

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

PAUL LEE

v.

PEREGRINE FINANCIAL GROUP, INC.

CFTC Docket No. 98-127

ORDER DENYING
RECONSIDERATION

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SUMMARY

Respondent Peregrine Financial Group, Inc. (“Peregrine”) seeks reconsideration of our order awarding prejudgment interest to complainant Paul Lee (“Lee”). For the reasons that follow, we deny Peregrine’s petition to reconsider.

BACKGROUND

This case came before us on Lee’s appeal from the decision below. The initial decision held that Lee failed to establish fraudulent conduct by Peregrine, which retained Lee’s account balance of \$21,285.58 after Lee demanded the return of his funds. *Lee v. Peregrine Financial Group, Inc.*, [1998-1999 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,664 (I.D. Jun. 16, 1999). As ordered by the Judgment Officer, Peregrine promptly remitted \$16,401.58 to Lee and retained \$4,884 granted in attorneys’ fees, based on the Judgment Officer’s finding that Lee engaged in “vexatious conduct” during the proceedings. The Judgment Officer declined to award prejudgment interest. *Id.*

Our opinion and order, among other things, vacated the fee award, finding no basis for the Judgment Officer’s ruling that complainant engaged in vexatious conduct, and ordered

Peregrine to pay prejudgment interest at the rate of 5.12 percent. *Lee v. Peregrine Financial Group, Inc.*, [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 30,131 (CFTC Sept. 7, 2005). Peregrine was ordered to pay interest on \$16,401.58 from April 10, 1998—when Lee’s attorney made a written demand on Peregrine to return Lee’s account balance—to the date Peregrine returned this amount after the initial decision. Peregrine was ordered to pay interest on \$4,884 from April 10, 1998 until it returned this sum to Lee.

In seeking reconsideration, Peregrine argues that Illinois law controls the prejudgment interest issue, and that under Illinois law, Lee is not entitled to interest. Peregrine cites two reasons for its contention that Illinois law applies: first, that Illinois was the site of the telephonic hearing in this matter, *Petition to Reconsider* at 2, and second, that Illinois law governs its customer contract with Lee. *Id.* at n.1.

Peregrine asserts that Illinois law generally allows for prejudgment interest only pursuant to a statute or an agreement between the parties, neither of which is present in this case. *Id.* at 2. Absent such a statute or agreement, prejudgment interest is appropriate in Illinois only in order to make a party whole for the lost use of funds “wrongfully” withheld, Peregrine argues. It contends that neither its “honest dispute” with Lee nor its “good-faith defense” of this reparations action constitutes wrongful withholding. *Id.* Finally, Peregrine argues that the Commission erred in calculating prejudgment interest on the legal fees by letting interest run from a date prior to the time that the Judgment Officer entered the fee award. *Id.* at 3.

Lee opposes respondent’s motion, asserting that the Commission lacks jurisdiction to reconsider its decision, and that Peregrine’s failure to oppose his prior requests for interest operates as a waiver.

DISCUSSION

While the Commission's reparations rules do not explicitly authorize motions for reconsideration, such requests are entertained in "truly extraordinary circumstances." *Kohler v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, [1986-1987 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 23,437 at 33,173 (CFTC Dec. 30, 1986). Circumstances meeting that standard include those in which a litigant raises an "egregious factual or legal error that goes to the heart of the challenged decision's validity." *Id.*

Peregrine's argument that the interest award is contrary to law fails to meet this standard. Its contractual choice-of-law provisions do not trump Commission precedent developed in the course of our administration of the reparations forum established by Congress in the Commodity Exchange Act. Longstanding precedent holds that "[i]t would be destructive of the Congressional design were the Commission to abdicate its proper role and blindly apply state law, varying its decisional basis in each case based upon the domicile of the parties, the situs of the case, or the nature of the customer agreement." *Sherwood v. Madda Trading Co.*, [1977-1980 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 20,728 at 23,020 n.19 (CFTC Jan. 5, 1979).

