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WILLIAM J. RALPH, JR.,
Complainant,

v.

LIND-WALDOCK & COMPANY,
Respondent.

CFTC Docket Number 00-R010

ORDER OF DISMISSAL ON SETTLEMENT

Under the parties' settlement agreement, Ralph has released and discharged Lind-Waldock from any and all claims arising from a disputed gold trade on September 22, 1999; and Lind-Waldock has paid Ralph \$7,000, has released and discharged Ralph from any and all claims arising from the same trade, and has filed a release of a judgment in a state court suit to collect attorneys fees.

Lind-Waldock's decision to sue Ralph for attorneys fees before a final decision of the Commission had been issued warrants discussion. As explained below, Lind-Waldock has declined an offer to justify its extraordinarily aggressive conduct while this proceeding was on appeal to the Commission – *i.e.*, initiating a suit in state court to collect fees on grounds that it had prevailed in a reparations proceeding, when that proceeding actually was still pending, and then not promptly advising the Illinois Court that the underlying reparations judgment had been vacated by the Commission.¹

By Initial Decision dated September 21, 2000, I dismissed Ralph's complaint. Ralph, then employed as a police officer in Massachusetts, timely filed and perfected his appeal to the Commission by filing a notice of appeal on October 6, 2000, and filing an appeal brief on November 3, 2000. Thus, the Initial Decision had not become a "final decision" of the Commission,² and was subject to reversal, modification, vacation, or remand, as well as affirmance. *See* CFTC rule 12.410.

¹ The description of the parties' conduct in the Illinois proceeding is based on documents produced by Ralph (filed February 27 and March 18, 2002) and by Lind-Waldock (filed March 8, 2002), and facts adduced in a telephone conference on March 20, 2002.

² Rule 12.210(d)(1) provides, in pertinent part: "The initial decision shall become the final decision of the Commission and order of the Commission thirty (30) days after service thereof, except – The initial decision shall not become the final decision as to a party who shall have timely filed and perfected an appeal thereof to the Commission." Underlining added for emphasis.

On October 25, 2000, after it had received notice that Ralph had initiated his reparations appeal to the Commission, Lind-Waldock filed a complaint in the Circuit Court of Cook County, Illinois, seeking an award of \$2,624.03 in attorneys fees and \$36.53 in costs that it had incurred in defending Ralph's reparations complaint (*Lind-Waldock & Company v. William Ralph, Jr.*, No. 00-M1-15808).³ In its fees claim, Lind-Waldock asserted: "On September 21, 2000, defendant's claim was dismissed by the Commodity Futures Trading Commission. . . . Defendant agreed to pay all expenses, including attorneys fees, incurred by Lind-Waldock to defend any unsuccessful claim brought by defendant." [Underlining added for emphasis, ¶¶ 6 and 7 of Lind-Waldock's Illinois complaint.]⁴ The Illinois Court set a November 22, 2000 deadline for filing a written appearance, and set the hearing for December 6, 2000.

In a letter accompanying his written appearance and addressed to the Clerk of the Court, Ralph noted that "this case has been under appeal for over a month and the request for this hearing appears to be premature." However, Ralph did not expressly spell out the relief that he sought. Soon afterwards, Ralph learned that he would be required to testify on December 6, 2000, in a criminal case in Massachusetts. He called Ingraham about the conflict, and she informed him that he had to contact the Court. When Ralph called the Clerk of the Court to request a different hearing date, he was advised that he must make a personal appearance to request a continuance. Ralph chose not to hire an attorney, or take any other action, and was defaulted when he did not appear.

By this time, Lind-Waldock knew that Ralph had perfected his reparations appeal. Nonetheless, Lind-Waldock obtained the default judgment on December 6, and then, in a demand letter dated January 9, 2001, warned Ralph: "If your financial obligation is not satisfied immediately, your failure to pay will be reported to credit agencies and the Massachusetts court system without further notice." According to Ingraham, Lind-Waldock never carried through on this threat. However, the Trans-Union credit reporting agency obtained information about the judgment anyway, and reported it as a delinquency.

Meanwhile on January 2, 2001, Ralph traveled to Chicago, and made an appearance to vacate the default. Lind-Waldock did not appear at this hearing, because it had not received notice. The Court then set April 6, 2001 to hear Ralph's motion to vacate the default. On April 6, 2001, Ralph traveled to Chicago, and explained to the Court why he had been unable to attend the December 6th hearing. The Court vacated the

³ The lead attorney for Lind-Waldock throughout the relevant time was its general counsel, Martin Doyle. Also making appearances for Lind-Waldock were two other in-house counsel, Joseph Pucci and Nancy Ingraham. Pucci had ceased participating in the reparations proceeding by July 2000. Doyle withdrew as counsel on October 15, 2001 -- 38 days after the remand. According to Ingraham, Doyle directed her work in the reparations proceeding and the Illinois proceeding. Doyle, Pucci and Ingraham are members of the Illinois bar. Neither Lind-Waldock nor Ralph informed the Judgment Officer or the Commission of the Illinois case until Ralph mentioned it during the settlement conference on December 3, 2001.

