



U.S. COMMODITY FUTURES TRADING COMMISSION

Three Lafayette Centre
1155 21st Street, NW, Washington, DC 20581

SIMEON ROBINSON, *
Complainant, *
v. * CFTC Docket No. 00-R080 *
ALTERNATIVE COMMODITY TRADERS d/b/a *
LEE HOWARD SEID, RANDY FARBER, *
RICHARD STUART SEID and *
LEE HOWARD SEID, *
Respondents. *
*

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U.S. COMMODITY FUTURES TRADING COMMISSION

OPINION AND ORDER DISMISSING COMPLAINT

Respondents Alternative Commodity Traders, Randy Farber, Lee Howard Seid and Richard Stuart Seid have moved to dismiss the complaint due to the willful and gross misconduct of complainant Simeon Robinson in this proceeding. The motion is **GRANTED**. Because of the severe nature of the sanction, this Opinion and Order addresses, in detail, the nature and course of this troubling case of misuse of the reparations forum.

Simeon Robinson's Trading

"I hope we have a long and prosperous run. Of course, there will be some ups and downs, but that's to be expected. Nevertheless, let's move on and see what the end is gonna be!"¹

¹ Commodity Futures Trading Commission Reparations Complaint Form of Simeon Robinson ("Complaint") at C6 (Memorandum from Simeon Robinson to Alternative Commodity Traders d/b/a Lee Howard Seid, dated September 24, 1999).

From September 20, 1999 to December 17, 1999, Simeon Robinson ("Robinson"), an experienced commodities speculator,² maintained a nondiscretionary options and futures account introduced by Alternative Commodity Traders d/b/a Lee Howard Seid ("ACT"), and cleared by LFG, LLC ("LFG"), ACT's guarantor. Until it began to wind down in December, the account was actively traded with -- as Robinson had expected -- its fair share of "ups and downs."

On September 17, 1999, Robinson forwarded a \$2,500 check to LFG to open the account.³ Robinson traded frequently over the period of time the account was active, concentrating mostly on options, with some foreign currency futures contracts.

Although alleged as unauthorized, Robinson's trading began with the purchase of 9 December Japanese yen put options.⁴ The options ultimately expired worthless.⁵ Robinson's trading activity increased over the next couple of weeks. On September 23, 1999, Robinson bought 10 December gold call options.⁶ On September 24, he bought another 5 and hedged that position, buying 3 December gold puts.⁷ Robinson also sent another check

² Id. at 10. Robinson offered to share his "good leads" with his brokers. Id. at C6.

³ Id. at 2.

⁴ Id.

⁵ Id. at C76.

⁶ Id. at C4.

⁷ Id. at C5.

to the respondents, this time for \$1,500.⁸ Robinson made his first substantial money on September 27, 1999, when he sold 15 December gold call options.⁹ He pocketed (net of commissions and fees) \$6,511.80 on the exchange.¹⁰ Emboldened, he bought another 50 December gold calls and sent in another check, this time for \$3,800.¹¹

Robinson hit the proverbial jackpot on October 5, 1999, when his gold options went through the roof. At different times throughout the day, Robinson liquidated his 55 December gold calls.¹² This transaction yielded a net profit of over \$125,000.¹³ Robinson was obviously feeling pretty good as he commented, allegedly in jest, on a phone call to Randy Farber that he wished he could get another 1,000 or 10,000 gold option positions.¹⁴ Randy Farber responded, apparently missing the joke, that he could not get Robinson that many contracts but could, perhaps, get him 500.¹⁵ In a subsequent phone call, later that day, Farber told Robinson, "we couldn't get them," meaning

⁸ Id. at C6.

⁹ Id. at C8.

¹⁰ Id.

¹¹ Id. at C8, C10.

¹² Id. at C12.

¹³ Id. at C13.

¹⁴ Id. at 7.

¹⁵ Id.

the 500 gold call positions.¹⁶ Farber then told Robinson that he could try again tomorrow, a plan to which Robinson agreed. Or did he? Robinson claims that he never authorized the purchase of the gold contracts, a fact denied by the respondents. Regardless, the next day, Farber called Robinson and told him, "We got them. You're in there."¹⁷ What Farber was referring to was the purchase of 300 December gold calls for about \$90,000. Robinson's fortuitous timing continued as the price of these options rose \$33,000 during the course of the day, putting his account value at its high point, over \$151,000.¹⁸ Robinson claims that he was never informed of the sharp increase in price of these allegedly unauthorized options and only found out about it when he received his statement a couple days later.¹⁹ By that time, October 8, the value of the calls had sunk to \$81,000.²⁰ Those calls ultimately expired worthless on November 12.²¹ That same day, October 8, seeking to catch the market decline, Robinson bought 45 December gold puts.²² Around that time, he

¹⁶ Id.

¹⁷ Id.

¹⁸ Id. at C14.

¹⁹ Id. at 3, C14.

²⁰ Id. at C17.

²¹ Id. at C57.

²² Id. at C16.

also expanded his trading horizons by purchasing 50 December coffee calls and 30 November light crude puts.²³

Although the record does not contain all of his account statements, Robinson seems to have made an average of about two trades per day for the rest of October. He had mixed results. He also claims that at least 11 of these trades were unauthorized.²⁴ Robinson withdrew a total of \$16,000 from his account during the month.²⁵ At the end of the month, the market value of Robinson's account had declined to about \$44,000.²⁶ And, in a sign of things to come, he had also begun to run account deficits.²⁷

In November, Robinson's account was traded at a similar pace, although somewhat more aggressively. Robinson claims that approximately half of the November trades were made without his authorization.²⁸ The account's fortune continued to sink. For example, in a disputed trade made on November 3, 1999, 50 December gold calls were purchased for the account, costing \$12,500 plus nearly \$1,900 in commissions and fees.²⁹ These calls expired worthless, less than two weeks later, on November

²³ Id.

²⁴ See Amendment to Damage Claim, dated July 6, 2000.

²⁵ See Complaint at C25, C42.

²⁶ Id. at C43.

²⁷ Id.

²⁸ See Complaint; Amendment to Damage Claim, dated July 6, 2000.

²⁹ See Complaint at C48.

12, 1999.³⁰ Despite three deposits totaling over \$17,000, the market value of his account had dropped to less than \$700 by the end of the month.³¹

In December, Robinson's activity was limited to sending the respondents a \$650 check on which he ultimately stopped payment.³² The last account statement in the record, dated December 17, 1999, indicates a debit balance of \$402.52.³³ In the end, Robinson's losses exceeded his gains by a little more than \$9000. Robinson's "long and prosperous run" was over.

Or was it?

Simeon Robinson's Complaint

"Risky investments by definition often fizzle, and an investor who loses money is a prime candidate for a suit to recover it."³⁴

The end of Robinson's trading run marked the beginning of his litigation run. On May 24, 2000, Robinson filed a complaint under the Commodity Future Trading Commission's Rules Relating to Reparation Proceedings, 17 C.F.R. §§12.1 et seq., seeking to recover from LFG, ACT, and three principals and/or associated persons of ACT (Randy Farber, Lee Howard Seid and Richard Stuart

³⁰ Id. at C57.

³¹ See Complaint at C52-53, C68, and C75-76.

³² Id. at C78.

³³ Id. at C80.

³⁴ Carr v. Cigna Securities, Inc., 95 F.3d 544, 547 (7th Cir. 1996) (Posner, C.J.).

Seid) over \$467,000 in damages alleged to have resulted from a miscellany of unauthorized trades.

Robinson alleges that 33 trades were unauthorized. (One of the trades, however, is not actually a trade but rather an missed opportunity to capitalize on the increase in value of an allegedly unauthorized 300 December gold call position). These trades are fairly evenly dispersed among those which he concededly authorized and appear to constitute almost half of the activity in the account. The bulk of these trades take three forms: first, an unauthorized purchase that Robinson holds until expiration, second, an unauthorized purchase that is offset by a later unauthorized sale, and, last, an unauthorized sale of an authorized purchase.

Robinson's allegations of widespread unauthorized trading are particularly striking, insofar as he concededly had notice of the allegedly unauthorized trades, talked about them with the respondents, held on to them, does not claim to have repudiated any of them at the time, and continued to trade with the respondents throughout the period of the purported wrongdoing.³⁵

³⁵ Robinson admits that he was in timely receipt of the account statements, reflecting the allegedly unauthorized trades, see Complaint at 23, and even attached most of these statements to the Complaint. Yet, he apparently did nothing to rectify the situation. He does not even claim to have complained to the respondents (with one exception, see Complaint at 7) and continued to trade actively. In fact, on at least eight different occasions, Robinson let the allegedly unauthorized trades expire worthless, sometimes after holding them for as long as six weeks.

