

UNITED STATES OF AMERICA  
Before the  
COMMODITY FUTURES TRADING COMMISSION

RECEIVED CFTC



Office of Proceedings  
Proceedings Clerk

1:47 pm, Jul 29, 2022

---

Vincent A. Onorato Phd Pension Plan Inc., et al. :

v. :

Claudia Marie Dubuque, et al., :

---

CFTC Docket Nos. 21-R004;  
21-R005;  
and 21-R006

**ORDER OF DISMISSAL AND  
DENIAL OF REQUEST FOR INTERLOCUTORY APPEAL**

Vincent Onorato Alfait (“Alfait”), a *pro se* complainant in three related reparations cases pending in the Office of Proceedings, has filed a request for interlocutory appeal from two orders issued by the Administrative Judge, prior to final decisions on the merits: (1) an order issued by the Administrative Judge (“AJ”) on March 29, 2022 (“IASG dismissal order”), which included scheduling discovery deadlines and dispositive motions, and dismissed some but not all respondents from the three cases; and (2) an order issued by the AJ on April 22, 2022, denying interlocutory appeal of the March 29 discovery order, and denying a motion to disqualify the AJ. In addition, on May 2, 2022, Alfait filed a second motion for interlocutory appeal from the AJ’s April 22 denial of the first motion for appeal and motion to disqualify.

Under 17 C.F.R. § 12.402(a), interlocutory appeal may be taken of an order that disposes of “less than all claims or parties in a proceeding” only if the Administrative Judge (A) directs that an initial decision is final and immediately appealable to the Commission, and (B) expressly determines that there is “no just reason for delay.” That did not happen here. In the absence of

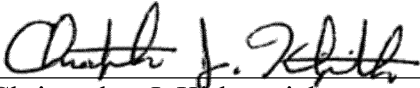
such a direction from the Administrative Judge, “no appeal may be taken” from a decision “disposing of fewer than all of the claims or all of the parties.” 17 C.F.R. §12.402(b).

In addition, 17 C.F.R. §12.309(a)(1) allows interlocutory appeal from a ruling pursuant to §§ 12.102, 12.202, or 12.305 refusing to grant a motion to disqualify an Administrative Judge. However, to succeed on a motion to disqualify, the movant must show bias that stems from an extrajudicial source or manifests “a deep-seated favoritism or antagonism that would make a fair judgment impossible, *i.e.*, ‘pervasive’ bias”. *Chu v. Peregrine Fin. Grp., Inc.*, CFTC Dkt. No. 07-R029, 2008 WL 4368671 at \*5 (Sep. 4, 2008) (quoting *In re Fisher*, [1994-1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,752, at 44,114 (July 22, 1996)). The Complainant’s bare allegation that one or several of the Administrative Judge’s factual findings are incorrect, without more, does not amount to either an “extrajudicial source of bias” or “pervasive” bias.

The applications for interlocutory appeal do not satisfy 17 C.F.R. §§ 12.402 or 12.309. Accordingly, the interlocutory appeals from the March 29, 2022, IASG dismissal order and the April 22, 2022 denial of the first motion for leave to appeal are dismissed, and the May 2, 2022 request for interlocutory appeal from denial of the motion to disqualify is denied.

IT IS SO ORDERED.

By the Commission (Chairman BEHNAM and Commissioners JOHNSON, GOLDSMITH ROMERO, MERSINGER, AND PHAM).

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

Dated: July 29, 2022