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C.F.T.C.

PHILLIP JHONG,

Complainant,

v.

CASTLE TRADING, INC.,
GREGORY ZANE PARKER and
YURI PLYAM,

Respondents.

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CFTC Docket No. 06-R051

ORDER DISMISSING COMPLAINT WITH PREJUDICE

In December of 2007, complainant Phillip Jhong failed to provide timely notice of his intent to participate in a hearing on his complaint.¹ On this ground, Administrative Law Judge George H. Painter dismissed the complaint with prejudice.² Jhong appealed and – over three years later – the Commission

¹ *Jhong v. Castle Trading, Inc.* [2007-2009 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶30,739 at 61,509 (CFTC Jan. 28, 2008) (Painter, ALJ).

² *Id.* In dismissing the complaint, Judge Painter also relied on what he regarded as second misstep by Jhong – his failure to disclose the terms of a settlement with former respondent MF Global, Inc. *Id.* But see 17 C.F.R. §12.21 (Disclosure of the terms of a settlement is not required in a stipulation of dismissal.).

reversed and remanded this case for a hearing.³ In so doing, the Commission stated:

[T]he delayed submission of Jhong's notice of intent to appear at the . . . hearing does not warrant the extreme sanction of dismissal. In addition, dismissal of a complaint on procedural grounds runs counter to the Commission's *strong policy preference for resolving reparations cases on the merits.*⁴

There is an inescapable irony here. During the three years that it took the Commission to craft its six-page slip opinion, Jhong disappeared. In the year of 2011, his counsel couldn't find him,⁵ I couldn't find him⁶ – even the respondents' counsel ran an internet and Lexis people search for him without success.⁷

³ *Jhong v. Castle Trading, Inc.*, [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶31,913 at 66,033 (CFTC Feb. 18, 2011). Because of Judge Painter's unavailability the case was reassigned to me. *Id.*

⁴ *Id.* (emphasis added) (citing *Marlow v. Oppenheimer Rouse Futures, Inc.*, [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶23,904 at 34,212 (CFTC Sept. 9, 1987)).

⁵ See Motion for Immediate Order Relieving Complainant's Legal Counsel, David S. Lin of the Law Offices of David S. Lin as Attorney of Record for Complainant Phillip Jhong in this Action, dated April 28, 2011.

⁶ See Memorandum to the File, dated May 19, 2011; Memorandum to the File, dated May 9, 2011.

⁷ See Motion to Dismiss for Failure to Participate in Proceeding and Supporting Memorandum, dated June 3, 2011.

Justice delayed is justice denied. For Jhong, there will be no resolution on the merits. The respondents' motion to dismiss⁸ is **GRANTED**, and the complaint is **DISMISSED** with prejudice.⁹

IT IS SO ORDERED.

On this 15th day of June, 2011



Bruce C. Levine
Administrative Law Judge

⁸ *Id.*

⁹ *Cf.* Fed. R. Civ. Pro. 41(b).