



U.S. COMMODITY FUTURES TRADING COMMISSION

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Office of Proceedings

MEHRIYA RAZAKI,
Complainant,

v.

MEGHAN BATOR, and
ALAKESH "ALEX" DHOLAKIA,
Respondents.

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CFTC Docket No. 10-R030

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INITIAL DECISION

Introduction

Mehriya Razaki, a resident of Kissimmee, Florida, alleges that R.J. Ginsberg associated person Meghan Bator fraudulently solicited Razaki's non-discretionary futures and options account: by falsely claiming that R.J. Ginsberg clients consistently enjoyed tremendous profits, when in fact its clients typically realized substantial losses; by falsely claiming that R.J. Ginsberg put its clients' interests first, when in fact its brokers routinely placed trades without proper authorization from the clients and aggressively traded client accounts to generate excessive commissions; by downplaying the risks and costs of the trading strategies recommended by R.J. Ginsberg; and by failing to disclose that, as soon as Bator gained Razaki's trust and convinced her to open the account she planned to pass Razaki to a senior broker, Alakesh "Alex" Dholakia. Razaki further alleges that Bator falsely portrayed the integrity, experience and expertise of Dholakia, who in reality had worked almost exclusively for firms

disciplined by the CFTC or the National Futures Association for fraudulent sales practices and whose clients at R.J. Ginsberg and at his previous firms typically had lost substantial sums of money and never consistently enjoyed the sort of profits promised by Bator. Razaki alleges that Alex Dholakia: perpetuated Bator's fraud by misrepresenting his expertise and by guaranteeing profits; routinely placed numerous trades without Razaki's authorization; disregarded and deflected Razaki's requests to stop placing trades without her prior authorization; and churned Razaki's account.

Razaki alleges that Randolph J. Ginsberg Introducing Brokerage, Incorporated ("R.J. Ginsberg"), a now defunct introducing broker located in Ft. Lauderdale, in Florida, was liable for the violations of its agents Bator and Dholakia, and Razaki alleges that the three principals of R.J. Ginsberg -- Brian Donahue, Randolph J. Ginsberg ("Ginsberg") and Jeffrey B. Jenkins -- failed to adequately supervise Bator, Dholakia and R.J. Ginsberg, and aided and abetted Bator's and Dholakia's violations.¹

Razaki seeks to recover her \$13,000 out-of-pocket losses. That amount has been reduced to \$8,500, based on payment by Brian Donahue under a separate settlement agreement between Razaki and Donahue.

In response to Razaki's initial complaint, R.J. Ginsberg, Bator and Dholakia filed a joint answer generally denying any violations.² R.J. Ginsberg subsequently abandoned defense of its

¹ Razaki initially filed a complaint against Bator, Dholakia and R. J. Ginsberg. She subsequently amended her complaint by adding Donahue, Ginsberg and Jenkins as respondents.

² Gary Sinclair, Esq. of Chicago, Illinois, filed the joint answer on behalf of Bator, Dholakia and R. J. Ginsberg. By order dated November 10, 2011, Sinclair was permitted to withdraw as counsel for these three respondents after R. J. Ginsberg ceased to cooperate with him, and after Bator and Dholakia indicated that they had chosen to represent themselves. After I found respondents' joint answer to the initial complaint to be deficient, I directed Bator and Dholakia to supplement the joint answer with affidavits containing precise and detailed descriptions of the factual circumstances which constituted their grounds for defense. *See* order dated November 15, 2011. In reply, Bator and Dholakia produced the requested statements, which were partially responsive.

case and was found in default.³ On the eve of the hearing, Dholakia ceased to participate in this proceeding.⁴ Ginsberg and Jenkins failed to file answers to the amended complaint and were found in default.⁵ Donahue satisfied the complaint against him by executing a settlement agreement with Razaki.⁶

As explained below, after careful consideration of the parties' documentary evidence and the oral testimony of Razaki and Bator, it has been concluded that Razaki has established by a preponderance of the evidence: one, that Meghan Bator violated Sections 4b(a)(1)(A) and 4c(b) of the Commodity Exchange Act and CFTC rule 33.10; two, that Alex Dholakia violated Sections 4b(a)(1)(A) and 4c(b) of the Act and CFTC rules 33.10 and 166.2; three, that Bator's and Dholakia's violations, separately and together, proximately caused \$13,000 in damages; and four, that Razaki is entitled to an award of \$13,000, less the amount received from Donahue, plus pre-judgment and post-judgment interest and the cost of the filing fee. This conclusion reflects adverse inferences taken against Dholakia for his non-production of a second requested affidavit and his non-appearance at the hearing, and reflects my determination that Razaki's testimony was more credible than Bator's testimony.⁷

³ See Default Order dated December 11, 2011.

