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Answer to NFA Complaint - Case 06-BCC-023

11/15/06

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NOV 21 2006
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Business Conduct Committee -

This is my written Answer to the NFA Complaint case number 06-BCC-023.

I deny all allegations against me.

I did not make misleading or deceptive statements to Dorothy Russell or to any other client or potential client at any time.

I did not blunt effectiveness of discussion regarding risk. In fact, considering NFA rules and potential penalty, my ethics training and Series 3 study, the fast-paced high risk nature of speculative futures markets, and my limited industry experience, I made sure to cover risk considerably more than the potential reward of a winning trade or two.

Moreover, and specifically, my conversations with Dorothy Russell did not ever constitute cheating, fraud or deception, nor the intent or attempt of such detestable behaviours.

When employed as an NFA registered AP, I observed Rule 2-29 diligently.

My Background

I am an honest person, seeking purity of conscience through purity of action.

I am a very hard worker, a fast learner, and exceptionally intelligent. My first choice for career that continues even today is in technology, where I worked for IBM, Intel and Gateway, and now own a small business serving consultation and web design firm. I started with very little college and limited computer experience, but with job training, self education, and vocational school paired with extremely hard work I earned several titles that ended in Engineer. However, I was bored, and did not want to work on computers or networks for the rest of my life, so I began looking for something else.

What I found was a "sales" opportunity at a small "financial" firm in downtown Portland. I interviewed with the owner and I began studying for my Series 3. I passed the test 3 weeks later. The training program at Mercer then (which is NOTHING like now) consisted of the Series 3 test and then calling and observing brokers on the phone with clients and prospects, that's it. It was a hard road, sort of like college with no professors and a test every day.

Portland is not the hub of the futures industry by any means and has a total of three futures firms, getting educated was up to me. I prefer self-education anyway so I turned to the best resource I could, the internet. Thanks in part to the NFA, the industry's online approach is robust. Over the course of the last three years, through education and experience, I have developed a thorough understanding on the workings of the markets and it has been very challenging and fun. I look forward to a sustained career in the industry as a strong and significant contributor.

The Action
It was clear early on, and as I expected from my ethics course and Series 3 study, that a majority of my clients were going to lose most or all of the money they put into their accounts. With that in mind, I found that being professionally courteous and ESPECIALLY HONEST with people's expectations, up front, to be the only appropriate way to deal with the potential and actual loss of money.

I observed Rule 2-29 diligently.

As an empathetic person, I can see how some vilify firms and/or individuals who assist others in a profession where the majority loses money, yet those are some of the largest industries in the world (gambling and trading). I, through honest personal relationships and hard work, was truly providing an above average service to people who sought me out. I only wanted to work with folks that wanted to work with me, and those that wanted to work with me appreciated my honesty.

It is very important to understand that **I had no reason to illicitly motivate potential clients into opening accounts, or to motivate clients to trade** because their desire was already there. As a whole the potential clients I spoke with, including Dorothy Russell, contacted my firm initially with interest in trading the markets. I found a good majority to be friendly, and many wanted to continue personal contact with myself and my firm for our educational publication offerings and/or to trade. Many individuals wanted to open accounts with very little time spent in conversation.

The lure and possibilities of large profits in futures market trading speaks for itself. Anyone with Bloomberg or CNN channels on TV will see how Rick Santelli can make Bond trading exciting. Everyone in business understands the desire for profit, but worse is the call of gambling and/or supposed "easy-money." But most people learn very quickly that "easy-money" doesn't exist outside of a pinpoint few minority lottery winners and fortune heirs. Again, the reason I spend time highlighting this is just that with the advent of the Internet and TV, people's interest in trading was very prolific and I didn't need to seek them out when they were calling us to "play" small amounts of their money in the markets.

The majority of interested people and clients I spoke with were well educated and wealthy, like Dorothy Russell, who is a retired US Court judge.

Contrary to what is stated in the final sentence of paragraph 23, I informed new potential clients including Mrs. Russell, specifically that "It is likely you will lose some or all of your money you put into the account," and that "I have yet to see long term success in trading futures/options" with the exception that "I have heard of one or two closed profitable accounts within my company." I let clients and potential clients know of the high likelihood of losing trades, and of the possibility of winning trades. I also explained that even if we had a winning record in one or two accounts that **"past performance is not indicative of future results"** and that there no guarantees of anything, just probability of loss and a chance to profit.

