

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

INDIA MOSS-THOMAS

v.

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

CFTC Docket No. 07-R007

ORDER

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Pursuant to 17 C.F.R. § 12.403, we hereby take *sua sponte* review of this matter, particularly the following orders issued by the Administrative Law Judge (“ALJ”): Order of Partial Dismissal, issued October 11, 2007, dismissing respondent Alice Welton (“Welton”); Order dated October 29, 2007, instructing complainant India Moss-Thomas (“Moss-Thomas”) to file a motion for default judgment against the remaining respondents or proceed to hearing; Order dated December 13, 2007, denying complainant’s request to change the location and date of the hearing; and Order of Dismissal, issued January 17, 2008. We take *sua sponte* review to determine whether the ALJ abused his discretion by holding a *pro se* litigant to an unreasonable standard of litigating proficiency.

According to the October 11, 2007 Order of Partial Dismissal, the ALJ dismissed respondent Welton when Moss-Thomas answered Welton’s discovery requests three days late. *See* 17 C.F. R. § 12.33(b). The ALJ stated that “[b]y failing to deny and/or object to admission requests within the prescribed time, the complainant automatically admitted and conclusively established that Welton ‘did nothing wrong.’” Order at 2. Based on this holding, the ALJ

granted Welton summary judgment and concluded that “additional fact finding would not produce a contrary outcome.” *Id.* at 3.

The ALJ’s October 29, 2007 Order noted that all of the named respondents were in default (except Welton, whom the ALJ had dismissed). He offered Moss-Thomas the option of filing a motion for default judgment or proceeding to a hearing. He established November 29, 2007 as the filing deadline for the motion, and instructed Moss-Thomas that the motion must include “proposed findings and conclusions concerning any violations of the Commodity Exchange Act [or Commission Regulations],” a calculation of “the actual damages proximately caused by such violations” and “citations to the documentary record.” Order at 2.

Instead of filing a motion, Moss-Thomas submitted a letter to the ALJ on November 14, 2007, expressing her frustration with the proceeding, particularly the ALJ’s order dismissing Welton:

[I]t just knocked us down when you said we did not do things right, so you Ordered the dismissal. We worked so hard on things and spent many hours on it. We are not attorneys and we do not understand everything. . . . The day the FBI agent called and interviewed my dad, he told us we could file on the respondents and the CFTC would help us do everything. This is far from what we discovered. We had to do everything and do all the filings when we did not understand it, but tried as hard as we could do it.

November 14, 2007 Letter at 1.

Subsequently, the ALJ scheduled a hearing on January 23, 2008, in Houston, Texas. Order dated December 5, 2007. On December 11, 2007, Moss-Thomas filed a motion to move the hearing from Houston to Dallas and to move the date to February. Motion at 1. Moss-Thomas stated that her father’s back condition would make the 5½ hour drive to Houston hard on him, whereas Dallas was only 1½ hours from her home. She sought a new date for the hearing because her father had to have his back surgery sometime after Christmas. *Id.*

On December 13, 2007, the ALJ denied the motion, citing the requirements of 17 C.F.R. § 12.312(b) (location of hearing), which states that an oral hearing must be held in one of the cities expressly named in the regulation unless a party files an affidavit averring that none of the cities listed in the regulation is within 300 miles of his or her residence.¹ The ALJ stated that because Moss Thomas “did not file an affidavit . . . [he] lack[ed] the authority to relocate the hearing to Dallas.” Order at 2. The ALJ deferred ruling on Moss-Thomas’s request to change the hearing date until he received a “notice of (1) the date upon which her father’s surgery will occur and (2) her father’s estimated recovery time.” *Id.* at 3.

On January 17, 2008, Moss-Thomas faxed a letter to the ALJ, stating that she would not attend the hearing and to “please cancel this case” because “I cannot take this anymore. . . . My family and I cannot handle the stress any longer . . . and I feel like we have worked so hard for nothing.” January 17, 2008 Letter at 1. On the same day, the ALJ dismissed the entire proceeding.

We take review to determine whether the ALJ’s action was warranted in the following instances: (1) his grant of summary judgment to Welton based on tardy responses to broad requests for admissions; (2) his manner of implementing the default procedures of 17 C.F. R.

¹In his first Order and Notice of Hearing dated June 6, 2007, the ALJ scheduled an oral hearing to be held on August 28, 2007 in Dallas. In a July 2, 2007 order (and for all subsequent orders regarding notice of hearing), the ALJ *sua sponte* changed the location of the hearing to Houston. In denying complainant’s December 11, 2007 motion to relocate the hearing to Dallas, the ALJ held that he was required to follow strictly Commission Rule 12.312(b), as held in *Kaps v. Executive Commodity Corp.*, [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 30,550 at 60,175 (CFTC June 19, 2007). The ALJ also stated that the Commission’s Director of Proceedings “did not excuse [him] from complying with Rule 12.312(b).”

§ 12.22; and (3) his denial of complainant's request to change the hearing location. In light of our action, this case is not final as to any party.

IT IS SO ORDERED.

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

A handwritten signature in cursive script, reading "David A. Stawick", written in black ink on a white background.

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

Dated: February 14, 2008