

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

CHENLI CHU

v.

PEREGRINE FINANCIAL GROUP, INC.
and JAMES FRANCIS KELLY

CFTC Docket No. 07-R029

ORDER DENYING STAY

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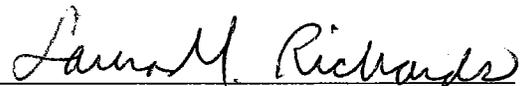
Respondents move to stay this proceeding, which is scheduled to be heard on June 3, 2008, while the Commission considers their petition for interlocutory review. Respondents seek review of the Administrative Law Judge's ("ALJ") order holding that the complainant does not have to post the bond required of nonresident complainants. Complainant opposes the petition. The motion to stay is denied.

Section 14(c) of the Commodity Exchange Act and Commission Regulation 12.13(b)(4) require a reparation complainant who does not reside in the United States to post a bond in double the amount of the claim. To have the bond waived, the complainant must show that he or she resides in a country that "permits the filing of a complaint by a resident of the United States against a citizen of that country without the furnishing of bond. Regulation 12.13(b)(4)(i)(B). The complainant in this case, a Taiwanese citizen, asserts that she lives in California. The ALJ agreed that she does. Respondents challenge the assertion based on complainant's federal tax filings claiming nonresident status for tax treatment. Respondents claim that complainant either is a nonresident based on her tax filings, and must pay the bond, or that she misrepresented her residency status and should be foreclosed from the reparation forum under the doctrines of estoppel and clean hands.

The jurisdictional issue presents questions of fact and law, including the novel legal issue of whether nonresidency under federal tax laws is dispositive on the issue of residency for all purposes. The fact question to be resolved is where the complainant actually resided at times relevant to the case. That question is best resolved at an oral hearing before a presiding official authorized to make credibility determinations. This case differs from the typical matter involving the non-resident bond. Generally, the complainant avowedly lives abroad and claims that his or her country's laws mandate waiver of the bond. Such cases involve pure questions of law and a delay to resolve the bond issue in those cases may indeed be appropriate.

For the foregoing reasons the motion to stay is DENIED. The ALJ is instructed to develop the factual record on the complainant's residency to enable the Commission to rule on the jurisdictional issue at an appropriate time.

IT IS SO ORDERED.¹



Laura M. Richards
Deputy General Counsel
Commodity Futures Trading Commission

Dated: May 20, 2008

¹ By the Commission pursuant to delegated authority. 17 C.F.R. § 12.408(a)(6).