UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Commodity Futures Trading Commission v. Frankwell Bullion Ltd.

99 F.3d 299 (9th Cir. 1996) · Decided October 29, 1996

SUMMARY

The Ninth Circuit affirmed summary judgment for Frankwell Bullion Ltd., holding that the Treasury Amendment to the Commodity Exchange Act exempted its off-exchange foreign-currency transactions from CFTC jurisdiction. The court also held that sovereign immunity did not bar assessment of receivership costs against the CFTC under 28 U.S.C. § 2412(a). It affirmed the district court's allocation of 75 percent of the receivership costs to the CFTC.

CASE DETAILS

COURT	United States Court of Appeals for the Ninth Circuit
WRITING FOR THE COURT	Choy; Canby; Fernandez
JURISDICTION	Federal
DECIDED	October 29, 1996
DISPOSITION	affirmed
PROCEDURAL POSTURE	The CFTC appealed the district court's grant of summary judgment for Frankwell and its affiliates, as well as the assessment of receivership expenses against the CFTC.
STANDARD OF REVIEW	Summary judgment and sovereign-immunity questions were reviewed de novo. Assuming sovereign immunity was waived, the assessment of receivership costs was reviewed for abuse of discretion.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Commodity Futures Trading Commission v. Frankwell Bullion Ltd. and its affiliates

TOPICS

administrative law · statutory interpretation · judicial review of agency action · summary judgment · remedies

PRACTICE AREAS

administrative law · commodity futures regulation · statutory interpretation · civil procedure · remedies

QUESTIONS PRESENTED

1. Whether Frankwell was a 'board of trade' within the meaning of the Treasury Amendment to the Commodity Exchange Act and whether the Amendment therefore exempted Frankwell's off-exchange foreign-currency transactions from CFTC jurisdiction.
2. Whether sovereign immunity barred the district court from assessing receivership costs against the CFTC.
3. Whether the district court abused its discretion by allocating seventy-five percent of the receivership costs to the CFTC.

HOLDINGS

1. The Treasury Amendment exempts all off-exchange foreign-currency transactions from CFTC jurisdiction because the phrase 'transactions conducted on a board of trade' refers to transactions conducted on an organized exchange. Frankwell therefore was not subject to CFTC jurisdiction on the facts presented, regardless of whether its transactions were futures or spot trades.
2. Sovereign immunity did not bar the district court from assessing receivership costs against the CFTC because 28 U.S.C. § 2412(a) authorizes costs against the United States that could be assessed against an ordinary citizen, including receivership costs.
3. The district court did not abuse its discretion by assessing seventy-five percent of the receivership costs against the CFTC.

KEY QUOTATIONS

> *"We hold, as the legislative history indicates, that Congress intended the Treasury Amendment to exempt all off-exchange transactions in foreign currency."* (304)

> *"The reasoning behind Mullen suggests that receivership costs, like master's fees, may be assessed as costs under § 2412(a)."* (305)

> *"Because Pioche Mines approves of the cost-allocation method which the district court adopted, the district court did not abuse its discretion in allocating seventy-five percent of the receivership costs to the CFTC."* (306)

FACTUAL BACKGROUND

Frankwell Bullion Ltd., a Hong Kong corporation, and its American affiliates marketed standardized foreign-currency transactions to the general public. Customers paid initial and additional margin for long or short positions, generally did not pay the full purchase price, did not expect to deliver or receive the currencies, and could leave positions open indefinitely subject to daily carrying charges. The CFTC contended that these transactions violated the Commodity Exchange Act, while Frankwell argued that the Treasury Amendment exempted them from CFTC jurisdiction.

PROCEDURAL HISTORY

The CFTC filed an action alleging that Frankwell violated sections 5 and 6 of the Commodity Exchange Act by engaging in foreign-currency and precious-metals transactions without complying with the Act. The district court issued a temporary restraining order and appointed a temporary receiver, later denied a preliminary injunction and dissolved the receivership, granted Frankwell summary judgment, and assessed seventy-five percent of the receivership costs against the CFTC. The Ninth Circuit affirmed both rulings.

DISPOSITION

affirmed

CASES CITED

- Jesinger v. Nevada Federal Credit Union, 24 F.3d 1127, 1130 (9th Cir. 1994)
- CFTC v. Standard Forex, Inc., 1993 WL 809966, at *7-*10 (E.D.N.Y. 1993)
- CFTC v. Co Petro, 680 F.2d 573, 581 (9th Cir. 1982)
- Singleton v. Wulff, 428 U.S. 106, 120 (1976)
- CFTC v. American Board of Trade, Inc., 803 F.2d 1242, 1248-49 (2d Cir. 1986)
- Salomon Forex, Inc. v. Tauber, 8 F.3d 966, 973 n.5 (4th Cir. 1993)
- Board of Trade v. SEC, 677 F.2d 1137, 1154 (7th Cir. 1982), vacated as moot, 459 U.S. 1026 (1982)
- CFTC v. Sterling Capital Co., Comm. Fut. L. Rep. (CCH) ¶ 21,169, at 24,784 (N.D. Ga. 1981)
- CFTC v. Dunn, 58 F.3d 50, 53 (2d Cir. 1995), cert. granted, 516 U.S. 1073 (1996)
- Arford v. United States, 934 F.2d 229, 231 (9th Cir. 1991)
- Pioche Mines Consolidated, Inc. v. Dolman, 333 F.2d 257, 276 (9th Cir. 1964), cert. denied, 380 U.S. 956 (1965)
- Barry v. Bowen, 884 F.2d 442, 443 (9th Cir. 1989)
- SEC v. Independence Drilling Corp., 595 F.2d 1006, 1008 (5th Cir. 1979)
- CFTC v. Comvest Trading Corp., 481 F. Supp. 438, 442 (D. Mass. 1979)
- Director of Office of Thrift Supervision v. Lopez, 141 F.R.D. 165, 167 (S.D. Fla. 1992)
- Crawford Fitting Co. v. J.T. Gibbons, Inc., 482 U.S. 437, 441-42 (1987)
- Little Earth of United Tribes, Inc. v. HUD, 807 F.2d 1433, 1442 (8th Cir. 1986)
- Donovan v. Robbins, 588 F. Supp. 1268, 1271 (N.D. Ill. 1984)
- National Organization for Reform of Marijuana Laws v. Mullen, 828 F.2d 536, 545-46 (9th Cir. 1987)
- W.F. Potts Son & Co. v. Cochrane, 59 F.2d 375, 378 (5th Cir. 1932)
- United States v. United States Fidelity & Guaranty Co., 309 U.S. 506, 513 (1940)
- Bank Brussels Lambert, S.A. v. Intermetals Corp., 779 F. Supp. 741, 742 (S.D.N.Y. 1991)