



U.S. COMMODITY FUTURES TRADING COMMISSION

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MIGUEL ANGEL RUBINI VARGAS and
GISELLA LUCIA T. SALINAS,

Complainants

v.

FX SOLUTIONS, LLC,

Respondent.

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CFTC Docket No. 07-R025

ORDER OF DISMISSAL

The complainants in this proceeding, Miguel Angel Rubini Vargas and Gisella Lucia T. Salinas, are residents of Peru.¹ When a non-resident sues in reparations, Section 14(c) of the Commodity Exchange Act and Commission Rule 12.13(b)(4) require him to either (1) file a bond in double the amount of the claim or (2) submit a waiver request "accompanied by sufficient proof" that the country of which the complainant is a resident permits the filing of a complaint by a resident of the United States against a citizen of that country without the furnishing of a bond.² In this case, the complainants accompanied

¹ Commodity Futures Trading Commission Reparations Complaint Form, dated February 8, 2007, at 1.

² 7 U.S.C. §18(c); 17 C.F.R. §12.13(b)(4). This bond requirement is jurisdictional. *Haekel v. Refco, Inc.*, [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶27,162 at 45,542 (CFTC Sept. 26, 1997).

their complaint with a waiver request that rested on Articles 63 and 71 of the Peruvian Constitution.³

On June 25, 2007, we issued a show cause order and tentatively concluded that the complainants failed to satisfy their burden of demonstrating an adequate basis for bond waiver.⁴ On this basis, we directed the complainants to show cause why their complaint should not be dismissed and explained that they could make this showing by posting a bond or submitting a more persuasive waiver request.⁵ The complainants responded to our order on July 20, 2007 and they once again opted to seek a waiver of the bond

³ Complaint, received February 12, 2007, at 4.

⁴ Show Cause Order, dated June 25, 2007 ("Show Cause Order"), at 3-5. In reaching this conclusion, we explained,

As translated, neither Article 63 nor Article 71 mentions the right to sue nor the presence or absence of a bond requirement for Peruvians or foreign nationals who appear before Peruvian courts. They do not facially indicate that "a United States citizen may proceed without furnishing 'a bond' for any purpose." Rather, they express a preference for free trade and state the limited property rights of foreign nationals. Moreover, the complainants did not try to show that the constitutional articles in question have been authoritatively interpreted to eliminate bond requirements. This limited showing leaves us incapable of finding that the complainants met their burden and, given the current record, we seem to lack jurisdiction.

Id. at 4-5.

⁵ Id. at 5 & n.16.

requirement.⁶ This time, the complainants cited to Article 2 of Legislative Decree 662, Articles 12 and 38 of Legislative Decree 757, and Regulation I of Supreme Decree 162-92 EF.⁷ As is the case with Articles 63 and 71 of the Peruvian Constitution, these laws simply do not address the issue of access upon which waiver determinations turn.

Article 2 of Legislative Decree 662 merely establishes a qualified preference for unencumbered investment by foreigners.⁸ Article 12 of Legislative Decree 757 seeks, in part, to implement this preference by banning "discriminatory" or "differentiated" treatment between foreign and local residents in the establishment of "currency exchange, prices, tariffs or non-tariff fees among investors and the companies."⁹ Regulation I of Supreme Decree 162-92 EF extends the ban on economic discrimination against foreign

⁶ Answer in Support of the Waiver of Bond Furnishing Request, dated July 20, 2007 ("Answer"). The respondent opposed the complainants' waiver request. FX Solutions, LLC's Response to Complainants' Pleading Allegedly Supporting the Waiver of the Bond Furnishing Requirement, dated July 30, 2007.

Shortly before we received the Answer, the complainants moved for an extension of time to respond to the Show Cause Order. Letter from Miguel Angel Rubini [Vargas] and Gisella L. Salinas to the Proceeding Clerk, received July 24, 2007. Because the Answer was timely filed, we **DISMISS** the motion as moot. See Show Cause Order at 5 (requiring the complainants to file a response no later than July 25, 2007).

⁷ Answer at 3-4.

⁸ As translated, Article 2 of Legislative Decree 662 states, in relevant part: "Foreign investors and the companies in which they participate have the same rights and obligations as the local investors and companies. Such rights and obligations are only limited by the exceptions established in the Political Constitution of Peru and the provisions hereof." Answer, Exhibit A.

⁹ Id., Exhibit B.

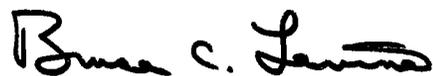
investors to such additional activities as the "right to private property" and the "right to engage in the economic activity of their preference."¹⁰ Finally, Article 38 of Legislative Decree 757 establishes certain principles of equal treatment of local and foreign investors in the application of certain rights, conditions and obligations concerning juridical stability agreements (i.e., agreements between private parties and the government).¹¹ None of these provisions indicate what, if any, bond requirements a United States resident would face if he sued a Peruvian citizen in a Peruvian court.

Conclusion

For the reasons set forth above, the complainants failed to demonstrate that they are entitled to a waiver of the bond requirement. Because they neither met this burden nor posted a bond, we **DISMISS** the complaint without prejudice.

IT IS SO ORDERED.

On this 31st day of July, 2007



Bruce C. Levine
Administrative Law Judge

¹⁰ Id., Exhibit C.

¹¹ Id., Exhibit B.