



U.S. COMMODITY FUTURES TRADING COMMISSION

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

PAUL SCHNEIDER

Complainant

v.

JOHN LEE NEUMAN and
THE LINN GROUP,

Respondents.

*
*
*
*
*
*
*
*
*
*
*
*
*

CFTC Docket No. 09-R013

Office of
Proceedings
Proceedings Clerk

2009 JUN -4 PM 12:55

Received
C.F.T.C.

ORDER OF DISMISSAL

In March of 2009, John Lee Neuman and The Linn Group (collectively, “The Linn Group”) provided the Office of Proceedings with notice of a parallel proceeding and moved to dismiss.¹ The Office of Proceedings denied this motion without explanation.² We conclude that the denial was in error, and we explain our reasoning below.

A parallel proceeding is one that is based on the same set of facts as a proceeding pending in another court at the time the reparations complaint is

¹ Respondents’ 17 CFR §12.24(b) Notice of Parallel Proceedings, filed March 4, 2009 (“Respondents’ Notice”). See 17 C.F.R. §12.24(b).

² Instead, it stated simply that “The request to dismiss the complaint is denied, because the civil action filed in the Circuit Court of Cook County does not constitute a parallel proceeding as defined in Rule 12.24 (a)(1).” Letter from Office of Proceedings to The Linn Group, dated March 19, 2009.

filed.³ The parties agree that The Linn Group sued Paul Schneider in the Circuit Court of Cook County, Illinois, on October 27, 2008.⁴ Schneider brought this suit in reparations two weeks later, on November 11, 2008.⁵ It is undisputed that the state court suit involves the same set of facts which serve as a basis for all the claims in the reparations complaint.⁶

Thus, the definition of a parallel proceeding is clearly met: (1) a civil court proceeding – in Cook County; (2) involving one or more of the respondents – The Linn Group; (3) which is pending at the time the reparations complaint is filed – it was filed two weeks prior; (4) involving claims or

³ The precise definition is:

(1) An arbitration proceeding or civil court proceeding, involving one or more of the respondents as a party, which is pending at the time the reparations complaint is filed and involves claims or counterclaims that are based on the same set of facts which serve as a basis for all of the claims in the reparations complaint, and which . . . :

(ii) Involves counterclaims by the complainant in reparations alleging violations of the Commodity Exchange Act, or any regulation or order issued thereunder....

17 C.F.R. §12.24(a)(1)(ii).

⁴ Respondents' Notice at 2; Complainant's 17 CFR § 14.8(c) Motion to Deny the Law Firm of Robbins Saloman & Patt, LTD., the Privilege Appearing [sic] Before the Commission, filed March 19, 2009, ("Complainant's Motion") at Exhibit 1, page 7.

⁵ Complaint, dated November 11, 2008.

⁶ Respondents' Notice at 2; Complainant's Motion, at Exhibit 1, page 7. See 17 C.F.R. §12.24(a)(1).

counterclaims that are based on the same set of facts which serve as a basis for all of the claims in the reparations complaint – this is not disputed; and (5) involving counterclaims by the complainant in reparations alleging violations of the Commodity Exchange Act – Schneider’s suit in reparations is a counterclaim to The Linn Group’s suit against Schneider in Cook County.

In opposing dismissal, Schneider relies on the assertion that he originally filed a reparations complaint on October 25, 2008, (two days before The Linn Group filed in Cook County) but that he later voluntarily withdrew it.⁷ He says this withdrawal was predicated on promises from the respondents during settlement negotiations that were not kept.⁸ We do not reach this issue. Whatever the reason, *this* suit in reparations was filed after the suit in Cook County, and nothing in the rules or case law suggests that equitable concerns permit modification of the rule requiring dismissal of parallel proceedings.

Even if we were permitted to ignore the rules on equitable grounds, we would decline to do so in this case. Earlier this year, Schneider moved to dismiss the suit in Cook County on the grounds that the Commission should be the controlling forum.⁹ This motion was denied on May 20, 2009.¹⁰ Thus,

⁷ Complainant’s Motion, at Exhibit 1, page 7.

⁸ *Id.*

⁹ Respondents’ Notice at 2.

¹⁰ We take judicial notice of this fact, having checked that court’s docket. To access the docket, search for case year “2008,” division code “L,” and case

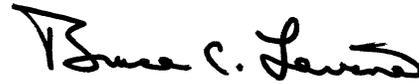
(continued...)

not only does the parallel proceeding continue unabated, but a decision to keep the case here would directly conflict with a prior decision by another court.

This case is dismissed without prejudice.¹¹ Should the case in Cook County be dismissed in a manner that permits refiling, Schneider may certainly refile here in reparations.

IT IS SO ORDERED.

On this 4th day of June, 2009



Bruce C. Levine
Administrative Law Judge

(...continued)

number "011962," at <http://www.cookcountyclerkofcourt.org/?section=CASEINFOPage&CASEINFOPage=2400>

¹¹ 17 C.F.R. 12.24(c)(2).