

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

LOUIE G. STIDHAM and
JUNE C. STIDHAM

v.

CALVIN LEE WORD

CFTC Docket No. 89-R300

OPINION AND ORDER

Respondent Calvin Lee Word ("Word") appeals from an Administrative Law Judge's ("ALJ") order denying Word's motion to set aside a default judgment entered against him in 1992. The ALJ based his order on Word's failure to comply with Commission Rule 12.23(b), 17 C.F.R. § 12.23(b), which requires such a motion to be filed within one year after the default order was issued. For the reasons below, we affirm the ALJ's order.

BACKGROUND

Complainants Louie G. Stidham and June C. Stidham (collectively, the "Stidhams") filed a reparations complaint on June 7, 1989 against Word, Madlyn L. Ferro ("Ferro"), Andrew C. Anderson ("Anderson") and their employer, futures commission merchant First Commodity Corporation of Boston ("FCCB"). A default judgment was entered against Word, Anderson and FCCB, none of whom answered the complaint. Ferro, who answered the complaint, was found to have engaged in fraud against the Stidhams, but avoided liability by pleading that the complaint was time-barred. The ALJ held that FCCB, Anderson, and Word were jointly and severally liable to the complainants and ordered them to pay \$17,511.91, plus interest of 4.58% compounded annually from April 7, 1986 until paid. *Stidham v. FCCB*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,264 (ALJ Apr. 1, 1992).

Nineteen years later, on April 14, 2011, Word filed a motion to set aside the default judgment, asserting that he was not served with the reparations complaint or given the opportunity to answer in 1989, and that the default judgment was entered against him without his knowledge. The Stidhams opposed the motion, citing their efforts to collect their damage award – an odyssey that has taken them in and out of various courts since 1993 – and Word’s vigorous opposition to their attempts to collect.

The ALJ denied Word’s motion as 18 years out of time, noting that Rule 12.23(b) requires motions to set aside a final default order for fraud, mistake, or excusable neglect to be filed within one year after the order was issued. He found that Word’s request to set aside the default because of “excusable error or mistake” clearly fell within the plain language of the rule. *Stidham v. Word*, CFTC No. 89-R300, 2011 WL 1761091 (CFTC May 6, 2011). Word now appeals that denial.

DISCUSSION

On appeal, Word maintains his contention that he never was served with the complaint or given the opportunity to answer. He states that “unintentional mistakes of service … will happen in very rare circumstances, and this is one.” Notice of Appeal at 1. He acknowledges missing Rule 12.23(b)’s one-year deadline and asks the Commission to waive the deadline pursuant to Rule 12.4, 17 C.F.R. § 12.4. Word seeks to have the case reopened so that he can avail himself of the statute of limitations. *Id.* at 1-2. In response, the Stidhams argue that the decision below should be affirmed.

Rule 12.4(b) provides that to prevent undue hardship, or for other good cause, the Commission may waive any reparations rule in a particular case upon a determination that no party will be prejudiced thereby, and that the ends of justice will be served. Word’s request for the extraordinary relief he seeks rests on his contention that it is manifestly unfair for him to

occurred, he never states that the complaint was served other than at his address of record. Moreover, before entering the default judgment in 1992, the ALJ found that “[t]he parties have received adequate notice.”² *Stidham*, ¶ 25,264 at 38,834. Accordingly, Word’s argument regarding lack of service of the complaint has no merit because Word himself was responsible for updating any change of address through November 28, 1991, which would have provided him with proper notification of the reparations complaint filed on June 7, 1989, in a timely manner.

Furthermore, the record indicates that Word knew of this case and the judgment against him no later than October 1995, when he filed his answer in the complainants’ debt collection lawsuit in the U.S. District Court for the Northern District of Georgia. In that case, Word argued that he never was served with the reparations complaint and did not appeal the decision because no judgment was lawfully rendered.³ Declaration of Patrick J. Gibbs, Ex. B (Word’s Answer in the Georgia case, filed by the complainants in proceedings below).

