U.S. COMMODITY FUTURES TRADING COMMISSION
Three Lafayette Centre
1155 21st Street, NW, Washington, DC 20581
www.cftc.gov

Office of Proceedings

RONALD S. DRAPER,
Complainant,

v.

KCG AMERICAS, LLC,
MAIN STREET TRADING, INC.,
PATRICK J. FLYNN, and
WEDBUSH SECURITIES, INC.
Respondents.

CFTC Docket No. 16-R003
Served electronically

INITIAL DECISION ON REMAND

Complainant, Ronald S. Draper, filed this reparations proceeding on October 13, 2015, and Judgment Officer (JO) McGuire dismissed that proceeding for cause on May 1, 2017 (Dismissal Order). A copy of that dismissal is appended to this Initial Decision at Appendix A.[1] Draper timely filed his Notice of Appeal on May 11, 2017, and that appeal was fully briefed as of June 23, 2017.

The Commission resolved that appeal by remanding it for reconsideration upon my appointment as the Judgment Officer on April 6, 2018. *See* Commission Ratification and Reconsideration Order (April 6, 2018). In that Order, the

[1] Although that Dismissal Order appended a March 28, 2017 Order to Show Cause as its Appendix A, I separately append that Order to Show Cause at Appendix B in order to avoid confusion.

Commission directed me to: reconsider the record, including all procedural and substantive actions undertaken in this case previously; give the parties time to submit additional evidence relevant to that reconsideration; and determine whether either ratification or revision was necessary. *Id.* Based on a careful reconsideration of the record, I ratify all prior decisions and orders issued in this case, and adopt their findings and conclusions.

I. Procedural History After Remand

Pursuant to the Commission's Order that I reconsider this reparations proceeding, on April 23, 2018, I issued a Notice of Appointment to the parties informing them of my appointment, and giving them until May 9, 2018 to submit any new evidence relevant to my reconsideration of the record. Complainant submitted a Notice of Parallel Proceedings, as well as a brief arguing that neither JO McGuire nor I had or have the authority to adjudicate his reparations proceeding. Compl. Response to Ratification Order (May 8, 2018) (Reconsideration Brief).

Draper's Notice of Parallel Proceedings informed this Office that he made substantially similar claims against the same Respondents named in this case, as well as additional parties, in the Northern District of California on April 27, 2018. *See Draper v. KCG Americas LLC*, 4:18-CV-02524 (N.D. Cal.) (Gilliam, Jr., J.) (District Court Case). Ordinarily, this Office will not accept a reparations complaint, or will dismiss such complaint, where a parallel proceeding is pending at any time before an initial or final decision has been issued. *See* 17 C.F.R. § 12.24(c). This protects the finality of decisions and avoids subjecting the parties to disparate

judgments. However, because this case was already disposed of in the Dismissal Order issued before Complainant brought his District Court Case, the parallel proceeding had no impact on any prior decisions. I nonetheless ordered Complainant on August 21, 2018 to inform this Office whether he intended to maintain the District Court Case.

Instead of complying with the Order and informing this Office whether he intended to maintain parallel proceedings, Draper filed a submission arguing again that neither former JO McGuire nor I were authorized to adjudicate his claims. Draper Response to CFTC's Order Regarding Parallel Proceeding at 2-3, 5-11, 14-21 (August 28, 2018) (August 28 Submission). Whether Draper intended to maintain parallel proceedings ultimately did not matter, because the district court dismissed Draper's claims under the Commodity Exchange Act as outside the statute of limitations. *Draper v. KCG Americas LLC*, No. 18-cv-02524-HSG, 2018 WL 4075858, at * 6 (N.D. Cal. Aug. 27, 2018). Without federal question jurisdiction, the district court found it had no jurisdiction over Draper's remaining claims. *Id.* Following that dismissal, on Saturday, September 8, 2018, Draper sent an email informing me that I was violating a criminal statute—18 U.S. Code 1001—by adjudicating his case.

With these filings, the remand is fully briefed for disposition here.

II. Analysis of Reconsideration Arguments

In his Reconsideration Motion and August 28 Submission, Complainant Draper argues principally that the Commission cannot appoint me as the presiding officer in this case because: (1) he has filed substantially similar claims against

these same Respondents in the District Court Case, Reconsideration Br. at 5-6; (2) the Commission did not appoint an Administrative Law Judge to oversee his reparations proceeding, Reconsideration Br. at 6-7; (3) my appointment violates the Appointments Clause in the U.S. Constitution and Section 3105 of the Administrative Procedure Act, Reconsideration Br. at 7-8; and (4) I cannot ratify the decisions made by JO McGuire, Br. at 9-10. He also makes several arguments on the merits that have already been considered. Reconsideration Br. at 4-5, 8-19. None of these arguments have merit.

First, even if the District Court Case, which Draper filed well after he filed an appeal of his reparations dismissal before the Commission, had some impact on this Office's jurisdiction, the District Court Case was dismissed. That dismissal has both mooted and cut against Draper's arguments that bringing the District Court Case voided the results of these reparations proceedings. And to be clear, Draper elected as an initial matter to bring his CEA claims as a reparations proceeding before the CFTC. He cannot now, after dismissal by this Office for cause and after he filed an appeal of that dismissal, refile the same claims in another forum and expect to be rewarded for it.

Second, Draper objects to the Commission's failure to appoint an ALJ and argues that this failure voids both JO McGuire's and my assertion of jurisdiction. Reconsideration Br. at 7. His predicate assumption is correct—that is, neither JO McGuire nor I were or are ALJs. But there is no statute, regulation, or other law requiring that an ALJ preside over these reparations proceedings. In fact, the

opposite is true; there is a regulation specifically authorizing Judgment Officers to preside over formal decisional proceedings such as this one. *See* Proceedings Before the Commodity Futures Trading Commission, 78 Fed. Reg. 12,933, at 12,934 (Feb. 26, 2013), codified at 17 C.F.R. § 12.2. And the passage of that regulation was expressly authorized by Congress: "The Commission may promulgate such rules, regulations, and orders as it deems necessary or appropriate for the efficient and expeditious administration of [reparations proceedings]." Commodity Exchange Act § 14(b), 7 U.S.C. § 18(b). JO McGuire's and my assertion of authority over this reparations proceeding was therefore entirely appropriate.

Third, because I am not an ALJ, Section 3105 of the Administrative Procedure Act, 5 U.S.C. § 3105, which governs the appointment of ALJs, does not control here. Therefore all arguments with respect to Section 3105 are irrelevant.

Fourth, Draper argues that the Supreme Court's recent decision in *Lucia v. SEC* somehow renders my appointment as JO and assignment as the presiding officer of this case invalid. *See, e.g.*, August 28, 2018 Submission at 12-13. In *Lucia*, the Supreme Court ruled that ALJs of the Securities and Exchange Commission qualify as "Officers" for purposes of the Appointments Clause such that they must have been "appointed" by the appropriate person or body. 138 S.Ct. 2044, 2049, 2051 (2018). But the Supreme Court did not purport to expand its decisional reach beyond that narrow question of whether the SEC ALJs were "Officers." *Id.* Accordingly, the Commission specifically made "no determination about whether a Judgment Officer is akin to an SEC administrative law judge for purposes of the

Appointments Clause" in its Ratification and Reconsideration Order, which formally ratified my appointment as JO. Commission Order at 1 (April 6, 2018). Further, no federal court has ruled on whether a Judgment Officer at the Commission falls within the purview of the Appointments Clause. Thus the holding in *Lucia* does not control here.

Even if it did control here, it was mooted by my Appointment and by implementation of the remedy set forth in *Lucia*. To cure the constitutional defect before it, the Supreme Court in *Lucia* ordered the occurrence of "a new hearing before a properly appointed judge" who is different than the judge who first decided the matter. *Lucia*, 138 S.Ct. at 2055 (internal quotation marks submitted). The Commission has effectuated this very cure. I was appointed by the Commission; the case was remanded to me; and I had nothing to do with the Initial Decision issued by JO McGuire. Thus it bears repeating that even if *Lucia* controls, the Commission has followed precisely the constitutional remedy set forth by the Supreme Court.[2]

Moreover, nothing in *Lucia* invalidates JO McGuire's prior decisions. At no time before my appointment did Draper suggest that JO McGuire lacked the constitutional authority to decide his case. It was only after he received Notice of my appointment that he raised the issue, by which time any constitutional defect—

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[2] In *Lucia*, the Court stated that Lucia was entitled to a new "hearing." But presumably that was because Lucia was entitled to a hearing as an initial matter. As discussed below, Draper's past misconduct—through his chosen unlawful representative Bright Harry—caused him to forfeit any rights he may have had to a hearing and his present actions indicate that he continues to maintain his preferred litigation strategy—that is advocacy through bombast, insults, and verbose pleadings rather than actually engaging in any fact inquiry that might support the allegations he makes in his complaints.

to the extent there was one—had been cured and mooted. Even if Draper had made such a challenge, as discussed above, no federal court has ever ruled that a JO is an "officer" for purposes of the Appointments Clause. And because JO McGuire was also authorized by Commission regulations to adjudicate Draper's case, *see* 17 C.F.R. § 2.2; 7 U.S.C. § 18(b), this Office had jurisdiction over his reparations proceedings. Therefore, Draper's argument that disposition of his case was void from the beginning is unpersuasive.

Moreover, Draper himself elected to bring his suit before this Office. By voluntarily choosing this forum, he consented to its assertion of jurisdiction. For the above reasons, I find I have the authority to decide Draper's case.

III. Ratification of Dismissal for Cause

I have thoroughly reviewed the record in this case, and find that the following Orders by JO McGuire were sufficient in their fact-findings and analyses that I ratify them here: (1) May 1, 2017 Dismissal Order, Appendix A; and (2) March 28, 2017 Order to Show Cause, Appendix B. I further rely upon the Commission's Order dismissing third-party Harry's appeal regarding his desire to be joined as a co-complainant and continue filing documents on Complainant Draper's behalf. Commission Order (March 17, 2017), Appendix C. Although this Initial Decision on Remand specifically incorporates the Appended Orders, I ratify and incorporate all JO McGuire's prior orders and other issuances.

