1)(A) of the Commodity Exchange Act authorizes the Commission to award "actual damages proximately caused by a violation of the Commodity ExchangeAct." The Commission has held that this language refers primarily to out-of-pocket losses, and does not extend to compensation for lost profits except in limited circumstances where lost profits are directly caused by a respondent's violation and the magnitude of the losses is determinable with reasonable particularity. *Los Angeles Trading Group, Inc. v. Peregrine Financial Group, Inc., et al.*, Comm. Fut. L. Rep. ¶ 30,805 (March 18, 2008); *Adams v. Black Diamond Futures & Trading, Inc.*, Comm. Fut. L. Rep. ¶ 30,492 at n.8 (April 11, 2007); and *Stiller v. Shearson, Loeb Rhodes, Inc.*, Comm. Fut. L. Rep. ¶ 21,780 at 27,155, 27,155 nn. 6, 7 (July 11, 1983).

In practice, the Commission generally has limited recovery for lost profits to cases involving the unauthorized liquidation of a complainant's market position. *Id.* Here, several factors support the conclusion that West has established with a reasonable degree of certainty that he would have realized a $10,000 profit on the first lot had Gain Capital's agent provided fair and adequate disclosure of the liquidation risks associated with selling a second lot: first, West had placed a limit order on the first lot to exit at a $10,000 profit; and second, the recording of West's second conversation with Gain Capital agent Jonathan, and the fact that

West did not call Gain Capital or access his account for six weeks, indicates that West was committed to a long-term strategy of waiting for the exit price to be hit.[1] In these circumstances, West is entitled to recover the $10,000 lost profit on the first EUR/USD lot. However, West is not entitled to recover the lost profit on the second lot, since he never expressed to Matt an intention to deposit addition funds, and since he has otherwise not shown with a reasonable degree of certainty that he would have realized a profit on the second lot.

Finally, since West has failed to establish any factual nexus between that Glenn Henry Stevens' website mission statement and West's liquidation-based losses, West's claim against Stevens must fail.

## ORDER

Robert West has established that an agent of Gain Capital Group, LLC d/b/a Forex.com violated Section 4b(a)(2)(A)of the Commodity Exchange Act, that this violation proximately caused $10,000 in damages, and that Gain Capital is liable for it agents' violation pursuant to Section 2(a)(1)(B) of the Act. West has failed to establish any violations causing damages by Glenn Henry Stevens. Accordingly: one, the complaint against Glenn Henry Stevens is hereby dismissed; and two, Gain Capital Group, LLC is ordered to pay to Robert West reparations of $10,000, plus interest on that amount at 0.10% compounded annually from February 9, 2010, to the date of payment, plus $125 in costs for the filing fee.

Dated November 25, 2011,

Philip V. McGuire,
Judgment Officer

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[1] Respondents have produced no evidence that market conditions would have prevented West from successfully holding the first lot until the limit price was hit.