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JOHN C. GORMAN, Complainant,	*	
v.	*	CFTC Docket No. 12-R005 Served electronically
BRIAN THOMAS BOOTH, Respondent.	*	

INITIAL DECISION

Before: Philip McGuire, Judgment Officer
Commodity Futures Trading Commission,
Washington, District of Columbia

Appearances: Joseph Kish, Esq., Synergy Law Group
Chicago, Illinois
For complainant

Philip Tanzar, Esq.
Chicago, Illinois
For respondent

Introduction

Captain John Gorman's chief allegation is that Brian Booth failed to disclose the specific risks associated with a silver option strangle recommended by Booth. Captain Gorman seeks $72,576 in damages. In response, Booth asserts that Gorman had previously traded strangles and similar short strategies, that the trade was consistent with Gorman's bullish views on precious metals, and that it was Booth's practice to disclose routinely the unlimited downside risk associated with these types of trades. As discussed in more detail below, neither Gorman nor Booth could recall meaningful details of the crucial conversation where Gorman accepted Booth's recommendation. After carefully considering the parties' oral testimony and documentary submissions, I have concluded that Captain Gorman has failed to establish by a preponderance of the evidence any violations causing damages.

Factual Findings

The parties

1. John C. Gorman, a resident of St. Augustine, FL, worked as a tugboat and passenger vessel skipper. He is now retired. Captain Gorman has a high school education. [*See* Gorman response to interrogatories 5 and 6, and Gorman testimony at pp. 27-28 of hearing transcript.] Captain Gorman's testimony revealed him to be candid, confident and smart. In this connection, he has readily conceded that he is responsible for his decisions, but firmly believes that Booth failed to provide adequate risk disclosure when Captain Gorman decided to authorize the trade in dispute.

Before Captain Gorman, unsolicited, opened his self-directed, broker assisted account with Lind-Waldock, he had traded stocks with a discount broker, and had bought gold, and possibly silver, via an account with Monex, but had not traded commodity futures or options on futures. Gorman's testimony revealed that he has retained little more than a rudimentary knowledge of futures and options trading. [*See* Gorman response to interrogatories 1 and 7, and Gorman testimony at pp. 28-20, and 66-197, of hearing transcript.] In addition, Captain Gorman could recall very few specific details of his dealings with Booth and other Lind-Waldock agents. [*See* Gorman testimony at pp. 49, 68-69, 98-99, 105-106, 117-119, 123-124, 144-145, 165-169, and 179, of hearing transcript.] Gorman's inability to recall significant details of important conversations with Booth appears to be the product of the fact that he had principally focused his attention on whether or not a trade was profitable and did not pay close attention to Booth's explanations of matters like the mechanics of trading futures and options. [*See* Gorman's testimony, at pages 27-40, 104-139 of hearing transcript.]

2. Lind-Waldock at the relevant time was a registered futures commission merchant based in Chicago. MF Global Holdings acquired Lind-Waldock in 2005, and in 2011 Lind-Waldock's name was changed to MF Global, Inc. On October 31, 2011, MF Global filed for bankruptcy. MF Global's request to withdraw its FCM registration is currently on hold, pending resolution of various matters related to its bankruptcy. [NFA records.]

3. Brian Thomas Booth at the relevant time was a registered associated person with the Lind-Waldock division of MF Global. Booth, currently a resident of Las Vegas, Nevada, is no longer registered. [*See* ¶ 1, Booth affidavit; and NFA records.]

Booth worked as a "Lind-Plus broker," that is, a personal broker who provided advice to customers with non-discretionary accounts who paid higher than discount rates for access to broker advice. Initially, Gorman worked with a team of multiple brokers, but over time Booth became Gorman's principal broker. In this connection Captain Gorman credibly testified that he spoke to Booth frequently and relied on Booth, rather than account statements, to monitor trades and the status of the account. [*See* Gorman testimony, at pp. 38-40, and 140, Booth testimony, at pp. 200-201, Sachs testimony at pp. 300-303 and Gombas testimony, at pp. 307-310, of hearing transcript; Sachs affidavit, at ¶¶ 2-3; and Gombas affidavit, at ¶¶ 3-9.]

Recording of trade authorization

4. In connection with trade recommendations, Lind-Waldock policies and procedures required Booth to balance any presentation of potential profit with a discussion of potential risk. Booth knew that his telephone calls with all of his customers were recorded, and that his supervisors were monitoring his conversations with customers. [*See* Booth affidavit, at ¶ 5; and Booth testimony at pp. 202-203 of hearing transcript.]

Lind-Waldock recorded the relevant conversations between Booth and Captain Gorman, and retained them for thirty days, per its policy. Since Captain Gorman did not complain about the disputed trade for several months, Lind-Waldock did not retain the recordings. [*See* Sachs' testimony at pp. 303-304, and Gombas testimony at pp. 310-322, of hearing transcript; and Gombas affidavit, at ¶¶ 9-13.]

The disputed trade

5. Most trades in Captain Gorman's account were based on Booth's recommendations. In their daily phone conversations, Gorman typically relied on Booth to discuss market conditions and trade status, and to provide trading advice. Gorman conceded that the main factor to which he paid serious attention was whether a particular trade was up or down. In his dealings with Booth, Gorman had never complained about any trade before the trade that is the subject of this dispute. Booth credibly testified that although he cannot remember specific conversations, he confidently remembers that Gorman routinely asked him about the specific risks of individual trades. [*See* Gorman's testimony at pages 40-41, 46-49, and Booth's testimony at pp. 204-206, of hearing transcript.]

6. Captain Gorman principally traded futures and options on futures in various metals markets, including gold and silver. He also traded light crude, natural gas, S&P 500 index, Japanese Yen, Canadian Dollar, Euro, T-bonds, sugar, wheat, corn, soybeans and cocoa contracts.