A. Relevant Factual Background

Because the facts in this case have been set forth in the various orders already on the record, familiarity with them is presumed, and my recitation here

will be brief. Draper filed this complaint, alleging that Respondents committed fraud, engaged in unauthorized trading, failed to supervise, and breached their fiduciary duties to him through their purported failure to route and clear orders and execute trades. Compl. (Oct. 13, 2015) Statement of Facts. Complainant sought $275,000 in damages for the return of his initial investment, as well as roughly $6 million in lost profits. First Am. Compl. (Oct. 29, 2015); Addendum to First Am. Compl. (Nov. 13, 2015); Complainant's Response to Deficiency Letter at 2 (March 24, 2016).[3]

In these complaint filings, Draper named himself and Bright Harry as co-complainants. On March 8, 2016, this Office informed Draper that if Mr. Harry was not an account owner, he would not have legal standing. This Office further informed him that Mr. Harry could not serve as Draper's representative under Commission Rule 12.9. *See* Compl. Deficiency Letter from Pugh to Draper & Harry at 1-2 (March 8, 2016). These rulings were re-affirmed by this Office, after multiple voluminous and repetitive filings by Complainant objecting to them, on July 21, 2016.

Instead of litigating the merits of his complaint, Draper—through his unauthorized representative Harry—chose to litigate by bombast and insults instead, making several decisions that were against his interests. I have listed a sample of these below.

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[3] Draper's claims for damages were ever-changing in both amount and the theory of damages, and eventually included $18.6 million in lost profits. However, this Office reduced his total claim for damages to $275,000 in out-of-pocket losses. *See, e.g.*, Letter from Jurgens, Chief of the Executive Secretariat Branch to Draper (July 21, 2016).

First, Respondents have sought authorization from Draper to return the $6,280 cash balance remaining in his account, but there is no evidence in the record that Draper has retrieved his funds.[4]

Second, Draper's complaint never set forth any meaningful causal connection between the alleged technological failures and his losses. *See, e.g.*, Compl (Oct. 30, 2015); First. Am. Compl. (Oct. 29, 2015); Addendum to First. Am. Compl. (Nov. 13, 2015); Revised Second Am. Compl. (Apr. 21, 2016); Revision to Revised Second Am. Compl. (Apr. 25, 2016). Without this, Draper has no way of proving that his damages were "proximately caused" by a violation of the Commodity Exchange Act, even if Draper had shown such violation occurred. *See* Commodity Exchange Act § 14(a)(1)(A), 7 U.S.C. § 18.

Third, Draper never produced any account statements that would have provided evidence supporting his trading losses. JO McGuire then asked Respondents to produce these statements. Email Order from JO McGuire to Respondents (Feb. 17, 2017). But Draper, through Harry, objected to this request, claiming that these business records were not relevant. Complainant's Response to JO McGuire Order at 1-2 (Feb. 27, 2017). This left Draper no path to substantiating his losses with documentary or objective evidence.

Fourth, Draper squandered any opportunity he had to obtain any real discovery from Respondents, choosing instead to use his discovery requests to

[4] JO McGuire sent, via UPS, a notice to the parties on March 21, 2017 regarding the balance of funds in Draper's account. It is not clear that Draper ever received this notice, but from conversations with Respondents' counsel, it does appear that Respondents made some unsuccessful attempt to return the money to Draper directly and bypass Harry.

impose undue and unnecessary burdens on the Respondents. For example, Draper filed five different sets of requests for admissions (RFAs) to various overlapping combinations of Respondents. *See* Draper's Requests for Admission (Jan. 11, 2017). He also attached many exhibits to each set of RFAs in a duplicative fashion, but does not appear to have numbered them in any intelligible fashion. *Id.* The exhibits Draper attached to his Request for Admissions directed to KCG Americas LLC were identified as follows: "Figure A2-ii, EXHIBITS iii, iv, v, vi, vii, viii, ix, x, xi, B13, H1, H2, H3, H4, H5, and xix-a." *Id.* His other RFAs contain either the same or similar exhibits, but none of these exhibit labels are printed on the exhibit pages themselves (though there does appear to be a header page for some or all of them). It is as if Draper designed the exhibits—the very documents he presumably wanted to use as proof in his case—to be difficult to identify and use in any logical fashion. By way of an order sent by e-mail on January 12, 2017, JO McGuire struck these RFAs and directed Draper to re-file new ones with no more than one set of RFAs directed to each Respondent and one set of exhibits designated A, B, C, etc. no later than February 13, 2017. Order (January 12, 2017). Draper did not do so before JO McGuire closed discovery and imposed sanctions by way of a Sanctions Order on January 31, 2017, appended here at Appendix D.[5]

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[5] The December 5, 2016 Discovery Order highlighted several defects in connection with Draper's discovery requests, specifically his interrogatories. The Order gave Draper a second opportunity to file his interrogatories, and asked that he: (1) reframe his interrogatories to exclude compound questions, and submit a maximum of 30 individual interrogatories; (2) explain how each interrogatory is relevant to his claims that have not been stricken; and (3) identify the applicable section of the Commodity Exchange Act or Commission rules for each interrogatory or document Draper seeks Respondents to produce as "required by law." *See* December 5, 2016 Discovery Order, appended at Appendix E.

Draper also refused to allow Respondents to take meaningful discovery. Respondents filed a First Set of Requests for Admissions on December 5, 2016, which included twenty-six straightforward requests for admission. In his response to these requests: (1) Draper stated, among other things, that the requests as a whole were "null and void" because Respondents had committed "Elder Abuse," Draper's Response to First RFAs at 3 (January 10, 2017); (2) he denied RFA #3, which asked Draper to admit that he signed disclosure documents affirming that Draper's annual income was between $100,000 and $249,000 by stating: "The request is impermissibly compound and meaningless," *id.* at 4; and (3) he responded to one RFA, in part, by claiming that: "One further example. 'He killed John Stone and realized when he woke up that it was a dream and John Stone is still alive.' If you choose only the following words from above, 'He killed John Stone,' you have a totally different meaning." *Id.* at 12.[6] This kind of litigating is exhausting, wastes this Office's and the parties' resources, and more to the point—does nothing to illuminate the facts necessary to resolve the case.

Fifth, Draper repeatedly and willfully ignored multiple warnings to stop allowing Harry to act as his representative. He was warned no less than six times that Harry could not represent him, on: March 8, 2016 (Letter from Pugh to Draper at 1); July 21, 2016 (Letter from Jurgens to Draper at 1-2); January 31, 2017 (Sanctions Order, Appendix D); February 28, 2017 (Order Denying Complainant's Motions at 7-8, Appendix F; March 17, 2017 (Commission Order, Appendix C); and

[6] On January 13, 2017, Draper filed "revised" versions of his responses to the RFAs that substantially stated the same thing.

March 28, 2017 (Order to Show Cause, Appendix B). Despite these warnings, Draper has admitted repeatedly that he allowed Harry to act as his representative. *See, e.g.*, Draper's Motion to Vacate Order ¶ 4 (Feb. 15, 2017); Draper's Ex Parte Motion Regarding Harry's Standing at 1 (Feb. 27, 2017); Email from Harry to McGuire (March 14, 2017) ("I am now taking very aggressive steps against you [JO McGuire], to protect my interests and those of 70-year old Draper."); Harry Ownership of Account Email Exhibit (e-mailed March 13, 2017).[7] Draper has also never contended that Harry did not act as his representative, nor did he ever object to Harry's doing so. *See* Order to Show Cause (March 28, 2017), Appendix B.

Finally, Draper could not refrain from using personal insults and attacks against this Office in his filings. For example, in Draper's response to JO McGuire's Discovery Sanctions Order (Jan. 31, 2017), Draper accused JO McGuire of "willfully and knowingly" participating in advancing Respondents' fraud by, in particular, helping Respondents conceal facts to support the issuance of discovery sanctions. Compl. Motion to Vacate JO McGuire at 10-11 (Feb. 15, 2017). In addition, Harry, in an email he sent to the Deputy General Counsel at the CFTC on which he copied Draper, asked that "all the nonsensical, irrelevant and immaterial legal arguments and decisions of [JO McGuire] go down the drain of USELESSNESS." E-mail from Harry to CFTC Deputy General Counsel re My Legal Right of Standing (March 13, 2017) (capitalization in original email). In that same email, he stated that "McGuire should get the hell out of my life, and he should also get the hell out of this matter. .

[7] Even the district court in the District Court Case found that Harry acted as Draper's unauthorized representative in litigating before it. *See Draper*, 2018 WL 4075858 at *3.

. . [JO McGuire] is the most FRAUDULENT, LYING ADJUDICATOR I have ever encountered in my life." (*Id.*) (capitalization in original email). Harry graduated from insults to threats against JO McGuire: "[JO McGuire] you are very dishonest and with no iota of integrity. This is my second direct cautionary email to you. Get out of this matter for your own good." E-mail from Harry to JO McGuire re One More Boldfaced Lie of Yours (March 16, 2017) (emphasis added). Despite being copied on all the correspondence in this case, Draper never objected to these verbal attacks until after JO McGuire dismissed his case.

B. Legal Analysis

Although "generally a decision on the merits based on full participation by all parties is the preferred outcome of a reparations proceeding," "[c]ourts have inherent power to dismiss an action when a party has willfully deceived the court and engaged in conduct utterly inconsistent with the orderly administration of justice." *Robinson v. Alternative Commodity Traders*, 2001 WL 741672, *6 (CFTC July 2, 2001), *aff'd* 2005 WL 2978171 (CFTC Nov. 4, 2005) (quoting *Fjelstad v. American Hondo Motor Corp.*, 762 F.2d 1334, 1337 (9th Cir. 1985)). Such dismissal should not be imposed unless: (1) there was advanced notice to the party; and (2) a specific finding is made on the issue of bad faith. *Marlow v. Oppenheimer Rouse Futures, Inc.*, 1987 WL 106915, *2 (CFTC Sept. 9, 1987). Both those preconditions are met here.

