

UNITED STATES OF AMERICA  
Before the  
COMMODITY FUTURES TRADING COMMISSION

DELBERT DUNMIRE

v.

MATTHEW STEPHEN HOFFMAN,  
ROBERT BRUCE LEE, MORGAN  
STANLEY DW, INC., and LAWRENCE J.  
SCHNEIDER

CFTC Docket No. 04-R051

ORDER PURSUANT TO  
DELEGATED AUTHORITY

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Upon deciding that his claims did not fall within the Commission's jurisdiction, complainant Delbert Dunmire ("Dunmire") moved for dismissal of his reparations complaint. By an order dated May 20, 2005, the Administrative Law Judge ("ALJ") found that Dunmire failed to state a "cognizable reparations claim" and dismissed his complaint.<sup>1</sup> At the same time, the ALJ found that he retained jurisdiction over respondent Morgan Stanley's counterclaim for the debit balance in Dunmire's account. He set a hearing on the counterclaim for June 27, 2005.

Dunmire asked the ALJ to certify for interlocutory review the question of the ALJ's jurisdiction to hear the counterclaim, and to stay the hearing pending review. The ALJ denied both requests. See Order of June 1, 2005 (refusing to certify) and Order of June 7, 2005 (refusing to stay).

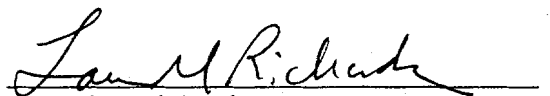
On June 7, 2005, Dunmire asked the Commission to take interlocutory review of the ALJ's May 20 order and to stay the proceeding pending review. The ALJ's ruling retaining jurisdiction over the counterclaim satisfies the conditions of Commission Rule 12.309(a)(4).<sup>2</sup>

<sup>1</sup> Dunmire has filed a claim in the National Futures Association's arbitration forum.

<sup>2</sup> Commission Rule 12.309(a)(4) provides that interlocutory review is available at the Commission's discretion in the absence of certification when "[t]he appeal is from a ruling which satisfies the conditions of paragraphs

Because the ALJ has denied respondent's request for a stay, respondent's current request to the Commission for a stay order is properly before the Commission as required by Commission Rule 12.309(d).<sup>3</sup> The request for a stay is granted; the stay shall remain in effect for a period of 90 days from the date of this order so that the Commission may address the ALJ's jurisdictional determinations regarding the counterclaim.

IT IS SO ORDERED.<sup>4</sup>

  
Laura M. Richards  
Acting Deputy General Counsel  
Commodity Futures Trading Commission

Dated: June 16, 2005

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(a)(3)(i)(ii)(iii) of this section, despite the absence of certification, and extraordinary circumstances are shown to exist." Rule 12.309(a)(3) contains the following standard

(i) a ruling sought to be appealed involves a controlling question of law or policy; (ii) an immediate appeal may materially advance the ultimate resolution of the issues in the proceeding; and (iii) subsequent reversal of the ruling would cause unnecessary delay or expense to the parties;

<sup>3</sup> Commission Rule 12.309(d) provides: "The Commission will not consider a motion for a stay unless the motion shall have first been made to the Administrative Law Judge (or, if applicable, the Judgment Officer) and denied."

<sup>4</sup> By the Commission pursuant to delegated authority, 17 C.F.R. § 12.408(a)(6). Within seven days after service of this order, a party may file with the Commission a petition for reconsideration of this ruling. *Id.* at § 12.408(c).