

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

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RICHARD S. NUMBERS, TRUSTEE, THE
RICHARD S. NUMBERS REVOCABLE
TRUST

v.

STEPHEN RANDALL MOORE

CFTC Docket No. 05-R86

ORDER

A Judgment Officer ordered respondent Stephen Randall Moore ("Moore") to pay complainant Richard S. Numbers ("Numbers") a reparation award of \$76,750. *Numbers v. Moore*, 2006 WL 1476900 (May 24, 2006). Moore did not appeal and the initial decision became the final decision of the Commission. Moore did not pay the reparation award and Numbers presented a certified copy of the Commission's order to the U.S. District Court for the Eastern District of Virginia to enforce it. The district court declined to enforce the award unless Numbers filed a new lawsuit against Moore on the debt. *Richard S. Numbers v. Stephen Randall Moore*, Case No. 1:6mc70 (E.D. VA May 31, 2007) (unpublished slip op).

By letters dated June 28, 2007 and August 20, 2007 Numbers apprised the Commission of his unsatisfactory collection efforts.¹ We treat Numbers's request as a motion for extraordinary post-judgment relief and set forth our interpretation of the applicable provision of the Commodity Exchange Act ("Act"), which we view as not requiring a second lawsuit. While our interpretation cannot bind another forum, we hope it may persuade district courts before which prevailing complainants seek to enforce awards. In addressing the post-judgment problem

¹ By letter dated July 27, 2007, an Assistant General Counsel responded to the first letter by explaining that the Commission cannot assist in the collection of reparation awards. This order is our response to the second letter.

brought to our attention by Numbers, we proceed under Commission Regulation 12.4(b) (empowering the Commission to waive or adopt a procedural provision for good cause).²

* * *

Section 14(d) of the Act, 7 U.S.C. § 18(d), which provides for enforcement of a reparation award by a prevailing complainant, states that a complainant may seek enforcement in district court, shall not be liable for costs, and shall be allowed a reasonable attorney's fee.³

In 1979, the Office of General Counsel published an interpretive letter opining that "in order to secure enforcement of a reparation award, Section 14(f) [since renumbered Section 14(d)] requires only the filing of a certified copy of the Commission's order with the appropriate federal court." *Enforcement of Reparation Awards in Federal District Court*, [1977-1980 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 20,875 at 23,567 (Interpretive Letter No. 79-4, Aug. 2, 1979) ("1979 letter"). The 1979 letter stated further that "[i]t is clear under Section 14 . . . that a reparation award which has become final should be treated and is enforceable as a final judgment would be if entered by a court." *Id.* at 23,566. The letter expressly raised the issue of whether an award "should be treated as a foreign judgment requiring [a prevailing complainant] to bring suit on the debt or as a local judgment for which more expeditious procedures

² Cf. *Hess v. Mount*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,039 (CFTC Apr. 17, 1991) (applying Regulation 12.4 to set aside a default order beyond the generally applicable window for such relief).

³ Section 14(d) states:

(d) Enforcement of reparation award. If any person against whom an award has been made does not pay the reparation award within the time specified in the Commission's order, the complainant, or any person for whose benefit such order was made, within three years of the date of the order, may file a certified copy of the order of the Commission, in the district court of the United States for the district in which he resides or in which is located the principal place of business of the respondent, for enforcement of such reparation award by appropriate orders. The orders, writs, and processes of such district court may in such case run, be served, and be returnable anywhere in the United States. The petitioner shall not be liable for costs in the district court, nor for costs at any subsequent state of the proceedings, unless they accrue upon his appeal. If the petitioner finally prevails, he shall be allowed a reasonable attorney's fee, to be taxed and collected as a part of the costs of the suit. Subject to the right of appeal under subsection (e) of this section, an order of the Commission awarding reparation shall be final and conclusive.

presumably are available.” *Id.* Acknowledging that the Act “does not specifically address this question,” the letter opined that the Act “should be construed to permit federal district courts to treat reparation orders properly filed before them as local judgments. This reading is consistent with the spirit and goals of the Act.” *Id.*

