

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

SEN TAI CHEN	:	
	:	
v.	:	CFTC Docket No. 02-R009
	:	
MONEY GARDEN CORPORATION,	:	ORDER PURSUANT TO
MUHAMMED AHMED NASIRWARRAICH,	:	DELEGATED AUTHORITY
and JONATHAN STUART ZIEGEL	:	
	:	

Complainant Sen Tai Chen (“Chen”) appeals from an Administrative Law Judge’s (“ALJ”) order dismissing his complaint for Chen’s failure to answer respondents’ discovery requests, and noting that Chen filed no prehearing memorandum. Because the notice of appeal was late and Chen has offered no colorable reason for being tardy, his attempted appeal is rejected.

The ALJ issued his order of dismissal on October 11, 2002, and on the same day, the Office of Proceedings (“Proceedings”) served the order on the parties, together with a standardized letter outlining the procedure for filing an appeal. The letter informed Chen that if he decided to seek appellate review, he needed to file a notice of appeal, proof of service and a filing fee within 20 calendar days of the date of the letter. *See* Commission Regulations 12.10(b), 12.401(a). Chen states that he received the order on October 20, 2002.

The record shows no action by Chen until October 30, 2002, when he spoke with the ALJ’s law clerk and informed him that he wished to file an appeal. He submitted a letter to the ALJ dated November 3, 2002 (which was received by Proceedings on November 6, 2002), in which he challenged the factual basis for the ALJ’s dismissal.

Proceedings received another letter from Chen on November 26, 2002, in which he asked, among other questions, “How do I appeal the verdict of dismissal?” Neither letter was served on respondents.

On December 11, 2002, Proceedings received a letter from Chen (dated December 9, 2002) cognizable as a notice of appeal. It stated, “I would like to appeal . . . the dismissal of my claim” and was addressed to the Commission rather than the ALJ. Nevertheless, there was no indication that it had been served on respondents and Chen’s filing fee was not received until December 18, 2002.

Chen offered no reason for his tardy filing beyond stating that when he asked the judge’s law clerk how to appeal the dismissal, “he refused to tell me and informed me to look for it myself,” and that his two letters seeking advice on how to appeal went unanswered. *See* Chen Letter dated Dec. 9, 2002.

The timely filing of a notice of appeal is mandatory and jurisdictional. *Wolken v. Refco*, [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,509 at 36,187 (CFTC July 18, 1989), *citing Bowen v. Ketchum* [1984-1986 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 22,400 (CFTC Oct. 11, 1984). The Commission has discretion to allow a late filing upon a showing of excusable neglect, but applies that standard strictly. *Maguire v. Carrington Financial Corp.*, CFTC Docket No. 94-152, 1996 WL 668193 (Nov. 19, 1996) (excusable neglect means “such things as misrepresentations by judicial officers, lost mail, and plausible misinterpretations of ambiguous rule”) (internal citation omitted).

No such circumstances are present here. The instructions from Proceedings are straightforward, and if Chen was confused, he had plenty of time to seek guidance

between receiving the ALJ's order on October 20 and his filing deadline eleven days later. Given his insubstantial reason, Chen cannot prevail even under the more lenient interpretation of excusable neglect announced by the Supreme Court in *Pioneer Insurance Service Co. v. Brunswick Association, Ltd.*, 507 U.S. 380 (1993). Nor could Chen obtain relief were his November 3, 2003 letter to the ALJ, in which he argued the merits of his case, treated as a notice of appeal, since even that submission was filed outside the 20-day deadline.

A litigant's *pro se* status does not obviate the obligation to make a good faith effort to comply with applicable rules and requirements. Chen's notice of appeal will not be accepted and his attempted appeal is dismissed. The filing fee shall be returned.

IT IS SO ORDRED.¹

Laura M. Richards
Senior Assistant General Counsel
Commodity Futures Trading Commission

July 22, 2004

¹ By the Commission pursuant to delegated authority. 17 C.F.R. § 12.408(a)(4).