These facts make clear that there was advanced notice to Draper that further misconduct would result in termination. He was warned no less than five times by this Office to stop having Harry act as his unauthorized representative. *See supra*

at 11-12. Draper ignored these warnings. He similarly ignored the Commission's Order to stop allowing Harry to prepare and file documents on his behalf. Commission Order at 2 (March 17, 2017), Appendix C.

It is also clear that Draper has acted willfully and in bad faith with respect to: (1) his conduct during the discovery process; (2) Harry's illegal representation of him; and (3) his inability to refrain from ad hominem attacks. *See supra* at 7-13; Dismissal Order at 4-5, Appendix A; Order to Show Cause (March 28, 2017), Appendix B. *See, e.g.*, *Dick v. Chicago Commodities Inc.,* CFTC Nos. 83-R892, R896, 1986 WL 66156, at *9 (CFTC Feb 3. 1986) ("The record reveals respondents' failure to provide discovery amounted to a repeated conscious, long-term disregard of the court's orders."); *Bragg v. Price*, CFTC Dkt. No. 97-R109, 1998 WL 171419, at *3-4 (CFTC April 13, 1998) (noting that ignoring "repeated warnings," "persistent noncompliance," and "engaging in dilatory and evasive tactics" amounted to "bad faith").

In granting a dismissal or default based on a party's misconduct, the Commission has stated that it is "not unmindful of the fact that courts have suggested that a default or dismissal should not be ordered as a sanction until other sanctions have proved unavailing." *Dick*, 1986 WL 66156 at *2-9 (affirming default judgment award for failure to comply with discovery orders). JO McGuire followed this directive and found, based on Draper's misconduct, that no sanction short of dismissal would be adequate to deter Draper's behavior. Dismissal Order at 5-6, Appendix A. And in fact, flouting this Office's orders alone—as Draper did when he

repeatedly violated this Office's and the Commission's orders to cease having Harry represent him—constitutes sufficient grounds to dismiss his case. *Id.* at *6 (The Commission "view[s] respondents' flagrant disregard of the ALJ's first two orders to respond as tantamount to a failure to comply with lesser sanctions.").

Draper's bad faith actions since that dismissal have validated JO McGuire's conclusion that no sanction short of dismissal will deter Draper's abuses of process.

First, Draper filed his District Court Case after his case had been fully resolved by this Office and his appeal before the Commission was pending. Such procedural chicanery served no purpose other than to re-litigate claims already disposed of by this Office, waste this Office's and potentially the district court's time, and repeat the kind of bad faith misconduct that warranted dismissal of his reparations complaint.

Second, it is clear that Draper continues to violate this Office's prior directive not to allow Bright Harry any role in these proceedings. Not only did Harry file a district court case himself, but Draper attempted to consolidate those cases in his District Court Case. That motion to consolidate was denied by the district court, but in so denying, that court found that "[t]here are strong indications that Harry, who is not an attorney, has improperly been acting in a representative capacity on behalf of Plaintiff, given the joint filings submitted by both and the similar language of their complaints." *Draper*, 2018 WL 4075858 at *3. And the reparations submissions by "Draper" continue to read in tone and substance as if they were prepared by Harry instead of Draper himself.

Finally, Draper continues to use insults and hyperbole to litigate his case instead of making an attempt to prove his allegations. For example, when I asked him if he intended to continue litigating his District Court Case (which would be relevant to my consideration of whether it was, in fact, a parallel proceeding under Rule 12.24), he informed me that my question was "disingenuously deceptive and [made] no sense." Draper's Response to Order (August 28, 2018). He then told me, over e-mail dated Saturday, September 8, 2018, that I was violating a criminal statute by issuing my Order. Appendix B. This is not good faith litigation, and Draper's case must be dismissed for the continuation of such abusive tactics.[8]

For these reasons and those stated through the prior Orders and other issuances from JO McGuire, the May 17, 2017 dismissal for cause is ratified. I also ratify JO McGuire's award of attorneys' fees to Respondents, which JO McGuire granted on January 31, 2017 pursuant to Commission Rule 12.30(c). *See* Sanctions Order (January 31, 2017), appended here as Appendix D. Therefore Complainant is to pay $1,060.00 at the termination of these proceedings to Respondents.

DATED: October 29, 2018

Kavita Kumar Puri
Judgment Officer

[8] The district court apparently came to a similar conclusion with respect to Draper's litigation style. In denying a motion to stay the case pending the outcome of this reparations proceeding, the district court ruled: "Based on Plaintiff's litigation conduct thus far, the Court finds that a stay would 'work damage' to Defendants, rendering it inappropriate. While it may be true that Plaintiff's proceedings before the CFTC are ongoing, it seems certain that a stay would needlessly prolong Defendants' litigation with Plaintiff—who has demonstrated an unwillingness to, for example, abide by the local rules—and further complicate this action." *Draper*, 2018 WL 4075858 at *3.

Appendix A

Dismissal Order

(May 1, 2017)

U.S. COMMODITY FUTURES TRADING COMMISSION
Three Lafayette Centre
1155 21st Street, NW, Washington, DC 20581
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Office of Proceedings

RONALD S. DRAPER, Complainant, v. MAIN STREET TRADING, INCORPORATED, WEDBUSH SECURITIES, INCORPORATED, KCG AMERICAS LLC, and PATRICK J. FLYNN, Respondents.	CFTC Docket No. 16-R003 Served electronically

ORDER OF DISMISSAL FOR CAUSE

Before: Philip McGuire, Judgment Officer
Commodity Futures Trading Commission,
Washington, District of Columbia

Appearances: Christopher Mader, Esq.,
Baldwin Mader Law Group,
Manhattan Beach, California
For complainant

James B. Koch, Esq.,
Gardner Koch Weisberg & Wrona,
Chicago, Illinois
For respondents

Background

By order dated March 28, 2017, I found that complainant Ronald Draper has disrupted the order of this proceeding by repeatedly disregarding two significant orders: one, my order dated March 9, 2017 which terminated electronic filing in this proceeding, principally because Draper's oversight of two electronically served orders

had rendered e-filing unreliable;[1] and two, the Commission's order dated March 17, 2017 which denied the appeal of Draper -- and his associate Bright Harry[2] -- to reverse the determination by the Director of the Office of Proceedings to strike Harry as a complainant on grounds that he lacked standing and to bar Harry from representing Draper;[3] and which directed Harry to cease and desist filing documents or communicating on Draper's behalf.[4] The Commission's order also denied Harry and Draper's appeal to reverse the Director's determination to strike various damage claims,[5] and to strike various individuals and firms named as respondents.[6]

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[1] In addition, Draper had abused e-filing: by permitting his associate Bright Harry to file repetitive motions and to repeatedly file duplicates of voluminous, chaotically organized, exhibits (Harry has filed the lion's share of the exhibits multiple times, some as many as seven times); and by permitting Harry to repeatedly make patently preposterous *ad hominem* attacks on opposing counsel and the undersigned. Needless to say, Draper and Harry have not only needlessly disrupted this proceeding, but also have unfairly diverted scarce Commission resources from other pending reparations cases where the parties on both sides, in sharp contrast, have litigated their disputes vigorously, but with at least a modicum of good faith and civility.

[2] Draper and Harry have revealed little to nothing about Harry's background beyond Harry's aspiration to become a commodities broker and his authorship of a disquisition on citizens' sovereign rights and responsibilities titled *America, Wake Up!* (Create Space Independent Publishing 2011). (Respondents claim that Harry holds himself out as, among other things, an expert commodities trader, but have not cited the source for that claim.) Harry, who did not contribute any funds to Draper's account, directed the trading in Draper's account pursuant to a power of attorney, and picked and paid for the electronic trading platform which he used for that trading. Harry and Draper claim that they had an oral agreement to share any profits from Harry's trading, which Harry in turn hoped to use to set up his own commodities brokerage. This was not to be. The first month of trading, November 2013, ended with decent profits, but by the end of the third month trading in various agricultural futures had dissipated the lion's share of Draper's $275,000 investment. After thirteen months, in December 2014 when the account was transferred from KCG to Wedbush, Draper had lost all but about $28,000. Finally, when Harry closed his woeful seventeen-month run of futures trading, in April 2015, he had lost all but $6,620 of Draper's funds. *See* monthly account statements for Draper account.

[3] From October 14, 2015, when he and Harry filed the initial complaint, to April 10, 2017, when Mr. Mader e-filed a notice of appearance as Draper's counsel, Draper appeared *pro se*, as did Harry before he was booted. By letter dated March 8, 2016, the parties were advised that the Director had determined, among other things, to bar Harry's participation in this proceeding as Draper's co-complainant and as Draper's representative. By letter dated July 21, 2016, the acting Director denied Draper's and Harry's request for reconsideration of the Director's March 8th determinations.

[4] The Commission's March 17, 2017 order -- issued by the Deputy General Counsel pursuant to authority delegated by CFTC rule 12.408 – clearly warned Draper that his complaint could be dismissed if he continued to permit Harry to file documents or to communicate on his behalf.

[5] The stricken damage claims were $287,463 for "speculative" damages, $1.6 million for "punitive" damages, and $18.6 million for "lost profits."

[6] The stricken respondents were fifty John Does, a principal of a respondent, and the unregistered vendors that had provided the trading system selected by Harry.

The multiple instances where Draper and Harry blatantly disregarded the March 9th and 17th orders are detailed in the March 28th order, which is hereby incorporated by reference.[7] In the March 28th order, I found that Draper had inexcusably disrupted the order of this proceeding, and directed Draper to show why his repeated disregard of the March 9th and 17th orders does not constitute grounds for dismissing his complaint.[8]

On April 13, 2017, respondents filed a petition for an award of attorney's fees.