⁴ See Default Notice dated May 16, 2012.

⁵ The Default Order against Ginsberg and Jenkins, dated February 24, 2012, became a final order of the Commission on March 27, 2012.

⁶ On or about March 26, 2012, Donahue made full payment under the terms of the settlement agreement. In a separate order, Razaki's complaint against Donahue has been dismissed.

⁷ The evidentiary record includes: (1) the 33-page on-line account opening package, including the account application and futures and options risk disclosure statements, and the monthly account statements and trade confirmation statements, for the Razaki account (produced by Farr Financial, Inc., in response to a *sua sponte* subpoena); (2) an affidavit by a principal of Farr Financial concerning the performance of R.J. Ginsberg customer accounts, dated December 9, 2011 (produced in response to a *sua sponte* subpoena); (3) Razaki's e-mail to Dholakia, dated May 18, 2010, and Razaki's letter to Jeff Jenkins, a R.J. Ginsberg principal, dated July 30, 2010 (attachments to Razaki's complaint); (4) Razaki's signed statements in her complaint, addendum to complaint, reply to respondents' joint answer, and reply to Dholakia's affidavit; (5) Dholakia's affidavit in reply to the order dated December 5, 2010; and (6) Bator's unsworn statement dated December 12, 2011. In addition, official notice has been taken of the registration and disciplinary histories of respondents in NFA records.

Factual Findings

The parties

1. Mehriya “Mary” Razaki was a novice and unsophisticated futures speculator when Bator convinced her to open her account. Razaki, a resident of Kissimmee, Florida, was born in Afghanistan, studied nursing and learned English in her teens in India, and immigrated to America in 1981, when she was 19 years old. Since then she has raised two sons and worked a variety of retail jobs. Before Bator cold called her in late April of 2010, Razaki had no experience with commodity futures or options or other derivatives. Razaki had maintained joint securities accounts with her husband, who had made the decisions for those accounts. [See Razaki testimony at pages 5-9 of hearing transcript, and account application dated May 6, 2010 (produced by Farr Financial in reply to *sua sponte* subpoena).]

Although Razaki’s testimony was at times self-serving, her testimony was internally consistent and consistent with her previous written submissions, plausible and believable when viewed in light of the factual circumstances, and generally sincere and convincing.⁸

2. Randolph J. Ginsberg Introducing Brokerage, Incorporated (“R.J. Ginsberg”), located in Ft. Lauderdale, Florida, with a branch office in San Diego, California, was a registered introducing broker from November 1994 to June 2004, and again from January 2005 to August 2011. R.J. Ginsberg introduced Razaki’s account to Farr Financial, Incorporated, a registered futures commission merchant located in southern California.

On May 19, 2011, after Razaki had filed her reparations complaint,⁹ the NFA Business Conduct Committee issued a complaint against R.J. Ginsberg and several of its associated

⁸ Razaki did not create and retain contemporaneous notes of her conversations with Bator and Dholakia. As a result, Razaki could not always provide the dates of significant conversations. Similarly, respondents did not produce any notes of conversations or otherwise substantiate their versions of conversations.

persons, including its co-presidents Randolph J. Ginsberg and Jeffrey B. Jenkins, and Alakesh Dholakia who was Razaki's principal broker. The NFA alleged, among other things: that R.J. Ginsberg's associated persons -- including Alex Dholakia -- had churned customer accounts and had exercised trading discretion without obtaining written authorization from customers; and that R.J. Ginsberg's principals had recruited and employed associated person -- such as Dholakia -- who had previously been employed by firms that had been disciplined for abusive sales practices, had failed to implement any enhanced supervisory procedures to monitor the conduct of these associated persons, and had failed to adequately monitor, detect and cure the firm's "aggressive trading approach and high commission and fee structure to prevent harm to customers." On October 18, 2011, pursuant to an offer of settlement submitted by R. J. Ginsberg and Mr. Ginsberg, the NFA permanently barred R. J. Ginsberg from membership and terminated its registration, and imposed a variety of sanctions on Mr. Ginsberg, including an eighteen-month membership suspension. [*In the matter of Randolph J. Ginsberg Introducing Brokerage, Incorporated, et al.*, NFA Case No. 11-BCC-009 ("*In re R. J. Ginsberg*").]

