

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CAMDEN VICINAGE

COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

v.

EQUITY FINANCIAL GROUP, LLC,
et al.,

Defendant.

Civil No. 04-1512 (RBK)

ORDER

This matter having come before the Court upon the application of Jack Vernon Abernethy, who is currently proceeding pro se in this matter, for appointment of counsel pursuant to 28 U.S.C. § 1915(e)(1), and the Court having reviewed the application; and

IT APPEARING TO THE COURT that Defendant is requesting appointment of counsel and asserting that he cannot afford to retain counsel. Defendant claims that his only regular source of income is derived from two rental houses with gross monthly rents of \$475 each and a net monthly income of \$100 per house. Additionally, Defendant asserts that he previously retained counsel but has since been refused representation because of his inability to pay attorneys' fees; and

IT FURTHER APPEARING TO THE COURT that the appointment of counsel under § 1915 is a privilege, not a statutory or constitutional right of the litigant. Purnell v. Lopez, 903 F.

Supp. 863, 864 (E.D. Pa. 1995). Moreover, a Court's power to appoint counsel pursuant to § 1915(e) lies in the sole discretion of the Court. Parham v. Johnson, 126 F.3d 454, 457 (3d Cir. 1997); see also, Tabron v. Grace, 6 F.3d 147, 155 (3d Cir. 1993), cert. denied, 510 U.S. 1196 (1994). The Court may, therefore, request an attorney to represent an indigent party in a civil action, pursuant to 28 U.S.C. § 1915, provided that the party has been granted permission to proceed in forma pauperis in the action and is unable to afford counsel, and provided further that analysis of the factors set forth in Tabron support appointment of counsel. See 6 F.3d at 155-58; 28 U.S.C. § 1915(e)(1); and

IT FURTHER APPEARING TO THE COURT that Defendant has neither sought nor obtained permission to proceed in forma pauperis, and, as such, is not entitled to have counsel appointed under 28 U.S.C. § 1915. Consequently,

IT IS on this 16th day of September, 2004,

ORDERED that Defendant's application for the appointment of counsel is hereby **DENIED** without prejudice.

s/ Ann Marie Donio
ANN MARIE DONIO
UNITED STATES MAGISTRATE JUDGE

cc: Hon. Robert B. Kugler