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UNITED STATES DISTRICT Court
FOR THE DISTRICT OF NEW JERSEY

Commodity Futures
Trading Commission

Plaintiff,

Vs.

Civil Action
No. 04-1512

Equity Financial Group, LLC,
et al,

Defendants.

Courthouse Mitchell H. Cohen United States
One John F. Gerry Plaza
Camden, New Jersey 08101
May 14, 2004

B E F O R E: Honorable Robert B. Kugler
United States District Judge

A P P E A R A N C E S:

Elizabeth M. Streit, Esquire
Attorney for Plaintiff

Jeremy Frey, Esquire
Attorney for Receiver
Stephen T. Bobo, Esquire
Attorney for Receiver

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3 Attorneys for Proposed Intervenors

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Carl J. Nami, C.S.R.
Official U. S. Reporter.

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1 based upon the arguments that were just made, there's even
2 more reason for us to intervene in this particular case,
3 either as of right or permissively. And we're here, we want
4 to intervene. We want the protections of this Court. And
5 as I indicated with regard to both the trust account and at
6 ManPro, at the very least the capital it is essential that
7 we get those monies out now. There's more than enough
8 monies to cover the losses that would remain. Thank you.

9 THE COURT: Thank you, Mr. Faulk. Well let me
10 first thank you, thank all counsel for the very professional
11 work that they've done. Putting together a lot of evidence
12 on a very short period of time. You briefed this matter and
13 the arguments have been absolutely wonderful, and I commend
14 you and thank you for that.

15 Let me also tell Mr. Bobo that during the course of
16 the argument today I raised some issues with both sides. I
17 don't mean by those, saying those things that I have any
18 opinion whatsoever as to how you should do your job. I have
19 no opinion, for example, on this issue of when monies are
20 put at risk. I leave that entirely up to you at this stage
21 of these proceedings. Nor do I mean to suggest to you that
22 I require there be any entire distribution whatsoever.
23 Again that's entirely up to you how you want to proceed in
24 this matter. I just raise these issues with counsel for the
25 purpose of argument.

1 Let's deal first with the motion to intervene.
2 Clearly the proposed interveners have the burden, as they
3 know. And there's four factors the Court must look at under
4 Rule 4(a). Was it timely. It was timely. And number two,
5 do they have an interest relating to the property of the
6 transaction. I think it's conceded that they have an
7 interest in this. It's a lot of their money. And they'd
8 like to have it back. But we get really, I think, to the
9 most important issues, and that is whether disposition in
10 this action may impair or impede under the appointment to
11 protect their interest, which I think is intertwined with
12 whether or not their interest is adequately protected by the
13 parties and presently before the Court.

14 As I read the cases in there, I think there is a
15 general principle out there that in circumstances where
16 there's a party charged by law with representing the
17 interest of the absentee, the representation will be
18 presumed adequate, unless special circumstances are shown.

19 Specifically in the absence of a very compelling
20 showing to the contrary it will be assumed there the need
21 adequately represents the public interest when it matters.
22 Here you have, I think, interveners who are investors, who
23 are claiming that they have a, frankly, a very -- frankly, a
24 greater claim to the funds that are in the possession of the
25 receiver than other investors than in the United States is,

1 in fact, because of the hints, because of the suggestions
2 that they're making about the Sterling Group is adverse. I
3 don't accept that it is adverse. The CFTC interest and the
4 interest of the receiver here does gather all information is
5 to gather all available money. And to gather all claims
6 that are out there to that money. To make judgments as to
7 who should get what amount and when back. Obviously, it is
8 in the interest of the Sterling Group to get all their money
9 back and to get more of their money back than other
10 investors get because there isn't enough money to go around.
11 But that's there administered under Rule 4(a) if it were
12 that all investors in these funds, in these schemes would
13 have an equal argument for intervention in this case. And
14 if I were to permit the intervention of one of these
15 investors, as opposed to the others, all that would do is
16 encourage a race to the Court house to be the first in line
17 to get your money back.

