

UNITED STATES OF AMERICA  
Before the  
COMMODITY FUTURES TRADING COMMISSION

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SEN TAI CHEN

v.

MONEY GARDEN CORPORATION,  
MUHAMMED AHMED NASIRWARRAICH,  
and JONATHAN STUART ZIEGEL

CFTC Docket No. 02-~~02~~

ORDER

Complainant seeks reconsideration of the order dismissing this case, which was issued for the Commission by delegated authority on July 22, 2004. The case was dismissed based on complainant's failure to file a timely notice of appeal from the initial decision. Respondents oppose the relief sought. For the reasons that follow, we take review of the order and deny the relief Chen seeks. The reasoning of the delegated authority order shall stand.

Under Commission Rule 12.408(c), a reparations litigant may ask the Commission to reconsider a delegated authority order, provided that the request is made within seven days after the delegated authority order is served. Chen submitted a letter that we will treat as a request for reconsideration, but filed it out of time. Under applicable rules for the computation of time, Chen needed to file his request on or before August 3, 2004.<sup>1</sup> Chen's letter was filed on August 11 and received by the Commission on August 12. Respondents filed a responsive letter through counsel on August 23, 2004, characterizing complainant's claims as "baseless and spurious" and urging the Commission to "consider this matter closed."

We invoke Rule 12.4(b) to accept the late submission. The rule provides:

<sup>1</sup> See Commission Rules 12.5, 12.10.

In the interest of expediting decision or for other good cause the Commission may . . . waive any rule in this part in a particular case, and may order proceedings in accordance with its direction upon a determination that no party will be prejudiced thereby, and that the ends of justice will be served. Reasonable notice shall be given to all parties of any action taken pursuant to this provision.

Chen's letter suggests that he did not understand that the order of July 22 was a final action dismissing his appeal. His letter continues to argue the merits of his case, stating why his original notice of appeal was timely and should be accepted. He appears to believe that his case remains open before the Commission and appears not to recognize that his arguments have been addressed and rejected. Chen's apparent confusion persists despite the unequivocal statement in the July 22 order, "Chen's notice of appeal will not be accepted and his attempted appeal is dismissed." Order of July 22, 2004 at 2.

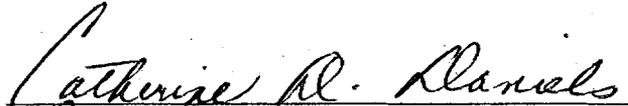
This apparent confusion on Chen's part prevented him from electing whether to exercise his appeal rights beyond the Commission in a timely fashion. Appeals from dispositive orders in reparation cases must be filed within 15 days after notice of the order. *See infra* note 2. That deadline had passed before Chen submitted his letter. In these circumstances, we find good cause to invoke Rule 12.4 to clarify for this *pro se* claimant the procedural posture of this matter. *Cf. Hess v. Mount*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. ¶ 25,039 (CFTC April 17, 1991) (applying Rule 12.4 to set aside a default order beyond the generally applicable window for such relief).

On reconsideration of this matter, we find no basis to disturb the reasoning or the result of the delegated authority order. We reassert the result and the reasoning of the July 22, 2004 order and incorporate its reasoning herein by reference. By this order, on this date, Chen's appeal is dismissed. Under the Commodity Exchange Act, he may seek further review in an

appropriate United States Court of Appeals. This is a final order of the Commission, effective as of the date of its service.

IT IS SO ORDERED.<sup>2</sup>

By the Commission (Acting Chairman BROWN-HRUSKA and Commissioner LUKKEN).

  
Catherine D. Daniels  
Assistant Secretary of the Commission  
Commodity Futures Trading Commission

Dated: September 30, 2004

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<sup>2</sup> Under Sections 6(c) and 14(e) of the Commodity Exchange 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. 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.