



**U.S. COMMODITY FUTURES TRADING COMMISSION**

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

ERNEST L. WADE,

Complainant,

v.

MARCUS CHEVALIER and  
KJW, LLC d/b/a/ KEN WOLF  
COMMODITIES,

Respondents.

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CFTC Docket No. 06-RO39

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2007 FEB 13 A 10:35  
OFFICE OF PROCEEDINGS  
PROCEEDINGS CLERK

**ORDER OF DISMISSAL**

On February 12, 2007, we received a letter from complainant Ernest L. Wade in which he states, "I . . . do withdraw my complaint and do not plan on attending the hearing on March 6[,] 2007."<sup>1</sup> Given Wade's choice to cease the prosecution of his case, we **DISMISS** the complaint with prejudice to Wade's right to seek redress for his claims in any forum.<sup>2</sup>

**IT IS SO ORDERED.**

On this 13th day of February, 2007

Bruce C. Levine  
Administrative Law Judge

<sup>1</sup> Letter from Ernest L[.] Wade to the Court, received February 12, 2007. See Order Dismissing the Complaint as to Durdack and Scheduling Hearing, dated January 23, 2007, at 5-6.

<sup>2</sup> Because there is no evidence that it was served on respondent KJW, LLC, we have attached a copy of Wade's letter to this order.

Ernest L Wade  
Complainant

Vs

Marcus Chevalier

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C.F.T.C.

CFTC Docket No. 06-R039

2007 FEB 12 P 12:45

OFFICE OF PROCEEDINGS  
PROCEEDINGS CLERK

Office of Judge Bruce Levine

I, Ernest Wade, do withdraw my complaint and do not plan on attending the hearing on March 6 2007. I have sent Marcus Chevalier a copy of this letter.

Ernest L Wade

*Ernest L Wade*



we struck it from the record.<sup>3</sup> We also advised Wade that the content of his filing violated a number of our directives.<sup>4</sup>

On November 2, 2006, we received Wade's second prehearing submission.<sup>5</sup> This time, he stated an intent to participate, listed himself as a witness and filed his written direct testimony.<sup>6</sup> He also listed Pamela Groves as a witness and filed a letter that she allegedly wrote in February 2006.<sup>7</sup> However, Wade implied that Groves' letter was not meant to serve as her entire direct testimony.<sup>8</sup> More importantly, he made no apparent attempt to set forth a detailed discussion of all issues of fact and law that are material to the hearing despite being warned twice that this failure might result in the waiver of issues not listed.<sup>9</sup> Accordingly, we ordered Wade to file, by November 27, 2006: (a) a prehearing memorandum that

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<sup>3</sup> Order and Notice of Non-Compliance, dated October 24, 2006 ("Notice of Non-Compliance"), at 1-2.

<sup>4</sup> Id. at 2-3.

<sup>5</sup> Letter from Ernest L. Wade to the Court, dated October 30, 2006 ("Wade Letter"), at 1-2.

<sup>6</sup> Id. at 1-2. See Order, dated November 3, 2006 ("Wade November 3rd Order"), at 2 n.6.

<sup>7</sup> Wade Letter at 2; Letter from Pam Groves, dated February 14, 2006 ("Groves Letter").

<sup>8</sup> "I will forward the letter Mrs. Groves wrote and add that she was also contacted during the hurricane and to[l]d by Joseph Durdack that investing in commodities at that time was a no brainer." Wade Letter at 2.

<sup>9</sup> Notice of Non-Compliance at 3; Order and Notice at 2-4. For example, outside of his direct testimony, Wade did not mention his theories of the case and nowhere in his filing did he state (or present evidence tending to show) the amount of his alleged injury. Wade Letter at 1-2.

states all issues of fact and law that are material to the hearing, (b) an addendum to his witness list stating whether Groves is a non-hostile witness, (c) written notification of whether the Groves Letter is meant to serve as Groves' entire direct testimony and, if the Groves Letter is not meant to serve as Groves' entire direct testimony and she is a non-hostile witness, (d) her direct testimony.<sup>10</sup>

Despite our warning that subsequent violations of our orders may result in the dismissal of the complaint, a default order or some other sanction,<sup>11</sup> Wade filed none of the documents that the Wade November 3rd Order required. Consequently, we directed him to show cause, on or before January 2, 2007, why we should not bar Wade from presenting evidence at the oral hearing or otherwise sanction him.<sup>12</sup> This deadline passed and, again, Wade did not respond.

Wade's defiance of our orders merits a serious sanction. Had all of the respondents substantially complied with our orders (and not been in default for failing to answer the complaint), we would have punished Wade with an order that precluded him from presenting evidence at the hearing. The consequence of such an order is generally the dismissal of a complaint. We decline to wield such a broad brush here because two of the respondents failed to meet their procedural obligations. Respondent KJW, LLC is in default while respondent

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<sup>10</sup> Wade November 3rd Order at 2-3.

<sup>11</sup> Id. at 3-4.

<sup>12</sup> Show Cause Order, dated December 19, 2006 ("Wade Show Cause Order"), at 3.