The interpretation of the Act in the 1979 letter is based upon the legislative history and the remedial intent of the provision as expressed by Congress. *Id.*, citing 120 Cong. Rec. H34737 (1974) (remarks of Rep. Poage); 120 Cong. Rec. S34997 (1974) (remarks of Sen. Talmadge). The 1979 letter stressed that Section 14(d) should be construed broadly “so as to effectuate the purpose of Congress and secure . . . relief.” *Id.*, citing *United States v. Southern Pac. R. Co.*, 184 U.S. 49, 56 (1902) (remedial legislation should be construed broadly); *accord*, *Tcherepnin v. Knight*, 389 U.S. 332, 336 (1967). Importantly, the 1979 letter pointed out the underlying statutory purpose:

The reparations procedure under Section 14 of the Act was adopted by Congress to protect customers from unscrupulous activities of persons registered or required to be registered with the Commission. *See* S. Rep. No. 93-1131, 93d Cong., 2d Sess. 1 (1974). It was intended to afford a remedy to private parties who have been damaged by violations of the Act and, in this regard, one of its public interest purposes is to enforce proscriptions of the Act through appropriate money awards made for any proven violations. *Sherwood v. Madda Trading Co.*, [1977-1980 Transfer Binder] CCH Comm. Fut. L. Rep. ¶ 20,728, at 23,025 (CFTC Jan. 5, 1979)

Id.

In 1984, in response to further inquiries, the Office of General Counsel published a second interpretation that reiterated the thrust of the 1979 letter and provided extensive guidance regarding writs of execution. *The Use of Writs of Execution to Enforce Reparation Awards in Federal District Court*, [1982-1984 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 22,073 (Apr. 6, 1984) (“1984 letter”). The Commission’s Office of Proceedings furnished Numbers with a

copy of the 1979 letter, which he submitted to the district court. Nonetheless, the court denied Numbers's motion to treat his reparation award as a local judgment, rejecting the published interpretation of the statute. The court stated:

Congressional silence in [7 U.S.C.] § 18(d) about whether further procedures are necessary to enforce a CFTC reparation award militates against treating such awards as local judgments. Had Congress intended CFTC reparation awards to receive the same expeditious treatment as judgments of other federal courts, it likely would have duplicated the language of 28 U.S.C. § 1963 in § 18(d), or stated that CFTC awards could be enforced pursuant to the procedures in § 1963. Federal courts strictly construe § 1963 out of an appropriate hesitation to extend the favored treatment of federal court-judgments to other judgments and awards. Indeed, only judgments of the courts specifically listed in § 1963 may be registered under that statute. . . . Likewise, a clear statement should be required before another statute is construed to afford the beneficiary of an administrative award the favored status granted federal court judgment-holders under § 1963, precisely because the result would be so unusual. Such a clear statement is lacking here.⁴

Slip op. at 3-4. The court advised Numbers to file a new lawsuit against Moore in federal district court.

An agency's reasonable interpretation of its own statute warrants deference. "[I]f the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute." *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 843 (1984) ("*Chevron*").

An agency's interpretation of the statute it administers is due even more weight when its interpretation has been uniformly maintained for a considerable period of time. *See Zenith Radio*

⁴ 28 U.S.C § 1963, the federal courts' local judgment rule, states in relevant part:

A judgment in an action for the recovery of money or property entered in any court of appeals, district court, bankruptcy court, or in the Court of International Trade may be registered by filing a certified copy of the judgment in any other district or, with respect to the Court of International Trade, in any judicial district, when the judgment has become final by appeal or expiration of the time for appeal or when ordered by the court that entered the judgment for good cause shown. Such a judgment entered in favor of the United States may be so registered any time after judgment is entered. A judgment so registered shall have the same effect as a judgment of the district court of the district where registered and may be enforced in like manner. . . .