In addition to receiving the account statements, the record indicates that Robinson communicated with the respondents nearly every day. Id. at 12. This level of contact and Robinson's
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Subsequently, Robinson has also asserted (without intelligible explanation) that there was never a valid contract between him and the respondents.³⁶ This second claim is of course nonsense. Under fundamental contract law, the parties' conduct -- including Robinson's extensive trading, his ongoing communication with the respondents, his dickering over the price of commissions, and numerous deposits and withdrawals from the account -- conclusively establishes Robinson's relationship with the respondents to be contractual.³⁷

One might reasonably ask how does a \$9,000 out-of-pocket loss translate into a \$467,000 damage claim? Well, the Director of the Office of Proceedings ("the Director") quite understandably could not figure it out and required Robinson to amend the claim.³⁸ In response, Robinson came up with another

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continuing dealings with the respondents certainly tends to undermine his claim that the trades were unauthorized. For example, on October 8, Robinson indicates that he had a telephone conversation with one of the respondents. Id. at 21. During the call, Robinson complained he had been overcharged on the commission for the October 6 purchase of 300 December gold calls -- the same trade he now contends was unauthorized. Id.

³⁶ See Complainant's Motion to Compel Respondents to Produce Credible Documented Evident [sic] of a Legally Binding Contract Between LFG, L.L.C. and Complainant, Simeon Robinson, dated May 7, 2001; but see, Complaint at 2 ("On September 17, 1999, Simeon forwarded a check in the amount of \$2,500 to LFG to open an options trading account.").

³⁷ See Farnsworth on Contracts §3.14 (2d ed. 2000).

³⁸ See Letter from R. Britt Lenz, Director, Office of Proceedings, to Simeon Robinson, dated June 15, 2000, at 1 ("We cannot determine from your complaint exactly how you calculated your damages . . .").

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calculation which was equally outlandish, but that lopped his

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Robinson claimed that the \$467,159.25 damage figure represented a calculation of "[t]he total costs of premiums plus commission fees plus other expenses generated by trading activities on the account" See Complaint at 24. As best we can tell, Robinson generated the \$467,159.25 figure by adding \$295,028.85 + \$146,851.25 + \$25,280, and making an \$0.85 arithmetic error (since the three figures actually sum to \$467,160.10). Id. at 5.

The first of these components, \$295,028.85, appears to represent Robinson's calculation of gross premiums and commissions for purchases made on the account. Id. This method of course -- even if appropriately applied to the 33 allegedly unauthorized trades -- vastly overstates any possible damages, since not all of these option positions expired worthless -- indeed some were even offset at a profit! The damage figure is further inflated by Robinson's inexplicable computations. For example, three of the allegedly unauthorized trades involve the purchase of 9 December Japanese yen puts, 5 December gold calls, and 10 January platinum puts. Id. at 6-7. However, when you add up all of the premiums, commissions, and other assorted fees from these trades you only get a total of \$8,451.91, an amount \$11,353.60 short of Robinson's figure. Id. at 5, C2-C9.

As if this were not bad enough, Robinson's second part of the calculation -- \$146,851.25 -- involves some shameless triple (or more) counting. This sum purports to reflect the so-called "margin deficits" that accumulated on his account. Id. at 5. These deficits occurred when Robinson bought options without enough cash in his account. The result was a debit balance that remained on his account until he added more money or made a sale. These sums, of course, are already reflected once in Robinson's calculation of gross premiums and fees. Moreover, Robinson's unorthodox method for calculating these debit balances results in the same sums being counted again and again and again. For example, if you have a \$1,000 debit balance for a period of 10 days, what, disregarding interest and transaction costs, would be your total debt at the end of the 10 days? For most people, the debt would remain at \$1,000. Using the Robinson calculus, however, our hypothetical investor would be saddled with \$10,000, or \$1,000 for each of the 10 days. In calculating this part of his damages, Robinson seems to have used this cumulative method.

Finally, Robinson claimed \$25,280 (the deposits actually total \$25,278.09) that he deposited into the account. Id. Robinson, however, failed to subtract the \$16,000 he withdrew from the account. Id. at C25, C42.

claim down to a mere \$359,400.³⁹ At this point, the Director

³⁹ See Amendment to Damage Claim, dated July 6, 2000. Robinson's amended claim specifically itemizes his alleged damages for each of the 33 allegedly unauthorized trades.

The single largest component of Robinson's damage calculation relates to the October 6, 1999 purchase of 300 December gold calls. See Complaint, at 7-8. The total cost of this trade, including premiums, commissions, and fees, was \$108,732. Id. at C14. Although Robinson claims that the trade was unauthorized, he concedes that he was informed of the trade by Randy Farber immediately after its execution. Id. at 3. Robinson then held the position for more than a month before the options expired worthless. Id. at C57. The Complaint contains no suggestion that during that period Robinson made any demand that the gold calls be liquidated or that the position be accepted by the respondents. Indeed, Robinson claims an extra \$33,000 in damages on this trade under the odd theory that respondents breached an alleged affirmative duty to keep him orally informed about any increase in the allegedly unauthorized position's value, and thereby prevented him from having the knowledge necessary to liquidate it at the top of the market. Id. at 3; see Amendment to Damage Claim at 24.

The bizarre qualities of Robinson's factual allegations aside, Robinson's method of calculating his damages for the 33 allegedly unauthorized trades is simply ridiculous. Robinson repeatedly claims as damages revenues that he received from the allegedly unauthorized sale of his positions. For example, on November 4, Robinson claims an unauthorized trade was executed resulting in the purchase of 10 January gold puts. See Amendment to Damage Claim, at 24. He claims damages from this trade of \$3,347.40 reflecting the premium, commissions, and other fees paid. Id. Robinson also claims damages, this time in the amount of \$1,534.40, for the amount realized from the sale of that position on November 12. Id.; see also Complaint at B10. Indeed, Robinson even employs this technique to allegedly unauthorized but profitable trades. To give but two of many possible examples, on October 7, Robinson authorized the purchase of 30 November light crude puts, paying, not including commissions and fees, \$6000. Id. at B6, C15. The next day, in an allegedly unauthorized trade, the 30 November light crude puts were sold for \$34,000, yielding a profit of \$28,000 not including commissions or fees. Id. at C16. Robinson claims damages of \$34,118.20 reflecting the sale price plus commissions and fees. See Amendment to Damage Claim, at 24. A similar situation occurred on October 11 with the allegedly unauthorized sale of 50 December coffee calls. The sale of those calls, after deducting for commissions and fees, returned a profit of \$11,661. See (continued..)

apparently gave up and forwarded Robinson's complaint.⁴⁰ After the forwarding of the Complaint, Robinson sought to amend it to triple-up his claim, by seeking an additional \$718,000 in punitive damages,⁴¹ but the motion was denied.⁴²

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Complaint, at C18. In this case, Robinson claims damages of \$28,264.50 again reflecting the sale price plus commissions and fees. See Amendment to Damage Claim at 24.

Finally, once again, Robinson claims \$25,278 that he deposited into the account, without subtracting the \$16,000 that he withdrew. Id.; Complaint at C25, C42.

⁴⁰ See Letter from R. Britt Lenz, Director, Office of Proceedings, to the named respondents, dated July 14, 2001.

⁴¹ See Robinson's Motion to Amend the Complaint to Claim Punitive Damages Based upon New Evidence, dated November 28, 2000 at 2 (arguing that Robinson had discovered "new evidence to support an appropriate claim of punitive damages.") See also Respondents' Reply to Complainant's Motions for Time Extension to Answer Respondents' Discovery and to Amend the Complaint to Claim Punitive Damages, dated November 29, 2000.

⁴² See Transcript of Conference Staying Proceeding, dated November 30, 2000, ("November 30 Conference") at 27-30. Only under one very limited exception are punitive damages recoverable in the reparations forum. See 7 U.S.C. §18(a)(1)(B) (providing for an award of punitive damages up to two times the amount of actual damages based upon a "willful and intentional violation in the execution of an order on the floor of a contract market."). The legislative history indicates that this exception was adopted in response to a massive Federal Bureau of Investigation sting operation to detect and prosecute widespread trading abuses by floor brokers and traders on the Chicago Board of Trade. See United States v. Dempsey, 768 F.Supp. 1277 (N.D.Ill. 1991), aff'd sub nom. United States v. Ashman, 979 F.2d 469 (7th Cir. 1992). The two major components of the bill, the regulation of dual trading and the imposition of more stringent audit requirements, as well as the punitive damages provision, were designed to counter the abuses of these practices and restore the public's faith in the commodity markets. See 138 Cong Rec. S. 17868, Vol. 138 No. 144, 102nd Cong. 2nd Sess. (Oct. 8, 1992).

