

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

---

LOUIE G. STIDHAM and JUNE C. STIDHAM,  
Complainants,  
v.  
CALVIN LEE WORD,  
Respondent.

)  
)  
) CFTC Docket No. 89-R300  
)  
) OPINION & ORDER  
)  
)  
)  
)  
)  
)  
)  
)  
)

---

In this reparations case, respondent Calvin Lee Word has moved the Commission—for the second time—to vacate a 1992 default judgment against him and to dismiss the complaint.<sup>1</sup> Word argues that he should be entitled to relief at this late date because the original complaint was filed more than two years after the cause of action accrued, in violation of the requirements of Commodity Exchange Act (“CEA”) section 14(a)(1).<sup>2</sup> According to Word, this deprived the Commission of jurisdiction and rendered the original default order against him void. We deny the motion because Word’s jurisdictional theory is incorrect as a matter of law. Failure to comply with the statutory deadline for filing a reparations claim gives rise to a defense if it is

---

<sup>1</sup> Motion to Vacate Final Order and Dismiss Based on Lack of Jurisdiction (“Motion”). Commission Rule 12.23(b) states that “[a]ll motions to set aside default orders shall be decided, in the first instance, by the official who issued the order.” 17 C.F.R. § 12.23(b). The administrative law judge (“ALJ”) who issued the 1992 default order in this case, however, is deceased. Because of this, and because Word’s motion can be decided on legal grounds that do not require additional fact finding, the Commission is directly ruling on the motion.

<sup>2</sup> 7 U.S.C. § 18(a)(1).

raised in a timely fashion, but does not deprive the Commission of jurisdiction or render an otherwise proper reparations award void.

## BACKGROUND

The background of this case has been described in previous orders.<sup>3</sup> Briefly, in 1989, Louie and June Stidham filed a reparations complaint for fraud against Word, two other individuals, and their employer, a futures commission merchant.<sup>4</sup> One of the individual respondents, Madlyn Ferro, answered the complaint and asserted as a defense that the Stidhams' complaint had been filed more than two years after their cause of action accrued. The remaining three respondents did not respond to the complaint or otherwise participate in the proceedings.<sup>5</sup> In a 1992 decision, the presiding ALJ found that the complaint was time barred as to Ferro based on the two-year limitations period of CEA section 14(a)(1).<sup>6</sup> The ALJ noted that the remaining individual respondents—including Word—might also have been able to assert a successful statute of limitations defense, but held that they had waived any such defense by not asserting it in an answer.<sup>7</sup> The ALJ therefore granted a motion for a default order against these respondents, including Word.<sup>8</sup> Word was ordered to pay \$17,511.91.<sup>9</sup> Word did not appeal the award to the Commission. In their response to Word's current motion, the Stidhams report that, since the

---

<sup>3</sup> *Stidham v. First Commodity Corp. of Boston*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,264, No. 89-R300, 1992 WL 74259 (CFTC ALJ Apr. 1, 1992) (“*Stidham I*”); *Stidham v. Word*, [2011-2012 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 31,952, No. 89-R300, 2011 WL 1761091 (CFTC ALJ May 6, 2011) (“*Stidham II*”); *Stidham v. Word*, [2012 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 32,200 (CFTC May 4, 2012) (“*Stidham III*”).

<sup>4</sup> *Stidham I*, 1992 WL 74259, at \*1-2.

<sup>5</sup> *Id.* at \*2.

<sup>6</sup> 7 U.S.C. § 18(a)(1); *Stidham I*, 1992 WL 74259, at \*4, \*5.

<sup>7</sup> *Id.* at \*5.

<sup>8</sup> *Id.* at \*6.

<sup>9</sup> *Id.*

1992 order, they have made continuing efforts, involving federal, state, and bankruptcy court proceedings, to enforce the award against Word.<sup>10</sup> According to the Stidhams, the amount of the unsatisfied judgment now exceeds \$123,000, including interest, and costs and attorney's fees accrued in court actions.<sup>11</sup>

In 2011, Word filed a motion to set aside the 1992 default award. Word argued excusable neglect, stating that he was never served with the reparations complaint and therefore never had a chance to respond. An ALJ denied the motion based on Commission Rule 12.23(b), which provides that motions to set aside default orders for excusable neglect must be filed within one year.<sup>12</sup> On appeal from the 2011 ALJ decision, the Commission focused on whether the time requirement of Rule 12.23(b) should be waived under Rule 12.4(b), which allows for waiver of procedural rules in reparations cases to prevent undue hardship.<sup>13</sup> In a 2012 order, the Commission held that a waiver was not justified because:

1. Any failure of service of the complaint was caused by Word's own failure to maintain an up-to-date address with the National Futures Association;<sup>14</sup>
2. Word knew of the reparations award by 1995, yet failed to seek relief from the Commission;<sup>15</sup> and
3. Vacating the award would severely prejudice the Stidhams, particularly in light of the

---

<sup>10</sup> Response of Complainants to Motion of Calvin Lee Word to Vacate Final Order ("Response") at 2.