Corp. v. United States, 437 U.S. 443, 450 (1978). The 1979 and 1984 letters have been in the public domain for almost 30 years. During this time, Congress has amended the Act several times without commenting on the letters' interpretation of Section 14. Consequently, this longstanding and consistent interpretation of Section 14(d) is entitled to considerable weight. *Id.*

The Commission has a mandate to protect "all market participants from fraudulent or other abusive sales practices and misuses of customer assets." Section 3(b) of the Act. Section 14, implemented by rules set forth at 17 CFR Part 12, is a customer protection provision that specifically provides redress for individual customers who were defrauded or otherwise cheated out of their money. The Act's legislative history indicates that the reparation program is to be user-friendly, implementing regulations are user-friendly, and our case law makes clear that we require presiding officials to maintain a user-friendly forum. Once a reparation complainant has proven his or her case and been granted an award, collection of the award should be user-friendly as well.

To that end, Section 14 provides that, to obtain enforcement of the order from a recalcitrant respondent, a reparation complainant need merely file a certified copy of the Commission's order in the district court where the complainant resides or the respondent does business, and the district court is to issue "appropriate orders." The provision that the courts' orders, writs and processes may "run, be served and be returnable anywhere in the United States" further indicates Congress's desire to ease a complainant's collection effort.⁵

The district court where Numbers sought to enforce his award reasoned that if Congress intended reparation awards to be treated as local judgments, "it likely would have duplicated the language of 28 U.S.C. § 1963 or stated that CFTC awards could be enforced pursuant to the

⁵ *But see Numbers*, slip op. at 4 ("availability of nationwide service of process . . . confirms that enforcement of reparations awards should be treated as a new civil action").

procedures in § 1963.” Slip op. at 3. Congress also could easily have said, but did not, that a complainant must file a new collection suit in federal district court. Section 14 very explicitly states that the reparation complainant need file only a certified copy of the Commission decision—a clear expression of Congress’s intent for a simplified process. It would be contrary to everything else in Section 14 to assume that Congress intended to require prevailing litigants in the reparation forum to file a separate action in district court in order to obtain recompense, especially since there is nothing substantial to litigate.

Section 1963 “protect[s] both judgment creditors and judgment debtors from the additional cost and harassment of further litigation which otherwise would be incident to an action on the judgment in a foreign district.” *Ohio Hoist Manufacturing Co., v. LiRocchi*, 490 F.2d 105, 107 (6th Cir. 1974) *citing* *Stanford v. Utley*, 341 F.2d 265, 270 (8th Cir. 1965). It was designed to “reduc[e] the cost and harassment of further litigation [by permitting] the judgment creditor to enforce his registered judgment.” *Id.* Section 1963 and Section 14 of the Act both operate to promote decisional economy. Thus, we believe that the procedures authorized in Section 1963 may appropriately be used in furtherance of the remedial purposes of Section 14.

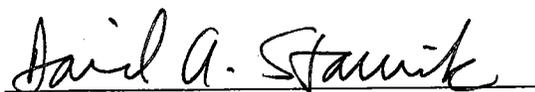
Section 14 is intended to make whole promptly victims injured by a violation of the Act committed by an industry registrant. To require prevailing complainants to initiate another proceeding in district court in order to collect an award already litigated serves no apparent purpose. In directing Numbers to file a new civil action, even with the proviso that Moore “may not contest the merits of the reparation award,” slip op. at 5, the district court imposed on Numbers the burdens and risks of litigation, including the duty of ascertaining and complying

with applicable procedural rules. Section 14(d) sends prevailing reparation complainants to district court to enforce reparation awards, not to establish a right to collect them.⁶

Based on the foregoing, we confirm the Commission's longstanding interpretation of Section 14(d) of the Act as contemplating that federal district courts will issue appropriate orders facilitating collection of reparation awards by treating them as local judgments.

IT IS SO ORDERED.⁷

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



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

Dated: February 28, 2008

⁶ Section 14 in addition provides that when a respondent fails to pay an award, the respondent's registration is suspended and a trading ban is imposed.

⁷ Reparation complainants may present a copy of this order to any district court as the Commission's interpretation of Section 14(d). The 1979 and 1984 letters also may be relied on.