I explained that "I understand how it is possible to profit long term with a disciplined trading approach" but that "I had not seen it in my limited experience with this firm." I remember specifically saying on numerous occasions, "Honestly, most people open an account, make some trades, and then close their account." I would explain that often, "Clients that profit early on will have their accounts open longer than those who lose initially, but that even those who get lucky up front end up losing it in the long run."

My business was built on those clients that chose to open an account and chose to make trades in the futures markets via my firm, but they were never under any kind of duress originating from me or my firm, nor were they deceived or misled in any way. Explanation of risk was always my first priority when speaking to potential traders.

I would love to end this Answer here, but a more detailed look at the allegations is necessary to properly refute them.

The Details:
Paragraph 22 and 23 are contained within count 1 and are the only allegations in the Complaint pertaining to me. Paragraph 22's first sentence asserts I made misleading and deceptive statements and then lists what I am alleged to have said, more specifically, what was supposed to have been misleading and deceptive.

First of all, these assertions are not proper evidence, and are CIRCUMSTANCIAL and INCONCLUSIVE for several reasons. They are incomplete and leave out the VAST MAJORITY of our conversation and cover only the parts that would make me appear to be guilty of the accusations. This is a terrible case of circular logic. Let me explain further; in this next section I go over the allegations one by one.

1.) The conversational quotations leave out the rest of the conversation in which I completely cover risk.
The complaint I am answering highlights evidence against me and makes no mention of the full conversation. Contrary to the complaint's allegations, I was not suggestive about potential profit with incomplete coverage of risk. I did not blunt effectiveness of discussion, and Dorothy Russell was very aware of the risks.

In fact:

- I spent more time with her covering risk than many of my other clients.
- I walked her through the entire disclosure document line by line.
- I disclaimed risk in nearly every spoken sentence I made, preceding any mention of profit with "...despite the risk of losing $X or more being so great, a move in the profitable direction could result in a similar $X profit..." making sure to keep the presentation balanced as usual, and additionally because she was a US court judge!
- I thoroughly explained futures markets in general over several conversations, especially the risk of loss.
- I guided Mrs. Russell to the NFA website, more specifically the Investor Information Center section that was available at that time.
- I also guided her to the NFA approved document on the Chicago Board of Trade entitled "Understanding Risks in Futures Trading" and others of that nature.
- My firm's website also had a very clear risk explanation and disclosure that I walked her through to be thorough.
- Dorothy Russell explained to me in detail that she was aware of the risks of trading in the futures markets and decided to proceed with opening an account and trading in pursuit of profit.

A US Judge is not someone either easily misled, or one to mislead when consequences are considered regarding her understanding of the legal system, and I made sure to overly cover the risks associated with this type of trading.

2.) Mrs. Russell is not quoted at all.
The complaint does not quote her saying she understood the risks and wanted to trade, even though she did in fact say that very thing several times. The complaint does not reflect that Dorothy Russell WANTED TO RISK money in order to place herself in position to profit, the very means the market provides to those who seek to participate.

Dorothy Russell sought to participate.
She knew there is risk in trading markets, and even more so with leverage in futures and options on futures.

She told me she desired a quick profit.

When she told me she desired a quick profit, and then and asked me to ALERT HER when I thought SHE could "**make a move**"- **I explained to her that the account was hers and completely her responsibility.** I explained to her that I was not a trading advisor, expert, or even veteran of the markets. I was there mainly to answer her questions and take her orders.

Our conversations consisted mainly of me answering her questions.

I told her I was there to provide information any time she needed or wanted it.

She asked about my experience and I told her I had been employed in the futures industry for a short time. She also knew my firm was relatively young at 5 years in business.

We did fully enjoy a fun relationship with good conversation about markets and a lot more about life. She was not concerned with losing money, relative to the value of the experience and "taking a shot" at some quick profit.

She didn't ask me for a guarantee or a promise of any kind, and I never offered one.

