

UNITED STATES OF AMERICA  
Before the  
COMMODITY FUTURES TRADING COMMISSION

PAUL LEE

v.

PEREGRINE FINANCIAL GROUP, INC.

CFTC Docket No. 98-12

OPINION AND ORDER

2005 SEP - 7 A 10: 51  
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Complainant Paul Lee ("Lee") appeals from a Judgment Officer's decision awarding respondent Peregrine Financial Group, Inc. ("Peregrine") \$4884 in legal fees. For the reasons that follow, the fee award is reversed. The initial decision is otherwise affirmed.

\* \* \*

Lee opened an account with Peregrine in November 1997, while incarcerated at a federal prison in West Virginia, and concealed that fact from respondent. He executed a power of attorney granting fellow inmate Keith Maydak ("Maydak") discretionary trading authority, and concealed Maydak's prisoner status as well as his own. Peregrine received \$28,557.50 in wire-transferred funds to open the account, and trading commenced.

In early March 1998, a representative of the U.S. Secret Service informed Peregrine that it was investigating the excessive number of calls made by Lee and Maydak, possibly in violation of their telephone privileges. According to Peregrine, the agent said that "the U.S. Attorney more likely would be seeking to enjoin the transfer of any funds." Ans. at 3.

Peregrine liquidated the account's open positions the next day, without notice to Lee or Maydak, leaving a cash balance of \$21,285.58. On March 10, 1998, the U.S. Attorney issued a subpoena to Peregrine to appear before a grand jury in connection with the account. Peregrine complied with the subpoena by submitting documents.

Early in April 1998, Peregrine received a call from a law firm retained by Lee to collect the account balance. Peregrine informed the firm that the U.S. Attorney might enjoin transfers from the account, but that no such order had been received. At about the same time, Lee and Maydak—acting on their own, not through Lee's law firm—threatened to sue Peregrine for invasion of privacy, fraud, conversion and other claims, unless Peregrine paid them \$38,500. On April 10, 1998, Lee's counsel sent a demand letter to Peregrine for the return of the account balance. Peregrine entered into settlement negotiations with the aims of forestalling any lawsuit by Lee or Maydak, and avoiding payment of any excess amount. No final agreement was reached.

Meanwhile, Lee and Maydak mounted a separate attempt to recover the account balance through this reparations claim, filing a *pro se* complaint on April 17, 1998, which alleged conversion of the account and other violations.<sup>1</sup> After a year of contentious proceedings, the Judgment Officer issued a decision finding no violation of the Act in Peregrine's decision to liquidate the account, or its subsequent retention of the funds for a "reasonable" time thereafter, given that Peregrine had received "apparently reliable notice of an imminent restraining order against the funds." *Lee v. Peregrine Financial*

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<sup>1</sup> We read the "conversion" claim as an allegation of wrongdoing under Section 4d of the Act (misuse of customer funds). The complaint was filed on behalf of Lee and Maydak. The Commission's Office of Proceedings declined to accept Maydak as a complainant because he was not a record owner of the account. The record nevertheless makes clear that Lee and Maydak have acted in concert throughout the events at issue.

*Group, Inc.*, [1998-1999 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,664 at 48,149 (Initial Decision, June 16, 1999) (“I.D.”). The Judgment Officer concluded that a reasonable time had not elapsed by the time the reparations complaint was initiated. *Id.*

The account balance remained in a segregated customer account in Peregrine’s custody while this case was pending below. The Judgment Officer held that while Peregrine was justified in not releasing the funds immediately, the lack of further law enforcement action meant that Lee was entitled to get his money back. He ordered Peregrine to return the balance, less \$4884 awarded to the firm in legal fees, based on “vexatious conduct” by Lee and Maydak during litigation. Shortly after the initial decision was issued, Peregrine paid Lee \$16,401.58.

On appeal, Lee challenges the finding that no conversion occurred, the award of attorneys’ fees, and a number of the Judgment Officer’s discovery rulings. Peregrine asks us to affirm the decision below.

With respect to Lee’s arguments on the merits of his claim, our review of the record and the parties’ appellate submissions establishes that the Judgment officer committed no error material to the outcome of the proceedings, and the parties have not raised important questions of law or policy that merit extended discussion. Accordingly, we summarily affirm the Judgment Officer’s decision.

