

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

JUSTIN FENSTERMAN

v.

STEVEN H. JOSEFF and
UNIVERSAL COMMODITY CORP.

CFTC Docket No. 09-R033

ORDER PURSUANT TO
DELEGATED AUTHORITY

Office of
Proceedings
CFTC

2010 MAY -5 AM 10:58

Received
C.F.T.C.

On March 2, 2010, the Commission, acting by delegated authority, ruled that respondent Steven H. Joseff's ("Joseff") Motion to Stay and Emergency Motion to Stay, filed respectively on February 25 and 26, 2010, were not properly before the Commission. The Commission declined to reach the issues raised in the motions until the Judgment Officer, before whom this case is pending, had ruled thereon. Joseff contended that the Judgment Officer had interfered in settlement negotiations with complainant Justin Fensterman ("Fensterman"), engaged in other inappropriate conduct, and demonstrated bias against him. He sought to have the case reassigned to another presiding officer. The March 2 order stated that any motion to disqualify should be addressed in the first instance by the Judgment Officer, pursuant to Commission Regulations 12.202 and 12.309, 17 C.F.R. §§ 12.202, 12.309.

On April 15, 2010, Joseff filed a Renewed Emergency Motion to Stay Proceedings ("Renewed Motion") addressed directly to the Commission, in which he asserts that the Judgment Officer has not ruled on his prior motions and in effect has denied them. Renewed Motion at 2. He avers the same allegations raised in his previous pleadings, and again asks the Commission to reassign the case.

The Judgment Officer's April 12, 2010 order states that certain documents that the March 2 order required to be placed on the record and served on all parties have not been produced. The April 12 order required Joseff to produce all such documents, together with an index listing each written communication and its recipients; and a statement listing each telephone conversation or email exchange between Joseff and any Commission employee, other than the Judgment Officer's paralegal and the Proceedings Clerk, concerning the motions, emails and other documents referenced in the Commission's March 2 order.

Joseff objects to the order, asserting that emails between Fensterman and himself have been placed in the record; that the Judgment Officer's requirement of an index and list of written and oral communications goes beyond the scope of the Commission's order; and that the information requested represents attorney work product and also violates the privacy rights of Joseff and his attorney. Respondent's Objection to Order Issued April 12, 2010 (filed April 22, 2010).

Meanwhile, discovery initiated by the Judgment Officer has been going forward in a case that Joseff asserts was settled before the case was assigned to the Judgment Officer's docket on February 12, 2010.

The record of what has become an increasingly convoluted proceeding suggests the need for limited Commission intervention. To assist the parties, the following clarification of the March 2 order is provided, in light of the record as it exists today. Joseff copied emails and other documents (including one styled an "ethics complaint" against the Judgment Officer) to individual Commissioners, other persons within the Commission, and to at least one person outside the Commission, as well as filing these with the Office of Proceedings and serving the parties. These include emails between the parties that discuss a settlement prior to the time this

case was placed on the Judgment Officer's docket, although the record contains no stipulation of dismissal signed by the parties pursuant to Regulation 12.21, 17 C.F.R. § 12.21. In addition, the Judgment Officer, through his own efforts, obtained information regarding various communications, including telephone calls, that date back to October 2009 and involve the parties to this case and Office of Proceedings' employees, including the staff of another presiding officer. Judgment Officer's Memorandum to File (March 15, 2010) (docketed but apparently not served on the parties). The ethics complaint against the Judgment Officer, which essentially reiterates Joseff's motions, appears not to have been docketed. The Proceedings Clerk is directed to docket the complaint. In light of the foregoing, the Judgment Officer's April 12 order is vacated.

Nevertheless, if Joseff possesses any additional documents that fall within the scope of Commission Regulation 12.7(a), 17 C.F.R. § 12.7(a), he shall produce them promptly. The rule provides: "No interested person outside the Commission shall make or knowingly cause to be made to any Commissioners, Administrative Law Judge, or Commission decisional employee an ex parte communication relative to the merits of a proceeding."

Joseff's pending motions must be resolved. Serious allegations have been raised that should be addressed at the earliest practicable moment. We hereby direct the Judgment Officer to rule on Joseff's motions on or before May 15, 2010. Joseff's renewed motion to the

Commission to reassign this case immediately is denied. His renewed motion to stay is granted.

This case is stayed until further order of the Commission.

IT IS SO ORDERED.¹


Laura M. Richards
Deputy General Counsel
Commodity Futures Trading Commission

Dated: May 5, 2010

¹ For the Commission pursuant to delegated authority, 17 C.F.R. § 12.408 (a)(3), (6). Within seven days after service of this order, a party may file with the Commission a petition for reconsideration of the ruling. Unless the Commission orders otherwise, the filing of a petition for reconsideration shall not operate to stay the effective date of such ruling. *Id.* at § 12.408(c).