

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

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1:30 pm, Sep 05, 2013

CHENLI CHU

v.

PEREGRINE FINANCIAL GROUP, INC. and
JAMES FRANCIS KELLY

CFTC Docket No. 07-R029

ORDER

Peregrine Financial Group, Inc. (“PFG”) and its Associated Person (“AP”), account executive James Francis Kelly (collectively, “respondents”), appeal from an initial decision in this reparations case. *Chenli Chu v. James Francis Kelly and Peregrine Financial Group, Inc.*, CFTC No. 07-R029, 2009 WL 3244153 (CFTC Oct. 7, 2009) (“Initial Decision”). That decision held that respondents allowed unauthorized trades to be executed in one of Chu’s accounts by her independent commodity trading advisor, in violation of 17 C.F.R. § 166.2, and committed fraud, in violation of Section 4b of the Commodity Exchange Act (“CEA”), 7 U.S.C. § 6b, by failing to disclose to Chu that the monies deposited in the account were used to trade rather than to purchase a Treasury bill, earn interest, and not be traded, as she had purportedly requested. The decision also held that Peregrine failed to diligently supervise the account, in violation of 17 C.F.R. § 166.3, but Kelly was not liable because he was an AP without supervisory duties under that provision. The Administrative Law Judge (“ALJ”) ordered respondents to pay \$500,000 for trading losses in Chu’s account purportedly caused by respondents’ conduct. On appeal, respondents argue that the ALJ’s decision is contrary to the evidence and law.

We reverse as to Kelly. There is ample undisputed evidence that Chu’s independent commodity trading advisor (“CTA”) had actual and apparent authority to conduct the trades at

issue with the funds deposited in the accounts.¹ In light of this reversal, we decline to address the other issues on appeal.² We stay the appeal as to respondent Peregrine pursuant to the automatic stay provision in the bankruptcy code, 11 U.S.C. § 362(a)(1), in light of Peregrine's bankruptcy filing while this appeal was pending.³

The Evidence

The ALJ conducted three days of hearings in Los Angeles, California. Chu and her independent CTA, Jennifer ("Jen") Huang, testified, as did Kelly and other PFG employees. In addition, the parties introduced account opening and power of attorney documents, as well as trading records and transcripts of Huang placing orders in Chu's accounts. The hearing testimony and evidence establishes the following.

Chu is over 70 years old and was born in Taiwan. She has known Jennifer Huang for over 20 years, since Chu lived in Taiwan. She knows Huang's parents as well, apparently from Taiwan. (June 3, 2008 transcript ["Tr."] at 78). Chu came to the U.S. in 1990, used to go back and forth between the U.S. and Taiwan, but since 2000 has mostly resided in the U.S. (*Id.*). She rents a room from Huang and has rented from her in the past. (June 3 Tr. at 86-88).

Huang is president of a company called Wintech Research, which was formed in 1987. Wintech and Huang got into the commodity trading business in 1990 (June 3 Tr. at 20; resp. Ex.

¹ Chu does not challenge the ALJ's dismissal of the failure to supervise charge as to Kelly and it is waived.

² Respondents also argued that Chu did not suffer any losses attributable to alleged misconduct, that the ALJ was biased and unduly limited cross-examination, and that the ALJ erred in determining that Chu was not required to post a non-resident bond in order to bring her complaint.

³ Section 362(a)(1) "operates as a stay, applicable to all entities," of "the commencement or continuation ... of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title."

Tab 41 at 3002).⁴ That year, Huang/Wintech opened a commodity trading account for Chu with another FCM, and began acting as her CTA. (June 3 Tr. at 21-22). From 1990 to 2003, Chu opened a number of commodity trading accounts with FCMs other than PFG, with Huang/Wintech as her CTA. (*Id.* at 21-23). According to Chu, Wintech and Huang would “take care of my money.” (June 3 Tr. at 74). During that time, Wintech/Huang was an introducing broker, but withdrew in 2003, and thereafter was an independent CTA. (*Id.* at 22-23).