Nor was the hearing "held" in Illinois. The Commission's Judgment Officers typically initiate telephonic hearings from the agency's Washington, D.C. headquarters. The Commission has ruled that telephonic hearings are "held" in Washington, D.C., although parties may speak from several different locations. *Dubois v. Alaron*, [2000-2002 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 28,406 at 51,027 n.17 (CFTC Oct. 26, 2000). Consequently, the Commission need not consider any arguments based on Illinois law.

Under the Commission's precedent, the interest award was appropriate. The Commission has long endorsed the view that prejudgment interest is "the rule rather than the exception," to be

denied only under “exceptional circumstances.” *Leftwich v. Rufenacht, Bromagen & Hertz, Inc.*, [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,044 at 34,597 (CFTC Dec. 9, 1987). No exceptional circumstances are present on the record in this case that militate against an award of interest.¹ The Commission has held that prejudgment interest is “nothing more than . . . a differential paid to compensate for the loss of the use of a sum of money for a period of time,” without regard to a finding of wrongdoing. *Sherwood*, ¶ 20,728 at 23,026. In fact, the Commission has found specifically that “wrongdoing” is not a necessary element for such an award. See *Stevens v. Clayton Brokerage Co.*, No. R 78-197-78-290, 1984 WL 48240, at 1, n.1 (CFTC July 2, 1984)(rejecting respondent’s argument that interest could be awarded only for a breach of a fiduciary duty, and not for its unintentional trading error). Under *Stevens*, prejudgment interest “is essentially compensatory; therefore, ‘wrongdoing . . . is not a prerequisite to an award.’” *Id.* (internal citations omitted). Indeed, the Commission has awarded interest as a purely “make-whole remedy” in situations not involving wrongdoing. *Katz v. Shearson Hayden Stone*, [1982-1984 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 21,878 at 27,735 (CFTC Oct. 20, 1983) (prejudgment interest awarded on a counterclaim against a customer).

Finally, Peregrine argues that interest on the attorneys’ fees was calculated erroneously from a date (April 10, 1998) prior to the time that the fee award was entered by the Judgment Officer on June 16, 1999. Peregrine contends that the award entry date is the earliest point at which Lee sustained any “loss.” Contrary to Peregrine’s claim, the relevant date for making complainant whole is the date on which he lost the use of his funds, without regard to whether

¹ An early decision by the U.S. Court of Appeals for the Seventh Circuit, issued when the Commission was a “recent congressional creation,” endorsed the Commission’s right to award prejudgment interest “[g]iven the compensatory basis of awarding prejudgment interest and the remedial purposes of CFTC reparation proceedings.” *Myron v. Chicoine*, 678 F.2d 727, 734 (7th Cir. 1982).

the lost use was wrongful. We determined that date to be April 10, 1998. That determination was reasonable and well within the scope of our discretion. *See Modlin v. Cane*, [1999-2000 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 28,059 at 49,553 (CFTC Mar. 15, 2000) (holding that presiding officers enjoy considerable discretion in formulating prejudgment interest awards and stating that “the zone of . . . discretion . . . extends to the method . . . use[d] to determine the starting date for accruing prejudgment interest”). No abuse of discretion will be found even if that “method is inexact or reflects practical factors to simplify reasonably the calculation of damages.” *Id.*

For the foregoing reasons, we deny Peregrine’s petition for reconsideration. Our September 7, 2005 decision was stayed pending reconsideration.² The stay is lifted and that decision shall be effective as of the date this order is issued.

IT IS SO ORDERED.³

By the Commission (Chairman JEFFERY and Commissioners LUKKEN, BROWN-HRUSKA, HATFIELD and DUNN).



Eileen Donovan
Acting Secretary of the Commission
Commodity Futures Trading Commission

Dated: May 24, 2006

² *See* Order Pursuant to Delegated Authority (Oct. 6, 2005).

³ The parties are referred to the September 7, 2005 decision for information respecting appeals from Commission decisions and the enforcement of reparation awards. *Lee*, ¶ 30,131 at 57,512 n.3.