Draper's response

On April 21, 2017, Draper timely filed a response to the March 28th order to show cause and a response to respondents' petition. In both responses, Draper makes identical or substantially similar arguments:

> Mr. Draper sincerely regrets the previous difficulties in this matter caused by Mr. Harry's representation. Mr. Draper very much looks forward to having this matter handled professionally, respectfully and appropriately going forward. Mr. Draper assures the Judgment Officer and the Respondents that neither he nor Mr. Harry fully comprehended or appreciated the consequences of Mr. Harry's actions. Mr. Harry has no legal education or training, and simply did not understand the rules of litigation, the expectations of counsel including proper decorum, or the rules of the CFTC.

[Draper's response to respondents' petition for fees and costs, at 3rd ¶ on p. 2; underscore in original.] *See* Draper's response to order to show cause, at 7th ¶ on p. 2. As explained below, these assurances are too late[9] and too little.[10]

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[7] A copy of the March 28, 2017 order is attached as an appendix.

[8] On April 11, 2017, Mr. Mader filed a notice of appearance as counsel for complainant. By order dated April 11, 2017, I re-authorized e-filing and extended complainant's deadline to respond to the March 28th order to c-o-b April 21, 2017.

[9] This case is at a late stage: discovery has been closed, and respondents have filed a motion for summary disposition.

[10] In his two responses, Draper does not, in any meaningful fashion, disavow or acknowledge the spurious and contemptuous nature of Harry's conduct. Rather, Draper seeks to avoid any adverse consequences flowing from that misconduct, and the resulting "difficulties," by denying any knowledge or responsibility of Harry's misconduct, despite the fact that Draper signed almost all submissions and communications

Conclusions and order

Dismissal sanction

A few factors in the record hint that Harry may be exercising undue influence over Draper, a retired teacher in his seventies who, out of dozens of filings and e-mails, has sent at most a couple of isolated e-mails in his own writing, and otherwise has appeared cipher-like throughout this proceeding. Starting with the initial complaint filed October 14, 2015. Draper has signed numerous submissions drafted by Harry and has permitted Harry's solo communications, all of which are written in Harry's unique style and voice and which generally favor Harry's interests.[11] Also, Draper has inexplicably ignored respondents' repeated requests to authorize them to return the $6,280 cash balance in his account which has been dormant since April 2015.[12] However, the record contains no other red flags of undue influence.[13]

Moreover, Draper's submissions state that he still manages real estate properties and that he travels back and forth from his home and Harry's nearby residence where Draper maintains a ground-floor office and daybed. Most significantly, in a rare and

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drafted and transmitted by Harry on Draper's behalf, and the fact that Harry copied Draper on all filings and communications whether or not signed by Draper.

[11] In addition to favoring his own interests, Harry has taken positions fundamentally adverse to Draper's interests. For example, as noted below, Draper's complaint, drafted by Harry, failed to set out any meaningful causal link between the purported glitches in the electronic trading platform and the trading losses. In this connection, Harry never even bothered to produce a complete set of account statements which would have substantiated the existence and amount of trading losses, and otherwise would have reliably clarified the factual circumstances. Thus, I asked respondents to produce a complete set of monthly account statements, because Commission rules require futures commission merchants to retain and make readily available such records. *See* CFTC rules 1.31, 1.33 and 12.34. When respondents produced the account statements, Harry drafted for Draper a response in which he inexplicably objected to my request, claiming that these (presumably reliable) business records were not relevant. *See* Draper's February 27, 2017 response to the February 17, 2017 order compelling respondents' production.

[12] On April 13, 2017, my office encouraged Mr. Mader to contact Mr. Koch for guidance on how to instruct respondents to return to Draper the account balance in his long-dormant Wedbush account.

[13] Harry's outlandish allegations that certain adverse rulings constituted a form of "elder abuse" gave rise to the notion that Harry might be projecting onto others his own impulses or actions. In this connection, I found the following brochure, and the links provided therein, to be an informative and useful guide: *A Citizen's Guide to Preventing and Reporting Elder Abuse* (California Department of Justice 2002).

recent e-mail, sent while recuperating from a recent near-fatal illness, Draper wrote in his own distinct voice and style. In sharp contrast to the many Harry-penned documents, Draper's December 9th e-mail was focused, coherent and temperate, and free of other markers of Harry's authorship, such as unconventional copious capitalization. *See* Draper's December 9, 2016, 1:45 pm e-mail to J. McGuire. Accordingly, I have determined that, on this record, Draper appears to be sufficiently competent to be held responsible for his albeit odd, stubborn decisions, and thus I find that Draper independently and knowingly permitted his associate Bright Harry to blatantly disregard the March 9th and 27th orders and thus disrupt the order of this proceeding: by employing un-necessarily combative and disrespectful litigation tactics, by drafting numerous repetitive motions for Draper's signature, and by frequently communicating with the Commission on Draper's behalf in the guise of a self-appointed co-complainant. In this connection, Draper made clear that he has fully embraced Harry's conduct and that he will continue to seek Harry's guidance:

> When I eventually get a competent Attorney for this Case, the Attorney will still work with Mr. Harry, as I am working with him currently, to prosecute these Respondent-Fraudsters. Unfortunately . . . you are stuck with Bright Harry, no matter what.

Draper's February 27, 2017 response to February 16, 2017 notice, at ¶2.

After considering each of Harry's acts of misconduct, all made with Draper's knowledge and approval, as well as the cumulative effect of these bad-faith acts, and considering the available sanctions for such abuse, I have determined that any sanctions less than dismissal of Draper's complaint would not be adequate given the repetitive and

patently contumacious nature of Harry's conduct on Draper's behalf, and the resources already wasted by the respondents and the Commission as a result of this abuse.[14]

Attorney's fees

In their petition for an award of their total attorney's fees and costs, respondents argue that the award is justified by the fact that Draper's complaint was meritless, and that Harry's conduct throughout the proceeding, approved by Draper, has been vexatious.

As much as the Director had sifted through Draper's and Harry's voluminous, prolix complaint and appropriately struck Harry as a party and struck numerous extraneous damage claims and respondents, the Director arguably also could have readily struck all of Draper's principal charges, particularly the core charge that Draper's losses were caused, not by adverse market forces or wrong trading decisions, but by "connectivity" glitches in the electronic trading platform provided by third-party vendors. In connection with that charge, based on the following reasons, it would not have been unreasonable to conclude that Draper had failed to provide intelligible notice of the specific problems Harry purportedly experienced trading futures, or of any specific act by respondents that caused those losses:

> One, Draper's complaint is basically an indiscriminate laundry list of almost every imaginable CFTC rule and CEA section that respondents conceivably could have violated, joined to a boiler-plate mash-up of passages from a 2013 class action complaint against KCG alleging

[14] One does not need to be an attorney to recognize that Harry's communications and submissions on behalf of Draper not only brazenly disregarded various orders, but also -- on their face -- were not remotely civil or reasonable. Thus, Draper's recent assertion that his *pro se* status somehow excuses his approval of Harry's conduct has no merit. In this connection, it is worth noting that the CFTC's Reparations program is expressly designed for *pro se* parties. In the almost thirty years that I have presided over reparations cases, only an infinitesimal percentage of *pro se* parties have engaged in the sort of patently bad faith, contemptuous and disruptive tactics favored by Messrs. Draper and Harry. It may be telling here that these past bad actors have almost all been respondents associated with boiler room operations.

violations of securities laws and a 2014 SEC consent order against Wedbush concerning similar violations (Draper's Exhibits C-1 and C-2). That is, for the most important part of the complaint – *i.e.*, the "description of factual circumstances" -- Draper has offered little more than a generalized, inapt description of problems with electronic securities trading platforms which had nothing to do with his account. Similarly, Draper has offered minimal documentary evidence of Harry's problems with the QST electronic commodities trading platform in the form of twelve e-mail exchanges between Harry and the trading platform vendor QST. These e-mails referenced six instances of "connectivity" issues with the QST trading platform on or about November 21 and December 26, 2013, and May 16 and 19, June 30, and October 22, 2014, and did not copy any of the respondents. *See* Draper Exhibits 3, A1-a, A1-b, A4, A6, A7, A9, A10 and A-15.

Two, Draper failed to articulate or substantiate any plausible causal link between any of these "connectivity" glitches and any specific related trading loss, let alone the total trading losses which had stretched from November 2013 to April 2015. For example, in one instance Harry complained to QST that he could not place an order, but Draper failed to describe that order at all, let alone in any detail, failed to explain if that order was to enter or exit the market, failed to explain if he managed to successfully place a subsequent similar order, and failed to calculate or substantiate any purported damages linked to this glitch.

Three, despite the sheer paper volume of the complaint and notwithstanding Harry's purported trading expertise, Draper failed to produce a scintilla of evidence describing or substantiating Harry's trading strategy, and thus failed to show how any such strategy could have been stymied by the connectivity glitches.

Four, Draper failed to offer any explanation why Harry kept using a purportedly defective trading system for seventeen months until the account was too depleted to support trading.

Five, Draper failed to explain why Harry never advised respondents about the connectivity issues.

Six, Draper failed to explain why he permitted Harry to continue trading after the losses began to mount rapidly in the second month of trading.

Striking this flimsy charge would have left a much reduced, but potentially viable, complaint: One could still tease out a theoretically cognizable, albeit fleeting and solitary, allegation that Wedbush had failed to provide a new risk disclosure statement

(which presumably would have disclosed the November 2014 SEC consent order) when the account was transferred to Wedbush in December 2014. *See* Second Amended Complaint, at ¶163.[15] Such alleged omission would have violated CFTC rule 1.65(a)(3),[16] and thus in turn violated CFTC rule 1.55[17] and Section 4b(a) of the Commodity Exchange Act.[18] If Draper could prove all the elements of such a fraud claim (*i.e.*, scienter, reliance and proximate causation in addition to presumed materiality), the ceiling for any damages proximately caused by such a violation would be $23,309, based on the total losses realized during the five months that the account was carried by Wedbush. In any event, this all means that although Draper's complaint was patently meager and overreaching, it was not absolutely meritless.[19]

The Commission has been quite reluctant to affirm awards of attorney fees against *pro se* parties in reparations cases. For example, in *Lee v. Peregrine Futures* Comm. Fut. L. Rep. ¶30,131 (2005), the Commission vacated an award of attorney's fees because it found a modicum of merit in Lee's Section 4d claim and found Lee's

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[15] Draper did not specify CFTC rule 1.65 in the laundry list of allegedly violated rules. However, in an isolated, and opaque, fused sentence, in ¶163 of the complaint, he did essentially complain that Wedbush had failed to disclose the then-recent SEC consent order when the account was transferred to Wedbush.