The Complaint alleges no execution misconduct on the exchange floor. When asked at the November 30 conference, what "new evidence," he had to support a punitive damage claim, the
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The five named respondents, jointly represented by Michael J. Conti, Esq., ("Conti") filed an answer asserting that Robinson authorized all of the trades in his account, and denying any allegations of wrongdoing. In addition, the respondents counterclaimed for the \$402.52 debit balance and for attorneys' fees pursuant to a prevailing party clause contained in Robinson's contract with LFG.⁴³

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best Robinson could come up with was to utter "I feel there was a conspiracy." November 30 Conference at 7-9.

⁴³ Respondents Response to Complainant's Complaint, dated September 5, 2000 ("Answer"). Robinson's contract with LFG included an indemnification clause containing the following: ". . . Customer agrees to reimburse LFG on demand for any cost of collection incurred by LFG in collecting sums owing by Customer under this agreement and any cost incurred by LFG in successfully defending against any claims asserted by Customer, including attorneys' fees, interest and expenses." *Id.*, Exhibit 1 (Customer Agreement) at 11, ¶6; see also Answer at 21-23.

The "American rule" governs the award of attorneys' fees in reparations proceedings. See Pal v. Reifler Trading Corp., [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶27,237 at 45,978 (CFTC Feb. 2, 1998); Sherwood v. Madda Trading Co., [1977-1980 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶20,728 at 23,025 (CFTC Jan. 5, 1979) (applying the American rule in Alyeska Pipeline Service Co., v. Wilderness Society, 421 U.S. 240 (1975), as the standard governing awards of attorneys' fees in Commission reparations proceedings.). Under this standard, attorneys' fees may be awarded against a party that has engaged in litigation-related misconduct. See Pal, ¶27,237 at 45,978; Sherwood, ¶20,728 at 23,025. The rule also permits contractually based counterclaims for attorneys' fees based on prevailing party clauses such as the one that Robinson signed -- even in circumstances where an unmeritorious complaint is pursued in good faith. See Pal, ¶27,237 at 45,978; Alyeska, 421 U.S. at 257-259; F.D. Rich Co. v. Industrial Lumber Co., 417 U.S. 116, 126, 129 (1974); Fleischmann Distilling Corp. v. Maier Brewing Co., 386 U.S. 714, 717 (1967). Also see this Court's discussion in AAA & Brothers International Financial Corp. v. Pioneer Futures, Inc., [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶26,925 (CFTC Dec. 30, 1998).

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Simeon Robinson's Unlicensed Attorney, Ray Pratt

"[L]imiting the practice of law to members of the bar protects the public against the rendition of legal services by unqualified persons."⁴⁴

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Nonetheless, Robinson (and countless other reparations complainants) may have been misled by the Commission's instructional materials into filing a reparations complaint without a proper appreciation of the counterclaim risks which he faced. For example, as late as November 2000, the Commission's website contained the false statement that "The CFTC does **not** accept counterclaims seeking attorneys' fees incurred by a respondent in simply answering or defending the reparations claim." Questions and Answers About Filing a Reparation Claim & Common Terms, <http://www.cftc.gov/proc/pcdrepgna.htm> (emphasis in original). Although this particular statement has since been dropped, the website continues to misinform the public with the similar and equally false representation that "The Commission does **not** allow recovery of attorneys' fees unless the other side engaged in bad faith litigation tactics. Strongly denying a claim is not bad faith litigation." Id. (emphasis in original). There is a disturbing irony in considering the prospect that unwitting complainants have filed fraud claims in reparations in reliance on the website's false statements.

In fact, at the Court's first and only conference that he attended -- more than six months after he filed his complaint -- it was evident that Robinson did not appreciate the risk that attorneys' fees might be awarded against him. See November 30 Conference at 36-38. Luckily for Robinson, however, the issue of attorneys' fees dropped out of the case when LFG filed a petition for bankruptcy under 11 U.S.C. §§101 et seq. As a consequence, the Complaint as to LFG, along with its counterclaim, was dismissed without prejudice, pursuant 17 C.F.R. §12.24(a)(3) and (d)(2). See Order of Dismissal, dated April 12, 2001. Subsequently, in anticipation of Conti's withdrawal as counsel, see Order, dated May 2, 2001, the remaining four respondents waived all other claims for attorneys' fees. See Letter from Michael J. Conti, Esq. to the Court, dated May 1, 2001. See also Letter from Michael J. Conti, Esq. to the Court, dated April 20, 2001; Amended Summary of Time and Costs, dated March 6, 2001; Respondents' Brief Regarding Awardable Attorneys' Fees in This Action, dated March 2, 2001.

⁴⁴ American Bar Association Model Rules of Professional Conduct, Rule 5.5 Comment.

Robinson's remarkable complaint, and all other court filings in this proceeding, are the product of an unlicensed attorney on his payroll, Ray Pratt.⁴⁵ Regrettably, Pratt's hand in this case is everywhere and unstayable.

Even before the filing of the Complaint, Pratt represented Robinson in dispute negotiations with LFG, and, in this capacity, prepared for Robinson a massive documentary submission which he presented to LFG's General Counsel.⁴⁶ After negotiations failed, it was Pratt who contacted the staff of the Office of Proceedings for assistance in his drafting of Robinson's complaint.⁴⁷ When

⁴⁵ Robinson is the owner and President of S.R. & Associates Network Resources & Services, Inc. ("S.R. & Associates") officed in Philadelphia, Pennsylvania. The company "servic[es] business & individual needs through information technology, the internet, e-business and e-commerce." S.R. & Associates Stationary (used by both Robinson and Pratt on correspondence contained in the public file); see also Pratt's Motion to Address the Matter of Unauthorized Practice of Law on the Record; and Further, Request the Honorable Court to Vacate the Order to Stay the Reparations Proceeding, dated December 7, 2000 ("Pratt's Motion"), at 1-2; Answer, Exhibit 1. Pratt is SR & Associates' Chief Information Officer and Director of Corporate Communications. Pratt's Motion at 2. "He used to be a products liability lawyer a long time ago." November 30 Conference at 9 (Robinson); see also id. at 33.

⁴⁶ See Complaint at 4-5; and attached document styled "The Written Dispute Presentation of Simeon Robinson in the Matter of Linco Futures Group Account E752 30 56264 Prepared by Ray Pratt and Presented to John Belom, LFG Chief Counsel, dated March 22, 2000." Pratt's legalistic package contained a statement of facts and supporting materials. It even contained an affidavit which Pratt drafted for Robinson.

⁴⁷ See Letter from Ray Pratt to Jacquelyn McPhail, Futures Trading Specialist, Office of Proceedings, dated May 24, 2000. Pratt's letter concluded,

"Please contact Mr. Robinson or myself should there be any questions or matters that need to be addressed in the process of completion

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the Director of the Office of Proceedings got wind of this, he sent Robinson a letter informing him that the Reparations Rules prohibit Pratt from representing him,⁴⁸ and that in the future the Office would deal only with Robinson directly.⁴⁹

Following the receipt of this cautionary letter, Robinson continued to file papers prepared by Pratt⁵⁰ in a ghost writing

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of the complaint and the service process. I do believe that I did manage to get the complaint process correct the first time. If I did manage to get it correct, it is thanks to your assistance and my diligence to do the necessary research into this matter."

Id.

⁴⁸ The Director directed Robinson attention to Rule 12.9, 17 C.F.R. §12.9. See Letter from R. Britt Lenz, Director, Office of Proceedings, to Simeon Robinson, dated June 15, 2000 ("Lenz Letter"), at 1. Under that rule, an individual reparations complainant is limited to either representing himself ("pro se" representation) or being represented by an attorney at law admitted to practice before the highest court in any state or territory or of the District of Columbia.

⁴⁹ Id.