Captain Gorman followed a variety of trading strategies, most of which involved purchases of futures or options. However, Gorman did approve a small number of trades involving short option positions. For example: one, on June 8, 2011, he sold two September 45.00 silver calls, which he offset on June 28, for a profit of about $4,290; two, on July 20, 2011, he sold three September 50.00 silver calls, which he offset on August 10, for a more modest profit of about $225; and three, on August 29, he sold two September S&P 500 puts, which he offset on September 2, 2011, for a loss of about $901. As can be seen, Gorman realized profits and losses on these trades, but the one loss obviously was not remotely as devastating as the loss on the trade that is the subject of this dispute. Gorman generally avoided stops, because he believed that they had too frequently had prematurely knocked him out of the market. [*See* Gorman testimony, at pp. 41-45 of hearing transcript.]

7. By late July 2011, Captain Gorman became bullish on precious metals. He made two gold futures trades in the second half of July, with one realizing a loss of about $875, and the other a profit of about $2,815. He made fifteen gold futures trades in August, with seven realizing profits between $115 and $6,835, and eight realizing losses between $1,275 and $11,985. At the end of August: Gorman's account held three short positions, two October sugar futures, two September e-mini S&P 500 futures, and two September S&P 500 puts; and Gorman's account balance was $119,157, and account liquidation value was $98,210.

8. On September 2, Captain Gorman accepted Booth's recommendation to sell two December silver 35.50 puts. This trade was filled at 95.00, resulting in a credit of about $9,360. This is the first of a series of related silver transactions in September that are the subject of Gorman's complaint. [*See* Booth affidavit, at ¶ 7; Booth testimony, at pp. 207-208, and Gorman testimony, at pp. 17, 49 and 101, of hearing transcript.]

9. From September 8 to 21, Captain Gorman made three round-turn long trades in December gold futures day trades or overnight trades, which realized a total of about $8,579 in profits.

10. On September 21, Captain Gorman deviated somewhat from his short-term gold strategy, buying one December gold futures contract. Gorman would buy two more December gold futures by September 23. On September 22, the market began moving against Gorman's short silver puts. As a result, Gorman accepted Booth's recommendation to sell two contracts of December Silver 43.00 call options, in order to lower, or mitigate increases in, his overall margin requirement. This order was filled at 85.00, resulting in a credit of about $8,360. Neither Gorman nor Booth could specifically recall the conversation. Gorman does not assert that Booth made any misrepresentations, but does assert that he did not remember Booth mentioning risk. In contrast, Booth testified credibly that for similar trades he routinely discussed factors like break-even scenarios and the specific risks if the market pulled back. At the close on September 22, Gorman's account liquidating value was $92,313. [*See* Booth affidavit, at ¶¶ 8-9; Booth testimony, at pp. 209-210, and Gorman testimony, at p. 49-55, of hearing transcript.]

11. On Friday, September 23, precious metals dropped sharply. At the close that day, of business, Captain Gorman's account liquidating value had dropped to $24,254, which was well below the maintenance margin requirement of $50,584.

On the evening of Sunday, September 25, and the early morning of Monday, September 26, precious metals continued to sell off, and Captain Gorman's account went on margin call. The Lind-Waldock 24-hour order desk contacted Gorman, who accepted their recommendation to place stops on the short gold futures position. A few minutes later, the stop was hit, and Gorman's gold position was liquidated at $1.60 per ounce, for a loss of about $48,075. A short time afterwards, gold hit a low of $1.58 per ounce and rebounded strongly. In addition, the silver market rebounded against his short futures sale at $28.65 per ounce, which caused losses that exceeded the gains on the short options positions, and pushed the account near deficit status. [*See* Booth affidavit, at ¶¶ 10-11.]

12. On September 26, Captain Gorman told Booth that he had planned to wire transfer funds from his Monex account to hold his remaining positions. At the close of business on September 26, Gorman's account was in a deficit of $2,035.

On September 27, Captain Gorman and Booth learned in a conference call that Monex policies would not permit an immediate transfer. Next, Booth advised Gorman that Lind-Waldock's anti-money laundering policy would not permit a wire transfer from Gorman's sister's account, which Gorman had indicated was his only other option. Thus, the Lind-Waldock margin department required Gorman to liquidate almost all the positions in his account.

Captain Gorman's account balance at the close of business on September 27th was a negative $9,986. The next day he wired funds to cover the deficit, liquidated his last remaining position, a long Yen put position, and closed his account.

Conclusions

The record in this case establishes that Captain Gorman was authentically stunned by the swiftness and size of his loss when precious metals dropped sharply. Gorman attributes his sincere surprise to a failure by Booth to provide a sufficiently dire warning of the high risk of loss specifically associated with the disputed trade. However, the disparity between Gorman's comprehension of risk and his experience with the loss can also reasonably be attributed to the fact that he had not previously experienced such a large loss, and thus, despite being diligently concerned with risk factors, had become inured to Booth's risk warnings for previously recommended short trades, and similarly inured to Booth's explanation of the specific risk associated with the disputed trade. Gorman -- who has acknowledged that he did not pay close attention to Booth's explanations of the mechanic of futures, and who has not alleged that Booth made any affirmative misrepresentations -- simply has not reliably recalled sufficient detail of his conversations with Booth to support a finding that Booth failed to provide adequate disclosure of the risk associated with the disputed trade. Accordingly, Captain Gorman's complaint must fail.

ORDER

Captain Gorman has failed to establish by a preponderance of the evidence any violations causing damages. Accordingly, the complaint in this matter is dismissed.

Dated this 18th day of April 2017.

Philip V. McGuire,
Judgment Officer