Despite having actual knowledge of the reparations matter, Word made no attempt at that time to reopen the default judgment before the Commission, thereby forfeiting any claim of undue hardship that might provide a basis for relief under Rule 12.4.⁴ Moreover, vacating the

² The ALJ held also that Word waived the statute of limitations defense by failing to file an answer raising the defense. *Stidham*, ¶ 25,264 at 38,836.

³ In his answer, Word stated that the reparations complaint showed his address as 45 Little Silver Ct., Smyrna, GA, and that the complaint was filed on June 7, 1989, and all notices thereafter, were sent to that address. Word stated that from July 1988 through July 1993, he lived in Roswell, Georgia. Declaration of Patrick J. Gibbs, Ex. B.

⁴ Word relies on *Hess v. Mount*, [1990-1992 Transfer Binder] Comm. Fut. L Rep (CCH) ¶ 25,039 (CFTC Apr. 17, 1991) in support of his request. In *Hess*, after an Administrative Law Judge refused to vacate a default judgment entered against a respondent, the respondent waited 21 months before seeking post-judgment relief from the Commission. The Commission applied Rule 12.4 to vacate the default judgment. Unlike the instant case, the facts in *Hess* established good cause for invoking Rule 12.4. The 21-month delay in *Hess* does not begin to approach the 19-year delay in this matter. Also, the respondent in *Hess* moved to vacate the default judgment when the complainant attempted to enforce her award of damages, whereas Word fought the Stidhams’ enforcement efforts for nearly two decades before seeking to vacate the judgment. Most important, there is no indication in the *Hess* decision that Mount caused the problem that led to the default.

default judgment now will severely prejudice the Stidhams, who have invested significant time and incurred substantial expense in attempting to obtain the benefit of a long-final decision.⁵

If Word intended to try to overturn the default, he should have approached the Commission no later than 1995, not 16 years later. We find no good cause or undue hardship to justify the extraordinary relief Word seeks and decline to apply Rule 12.4 to waive the one-year deadline in Rule 12.23(b).⁶ Accordingly, the 1992 default judgment stands undisturbed.

CONCLUSION

For the foregoing reasons, the ALJ's Order Denying Motion to Set Aside Default Judgment is affirmed.

IT IS SO ORDERED.⁷

By the Commission (Chairman GENSLER and Commissioners SOMMERS, CHILTON, O'MALIA AND WETJEN).



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

Dated: May 3, 2012

⁵ Due to discovery sanctions against Word, the complainants obtained a default judgment in the Georgia debt collection case of over \$37,000 in 1996, an amount that included attorney's fees and costs. Declaration of Patrick J. Gibbs, Ex A. (the Georgia decision, filed by the complainants in proceedings below). The complainants assert that the amount of the unsatisfied judgment now exceeds \$100,000, with interest continuing to accrue. Complainants' Opposition to Appeal at 2.

⁶ When Word filed his Notice of Appeal in May 2011, he included arguments and a request for relief that normally would be found in a brief. The complainants filed a timely response opposing the appeal and countering Word's arguments. Word filed a one-paragraph supplemental pleading in August 2011, reiterating his earlier arguments. The complainants filed a response in which they characterized the supplemental pleading as Word's appeal brief and contended that Word did not perfect his appeal because he did not file a brief in the format and within the time prescribed by Rule 12.401, 17 C.F.R. § 12.401. We find that by including arguments and a request for relief in his notice of appeal, Word satisfied our briefing requirements. Reparations rules "shall be construed liberally so as to secure the just, speedy and inexpensive determination of the issues presented with full protection for the rights of all parties." Rule 12.1, 17 C.F.R. § 12.1. The complainants suffered no harm from Word's combining his notice and appeal brief in a single document.

⁷ Under Sections 6(c) and 14(e) of the Commodity Exchange Act, 7 U.S.C. §§ 9 and 18(e), 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 was 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.