[16] CFTC rule 1.65(a)(3) provides in pertinent part: "Where customer accounts are transferred to a futures commission merchant or introducing broker, other than at the customer's request, the transferee introducing broker or futures commission merchant must provide each customer whose account is transferred with the risk disclosure statements and acknowledgments required by §1.55 (domestic futures and foreign futures and options trading). . . of this chapter and received required acknowledgments within sixty days of the transfer of accounts."

[17] CFTC rule 1.55(a) provides in pertinent part: " no futures commission merchant, or in the case of an introduced account no introducing broker, may open a commodity futures account for a customer. . . unless the futures commission merchant or introducing broker first. . .[f]urnishes the customer with a separate written disclosure statement, and. . . [r]eceives from the customer an acknowledgment signed and dated by the customer that he received and understood the disclosure statement."

[18] Section 4b(a)(2)(A) of the Act provides in pertinent part: "Its shall be unlawful. . . for any person, in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery, or swap, that is made, or to be made, for or on behalf of, or with, any other person, other than on or subject to the rules of a designated contract market-- to cheat or defraud or attempt to cheat or defraud the other person[.]"

[19] In addition, this all underscores the fact that Draper's approval of Harry's persistent interventions has not just forced the Commission to expend scarce resources that could have been devoted to other cases, but also has served to deflect the focus of this proceeding away from an inquiry into the nature and scope of Harry's responsibility for Draper's $268,380 trading losses.

disingenuous and evasive statements, spurious arguments, attempts to circumvent rulings and threats of additional lawsuits to be merely "aggressive," but not sufficiently "wanton" to support an award of attorney's fees *Wanton* -- a colorful, but not particularly precise term -- can be used to describe a fairly wide range of gross misconduct ranging from reckless, deliberate, gratuitous, brazen and excessive, to malicious and violent.[20] Thus, *wanton* essentially serves as a high-bar "eye of the beholder" standard for the Commission. Here, Harry's abusive conduct, approved by Draper, has been at least as objectionable as was Mr. Lee's "aggressive" conduct. However, no matter how spurious and disruptive it may have been, Draper's and Harry's behavior has not been sufficiently egregious to be considered wanton, at least as far as that term was interpreted by the Commission in *Lee*.

Accordingly, because Draper's complaint is not totally without merit, because his misconduct has not been sufficiently wanton to satisfy the Commission's *Lee* standard, and because the dismissal sanction by itself is extraordinary and severe, I have determined not to award respondents' total attorney's fees and costs. Nonetheless, by order dated January 31, 2017, I did tentatively award respondents' their attorney's fees and costs incurred in connection with a discovery motion, based on my determination that Draper had inexcusably abused the discovery process. Respondents have established that the amount of those reasonable attorney's fees is $1,060.

[20] *See, e.g.*, the various definitions and synonyms set out in Black's Law Dictionary, the American Heritage Dictionary and the Oxford English Dictionary.

Order

Pursuant to CFTC rules 12.304(i) and (m), based on complainant's repeated, contemptuous disregard of orders issued by the Commission and by the undersigned, the complaint in this matter is hereby dismissed with prejudice.

Pursuant to CFTC rules 12.30(c) and 12.304(m), based on complainant's abuse of the discovery process, complainant is ordered to pay to respondents $1,060 in attorney's fees. Payment of this award shall be made within 45 days of the date of service of this order of dismissal, unless a notice of appeal is timely filed.

Dated this 1st day of May 2017.

Philip V. McGuire,
Judgment Officer

Appendix attached: Order dated March 28, 2017.

Appendix B

Order to Show Cause

(March 28, 2017)

U.S. COMMODITY FUTURES TRADING COMMISSION
Three Lafayette Centre
1155 21st Street, NW, Washington, DC 20581
www.cftc.gov

Office of Proceedings

RONALD S. DRAPER,
Complainant,

v.

MAIN STREET TRADING, INCORPORATED,
WEDBUSH SECURITIES, INCORPORATED,
KCG AMERICAS LLC,
PATRICK J. FLYNN, and
Respondents.

CFTC Docket No. 16-R003
Served via UPS

ORDER TO SHOW CAUSE

By Order dated March 17, 2017, the Commission dismissed the appeal of third-party Bright Harry who sought reversal of the March 2016 determination that Harry lacked standing and could not represent complainant Ronald Draper in this proceeding, and the July 2016 denial of Draper's and Harry's request for reconsideration of that determination.[1] The Commission warned Draper and Harry: one, that Harry may not file any further documents or otherwise communicate with any Commission staff in connection with this proceeding; two, that Harry may not represent, and Draper may not permit Harry to represent, Draper in this proceeding; and three, that Harry was to cease and desist filing documents or communicating on Draper's behalf, and that if Draper continued to permit Harry to do so, and Harry continued to do so, Draper's complaint could be dismissed. In addition, by Order dated March 9, 2017, the

[1] The Commission's March 17th Order, issued by the Deputy General Counsel pursuant to CFTC rule 12.408 delegated authority, dismissed Harry's appeal on grounds that it was untimely.

undersigned had terminated electronic filing in this proceeding. Unfortunately, Draper and Harry have disregarded the March 9th and 17th orders multiple times.

First, Harry disregarded the March 9th order by e-mailing a series of demands and threats to the undersigned and the Deputy General Counsel: one, a March 13, 2017 10:52 am *my legal right of standing and constitutional rights are superior* e-mail addressed to the Deputy General Counsel and demanding reversal of the determination that Harry lacked standing and could not represent Draper, and demanding that the undersigned "get the hell out of my life" and "get the hell out this matter;"[2] two, a March 14, 2017 2:46 pm *I am now taking very aggressive steps against you to protect my interests* e-mail addressed to the undersigned, alleging forgery of the Proceedings Clerk's transmittal e-mail for the order dated November 17, 2016,[3] and demanding immediate recusal and reversal of the determination that he lacked standing; and three, a March 16, 2017 2:20 pm *my final cautionary warning: the elephant grass swings and sways, the stubborn tall oak tree is torn to pieces by the ferocious wind* e-mail addressed to the undersigned and threatening various actions if the undersigned was not immediately recused. In all three e-mails, Harry identified himself incorrectly as a co-complainant. For all three e-mails, Harry copied Draper among others. Therefore, Harry presumably transmitted these three e-mails on Draper's behalf with Draper's approval.[4]

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[2] In the original text of Harry's e-mail, the *get the hell out* language was underscored and boldfaced.
[3] The Office of Proceedings forwarded the November 17, 2016 transmittal e-mail to Draper on two separate occasions: February 28, and March 13, 2017. For these two occasions, the November 17th e-mail was pulled from different files, the first of which captures the time of an e-mail down to the second, and the second which reports the time down to the minute only. Harry bases his forgery allegation solely on what he perceives to be a four-second differential in the two reported times: *i.e.*, 1:28:04 pm *vs* 1:28 pm.
[4] *See* Draper February 27, 2017 2:09 pm e-mail to the undersigned ("All reparations [*sic*] for this case, filings to CFTC and even letters, including this one were drafted by Bright Harry and I [*sic*]. We work together to file all documents to CFTC and even the opposing party. . . . Bright Harry has his computers

Second, Harry disregarded the Commission's March 17th Order, as well as the March 9th Order, with a March 21, 2017 2:45 pm *my gloves are off* e-mail addressed to the Deputy General Counsel. In this e-mail, Harry expressed his displeasure with the March 17th dismissal of his appeal seeking reversal of the determination that he lacked standing and could not represent Draper. Significantly, Harry also stated his adamant intention to continue: to act as if he had standing,[5] to communicate with the Commission on his and Draper's behalf, and to draft submissions for Draper's signature.[6]

Third, Draper disregarded the Commission's March 17th Order in his application for interlocutory review, by permitting Harry: to add his name to the case title as a self-

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upstairs at [Harry's residence] and I have my computers downstairs in my office at [Harry's residence]. We share the same ISP and telecommunications network at [Harry's residence].")

[5] Harry primarily bases his standing argument on provisions in the U.S. Constitution and the California Code of Civil Procedure that concern standing in Article III and California courts. However, the CFTC reparations forum is neither an Article III nor a California court. Rather, it is an alternative dispute resolution forum before an independent federal agency, congressionally authorized by Section 14 of the Commodity Exchange Act ("the Act"), 7 U.S.C. § 18. As noted in the Commission's March 17th Order: "[I]n the context of a reparations proceeding, [Section 14(a) of the Act provides that] a claimant must allege and prove that he or she suffered 'actual damages proximately caused' by the alleged violations." The difficulty of stretching this language into an authorization for third-party standing is underscored by the fact that third-party standing has been consistently rejected in those rare instances when it has been asserted. *See, e.g., Resolution Trust Corporation v Geldermann, Inc.*, Comm. Fut. L. Rep. ¶26,621 at 43,645-43,646, and fn. 6 at 43,646 (CFTC 1996)("[O]ur review of the legislative history of Section 14(a) yields nothing to suggest that Congress intended to confer third party standing in the reparations forum in this circumstance.") Since it was Draper, not Harry, who funded the account which was in Draper's name, it was Draper alone who suffered the loss of a large portion of those funds, and thus it is Draper alone who has standing in CFTC reparations to seek an award based on those losses.

