

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

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INDIA MOSS-THOMAS

v.

EAST COAST COMMODITIES,
KEVIN ALAN ROSENBERG,
SOUTH COAST COMMODITIES, INC.,
and ALICE GORDON WELTON

CFTC Docket No. 07

ORDER

This Order amends our March 3, 2009 Opinion and Order by awarding inadvertently omitted interest to the prevailing complainant, India Moss Thomas ("Moss-Thomas").¹ The Commission awarded Moss-Thomas \$46,946 against respondents East Coast Commodities ("East Coast") and Kevin Rosenberg ("Rosenberg"), and \$57,680 against respondent South Coast Commodities ("South Coast"). *Moss-Thomas v. East Coast Commodities*, [Current Transfer Binder] Comm. Fut. L. Rep (CCH) ¶ 31,322 at 62,681 (CFTC Mar 3, 2009). The award against South Coast reflected Moss-Thomas's damages on her fraudulent inducement claims. The Commission held, however, that an additional award might be ordered against South Coast on remand in the event Moss-Thomas pursued and prevailed on churning claims against respondent Alice Welton ("Welton") for which South Coast faced derivative liability.

On remand, Moss-Thomas informed the Administrative Law Judge ("ALJ") that she did not wish to pursue her claims further, and on March 23, 2009, the ALJ issued a dismissal order to terminate the case in its entirety.

¹ Reconsideration of reparations orders is available in extraordinary circumstances for good cause shown. *Kohler v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, [1986-1987 Transfer Binder] Comm. Put. L. Rep. (CCH) ¶ 23,437 at 33,173 (CFTC Dec. 30, 1986).

Prejudgment interest is authorized in formal decisional proceedings under Commission Regulation 12.314 (c), “if warranted as a matter of law under the circumstances of a particular case.” The Commission has held that prejudgment interest, while a matter of discretion, is the rule rather than the exception. *Ruddy v. FCCB*, [1980-1982 Transfer Binder] Comm. Fut. L. Rep (CCH) ¶ 21,435 (CFTC Mar. 31, 1981). Prejudgment interest runs from the date on which a complainant sustained his or her loss. *Mintz v. Heinold Commodities, Inc.*, [1984-1986 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 22,707 at 30,997 (CFTC Aug. 22, 1985). When the exact date of loss cannot be ascertained, the Commission may use another date, *e.g.*, the date on which a complainant had clear notice of fraud. *Modlin v. Cane*, [1999-2000 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 28,059 (CFTC Mar. 15, 2000). Post-judgment interest is nondiscretionary and runs until paid whether or not expressly awarded. Commission Rule 12.407(d); 73 Fed. Reg. 70274 (Nov. 20, 2008).

In this case, interest against South Coast, East Coast and Rosenberg shall run from October 16, 2006, the date federal prosecutors informed complainant's father about the corporate respondents' disciplinary history and fraudulent conduct. Interest against East Coast and Rosenberg shall run at the annual rate of 0.72 percent (the applicable rate when the case became

final as to them).² Interest against South Coast shall run at the annual rate of 0.64, the applicable rate when the ALJ issued his order of dismissal.

IT IS SO ORDERED.

By the Commission (Chairman GENSLER and Commissioners DUNN, SOMMERS and CHILTON) (Commissioner LUKKEN not participating).

Dated: June 18, 2009



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

² Rule 12.407(d) provides that interest shall run on an unpaid reparation award "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." *See also* Section 14(f) of the Commodity Exchange Act, 7 U.S.C. § 18(f) (statutory authority for Rule 12.407(d)).