U.S. COMMODITY FUTURES TRADING COMMISSION
Three Lafayette Centre
1155 21st Street, NW, Washington, DC 20581
www.cftc.gov

Office of Proceedings

RECEIVED CFTC
Office of Proceedings
Proceedings Clerk
11:26 am, Dec 22, 2015

WINDJAMMER CAPITAL LLC, Complainant, v. GLOBAL FUTURES EXCHANGE & TRADING COMPANY, INC., Respondent.	*	CFTC Docket No. 14-R1

INITIAL DECISION

Introduction

Windjammer Capital ("Windjammer") alleges that Global Futures Exchange & Trading Company ("Global Futures") mishandled a series of stop orders, and thus caused the wrongful liquidation of a 90-lot e-mini Nasdaq future long position. Windjammer claims that Global Futures improperly adjusted Windjammer's stop orders which prevented Windjammer from "scaling out" of the positions. According to Windjammer, had it not been precluded from scaling out, its losses would have been $31,385, which is $27,000 less than the $61,482 lost when the entire 90-lot position was liquidated. Windjammer seeks $29,642 in damages, based on the sum of above $27,000 differential and $2,642 in "liquidation fees" charged by the carrying broker.

Global Futures denies that it mishandled Windjammer's stop orders or that the 90-lot position was improperly liquidated. Global Futures asserts that Windjammer's owner, Dan Clay, in the face of a declining market, disregarded its instructions to reduce his exposure by liquidating positions, placing an appropriate stop, or wiring more funds, and as a result his account became insufficiently margined to carry the positions overnight, thus compelling the carrying broker to liquidate the seriously under-margined 90-lot position.

The findings below are based on the parties' documentary evidence. As explained below after carefully reviewing the parties' submissions, I have concluded that Windjammer has failed to establish any violations proximately causing damages by Global Futures in connection with the disputed liquidation.

Factual Findings

The parties

1. Complainant Windjammer Capital LLC ("Windjammer"), a Delaware limited liability company located in Bourne, Massachusetts, was a registered commodity trading advisor from May 2013 to August 2014.

Dan Clay was the founder, sole owner and listed principal of Windjammer. Clay directed the trading activity that is the subject of this dispute. When Clay opened the account in 2012, he represented that he had seven years' experience trading futures, options, securities and securities options. Clay also represented that the net cash and liquid value of Windjammer was $50,000.

2. In 2012, Clay opened Windjammer's account. The account was carried by Gain Capital Group LLC, d/b/a Open E Cry LLC ("OEC"), a registered futures commission merchant located in New Jersey. Windjammer's account was introduced by respondent Global Futures Exchange & Trading Company, Incorporated, a registered introducing broker located in Tarzana, California.

The account

3. Windjammer's account was self-directed and non-discretionary.

4. The account-opening documents provided to Clay on or about December 4, 2012 included a "Global Futures Additional Risk Disclosure." Paragraphs 14 through 17 of this disclosure provided:

> 14. You understand that GFETC has the sole and absolute discretion and the right to limit positions in your account(s), to decline to accept any orders, and to require that your account(s) be transferred to another firm. You understand that if you do not promptly transfer your positions upon GFETCs demand, GFETC reserves the right to liquidate positions in your account(s) at its sole and absolute discretion.
>
> 15. You agree to maintain such margin as GFETC may require in its sole and absolute discretion with respect to your account(s). Any accounts that fall into margin call will be charged a $25.00 per contract. An account that does not meet the margin requirement may be liquidated and a fee of $50.00 will be assessed to your account. Margin requirements and the fees may be increased without notice in GFETCs sole and absolute discretion and may differ from those established by the exchange on which the transaction is executed and the clearing firm at which your account is held. Margin requirements are subject to change without notice and will be enforced retroactively and prospectively. You shall make deposits of margin as GFETC requests within a reasonable time after such a request. It is agreed and understood that one hour may be deemed to be a reasonable time; provided, however, that GFETC, in its sole and absolute discretion, may require that deposits be made in a lesser period of time. GFETCs failure to require satisfaction of a margin call within one hour, or any lesser period, on any occasion shall not be deemed to be a waiver of its right to do so in the future. You shall provide GFETC with any information deemed reasonable and prudent for immediate verification of wire transfers.
>
> 16. In the event you fail to deposit sufficient funds to pay for any futures and/or commodities and/or to satisfy any demands for initial and/or variation margin, or whenever, in GFETCs sole and absolute discretion it considers it necessary, GFETC may, without prior demand or notice and not withstanding any rule of any exchange, liquidate and/or hedge the positions in your account(s). Such sale or purchase may be made without advertising or notice to you and in such a manner as GFETC may, in its sole and absolute discretion, determine, and no demands, tenders or notices which GFETC may make or give shall invalidate your aforesaid waiver. If liquidation is deemed necessary a liquidation fee of $50.00 per

> contract will be assessed to your account and risk. You agree that GFETC has no duty and is not required to liquidate positions in your account(s) and that the provisions of this paragraph are solely for the protection of GFETC.
>
> 17. You acknowledge that you shall be liable for all losses in your account(s) whether or not your account(s) is liquidated for any debts and deficiencies, including, but not limited to, interest, costs, expenses, maintenance fees, exchange rates, margin call fees, liquidation fees and attorney's fees, including all debts and deficiencies resulting from a liquidation of your account(s).

