

FILED

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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

RICHARD B. ELLWOOD,)

Plaintiff-Appellant,)

vs.)

MID STATES COMMODITIES, INC.)

AND RICHARD L. ROSENQUIST,)

Defendants-Appellees.

$\frac{8-289}{87-1242}$ **146**

Appeal from the Iowa District Court for Webster County
(No. 49295), R. K. Richardson, Judge.

Plaintiff appeals from the entry of judgment for defendant Mid States Commodities, Inc. on its counterclaim for a deficit balance in plaintiff's margin account.

AFFIRMED.

Patrick B. Chambers of Webster City for plaintiff-appellant.

James L. Kramer of Fort Dodge for defendant-appellee.

Considered by Oxberger, C.J., and Donielson and Schlegel, JJ. Habhab, J., takes no part.

OXBERGER, C.J.

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This is an appeal from a district court judgment in the determination of damages. The case was remanded from the supreme court. See Ellwood v. Mid States Commodities, 404 N.W.2d 174 (Iowa 1987). Plaintiff claims that the district court's judgment for damages is not supported by the evidence. Our review is for the correction of errors at law. The trial court's findings of fact are binding upon this court if supported by substantial evidence. We affirm.

Ellwood filed suit against Mid States and Rosenquist on several theories. Mid States counterclaimed for the debit balance in Ellwood's account. The district court awarded Ellwood \$5,000 against both defendants for damage to his credit because Rosenquist forged checks in his name, and \$10,000 in punitive damages against Rosenquist. On appeal, in Ellwood v. Mid States Commodities, Inc., 404 N.W.2d 174, 184 (Iowa 1987), the supreme court reversed the \$5,000 award as to Mid States and concluded that Mid States should prevail on its counterclaim because Ellwood had ratified the unauthorized trades and became responsible for the consequences of them. The case was remanded to the district court for findings and conclusions as to the appropriate amount of judgment on the counterclaim.

On remand, the district court determined that Mid States was entitled to recover the debit balance of the account, which was \$45,096.48, plus interest. Ellwood

contends that there was no sufficient evidence in the record to support this amount of damages. He states that he was not the proximate cause of the debit balance in his account because he had not authorized the open position in his account which committed him to deliver 350,000 bushels of wheat. In order to close out Ellwood's account, Mid States purchased 350,000 bushels of wheat, which resulted in a loss to Ellwood's account of \$22,285. Ellwood contends that while he is held to have ratified the other trades, he did not approve of the action of Mid States which closed out his account. He feels that Mid States should have either charged the loss against an error account or offset the loss by commissions earned.

As the supreme court in Ellwood v. Mid States Commodities, Inc., 404 N.W.2d 174, 184 (Iowa 1987) stated:

When the customer ratifies unauthorized trades, he becomes responsible for the consequences of those trades. P. Johnson, Commodities Regulation § 5.47, at 347-48 (1982). The commodity broker's violation of commission, exchange or in-house rules has not affected the broker's recovery on its claim for an account deficit where the court finds that the customer ratified the trades or a misrepresentation was not relied upon to the customer's detriment. See Lincoln Commodity Servs. v. Meade, 558 F.2d 469, 471-72 (8th Cir. 1977); Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Goldman, 593 F.2d 129, 130, 134 (8th Cir.), cert. denied, 444 U.S. 838, 100 S.Ct. 76, 62 L.Ed.2d 50 (1979); J.E. Hoetger & Co. v. Ascencio, 572 F.Supp. 814, 823 (E.D. Mich. 1983).

The trial court found that Defendant Mid States Commodities, Inc. was entitled to recover upon its

counterclaim in the amount of \$45,096.48, the amount of the deficit balance in Ellwood's account. Mid States had to pay this amount to Stotler and Company to close out Ellwood's trading account. Ellwood's ratification of the trades binds him to cover the losses which result therefrom. Accordingly, we fail to find it appropriate to charge Mid State's loss against their errors account or to offset such loss by commissions not paid to Rosenquist. We find substantial evidence to support the trial court's findings that Mid States was entitled to recover the debit balance in the amount of \$45,096.48 plus interest.

AFFIRMED.