The vast majority -- 36 of 44 -- of the individuals hired to be registered associated persons with R.J. Ginsberg over the life of the firm had previously been registered as associated persons with firms, or strings of firms going back one or two decades, that had previously been disciplined by the National Futures Association or the CFTC for fraudulent sales and trading activities. Such brokers are colloquially known as "tainted" brokers. Similarly, the vast majority -- 11 of 15 -- of the registered associated persons working for R.J. Ginsberg during the time

⁹ Respondents' assertion in their joint answer that Razaki "copied her allegations from . . . allegations in other cases" is unsubstantiated, and appears particularly unconvincing in light of the fact: one, that she filed her reparations complaint well before the NFA had issued its disciplinary complaint against R.J. Ginsberg and Dholakia alleging similar violations; and two, that she had set out her basic complaint in a letter to an owner of R.J. Ginsberg just days after she closed her account in late July 2010.

relevant to this case, *i.e.*, in 2010, were tainted brokers. As discussed below, Alex Dholakia and Megan Bator were tainted brokers. [NFA records.]

Farr Financial, Incorporated, the futures commission merchant that carried R.J. Ginsberg accounts, confirmed that the vast majority of R.J. Ginsberg customers had failed to realize profits.

According to Farr Financial, a review of its records established:

- In 2007: forty-five (45) customer accounts were opened at R.J. Ginsberg; just 12 customer accounts realized an overall net profit; customer accounts realized aggregate net losses totaling \$451,076; and \$368,196 in commissions and fees were charged to customer accounts.
- In 2008: ninety-two (92) customer accounts were opened at R.J. Ginsberg; just 10 customer accounts realized an overall net profit; customer accounts realized aggregate net losses totaling \$558,496; and \$631,183 in commissions and fees were charged to customer accounts.
- In 2009: seventy (70) customer accounts were opened at R.J. Ginsberg; just one account realized an overall net profit; customer accounts realized aggregate net losses totaling \$450,881; and \$424,537 in commissions and fees were charged to customer accounts.
- In the first four months of 2010: \$153,861 in commissions and fees were charged to customer accounts.

[See Farr Financial affidavit dated December 9, 2011.] Similarly, R.J. Ginsberg and its owners, and Dholakia, did not dispute the findings of an NFA audit of R. J. Ginsberg that confirmed that, for calendar years 2008 through 2010, over 90% of R.J. Ginsberg customers lost money, with total losses exceeding \$2.2 million, while R.J. Ginsberg collected a total of \$1.7 million in commissions. [See ¶ 8 of NFA complaint, *In re R. J. Ginsberg*.]

3. Randolph Jacob Ginsberg (“Ginsberg”) was a registered associated person with R. J. Ginsberg during the relevant time. He was the president of R. J. Ginsberg from October 1994 to

June 2004, and co-president from September 2004 to November 2011.¹⁰ Before starting up R. J. Ginsberg, from March 1991 to October 1994, Ginsberg had worked for a series of firms, many of which had been disciplined by the CFTC or the NFA for fraudulent sales practices. As noted above, on October 18, 2011, pursuant to an offer of settlement in the disciplinary proceeding, the NFA imposed a variety of sanctions, including an eighteen-month membership suspension, on Ginsberg. [NFA records.]

Finally, since Ginsberg has failed to satisfy the default award in this proceeding, his registration has been automatically suspended and he has been prohibited from trading on any contract market. As a result, if he seeks re-registration, he first must satisfy the default award.

4. Jeffrey Bernard Jenkins was co-president of R. J. Ginsberg from February 2005 to August 2011. Before joining R. J. Ginsberg, from September 1984 to January 2005, Jenkins had worked for a series of firms, most of which had been disciplined by the CFTC or the NFA for fraudulent sales practices. On August 11, 2011, pursuant to an offer of settlement in the disciplinary proceeding, the NFA imposed a variety of sanctions, including a three-year membership suspension, on Jenkins. [NFA records.]