In 2003, Chu opened her first account at PFG. She did so through Huang. Huang, in turn, was working with PFG’s Kelly, a senior vice president for business development. (Dec. 2, 2008 Tr. at 61-62). Kelly began working with Huang that year in connection with her request that Wintech become a guaranteed introducing broker (“GIB”) of PFG. Wintech was briefly a GIB of PFG, from April through October 2003. (Dec. 2Tr. at 62-63).

Chu opened her first PFG account online in March 2003 by executing the requisite customer agreement and risk disclosure statements in accordance with the Electronic Signatures Act, 15 U.S.C. § 7001, *et seq.* The account was assigned number LE 44295. (respondents’ [“resp.”] Exs. Tab 1, 6). Between April 2003 and early 2005, Chu opened additional accounts LE 44294, K 0018, K 0088, K 0098, and F 3888 (resp. Exs. Tab 2, 5, 6, 8, 14, 15, 17, 18, 19, 20). Each account was opened using a generic “new account request form” that authorized PFG to use the forms executed to open prior accounts. (*Id.*)⁵ In addition, in June 2004, Chu signed discretionary account documents for accounts K 0088 and K 0098 which gave Huang a limited power of attorney (“POA”) to buy and sell commodities, futures and options on Chu’s behalf in

⁴ References are to the tab numbers preceding each exhibit because the exhibits themselves are incorrectly numbered.

⁵ Chu’s accounts were assigned to Kelly under an “IB” sales code based on Wintech/Huang’s brief period in 2003 as a GIB of PFG. Once Wintech was no longer a GIB of PFG, Chu’s accounts were house accounts traded by an independent CTA (Huang), and still assigned to Kelly, along with Huang’s other client accounts. (Dec. 2 Tr. at 63).

those accounts. (resp. Ex. Tab 14 and 15).⁶ Between March 2003 and March 2005, when Chu opened the account at issue, both Chu and Huang corresponded frequently with Kelly by e-mail and fax (and in Huang's case, also by phone) about Chu's accounts. Those exchanges indicate that Chu was well aware that Huang was trading on her behalf and also that Chu herself closely monitored her accounts and was a sophisticated investor. (resp. Ex. Tabs 9, 10, 11, 21, 22).⁷

In late February/early March 2005, Kelly and Chu had an e-mail exchange about a trade that occurred in January of that year. (resp. Ex. Tab 25). Evidently, a trade had been "busted" (cancelled by the exchange due to an error), and PFG had trouble reaching Huang to notify her. Chu suffered losses as a result and withdrew \$500,000 in protest. In a March 2, 2005 e-mail, Kelly told Chu that every effort had been made to reach Huang regarding the January trade. (resp. Ex. Tab 25 at 0000041).⁸ He also said that, regarding her forex account, he would "need a letter written by you that says that the POA you signed is good for all of your accounts at PFG. I received your e-mail but I need a fax with your signature and a list of all accounts [Huang] can trade ..." (resp. Ex. Tab 25 at 0000043). Chu responded the same day. She told Kelly that she appreciated his service but was upset at the compliance department's explanation of the January

⁶ According to PFG's compliance officer, such secondary account opening documents are standard in the industry and were never questioned by NFA in its audits. (Dec. 2 Tr. at 107-08).

⁷ Chu frequently visited Wintech's offices, which contained computers connected to PFG's trading platforms. (June 3 Tr. at 73, 129, Dec. 2 Tr. at 86-89). Although Chu claimed that she did not speak or read English and only understood Chinese (resp. Ex. Tab 21 at 0000022), she frequently checked her accounts online and would dictate e-mails or faxes to PFG and Kelly inquiring about transactions, which Huang or other Wintech staff translated into English. Huang or other Wintech staff would also translate the responses, as well as other documents, into Chinese for Chu. (June 3 Tr. at 73; Dec. 2 Tr. at 86-87, 100). Chu made no claim that she did not understand the documents or correspondence or that they were inaccurately translated.