3.) The quotes in the complaint are made to sound like I was guiding the conversation, when in fact those were answers to Mrs. Russell's questions.
There are three bulleted quotations of me in paragraph 22.

a.) In the first I am quoted saying even a small move in a commodity could result in a considerable profit. This is a perfect example and I am astounded at how my words are used against me here.

Mrs. Russell, when in conversation with me about the workings of the markets asked, "So can a small move then, of just a penny or two, make us some pretty good money?"

I replied, "Not barring the risks, understand, of losing money in an opposing market move, **EVEN** A SMALL MOVE in a commodity or currency can result in considerable profit, relative to the amount invested. The odds, however, are not great for that happening in your account, although the potential is there if everything happened perfectly."

As for the second part of that sentence, I am accused of telling her I knew when to "make a move."
Mrs. Russell told me she desired a quick profit, and asked me if I could **ALERT HER** when I thought SHE could "**make a move**." It was her idea to "make a move," not mine, and **I explained to her that the account was hers and completely her responsibility.** I explained to her that I was not a trading advisor, expert, or even veteran of the markets. I was there mainly to answer her questions and take her orders, but that I would do what I could. I also suggested she find some trading systems to help her with market timing, but that I couldn't guarantee the results of those either.

b.) The allegation implies (without quite saying) that I told her outright that I could double her money in four months.

Again, more than half of the conversation is missing, in particular her asking me this specific question and me explaining the risk and likelihood of loss: in the real conversation **she asked if it was possible** for me to help her **to double her money** in a few months, to which I replied it was highly improbable, and she was more likely to lose the money. She was not concerned about her $10,000 risk capital and wanted to "take a shot" at just that goal. I never sold her or suggested this idea to her, she knew what she wanted and had it in mind from the beginning. Mrs. Russell already knew it was possible from her previous research and what others had said, however much I stressed the improbability of it actually happening. Her question was basically rhetorical.

c.) The 3 sentences in the third bullet quoting me are very similar in format and fashion to the first two bullets, taken out of context and missing the rest of the conversation.

i.) The first sentence is very much like the first bullet (covered in this same section designated a. above). I answered her question that "yes, with leverage, even a small move could result in considerable profit," but this was not a sales pitch, it was a factual statement disclaimed by mention of risk.

ii.) The second sentence quotes me as saying I could send her home her initial $10,000 after profiting in the account, effectively reducing her risk to zero. Once again my reply to her question is used against me as if I originated the idea, and you can see the pattern.

Any investor knows the strategy to get your initial capital out after profit allows just that. After I told Mrs. Russell that most people lose any profit they gain, **she asked if I could send the initial capital home, if she were to profit in the account**. To which **I replied that hypothetically it was possible** and I had even heard of that happening, but had not seen it myself. I hoped for her in the same way she was envisioning profit in her account, but let her know the likelihood was the exact opposite.

iii.) The **third sentence was again a response to her line of questioning** about risk management which was "...IF we maintained a loss of less than $3,000 out of her initial $10,000 on the first few trades, would that leave $7,000 in the account from which to trade and possibly regain the lost $3?" Mathematically her hypothetical question was sound so I answered that, "Yes, if you lost $3,000 that would $7,000 to trade with, and yes that $7,000 would allow you to trade again in an attempt to regain the lost capital. However, I let her know in no uncertain terms, "If the first three was lost in trading, the most likely thing to occur would be a continuation of loss in the account." I didn't tell her it was impossible to regain lost money, just very unlikely. Now I am being accused of having posed the scenario to her, which did not happen.

She wanted to trade and her lines of questioning were about risk management and profit potential; the things she wanted to discuss.

I made my best effort to align her expectations realistically according to my training and experience.

Conclusion
I did not at any time claim to be able to see the future, guarantee anything, or fail to cover, IN FULL, the risks of trading in the futures markets. I did not lie or mislead anyone. I did not patently or otherwise fabricate anything. My experience as a broker in the futures industry has been very rewarding and I hope I am not punished for showing up to work.

I never promised Dorothy Russell anything and we talked at length about risk. I answered every question she had and when she wanted to try and profit I was willing to help her.

I worked hard to provide a service, and hopefully you can see that.

CHARLES M. MONTGOMERY 11/15/06