

ALJ

ADMINISTRATIVE PROCEEDING
FILE NO. 3-11503

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
July 6, 2004

SECURITIES & EXCHANGE COMMISSION
MAILED FOR SERVICE

JUL 06 2004

FIRST CLASS

In the Matter of :
:
CURRENCY TRADING :
INTERNATIONAL, INC., : ORDER
CRAIG A. CUNNINGHAM, :
JAMES R. KELSALL, :
and CHRISTIAN J. WEBER :
:

The Securities and Exchange Commission issued its Order Instituting Proceedings (OIP) on May 27, 2004. The Chief Administrative Law Judge then assigned the matter to my docket and scheduled a hearing for July 12, 2004.

Respondent Craig A. Cunningham (Cunningham) filed an Answer to the OIP on June 16, 2004. Cunningham also moved to stay this proceeding pending the resolution of his appeal of the underlying district court decision to the United States Court of Appeals for the Ninth Circuit.


Cunningham's pending appeal is not a valid reason for delaying the resolution of this matter. See Joseph G. Galluzzi, 78 SEC Docket 1125, 1130 n.21 (Aug. 23, 2002); Jon Edelman, 52 S.E.C. 789, 790 (1996); Charles Phillip Elliott, 50 S.E.C. 1273, 1276 n.15 (1992), aff'd on other grounds, 36 F.3d 86 (11th Cir. 1994). If Cunningham succeeds in having the underlying district court injunction vacated, he may then ask the Commission to reconsider any sanctions that may be imposed in this administrative proceeding. See Gary L. Jackson, 48 S.E.C. 435, 438 n.3 (1986); cf. Jimmy Dale Swink, Jr., 59 SEC Docket 2877 (Aug. 1, 1995). Accordingly, Cunningham's motion for a stay is denied.

The Division of Enforcement (Division) has filed a status report and a request for a prehearing conference. The Division advises that an agent for Respondent Christian J. Weber (Weber) received the OIP on June 16, 2004, and that an agent for Respondent Currency Trading International, Inc. (CTI), received the OIP on June 29, 2004. Answers from Weber and CTI are due today and on July 19, 2004, respectively. Respondent James R. Kelsall has not yet received the OIP. In these circumstances, I will postpone the hearing from July 12 to August 12, 2004, at the time and place previously announced.

As soon as possible, the Division should state the specific sanction(s) it seeks as to each Respondent. As to Cunningham, the Division should also clarify the status of his inspection and copying of the investigative file and it should state whether summary disposition is appropriate. The fact that the Division and Cunningham may be “amicably” discussing settlement and “believe” they may be close to agreement on its terms are not grounds for delaying summary disposition and/or a hearing. If Weber and CTI do not file timely Answers, they will be subject to default and to the imposition of the sanction(s) identified by the Division.

I will schedule a telephonic prehearing conference promptly after all Respondents have received the OIP and the time for each to file an Answer has expired.

SO ORDERED.



James T. Kelly
Administrative Law Judge