



UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

SHERRY R. MIDDLETON, and)
 MARK A. MIDDLETON,)
)
 Complainants,)
)
 v.)
)
 JAMES P. CAGNINA, Jr., and)
 ANTHONY GIACOMIN,)
)
 Respondents,)
)
 And)
)
 INFINITY FUTURES, L.L.C.,)
)
 Respondent-Appellant.)

CFTC Docket No. 11-R011

ORDER OF PARTIAL VACATUR AND REMAND

Upon review of the record and the parties' submissions, we find that the Judgment Officer erred in holding that Infinity Futures violated Section 4b(a) of the Commodity Exchange Act and proximately caused complainants damages totaling \$6,075 plus 0.12% in interest, compounded annually from October 20, 2010, to the date of payment. *Middleton v. Cagnina Jr., et al.*, [2012 Transfer Binder] Comm Fut. L. Rep. ¶ 32,109 at 68,544 (CFTC Feb. 3, 2012), 2012 WL 368578 (C.F.T.C. Feb. 3, 2012).¹

¹ Respondent Infinity Futures did not appeal the Judgment Officer's findings that: 1) the complainants failed to establish that respondents James P. Cagnina and Anthony Giacomini violated any statute or regulation that caused damages; and 2) complainants failed to establish that all three respondents violated any statute or regulation that caused damages in connection with the May 20, 2010 liquidation. Thus, this Order does not remand this matter regarding those claims. Because the Judgment Officer erred in finding Infinity Futures liable, it was also error to award costs to the complainants.

This dispute arose from two forced liquidations² in the complainants' account due to a keypunch error made by TransAct, their futures commission merchant ("FCM"), in an account with an automatic liquidation feature. The JO found that the complainants' introducing broker, Infinity Futures, a partially owned subsidiary of TransAct, violated Section 4b(a) of the CEA and was liable for failing to disclose the FCM's forced liquidation of October 20, 2012, that caused a liquidation and a resulting loss of \$6,045. The Judgment Officer's findings regarding Infinity Futures are not supported by the weight of the evidence because there is no evidence in record that Infinity Futures knew of TransAct's keypunch error at the time of the liquidation, Middleton, ¶ 32,109 at 68,549, 2012 WL 368578, at *9, and that there is no basis upon which to impute the acts of TransAct to Infinity Futures.

Accordingly, pursuant to Section 14 of the Commodity Exchange Act and 17 C.F.R. § 12.405, we order a partial vacatur and remand of this matter back to the Judgment Officer without an opinion. The Judgment Officer should afford the complainants the opportunity to present evidence, if any, that would support a finding that TransAct, the FCM, was the agent of Infinity Futures, the introducing broker. The Judgment Officer should also determine whether the applicable statute of limitations would now bar a reparation action³ against TransAct or whether there is any equitable tolling of the statute of limitations to enable complainants to file a reparation claim against TransAct.


IT IS SO ORDERED.⁴

² The forced liquidations occurred on May 20 and October 20, 2010.

³ 17 C.F.R. § 12.13(a) provides that any person complaining of a violation under the act or rule of the Commission by any person who is a registrant may, at any time within two years after the cause of action accrues, apply to the Commission for a reparation award by filing a complaint.

⁴ Under Section 6(c) and 14(e) of the Commodity Exchange Act, 7 U.S.C. §§ 9 and 18(e) (2006), a party may appeal a reparation order of the Commission to the United States Court of Appeals for only the circuit in which a hearing was held; if no hearing was held, the appeal may be filed

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


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

Dated: January 2, 2014

in any circuit in which the appellee is located. The Commission has ruled that telephonic hearings are “held” in Washington, D.C., although parties may speak from several locations. *Dubois v. Alaron*, [2000-2002 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 28,406 at 51,026 n. 16 (CFTC Oct. 26, 2000). The statute also states that such an appeal must be filed within 15 days after notice of the order and that 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.