In the

United States Court of Appeals

For the Seventh Circuit

No. 22-1421

JACOB DANESHRAD, JOSEPH DANESHRAD, and HASSAN BLURFRUSHAN,

Plaintiffs-Appellants,

v.

TREAN GROUP, LLC, NANCY STUBENRAUCH, and MARK FRANTZ,

Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 20 C 3887 — **Jorge L. Alonso**, *Judge*.

ARGUED DECEMBER 2, 2022 — DECIDED JANUARY 11, 2023

Before EASTERBROOK, KIRSCH, and LEE, *Circuit Judges*.

EASTERBROOK, *Circuit Judge*. Several affiliated traders set up four accounts with Trean Group, an introducing broker at the Chicago Mercantile Exchange. An introducing broker manages the customer side of the futures-trading business. The trading side is the province of a futures commission merchant, which for these traders was FCStone (a part of what is now called StoneX Group, Inc.). On the traders' behalf, Trean and Stone bought and sold futures contracts on the Standard & Poor's 500 Index. The traders wanted to engage in naked trading—that is, to speculate rather than hedge—and Stone set a high margin accordingly. (In the futures business, margin is money on deposit for the security of the broker and merchant, should the market price move against the trader and the trader fail to cover the loss; this differs from the meaning of margin in securities trading.) Stone, as the futures commission merchant, was a principal in all trades and together with the clearing house bore the immediate economic risk; Trean, as the introducing broker, guaranteed Stone's positions and shared in its commissions. The traders were liable to Stone and Trean, but not to the counterparties on the futures contracts.

The traders started in fall 2018 with a kitty slightly exceeding $1 million, which enabled them to buy a substantial number of futures contracts. They went long. That is, they stood to gain if the S&P 500 Index rose and to lose if it fell, with the effect magnified by the leverage built into futures contracts. But the market did not cooperate. As the S&P 500 Index fell, Stone demanded more margin. The traders were reluctant to comply, seeking to adjust their holdings instead as a means to reduce Stone's exposure. The traders also proved reluctant to discuss their positions with Trean, even though Trean was on the hook for any loss that Stone incurred. Between December 3 and December 22, 2018, the S&P 500 Index declined 13%, and Trean learned that the traders had not met Stone's margin call during the window allowed by the Exchange. Because the traders were not cooperating with Stone, and Trean was not happy with the degree of cooperation it was receiving, it told the traders on December 31 that it would close their accounts.

It added that they were free to deal directly with Stone. Trean thus cut its own risk without necessarily closing the traders' positions.

Stone responded to this development by telling the traders on January 2, 2019, that their accounts had been put on "liquidation only" status. This meant that the traders must wind up their positions by purchasing offsetting short futures contracts. (The traders' S&P 500 Index contracts would not expire until spring 2019, but a trader can close a futures contract by buying an exactly offsetting one.) Stone had a contractual right to demand that the traders liquidate for any reason that Stone deemed sufficient. At the traders' request, however, Stone promptly modified its directive to allow them to keep their contracts and hedge to reduce risk, but Stone prohibited any trades that would increase the holdings' net risk. Stone also increased the traders' margin to 150% of their open positions. The traders responded by immediate liquidation. Of the $1,020,000 with which they began, they had lost $548,000.

In this suit, the traders want Trean to compensate them for this loss. They contend that their contract with Trean did not allow it to cease dealing with them for the reason it did (or perhaps that the reason Trean gave was not the real one). They acknowledge that Trean did not require Stone to close their positions but contend that Trean's decision led Stone to impose conditions that they found unacceptable, even for the time that the traders would have needed to find another introducing broker. Observing that the S&P 500 Index began to rise again in January 2019, and by February 2019 had recovered most of the losses from December, the traders contend that Trean should be liable for the amount that they could have recouped had they maintained their long positions during January and February.

But the district court granted summary judgment to Trean. 585 F. Supp. 3d 1100 (N.D. Ill. 2022). Without deciding whether Trean violated a duty it owed the traders, the court held that they lack any evidence that Trean caused their loss or could be responsible for the lack of gain as the market rebounded. It is undisputed, the court observed, that the traders themselves made the decision to liquidate. The traders could have held their long positions until the settlement (expiration) dates in spring 2019 and so obtained any gain that came their way from a rising market.

Like the district court, we need not decide whether Trean was entitled to end its dealings with the traders. They must lose, as the district court held, because they did not show how a reasonable jury could find that Trean injured them.

The district court asked whether Trean's decision was a "proximate cause" of the traders' loss. We prefer a rubric more closely associated with the law of securities and futures trading. The traders' claim arises under state law, but the subject of the contract is federally regulated futures contracts traded on a federally regulated exchange, which makes it apt to use a lens ordinarily applied to investment dealings. That approach looks for "loss causation." See *Dura Pharmaceuticals, Inc. v. Broudo*, 544 U.S. 336 (2005). There may be a lot of overlap between loss causation and proximate causation, but the concept of loss causation has been tailored to investments, while proximate causation is a generic term that runs throughout private law and has many different shades of meaning. We observed in *Leibowitz v. Great American Group, Inc.*, 559 F.3d 644 (7th Cir. 2009), that Illinois, whose law applies to the traders' claim, uses the federal approach to loss causation when looking for causation in the financial world.

The idea of loss causation is easiest to understand when contrasted with its counterpart, transaction causation. A false statement about the value of a security may cause a *transaction*—that is, the purchase or sale of a security—without causing a *loss*. One example from *Dura Pharmaceuticals* is the purchase of securities at an inflated price, followed by a prompt sale at the same price. 544 U.S. at 342. The fraud may have caused the investor to buy the shares, but the fraud also meant that the shares could be sold at the inflated price, so the investor did not lose anything. We put it this way in *Nelson v. Hodowal*, 512 F.3d 347, 351 (7th Cir. 2008): "a non-disclosure that may affect a person's choice about which securities to hold, but does not relate to the value of those securities, yields transaction causation but not loss causation. And without loss causation there is no liability." That's as true where the asserted legal wrong is ending a brokerage relation as when the asserted legal wrong is failure to disclose some fact.

The traders' problem is that Trean's decision did not affect the value of their futures contracts. Likewise the traders do not contend that they suffered a greater loss than they would have done had they moved their accounts to a different introducing broker and retained Stone as the futures commission merchant. Nor did Trean impose on them a spate of excess commissions that diminished the securities' net value (as in churning litigation). Plaintiffs' loss comes, not from Trean's decision, but from the fact that the S&P 500 Index declined in December 2018, producing unrealized losses in their futures contracts. When the traders closed those contracts, they *realized* a loss that had already happened. Realizing a loss at one time rather than another may have tax consequences but does not cause the loss itself.

The traders could have held these futures contracts through their settlement dates in spring 2019 and gained from the market's rise in early 2019. But to reap that gain they had to take the associated risk that the market would continue to fall—and to post margin that would protect Stone against that risk. By liquidating in early January the traders eliminated for both themselves and Stone any further risk from market decline (at least, any risk posed by these particular futures contracts) and equally eliminated the possibility of gain. What they seek in this litigation is a power to cash out, and so avoid the risk of market decline, while demanding that Trean compensate them for the eventual rise. They ask for an outcome in which, as of the liquidation date, they could gain but not lose from market movements, while Trean could lose but not gain. That is doubtless an investor's ideal outcome, but not one provided by any plausible theory of damages. To reap the rewards from a higher market, an investor must take the risk of a lower market. By electing to sell and prevent any further loss, the traders also cut off any access to gain.

AFFIRMED