⁸ From 2003 to 2005, Chu filed at least two complaints against PFG involving purported trading errors. One complaint, involving an "out trade," was settled in mid-June 2003 for \$2,187.50. (resp. Ex. Tab 9-11). Another complaint was filed with NFA in mid-2005 regarding the January 2005 trade discussed above. (resp. Ex. Tab 29-33). That complaint was dismissed by an NFA arbitrator in 2006. (resp. Ex. Tab 32).

trade. She also told Kelly that she wanted the problem to be resolved because “I do not want this incident to be repeated since I still want Jen to trade for me.” Chu promised to “fax [Kelly] the POA with my signature per your request.” (resp. Ex. Tab 25 at 0000042). Chu signed a broad general POA the same day. It stated:

Dear Jim/PFG,

I am here granting a blanket trading authority for Jen Huang to trade/placing [sic] order to all my accounts with PFG which is including K0018, K0088, K0098, F3888 as well as any future accounts that I might open. Thanks.

(Resp. Ex. Tab 24).⁹

On March 15, 2005, Chu e-mailed Kelly that she was sending \$500,000 “back to PFG in request of you and Jen,” and was still awaiting resolution of her complaint about the January busted trade. (resp. Ex. Tab 25 at 0000041). Kelly responded “[t]hank [y]ou for sending back the money for Jen to trade....” (*Id.*). Three days later, Chu signed a generic account opening statement for the account at issue, K 0058. Chu requested that PFG open the new account using the account opening forms she had already executed for account K 0088 (which included a POA for Huang). (resp. Ex. Tab 26; *see also* Tab 14). Chu wrote on the form that the commissions and fees would be fifty cents one way. She also wrote and signed instructions at the bottom that PFG should “move \$ 500K T-Bill to K 0058 also link margin for K 0058/88/98.” (resp. Ex. Tab 26). By linking the margin among the three accounts, Chu authorized PFG to use her balance in any one of those accounts to satisfy margin requirements for the others.

⁹ Chu did not deny that she or someone she authorized signed the documents. Rather, whenever asked whether she recognized the documents or her signatures, she responded “I don’t remember”; “It’s been a long time”; “So many things”; “I don’t know.” (June 3 Tr. at 79-85). Huang suggested that Chu or Chu’s son (under a POA) signed the documents, and she denied signing them for Chu. (June 3 Tr. at 65-71, 114-20).

Chu admitted that she “handed [the \$500,000] over to Ms. Huang to have her take care of it for me,” but told her “to be very careful because I wanted to generate interest from this fund for my retirement.” (June 2 Tr. at 74). Kelly agreed that Chu indicated that she wanted to earn interest, that he advised her that her forex accounts did not pay interest so if she wanted to earn interest she would have to move money to another account or open a new account and purchase a treasury bill. Chu chose to open a new account, but, according to Kelly, she did not request that a T-bill be purchased. (Dec. 2 Tr. at 90-91, 102). Neither Chu’s March 2005 e-mail exchanges with Kelly nor Chu’s K 0058 account opening form mentions any limitation on trading in the account or requests that the funds be invested solely to generate interest or to purchase and hold a T-bill. Further, by directing PFG in the account opening form to link the margin among K 0058 and two other accounts, Chu authorized PFG to use her balance in K 0058 to satisfy margin in any of the accounts, an authorization inconsistent with a conservative investment strategy. (Dec. 2 Tr. at 98-99). Huang confirmed that Chu intended that the funds deposited in K 0058 be used to link margin, so that Chu did not have to wire money from her bank every time she got a margin call. (June 3 Tr. at 36, 104-105, 109-10). Finally, even if a \$500,000 T-bill had been deposited in the account, it could have been used to meet margin in any of the three accounts, as Chu directed in her account opening form, or could have been used to trade. (Dec. 2 Tr. at 123).¹⁰

