

may enter a default order and an award based thereon.

(c) *Finality.* A default order issued pursuant to this rule, or pursuant to any other provisions of these part 12 Reparation Rules, shall become the final decision and order of the Commission thirty (30) days after service thereof, unless the order is set aside pursuant to §12.23(a) of these rules, or unless the Commission takes review of such order on its own motion on or before the thirtieth day.

[49 FR 6621, Feb. 22, 1984, as amended at 57 FR 20638, May 14, 1992]

§ 12.23 Setting aside of default.

(a) *Default order not final.* In order to prevent injustice or for good cause shown, and on such conditions as may be appropriate, a non-final default order (including any award therein) may be set aside by the official who issued the order.

(1) *Procedure for setting aside non-final default order.* Any party or person who is the subject of a default order issued pursuant to these rules may, at any time before the order becomes final pursuant to §12.22(c), file and serve a motion to set aside the default, which shall set forth reasons why the act or omission for which the party was defaulted was not willful, why there is a reasonable likelihood of success for the party's claim or defense if heard on the merits, and why no prejudice will be sustained by other parties if the default is set aside. A motion to set aside a default order filed pursuant to this paragraph (a)(1) shall be decided, in the first instance, by the official who issued the default order.

(2) *Review.* A denial of a motion to set aside a non-final default order by the official who issued the order shall be treated as an initial decision, which may be appealed to the Commission in accordance with the requirements of §12.401 of these rules. A grant of a motion to set aside a non-final default order may be appealed only in accordance with the requirements of §12.309 of these rules.

(b) *Default order final.* A default order that has become final pursuant to §12.22(c) shall not be set aside except upon a motion filed and served by the defaulted party showing that he should

be relieved from the default order because of fraud perpetrated on a decisionmaking official or the Commission, mistake, excusable neglect, or because the order is void for want of jurisdiction. Such a motion shall also show that, if the default order were set aside, there would be a reasonable likelihood of success for his claim or defense on the merits and that no party would be prejudiced thereby. 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. All motions to set aside default orders shall be decided, in the first instance, by the official who issued the order. A denial of a motion to set aside a default order that has become final shall be treated as an initial decision, which may be appealed to the Commission in accordance with the requirements of §12.401 of these rules. A grant of a motion to set aside a final default order shall be treated as a non-final order which may be appealed only in accordance with the requirements of §12.309 of these rules.

§ 12.24 Parallel proceedings.

(a) *Definition.* For purposes of this section, a parallel proceeding shall include:

(1) An arbitration proceeding or civil court proceeding, involving one or more of the respondents as a party, which is pending at the time the reparation complaint is filed and involves claims or counterclaims that are based on the same set of facts which serve as a basis for all of the claims in the reparations complaint, and which either:

(i) Was commenced at the instance of the complainant in reparations; or

(ii) Involves counterclaims by the complainant in reparations alleging violations of the Commodity Exchange Act, or any regulation or order issued thereunder; or

(iii) Is governed by a compulsory counterclaim rule of federal court procedure which required the complainant in reparations to assert all of his claims (including those based on alleged violations of the Commodity Exchange Act, and any regulation or order issued thereunder) as counterclaims in that proceeding;

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(2) The appointment by a court of a receivership over the assets, property or proceeds of a respondent named in a reparation complaint where the responsibility of the receivership includes the resolution of claims made by customers; or

(3) A petition filed under any chapter of the Bankruptcy Code, 11 U.S.C. 101 *et seq.*, as amended, commenced pursuant to 11 U.S.C. 301 or 302 by a respondent in a reparation proceeding, or the issuance by a bankruptcy court of an order for relief after the filing against a respondent in a reparation proceeding of an involuntary petition in bankruptcy pursuant to 11 U.S.C. 303.

(b) *Notice.* At the time a complaint in reparations is filed pursuant to these rules, or at any time thereafter, any party, receiver or trustee, or counsel to any of the foregoing with knowledge of a parallel proceeding shall promptly notify the Commission, by first-class mail addressed to the Office of Proceedings, attention of the Proceedings Clerk, and serve notice on all other parties, including the receiver or trustee. The notice shall include the following information:

(1) The caption of the parallel proceeding;

(2) The name of the court or the arbitration tribunal (including address and phone number, if known);

(3) The docket number or numbers;

(4) The date the parallel proceeding was filed (and the current status if known); and

(5) If a proceeding in bankruptcy or receivership is pending, the date of the appointment and name and address of the receiver or trustee.

A copy of any relevant complaint, petition or order shall be attached to the notice.

(c) *Effect of pending arbitration or civil court litigation.* (1) The Director of the Office of Proceedings shall refuse to institute an elected decisional procedure concerning a reparation complaint filed under this part in which there is a parallel proceeding described in paragraph (a)(1) of this section and shall return the complaint to the complaining person. The effective date of the Director's termination of the complaint without prejudice shall be fifteen (15) days from the date of service of notice

of the action taken pursuant to this paragraph.

(2) If notice of a parallel proceeding described in paragraph (a)(1) of this section is received before the initial decision is filed (or before a final decision under §12.106 of the rules is entered), a proceeding in which a decisional procedure has been commenced shall be dismissed, without prejudice. The effective date of the order of dismissal shall be fifteen (15) days from the date of service of the order by the Proceedings Clerk.