Since Jenkins also has failed to satisfy the default award in this proceeding, his registration has been automatically suspended and he has been prohibited from trading on any contract market. As a result, if he seeks re-registration, he first must satisfy the default award.

5. “Alex” Dholakia, a resident of Boca Raton, Florida, would take over as Razaki’s broker as soon as Bator had opened the account and placed the first trade in the account. Dholakia would select all of the trades for the Razaki account, including the first trade in the account recommended by Bator. In just three months, from May 7, to July 15, 2010, the trades

¹⁰ Ginsberg’s elder, Stuart M. Ginsberg, was the firm’s vice president from November 1998 to April 2002. Stuart Ginsberg similarly had previously worked for a series of firms, from 1987 to 1998, most of which had been disciplined for fraudulent sales practices. [NFA records.]

recommended by Dholakia would wipe out Razaki's \$13,000 deposit, and generate \$7,403 in commissions and fees which accounted for almost half of Razaki's \$13,000 loss.

Before he had abandoned his defense in this proceeding, Dholakia effectively conceded that he had placed all or almost all of the trades in Razaki's account without obtaining a written power of attorney and without obtaining her specific authorization before each individual trade: "Razaki told me [in early May 2010] that if you see a good trade, go ahead and do it." [Dholakia affidavit, dated December 20, 2011.] In addition, Dholakia claimed that Razaki purportedly told him that she could "see that the account was doing good," and thus wanted him to trade more aggressively by increasing the volume and frequency of trading. However, Dholakia's claim was belied by Razaki's May 18, 2010 e-mail instruction to stop making trades without first talking to her. Dholakia's claim was further belied by the presumptively reliable Farr Financial account statements which established that the Razaki account was not "doing good" as that term is commonly understood. Rather, these statements show that the account liquidating value exceeded Razaki's \$13,000 deposit for just two days early in the three-month life of her account: May 12 and 13, 2010. Otherwise, over the life of the account, the trades made by Dholakia for the Razaki account failed to generate overall net profits for her and merely succeeded in quickly generating commission income for Dholakia, Bator and R.J. Ginsberg.

Dholakia was a registered associated person with R.J. Ginsberg from October 2007 to December 2010. On August 3, 2011, the NFA would issue a default order in the disciplinary proceeding discussed above, imposing a permanent membership ban on Dholakia. [NFA records.]

Dholakia first became registered with the NFA in 1981. Before working for R.J. Ginsberg, Dholakia: one, had been disciplined by the NFA for financial and supervisory

violations at a firm that he owned and operated (*In re First Energy Investments, Inc., et al.*, NFA case number 93-BCC-12 (Decision January 19, 1994); two, had been named in nine reparations cases; and three, had worked for nineteen firms, seven of which were on the NFA's list of firms disciplined for fraudulent sales and trading activity, and eight of the other eleven of which had been named in NFA disciplinary or CFTC enforcement cases.¹¹ In the same vein, on December 2, 2007, Dholakia's previous employer, Universal Commodity Corporation ("UCC"), was named in an NFA disciplinary complaint alleging widespread and pervasive fraudulent sales practices and supervisory failures during the time that Dholakia had worked for UCC. [NFA records.]

As previously noted, Dholakia failed to produce a second affidavit with answers to a series of requests in a *sua sponte* discovery order. These requests principally concerned factual matters related to Razaki's churning and unauthorized trading allegations against Dholakia. Subsequently, I issued a notice in which I concluded that, based on Dholakia's non-response, Dholakia had ceased to participate in this proceeding, and as a result: Dholakia was deemed to have waived the opportunity to provide oral testimony and to cross-examine witnesses at the telephonic hearing; adverse inferences would be taken that the oral testimony not produced by Dholakia would have been not credible and would have tended to prove Razaki's allegations against Dholakia and tended to disprove Dholakia's defenses; and appropriate sanctions would be imposed pursuant to CFTC rule 12.35.¹² Accordingly, pursuant to CFTC rule 12.35, the following adverse inferences have been taken and are reflected in the findings: one, each trade

¹¹ Dholakia's former employers included the following firms with checkered histories: First Commodity Corp. of Boston (1981-1983), Chicago Commodities (1985-1986), Chilmark Commodities Corp. (1986-1988), FSG International (1988), Dunhill Investments Corp. (1988-1990), First Sierra Corp. (1990), Diversified Trading Systems (1990-1992), First Investors' Group of the Palm Beaches (1994-1995 and 1998), Barkley Financial Corp. (1997-1998), The Winner Group (1997 and 1999), Cromwell Financial Services (2001-2002), and Universal Commodity Corp. (1995-1997 and 2004-2007). The vast majority of the customers of all of these firms realized substantial losses, and a large share of these losses were typically attributable to the excessive commissions charged by these firms. [NFA records.]

