

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

BERNARD M. SEEMAN

v.

NATIONAL FUTURES ASSOCIATION

CFTC Docket No. CRAA 08-01

ORDER DENYING
RECONSIDERATION

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Appellant Bernard Seeman seeks reconsideration of a May 1, 2008 order issued by staff pursuant to delegated authority dismissing his appeal as unperfected because he did not file an appeal brief. Under Commission Regulation 171.25(a), Seeman's brief should have been filed on or before April 17, 2008 (30 days after the filing and service of the National Futures Association ("NFA") Record on Review, plus 5 days when service is effected by mail pursuant to Commission Regulation 171.9(b)). We affirm the delegated authority order and deny Seeman's petition for reconsideration.

Seeman submitted a pleading on May 5, 2008, styled "Notice of Appeal Affirmation," which we treat as a petition filed pursuant to Regulation 171.50(b) for reconsideration of a delegated authority order. Seeman states therein that "[t]here was no indication in the receipt of the Record on Review that I had to perfect my appeal brief within thirty (30) days." He adds that the Commission should "allow this matter to be decided on the substantive issues and not a procedural mishap." Seeman's Petition at 1. On May 13, 2008, NFA filed its opposing brief, arguing that Seeman's failure to perfect his appeal was not excusable neglect since he had notice of the briefing schedule. *See* NFA's Opposition Brief.

Seeman asks the Commission to resolve this matter on the merits rather than procedural grounds. Seeman, however, by his own dilatory pattern of conduct, has barred us from reaching the merits. On October 2, 2007, Seeman filed a timely notice of appeal before the Commission of an NFA Final Order denying him registration, but failed to include the \$100 required filing fee. Subsequently, a staff delegated authority order granted Seeman leave to file a motion showing excusable neglect for failing to pay the fee. Seeman tendered the required fee and filed a motion explaining that he filed his notice of appeal in haste and simply neglected to include the fee. Seeman's Motion dated October 31, 2007. Subsequently, another staff delegated authority granted Seeman's motion and ordered NFA to file the Record on Review. *See* February 12, 2008 Order of Delegated Authority. NFA timely filed the Record with the CFTC on March 13, 2008 and simultaneously served it on Seeman. Seeman did not file his appeal brief.

In *Pioneer Investment Services Co. v. Brunswick Associates, Ltd. et al.*, 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.

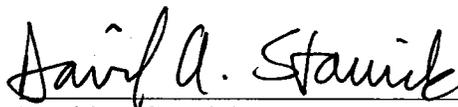
In his petition for reconsideration, Seeman argued that he was not informed about the briefing schedule when he received the NFA Record on Review. However, the Office of Proceedings, in a letter assigning a docket number to this case, had notified Seeman explicitly that "the Commission's Part 171 Rules will govern the procedural aspects of this matter." *See* Proceedings Letter dated October 17, 2007. A copy of the rules was also enclosed with the

letter. Seeman, while no longer a licensed bar member, had practiced law and presumably is familiar with legal terminology and litigation norms. We note that Seeman, in his petition for reconsideration, also cited relevant provisions of Part 171. Consequently, Seeman cannot establish, with any credibility, that his failure to perfect his appeal was due to excusable neglect. In the final analysis, while our forum aims to be user friendly, we cannot excuse any and all instances of parties' reckless or deliberate inattention to basic instructions.

Accordingly, Seeman's petition for reconsideration is denied and his appeal is dismissed.

IT IS SO ORDERED.

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



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

Dated: June 27, 2008