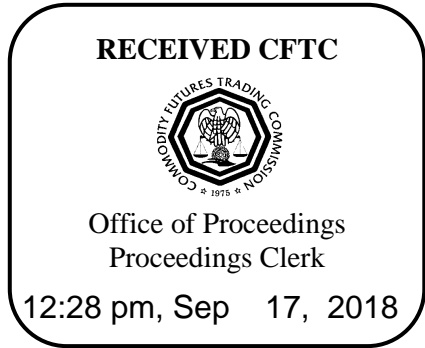




U.S. COMMODITY FUTURES TRADING COMMISSION

Three Lafayette Centre
1155 21st Street, NW, Washington, DC 20581
www.cftc.gov

Office of Proceedings



SEAN WARAICH,
Complainant,

v.

NATIONAL AUSTRALIA BANK,
LIMITED,
Respondent.

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CFTC Docket No. 17-R011
Served electronically

**ORDER DENYING
MOTION TO RECONSIDER**

On April 20, 2018, I issued a Final Decision in this action dismissing Claimant’s reparations complaint for failure to prove, by a preponderance of the evidence, a claim arising under the Commodity Exchange Act and regulations promulgated thereunder, proximately causing his damages. Since that date, Claimant has called this office no less than forty times; and emailed the Commissioners, this Office, the Secretariat, the Office of General Counsel, and me numerous times to complain about the Final Decision. Then on May 1, 2018, Waraich filed a Motion to Set Aside the Final Decision (Reconsideration Motion). I accepted the Motion, and ordered briefing on that Motion on May 2, 2018. The

parties have now briefed that Reconsideration Motion and it is ripe for ruling.¹ For the reasons stated below, this Motion is denied.

Complaint Allegations

Waraich opened a forex account with International Capital Markets Pty Ltd (International Capital) in August 2013, with \$5,000. Compl. at 5 (May 12, 2017), Ex. 2 (Capital One Bank “International Wire Transfer Request”). International Capital operates an online foreign exchange brokerage business that provides an online trading platform for its forex trading clients. Answer ¶ 10. Waraich was one of those clients, and he traded in his account until February 2016, Compl. at 2, allegedly suffering \$119,792.13 in trading losses during that period. Compl. at 6. Whether those trading losses were caused by the markets, his own trading strategies, or International Capital’s misconduct is not clearly stated in the allegations.

The allegations do clearly state that International Capital fraudulently allowed him, a U.S.-domiciled person, to open an online forex trading account. *See, e.g.*, Compl. at 4; Motion to Reconsider at 1; Reply Br. at 1 (May 17, 2018). Waraich alleges that he presented his U.S. passport when opening his account. *Id.* International Capital, on the other hand, counters that in fact Waraich opened an account using a Spanish passport. Answer (Aug. 24, 2017), Statement of Angus

¹ During the pendency of the Reconsideration Motion, Waraich filed a Motion to Disqualify me as the presiding Judgment Officer on May 24, 2018. He withdrew that Motion on July 10, 2018. Because that Motion to Disqualify was withdrawn, I do not discuss it here. He also filed a Motion to Forward Reconsideration, which I also deny for the same substantive reasons his Reconsideration Motion is denied.

Walker ¶3 (Aug. 24, 2017). Either way, Waraich's central complaint is against International Capital.

But he does not sue International Capital by way of this reparations complaint. Instead, he is suing National Australia Bank (NAB or the Bank), a registered swap dealer, not in connection with any of its activities as a CFTC-registrant, but as the depository institution for International Capital.² He alleges that:

The banking procurer, brokerage firm collaborator, and principal client segregated account holder of the funds, National Australia Bank (NFA ID: 0443453), was not authorized in accordance to CFTC federal regulations to accept process the cited fund amounts in such a manner to their internal banking operative receiver benefit on behalf of their investment brokerage client.

Compl. at 1. He further asserts:

[T]he CFTC retains jurisdictional developmental level discretionary oversight with regards to compliance efficiencies of international funds handling procedures and services to all types of electronic trading facilities conducted by swap dealers registered with the Commodity Exchange Act.

First Compl. Addendum at 1 (June 5, 2018). Because he alleges that National Australia Bank breached some duty in accepting International Capital's deposits, he asserts that the Bank is liable to him for the full amount of his trading losses.