⁵⁰ Pratt prepared the following papers for Robinson in the time period between receipt of the Lenz letter and the Court's November 30, 2001 conference with the parties: Complainant's Request to Find Respondents in Default for Presenting False Statements of Extenuating Circumstances to Obtain an Extension of Time, dated September 7, 2000 ("September 7 Motion"); Complainant's Request to Find Respondents in Default for Failure to Answer the Complaint and Failure to Sign the Answer, dated September 12, 2000 ("September 12 Motion"); Complainant's Rebuttal Response to Respondents' Reply to Complainant's Motion to Find Respondents in Default for Making False Statements to Obtain an Extension of Time to Answer the Complaint, dated September 18, 2000 ("September 18 Rebuttal"); Complainant's Reply to Respondents' Counterclaim, dated September 18, 2000; Complainant's Motion for Time Extension to Complete Discovery, dated October 19, 2000; Complainant's Discovery Requests, dated November 16, 2000; Complainant's Motion for Time Extension, dated November 20, 2000; Robinson's Motion to Amend the Complaint to
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capacity.⁵¹ Many of these were frivolous, scandalous and/or

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Claim Punitive Damages Based Upon New Evidence, dated November 28, 2000. These documents are identical in style as the Complaint; it is obvious the same person wrote them.

⁵¹ There is a specter haunting American courts today, the specter of ghost attorneys. Increasingly, these ghosts also possess the reparations forum. See Palomares v. Bradshaw, [1999-2000 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶28,268 at 50,624 n.45 (CFTC Oct. 2, 2000). Ghost attorneys are those attorneys who prepare, in whole or in part, documents and other work product for otherwise pro se litigants. In the last several years, courts have become more alert to the problems that ghost representation may cause. See Ricotta v. California, 4 F. Supp.2d 961, 985-88 (S.D. Cal. 1998).

First, because many courts (as well as the Commission, see Taub v. Lind-Waldock & Co., [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶28,550 at 51,970 (CFTC May 30, 2001); Gray v. LFG, LLC, [1999-2000 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶28,235 at 50,459 n.7 (CFTC Sept. 12, 2000); Hall v. Diversified Trading Sys., Inc., [1992-1994 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶26,131 at 41,751 (CFTC July 7, 1994); Motzek v. Monex Int'l Ltd., [1992-1994 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶26,095 at 41,625 (CFTC June 1, 1994)) construe complaints by pro se litigants liberally and afford them greater latitude as a matter of judicial discretion, undisclosed ghost attorneys can abuse this practice to the prejudice of an opposing party. See Johnson v. Board of County Comm'rs, 868 F. Supp. 1226, 1231 (D. Colo. 1994).

Second, ghost representation is a deliberate evasion of the responsibilities imposed on counsel in federal courts, see Fed. R. Civ. Pro. 11, in reparations, see 17 C.F.R. §12.12(b), and by applicable professional codes. See Johnson, 868 F. Supp. at 1231-32. By not signing documents prepared for the Court, attorneys escape their duties to the Court. See 17 C.F.R. §12.12(b).

Third, such behavior involves an attorney in his client's fraud. See Johnson, 868 F. Supp. at 1232. In an ethics opinion, the American Bar Association has determined that "an undisclosed counsel who renders extensive assistance to a pro se litigant is involved in that litigant's misrepresentation" to the Court "in violation of ABA DR 1-102(a)(4) [which states] 'a lawyer shall not . . . (4) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation.'" ABA Comm. on Ethics and

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unauthorized.⁵² It also remained evident that Pratt was continuing to formulate and advise Robinson as to all aspects of

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Professional Responsibility, Informal Op. 1414 (1978). See also Rothermich, Ethical and Procedural Implications of "Ghostwriting" for Pro Se Litigants: Toward Increased Access to Civil Justice, 67 Fordham L. Rev. 2687, 2697 (1999) ("It is therefore likely that the failure to disclose ghostwriting assistance to courts and opposing parties amounts to a failure 'to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client,' which is prohibited by [American Bar Association] Model Rule 3.3."); Cohen, Afraid of Ghosts: Lawyers May Face Real Trouble When They 'Sort of' Represent Someone, 80 ABA Journal (Dec. 1997).

Fourth, ghost attorneys avoid ethical rules designed to protect the attorney/client relationship. See Laremont-Lopez v. Southeast Tidewater Opportunity Center, 968 F. Supp. 1075, 1079 (E.D. Va. 1997). For example, all jurisdictions have regulations on when and how an attorney can withdraw, but a ghost attorney can avoid such regulations by never disclosing his or her existence to the Court. Id.

The problem of ghost writing however severe it may be, is infinitely more serious where -- as here -- the attorney practitioner is unlicensed. See 42 Pa.C.S. §2524(a) ("any person who within this Commonwealth shall practice law . . . without being an attorney at law . . . commits a misdemeanor of the third degree upon a first violation. A second or subsequent violation of this subsection constitutes a misdemeanor of the first degree").

⁵² In addition to Robinson's motion seeking to amend the Complaint to claim punitive damages, Pratt prepared several other vexatious filings during this time period. For example, the September 7 Motion drafted by Pratt seeks a \$359,000 default award and debarment of the respondents' counsel based on the motion's unsupported allegation that respondents' counsel had made false statements in a request seeking additional time to answer the Complaint. Specifically, these false statements were allegedly made regarding the situation in the United States Virgin Islands where one of the respondents' attorneys represented that he was vacationing. Because of Hurricane Debby, respondents' counsel claimed that he was delayed in returning to the mainland, necessitating the request for an extension. See Respondents' Request for Additional Time to Answer, dated August 23, 2000. The September 7 Motion insinuates, without substantiation, either that (1) respondents' counsel was not in the Virgins Islands during the period of the storm, or (2) if he

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Robinson's litigation tactics and strategy. At a November 30, 2000 conference, the Court addressed these issues.

At the conference, Robinson could not articulate either the factual or legal basis of the motion that he had filed seeking to amend his complaint to claim punitive damages,⁵³ stating that "Ray Pratt, he is -- has assisted me in preparing this case . . .

(..continued)

was he could have found a plane seat out. See also Robinson's unauthorized September 18 Rebuttal.

The September 12 Motion seeks the same \$359,000 default award, this time by erroneously asserting that the Answer was not properly verified. Needless to say, the Director denied both motions. See Letter from R. Britt Lenz, Director, Office of Proceedings, to Simeon Robinson, dated September 21, 2001.

⁵³ November 30 Conference at 4-10. The motion to amend the complaint -- like all of Robinson's other papers prepared by Pratt -- was signed by Robinson. Rule 12.12 provides in relevant part:

"(b) *Effect.* The signature on a document of any person acting either for himself or as attorney or agent for another constitutes a certification by him that:

(1) He has read the document subscribed and knows the contents thereof;

. . . .

(3) To the best of his knowledge, information and belief, every statement contained in the document is true and not misleading"

17 C.F.R. §12.12.

In signing Pratt's papers without full knowledge of the same, Robinson violated Rule 12.12 and undertook a fraud on the Court. See November 30 Conference at 14 (the Court stating, "If you're representing yourself, pro se, Mr. Robinson, it's incumbent upon you not only to sign these pleadings, but also to understand what you're signing.").

.⁵⁴ And when pressed on the matter, Robinson conceded that Pratt was preparing the Court papers and giving Robinson legal advice.⁵⁵ The Court informed Robinson that it appeared that Pratt's activities on his behalf constituted the unauthorized practice of law and that it would not consider any more papers drafted by Pratt.⁵⁶

The Court then stayed the case for Robinson to consider whether he would elect to proceed pro se without reliance on legal assistance from Pratt⁵⁷ or to retain properly licensed

⁵⁴ November 30 Conference at 7.

⁵⁵ See id. at 10-12. In Robinson's words, Pratt's "a lawyer, doing all of the legalities and necessary paperwork that should be forwarded." Id. at 12.

⁵⁶ Id. at 10-11, 30-31. As the Court explained to Robinson,

"Lawyers are licensed, and there's a reason why licensed lawyers make appearances before courts. In doing that the system therefore - - the system ensures that those who give legal representation both are responsible in their obligations toward the person they're representing and also responsible in terms of their conduct before the court."

Id. at 26-27.

⁵⁷ Id. at 34-35.

The Court: "You have to truly proceed pro se."

Robinson: "Right."

The Court: " -- without reliance on the legal advice of Mr. Pratt."

Robinson: "Yes, sir."

The Court: "Without the reliance on his crafting of pleadings for you --"

(continued..)

counsel to represent him.⁵⁸ On a multitude of different occasions, Robinson stated that he understood the nature of the

(..continued)

Robinson: "Yes, sir."

The Court: "-- in filing of, and provision of legal strategy for you in this case. You're going to have to truly proceed on your own, without his advice."

Robinson: "Yes."

Id.

⁵⁸ Id. at 38-39.

The Court: "It might well be penny-wise and pound-foolish --"

Robinson: "Gotcha."

The Court:: "-- not to actually retain counsel, who makes a proper appearance before me, and who is responsible both to you, to provide you with proper legal advice to best advance your claim --"

Robinson: "Yes."

