U.S. COMMODITY FUTURES TRADING COMMISSION
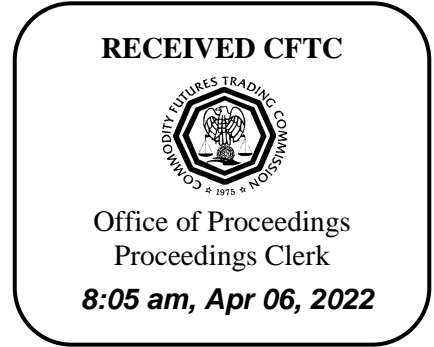Three Lafayette Centre
1155 21st Street, NW, Washington, DC 20581
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Office of Proceedings

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Patrick Wong,

    Complainant,

        v.

AMP Global Clearing LLC,
d/b/a AMP Futures,

    Respondent.

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CFTC Docket No. 20-R028
Served electronically

INITIAL DECISION & ORDER DISMISSING THE COMPLAINT

Complainant, Patrick Wong, appearing in this forum as a self-represented

litigant and by way of summary proceeding filed on September 24, 2020, seeks

$742.47 in damages related to his forex account with Respondent, AMP Futures.

He alleges that on September 22, 2020, he placed a bracketed short position on a

New Zealand Dollar contract by entering the following: a (1) trade position on the

New Zealand Dollar; (2) stop loss order at a 7-tick loss, that if triggered, would take

him out of the trade; and (3) profit target order at a 30-tick profit target that would

execute once the position hit a certain price. The profit target trade was to execute

only if the stop loss did not execute. However, Wong's stop loss order did execute,

but the profit target order never canceled. Instead, it was carried over to the next

day and liquidated at a loss. Wong alleges this cost him $742.47 in damages (the

difference between $1,948.52 Wong would have made had the bracketed order executed the way Wong intended, and $1,206.05, which was the amount Wong was left with).

AMP Futures contends that although it sees three orders placed on September 22, 2020, there was no bracket order. There was a buy stop and buy limit placed as separate orders, which would mean that the trades were executed correctly. In any event, AMP Futures further argues that because Wong used a third-party platform provider, Sierra Chart, which provided the interface for placing the orders and sending them to the exchange, AMP Futures cannot be held liable for any errors in how the orders were placed. AMP Futures alleges it has access only to the live orders once they are received and processed on the exchange.

The parties filed documents along with the Complaint and Answer, including: 1) daily account statements for Wong's account for September 22 and 23, 2020; 2) the Customer Agreement between Wong and AMP Futures as well as certain excerpts from the Customer Agreement; 3) order logs for the three September 22, 2020 trades at issue; 4) a disclosure document titled "Electronic Trading and Order Routing Disclosure Statement for Futures Trades"; 5) emails between Wong and Respondent between September 23 and October 12, 2020 concerning the September 22 trades; and 6) a document detailing Sierra Chart's software ownership and disclaimers (like liability releases and warnings that the software is being provided "as is.")

For the reasons discussed further below, I am dismissing Wong's complaint because he has failed to meet his burden and prove his case by a preponderance of the evidence.

I. Summary of Parties and Relevant Procedural History

A. <u>The Parties</u>

<u>Complainant Patrick Wong (Wong)</u> is a resident of San Francisco, CA. *See* reparations complaint form. He opened a trading account with AMP Futures on May 2, 2017, which he traded until he closed the account on or about September 24, 2020. *See* Answer at 1; Ex. E (attached as an Exhibit to Answer); and Complaint.

<u>Respondent AMP Global Clearing LLC, d/b/a AMP Futures (AMP Futures)</u> has been a registered Futures Commission Merchant since June 2010, and a Forex firm since December 2012. *See* National Futures Association (NFA) Basic Research, available at https://www.nfa.futures.org/BasicNet/basic profile.aspx?nfaid=k17Ne6qLD o8%3D. AMP Futures held Wong's account from May 2, 2017 through about September 24, 2020. Answer at 1.