<sup>11</sup> *Id.* at 3.

<sup>12</sup> 17 C.F.R. § 12.23(b); *Stidham II*, [2011-2012 Transfer Binder] Comm. Fut. L. Rep. (CCH) at 66,202, 2011 WL 1761091, at \*1.

<sup>13</sup> *Stidham III*, [2012 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 32,200.

<sup>14</sup> *Id.* at 69,463.

<sup>15</sup> *Id.*

time and expense they had incurred in attempting to enforce the 1992 award.<sup>16</sup>

The Commission therefore affirmed the ALJ.<sup>17</sup>

### PROCEEDINGS ON THE PRESENT MOTION

In 2015, Word filed a new motion to set aside the default order against him and dismiss the complaint. In his new motion, Word argues that the Stidhams' failure to file their complaint within the statutory two-year period deprived the Commission of jurisdiction and rendered the award against him void.<sup>18</sup> He further argues that an order that is void for lack of jurisdiction "must be vacated at any time lack of jurisdiction is discovered" so that he is entitled to raise the issue now.<sup>19</sup>

In their response, the Stidhams point out that Word did not cite any Commission decision in which a final reparations order was set aside based on a determination that the late filing of a complaint deprived the Commission of jurisdiction.<sup>20</sup> The Stidhams also rely on a 1996 decision by the United States District Court for the Northern District of Georgia in a suit to enforce their reparations award. The court in that case granted a default judgment to the Stidhams as a sanction for Word's failure to respond to discovery orders.<sup>21</sup> The Stidhams argue that the decision in that case should be considered *res judicata* with respect to the validity of the original reparations order because the validity of the order was put in issue in the case by Word.<sup>22</sup> The Stidhams further argue that previous Commission rulings against Word should be treated as

---

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 69,464.

<sup>18</sup> Motion at 3.

<sup>19</sup> *Id.*

<sup>20</sup> Response at 2.

<sup>21</sup> *Stidham v. Word*, No. 1:93-cv-2216-JEC (N.D. Ga. July 5, 1996).

<sup>22</sup> Response at 3-4.

binding law of the case.<sup>23</sup> The Stidhams generally assert that Word has filed the present motion as a delaying tactic with regard to their collection efforts.

In his reply, Word cites cases to the effect that a void judgment must be set aside at any time, but provides no authority holding that the two-year limitations period for Commission reparations cases is jurisdictional or that a failure to meet it renders a reparations order void.<sup>24</sup> Word also argues that the district court decision on which the Stidhams rely should not have *res judicata* effect, because, he claims, the Commission lacked jurisdiction for the underlying reparations award.<sup>25</sup> Word defends his failure to comply with discovery orders in the district court case on the ground he was in prison on an unrelated matter at the time.<sup>26</sup>

### DISCUSSION

Commission Rule 12.23(b) provides that a final default order may be set aside for “fraud perpetrated on a decisionmaking official or the Commission, mistake, excusable neglect, or because the order is void for want of jurisdiction.”<sup>27</sup> With respect to timing, Rule 12.23(b) provides, “Motions to set aside a final default order for fraud, mistake, or excusable neglect shall be filed within one year after the order was issued.”<sup>28</sup> The rule thus does not specify a time limit for motions to set aside a default order because the order is void for want of jurisdiction.

As described above, Word argues that the order against him should be set aside as void because the Stidhams filed their reparations complaint after the statutory deadline. Because

---

<sup>23</sup> *Id.* at 4.

<sup>24</sup> Reply to Petitioner/Applicant’s Response in Opposition to Word’s Motion to Vacate Final Order and Dismiss Based on Lack of Jurisdiction at 3.

<sup>25</sup> *Id.* at 4.

<sup>26</sup> *Id.* at 1.

<sup>27</sup> 17 C.F.R. § 12.23(b).

<sup>28</sup> *Id.*

Word defaulted, there was never a definitive ruling on the timeliness of the Stidhams' complaint with respect to Word, including whether there was reason to toll the limitations period.

However, we need not resolve that factual issue. Even if the Stidhams filed late, that would not deprive the Commission of jurisdiction and would not provide a basis for setting aside the default order against Word long past the one-year deadline set forth in Rule 12.23(b).

CEA section 14(a)(1) provides that “[a]ny person complaining of any violation” of the CEA by a registrant “may, at any time within two years after the cause of action accrues,” apply to the Commission for reparations.<sup>29</sup> Generally speaking, a statutory time limit on initiating a legal proceeding creates a defense against a party who does not comply, but does not affect the jurisdiction of a tribunal otherwise authorized to hear the case.<sup>30</sup> Consistent with this principle, a defense based on failure to comply with a statute of limitations is generally deemed to be waived if it is not asserted in a timely fashion.<sup>31</sup> Some statutory time limits are treated as jurisdictional requirements that cannot be waived and can be asserted at any time.<sup>32</sup> Jurisdictional time limits of this sort are the exception, however.<sup>33</sup>

For two reasons, the time limit in section 14(a)(1) should not be considered jurisdictional. First, the Supreme Court has held that time limits are presumed not to be jurisdictional unless Congress clearly indicates that they are.<sup>34</sup> The language of CEA section 14(a)(1) contains no such clear indication. Second, the Commission has held that a defense to a reparations claim

---

<sup>29</sup> 7 U.S.C. § 18(a)(1).

