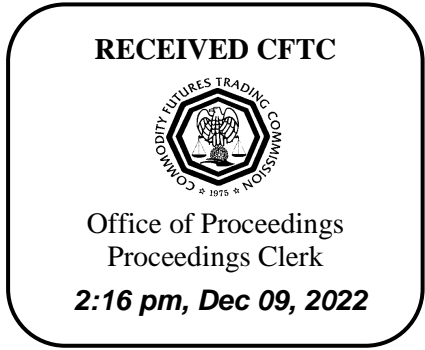


UNITED STATES OF AMERICA  
Before the  
COMMODITY FUTURES TRADING COMMISSION



\_\_\_\_\_  
WESLEY M. JARRELL, II,  
*Complainant-Appellee,*  
v.  
ROBERT LEE SPEARS, JR.,  
*Respondent-Appellant.*  
\_\_\_\_\_

CFTC Docket No. 18-R027

**ORDER OF SUMMARY AFFIRMANCE AND  
ORDER DENYING MOTION FOR ATTORNEYS' FEES**

This reparations matter is before the Commission for consideration of two separate issues: (1) Respondent-Appellant Robert Lee Spears, Jr.'s appeal from the Administrative Judge's initial decision of November 22, 2021; and (2) Complainant-Appellee Wesley M. Jarrell, II's motion for attorney fees.

As to Respondent-Appellant Spears's appeal, upon review of the briefs and the record as a whole, we conclude that the result reached in the Administrative Judge's initial decision of November 22, 2021 was substantially correct and no important question of law or policy has been raised on appeal. We therefore summarily affirm. *See* 17 C.F.R. § 12.406(b). Pursuant to Rule 12.406(b), neither the initial decision nor this order of summary affirmance shall serve as Commission precedent in future proceedings.

As to Complainant-Appellee Jarrell's motion for attorneys' fees, we deny the motion. That motion was filed after the decision under appeal and is thus before the Commission in the first instance. *See* 17 C.F.R. § 12.205(a). Our regulations provide that, "if appropriate,"

“reasonable attorneys’ fees” may be awarded in reparations proceedings. 17 C.F.R. §§ 12.210(c) and 12.314(c). Our precedent establishes that attorneys’ fees may be awarded to the prevailing party in reparations proceedings in appropriate circumstances—that is, if an exception exists to the familiar “American Rule” of litigants bearing their own expenses—such as when “the losing party acts in bad faith, vexatiously, wantonly, or for oppressive reasons.” *Sherwood v. Madda Trading Co.*, [1977-1980 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 20,728 at 23,025 & n.26 (CFTC Jan. 5, 1979). When promulgating our rules authorizing attorney-fee awards in the reparations program, we explained that we “expect[] to apply the ‘American rule’” and for “the reasoning set forth in *Sherwood*” to apply when “determining whether an award of attorney’s fees is appropriate.” See CFTC, *Final Rules Relating to Reparations*, 49 Fed. Reg. 6602, 6615–18 & n.48 (Feb. 22, 1984) (promulgating 17 C.F.R. §§ 12.210(c) and 12.314(c)).

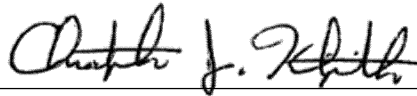
We have previously understood *Sherwood*’s “bad faith” exception to require a showing of “litigation-related misconduct in the reparation forum.” See, e.g., *Pal v. Reifler Trading Corp.*, [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,237 at 45,978 (CFTC Feb. 2, 1998). No such “litigation-related misconduct” is alleged here. Instead, Jarrell argues that attorneys’ fees are available and appropriate because his underlying fraudulent-solicitation claim itself reflects Respondent-Appellant Spears’s “bad faith.” In support of his motion, Jarrell cites a previous reparations appeal, *Anderson v. Beach*, and certain “persuasive” Ohio common-law authorities. Neither is availing. As Jarrell concedes, Ohio common law does not alter the governing *Sherwood* standard in CFTC reparations cases. Nor does *Anderson v. Beach* create a new exception to the “American Rule” for claims involving pre-litigation fraudulent conduct generally. Cf. (2009-2011 Transfer Binder) Comm. Fut. L. Rep. (CCH) ¶31,496 at 63,579 (CFTC Dec. 3, 2009). In *Anderson*, we summarily affirmed an award of attorneys’ fees.

Nothing in *Anderson*, either expressly or implicitly, modifies *Sherwood*. Jarrell’s failure to show that Spears acted “in bad faith, vexatiously, wantonly, or for oppressive reasons” in the reparations forum is a sufficient basis to deny an award of attorneys’ fees here.

We therefore SUMMARILY AFFIRM the Administrative Judge’s November 21, 2021 initial decision, and DENY Jarrell’s motion for attorneys’ fees.

IT IS SO ORDERED.

By the Commission (Chairman BEHNAM and Commissioners JOHNSON, GOLDSMITH ROMERO, MERSINGER, and PHAM).



Christopher J. Kirkpatrick  
Secretary of the Commission  
Commodity Futures Trading Commission

Dated: December 9, 2022