[6] In recent submissions, Harry and Draper have confirmed what could always be readily gleaned from Draper's post-March 2016 submissions: that is, that "behind the scene" Harry has driven Draper's litigation strategy and tactics, and drafted Draper's submissions, with Draper's apparent knowledge and approval, but in an imbalanced manner that favors Harry's interests. *See* complainant's application, at page 9:

> Bright Harry has always been the Co-complainant of Ronald Draper and filed every single Document with Ronald Draper, and never once relinquished his Constitutional Right to sue and Legal Right of Standing to the CFTC. In other words, Bright Harry has always had Standing in this Matter, and will continue to do so.

[Capitalization in original.] *See also* Harry's March 21st e-mail: "[A]t the behest of Ronald Draper, I decided to allow Draper alone [to] sign all our Documents to CFTC, while operating from behind the scene, to satisfy CFTC's demand." [Underscoring added for emphasis.]

proclaimed co-complainant; to title the application as being filed on behalf of Draper and Harry as co-complainants; and, most significantly, to co-sign the application and notice of filing as "complainant."[7] Throughout the text of the application, Harry and Draper described themselves collectively as the "complainants" and devoted a substantial portion of the application to Harry's oft-repeated argument that he has standing.[8]

Fourth, in an e-mail addressed to the Proceedings Clerk and transmitted after close of business on Friday March 24, 2017, at 5:00 pm EDT, Draper disregarded the Commission's March 17th order by permitting Harry to appear as a self-proclaimed co-complainant: in the subject line and the closing, Draper and Harry were identified as co-complainants and co-signers. Draper and Harry opened by expressing their preference for e-filing.[9] However, the e-mail was not a simple procedural inquiry, because it closed with a repeated recusal demand. Thus, Draper also disregarded the March 9th Order which only permits e-mails that are strictly procedural inquiries or requests.

Certain allowances should be made for the *pro se* status of Draper, who has a right to act as his own zealous advocate. However, this right does not grant Draper free rein to disregard orders, to file repetitive motions, to make reckless *ad hominem* attacks on opposing counsel or Commission presiding officials, or to permit a third party non-

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[7] Draper and Harry also added to the case title the names of certain individuals as supposed respondents, in blatant disregard of the November 17, 2016 ruling which had denied Draper's motion to amend the complaint to add these individuals as respondents.

[8] Underscoring added for emphasis. *See* complainant's application for interlocutory review, at ¶¶ 1, 2, 4, 5, 7, 9, 11, 12, 18, 19, 20, 24, 25, 26, 27 and 46. By Order dated March 24, 2017, issued by the Deputy General Counsel pursuant to CFTC rule 12.408 delegated authority, the Commission dismissed complainant's application on grounds that it was untimely. In this connection, a copy of the FedEx March 21, 2017 shipping label for complainant's application is attached.

[9] Draper did not describe any concrete steps that he has taken to prevent a repeat of the oversights that had rendered e-filing unreliable.

lawyer to represent him in the guise of a self-proclaimed co-complainant. In Draper's recent submissions, and Harry's recent communications on Draper's behalf, Draper has repeatedly disregarded the March 9th and 17th orders, with no suggestion of prospective moderation. Coupled with the unreasonable, intemperate tone in Draper's submissions and Harry's communications, Draper's regular blatant disregard of these orders has inexcusably disrupted the order of this proceeding. Accordingly, complainant Ronald Draper is ordered to show cause, no later than April 12, 2017, why his repeated disregard of orders does not constitute grounds for dismissing his complaint, pursuant to CFTC rules 12.304(i) and (m).[10] Failure to timely and properly file a response to this order will result in dismissal.

Dated March 28, 2017.

Philip V. McGuire,
Judgment Officer

Attachment: Copy of the FedEx March 21, 2017 shipping label

[10] Draper's and Harry's Friday March 24, 2017 e-mail was forwarded to my office after my office had issued a Monday March 27, 2017 notice that set an April 10, 2017 filing deadline for any opposition to respondents' motion for summary disposition. The filing deadline for complainant to file an opposition to respondents' motion for summary disposition is hereby suspended pending review of his response to this order to show cause.

Appendix C

Commission Order

(March 17, 2017)

UNITED STATES OF AMERICA
Before the
U.S. COMMODITY FUTURES TRADING COMMISSION

RONALD S. DRAPER, Complainant, v. MAIN STREET TRADING, INC., WEDBUSH SECURITIES, INC., KCG AMERICAS LLC, and PATRICK JOSEPH FLYNN, Respondents.	CFTC Docket No. 16-R003 **ORDER**

This Order is in response to Bright Harry's email of March 13, 2017, re: My Legal Right of Standing and my Fifth Amendment Constitutional Rights are Superior to, and precede McGuire's orders and your Interlocutory Review in Ronald S. Draper and Bright Harry [*sic*] vs. KCG et al. [CFTC Docket No. 16-R003] (bracketed docket number in original). The email's addressee was the undersigned, but Harry also copied the Office of Proceedings, attorney James Koch, Claimant Ronald S. Draper, Commissioner Sharon Bowen, and former Commissioner Timothy Massad. In the email, Harry challenges decisions by the Office of Proceedings dated March 8 and July 21, 2016, that because the 1st Amended Complaint did not allege an injury to Harry, Harry did not have standing to be included as a co-complainant with Complainant Ronald S. Draper. Harry also protests Judgment Officer Philip McGuire's direction, by email dated December 6, 2016, that Harry cease filing documents on Draper's behalf, because Harry is not an attorney.

I construe Harry's email as a petition to appeal those determinations, and I dismiss the appeal as untimely. This is true whether the appeal is considered interlocutory or from a

disposition of a claim. An interlocutory appeal must be brought within 10 days of the ruling described, 17 C.F.R. § 12.309 (b), and an appeal from a final disposition must be brought within 15 days, *id.* § 12.401(a). The decisions to which Harry objects occurred between three and twelve months ago. Accordingly, pursuant to 17 C.F.R. § 12.408(a)(4), the appeal is dismissed.[1]

I also warn Harry and Draper that Harry may not file any further documents or otherwise communicate with any CFTC staff in this proceeding. Under the current complaint, only Draper is a Complainant. As the Judgment Officer and Office of Proceedings correctly note, under 17 C.F.R. § 12.9(a), only an attorney may represent a party in a proceeding before the Commission. Harry is not an attorney. Thus, Harry may not represent, and Draper may not permit Harry to represent, Draper in this proceeding. I warn Harry to cease and desist filing documents or communicating on Draper's behalf. If Draper continues to permit him to do so, and Harry continues to do so, the Complaint may be dismissed.[2]

IT IS SO ORDERED.[3]

Robert A. Schwartz
Deputy General Counsel

Dated: March 17, 2017

[1] Harry has requested a legal citation for the proposition that he lacks standing to participate in this position. Because his appeal is untimely, I do not reach that question. However, in the context of a reparations proceeding, a claimant must allege and prove that he or she suffered "actual damages proximately caused" by the alleged violation. 7 U.S.C. § 14(a)(1).

[2] Pursuant to my order dated March 9, 2017, the deadline remains March 20, 2017, for Draper to file and serve any application for interlocutory review from the Judgment Officer's February 20, 2017 order denying Draper's disqualification motion.

[3] By the Commission pursuant to delegated authority. 17 C.F.R. § 12.408(a)(1).

Appendix D

Sanctions Order

(January 31, 2017)

U.S. COMMODITY FUTURES TRADING COMMISSION
Three Lafayette Centre
1155 21st Street, NW, Washington, DC 20581
www.cftc.gov

Office of Proceedings

RONALD DRAPER, Complainant, v. MAIN STREET TRADING, INC., WEDBUSH SECURITIES, INC., KCG AMERICAS LLC, and PATRICK JOSEPH FLYNN, Respondents.	*	CFTC Docket No. 16-R003 Served electronically

ORDER IMPOSING SANCTIONS FOR ABUSE OF DISCOVERY

As explained below, I have granted respondents' motion for protective order and sanctions and denied complainant's cross-motion for sanctions, and thus have imposed sanctions on complainant for abuse of discovery.[1] I also have closed discovery, and have

[1] Respondents filed their motion on January 19, 2017. Complainant, appearing *pro se*, filed a *Memorandum in Support of Cross-motion for Sanctions and Opposition to Motion for Protective Order* ("Opposition") on January 30, 2017. In his opposition: complainant devotes six of twenty-seven total pages to the relevant subject matter, *i.e.*, his answers to the requests for admissions; attached four exhibits which are inexplicably numbered T11 to T14; and seeks (1) denial of respondents' motion, (2) an order requiring respondents and their counsel to post a $45 million bond, or (3) summary judgment. The tone, style, organization and substance of the opposition are consistent with complainant's previous submissions, all of which have been authored by an individual named Bright Harry. The transmittal e-mail was sent by an individual named Eric Coker of TCB Process Service. Mr. Coker's e-mail indicates that the memorandum in support of the cross motion and opposition to the motion for protective order is meant to serve as the actual cross-motion and the opposition to the motion for protective order.

set a February 20, 2017 filing deadline for any motion for summary disposition, or any motion for disposition without an oral hearing.

I. Discovery: Sanctions imposed; discovery closed.

Background

Complainant has been warned multiple times that Bright Harry, whom complainant had authorized to trade his account, may not act as his attorney in this proceeding. *See* Pugh March 9, 2016 letter to Draper; Jurgens July 21, 2016 letter to Draper; and McGuire December 6, 2016 1:04 pm e-mail to Draper. Nonetheless, it is clear that complainant has cavalierly disregarded these warnings, and has permitted Mr. Harry to continue acting as his counsel and alter-ego, because almost all of complainant's submissions -- including his first and second rounds of discovery requests, his "revised" response to the requests for admissions, and his opposition to respondents' motion -- share the same tortuous and voluminous quality of complainant's previous submissions prepared by Mr. Harry. In this connection, complainant's discovery requests have twice been stricken because on their face they were so convoluted and redundant, and so disproportionate given the nature of the case and the amount actually involved, that any effort to respond would have been unreasonably costly and time-consuming. On January 12, I gave complainant a third chance to produce "corrected" discovery requests. *See* Order dated December 5, 2016; and McGuire January 12, 2017 e-mail.