<u>Non-Party Sierra Chart</u> is a third-party platform provider that submitted Wong's orders to the exchange. In other words, although Wong's account was held at AMP Futures, all of his orders were entered through Sierra Chart's platform and put through directly to the exchange.

B. Relevant Procedural History

On September 24, 2020, Wong filed his Complaint electing a Summary Proceeding against AMP Futures. Respondent filed its Answer on November 25, 2020; and this case was forwarded to my docket on January 22, 2021.

On February 3, 2021, the parties were emailed an Initial Scheduling Order setting forth deadlines governing the case, including discovery deadlines. *See* Initial Scheduling Order at 1-2 (Feb. 3, 2021). The parties opted not to serve any discovery requests on each other, nor did either party produce anything beyond the documents appended to their Complaint and Answer.

After several failed attempts to hold a discovery hearing as set forth in the Initial Scheduling Order, I ordered the parties to produce the following evidence. Wong was ordered to: 1) inform this Office if he had any pending claims in any other forum against AMP Futures involving the same set of facts; and 2) provide details for three other bracketed transactions like the one he alleged he placed on September 22, 2020 that had been successfully executed, so I could compare those to the ones he alleged had not been successfully executed. *See* Discovery Order at 1 (Oct. 15, 2021). Respondent was ordered to submit transaction logs that corresponded to the successfully bracketed orders Wong identified. *Id.* at 2.

Wong emailed this Office on October 26, 2021, stating he did not have any other claims against AMP Futures pending, and he could not provide any other details of successful transactions like those he made on September 22, 2020.

Because Wong did not identify any successfully bracketed trades, there were no corresponding trade logs for AMP Futures to produce.

This case is now ready for disposition, and for the reasons discussed below, I am dismissing the Complaint.

II. Factual Findings

Wong opened his account with AMP Futures on May 2, 2017. Answer at 1; and Compl. When he opened his account, he had to review and sign the AMP Futures Customer Agreement and Risk Disclosure documents. *Id.*; *see also* Answer Exs. A (AMP Global Clearing Risk Disclosure Statement for Futures and Options); A1 (Wong's signed "Acknowledgment of Receipt of Risk Disclosure Statements" (dated May 2, 2017)); and A3 (Electronic Trading and Order Routing Disclosure Statement for Futures Trades). These documents included language that informed the customers of the risks involved in electronic trading (such as software and hardware failures, and orders not executing). These documents also informed the customers that they bear responsibility for monitoring their trading positions and that they assume the risks and agree to seek recovery from third-party trade routers if they choose a third party to place orders. *See* Answer and Disclosures at Exs. A1, A2, A4, A5, and A6. Wong chose a third-party platform provider, Sierra Chart, to transmit his orders to the exchange. Compl.; Answer at 1 and Ex. G (Sierra Chart Agreement).

On September 22, 2020, Wong placed three trades on the New Zealand Dollar contract that he believes constituted a bracket sell order, betting that the value of

the position would go down. He used three trades to do so: his entry position at

.6668; a stop loss order at .6674; and a buy profit target at .6638. Compl.; Answer

at 1 & Answer Exs. B (September 22, 2020 Trade Log), C (September 22, 2020 Daily

Statement), & D (September 23, 2020 Daily Statements). These orders were placed

by Wong using the Sierra Chart trading platform, Compl., and received by AMP

Futures that same day, Answer at 1. Two of Wong's trades executed on September

22—the entry order and stop limit order. The last order, the profit target order (or

buy limit order), remained open and was rolled over to the next day. *Id.*

On September 23, Wong reviewed his daily account statement and saw a $30

charge from AMP Futures for a liquidation fee. Compl. Wong signed into the

Sierra Chart trading platform and realized his buy limit order had been executed

and his trade had been liquidated and incurred a $742.47 loss. *Id.*

On September 23, 2020, Wong emailed AMP Futures claiming he established

a bracket order with a stop loss and profit target, and that after he was "stopped out

later that evening," his buy limit order should have been canceled. *See* Answer Ex.