Beginning in March 2005 and through May 2005, a substantial amount of Euro currency contracts were moved into and out of Chu’s various accounts, including K 0058, and then offset. Some trades were electronic. Those trades were placed using Chu’s unique electronic “access

¹⁰ The record indicates that \$500,000 in cash was transferred from account F 3888 to account K 0058 on March 21, 2005. (resp. Ex. Tab 52 at 000647). The record does not indicate whether there had been a T-bill for that amount in account F 3888.

key,” which is like a bank PIN number, and were placed from the same IP (computer) address as for other trades placed by Huang over which she had trading authority. (Dec. 2 Tr. at 18-19, 46-47). Others were placed by Huang by telephone. Respondents introduced transcripts of telephone calls in which Huang bought or sold the contracts for the accounts and requested that they be moved among the accounts. (resp. Ex. Tab 34).¹¹

By early June 2005, Chu had suffered a net futures loss of over \$537,000 in account K 0058. On June 2, 2005, Huang sent an email to Kelly requesting the closing of account K 0058. (resp. Ex. Tab 27). Huang also stated, for the first time, “[i]t is confirmed that Chen Chu is the only person who has trading power and has been trading on this account.” (*Id.*). Two years later, Chu filed her reparations claim against PFG and Kelly.

The ALJ’s Decision

The ALJ’s decision held that respondents allowed unauthorized trades to be executed in account K 0058. (Initial Decision, 2009 WL 3244153, at *5-*8). The ALJ found that Huang possessed neither actual nor apparent authority to trade in account K 0058 because the POAs did not specifically refer to that account, and respondents failed to confirm that Huang had authority. (*Id.*). The ALJ also found, based on the unauthorized trading and failure to follow Chu’s purported instructions regarding the account, that respondents committed fraud. (Initial

¹¹ Respondents sought to introduce and play recordings of the calls to confirm that the caller, who usually identified herself as “Jen,” was Huang. The ALJ said he would not listen to them. (June 3 Tr. at 134-35, 140-42). However, the parties stipulated that the transcripts accurately reflected the recordings. (June 3 Tr. at 37-38). In addition, Kelly testified that he had listened to the transcribed recordings, and recognized Huang as the person placing the orders. (Dec. 2 Tr. at 70-72).

Decision, 2009 WL 3244153, at *9-*11). Finally, the ALJ found that Peregrine, but not Kelly, failed to diligently supervise the account. (Initial Decision, 2009 WL 3244153, at *7-*9).¹²

Standard of Review

In an appeal from an ALJ's decision, the Commission independently assesses the factual record to determine whether the charges are supported by the weight of the evidence. *In re Mayer*, [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,259 at 46,129 (CFTC Feb. 3, 1998), 1998 WL 39411, at *15, *aff'd sub nom, Reddy v. CFTC*, 191 F.3d 109 (2nd Cir. 1999). The Commission defers to the ALJ's credibility determinations in the absence of clear error. *Mayer*, ¶ 27,259 at 46,129, 46,136 n.63, 1998 WL 39411, at *15, *23 n.63. It reviews the ALJ's legal conclusions *de novo*.

Discussion

The charges of unauthorized trading under 17 C.F.R. § 166.2 and fraud under 7 U.S.C. § 6b are unsupported by the evidence. As to unauthorized trading, the evidence establishes that Chu gave Huang actual authority --- two POAs --- to trade in the accounts at issue. As to fraud, the evidence establishes that Chu's funds were traded by Huang as Chu had authorized. Kelly did not misrepresent that the funds would be used in some other way. Chu does not appeal the ALJ's dismissal of the charge of failure to supervise under 17 C.F.R. § 166.3 as to Kelly and any challenge is therefore abandoned as to Kelly. The Commission declines to reach the remaining issues in light of its dismissal of the charges.