Legal Analysis

As an initial matter, Complainant in this case elected a voluntary decisional procedure. To do so, Waraich independently checked the Voluntary Decisional

² National Australia Bank concedes that International Capital is its client. Answer ¶ 10.

Procedure requisite box on the Reparations Complaint Form. Compl. Form at 2 (May 12, 2017). The text next to that box states:

This procedure entitles you, if the respondents agree, to present your case in written form before a CFTC judgment officer. A final decision will be issued without explanation of the reasons. By electing the voluntary procedure, you will waive your right to appeal as well as prejudgment interests and costs.

Id. (emphasis added).³ Because Complainant has waived his rights to appeal, personal communications to the Commissioners or Commission staff are ill-advised.

With regards to the Final Decision, Complainant appears dissatisfied with its brevity. Motion to Reconsider at 1 (May 1, 2018) (noting that the Final Decision was “deficient in addressing relevant case facts and evidence submissions.”). That brevity is prescribed by Commission Rule 12.106(b), which makes clear that the Final Decision in Voluntary Decisional Cases should set forth a brief statement of the conclusion, unaccompanied by facts.

Finally, with regard to the substance of Waraich’s Motion for Reconsideration, nothing in our rules specifically considers or authorizes such motions. *See, e.g., Kohler v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, CFTC No. R80-1350, R82-528, 1986 WL 66121 (CFTC Dec. 30, 1986); *Edgerly v. Hamill*, CFTC No. 82-R1072, 1985 WL 55282 (CFTC Sept. 26, 1985). Because no such relief is

³ Under this type of proceeding, the “parties waive the opportunity for an oral hearing and whatever rights they may have otherwise had: to receive a written statement of the findings of fact upon which the final decision is based; to prejudgment interest in connection with a reparation award; to appeal to the Commission the final decision; and to appeal the final decision to a U.S. Court of Appeals pursuant to section 14(e) of the Commodity Exchange Act, 7 U.S.C. 18(e).” 17 C.F.R. § 12.100(b). In addition, no oral testimony is permitted in voluntary cases; proof can only be submitted through documentary proof and verified statements. 17 C.F.R. § 12.105.

allowed by our rules, the moving party “faces the burden of showing truly extraordinary circumstances.” *Kohler*, 1986 WL 66121 at *2. These “extraordinary circumstances” include:

a clear and convincing showing of fraud on the forum by an adverse party; the discovery of previously unknown and non-discoverable evidence which would probably produce a different result; a factual error in a jurisdictional ruling (e.g. a respondent’s registration status); or the type of egregious factual or legal error that goes to the heart of the challenged decision’s validity. A request which repeats contentions that [were] previously made, or could have been made, or reweighs the facts in an effort to persuade the Commission to come out differently will not succeed.

Id. Waraich has shown none of these circumstances. Instead, he “repeats contentions that [were] previously made, or could have been made, or reweighs the facts in an effort to persuade the Commission to come out differently,” which is insufficient to rise to the kind of extraordinary circumstances necessary to prevail on a reconsideration motion. *Id.*

Even if the bar for deciding reconsideration motions were lower, the problems with Waraich’s case are myriad. First, his actual complaint is against International Capital, which he does not sue here, perhaps because it falls outside this Office’s jurisdiction as a non-registrant. 7 U.S.C. § 18(a)(1) (authorizing jurisdiction over “any person who is registered [under the CEA]”). Even if he could sue International Capital, he has elected not to do so, but sues NAB instead. However, he has no relationship with NAB and in fact has submitted no evidence substantiating any relationship between himself and the Bank.


Second, this Office’s authority is limited to “any violation of any provision of this Act or any rule, regulation, or order issued pursuant to this Act.” 7 U.S.C. §

18(a)(1). But Complainant cites no claim under the CEA or its accompanying regulations, but for rules relating to swaps. First Compl. Add. at 1 (June 5, 2017). His reparations case is unrelated to swap transactions and involves only a forex account, and so those rules are unavailing here.⁴

Finally, because he has no nexus with NAB, nor has he cited to any wrongdoing under the CEA that it committed against him, he cannot show that NAB proximately caused him any damages.

For these reasons, Complainant's Reconsideration Motion is DENIED.

DATED: September 17, 2018


Kavita Kumar Puri
Judgment Officer

⁴ And although it is true that a depository institution must appropriately maintain segregated accounts for futures customers, *see, e.g.*, 7 U.S.C. § 6d(b), Waraich has not made any claims with regards to any futures accounts he may have had (only a forex account).