18 As I mentioned during oral argument, the obligation of
19 the Court and the receiver is to be fair to all the parties
20 that have claims to this fund. And I'm confident, without
21 any reservation, Mr. Bobo will do that. He'll do that in an
22 expeditious manner. Again, obviously, there is that check
23 that if the proposed interveners are or anybody else
24 disagrees with the recommendations made by the receiver, I
25 will have a hearing and make a decision, make a decision and

1 we can argue that out at that time. I do not accept that
2 the capital requirements of the proposed intervenors mandate
3 any different results, for two reasons. Number one, there
4 simply is no proof, no evidence whatsoever that there's any
5 threat whatsoever any imminent action against their license.
6 Also the license that is sought out at the bank is
7 sufficiently, I think, ambiguous on all these issues and
8 other issues which are explored with the witness, Miss Woltz
9 yesterday. The Court cannot conclude that there is any
10 threat whatsoever that the licensure and furthermore the
11 government points out, there has been no evidence whatsoever
12 presented to the Court that they cannot meet capital
13 requirements by simply asking the owners to put up more
14 capital. And so I do not accept that argument. I am
15 persuaded by the cases of Commodities Futures Trading
16 Commission versus Heritage Capital Advisory Services, 736
17 F.2d, 384. That's just a Seventh Circuit. And the Tenth
18 Circuit case of Commodities Futures Trading Commission
19 versus Chilcott Portfolio Management, Inc., reported at 725
20 F.2d, 584. That the intervenors are not entitled to
21 intervention.

22 As to permissive intervention, I am at this time going
23 to deny that request. I think they obviously, the
24 intervenors have proven that there is a question of lay in
25 fact in common there's no doubt about that, but I d find at

1 this point, at this time that their participation in this
2 matter will unduly complicate the issues that face the
3 plaintiff and the receiver in trying to find out what
4 happened here. I just can't, frankly, imagine how
5 permitting Sterling to participate in discovery in this
6 matter in a pretrial matter the will assist in gathering the
7 evidence that's necessary for the receiver to do the job
8 that the Court has assigned. Consequently, I deny the
9 motion to intervene.

10 As to the release of funds. There's no question in my
11 mind that this is in the nature of an injunction. The
12 burden again is on the proposed interveners here. I, also,
13 find that almost all the funds of the Sterling funds that
14 were invested were commingled in this Bank of America Tech
15 Traders account. The money is fungible, folks. I think
16 it's virtually impossible to trace and to segregate it out
17 that way. And, furthermore, once the money goes into that
18 account, I think Tech Traders thereafter owns it and these
19 investors become nothing more than creditors.

20 As I stated during the oral argument, I don't
21 necessarily accept the argument about when monies are put at
22 risk for the reasons I stated. But once again, I am not
23 indicating by saying that to Mr. Bobo or anyone else that
24 one of the ultimate rules of the Court I do not need to
25 decide whether that is a reason to differentiate among all

1 these various investors or not. I leave it to his good
2 judgment at this point to try and straighten that out all
3 out. I do recognize that there is case law in some
4 sentiment to the contrary that would support to this putting
5 money at risk theory that's being advanced at this time by
6 the proposed intervenors.

7 Thus, as a general proposition, the intervenors have
8 not demonstrated any compelling reason for the return of
9 their money. That is that they are in anyway any different
10 than any other investors in this, even the non Shasta
11 investors in this matter.