Unauthorized Trading

Commission Regulation 166.2 prohibits transactions by an FCM, IB, or AP in a customer's commodity account unless (a) the customer or person designated by the customer to

¹² As mentioned above, Chu did not appeal from the ALJ's dismissal of this charge against Kelly, and we do not consider it.

control the account has specifically authorized the transactions in advance, or (b) the customer has executed a written authorization permitting a third party to trade in that account without specific authorization for each transaction. 17 C.F.R. § 166.2 (2006); *In re Mock*, [2000-2002 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 28,662 at 52,600 (CFTC Sept. 6, 2001), 2001 WL 1195693, at *2 (CFTC Oct. 10, 2001).¹³

Under this regulation and common law principles that have been applied in interpreting it, “an FCM may make trades ordered by someone other than the customer when that someone is designated by the customer to control the customer’s account.” *Peltz v. SHB Commodities, Inc.*, 115 F.3d 1082, 1087 n.1, 1088 (2d Cir. 1997) (“*Peltz*”) (interpreting Rule 166.2 in “accord with the CFTC’s position” in an amicus brief in that case). “The FCM may make trades ordered by the third party who has either actual or apparent authority to make the trades.” *Id.* at 1088. In general, actual authority “is created by direct manifestations from the principal to the agent, and the extent of the agent’s actual authority is interpreted in light of all the circumstances attending these manifestations, including the customs of business, the subject matter, any formal agreement between the parties, and the facts of which both parties are aware.” *Id.* (internal citations and quotations omitted). Where there is actual authority, the FCM is not required to make an inquiry into the extent of a third party’s authority. *Id.* at 1089.

¹³ 17 C.F.R. § 166.2(b) (2006) provides in relevant part that no FCM, IB, or AP “may directly or indirectly effect a transaction in a commodity account for the account of any customer unless before the transaction the customer, or person designated by the person to control the account: authorized in writing the [FCM, IB] or any of their [APs] to effect transactions in commodity interests for the account without the customer’s specific authorization; *Provided, however*, That if any such [FCM, IB] or any of their [APs] is also authorized to effect transactions in foreign futures or foreign options without the customer’s specific authorization, such authorization must be expressly documented.” (emphasis in original). This regulation, which applies to the conduct challenged here, has since been amended.

If it is unclear whether there is actual authority, the FCM must make a reasonable inquiry in order to determine whether there is apparent authority. *Peltz*, 115 F.3d at 1088. Apparent authority is created when a customer's actions provide an implicit or reasonable basis for the entity to believe that the third party has authority. *Wheeler v. Investment Managers Commodity Corp.*, [1984-1986 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 22,770 at 31,220 (CFTC Oct. 30, 1984), 1984 WL 48700, at *4; *see also Sansom Refining Company v. Drexel Burnham Lambert*, [1986-1987 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 23,796 at 34,107 (CFTC July, 20 1987), 1987 WL 106873, at *4; *aff'd in part, rev'd in part sub. nom. Drexel Burnham Lambert Inc. v. CFTC*, 850 F.2d 742 (D.C. Cir. 1988) (“*Drexel Burnham*”).

There is abundant evidence that Huang had actual authority to trade in the account at issue. Chu executed two POAs giving Huang authority to trade in her accounts. The first POA was for accounts K 0018 and K 0098. (resp. Ex. Tabs 14 at p.1; 15 at 000774). But when Chu opened subsequent accounts, including the one at issue (K 0058), she invariably stated in writing that the account opening documents from the earlier opened accounts should govern the later opened accounts. *Supra* at 3. For account K 0058, Chu specifically stated that the account opening documents for account K 0088 were to be used. (resp. Ex. Tab 26, *supra* at 5). These included a POA to Huang.¹⁴ The second POA was submitted by Chu at Kelly's request shortly before account K 0058 was opened. This POA was broader in that it granted Huang “blanket

