

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

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RICHARD and BARBARA CUNNINGHAM

v.

DANIEL JAY PARKER

CFTC Docket No: 98-119

ORDER DENYING
RECONSIDERATION

Complainants Richard and Barbara Cunningham seek an award of post-judgment interest to be added to their reparation award against respondent Daniel Jay Parker. Complainants filed their complaint under the Commission's voluntary decisional procedure in 1998, and in 1999, were awarded \$20,000 in out-of-pocket damages, plus \$50 in costs for the filing fee. For the reasons that follow, the complainants' request is denied.

DISCUSSION

The complainants' claim for post-judgment interest arises from the Judgment Officer's January 14, 1999 Final Decision in their favor under Commission Regulation 12.106, governing Voluntary Decisional Proceedings. The Judgment Officer found that Parker violated Section 4o(1) of the Commodity Exchange Act ("Act")(prohibiting fraud by a commodity trading advisor) and Commission Regulation 4.30, causing \$20,000 in damages to the Cunninghams. This award was not paid by Parker within 45 days of service of the Final Decision as mandated by Regulation 12.106(e), resulting in the suspension of his registration and a ban prohibiting him from trading on any registered entity. *See* Section 14(f) of the Act; Commission Regulation

12.407(c). His name was added to the Commission's Reparations Sanctions in Effect List ("Sanctions List").¹

The award remained unsatisfied until June 2007, when Parker offered Richard Cunningham \$12,000 as full satisfaction of all claims arising from the reparation complaint. A check for that amount was mailed to the Cunninghams and Richard Cunningham executed a sworn release in Parker's favor. The Commission's Office of Proceedings nevertheless could not remove Parker from the Sanctions List, because Barbara Cunningham had not executed the release, although she was a party to the original complaint.² As a consequence of her failing to sign, Parker remitted the balance of the reparation award plus the filing fee—\$8,050—jointly to the Cunninghams in July 2007, in full satisfaction of the claim, and was removed from the Sanctions List on August 10, 2007.

At some point after Richard Cunningham signed the release, the Cunninghams began making inquiries to the Commission, seeking an additional award of post-judgment interest. Those inquiries continued after they received payment in full, culminating in written demands for interest, which we treat as a motion for extraordinary post-judgment relief. *See* Cunningham letters dated August 9, 2007 and August 13, 2007. The complainants argue that Commission Regulation 12.407(d) (pertaining to reinstatement of a sanctioned respondent's trading and registration privileges upon payment of a reparation award) mandates satisfaction of the award with interest at the prevailing rate as a condition of reinstatement. Additionally, the

¹ The Sanctions List is published by the Commission as part of its effort to protect market participants and the public from fraud, manipulation, and abusive practices. The list provides federal and state law enforcement agencies, boards of trade, members of the futures industry, and members of the public with information about firms or individuals who have violated the Act or the Commission's Regulations and have not paid awards made through the Commission's reparations program. *See* www.cftc.gov.

² Sanctions remain in effect until the award is paid "in full," Regulation 12.407(d), or a respondent submits a sworn release "executed by *each* recipient of a reparation award." *Id.* at 12.407(c)(2) (emphasis added).

Cunninghams claim that Florida law, under which they obtained a 2001 Writ of Execution against Parker, entitles them to interest on their judgment.³

Although the normal avenue for relief from a final judgment would be an appeal, a party waives the right to appeal when filing under the voluntary decisional procedure. *See* Regulation 12.100(b). Consequently, the complainants' request for additional relief must be treated, if at all, as a request for the Commission to reconsider the Judgment Officer's decision. While the Commission's Part 12 Regulations governing reparation actions do not provide for motions for reconsideration, such motions are cognizable as applications for a form of relief not otherwise provided for. *See* Regulation 12.308. Motions for reconsideration may be granted in "extraordinary circumstances," *Kohler v. Merrill Lynch, Pierce Fenner & Smith*, [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.*

The complainants' argument that they are entitled to an award of post-judgment interest on their reparation award fails to meet this standard. First, Richard Cunningham executed a settlement and release agreement with Parker, and thus lacks standing to pursue additional relief regarding the same transaction. *Cf. Murphy v. Madsen*, CFTC Docket No. 89-213, 1992 WL 88340 (CFTC Apr. 22, 1992)(vacating a presiding officer's order reopening a valid settlement agreement between parties to a reparation proceeding). Also, complainants misread Regulation 12.407(d). The rule provides that interest, when awarded in a final reparation order, must be paid before a respondent may be removed from the Sanctions List. The rule does not, as the

³ The record indicates that in November 2001, the complainants sought to enforce their reparations award in the U.S. District Court for the Southern District of Florida—Parker's place of residence—obtaining a Writ of Execution that was never executed.

Cunninghams claim, establish an independent right to receive interest. Regulation 12.407(d)

provides:

Reinstatement. The sanctions imposed [for nonpayment of a reparation award] shall remain in effect until the person required to pay . . . demonstrates to the satisfaction of the Commission that he has paid the amount required in full with interest at the prevailing rate computed in accordance with 28 U.S.C. § 1961 from the date *directed in the final order* to the date of payment, compounded annually.

(Emphasis added.) Interest is customary in reparation proceedings, but it must be awarded. It does not run automatically. If the Cunninghams sought interest, the appropriate time to petition for post-judgment relief was in 1999, not eight years later, and particularly not after one of them had released the respondent. *Cf. Hubbard Feeds, Inc. v. Animal Feed Supplement, Inc.*, 182 F.3d 598, 602 (8th Cir. 1999)(applying laches to bar a claim where the claimant inexcusably delayed in asserting it and thereby unduly prejudiced the party against which it was asserted); *Pro-Football, Inc. v. Harjo*, 415 F.3d 44, 47 (D.C. Cir. 2005)(equity aids the vigilant).⁴ Further, the complainants' Writ of Execution, which was never executed, is not enforceable in the reparation

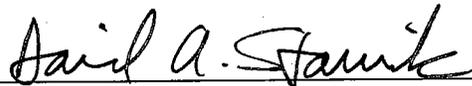
⁴ Under Commission Regulation 12.106(c), prejudgment interest is not available in voluntary reparations proceedings, thus, only post-judgment interest could have been sought.

forum. See Section 14(d) of the Act (providing for post-judgment enforcement of awards in federal district courts).

For the foregoing reasons, we deny the Cunninghams' petition for reconsideration.

IT IS SO ORDERED.⁵

By the Commission (Chairman LUKKEN and Commissioners DUNN, SOMMERS and CHILTON).



David A. Stawick
Secretary of the Commission
Commodity Futures Trading Commission

Dated: February 26, 2008

⁵ 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 also states that such an appeal must be filed within 15 days after notice of the order, and that any appeal is not effective unless, within 30 days of the date of the Commission order, the appealing party files with the clerk of the court a bond equal to double the amount of the reparation award.