On December 5, 2016, respondents served 26 requests for admissions. On December 13, 2016, I extended to January 31, 2017 complainant's deadline to respond to the requests, based on representations that he had been hospitalized and that he would

soon be hiring an attorney. On January 10, 2017, complainant served his response to the requests. This response is written in the same style as complainant's previous submissions, *e.g.*, although laden with legal terminology it is obviously not prepared by an attorney, but rather by Mr. Harry. Since this response was served long before the January 31st deadline, it is reasonable to conclude that complainant had already abandoned any effort to hire an attorney. On or about January 11, 2017, respondents' counsel, Jim Koch, sent complainant a letter asking him to refile responses that simply and plainly answer the requests. On January 13, 2017, complainant served and filed the "Revised Response" to the requests for admissions. This revised response is the subject of this Order.

Complainant's abusive "revised" response to requests for admissions

The purpose of requests for admissions is to facilitate proof with respect to issues that cannot be eliminated from the case, and to narrow the issues by eliminating those that can be. *See* Federal Rule of Civil Procedure 36, advisory committee notes to 1970 Amendment. Generally, a party may serve on another party a written request to admit the truth of any matter that is relevant to the subject matter of the case and proportional to the needs of the case, and that relates to the facts or the application of law to fact or opinions about either, including the genuineness of any described document. *See* CFTC rules 12.30(b)(1) and 12.33(a).

Although requests for admissions do require careful consideration before answering, they are the least burdensome type of discovery to answer, typically requiring a plain and simple *admit*, or *deny*, or *admit in part, deny in part*, or *unable to admit or deny due to lack information or knowledge*, or *object*, accompanied if

necessary by a brief, closely related and narrowly focused explanation or qualification. Complainant's *pro se* status does not relieve him of the obligation to provide such good-faith, plain and simple answers that meet the substance of any straightforward requests for admission, particularly those requests that concern basic factual matters.

Here, respondents' requests are narrowly focused on relevant knowledge and information that is held or readily obtainable by complainant. With one exception, all of the requests concern factual matters.[2] Unfortunately, complainant has abused the discovery process without justification by serving numerous patently unresponsive, nonsensical, and/or vexatious denials to reasonable requests for admissions.[3] As result, I am imposing sanctions.

Sanctions

Pursuant to CFTC rules 12.30(b)(2), 12.30(c), 12.33(c) and 12.304(m), respondents' motion for protective order and sanctions is hereby granted, complainant's counter-motion is denied, and the following sanctions are hereby imposed:

> One, complainant is deemed to have admitted each of the following requests for admissions: ## 2, 3, 4, 5, 6, 10, 11, 13, 14, 15, 16, 17, 20, 21, 22, 24, and 26.[4]

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[2] Request # 12 sought complainant's legal opinion on whether or not respondents owed complainant a fiduciary duty in light of the fact that his account was non-discretionary.

[3] Complainant has admitted requests ## 1, 7, 8, 9, 18, 19, 23 and 25. Complainant has denied the majority of the requests: ## 2, 3, 4, 5, 6, 10, 11, 12, 13, 14, 15, 16, 17, 20, 21, 22, 24 and 26. I find that all of these denials -- with the exception of the denial of request # 12, which seeks a legal conclusion -- are abusive. In addition, complainant has opened his revised response with a lengthy introduction in which he raised a hodgepodge of gratuitous, absurd arguments including, for example, a novel charge that respondents had engaged in "elder abuse." This superfluous introduction is a factor in my determination that complainant's revised response to the requests for admissions, when viewed as a whole, is sufficiently vexatious to justify the sanctions imposed by this Order.

[4] These admissions are conclusively binding on complainant. *See* CFTC rule 12.33(d).

Two, complainant is deemed to have waived the right to propound "corrected" discovery requests on respondents.[5]

Three, complainant is ordered to pay, at the termination of this proceeding, respondents' reasonable costs incurred in the filing of the motion.[6]

Discovery is hereby closed.

II. Opportunity to file a motion for summary disposition, or a motion for disposition of this case without an oral hearing.

The filing deadline for any motion for summary disposition pursuant to CFTC rule 12.310, or any motion for disposition without an oral hearing pursuant to CFTC rule 12.311, is c-o-b February 20, 2017.

Dated January 31, 2017.

Philip V. McGuire,
Judgment Officer

[5] In view of complainant's abusive discovery replies, it is now reasonable to conclude that complainant's alter ego Mr. Harry would likely design any "corrected" discovery requests, not as a reasonable means to discover relevant information, but rather as a tactical ploy to impose a wasteful, abusive burden on respondents. Accordingly, I have determined that complainant has squandered a fair opportunity to develop and prepare his case through discovery, and that further prolonging discovery by giving complainant a third opportunity to serve purportedly "corrected" discovery requests would serve no valid purpose.

[6] The filing deadline for respondents to substantiate their reasonable costs incurred in the filing of the January 19th motion is c-o-b February 20, 2017.

Appendix E

Discovery Order

(December 5, 2016)

U.S. COMMODITY FUTURES TRADING COMMISSION
Three Lafayette Centre
1155 21st Street, NW, Washington, DC 20581
www.cftc.gov

Office of Proceedings

RONALD DRAPER,
Complainant,

v.

MAIN STREET TRADING, INC.,
WEDBUSH SECURITIES, INC.,
KCG AMERICAS LLC, and
PATRICK JOSEPH FLYNN,
Respondents.

CFTC Docket No. 16-R003
Served electronically

ORDER

A review of complainant's discovery requests reveals several defects requiring remedial action by complainant. First, although the interrogatories are numbered 1 through 20, several interrogatories contain multiple questions, and consequently the total number exceeds the 30-interrogatory limit set out in CFTC rule 12.32(b). Second, several interrogatories and document requests appear to relate principally to claims that were stricken by the March 8, 2016 letter, and thus seek information that appears to be not relevant. Third, several interrogatories and document requests seek production of information described vaguely as "required by law." Accordingly, complainant's interrogatories and document requests are hereby stricken.

However, complainant will get a second chance, and thus may file and serve a new set of interrogatories and document requests, which must comply with the following conditions:

(1) Complainant may file a total of 30 interrogatories.

(2) For each new interrogatory and document request, complainant must separately, and briefly, explain how the information sought is relevant to a claim that has not been stricken.

(3) For each new interrogatory and document request that seeks production of information that complainant asserts is "required by law," complainant must specify the applicable section of the Commodity Exchange Act and/or CFTC rule.

The deadline for complainant to serve and file the new discovery requests is close of business December 27, 2016.

Dated December 5, 2016.

Philip V. McGuire,
Judgment Officer

Appendix F

Order Denying Complainant's Motions
(February 28, 2017)

U.S. COMMODITY FUTURES TRADING COMMISSION
Three Lafayette Centre
1155 21st Street, NW, Washington, DC 20581
www.cftc.gov

Office of Proceedings

RONALD DRAPER, Complainant, v. MAIN STREET TRADING, INC., WEDBUSH SECURITIES, INC., KCG AMERICAS LLC, and PATRICK JOSEPH FLYNN, Respondents.	*	CFTC Docket No. 16-R003 Served electronically

ORDER DENYING COMPLAINANT'S MOTIONS

The motions

Ronald Draper, appearing *pro se*, filed two motions on February 16, 2017: one, a motion to vacate the January 31, 2017 order which imposed various sanctions for abuse of discovery ("motion to vacate"); and two, a motion to disqualify me as presiding official in this proceeding ("disqualification or DQ motion"). Draper asserts that three actions show bias against Draper, and against Bright Harry, the scribe of the two motions as well as all of Draper's previous filings: one, my refusal to permit Harry, a non-attorney, to represent Draper;[1] two, my adverse December 5, 2016, and January 12 and 31, 2017 discovery orders;[2] and three, my purported failure to timely rule on Draper's November 16, 2016 motion for leave to amend the complaint which, Draper

[1] *See* DQ motion, at ¶¶ 3, 4, 34-40, and 45.
[2] *See* motion to vacate, at ¶¶ 13-38, and 54-55; and DQ motion, at ¶¶ 8, 9, 11, 12, 26, 34, and 78 [sic].

asserts, hindered his ability to conduct discovery.[3] Draper emphasizes the first factor in the disqualification motion, and the third factor in the motion to vacate. As explained below, after carefully considering Draper's motions and respondents' responses to the motions,[4] I have denied both of Draper's motions.

Background

Determination to bar Bright Harry

Draper and Harry are neighbors. Draper funded the non-discretionary account in his name, and selected Harry to trade the account, for 17 months, pursuant to a power of attorney. Harry, in turn, selected and paid for the third-party electronic trading platform that he used to trade Draper's account. Harry's purported problems with the trading platform form the basis for Draper's complaint.

Harry and Draper initially filed a complaint as co-complainants. Belinda Pugh, complaints specialist for the CFTC Office of Proceedings, advised Draper and Harry: one, that Harry lacked standing to sue respondents in reparations because he was not an account holder; and two, that Harry could not appear as Draper's counsel because he is not a licensed attorney.[5]

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[3] *See* motion to vacate, at ¶¶ 4-15, and 39-53; and DQ motion, at ¶¶ 5, 7, 9, 15, 16, 19, 21-26, 33, 40, and 45.

[4] On February 27, 2017, Draper e-mailed a "letter" to the undersigned, with four attachments, which he denominated a response to the February 16, 2017 e-notice (which had set and suspended certain deadlines). In this voluminous package, Draper has recycled his argument that I be disqualified, as well as his previously rejected argument that Harry be given standing, injected with a fresh dose of preposterous vitriol. Draper copied two CFTC commissioners, but not respondents' counsel. Therefore, Draper's "letter" is presumably a prohibited *ex parte* communication. Accordingly, Draper's February 27th "letter" has not been considered, because it is *ex parte* and repetitive. *See* CFTC rules 12.7(a) and 12.308(e).