¹⁴ The ALJ determined that Chu's statement was insufficient because it was unclear to which accounts the earlier POA applied, and because the POA did not specifically reference account K 0058. (Initial Decision, 2009 WL 3244153, at *2, *6). While the POA did not on its face state to which account or accounts it applied, it was part of Chu's completed packet of discretionary account opening documents for accounts K 0088 and K 0098, and the cover sheet of each packet was marked with the account number. Chu did not dispute that the POA applied to either of those accounts.

trading authority” for “K 0018, K 0088, 0098, F 3888 as well as any futures accounts that [she] might open.” (resp. Ex. Tab 24). Three weeks later, Chu opened account K 0058.¹⁵

There is also additional evidence that Huang had actual authority to trade in the account at issue. In an e-mail exchange a few days before Chu opened account K 0058, Chu stated that she was sending \$500,000 that she had previously withdrawn back to PFG, and wanted Huang to keep trading for her. In response, Kelly thanked Chu for “sending back the money for Jen to trade in.” (resp. Ex. Tab 25 at 0000041; *supra* at 5). Chu also testified that she gave Huang authority to trade in the account. (June 3 Tr. at 74-76). Although Huang denied that she had authority to trade in the account, her testimony was irreconcilable with the documents, Chu’s testimony, and transcripts of Huang’s telephone calls placing trades in the account. Indeed, the ALJ found “Huang’s denial of trading in K0058 to be disingenuous...” (Initial Decision, 2009 WL 3244153, at *6). He also found Huang’s June 2005 e-mail to Kelly requesting that K 0058 be closed and denying that she had trading authority “suspicious.” (Initial Decision, 2009 WL 3244153, at *5). And the ALJ determined that “Huang’s credibility was further eroded when it was brought to the attention of this court that Huang had attempted to ‘sell’ allegedly damaging information about Chu to Respondents.” (Initial Decision, 2009 WL 3244153, at *6 n. 12). The ALJ’s conclusion that Huang did not have actual authority because there was no POA

¹⁵ The ALJ discounted the second POA because it did not specifically reference account number K 0058 and was executed several weeks before Chu opened that account. He also reasoned that the account opening form and Chu’s professed desire to earn interest imposed limitations on Huang’s authority. (Initial Decision, 2009 WL 3244153, at *6). However, the POA expressly applied to all future accounts that Chu might open, and the account at issue was opened just three weeks later. Further, Chu’s purported desire to earn interest was not inconsistent with a grant of actual authority to Huang to trade in the account.

specifically for the account at issue is contrary to the weight of the evidence, and we accordingly reverse.¹⁶

Fraud

The evidence also fails to establish that Kelly committed fraud in violation of CEA section 4b(a)(2), 7 U.S.C. § 6b(a)(2) (2006).¹⁷

Section 4b(a)(2)(A) provides in relevant part that it shall be unlawful for any person in connection with the sale of a commodity futures contract to “cheat or defraud or attempt to cheat or defraud the other person.” Section 4b(a)(2)(C) provides in relevant part that it shall be unlawful for any person in connection with the sale of a commodity futures contract to “willfully deceive or attempt to deceive the other person by any means whatsoever in regard to any order or contract or the disposition or execution of any order or contract, or in regard to any act of agency performed, with respect to any order or contract for, or ... with the other person.” Restitution may be awarded for a violation of section 4b where there is 1) a material misrepresentation, 2) scienter, 3) reliance and 4) damages. *Indosuez Carr Futures, Inc. v. CFTC*, 27 F.3d 1260, 1264-65 (7th Cir. 1994). Unauthorized trading may be a violation of section 4b where an AP executes trades without the customer’s permission or contrary to the customer’s instructions or where a broker executes trades in a corporate customer’s account which were placed by an unauthorized

¹⁶ The ALJ’s conclusion that Huang did not have apparent authority is likewise contrary to the weight of the evidence. Although the Commission need not reach this question, the evidence shows that Huang had apparent authority. Kelly made a reasonable inquiry by requesting that Chu submit a signed statement specifying in which accounts Huang had authority to trade. In response, Chu sent a signed statement the next day giving Huang “blanket trading authority” over all her existing accounts, including named accounts, and all future accounts. In contemporaneous e-mail exchanges with Kelly, Chu made clear that she intended to continue to give Huang blanket trading authority over all accounts, as she had in the past. *Supra* at p. 4-5.