The Court: "-- and is responsible to this court --"

Robinson:: "Yes."

The Court: "-- both in terms of legal ethics and in terms of the proper filing of pleadings."

Robinson: "Yes, sir."

The Court: "This is -- you know, I'm trying to help you."

Robinson: "I understand you. I appreciate what you're saying, sir."

The Court: "Okay. So --"

Robinson: "I really do."

(continued..)

problem and that he would make sure that Pratt was no longer involved in the case.⁵⁹ The conference closed with Robinson

(..continued)

Id.

⁵⁹ At the conference, Robinson was repeatedly warned that his continued reliance on Pratt would result in the dismissal of the complaint with prejudice, without it being heard on the merits.

The Court: ". . . You've got a serious claim here."

Robinson: "Yes, sir."

The Court: "I really want to hear it on the merits. You're not being served by having Mr. Pratt engage in the unauthorized practice of law, and advising you to file frivolous pleadings with this court. That's not helping you."

Robinson: "Yes, sir."

The Court: "Indeed, it's putting you at risk -- it's putting you at risk for not -- for having your complaint dismissed, without being heard on the merits --"

Robinson: "Yes."

The Court: "-- which would be a terrible result."

Robinson: "Yes, sir."

The Court: "And it's also putting you at risk for paying Mr. Conti's legal fees."

Robinson: "Yes, sir."

The Court: "Because if you don't prevail in this case, it -- there is a counterclaim that's been launched against you under a prevailing party contract clause, which you signed."

Robinson: "Yes, I did."

Id. at 35-37. See also id. at 43-44, 46, 50-51.

thanking the Court and promising to be "in touch" shortly.⁶⁰

Subsequent events, however, proved Robinson and Pratt to be both uncontrolled and uncontrollable. They remained steadfast in their determination that Pratt continue to be actively engaged in the case. To this end, they adopted a strategy of simply disobeying the Court's orders and embarked on a course to obstruct and scandalize its proceedings.

Robinson's and Pratt's Contemptuous Conduct

"I assert that my continued assistance to Mr. Robinson is not defiance of the Court's Order nor is it contempt for the Court or the Commission. I continue my persistent assistance to Mr. Robinson with due respect for the Court and the Commission, but cannot turn away from what I have knowledge of is criminal conduct in an original crime against Mr. Robinson, a continuing deception against Robinson to conceal the original criminal conduct, and the working of a fraud on the Court and the Commission."⁶¹

A week after the conference, it was Pratt, not Robinson, who got back in touch with the Court, filing a number of papers in his own name.⁶² Pratt admitted that he "drafted and prepared the

⁶⁰ Id. at 51.

⁶¹ Affidavit of Ray Pratt, dated March 15, 2001 at 1 (filed by Robinson).

⁶² See Letter from Ray Pratt to the Court, dated December 7, 2000; S. R. & Associates' Motion to Enter its Appearance on the Record as an Interested Person in the Above-Captioned Matter, dated December 7, 2000 ("S.R. & Associates' Motion"); Pratt's Motion to Address the Matter of Unauthorized Practice of Law on the Record; and Further, Request The Honorable Court to Vacate the Order to Stay the Reparations Proceeding, dated December 7, 2000; Pratt's Support Brief to Address the Matter of the Unauthorized Practice of Law on the Record; and Further, Request
(continued..)

Reparations Complaint and the documents filed in this matter," but pleaded that his involvement was necessary "in the interest of justice and fairness considering that Pratt has the knowledge and skill to prepare the necessary, technical crafting of the pleadings required for Robinson to make a statement of the case out of the trading activities in the account."⁶³ Indicating that he wanted to continue as Robinson's representative, Pratt alternatively seemed to argue (wrongly)⁶⁴ that Pennsylvania law does not bar the unauthorized practice of law, but -- if it does -- the Court should waive the Commission's own rules prohibiting Pratt from representing Robinson so as to preempt state law to the contrary.⁶⁵

If the Court did not take to that approach, Pratt suggested another path to the same result. He requested that he be permitted to represent Robinson's interests as an officer of Robinson's firm.⁶⁶ This is because, according to Pratt, the firm should be permitted intervenor or some lesser status in Robinson's case because "the other officers of S.R. & Associates "[intended to] become traders on the account at a future date"

(..continued)

the Honorable Court to Vacate the Order to Stay the Reparations Proceeding, dated December 7, 2001.

⁶³ S.R. & Associates' Motion at 4.

⁶⁴ See 42 Pa.C.S. §2524(a).

⁶⁵ See Pratt's Motion at 4, 5-7.

⁶⁶ See S.R. & Associates' Motion.

and to use the account's profits for "the business development" of S.R. & Associates.⁶⁷

On February 12, 2001, the Court denied Pratt's frivolous motions seeking authority to continue to interject himself into

⁶⁷ Id. at 2. As the respondents point out:

"Robinson represent[ed] upon the opening of his account that 'no other person or entity [had] any interest in or control of the account to which [the] agreement pertains.' Furthermore, all of the deposits to Robinson's personal account were made with Robinson's personal checks. All withdrawals from Robinson's account were issued to Robinson personally. And, finally, Pratt never had any contact with any of the respondents until after Robinson's account stopped trading."

Respondents' Memorandum of Fact and Law on Ray Pratt's Appearance in This Case and Further Case Administration, dated January 8, 2001, ("Respondents Memorandum on Pratt") at 10 (first bracket added, citations omitted).

It suffices to note that Pratt's "interest" in this case does not support intervention as a matter of right. See New York News, Inc. v. Kheel, 972 F.2d 482, 486 (2d Cir. 1992) (intervention as a matter of right requires, among other things, the person's interest to be "direct, substantial, and legally protectable"); H.L. Hayden Co. of New York, Inc. v. Siemens Med. Sys., Inc., 797 F.2d 85, 88 (2d Cir. 1986) (intervention as a matter of right not supported by interest that is "remote or contingent"); see also, Wapnick v. United States, 2000 WL 1718516 at *2 (E.D.N.Y. 2000) (finding that a husband's interest as beneficiary of wife's estate is "clearly a contingent interest"). Even in considering permissive intervention, the nature and extent of the person's interest remains an important factor. See H.L. Hayden, 797 F.2d at 89.

Moreover, Pratt does not meet the test for limited amicus curiae participation. The primary role of the amicus curiae is to assist the Court in reaching the right decision in a case that affects the interest of the general public. No such issue is presented here. Moreover, the amicus cannot assume a fully adversarial position, and is precluded from engaging in adversarial activities such as motions to compel. See Moore's Federal Practice Digest 3d §327.11[2].

this case, and specifically barred "Ray Pratt from practicing law in this proceeding and from representing complainant Simeon Robinson in any capacity relating to this case."⁶⁸

⁶⁸ See Order, dated February 12, 2001. On February 13, 2001, the Court sent a letter to the Pennsylvania Bar Association reporting on the nature and extent of Pratt's participation in Robinson's reparations case. See Letter from the Court to Louann Bell, Pennsylvania Bar Association, Unauthorized Practice of Law Committee, dated February 13, 2001. That same day, the Court received a 45-page (not including exhibits) unauthorized and scandalous reply to the Respondents' Memorandum on Pratt. See Complainant's Reply Memorandum to Respondents' Memorandum of Fact and Law on Ray Pratt's Appearance in This Case and Further Case Administration, dated February 11, 2001 ("Complainant's Reply Memorandum"). The reply was signed by "Simeon Robinson, pro se," but contained a "verification" signed by "Ray Pratt, Interested Person & Amicus Curiea [sic]." Among other things, the unauthorized document sought to vilify respondents' counsel for raising the issue of Pratt's unauthorized law practice. The following quote from the document gives a flavor of its unsupported rantings:

"Pratt's response to Mr. Conti comes down to the bottom line that Mr. Conti has attacked Pratt because Respondents do not have a legal defense to the Complaint (Rule 12.18); and further, Mr. Conti has made known and intentional misrepresentations of material facts to create the facade of a defense to the Complaint and avoidance of paying the reparations award as instructed by the Director and required pursuant to Rule 12.16."

Complainant's Reply Memorandum at 6. See also id. at 3 ("There are no safe harbors in this storm. There is no doubt that the memoranda in this matter demonstrate the process and progress of a war on the record here.").

On February 13, 2001, the Court struck Robinson and Pratt's highly offensive document from the record. See Order Striking Memorandum, dated February 13, 2001. That same day, the Court received a letter from respondents' counsel requesting that the Court "dismiss this case, based on the complainant's continuous contemptuous course of conduct during these proceedings." See Letter from Michael J. Conti, Esq. to the Court, dated February 12, 2001.