[5] *See* Pugh March 8, 2016 letter to Draper and Harry ("Pugh March 8th letter").

Draper next filed an amended, but substantially similar, complaint which listed him as the lone complainant. Subsequently, Melissa Jurgens, acting director of the CFTC Office of Proceedings, denied Draper's request for reconsideration of the determination that Harry lacked standing and could not appear as Draper's counsel.[6] Unfortunately, Draper has disregarded this ruling and permitted Harry to continue to act openly as his off-stage *de facto* attorney, drafting numerous submissions for Draper approval and signature, and filing them via a third-party service provider.[7]

November 17th order denying November 16th motion for leave to amend complaint

The gravamen of Draper's complaint is that a third-party electronic trading system -- selected and paid for by Harry -- hindered Harry's ability to place orders for Draper's account. Draper asserts that all of his trading losses were caused, not by market forces or by Harry's trading decisions, but by the allegedly defective trading system. Draper offers a variety of novel theories why respondents caused, or are responsible for, these losses.

The Pugh March 8th letter struck various extravagant claims for speculative and lost-profit damages, and struck several respondents: the unregistered companies that had provided the trading system, a principal of respondent Wedbush, and 50 John Does. The Pugh letter advised Draper that, if he subsequently learned the identity of a

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[6] *See* Jurgens July 21, 2016 letter to Draper ("Jurgens July 21st letter"). *See also* notice e-served December 6, 2016 4:04 pm (reiterating bar on Harry's appearance as Draper's representative).

[7] I have permitted Harry to act in a ministerial function in an isolated instance when Draper was hospitalized at the end of November 2016, and I have advised Draper that Harry may appear as a fact witness via written or oral testimony. *See* notice regarding request to extend discovery deadlines, e-served December 6th 4:04 pm; McGuire December 9th 5:16 pm e-mail to Draper; and notice granting extension request, e-served December 13th 11:08 am.

John Doe, he could request to add that individual as a respondent, but that he must show how the proposed respondent had caused, or was responsible for, the losses. The Jurgens July 21st letter: summarized the tortuous history of the multiple revised versions of Draper's complaint; denied Draper's request to reconsider the initial determinations to bar Harry's participation as complainant or as representative for Draper, and to strike certain respondents and certain damage claims; and advised Draper that he "may" file a motion to amend the complaint after the case was assigned to a judge, but warned him against filing repetitive motions.

Before discovery had begun, on November 16, 2016, Draper filed a motion for leave to amend the complaint. Draper would subsequently explain that he and Harry had sought to file a responsive pleading to the answer and to seek to add as respondents two freshly identified principals of respondents Wedbush and KCG.[8]

As for the newly named individuals, Draper did not produce or identify a scintilla of reliable evidence to substantiate the proposed claims which appear to be based solely on the status of the prospective respondents as principals of their firms. Thus Draper failed to set out how these individuals plausibly could have caused, or been responsible for, Draper's trading losses allegedly caused exclusively by a defective third-party trading platform.

As for Draper's and Harry's desire to rebut the answer, in contrast to the Federal Rules of Civil Procedure, the CFTC Part 12 reparations rules do not provide for multiple rounds of pleading.[9] However, the reparations rules do provide adequate opportunity

[8] *See* DQ motion at ¶¶ 16, 21 and 22.
[9] *See* CFTC rules 12.13 to 12.27.

later in a proceeding for a party to produce documentary evidence, affidavits and oral testimony to support their case and to rebut an opposing party's case.[10]

Also, CFTC rule 12.307 -- not FRCP 15, as asserted by Draper and Harry -- governs amendments of pleadings in CFTC reparations cases. In this connection, CFTC rule 12.307(a) provides that the presiding judge "may" allow amendments to the pleadings upon the consent of the parties or for good cause shown. Notwithstanding respondents' consent to Draper's motion, by Order e-served on both sides on November 17, 2016, I denied Draper's November 16th motion on the grounds that the proposed claims against the prospective respondents were not cognizable.[11]

The Commission's IT staff has confirmed that electronic service of the November 17th Order was successful. In this connection, Draper has not reported any e-service issues with any other orders and communications from the CFTC, before or after November 17, 2016. Nonetheless, Draper has belatedly asserted that he twice called someone at the CFTC sometime in November to ask about the status of his November 16th motion.[12] However, Draper's and Harry's conduct after November 16th belies this assertion: first, Draper and Harry did not mention the November 16th motion, or any unreturned calls, in their early December e-mails requesting an extension of discovery deadlines;[13] and second, Draper waited more than two months before asserting that he was still "waiting" for a ruling on the motion.[14]

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[10] *See, e.g.*, CFTC rules 12.310(b), 12.311, 12.312(d) and (g), and 12.313.
[11] Copies of the November 17th Order and the Proceedings Clerk's transmittal e-mail are attached.
[12] *See* DQ motion, at ¶ 7.
[13] *See* Harry's December 6th 12:59 pm e-mail, and Draper's December 9th 1:45 pm e-mail.
[14] *See* Draper's January 30, 2017 cross-motion for sanctions.

December 5th and January 12th and 31st discovery orders

By order dated December 5, 2016, I found several defects in Draper's discovery requests which required remedial action. Principally, several interrogatories contained multiple questions which resulted in the total number of interrogatories substantially exceeding the 30-interrogatory limit set out in CFTC rule 12.32(b), and numerous interrogatories and document requests related to claims that had been stricken by the Pugh March 8th letter, and thus sought information that appeared to be not relevant. As a result, I *sua sponte* struck the requests but gave Draper a second chance to file and serve an amended set of interrogatories and document requests, provided that he comply with certain conditions, including that he explain how the information sought by each new interrogatory and document request is relevant. On December 13, 2016, I extended Draper's deadline to January 31, 2017.

However, Draper would not serve and file an amended set of interrogatories and document requests. Rather, on January 11, 2017, Draper served and filed four sets of requests for admissions.[15] By order dated January 12, 2017, I *sua sponte* rejected Draper's requests for admissions because the requests were unnecessarily cumbersome for respondents to answer, and otherwise failed to serve their purpose to clarify and narrow the issues in dispute. For example, Draper had addressed four sets of requests to overlapping combinations of respondents -- one was addressed to the four respondents collectively, a second was addressed to Main Street and Flynn, a third was addressed to KCG, and a fourth was addressed to Wedbush. I gave Draper a second chance to serve and file, by February 13, 2017, corrected requests for admissions,

[15] On January 11th Draper also filed and served his initial replies to respondents' requests for admissions.

provided that he comply with certain conditions, including that he address no more than one set of requests to each respondent.

By order dated January 31, 2017, I found that Draper, in connection with his replies to respondents' requests for admissions, had abused the discovery process and squandered his opportunity to conduct discovery, and thus granted respondents' January 19th motion for protective order and sanctions, denied complainant's January 30th counter-motion, and imposed the following sanctions: one, Draper was deemed to have admitted certain requests for admissions, two, Draper was deemed to have waived the right to propound any "corrected" discovery requests, and three Draper was ordered to pay, at the termination of this proceeding, respondents' reasonable costs incurred in the filing of their motion.

Conclusions

Draper and respondents are entitled to a fair and open proceeding, and that right includes access to an impartial decision-maker. Draper must show that any disqualifying bias is of a personal, as opposed to a judicial, nature, and that the bias stems from an extrajudicial source, resulting in an outcome on some basis other than what I have learned from my participation in the case. Here, Draper has failed to establish any plausible extrajudicial source, and thus must show "pervasive bias."[16]

First, Draper has been repeatedly informed that CFTC rule 12.9(a) does not permit Harry to represent Draper in this reparations proceeding, because Harry is not a licensed lawyer. Requiring Draper to comply with this basic rule is not unfair or unreasonable, and otherwise does not manifest pervasive bias against Draper or for

[16] *See Saxon v. First Commodity Corporation of Boston*, Comm. Fut. L. Rep. ¶ 22,808 (CFTC 1985).

respondents. Moreover, the fact that I may have formed a negative impression of Draper, or of Harry, over the course of this proceeding – *e.g.*, due to Draper's on-going approval of the needlessly prolix and repetitive, and recklessly vituperative, submissions drafted and filed on his behalf by Harry -- does not establish disqualifying bias.[17]

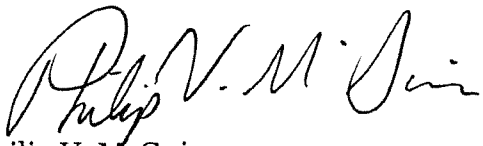
Second, adverse discovery rulings do not establish disqualifying bias, particularly where Draper has failed to justify his abuse of the discovery process.[18]

Third, on November 17, 2016, less than twenty-four hours after the CFTC had received Draper's motion for leave to amend the complaint, the CFTC Proceedings Clerk electronically served my order denying the motion. Thus, Draper's assertion that I have not yet ruled on his November 16th motion is baseless.

Ruling

Draper has failed to establish extrajudicial or pervasive bias. Accordingly, Draper's February 16th motions are denied.[19]

February 28, 2017.



Philip V. McGuire,
Judgment Officer

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[17] *See Harmon v. Murlas, Inc.*, Comm. Fut. L. Rep. ¶ 25,323 (CFTC 1992). In addition, although the interests of Draper and Harry may seem to be generally aligned, their interests are not identical and may, if not now, at some point come into conflict.

[18] *See Nixon v. Lind Waldock & Co.*, Comm. Fut. L. Rep. ¶ 26,935 (CFTC 1997).

[19] The procedure for seeking interlocutory review of the denial of Draper's disqualification motion is governed by CFTC rule 12.309(b). The *Notice of Formal Proceeding*, served on Draper on November 9, 2016, provides the link to the Commission's Part 12 reparations rules. In this connection, by e-notice on February 16, 2017, I suspended the deadline for Draper to file any counter-motion for summary disposition, or opposing papers, in reply to respondents' February 16th motion for summary disposition, pending final resolution of Draper's disqualification request.