E (Email Exchange). Instead, he continues, he was forced into a trade he never

made and was now "down about 700 dollars." Because of this, Wong requested a

reimbursement from AMP Futures. *Id.* In response, AMP Futures emailed Wong

back that same day and informed him that they did see a buy stop and buy limit

order, but that "there was no bracket order," and because there were "[n]o [e]rrors

by AMP. . . .[,] no adjustments/[c]redits warranted." *Id.* Wong responded to AMP

Futures on September 23, 2020 with profanity and requested they send him his

check and close his account. *Id.* On or about September 24, 2020, AMP Futures

closed Wong's account and returned his money via ACH. *Id*

III.   Analysis and Legal Discussion

There are two crucial questions in this case. First, did Wong in fact enter his

three orders on September 22, 2020 as a bracket order? If so, his profit target buy

order was wrongly rolled over as an open position. If not, then his orders executed

correctly. Second, if in fact Wong entered his bracket order correctly and the

position remained open—should AMP Futures bear the cost of that mistake. If we

cannot answer the first question, then the second question becomes moot.

For Wong to prevail on his claim that he entered the bracket order correctly,

he bears the burden of establishing that by a preponderance of the evidence. *See*

Briscoe, III v. CA-IN Industries, Ltd., CFTC Dkt. No. 00-R070, 2001 WL 15907, *1

n.3 (CFTC Jan. 4 2001) ("[T]he judge must carefully review the record in an effort to

separate appearance from reality. The issue is not what could have happened,

rather it is what the preponderance of the evidence shows most likely did happen."

(internal quotation marks and citation omitted)). Wong has failed to meet his

burden and failed to prove his case by a preponderance of the evidence.

Wong claims he set up his bracket order correctly on September 22, 2020, as

he had throughout his trading relationship with AMP Futures without any

execution issues. AMP Futures claims he did not. Wong provides no evidence to

substantiate his position. For example, he provided no screenshots or other

evidence from the Sierra Chart platform to demonstrate that he placed the trades

correctly, and he declined to participate in a discovery hearing that may have helped focus him on the fact that he needed proof to support his claims. And although he states in his Complaint that he has always entered three-part bracket order trades like the one attempted on September 22, 2020 without any issue, when ordered to produce details for at least three other successful bracket transactions, Wong stated "he can not provide any other details of other successful transactions." *See* Discovery Order (Oct. 15, 2021); Email from Wong to OP (Oct. 26, 2021).

The fact that he cannot provide details for successfully bracketed trades damages the credibility of his assertions. Wong stated in both his Complaint and October 26, 2021 email to this Office that he has always used this three-part order to bracket his trades on the Sierra Chart platform and has never had an execution issue. In fact, he states that he used the platform to place a correctly executed trade the day before the alleged incorrectly executed one. Given that he represents there is a pattern of correctly executed trades, it is difficult to understand why Wong could not identify the specifics of any of these. Without this information, I have no way of determining whether the error was Wong's or AMP Futures'. And because Wong bears the burden of proof—not AMP Futures—his claim cannot be sustained if I cannot resolve that question.

Even if I could sustain Wong's claims, it is not at all clear that AMP Futures should bear liability for the losses. Wong used a third-party trading software provider, Sierra Chart, to place his trades. Sierra Chart routed Wong's trades to the exchange. Thus, assuming that Wong input the trades correctly and they were

executed incorrectly, there is no way of knowing whether the error occurred on Sierra Chart's platform or not. Furthermore, Wong signed documentation agreeing to the fact that AMP Futures could not be held liable for any third-party software failures. *See supra* at 5.

Wong needed to prove, by a preponderance of the evidence, that his version of what occurred with respect to his trades is correct. However, Wong took no opportunity to substantiate that version with anything other than repetition of his allegations. He has therefore failed to meet his burden of proof.

IV. Conclusion

I find that Wong has failed to meet his burden of proof and has not proved his case by a preponderance of the evidence. For the reasons discussed above, Wong's reparations Complaint is DISMISSED.

Dated: April 6, 2022

/s/ Kavita Kumar Puri
Kavita Kumar Puri
Administrative Judge