¹² See Default Notice dated May 15, 2012.

in the Razaki account lacked a reasonable basis; two, each trade was not consistent with Razaki's investment objective to make trades with a reasonable likelihood of profit; three, Dholakia did not discuss each trade with Razaki before placing the order; and four, Dholakia did not clearly and accurately report the net result of each trade.

4. Meghan Bator, a resident of Boca Raton, Florida, would: cold-call Razaki, gain Razaki's trust and assuage her concerns about risk, enthusiastically tout profits purportedly being enjoyed by R.J. Ginsberg clients, convince Razaki to open her non-discretionary account, guide Razaki through the account-opening documentation, recommend the first trade in Razaki's account, and pass Razaki to Dholakia. Once Dholakia took over as Razaki's broker, Bator and Razaki would never again speak to each other. Bator received half of the commissions charged to Razaki's account. Significantly, Bator conceded that she knew that Dholakia had routinely made trades in Razaki's account without obtaining a written power of attorney and without obtaining Razaki's specific approval. [See Razaki testimony, at page 27, and Bator testimony, at pages 56-60, and 67, of hearing transcript.]

Bator was a registered associated person with R. J. Ginsberg from March to October 2010. Before working for R. J. Ginsberg, Bator had worked at a series of firms, three of which had been disciplined for fraudulent sales practices: Liberty Financial Trading Corp. (2002 to 2004), Liberty Real Assets Investment Corp. (2004 to 2005), and Universal Commodity Corp. ("UCC") (2005 to 2007). Bator had worked with Dholakia at UCC for over three years and had worked with Dholakia at R.J. Ginsberg for six weeks, before she first spoke to Razaki. [NFA records.]

As noted above, I found that the bulk of Bator's oral testimony, particularly her testimony about her solicitation of Razaki and her passing Razaki off to Dholakia, was less convincing, less

plausible and less reliable than Razaki's testimony. As with her written statements, Bator's oral testimony was often evasive and less than completely responsive and short on meaningful detail. For example, when asked if she had any factual basis to think that Dholakia, who had been her colleague for over three years, had ever actually consistently made money for his clients, Bator dodged: "Well, he has made money and lost money for his clients." Bator did not substantiate her assertion at the hearing that she was compelled to hand Razaki off to Dholakia principally for health reasons. Furthermore, this assertion was undermined by Bator's previous assertion in her supplement to the joint answer that her principal responsibility at R.J. Ginsberg was to open new accounts and not to select trades or handle accounts, and was further contradicted by her testimony that she handed Razaki to Dholakia because Bator had no experience trading futures and that she had sat next to Dholakia and overheard most of his conversations with Razaki. Bator's testimony that Razaki told her that she was currently employed by the U.S. government was undermined by the fact that Razaki on her account application indicated that she was "retired" and did not otherwise reference any employment history.

Bator's testimony about her solicitation was particularly vague, one-sided and unconvincing: she tried to portray her solicitation as nothing more than a *pro forma* disclosure of the downside of trading futures and options without any reference to trading strategies, markets or profit potential, which could not plausibly have convinced any reasonable prospective customer to consider opening an account. Finally, Bator's assertion that Razaki's son had led her to call Razaki was unsubstantiated and unconvincing. [See ¶2 of Bator's supplement to joint answer, filed December 12, 2011; and Bator's testimony, at pages 46-47, 52-59 of hearing transcript.]