(d) *Effect of receivership or bankruptcy proceedings.* (1) The Director of the Office of Proceedings shall refuse to institute an elected decisional procedure as to a respondent in any reparation complaint filed pursuant to this part who is the subject of a parallel proceeding described in paragraph (a)(2) or (a)(3) of this section, and shall notify all parties, including the receiver or trustee, that as to that respondent a reparation proceeding shall not be instituted. The effective date of the Director's action shall be fifteen (15) days from the date of service of the notice thereof.

(2) A proceeding in which an elected decisional procedure has been commenced shall be ordered dismissed, without prejudice, as to any respondent who becomes the subject of a parallel proceeding described in paragraph (a)(2) or (a)(3) of this section if notice pursuant to paragraph (b) of this section is received before the filing of an initial decision (or before a final decision is issued pursuant to §12.106) as to that respondent. The Proceedings Clerk shall notify all parties, including the receiver or trustee, of the order. The effective date of the order shall be fifteen (15) days from the date of the service of the order by the Proceedings Clerk.

(e) *Exceptions.* At the time notice of a parallel proceeding is filed pursuant to paragraph (b) of this section, or any time thereafter, any party, or the receiver or trustee, may file and serve upon other parties a statement in support of or in opposition to any action taken or to be taken pursuant to paragraph (c) or (d) of this section. This statement shall be addressed to the Office of Proceedings, attention of the

Proceedings Clerk. Upon receipt of any such statement, the Proceedings Clerk shall immediately forward the statement to the official with responsibility over the case. The notice and the statements filed by the parties shall be reviewed by that official who, on or before the effective date of action taken pursuant to paragraphs (c)(1), (c)(2), (d)(1), and (d)(2), of this section, may take such actions as, in his opinion, are necessary to ensure that the parties to the matter or proceedings are not unduly prejudiced.

(f) *No right of appeal to the Commission.* Any action taken, or order issued, pursuant to paragraphs (c)(1), (c)(2), (d)(1), or (d)(2), of this section that has become effective shall be deemed a final order which is not subject to appeal pursuant to subpart F of these rules.

§ 12.25 Filing fees.

(a) *Fees payable upon filing a complaint.* (1) A complainant who, in the complaint, has elected the voluntary decisional procedure shall, at the time of filing the complaint, pay a filing fee of \$50.00;

(2) A complainant who, in the complaint wherein the amount of damages claimed does not exceed \$30,000, exclusive of interest and costs, has not elected the voluntary decisional procedure shall, at the time of filing the complaint, pay a filing fee of \$125.00.

(3) A complainant who, in the complaint wherein the amount of damages claimed exceeds \$30,000, exclusive of interest and costs, has not elected the voluntary decisional procedure shall, at the time of filing the complaint, pay a filing fee of \$250.00.

(b) *Fees payable upon filing an answer.*

(1) If a complainant, in the complaint, has elected the voluntary decisional procedure, a respondent who, in his answer, elects the summary decisional procedure (available only where the amount of damages claimed in the complaint or as counterclaims does not exceed \$30,000) shall, at the time of filing the answer, pay a filing fee of \$75.00.

(2) If a complainant, in the complaint, has elected the voluntary decisional procedure, a respondent who, in his answer, elects the formal

decisional procedure (available only where the amount of damages claimed in the complaint or as counterclaims exceeds \$30,000) shall, at the time of filing the answer, pay a filing fee of \$200.00.

(c) *Fees payable upon filing a reply.* In any case in which a counterclaim has been made, unless a complainant in the complaint, or the respondent in an answer, has elected the summary decisional procedure or the formal decisional procedure a complainant, who in his reply elects either of these procedures, shall, at the time of filing the reply, pay a filing fee of \$75.00 or \$200.00, respectively, depending whether the procedure elected by complainant is pursuant to subparts D or E.

[49 FR 6621, Feb. 22, 1984; 49 FR 15070, Apr. 17, 1984, as amended at 59 FR 9637, Mar. 1, 1994]

§ 12.26 Commencement of a reparation proceeding.

(a) *Commencement of voluntary decisional proceeding.* Where complainant and respondent in the complaint and answer have elected the voluntary decisional procedure pursuant to subpart C of these rules and the complainant has paid the filing fee required by § 12.25 of these rules, the Director of the Office of Proceedings shall, if in his opinion the facts warrant taking such action, forward the pleadings and all materials of record to the Proceedings Clerk for a proceeding to be conducted in accordance with subpart C of these rules. The Proceedings Clerk shall forthwith notify the parties of such action. Such notification shall be accompanied by an order issued by the Proceedings Clerk requiring the parties to complete all discovery, as provided in subpart B of these rules, within 50 days thereafter. A voluntary decisional proceeding commences upon service of such notification and order. As soon as practicable after service of such notification, the Proceedings Clerk shall assign the case to a Judgment Officer for a final decision.

(b) *Commencement of summary decisional proceeding.* Where the amount claimed as damages, exclusive of interest and costs, in the complaint or in counterclaim does not exceed \$30,000, and either a complainant or a respondent in the complaint, answer, or reply,