<sup>30</sup> See, e.g., *United States v. Wong*, 135 S. Ct. 1625, 1631-32 (2015) (reviewing law on the subject in context of federal court proceedings); *Sebelius v. Auburn Reg'l Med. Ctr.*, 133 S. Ct. 817, 824-25 (2013) (in context of certain administrative proceedings).

<sup>31</sup> See, e.g., *Alaska Airlines, Inc. v. U.S. Dept. of Transp.*, 575 F.3d 750, 759 (D.C. Cir. 2009).

<sup>32</sup> See *Wong*, 135 S. Ct. at 1631.

<sup>33</sup> *Id.* at 1632.

<sup>34</sup> E.g., *Sebelius*, 133 S. Ct. at 824.

based on the section 14(a)(1) time limit normally is waived if it is not asserted in the complainant's answer; and that the time limit may be equitably tolled to prevent hardship.<sup>35</sup> Waiver and equitable tolling are typically available in connection with ordinary statutes of limitations, but not for time limits whose violation deprives a tribunal of jurisdiction to hear a case.<sup>36</sup> It would therefore be inconsistent with Commission precedent to treat the reparations time limit as jurisdictional.

Word argues that the time limit for reparations complaints should be construed as jurisdictional because it is part of a "unitary" statutory provision—section 14(a)(1)—that both authorizes reparations and establishes a time limit for them.<sup>37</sup> However, the fact that a time limit is part of the same statutory text that authorizes the relevant action does not, by itself, imply, much less require, that the time limit is jurisdictional.<sup>38</sup> Word also cites cases holding that the two-year limitations period for administrative reparations proceedings does not apply to court actions under the CEA; but that issue is irrelevant to the question of whether the two-year limit is jurisdictional or not.<sup>39</sup>

Based on these considerations, we hold that the Commission had jurisdiction to decide the Stidhams' reparations claim and award relief whether or not the Stidhams missed the two-

---

<sup>35</sup> *Sommer v. ContiCommodity Servs., Inc.*, [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,244, at 35,105-06, No. 87-126, 1988 WL 228628, at \*3-4 (CFTC May 20, 1988).

<sup>36</sup> *See Wong*, 135 S. Ct. at 1631.

<sup>37</sup> Motion at 1-2.

<sup>38</sup> *Sebelius*, 133 S. Ct. at 825 (requirement "does not become jurisdictional simply because it is placed in a section of a statute that also contains jurisdictional provisions").

<sup>39</sup> Motion at 5; *see, e.g., Fustok v. ContiCommodity Servs., Inc.*, 618 F. Supp. 1076, 1078-80 (S.D.N.Y. 1985) (discussing application of section 14(a) time limit to court actions without addressing whether it is jurisdictional). The private right of action provision of the CEA, section 22, 7 U.S.C. § 25, contains its own two-year limitations period; but the cases cited by Word predate the enactment of section 22.


year deadline. The 1992 order against Word therefore is not void and remains a valid order. Since Word has no valid jurisdictional challenge to the default order against him, the one-year time limit in Rule 12.23(b) for motions to vacate a Commission decision applies and has long since expired. Relatedly, but as a separate independent ground to deny the Motion, we hold that since the two-year deadline for reparations claims is not jurisdictional, the ALJ in 1992 properly treated it as an affirmative defense that Word waived by not asserting it in a timely answer to the complaint. Thus, even if Word's motion were properly before us, we would deny it.<sup>40</sup>

### CONCLUSION

For the foregoing reasons, Respondent Word's motion to set aside the default order against him is DENIED.

IT IS SO ORDERED.<sup>41</sup>

By the Commission (Chairman MASSAD and Commissioners BOWEN, and GIANCARLO).

  
\_\_\_\_\_  
Christopher J. Kirkpatrick  
Secretary of the Commission  
Commodity Futures Trading Commission

Dated: July 29, 2016

---

<sup>40</sup> Because our holding that the time limit of CEA section 14(a)(1) is not jurisdictional is sufficient to dispose of Word's motion, we do not find it necessary to reach the alternative grounds for denying the motion put forward by the Stidhams.

<sup>41</sup> A party may petition for review of a CFTC reparation order to the United States Court of Appeals for the circuit in which a hearing was held, if any; if no hearing was held, the petition may be filed in any circuit in which the appellee is located. 7 U.S.C. §§ 9(11)(B), 18(e). Such a petition for review must be filed within 15 days after notice of the order; any such petition is not effective unless, within 30 days of the date of the Commission order, the petitioning party files with the court a bond equal to double the amount of any reparation award. *Id.* § 18(e).