Bator's solicitation

5. Sometime in late April 2010, Bator cold-called Razaki. Bator and Razaki spoke at least three times before Razaki decided to commit \$13,000 and open a non-discretionary account. Razaki told Bator that she had saved a modest amount, knew nothing about commodity futures and options, was concerned about risk, and was looking, not for quick profits, but for long-term, steady and modest profits. Bator enthusiastically emphasized: that Razaki's money was making next to nothing sitting in the bank, that Razaki should trust her and R.J. Ginsberg, that R.J. Ginsberg was an established, reputable firm, that R.J. Ginsberg had expert knowledge of the commodity markets such as gold and unleaded gasoline, that R. J. Ginsberg valued its clients and always looked out for their best interests, that many of R.J. Ginsberg's clients had maintained accounts with the firm for years, that R.J. Ginsberg clients consistently made large profits and typically doubled their investments in a short time for its clients, and that as soon as Razaki deposited funds she would start making money. Bator otherwise did not disclose or intimate: that she had been with R.J. Ginsberg for barely six weeks, that in reality R.J. Ginsberg clients, for the past three years, had consistently failed to enjoy profits, and that R.J. Ginsberg's owners and brokerage force, including Bator, were not inherently trustworthy or successful because they had worked principally for firms that had been disciplined by the CFTC or the NFA for fraudulent sales practices. [See Razaki testimony at pages 8-15 of hearing transcript; Razaki letter to Jeff Jenkins, dated July 30, 2010 (attachment to Razaki's complaint); first paragraph on page one of factual description for Razaki's reparations complaint; first page of Razaki's reply to the joint answer; and second page of Razaki's reply to Dholakia's statement supplementing the joint answer.]

6. After several similar conversations, Razaki decided to open an account, principally based on Bator's assurances that she could trust Bator and R.J. Ginsberg to watch her account, to protect her from losses, and to make a reasonable return on her deposit. While both were on the phone, Bator helped Razaki fill in the account application on line. Bator did not spend much time explaining the futures and options risk disclosure statements, and spent most of the time advising Razaki how to fill in the blanks in the application. [See Razaki's testimony at pages 15-20, hearing transcript.]

7. On or about Friday May 7, 2010, after Farr Financial confirmed receipt of Razaki's \$13,000 deposit, Bator called Razaki on her cell phone while Razaki was grocery shopping. Bator told Razaki that Razaki had to act quickly and approve an unleaded gasoline option spread. Razaki's testimony made it clear that she felt rushed and that Bator had not adequately explained the mechanics or risks associated with the trade. [See pp. 20-22 hearing transcript.]

Later that day, Bator told Razaki that Alex Dholakia was taking over as Razaki's broker and transferred the phone call to Dholakia. Razaki was surprised and upset, because her decision to agree to open the account had been based in part on Bator's promise that Razaki could trust her to look after Razaki's interests and because Bator had never mentioned the possibility that a stranger would be suddenly taking over her account. Bator assured Razaki with unreservedly confident claims Dholakia was a trustworthy and extraordinarily successful trader who had been making money for his clients for over 25 years. Bator and Razaki would not speak again. [See second paragraph of factual description to complaint, first page of Razaki's reply to the joint answer, and Razaki's testimony at pages 23-25 of hearing transcript.]

Dholakia's trading

8. When Dholakia introduced himself to Razaki, she indicated that she was not happy with being dumped by Bator. She also made it clear that she did not understand the mechanics of trading commodity futures and options, that she was risk averse, and that she would be satisfied with steady modest returns. In response, Dholakia calmly and confidently assured her that she should trust him, because he would look out for her interests and keep an eye on her account around the clock, and because he had been consistently making big money for his clients for over twenty years. Dholakia assured Razaki that he would quickly double her money and return her \$13,000 deposit, and then re-double her profits. Dholakia otherwise did not remotely indicate that in reality his clients at R.J. Ginsberg and his previous firms had consistently failed to enjoy profits, and that he had had worked principally for firms that had been disciplined by the CFTC or the NFA for fraudulent sales practices. [See Razaki testimony at pages 24-27 of hearing transcript.]

9. Beginning Monday May 10, 2010, Dholakia began placing an increased volume of short-term futures trades in Razaki's account without first discussing and then obtaining Razaki's specific authorization. On May 18, 2010, Razaki sent Dholakia an e-mail:

"Hi Alex, don't buy any more commodity stock, without asking me first. [A]nd why you bought corn and wheat stock without asking me first???? I don't want them. I lost \$1000 more money for corn and wheat today? Beside I already lost more money in the gasoline.

[Attachment to Razaki's complaint.] On that date, the account had a \$11,325 net liquidating value at the close.