With the problem of Pratt's interference in the case finally disposed of (or so the Court thought), on February 13, 2001, the Court lifted its stay of the case, and scheduled another telephonic conference for eight days later to address discovery issues.⁶⁹ In addition to the usual service by mail, the notice of the conference was telefaxed to the parties immediately upon issuance. The notice only contained two paragraphs, with the second paragraph clearly informing that:

"The parties must participate in the conference in person or by counsel. The Court **CAUTIONS** that any party's failure to participate may result in the imposition of sanctions, including dismissal of the complaint or issuance of a default order as appropriate."⁷⁰

On February 20 at 3:55 p.m. -- on the eve of the conference scheduled for the next morning -- Robinson and Pratt hand delivered to the Office of Proceedings two unauthorized notices of appeal to the Commission of the Court's adverse rulings relating to Pratt's involvement this case.⁷¹ Both notices

⁶⁹ See Order Lifting Stay and Notice of Prehearing Conference, dated February 13, 2001.

⁷⁰ Id. (emphasis in original).

⁷¹ See Complainant's Notice of Intention of Filing an Appeal to the Court's Orders and Correspondence of February 13, 2001, dated February 20, 2001 (Robinson's Notice") (signed by "Simeon Robinson, pro se," but obviously prepared by Pratt); Interested Persons' Notice of Intention of Filing an Appeal of the Court's Orders and Correspondence of February 13, 2001; and also, on Grounds of 14th Amendment Due Process of Law Guarantee, dated September 20, 2001 ("Pratt's Notice") and attachments, (signed by Ray Pratt, Interested Person, Amicus Curiae"). The Commission subsequently dismissed Robinson and Pratt's notices. See Order Pursuant to Delegated Authority, dated February 27, 2001.

(continued..)

indicated that Robinson was fully aware of the Court's directive that he participate in the conference scheduled for the next day, and of the possible adverse consequences of failing to do so.⁷² Nonetheless, along with their unauthorized notices of appeal, Robinson filed a letter reflecting his obvious contempt for the Court.

Although he had never previously shown any compunction to pick up the telephone and call either the Court or the Office of Proceedings with procedural questions, requests or concerns, Robinson waited seven full days, until the afternoon before the scheduled conference, to hand-file his own notice curtly pronouncing that he would not participate "as the timing of the [conference] conflicts with pre-existing schedules already in place."⁷³

(..continued)

The attachments to Pratt's notice of appeal include copies of two incredible letters that Pratt sent to two United States Attorneys. By these letters, Pratt requested that Conti be criminally investigated for "working a fraud on a federal court and carrying out a vile obstruction of justice" in raising the issue of Pratt's unauthorized law practice. See Letter from Ray Pratt to Francis Hulin, United States Attorney, Central District of Illinois, dated February 20, 2001; Letter from Ray Pratt to United States Attorney, Eastern District of Pennsylvania, dated February 20, 2001.

⁷² See Robinson's Notice at 2; Pratt's Notice at 2.

⁷³ Letter from Simeon Robinson to the Court, dated February 20, 2001.

As the Court explained at February 21 conference,

"At the time I issued my order lifting the stay and Notice of Prehearing Conference, I did so at approximately noon on February the 13th, which was eight days ago.

(continued..)

Nonetheless, on February 21, at the time of the scheduled conference, the Court had no difficulty in contacting Robinson at his telephone number of record. At that time, the Court reminded Robinson of his obligation to participate in the conference, and questioned him as to the circumstances of his purported scheduling conflict and why it was not brought to the Court's attention earlier. Robinson's response was one of deeds not words: he hung up on the Administrative Law Judge.⁷⁴

On February 23, 2001, the Court issued a show cause order as to why the Complaint should not be dismissed and the counterclaim

(..continued)

At that time, almost immediately, I had my legal technician, Ms. Rita McMullan, call Mr. Robinson to inform him of its issuance, confirm his telephone number for purposes of the conference scheduled for today, and confirm his fax number, after which Ms. McMullan immediately faxed him a copy of the order.

At no time did he -- between now -- at no time between February 14th, when he received that order -- February 13th, when he received that order, and at which time Ms. McMullan talked to him -- at no time since then did he request that the conference be rescheduled. Indeed, he's never requested that the conference be rescheduled, and at no time prior to 4:00 p.m. yesterday, did he indicate that the prehearing conference posed a conflict for him."

Transcript of Telephonic Prehearing Conference, dated February 21, 2001 ("February 21 Conference"), at 4.

⁷⁴ See id. at 5-6.

granted as a consequence of Robinson's pervasive misconduct,⁷⁵ and set a telephonic hearing on the issue for March 6, 2001.⁷⁶

Robinson responded with another act of contempt. In clear violation of the Court's February 12 Order barring Pratt's participation in the case, Robinson filed a motion -- obviously

⁷⁵ See Order to Show Cause as to Why the Complaint Should Not Be Dismissed and the Counterclaim Granted; and Notice of Hearing dated February 23, 2001 ("Show Cause Order"). See also February 21 Conference at 11-12. As the Court explained,

"Progress in this case has been stymied for months as a consequence of complainant Simeon Robinson's insistence that Ray Pratt act as his attorney, although Pratt is not licensed as such. Pratt's handiwork in this case has included the formulation of Robinson's unclear legal theories, the drafting of a raft of impenetrable pleadings and frivolous court papers, and the orchestration of a set of litigation tactics that is both dilatory and vexatious.

. . . .

[Moreover] [a]ffronted by the Court's failure to countenance Pratt's continuing presence in this case, Robinson responded with what appears to be an overt show of contempt [by refusing to attend the February 21 conference]."

Show Cause Order at 1, 3.

⁷⁶ The Order contained the usual (and heretofore and hereafter disregarded) warning to Robinson,

"The parties must participate in the conference in person or by counsel. The Court once more **CAUTIONS** that any party's failure to participate may result in the imposition of sanctions, including dismissal of the complaint or issuance of a default order as appropriate."

Id. at 6 (emphasis in original).

drafted by Pratt -- seeking disqualification of the Administrative Law Judge and a stay of proceedings.⁷⁷ The Court denied the motion.⁷⁸ When they failed to get their way, Robinson and Pratt responded in their usual manner: by engaging in conduct evermore outrageous.

It was deja vu all over again. On March 5, 2001 -- one day before the scheduled show cause hearing -- Robinson and Pratt filed more papers with the Court: this time, three letters signed by Pratt. The first was a letter, addressed to Attorney General John Ashcroft, identifying Robinson and Pratt as African-Americans.⁷⁹ It expressed Pratt's belief (without any attempt at substantiation) that the Court's rulings and actions against Robinson and Pratt were the result of the Administrative Law Judge's alleged racial bigotry.⁸⁰ Pratt repeated this slanderous accusation in a second letter, this one addressed to Office of Proceedings staff.⁸¹ Robinson and Pratt also filed a copy of a letter that Pratt recently sent to yet another United States Attorney, seeking a criminal investigation of Conti relating to

⁷⁷ See Complainant's Motion to Recuse Pursuant to 12.305(b) and to Stay the Proceeding Pursuant to 12.309(d), dated March 1, 2001 ("Recusal Motion").

⁷⁸ See Order, dated March 2, 2001.

⁷⁹ See Letter from Ray Pratt to the Honorable John Ashcroft, United States Attorney General, dated March 2, 2001. It also identified Pratt as an "interested person" in Robinson's reparations case. Id. at 1.

⁸⁰ Id. at 1-3.

⁸¹ See Letter from Ray Pratt to Deedra Jones, Deputy Director, Office of Proceedings, dated March 2, 2001.

his representation of the respondents in this proceeding.⁸² Finally, they additionally filed what now had become Robinson's

⁸² See Letter from Ray Pratt to William A. Lewis, United States Attorney, District of Columbia, dated February 26, 2001, at 1 (" . . . Mr. Conti is using the telephone, the U.S. Postal Service and the internet to carryout his obstruction of justice and the concealment of criminal fraud.").

On March 12, 2001, Robinson and Pratt filed an application for interlocutory appeal of this Court's denial of Robinson's recusal motion continuing their scurrilous assault on the Court. See Complainant's Application for Interlocutory Review Pursuant to 12.305(b), 12.309(a)(1), 12.309(a)(4) and 12.309(b) on Grounds of Extraordinary Circumstances Shown on the Record, dated March 12, 2001 ("Application for Interlocutory Review") (signed by "Simeon Robinson, pro se," but containing a "verification" signed by "Ray Pratt, Interested Person & Amicus Curiae "). In an attached affidavit, Pratt admits to authoring the application (in violation of the Court's February 12 Order) as well as all other Court papers filed by Robinson. See Affidavit of Ray Pratt, dated March 15, 2001, at 1.