Marcus Chevalier filed no prehearing documents<sup>13</sup> and, in response to a show cause order,<sup>14</sup> provided an inadequate excuse for his misbehavior.<sup>15</sup> Thus, we

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<sup>13</sup> Because there had been confusion with respect to Chevalier's address, we provided him with a second opportunity to file prehearing documents. Chevalier November 3rd Order at 1-2.

<sup>14</sup> Show Cause Order, dated December 19, 2006 ("Chevalier Show Cause Order").

<sup>15</sup> Chevalier wrote, "I apologize for my non-reply of the notice of the scheduled hearing date. There is no excuse . . . ." Letter from Marcus Torrence Chevalier, dated December 28, 2006 ("Chevalier Letter"). As a self-damning statement, this part is easy to believe. However, he continued, "I simply misread that I needed to reply only to remit a list of witnesses that would testify on my behalf. I further assumed, incorrectly, that my attendance was a given once I was notified of a hearing date." Id. Thus, Chevalier claims that he (1) read our order, (2) detected the requirement to file a witness list but (3) failed to notice that, among other things, he also needed to file a notice of intent to appear, file a prehearing memorandum and, if he intended to testify, list himself as a witness and file his direct testimony. We test this theory by reviewing the language that established the filing requirements.

In the Chevalier November 3rd Order, we instructed,

Accordingly, we . . . **ORDER** Chevalier to submit, in accordance with the Order and Notice and no later than **December 1, 2006**: (1) a notice of his intent to participate in the oral hearing; (2) a final list of the witnesses that he intends to present as part of its case-in-chief (**including the party if it intends to testify on its own behalf**) stating, as to each listed witness, whether the witness is a hostile witness as to him, and the name, address, title (if applicable) and business telephone number of the witness; (3) the direct testimony of each witness (other than hostile witnesses and his party-opponent) that Chevalier intends to present as part of his case-in-chief (**including his direct testimony if the party intends to testify on its own behalf**) set forth in documentary form by affidavit, interrogatory or other document; (4) copies of all other documents that Chevalier wishes to be received in evidence; and (5) a prehearing memorandum setting

(continued..)

must impose sanctions that strike a balance based on each of the parties' relative misbehavior. To that end we order the following.

We **DISMISS** the complaint in this matter with respect to the charges against respondent Joseph George Durdack, the one party who substantially complied with the prehearing filing requirements.<sup>16</sup> In order to resolve the claims against the other remaining respondents, **NOTICE** is hereby given that an oral

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(..continued)

forth a detailed discussion of all issues of fact and law that are material to the hearing.

Chevalier November 3rd Order at 1-2 (footnotes omitted, emphasis in original). Given the structure and content of this passage, not to mention the use of a bold font, it is unlikely that a literate adult like Chevalier would have read (or at least skimmed) the witness list provision while skipping over the notice of intent mandate and the remainder of the list.

The response to the Chevalier Show Cause Order also leaves us a bit perplexed. On the one hand, he states, "I do not have witnesses, nor do I have any files to present as evidence." Chevalier Letter. However, he continues, "As I stated in my answer, the broker retained the complainant's file when I left the firm. With your permission . . . I will attend the January 30, 2007, proceeding in order to present my case." Id. Unless he intends to rest his defense solely on the cross-examination of Wade and (possibly) Groves, we do not see the "case" to which he refers. Perhaps, Chevalier intends to testify on his behalf at the hearing and, in the Chevalier Letter, did not consider himself to be a witness because he is a party. If this is so, then he also violated the above-quoted witness list and written testimony requirements that clearly and emphatically applied to parties as well as non-party witnesses.

Because Chevalier's explanation is too far-fetched, he has not shown good cause for his violations of our order. Thus, sanctions are appropriate. In this case, the only penalty that is sufficiently weighty and appropriate is an order precluding him from presenting any evidence at the hearing.

<sup>16</sup> We do not dismiss the claims against the other respondents that rest on Durdack's alleged acts and/or omissions.

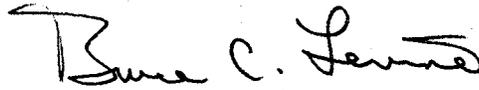
hearing in this matter has been rescheduled to commence at **9:30 a.m.**, on **Tuesday, March 6, 2007**. The hearing will be held at:

United States Merit Systems Protection Board  
1615 M Street, N.W.,  
5th Floor Courtroom  
Washington, District of Columbia 20036.

At the hearing, neither Chevalier nor KJW will be permitted to present any form of evidence for any purpose.<sup>17</sup>

**IT IS SO ORDERED.**

On this 23rd day of January, 2007



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Bruce C. Levine  
Administrative Law Judge

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<sup>17</sup> Wade's case is generally limited to the proposed evidence that he has filed. Thus, the only evidence that Wade may present at the hearing is his written testimony, what we take to be the written testimony of Groves (the Groves Letter) and whatever evidence may be appropriate if either witness receives questions from the bench. See Wade Letter at 1-2; Groves Letter. As earlier instructed, we will not accept the written testimony of any witness (regardless of whether or not the witness is a party) that does not appear at the hearing. Order and Notice at 4.