

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

JOYCE POZNIKO

v.

LESLIE ANN BURTON and
MAN FINANCIAL, INC.

CFTC Docket No. 04-R057

ORDER DENYING
RECONSIDERATION

Office of
Proceedings
Proceedings Clerk

2008 SEP 30 PM 11:41

Received
C.F.T.C.

Complainant Joyce Pozniko (“Pozniko”) seeks reconsideration of an order issued by staff pursuant to delegated authority that dismissed her appeal as unperfected because she did not file the appeal brief required by Commission Regulation 12.401(b). Pozniko filed a timely notice of appeal on December 5, 2007 from the initial decision of November 30, 2007 that dismissed her complaint. Under Regulation 12.401(b), Pozniko’s brief should have been filed on or before January 4, 2008 (30 days after her notice of appeal was filed). Her unperfected appeal was dismissed on February 11, 2008.

Pozniko submitted a pleading on February 14, 2008 styled “Complainant’s Right to Appeal Denied,” which we treat as a petition filed pursuant to Regulation 12.408(c) for reconsideration of a delegated authority order. She stated therein that “I was awaiting the proper paperwork to write out my appeal,” and added, “I would like to at least exercise my right to appeal knowledgeably.”

Each initial decision issued by a Commission presiding officer is served by the Proceedings Clerk and is accompanied by a standard cover letter that explains in “plain English” how to file and perfect an appeal. As relevant here, the letter states:

Summary of the Appeal Process

If you choose to appeal, you must mail an original and one copy of your brief to the Office of Proceedings within thirty (30) calendar days of the date you mailed your Notice of Appeal. Copies must be provided to all other parties. *If you do not file a brief, your appeal will not be considered and the initial decision will stand.*

Proceedings Clerk's Cover Letter at 2 (emphasis added). The Office of Proceedings also furnishes reparation complainants with a complete set of the Rules Relating to Reparation Proceedings, 17 CFR Part 12. Regulations 12.401(b)-(d) set forth the briefing requirements and deadlines for appeals.

The Commission has held that "to remain inexpensive, the reparations forum must, at a minimum, remain hospitable to the participation of *pro se* parties. As a result, we have recognized that allowances must be made for *pro se* status in interpreting and applying procedural requirements." *Hall v. Diversified Trading Systems, Inc.*, [1992-1994 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,131 at 41,751 (CFTC July 7, 1994) (citation omitted). To that end, Regulation 12.401(d) provides that "any party, with leave of the Commission, may file an informal document in lieu of a brief."

The letter Pozniko received with her decision and the reparation rules both informed her that after she filed a notice of appeal, the ball remained in her court to perfect it. Nothing in the language of either, and nothing in the record of this case, reasonably should have given Pozniko the impression that she should expect anything further from the Commission. The record sheds no light on her unexplained statement that she was "awaiting the proper paper work." The

reparation forum aims to be user friendly, but the Commission cannot excuse any and all instances of parties' inattention to basic instructions.

Accordingly, Pozniko's petition for reconsideration is denied and her appeal is dismissed. Pursuant to Regulation 12.408(c), the filing of Pozniko's petition shall operate *nunc pro tunc* to stay the effective date of the delegated authority order. Pozniko's appeal is finally dismissed as of the date of this order.

IT IS SO ORDERED.¹

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



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

Dated: September 30, 2008

¹ 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.