12 Again, the Court is mindful that at this time it
13 appears that there simply is not enough money to pay
14 everybody. The best to permit one party to withdraw money
15 at this time would have an adverse effect on the ability of
16 the other parties who are not yet before the Court formally
17 to withdraw their share of the money. Now there may be a
18 different consideration regarding 37923, the ManPro account.
19 The money in that account or the large portion of the money
20 in the account and apparently was not -- did not go through
21 the Tech Traders bank account. But again, money is
22 fungible. There is evidence that money was going back from
23 Tech Traders to the Sterling Entity. The 475 thousand
24 dollars. There's other evidence that money has gone back
25 and forth between the two. Obviously, it's not the 1.9

1 million or the 1.2 million in the account. Considerably
2 more than that. But to argue that this money is some how
3 different, I think misses another point that the Government
4 raises at this time. And that is that there is evidence
5 presented so far to the Court that the connection between
6 Tech Traders and the these Sterling Entities at the very
7 least requires further inquiry and investigation. Tech
8 Traders did have, for some period of time, trading authority
9 over that account 37923. Now I know Miss Woltz testified
10 that Sterling voided that and indeed the document IS-1
11 indicates that she did so advise Coyt Murray. However, it
12 is interesting that no documents have been found at the CFM
13 that support that at this time. There's, also, the saga of
14 Mr. Abernethy, the payment that he received the 34 thousand
15 dollars. The fact he was present at one of the Sterling
16 entities while at the same time was supposed to be the
17 person who a was certifying the rate of return for all the
18 investors. There is obviously some relationship between how
19 Woltz who is deeply involved in all the Sterling entities
20 and Murray, Mr. Coyt Murray, Tech Traders at least through
21 New Century. There was, also, an offer from Woltz to make
22 Murray a partner in the Sterling Trust. There is that issue
23 of the payment, the 2.5 percent monthly payment from Tech
24 Traders to Sterling Trust. There was the unexplained \$2000
25 dollar payment by Tech Traders to Miss Woltz. In fact, at

1 this point it's just merely simply impossible to sort out
2 the precise financial and other arrangements between and
3 among all these parties. Perhaps the CFTC and perhaps Mr.
4 Bobo will figure it out. Perhaps, some other Government
5 agency will figure it out. I don't have any -- make -- I
6 only make that mention because of the intriguing documents
7 that are found in IS-1. As I said the capital is not really
8 at risk. The interveners haven't proven the capital is at
9 risk. There's no evidence of any imminent threat that the
10 licensure there could be another call of the openers to
11 restore the capital account. I'm simply not convinced at
12 this point nor even slightly persuaded that these
13 relationships between the Tech Traders groups and the
14 Sterling Groups are entirely arms length. And until such
15 time as these matters are sufficiently cleared up, I will
16 not release any of the money to anyone. I will direct the
17 receiver to continue his fine work as expeditiously as he
18 can. I have read cases relied upon, again the Black case
19 referred to by Mr. Faulk. And, frankly, I don't think it
20 holds to the contrary. In that case, it states the
21 proposition that is obvious. That is that we would not and
22 cannot freeze ex parte assets unless the assets were
23 property or deemed property of a defendant or of a culpable
24 third-party. It goes on to talk about the other cases where
25 the defendants have controlled their party's property and as

1 a matter of law and, therefore, made it subject to a freeze
2 and seizure. And I do I don't think anything more than that
3 has been done here. I remind everyone this money is
4 actually the property except for that one account, the money
5 is the property of Tech Traders. That's where it, that's
6 where it's gone through.

7 Number 4, I think regarding that one account, at this
8 point I think there's sufficient evidence that it can be
9 deemed under the control of a culpable third-party. And
10 consequently, at this time I'm going to deny the application
11 for release of any of the seized funds and again urge the
12 Government onward and upward to get this thing wrapped up as
13 expeditiously and a possible and urge the Sterling Entities
14 to work closely with the receiver because I think all, you
15 all understand my sentiments that there does seem to be
16 sufficient money that Sterling, if they are an innocent
17 party, will get back a significant amount of money.

18 Anything further?

19 MS. STREIT: Your Honor.

20 THE COURT: I'll do an order. Thank you, counsel.

21 MR. FREY: Thank you, your Honor.

22 MS. STREIT: Actually Mr. Bobo reminded me of one
23 thing. There's a scheduling with the magistrate on June
24 15th? Should I deal directly with the magistrate on that?

25 THE COURT: Yes. Call Judge Donio and she'll work