

2(a)(1)(A) of the Act. *Id.* at 49,333. The Judgment Officer held LMB and Cavanagh jointly and severally liable for the reparations award.³

The Initial Decision was based on a record that included testimony presented at a telephonic hearing. Cavanagh, who was not available at his phone number of record at the time of the hearing, did not appear. *Id.* at 49,328 n.1. The Judgment Officer held that “[b]y failing to notify the CFTC of his intent to participate in the hearing and by failing to be available to testify at the time of the hearing, Cavanagh has waived the opportunity to testify about his dealings with Grey and the opportunity to cross-examine Grey.” *Id.*

On appeal from the Initial Decision, LMB submitted a two-page letter that it refers to as an “Appeal Brief,” signed by Brian S. Marro (“Marro”), Custodian of Records for LMB. LMB’s brief focuses on issues relating to Cavanagh and the Judgment Officer’s decision to exclude Cavanagh from participating in the telephonic hearing. Attached to the brief are declarations by Cavanagh, Marro and Sharon Jones Miller (“Miller”), a former LMB employee, all of which contain factual assertions concerning Cavanagh’s failure to be available at the telephonic hearing.

LMB has not raised a challenge to the Judgment Officer’s conclusion that Paci and Glover fraudulently induced Grey to open and trade his account nor argued that the Judgment Officer’s findings as to Paci and Glover are contrary to the record. Consequently, we conclude that LMB waived any argument that it should not be held liable for the violations committed by Paci and Glover. *See* Commission Rule 12.401(f); *Bickley v. First Sierra Corp.*, CFTC Docket No. 91-R154, 1993 WL 96088 at *1 n.1

³ The Judgment Officer dismissed the complaint against Glover, because he paid Grey \$975 pursuant to a settlement agreement. *Id.* at 49,333. The \$15,278.10 awarded by the Judgment Officer represents the amount of Grey’s out-of-pocket loss reduced by the amount of Glover’s payment. *Id.*

(CFTC April 2, 1993). *Compare Sharp v. United Airlines, Inc.*, 236 F.3d 368, 372 (7th Cir. 2001) (absence of argument on appeal waives the argument); *In re Worlds of Wonder*, 35 F.3d 1407, 1424 (9th Cir. 1994) (same).

The sole contention raised by LMB is that the Judgment Officer should not have excluded Cavanagh from participating in the telephonic hearing. LMB, however, does not explain how Cavanagh's testimony would eliminate or even diminish its responsibility for the damages awarded in the Initial Decision.⁴ Even if we ruled that the Judgment Officer erred in his treatment of Cavanagh, LMB would remain responsible for the damages flowing from Paci's and Glover's wrongful conduct.

The focus of our reparations program is to resolve monetary disputes between Commission registrants and their customers, not arguments and issues that will have no bearing on the final reparations award. *Delman v. Oppenheimer and Co.*, [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,012 at 34,536 (CFTC Nov. 9, 1987). There being no dispute that bears on the amount of the reparations award against LMB,

⁴ In its appeal brief (at 1), LMB states that "Cavanagh is accused of very serious infractions without being given the opportunity to answer to these allegations and/or defend himself"

we conclude that the errors raised in LMB's brief are, at best, harmless. Consequently, we affirm the result of the Initial Decision as to respondent LMB.

IT IS SO ORDERED.⁵

By the Commission (Acting Chairman NEWSOME, and Commissioners HOLUM, SPEARS and ERICKSON).

Jean A. Webb
Secretary of the Commission
Commodity Futures Trading Commission

Dated: July 3, 2001

⁵ Under Sections 6(c) and 14(e) of the Act, 7 U.S.C. §§ 9 and 18(e) (1994), a party may appeal a reparation order of the Commission to the United States Court of Appeals for only the circuit in which a hearing was held; if no hearing was held, the appeal may be filed in any circuit in which the appellee is located. *See also* 17 C.F.R. § 12.209 (telephonic hearings in reparations proceedings are held in Washington, D.C.). The statute also states that such an appeal must be filed within 15 days after notice of the order and that any appeal is not effective unless, within 30 days of the date of the Commission order, the appealing party files with the court a bond equal to double the amount of any reparation award.

A party who receives a reparation award may sue to enforce the award if payment is not made within 15 days of the date the order is served by the Proceedings Clerk. Pursuant to Section 14(d) of the Act, 7 U.S.C. § 18(d) (1994), such an action must be filed in a United States District Court. *See also* 17 C.F.R. § 12.407 (2001).

Pursuant to Section 14(f) of the Act, 7 U.S.C. § 18(f) (1994), a party against whom a reparation award has been made must provide to the Commission, within 15 days of the expiration of the period for compliance with the award, satisfactory evidence that (1) an appeal has been taken to the United States Court of Appeals pursuant to Sections 6(c) and 14(e) of the Act or (2) payment has been made of the full amount of the award (or any agreed settlement thereof). If the Commission does not receive satisfactory evidence within the appropriate period, such party shall be automatically prohibited from trading on all contract markets and its registration under the Act shall be automatically suspended. Such prohibition and suspension shall remain in effect until such party provides the Commission with satisfactory evidence that payment has been made of the full amount of the award plus interest thereon to the date of payment.