Razaki followed up with repeated requests to Dholakia that he consult her before placing trades. However, Dholakia deflected or disregarded these requests with a variety of tactics:

starting out with false assurances that he knew what he was doing and would look out for her and double her money, but ending with rude, condescending dismissals that her small account was not worth his bother.

Between May 10 and July 15, Dholakia bought and sold futures in a wide variety of markets nearly every day. By the end of May his trading had already generated \$5,399 out of the \$7,403 in commissions and fees that would be charged to Razaki's account. Before the end of July, the account was completely wiped out.

In the immediate aftermath, on July 30, 2010, Razaki sent a letter to R.J. Ginsberg owner Jeffrey Jenkins in which she complained of deception and abuse of trust by Bator and Dholakia. Her principal complaint was: that Bator had deceived her about the high risk of the trading strategies favored by R.J. Ginsberg, had tricked her into becoming a client of Dholakia, and had deceived her about Dholakia's integrity and expertise; and that Dholakia had mischaracterized his experience, had falsely guaranteed profits, and had coldly deflected and disregarded her pleas that he cease placing trades in her account without first consulting her. [Exhibit to addendum to complaint.] Neither Jenkins, nor Dholakia, nor Bator replied to Razaki's letter.¹³

Conclusions

Megan Bator's and Alex Dholakia's fraudulent solicitation

Mehriya Razaki has established by a preponderance of the evidence that Megan Bator and Alex Dholakia worked together to defraud Mehriya Razaki into opening and maintaining her account. Bator: falsely represented that the trading strategies favored by R.J. Ginsberg were suitable for Razaki's conservative investment objectives; falsely guaranteed profits by grossly

¹³ In the joint answer, R.J. Ginsberg, Dholakia and Bator did not address their nonresponse to Razaki's complaints in her May 18, 2010 e-mail, or her July 30, 2010 letter.

exaggerating the profit potential and downplaying the substantial risk of loss of the option trading strategies favored by R.J. Ginsberg; falsely suggested that R.J. Ginsberg clients typically enjoyed tremendous profits, when in fact the vast majority of R.J. Ginsberg customers had lost large portions of their investments in the two preceding years; falsely claimed that R.J. Ginsberg put its clients' interests first, when in fact its brokers routinely placed trades without proper authorization from the clients and aggressively traded client accounts to generate excessive commissions; deceptively assured Razaki that R.J. Ginsberg was an established, reputable firm when in reality its owners and brokers, including Bator, had worked predominantly for firms that had been charged and disciplined for fraudulent boiler-room practices; deceptively failing to disclose that she planned, per her routine, to pass Razaki to a senior broker, Alakesh "Alex" Dholakia, as soon as Bator gained Razaki's trust and convinced her to open the account.

When Bator passed off Razaki to Dholakia, she falsely portrayed Dholakia as a trustworthy and successful trader, when in fact he had worked almost exclusively for firms disciplined by the CFTC or the NFA for fraudulent sales practices and his clients at R.J. Ginsberg and at his previous firms typically had lost substantial sums of money and never enjoyed the sort of profits promised by Bator. Dholakia perpetuated Bator's fraud by falsely representing that he was consistently making money for his clients and by falsely guaranteeing that he would quickly double her investment and return her deposit, when in fact his clients at R.J. Ginsberg and his previous employers had in fact consistently lost money. Nothing that Bator or Dholakia told Razaki, from the solicitation on, accurately or fairly reflected the reality: that a significant majority of their customers had failed to realize profits, that they had planned to pass her off to Dholakia as soon as she opened her account, that Dholakia would then routinely make trades without her approval and engage in aggressive trading strategies which were certain

to deplete her account eventually with accumulating commissions, and thus were totally inconsistent with her conservative financial objectives. It is “rudimentary” that these types of misrepresentations and omissions about profit potential and risks are material. *In re JCC*, Comm. Fut. L. Rep. ¶ 26,080, at 41,576 n.23 (CFTC 1994). The intentional nature of Bator’s and Dholakia’s fraud is underscored by the patently baseless and false nature of their deceptions, misrepresentations and omissions, by their awareness of Razaki’s lack of sophistication, by their indifference to the concerns she expressed during the solicitation, and by their blatant disregard of the protests she raised in her May 18, 2010 e-mail and her July 30, 2010 letter.

