

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

KHORRAM PROPERTIES, LLC

v.

McDONALD INVESTMENTS, INC.

CFTC Docket No. 04-R0452
ORDER DENYING
RECONSIDERATION

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On April 22, 2005, in an Order Pursuant to Delegated Authority, the Commission stayed this reparation proceeding (then pending before an Administrative Law Judge) for 120 days to take interlocutory review to determine whether the Policy Statement Concerning Swap Transactions, 54 Fed. Reg. 30,694 (1989) ("Swaps Policy Statement") governs the resolution of this matter. The order was issued in response to respondent's application for interlocutory review and motion to stay pending review filed on April 4, 2005.

On April 29, 2005, complainant timely filed with the Commission a motion for reconsideration of the stay order under Rule 12.408(c). Complainant asserts that the stay should be lifted because the Swaps Policy Statement does not touch complainant's fraud claim or other allegations, which, complainant argues, arise under the Commission's Part 35 Regulations. Complainant maintains that respondent never relied on the Swaps Policy Statement in the parties' dealings with each other. It argues that the issues in this matter involve questions of fact, and that the fact-finding process should continue before the ALJ. Complainant does not seek reconsideration of the decision to take interlocutory review.

In opposition, respondent points out that complainant's case rests on what it deems the faulty premises that the transactions at issue are illegal off-exchange futures and that the

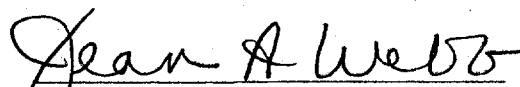
Commission's 1989 Swaps Policy Statement is no longer in effect, at least with respect to the transactions in this case. Respondent argues that the ALJ "violated Commission policy when he accepted complainant's argument that the Swaps Policy Statement . . . does not apply" to the swap at issue in this proceeding. Respondent argues that the questions of how the transaction would have been treated under Part 35, and what was said when the parties entered into the transaction, are irrelevant, since the Swaps Policy Statement issue is jurisdictional and outcome determinative. In these circumstances, the stay should remain, respondent argues.

Complainant has filed a reply asserting that its fraud claims will require a hearing "in any event," Reply at 4, and that the hearing ought not be delayed during interlocutory review. Complainant also raises additional challenges to respondent's assertions regarding the scope of the Swaps Policy Statement.

Upon due consideration, we find that complainant has not advanced reasons sufficient to alter the determination to stay the proceedings below. It has not shown with particularity that it is suffering prejudicial harm from this brief stay we have imposed. The jurisdictional question presented to us warrants our deciding whether it can and should be resolved at this juncture. Our further deliberations potentially may affect the course of proceedings below. In these circumstances, a brief stay is warranted. Accordingly, complainant's motion for reconsideration is denied.

IT IS SO ORDERED.

By the Commission (Acting Chairman BROWN-HRUSKA and Commissioners LUKKEN, HATFIELD, and DUNN).



Jean A. Webb
Secretary of the Commission
Commodity Futures Trading Commission

Dated: June 28, 2005