Exhibit 8, Global Futures' answer.

5. On four dates before the disputed liquidation, January 7 and 8, February 22, and September 30, 2013, Global Futures liquidated under-margined positions in Windjammer's account. On these dates, Global Futures reversed the liquidation fees assessed pursuant to paragraph 16 of the Global Futures Additional Risk Disclosure, and warned Clay about Global Futures' margin policy. After the fourth incident, Global Futures warned Clay that it would no longer reverse the liquidation fees in the event that he again permitted the account to become under-margined. *See* daily statements and September 30, 2013 e-mail, Exhibits 9 and 10, Global Futures' answer.

6. Between December 2012 and October 2013, Clay made six deposits, four by wire and two by check, totaling $144,000. Between February 2013 and January 2014, Clay made five withdrawals totaling $78,488.[1] *See* Exhibit 3, Global Futures' answer

Disputed liquidation

7. The disputed liquidation took place on November 7, 2013 and involved the December 2013 e-mini Nasdaq future ("NQZ3").

[1] Amounts are rounded to the nearest dollar.

8. The CME Group's initial margin for the NQ was $3,245. OEC's day-trading margin for the NQ was $500. *See* Exhibit 5, Global Futures' answer.

9. On November 6, 2013, Clay bought and sold 130 NQZ3's, and realized a loss of $16,960. At the close that day, the account value was $63,048. This provided enough margin for Clay to purchase 90 NQZ3's the next day. *See* Exhibit 6, Global Futures' answer.

10. On November 7, 2013, the NQZ3 opened at 3374, ranged between a 3387 high and 3314.25 low, and settled at 3319.4. From Bloomberg, LP market data services, via CFTC Division of Market Oversight.

11. On November 7, 2013, Clay bought 90 NQZ3's at an average price of 3367. The CME's initial margin requirement for 90 NQZ's was $277,200, and OEC's day-trading margin requirement for 90 NQZ's was $45,000.

Clay also placed a stop at 3320. The total margin requirement at that price was $84,600.

12. When the market dropped, Global Futures asked Clay, more than once, either to liquidate excess positions, to place an appropriate stop, or wire more funds. However, Clay did not choose any of these options. Rather, he placed a stop which would have created a $20,000 to $23,000 debit balance if executed. He was then notified that OEC was placing a stop, which Clay cancelled, twice. After the second cancellation, OEC and Global Futures decided to liquidate the 90-lot position, based on the following factors: the account had insufficient margin, the unrealized losses exceeded Windjammer's net capital, Clay's refusal either to wire more funds or place the correct stop. The liquidation resulted in a $58,385 loss. Windjammer's account also

was charged $3,097 in commissions and fees. The liquidation left the account with a positive $1,566 balance. *See* Exhibit 11, Global Futures' answer.

13. The next day, November 8, 2013, Global Futures sent an e-mail to Clay explaining why the 90-lot position had been liquidated and why Global Futures would not be crediting any amount to Windjammer's account. *See* Exhibit 13, Global Futures' answer.

Conclusions

Initial and maintenance margins are instituted for the protection of futures commission merchants, and reflect the amount of risk a futures commission merchant is willing to accept for a customer's position. For this reason, it is well established that a futures commission merchant has considerable discretion to set and enforce its margin policies, absent evidence of fraudulent or bad faith conduct. *Baker v. Edward D. Jones & Company*, Comm. Fut. L. Rep. ¶21,167 (CFTC 1981). Therefore, in order to establish wrongdoing by respondents, Windjammer must show by a preponderance of the evidence either that respondents misled Windjammer about Global Futures' margin policy or executed the November 7, 2013 liquidation in bad faith.

Windjammer has not produced any evidence that Global Futures misled Windjammer about Global Futures' margin policy. In this connection, it appears that Global Futures repeatedly explained its margin policy when it liquidated under-margined trades on four occasions before the disputed liquidation. Windjammer also has failed to show that Global Futures acted in bad faith in connection with the disputed liquidation, where Global Futures offered Clay multiple options to correct the under-margined status of the account, all of which Clay rejected.

ORDER

Windjammer has failed to establish any violations proximately causing damages by Global Futures in connection with the disputed liquidation. Accordingly, the complaint in this matter is dismissed.

December 22, 2015.

Philip V. McGuire,
Judgment Officer