

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

MICHELLE J. SHEHEE and
JENNIE B. SHEHEE

v.

IRA EPSTEIN & COMPANY and MAN
FINANCIAL, INC.

CFTC Docket No. 03-R021
ORDER PURSUANT TO
DELEGATED AUTHORITY

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On December 21, 2005, complainants Michele J. Shehee and Jennie B. Shehee filed a petition for reconsideration of the Commission's opinion and order reversing an initial decision in their favor and dismissing their complaint. *Shehee v. Epstein*, No. 03-R021, 2005 WL 3068054 (CFTC Nov. 14, 2005). Respondents Ira Epstein & Company ("Epstein") and Man Financial, Inc. ("Man") oppose reconsideration.

The Commission's reparations rules do not expressly provide for reconsideration of a Commission decision.¹ *Kohler v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, [1986-1987 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 23,437 at 33,172 (CFTC Dec. 30, 1986), *accord*, *Buchanan v. Fox, Inc.*, [2003-2004 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 29,472 (CFTC Apr. 24, 2003). Such relief is available only in "truly extraordinary circumstances." *Kohler*, ¶ 23,437 at 33,173.

The Commission has said that circumstances justifying reconsideration, which necessarily must be narrow, would include such matters as a clear and convincing showing of

¹ The Shehees rely on Rule 12.408(c), 17 C.F.R. § 12.408(c), as the basis for their request for reconsideration. Rule 12.408(c) provided for reconsideration by the Commission of an order issued pursuant to delegated authority—not an order of the Commission.

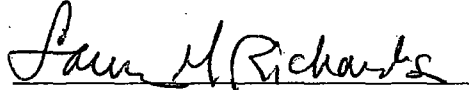
fraud on the forum by a party, the discovery of previously unknown and non-discoverable evidence that probably would produce a different result, a factual error in a jurisdictional ruling, or the type of egregious factual or legal error that goes to the heart of the challenged decision's validity. *Kohler* at 33,173. Measured by these standards, the instant request fails.

In their petition for reconsideration, the Shehees assert that, in reviewing the record, the Commission overlooked Exhibit C to their complaint, purportedly containing “the actual text message from Ira Epstein regarding the cancellation notice in question.” Petition for Reconsideration at 2. A copy of “Exhibit C” was attached to the petition. An examination of the record reveals no such document. The Shehees labeled and numbered the exhibits to the complaint. There is an exhibit C attached to the complaint with an entirely different content from that attached to the petition. The record contains no other document with the proffered content. Consequently, no showing of extraordinary circumstances has been made warranting reconsideration by the Commission.² In any event, the newly proffered “Exhibit C” would not have changed the outcome had it been before the Commission. “Exhibit C” states that a cancellation order was “sent for execution.” Complainants litigated this case on the basis that they had been informed that the transaction they sought to cancel had, in fact, been cancelled.

²The Shehees’s petition for reconsideration was filed 37 days after service of the Commission’s decision, and a petition to file out of time was filed with it. Given that there is no provision for reconsideration of a Commission decision, missed deadlines are not at issue here. Nevertheless, the representations that the Shehees set forth would not have justified any tardiness, had there been a deadline to consider. Jennie B. Shehee submitted an affidavit stating that she received a notice of certified mail, retrieved it from the post office, noticed that the mail was from the CFTC, and disregarded it. Michele J. Shehee submitted an affidavit stating that she “never received notice via mail.” According to the tracking mechanism for certified mail, the U.S. Postal Service left a notice of certified mail with Michele J. Shehee on November 16, 2005. When it went unclaimed as of December 6, 2005, it was returned to the CFTC.

Accordingly, complainants' request for reconsideration is denied.

IT IS SO ORDERED.³


Laura M. Richards
Deputy General Counsel
Commodity Futures Trading Commission

Dated: April 7, 2006

³ By the Commission pursuant to delegated authority. *See* 17 C.F.R. § 12.408(a)(5). Within seven days after service of this order, a party may file with the Commission a motion for reconsideration of the ruling. *Id.* at § 12.408(c).

Under Sections 6(c) and 14(e) of the Commodity Exchange Act (7 U.S.C. §§ 9 and 18(e) (2000)), a party may appeal a reparation order of the Commission to the United States Court of Appeals for only the circuit in which a hearing was held; if no hearing is held, the appeal may be filed in any circuit in which the appellee is located. The statute states that such an appeal must be filed within 15 days after notice of the Commission order, and that any appeal is not effective unless, within 30 days of the effect of the order, the appealing party files with the clerk of the court a bond equal to double the amount of the reparation award.