We reach a different conclusion with respect to his award of legal fees to Peregrine. The Judgment Officer based the award on what he deemed Lee’s and Maydak’s disingenuous and evasive statements, spurious arguments, attempts to circumvent discovery rulings, and threatened collateral lawsuits against Peregrine. *Cf. Sherwood v. Madda Trading Co.*, [1977-1980 Transfer Binder] Comm. Fut. L. Rep.

(CCH) ¶ 20,728 at 23,023 n.26 (CFTC Jan. 5, 1979) (fees may be awarded to a prevailing party when the opponent acted “in bad faith, vexatiously, wantonly, or for oppressive reasons”); *see also Brooks v. Carr Investments, Inc.*, [2002-2003 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 29,027 at 53,457 (CFTC May 9, 2002) (denying fees). Although the Judgment Officer characterized the conduct of Lee and Maydak as vexatious, and while our independent review of the record confirms that they litigated aggressively, we are not persuaded that their conduct was wanton or vexatious.

The Judgment Officer expressly limited his award to costs incurred by Peregrine after Lee would not agree to a settlement conference. I.D. at 48,149. Lee’s refusal did not cause this case to be unduly protracted, or cause Peregrine to incur significant avoidable fees. Lee and Maydak had refused to accept an earlier settlement negotiated by their lawyer outside the reparations forum, reducing the likelihood that further talks would be fruitful. Whether or not such talks took place had little bearing on the amount of legal resources expended to resolve this case, and should not have been a factor in the decision to award fees.

Based on the foregoing, we vacate the fee award. Our resolution of this case, together with the initial decision, gives Lee the full amount of his account value at liquidation. Accordingly, his assertions of flawed discovery rulings and other errors are moot, and we decline to reach them.

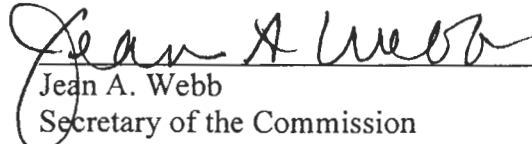
#### CONCLUSION

Peregrine shall pay Lee \$4,884 in improvidently awarded attorney fees; prejudgment interest at a rate of 5.12 percent on \$16,401.58 from April 10, 1998 through

June 21, 1999, and on \$4,884 from April 10, 1998 to the date of payment; and the \$75 filing fee. The initial decision is otherwise affirmed.<sup>2</sup>

IT IS SO ORDERED.<sup>3</sup>

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

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

Dated: September 7, 2005

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<sup>2</sup> The holding and reasoning of this case are limited to its facts and shall not be cited as precedent in other cases.

<sup>3</sup> Under Sections 6(c) and 14(e) of the Commodity Exchange Act (7 U.S.C. §§ 9 and 18(e) (1994)), a party may appeal a reparation order of the Commission to the United States Court of Appeals for only the circuit in which a hearing was held; if no hearing is held, the appeal may be filed in any circuit in which the appellee is located. The statute states that such an appeal must be filed within 15 days after notice of the Commission order, and that any appeal is not effective unless, within 30 days of the effect of the order, the appealing party files with the clerk of the court a bond equal to double the amount of the reparation award.

A party who receives a reparation award may sue to enforce the award if payment is not made within 15 days of the date the order is served by the Proceedings Clerk. Pursuant to Section 14(d) of the Act, 7 U.S.C. § 18(d) (1994), such an action must be filed in a United States District Court. *See also* 17 C.F.R. § 12.407 (2000).

Pursuant to Section 14(f) of the Act, (7 U.S.C. § 18(f) (1994)), a party against whom a reparation award has been made must provide to the Commission, within 15 days of the expiration of the period for compliance with the award, satisfactory evidence that (1) an appeal has been taken to the United States Court of Appeals pursuant to Section 6(c) and 14(e) of the Act, or (2) payment has been made of the full amount of the award (or any agreed settlement thereof). If the Commission does not receive satisfactory evidence within the appropriate period, such party shall be automatically prohibited from trading on all contract markets and its registration under the Act shall be suspended automatically. Such prohibition and suspension shall remain in effect until such party provides the Commission with satisfactory evidence that payment has been made of the full amount of the award plus interest thereon to the date of payment.