¹⁷ This provision has since been amended to also apply to swaps.

employee of the customer. *See, e.g., Crothers v. CFTC*, 33 F.3d 405, 409 (4th Cir. 1994); *Drexel Burnham*, 850 F.2d at 748 (analyzing elements of fraud as applied to unauthorized trading).

The ALJ found fraud (apparently under Section 4b(a)(2)(C)) based on Kelly's purported misrepresentations in failing to tell Chu that Peregrine was not purchasing and holding a requested T-bill for her in that account, and in failing to inform Chu that Huang was trading in Chu's account. (Initial Decision, 2009 WL 3244153, at *9-*11). But this finding assumed that Chu requested that a T-bill be purchased and held in the account. It also assumed that Huang did not have authority to trade in the account. As shown above, neither assumption is supported by the evidence. The evidence establishes that Chu gave Huang written "blanket authority" to trade in all current and future accounts, including K 0058, and again gave Huang written discretionary trading authority when Chu opened the account by authorizing the use of the POA from an earlier account opening document for an account over which Huang indisputably had trading authority. Chu confirmed in e-mails with Kelly that Huang had authority. And Chu admitted in her testimony that Huang had authority over the account. *Supra* at 4-6.

Further, Chu's purported desire to generate interest in the account and use a T-bill from another account to open K 0058 does not establish that Chu limited Huang's trading authority. Chu made no mention of any such limitation in her e-mails to Kelly. The account opening document merely stated that a \$500,000 T-bill from another account should be transferred to account K 0058 in order to open it.¹⁸ It did not limit or prohibit trading in the account. And, by directing that margin be linked among three accounts, Chu authorized the funds to be used to meet margin in any of the accounts, a direction inconsistent with the purported maintenance of a

¹⁸ As noted above, the record indicates that \$500,000 in cash was transferred from account F 3888 to account K 0058 on March 21, 2005. *Supra* at 6 n.10, resp. Ex. Tab 52 at 000647. The record does not indicate whether there had been a T-bill for that amount in account F 3888.

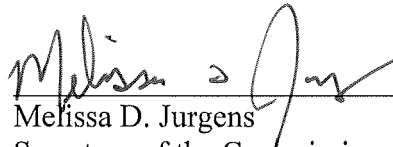
principal, interest-only investment objective. *Supra* at 5-6. Because Kelly made no material misrepresentations or omissions, and there was no unauthorized trading, the evidence does not support the charge of fraud.

Conclusion

For the reasons stated above, we reverse the ALJ's decision as to Kelly and dismiss this matter as to Kelly with prejudice. We stay the appeal as to respondent Peregrine pursuant to the automatic stay provision in the bankruptcy code, 11 U.S.C. § 362(a)(1), in light of Peregrine's bankruptcy filing while this appeal was pending.

IT IS SO ORDERED.¹⁹

By the Commission (Chairman GENSLER and Commissioners CHILTON, O'MALIA and WETJEN).



Melissa D. Jurgens
Secretary of the Commission
Commodity Futures Trading Commission

Dated: September 5, 2013

¹⁹ Any appeal of a reparations order must be filed within 15 days of notice of the Commission order. *See* Section 6(c)(11)(B)(ii) of the CEA, 7 U.S.C. § 9 (c)(11)(B)(ii). Any appeal must be made to the United States Court of Appeals for the circuit in which the hearing was held. *See* Section 14(e) of the CEA, 7 U.S.C. § 18(e). The hearing in this case was held in Los Angeles, California, which is in the 9th Circuit. In addition, any appeal is not effective unless, within 30 days of the date of the Commission order, the appealing party files with the court a bond equal to double the amount of any reparation award. *See id.*