The application repeats its attacks over and over again in the course of 25 grueling pages. In short, Robinson claims that the respondents, respondents' counsel, and this Court have engineering a widespread criminal conspiracy against Robinson because he is black. The application provides not a shred of support for its accusations beyond the fact that the Court has denied Robinson's motion to amend the Complaint and sought to preclude Pratt from practicing law in the case.

This application, which is currently pending before the Commission, is one of the most offensive filings this Court has ever read. See e.g., Application for Interlocutory Review at 13 ("It may be shown that Conti, Respondents and Levine are engaged in a cover-up of a crime that is probably the result of conduct by Respondents that effects hundreds or thousands of LFG customers similarly situated as Robinson."); id. at 5 (accusing the Court of "an animus racial discrimination, judicial prejudice, judicial prejudgment of the complaint, judicial abuses of telephonic conferences to harass and badger and to intimidate and threaten Pratt and Robinson"); id. at 8 (referring to "Levine" as "capricious[] and chameleon-like").

expected letter informing the Court on the eve of the March 6 show cause hearing that he would not participate in it.⁸³

⁸³ See Correspondence to Notify of Complainant's Unavailability to Attending Telephone Conference on March 6, 2001, dated March 5, 2001.

Once again, Robinson signaled his contempt for the Court by the transparent disingenuousness of his excuse. He claimed that:

" I shall not be available to attend [the March 6 show cause hearing] as I am under **medical recuperation** as a result of a **severe emergency medical situation** which befell me on the eve of Monday, February 26th, 2001

At this time, and in the near foreseeable future, I shall be under **Doctors Orders** and under **medical care** until **complete recovery** and therefore unavailable for a telephonic conference until further notice."

Id. (emphasis in original).

Robinson did not identify the nature of the alleged medical condition that befell him on February 26, nor did he explain why he waited over a week -- until the day before the scheduled show cause hearing -- to inform the Court of his alleged incapacity. Moreover, as purported substantiation for his claim, Robinson attached nothing more than a form discharge instruction, showing only that he had checked himself into a hospital emergency room and had been discharged on February 27.

Significantly, Robinson's motion seeking recusal of the Administrative Law Judge and a stay of proceedings -- although dated four days after the occurrence of this alleged "**severe emergency medical situation**" -- makes no mention of his incapacity. See Recusal Motion. In fact, on March 2, 2001, Conti spoke by telephone to Robinson, who was working in his office. See Letter from Michael J. Conti, Esq. to the Court, dated March 5, 2001 (renewing motion to dismiss the Complaint with prejudice due to Robinson's misconduct). Robinson gave no indication to Conti that he was impaired. Id. at 2. When Conti asked Robinson whether he intended to participate, as the Court had ordered, in the March 6 show cause proceeding, "[h]e stated that he may or may not appear, but he hadn't decided yet." Id. Moreover, during the entire period of Robinson's alleged incapacity, he and Pratt maintained a steady stream of filings in
(continued..)

At the show cause hearing the next day, respondents' counsel moved -- for a third time⁸⁴ -- to dismiss the Complaint.⁸⁵ The Court tentatively determined to grant the motion, and stayed the case to prepare this opinion.⁸⁶

(..continued)

the case. See Application for Interlocutory Review; Supplemental Filing of Application for Appeal Complainant's List of Documents Filed Related to Judicial Actions & Rulings From November 30, 2000 to March 6, 2001, dated March 16, 2001; Affidavit of Simeon Robinson, dated March 16, 2001; Affidavit of Ray Pratt, dated March 15, 2001; Complainant's Rule 12.24(e) Statement in Opposition to the Order Issued March 12, 2001 Dismissing the Proceeding as to LFG, LLC Pursuant to Rule 12.24(d)(2), dated April 24, 2001; Complainant's Objection to the Motion of the Law Office of Michael J. Conti for Leave to Withdraw, dated May 1, 2001; see also Memorandum from Rita McMullen to the File, dated May 1, 2001.

Even after Robinson became aware of the Court's reasons for finding his excuse for not participating in the March 6 show cause hearing to be "utterly incredible," See Telephonic Hearing on Order to Show Cause as to Why the Complaint Should Not Be Dismissed and the Counterclaim Granted, dated March 6, 2001 ("March 6 Hearing") at 9-10, he has steadfastly refused to identify and explain (much less substantiate) the nature and unusual contours of his alleged incapacity or to otherwise provide an innocent explanation of the facts and circumstances that give rise to the Court's disbelief. See Letter from Simeon Robinson to the Court, dated May 8, 2001.

⁸⁴ See Letter from Michael J. Conti, Esq. to the Court, dated February 12, 2001; Letter from Michael J. Conti, Esq. to the Court, dated March 5, 2001.

⁸⁵ See March 6 Hearing at 11-15.

⁸⁶ Id. at 23, 36-37.

Robinson's Misconduct Warrants Dismissal of the Complaint

"[C]ourts have inherent power to dismiss an action when a party has willfully deceived the court and engaged in conduct utterly inconsistent with the orderly administration of justice."⁸⁷

The Administrative Law Judge is responsible for the fair and orderly conduct of the proceeding.⁸⁸ Where the Judge's efforts to fulfill this responsibility are frustrated by one of the parties, public and private resources are squandered, the adjudicatory process is discredited, and due process is jeopardized.

Although the Commission has expressed that "[g]enerally a decision on the merits based on full participation by all parties is the preferred outcome of a reparations proceeding,"⁸⁹ the Court cannot recall a stronger example of the exception to that general rule than this case.⁹⁰ In the face of multiple warnings from the

⁸⁷ Fjelstad v. American Honda Motor Corp., 762 F.2d 1334, 1337 (9th Cir. 1984), quoting Wyle v. R.J. Reynolds Industries, Inc. 709 F.2d 585, 589 (9th Cir. 1983).

⁸⁸ See 17 C.F.R. §12.304; accord Administrative Procedure Act, 5 U.S.C. §§551, 556(c).

⁸⁹ Levine v. Stotler & Co., [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶25,164 at 38,425 (CFTC Nov. 6, 1991), quoting Matthews v. Paine Webber Jackson & Curtis, Inc., [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶23,946 at 34,319 (CFTC Sept. 22, 1987); see also Jenne v. Painewebber, Inc., [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶24,329 at 35,425 (CFTC Aug. 31, 1988).

⁹⁰ See Edwards v. Gerald, Inc., 1993 WL 16054 at *1, n.1 (CFTC Jan. 21, 1993); Marlow v. Oppenheimer Rouse Futures, Inc., [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶23,904 at 34,212 (CFTC Sept. 9, 1987); Chapman v. CFTC, 788 F.2d 408, 410-411 (7th Cir. 1986); see also Gross v. Verrilli Altschuler Schwartz, Inc.,
(continued..)

Court, Robinson has openly flouted its orders barring Pratt's participation in this case, continued to file ridiculous pleadings in support of his bloated damage claim, refused to attend its conferences and hearings, brought discovery to a screeching halt, and generally embarked on a scurrilous campaign to discredit and scandalize these proceedings and the Court. Robinson's willful

(..continued)

[1986-1987 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶23,130 at 32,340 (CFTC July 8, 1986); Dick v. Chicago Commodities, Inc., [1986-1987 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶22,934 at 31,741 (CFTC Feb. 3, 1986).

Whenever appropriate, the Commission has given content to its requirements by reference to analogous standards set forth in the Federal Rules of Civil Procedure. Oram v. National Monetary Fund, [1986-1987 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶23,670 at 33,748 (CFTC May 28, 1987); Southerton v. Bache Halsey Stuart Shields, Inc., [1984-1866 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶22,428 at 29,910 (CFTC Nov. 28, 1984); Reho v. Dean Witter Reynolds, Inc., [1982-1984 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶21,993 at 28,373 (CFTC Mar. 31, 1983).