⁴ Paragraph 11 of the customer agreement provided that "Customer agrees to pay all expenses, including attorneys fees, incurred by Broker . . . to defend any unsuccessful claim Customer brings against Broker." The customer agreement did not include any provision governing the timeliness of pursuing attorneys fees.

default and set a new hearing date for June 4, 2001, and also instructed Ingraham and Ralph to step outside the courtroom and to try to settle their dispute. During their discussion, Ingraham expressed no desire to settle this matter, and rejected Ralph's assertion that the Illinois suit was premature.⁵ In a virtually identical repeat of December 6, 2001, Ralph was unable to attend the June 4 hearing, and was again defaulted by the Illinois Court.⁶

By Opinion and Order dated September 7, 2001, the Commission vacated the initial decision and remanded the proceeding for a hearing. The Commission noted that "there is a decidedly 'post-hoc' quality to Ralph's allegations," and that "[the factual] circumstances raise substantial questions about the credibility of Ralph's version of the events at issue." But, notwithstanding its questions about the reliability of Ralph's assertions, the Commission concluded that reliable documentary evidence had established "a *prima facie* showing that Lind-Waldock had executed the disputed market liquidation order when it was no longer effective."

By Order dated September 10, 2001, I directed both sides to produce any additional documentary evidence and affidavits regarding the issues set out in the Commission's remand order, and scheduled the hearing for October 23, 2001. Soon afterwards, Lind-Waldock sought a continuance because it could not access relevant documents in its New York back office facility at 2 Liberty Plaza, which had been severely damaged in the destruction of the World Trade Center on September 11. On December 3, when the parties settled their dispute, Lind-Waldock still had not gained access to its back office facility at 2 Liberty Plaza.

Also on December 3, I learned about Lind-Waldock's Illinois suit for the first time, when Ralph mentioned it. After I expressed surprise and displeasure at this news, Ingraham stated that Lind-Waldock would soon file a motion to vacate the default judgment. By order dated December 28, 2001, the Illinois Court vacated the default and dismissed the suit.

During the March 20, 2002 conference, I informed Ralph that he would be responsible for informing his credit agency that the Illinois judgment had been vacated. Lind-Waldock declined an opportunity to explain or justify its course of conduct, especially pressing the Illinois suit after Ralph had perfected his reparations appeal, and then not immediately notifying the Illinois Court after the Commission had issued the remand order. I then urged Ingraham to exercise far greater restraint the next time a client pressured her to jump the gun on a suit for attorneys fees.

⁵ During the conference on March 20, 2002, Ingraham did not challenge Ralph's version of this conversation. Nonetheless, she did state that, as far as she knew, this has been the only instance when Lind-Waldock had brought suit to collect attorneys fees on a pending reparations case. When asked why Lind-Waldock had taken such an extraordinarily aggressive stance in this particular case, Ingraham stated that she did not know and had simply been following Doyle's orders.

⁶ The only difference was that he was now a policeman in Wisconsin required to give testimony in a Wisconsin trial on the same date.

Lind-Waldock and its attorneys unquestionably had a duty to notify the Illinois Court once Ralph had perfected his appeal in the underlying reparations case and to notify the Illinois Court more promptly when the underlying initial decision had been vacated. The most offensive quality of Lind-Waldock's conduct was its determination to take advantage of Ralph's out-of-state and *pro se* status by filing a premature and abusive suit in local court, seeking and obtaining -- twice -- a default judgment, and threatening to notify his credit agency of the default judgment, when it knew that Ralph's inability to appear had been due to his conflicting obligations as a police officer. This sequence of unjustifiable actions supports a conclusion that Lind-Waldock was improperly attempting to hinder Ralph's pursuit of his reparations appeal rights.

However, I have decided not to initiate formal action, including any sanctions under CFTC rule 12.9, beyond making Lind-Waldock's conduct a matter of public record, for the following reasons: Ralph has received a generous payment under the settlement agreement; the attorney principally responsible for Lind-Waldock's offensive conduct has withdrawn from this case and is no longer associated with Lind-Waldock; and finally, and hopefully, Lind-Waldock's conduct here appears to have been an isolated incident that is not likely to be repeated.

All issues having been resolved between the parties, this matter is DISMISSED.

Dated March 24, 2002.



Philip V. McGuire,
Judgment Officer

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