

UNITED STATES OF AMERICA  
Before the  
COMMODITY FUTURES TRADING COMMISSION

BERNARD M. SEEMAN

v.

NATIONAL FUTURES ASSOCIATION

CFTC Docket No. C-07-08-01

ORDER PURSUANT TO  
DELEGATED AUTHORITY

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2008 FEB 12  
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CFTC  
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Bernard Seeman ("Seeman") moves the Commission to accept his tardy filing fee, which he tendered with his motion on October 31, 2007. The fee should have been submitted with his timely October 2, 2007 notice of appeal, and in any event no later than October 16, 2007, the deadline for appealing the National Futures Association's ("NFA") final order denying registration. NFA opposes the motion, contending that Seeman failed to demonstrate excusable neglect. *See* Commission Regulation 171.23(d). Seeman's fee is accepted and his appeal is docketed. The stay imposed in the October 25, 2007 delegated authority order is lifted and NFA shall submit the record within 30 days after the date of this order.

In *Pioneer Insurance Co. v. Brunswick Association, Ltd.*, 507 U.S. 380, 395 (1993), the Supreme Court established a four-factor test to be applied to motions to accept tardy submissions: (1) the risk of prejudice to the non-moving party; (2) the length of the delay and its potential impact on judicial proceedings; (3) the reason for the delay, including whether it was within the reasonable control of the movant, and (4) whether the movant acted in good faith. *Pioneer* instructs that the determination of excusable neglect "is at bottom an equitable one, taking account of all relevant circumstances surrounding the party's omission." 507 U.S. at 395.

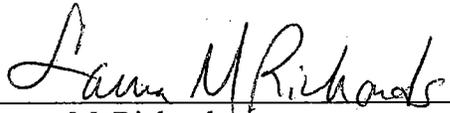
Seeman states that "being anxious to file the Notice of Appeal in a timely fashion and not having the pertinent Regulations at the time of filing [he] was unaware of the filing fee." Motion

at 1. NFA responds that its final order advised Seeman of his right to appeal, including the fact that a fee had to be paid. NFA Response at 1-2.

We take into account that Seeman filed his notice of appeal well within the deadline, thus promptly indicating his intent to seek review. *Compare In re Ligammari*, [2005-2007 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 30,103 (CFTC June 28, 2005)(order pursuant to delegated authority)(applying *Pioneer* adversely to a respondent who filed a late notice of appeal); *In re Errickson*, [1992-1994 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,025 (CFTC Mar. 2, 1994)(order issued pursuant to delegated authority)(rejecting late notice of appeal); *In re Wnukowski*, [2005-2007 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 30,234 (CFTC May 3, 2006)(rejecting a late answer).

Seeman's promptly filing of the notice itself, and the fact that he manifestly satisfied the other *Pioneer* factors, militate in favor of accepting his fee and docketing his appeal. The stay imposed in this matter is lifted. NFA shall submit the record within 30 days after the date of this order.

IT IS SO ORDERED.<sup>1</sup>

  
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Laura M. Richards  
Deputy General Counsel  
Commodity Futures Trading Commission

Dated: February 12, 2008

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<sup>1</sup> By the Commission pursuant to delegated authority. 17 C.F.R. § 171.50(a)(5), (8). A party may petition the Commission to reconsider this ruling within seven days after service of this order. *Id.* at § 171.50(b).