

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

Case No. 11-60674-CIV-COHN/SELTZER

U.S. COMMODITY FUTURES  
TRADING COMMISSION,

Plaintiff,

v.

KASTLE & HAWKE, INC.,  
JAMES A. WARD, and  
NATHANIEL R. WALKER,Defendants.  

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**ORDER OF DISMISSAL WITHOUT PREJUDICE**

**THIS CAUSE** is before the Court upon Plaintiff U.S. Commodity Futures Trading Commission's Motion to Dismiss without Prejudice its Action Against Kastle & Hawke, Inc., James A. Ward, and Nathaniel R. Walker [DE 46]. The Court has considered the motion and the record in this case, and is otherwise fully advised in the premises.

Plaintiff seeks dismissal without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2).<sup>1</sup> Rule 41(a)(2) provides that "an action may be dismissed at the plaintiff's request only by court order, on terms that the court considers proper." Fed. R. Civ. P. 41(a)(2). "Unless the order states otherwise, a dismissal under this paragraph (2) is without prejudice." Id.

"In exercising its 'broad equitable discretion under Rule 41(a)(2),' the district court must 'weigh the relevant equities and do justice between the parties in each case.'" Pontenberg v. Boston Scientific Corp., 252 F.3d 1253, 1256 (11th Cir. 2001)

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<sup>1</sup> Dismissal under Rule 41(a)(1) is not available here because Defendant Walker has served an Answer [DE 22], see Fed. R. Civ. P. 41(a)(1)(A)(i), and the parties have not submitted a stipulation of dismissal signed by all parties who have appeared, see Fed. R. Civ. P. 41(a)(1)(A)(ii).

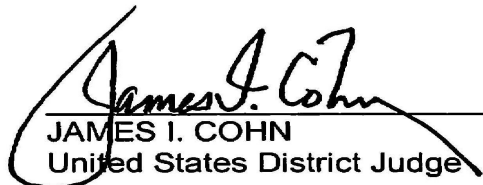
(quoting McCants v. Ford Motor Co., Inc., 781 F.2d 855, 857 (11th Cir. 1986)). “The crucial question to be determined is, would the defendant lose any substantial right by the dismissal.” Pontenberg, 252 F.3d at 1255. “[I]n most cases a dismissal should be granted unless the defendant will suffer clear legal prejudice, other than the mere prospect of a subsequent lawsuit, as a result.” McCants, 781 F.2d at 857 (emphasis omitted).

Here, there is no indication that Defendants would lose any substantial right or suffer clear legal prejudice if this action is dismissed. Importantly, Defendant Walker, the only Defendant who has appeared, does not object to dismissal without prejudice. See Mot. at 3, 4. Therefore, the Court finds good cause to dismiss this action without prejudice. Accordingly, it is hereby

**ORDERED AND ADJUDGED** that Plaintiff’s Motion to Dismiss without Prejudice its Action Against Kastle & Hawke, Inc., James A. Ward, and Nathaniel R. Walker [DE 46] is **GRANTED**. All claims in the above-captioned action are **DISMISSED without prejudice**. It is further

**ORDERED AND ADJUDGED** that any pending motions are **DENIED as moot**, and the Clerk of Court is directed to **CLOSE** this case.

**DONE AND ORDERED** in Chambers at Fort Lauderdale, Broward County, Florida, on this 23rd day of November, 2011.

  
JAMES I. COHN  
United States District Judge

Copies provided to:  
Counsel of record via CM/ECF  
*Pro se* parties via CM/ECF regular mail