After the first round of unauthorized trades, Razaki may have had growing doubts regarding the risk to which she had exposed her money. However, the overall impression conveyed by Dholakia was that she should continue to trust him to double her money. Thus, Razaki never understood that the chances of recovering her deposit were minimal, and her decision to continue trading was caused solely by Dholakia’s lulling conduct.

Razaki’s decision to open the account was consistent with her assertions that she relied on Bator’s confident, but baseless, message – reinforced by Dholakia’s similar message -- that Razaki would quickly realize large profits with minimal accompanying risk. The conclusion that Razaki reasonably relied on respondents’ misrepresentations and omissions to her detriment is supported by the fact that she was naïve and unsophisticated, with limited investment experience, no experience trading commodity options, and no familiarity with the commodity markets. Respondents’ written disclosures of general risks by themselves did not cure the false impression of guaranteed large profits created by Bator, where Bator glossed over the disclosures and where the overall effect of Bator’s and Dholakia’s intentionally deceptive statements substantially

outweighed and vitiated the written risk warnings. *See Ferriola v. Kearsse-McNeill*, Comm. Fut. L. Rep. ¶ 28,172, at 50,153 (CFTC 2000).

The proper measure of damages for Bator's and Dholakia's deceptions, misrepresentations and omissions is Razaki's out-of-pocket losses, less the amount paid by Donahue.

Alex Dholakia's unauthorized trading

Dholakia's acknowledged failure either to obtain a written discretionary trading authorization or to obtain Razaki's specific authority for all or almost all of trades he executed for her account constituted *per se* unauthorized trading. A liability analysis under CFTC rule 166.2 focuses on two issues: (1) whether there was a written power of attorney in effect at the time of the transaction at issue and, if not, (2) whether the transaction was specifically authorized by the customer in advance of its execution. *See Wolken v. Refco, Inc.*, Comm. Fut. L. Rep. ¶ 24,509, at 36,188 (CFTC 1989). Under rule 166.2, a customer's oral grant of general discretion to an account executive is irrelevant to the analysis of liability, because the rule renders such oral agreements void. *Id.* The customer's post-transaction conduct is equally irrelevant to an analysis of liability, because a transaction cannot be specifically authorized unless the customer selects the type of transaction (*i.e.*, option or future, purchase or sale), the commodity interest, the contract month, and the exact amount of the commodity interest, in advance of the transaction. Similarly, an oral authorization which is not specific does not satisfy the requirements of rule 166.2. *See Kacem v. Castle Commodities Corp.*, Comm. Fut. L. Rep. ¶ 27,058, at 45,031 (CFTC 1997); and *In re Paragon Futures Association*, Comm. Fut. L. Rep. ¶ 25,266, at 38,850 (CFTC 1992). Here, Razaki's credible assertion that Dholakia routinely

placed trades without her specific authorization, corroborated by Bator, establishes that Dholakia committed multiple violations of CFTC rule 166.2 throughout the life her account.

Under Section 14 of the Commodity Exchange Act, Razaki is entitled to recovery of "actual damages proximately caused" by Dholakia's violations. *See Adams v. Black Diamond Futures & Trading*, Comm. Fut. L. Rep. ¶30,492 (CFTC 2007). Thus, the proper measure of damages for Dholakia's violation is Razaki's total out-of-pocket losses, less the amount paid by Donahue.

ORDER

Mehriya Razaki has established by a preponderance of the evidence: one, that Meghan Bator violated Sections 4b(a)(1)(A) and 4c(b) of the Commodity Exchange Act and CFTC rule 33.10; two, that Alakesh "Alex" Dholakia violated Sections 4b(a)(1)(A) and 4c(b) of the Act and CFTC rules 33.10 and 166.2; three, that Bator's and Dholakia's violations, separately and together, proximately caused \$13,000 in damages; and four, that Razaki is entitled to an award of \$13,000, less the \$4,500 received from Donahue on March 26, 2012.

Accordingly, Megan Bator and Alakesh "Alex" Dholakia are ordered to pay to Mehriya Razaki reparations of \$8,500, plus interest on \$13,000 at 0.18 percent compounded annually from May 6, 2010 to March 26, 2012, plus interest on \$8,500 at 0.18 percent compounded annually from March 26, 2012 to the date of payment, plus \$50 in costs for the filing fee. Liability is joint and several.

Dated July 26, 2012


Philip McGuire,
Judgment Officer