Fyi

From: Benjamin Wegg-Prosser
Sent: Tuesday, March 22, 2011 02:56 PM
To: Peter Mandelson
Subject: This is extract of judgement - shows how judge does not believe her

1. In any event, so far as volatility is concerned, it seems to me that, albeit in the context of vanilla options, the discussion with Ms Wachner on 9 July 2008 to which I have referred in paragraphs 112 and 114 above was a sufficient warning about the volatility of options close to any rate (whether the strike rate or the knock-in rate) which could lead to their being in the money. Even without that warning, I consider Ms Wachner was an experienced trader (despite all her protestations to the contrary) who understood the risks she was running.

2. It was a constant theme of Ms Wachner's evidence, when confronted with discussions where the choices available to her had essentially either been spelt out by Mr Leslie or Mr Gabb or were obviously known to her anyway from what she said to them, that she was simply following their advice and that they never explained to her the "embedded cost" in rolling over or pushing out options. Ms Wachner made repeated protestations that she did not understand how RKIs worked and that Mr Leslie and Mr Gabb did not explain to her the "embedded cost", in the sense that each new rolled over option sold was riskier than the option whose purchase back was financed by the sale and also the bid-ask spread increased with any purchase which took place when the spot rate was approaching the knock-in rate.

3. Having read the transcripts of the discussions between Ms Wachner and Mr Leslie and Mr Gabb and having had the opportunity to assess Ms Wachner in the witness box, I was unconvinced by her attempt to portray herself as a financial ingénue who simply followed blindly the advice of Mr Leslie and Mr Gabb both in trading RKIs and in the rolling over or pushing out strategy she adopted. Contrary to the impression she sought to create, she was clearly a sophisticated businesswoman and investor who knew her own mind. Whilst it is true that she followed "advice" given by BLUK, that was by no means invariably the case.

4. Furthermore, despite what Dr Fitzgerald said, I do not consider that it was necessary for Ms Wachner to have sophisticated software of the kind he advocated either to appreciate the embedded cost of pushing out or to assess her overall position at any given time. I consider that despite the constant mantra in her evidence that she did not understand the embedded cost of pushing out, the reality is that the risks involved in buying back options close to the knock-in rate and financing those purchases by the selling of new options with ever more aggressive strike and knock-in rates in order to generate the premium required are evident from a cursory examination of the transactions in question and must have been obvious to an experienced foreign exchange trader such as Ms Wachner clearly was, despite her attempts to portray herself as inexperienced.

5. So far as the allegations about sufficiency of margin and the "moving of the goalposts" in relation to how the margin was calculated by BLUK are concerned, I am wholly unconvinced by the case that there was any breach of duty in this regard. Ms Wachner must always have appreciated (particularly given her experiences with BLUSA who were concerned about her

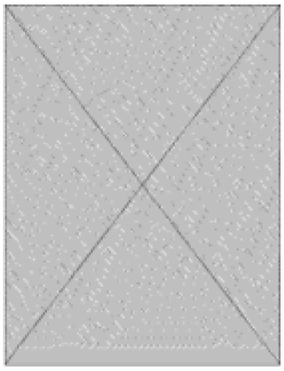
exceeding her margin) that pushing out could only continue if she had sufficient margin to cover her open positions. Similarly, as I have held, it is clear that BLUK's practice, until it actually insisted on two sided margin in October/November 2008 as a condition of any further pushing out, was to require only one sided margin. Once the practice changed, she was informed, so that there is nothing which could be said to amount to a failure to advise.

6. Ultimately the whole case of breach of a duty to advise founders either on the rock of clause 6.16 and the inability of Ms Wachner to establish a "specific agreement" in relation to transactions which Ms Wachner entered into with BLUK directly, or the insurmountable obstacle of the contractual relationships under the BLUSA Agency Agreement. However, to the extent that it is necessary to make findings as to what would have happened if the "right advice" as alleged by Ms Wachner had been given, I consider that even if BLUK had advised Ms Wachner in more specific terms about the embedded costs and volatility or about the need for sufficient margin to keep on pushing out, in all probability she would still have engaged in the trading which she did. It is apparent that, at least until July 2008, her RKI trading was broadly successful and she was completely uninterested in Mr Leslie's suggestion on 8 July 2008 that she should close out her open positions and take a modest profit overall.

7. It is clear from reading the transcripts that throughout 2008 Ms Wachner's trading was motivated by her desire to make up the losses of some $1.7 million that she had made on her trading up to December 2007 (for which on any view BLUK was not responsible). Even when warned in clear terms by Mr Leslie of the risks of the market turning dramatically against her (as it subsequently did) in the discussions on 8 July 2008, her attitude was that she had to make good those losses and continuing to trade in RKIs was how she was going to achieve that aim.

8. That remained the position when Ms Wachner was effectively closed down by BLUSA in August 2008, in the sense that they would not let her trade options greater than two months ahead. She transferred her options to BLUK starting on 8 September 2008, precisely because she wanted to carrying on trading RKIs pushing out for longer periods with a view to beating the market. This is clear, for example, from the conversation she had with Mr Leslie on the morning of 5 September 2008, quoted at paragraph 121 above.

Despite what Ms Wachner said in her evidence about what she would have done or not done if she had been given the "right advice", I remain unconvinced that, given her desire to make good those losses, she would not still have carried on trading as she did. That conclusion is borne out by the evidence of her own personality. Having heard and considered all the evidence, including all the transcripts, my overwhelming impression is of someone who seeks to "soak up" advice from a variety of sources but who ultimately knows her own mind and takes her own course, irrespective of what that advice is.



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