Misconduct by a party can be grounds for dismissal or a default judgment in actions brought pursuant to the Federal Rules of Civil Procedure. See Morgan v. Massachusetts General Hosp., 901 F.2d 186, 195 (1st Cir. 1990) (appellant who willfully violated procedural rules and explicit orders of the district court was not entitled to have his case heard on the merits); Davis v. Fendler, 650 F.2d 1154, 1161 (9th Cir. 1981) ("The sanction was imposed because of appellant's persistent unresponsiveness to both informal discovery requests and formal court orders. Appellant never appeared to take seriously the district judge's orders."). Filing a series of frivolous pleadings and documents itself can be a basis for dismissal of an action. See American Inmate Paralegal Association v. Cline, 859 F.2d 59, 62 (8th Cir. 1988). See also Fjelstad, 762 F.2d 1334 at 1337; Aztec Steel Co. v. Florida Steel Corp., 691 F.2d 480, 481 (11th Cir. 1982) ("When a party demonstrates a flagrant disregard for the court and the discovery process . . . dismissal is not an abuse of discretion); Affanato v. Merrill Bros., 547 F.2d 138, 139 (1st Cir. 1977); National Hockey League v. Metro Hockey Club, Inc., 427 U.S. 639, 640-643 (1976).

misconduct has unjustly injured the respondents⁹¹ and challenged

⁹¹ On notice from the March 6 show cause hearing that the Court was preparing to dismiss the Complaint, Robinson has filed an eleventh hour letter announcing his "availability to resume the proceeding in my case." See Letter from Simeon Robinson to the Court, dated May 8, 2001, at 1. (What is the saying about a court being "fooled thrice?") Credibility aside, Robinson's announcement is both too late and too little.

It is too late because the damage has already been done. Even if Robinson were to now faithfully comply with the Court's present and future orders (an assumption that the Court could not reasonably make), it would not remedy the prejudice suffered by the respondents as a consequence of Robinson's misconduct and dilatory tactics. Respondents' counsel has correctly noted Robinson's allegations are the subject of "factual disputes that are going to require a credibility determination at some point or other. And as time goes by -- I mean this thing was filed, I believe in August [actually it was May 2000] . . . got stayed in November. I mean, we're months and months and months down the road in this case, plus I mean we've hardly begun discovery." March 6 Hearing at 25 (Conti). See Dick ¶22,934 at 31,741 (CFTC Feb. 3, 1986) ("[D]elay is especially significant where as here, the complainants' case turns in part on recollections of oral conversations. For these reasons, therefore, we find the requisite prejudice through delay.").

As Judge Posner has observed:

"Defendants are not second-class citizens in our courts. The fact of being sued creates no presumption that the person or institution sued has in fact committed a wrong. A protracted lawsuit ties up the defendant's time and prolongs the uncertainty and anxiety that are often the principal costs of being sued. Delay may also make it more difficult to mount an effective defense. All these are consequences superadded to the lawful sanction for whatever misconduct the defendant may have engaged in that precipitated the suit -- and he may not have engaged in any misconduct. Unwarranted prejudice to a defendant from keeping a suit alive is an important consideration in the choice of sanctions for dilatory behavior from the wide menu available to the district judge."

(continued..)

the integrity of the reparations program. Dismissal of the Complaint is required to rectify (as best we can) both of these wrongs.⁹²

Lastly, there is an additional reason to dismiss the Complaint in this case. Pratt resides in Pennsylvania, where the unauthorized practice of law is illegal.⁹³ As the Court

(..continued)

Ball V. City Of Chicago, 2 F.3d 752, 759 (7th Cir. 1993) (Posner, C.J.).

Robinson's last minute letter is also too little. It contains no indication that he will not continue to rely upon Pratt as his legal advisor and draftsman in contemptuous violation of the Court's orders. To the contrary, only one day before the drafting of the letter, Robinson submitted another frivolous motion obviously drafted by Pratt. See Complainant's Motion to Compel Respondents to Produce Credible Documented Evident [sic] of a Legally Binding Contract Between LFG, L.L.C. and Complainant, Simeon Robinson, dated May 7, 2000. After the letter, a second Pratt-drafted motion was filed. See Complainant's Objection to Respondents [sic] Request for 30 Days to Obtain Attorneys and to Familiarize Attorneys with the Case to Answer Motions Filed by the Complainant, dated May 22, 2001. It is clear that no sanction short of dismissal will be sufficient to prevent Pratt's continued involvement in this case.

⁹² As the Supreme Court has noted

"[T]he most severe in the spectrum of sanctions provided by statute or rule must be available to the district court in appropriate cases, not merely to penalize those whose conduct may be deemed to warrant such a sanction, but to deter those who might be tempted to such conduct in the absence of such a deterrent."

National Hockey League, 427 U.S. at 643.

⁹³ See 42 Pa.C.S. §2524(a) ("any person who within this Commonwealth shall practice law . . . without being an attorney at law . . . commits a misdemeanor of the third degree upon a first violation. A second or subsequent violation of this subsection constitutes a misdemeanor of the first degree").

(continued..)

explained to Robinson at great length early on,⁹⁴ Pratt's efforts on his behalf plainly fall under this criminal prohibition.⁹⁵ Despite the Court's persistent efforts throughout this proceeding to stop Pratt's unlawful conduct, Robinson's continuing use of

(..continued)

The power to regulate the practice of law is vested in the Pennsylvania Supreme Court. See Cole v. Price, 758 A.2d 231, 233 (Pa. Super. 2000). The Pennsylvania Constitution, in Article V, Section 10(c) provides that the "Supreme Court shall have the power to prescribe general rules governing practice, procedure and the conduct of all courts . . . and for the admission to the bar and to practice law" Id. In exercising this mandate, the Pennsylvania Supreme Court created testing procedures administered by the Board of Law Examiners. After admission into the Bar, the attorney's conduct is still regulated by both the Code of Professional Ethics and the Rules of Continuing Legal Education. Accordingly, one who is not admitted to and licensed by the Bar is not an attorney "eligible to practice law" Id. at 234.

⁹⁴ See, e.g., November 30 Conference at 10-11, 26-27, 30-31, 40-44.

⁹⁵ See the often-cited case of Shortz v. Farrell, 193 A. 20, 21 (Pa. 1937) (the practice of law encompasses instructing and advising in regard to the law, and preparing documents for clients that require a familiarity with legal principles beyond the grasp of the ordinary layman). In the words of the Shortz court:

"In considering the scope of the practice of law mere nomenclature is unimportant, as, for example, whether or not the tribunal is a 'court,' or the controversy 'litigation.' Where the application of legal knowledge and technique is required, the activity constitutes such practice even if conducted before a so-called administrative board or commission. It is the character of the act and not the place where it is performed which is the decisive factor."

Id.; accord, Gmerer v. State Ethics Comm'n, 751 A.2d 1241, 1255 (Pa. Commw. 2000).

this paid, but unlicensed, legal counselor is both open and notorious.

Under these circumstances, the Administrative Law Judge is subject to certain ethical duties⁹⁶ which preclude this case from going forward. For if the Administrative Law Judge were to permit this case to proceed, it would be with the full knowledge that his decision to do so was tantamount to providing Robinson and Pratt with a necessary instrument -- the reparations forum -- for use in Pratt's continuing violation of the law.⁹⁷

Order

For the reasons set forth above, the Complaint is **DISMISSED** with **PREJUDICE**, and this proceeding is **TERMINATED** in its

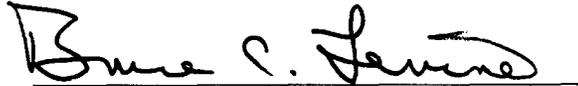
⁹⁶ The American Bar Association Model Code of Judicial Conduct has been recognized as an appropriate authority for guiding the conduct of federal administrative law judges. See ABA Comm. on Ethics and Professional Responsibility, Informal Op. 86-1522 at 1 n.1 (1986); In re Chocallo, 2 M.S.P.B. 23, 27, 38, 62-3 (1978), aff'd, 2 M.S.P.B. 20 (1980). Canon 2 of the Code states that judges "shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary."

⁹⁷ See F.T. Int'l, Ltd. v. Mason, 2001 WL 569280 at *4 (E.D. Pa. 2001), ("To ignore or further tolerate defendants' flagrant contempt would undermine the credibility of our processes of justice.").

entirety.

IT IS SO ORDERED.⁹⁸

On this 2nd day of July, 2001



Bruce C. Levine
Administrative Law Judge

⁹⁸ Under 17 C.F.R. §§12.10, 12.308(c), 12.314(d) and 12.401(a), any party may appeal this Opinion and Order to the Commission by serving upon all parties and filing with the Proceedings Clerk a notice of appeal within 20 days of the date of the this Opinion and Order. If the party does not properly perfect an appeal -- and the Commission does not place the case on its own docket for review -- this Opinion and Order shall become the final decision of the Commission, without further order by the Commission, within 30 days after service of the Opinion and Order.