

VINCENT J. FIRTH, *pro se*
3 Aster Court
Medford, NJ 08055
(609)714-1981

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

COMMODITY FUTURES TRADING :
COMMISSION, : Hon. Robert B. Kugler
:
Plaintiff,

vs. **Civil Action No. 04-1512**

EQUITY FINANCIAL GROUP LLC, TECH
TRADERS, INC., TECH TRADER, LTD., Motion For Summary Judgment
MAGNUM CAPITAL INVESTMENTS, LTD.,
VINCENT J. FIRTH, ROBERT W. SHIMER,
COYT E. MURRAY, & J. VERNON ABERNETHY

Defendants.

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Pursuant to Federal Civil Procedure Rule 56(b) defendant Vincent J. Firth *pro se* respectfully moves the Court for Summary Judgment for himself with respect to Counts I, II, III, and IV of Plaintiff’s First Amended Complaint For Injunctive and Other Equitable Relief And Civil Monetary Penalties Under the Commodity Exchange Act, 7 U.S.C. §§ 1 *et seq.* (hereinafter “CEA”). More specifically, Vincent J. Firth (“Firth”) moves for Summary Judgment pursuant to Federal Rule 56(b) with respect to each of the following:

- 1) Plaintiff’s claim in Count I that defendant Firth violated Section 4b(a)(2) of the Commodity Exchange Act 7 U.S.C. §§ 6b(a)(2). Controlling federal case law requires that a motion for summary judgment by a Defendant be granted against Plaintiff if a material fact essential to Plaintiff’s claim cannot be established and has no basis in fact.

For Plaintiff to succeed with respect to its allegation that Firth violated Section 4b(a)(2) of the CEA Plaintiff must be able to “connect” Firth’s alleged acts to the CEA. That “connection” is critically dependent upon a finding by the Court that the entity Shasta Capital Associates, LLC (hereinafter “Shasta”) is a “commodity pool”. Controlling case law of *Lopez v. Dean Witter Reynolds, Inc.* requires that for an entity such as Shasta to be a “commodity pool” it must own *in its name* a trading account from which commodity interests were traded on its behalf. Because no such account in the name of Shasta ever existed, Shasta is not a “commodity pool” and, therefore, Defendant Firth is entitled, as a matter of law, to summary judgment with respect to Count I of Plaintiff’s First Amended Complaint because Plaintiff has not and cannot make a sufficient showing on an essential element necessary to sustain Plaintiff’s allegation in Count I that Defendant Firth violated Section 4b(a)(2)(i)-(iii) of the CEA. In support of his motion for summary judgment with respect to Count I Defendant Firth respectfully refers the Court to Defendant Shimer’s Brief dated July 7, 2005 and Exhibits filed in support thereof;

- 2) Plaintiff’s claim in Count I that Defendant Firth violated Section 13(b) of the Commodity Exchange Act, 7 U.S.C. §13c(b) by knowingly inducing Defendant Equity’s alleged violation of Section 4(b)(2)(i)-(iii) of the Commodity Exchange Act 7 U.S.C. §§ 6b(a)(2)(i)-(iii). Controlling federal case law requires that a motion for summary judgment by a Defendant be granted against Plaintiff if a material fact essential to Plaintiff’s claim cannot be established and has no basis in fact. For Plaintiff to succeed with respect to its allegation that Firth violated Section 13(b) of the CEA Plaintiff must be able to “connect” Firth’s alleged acts to the CEA. That “connection” is critically dependent upon a finding by the Court that the entity Shasta is a “commodity pool” and that Defendant Equity Financial Group, LLC (hereinafter “Equity”) is, therefore, the “operator” of that alleged “commodity pool”. Controlling case law of *Lopez v. Dean Witter Reynolds, Inc.* requires that for an entity such as Shasta to be a “commodity pool” it must own *in its name* a trading account from which commodity interests were traded on its behalf. Because no such account in the name of Shasta ever existed, Shasta is not a “commodity pool” and, therefore, Defendant Firth is entitled, as a matter of law, to summary judgment with respect to Count I of Plaintiff’s First Amended Complaint

because Plaintiff has not and cannot make a sufficient showing on an essential element necessary to sustain Plaintiff's allegation in Count I that Defendant Firth violated Section 13(b) of the CEA. In support of his motion for summary judgment with respect to this allegation contained in Count I Defendant Firth respectfully refers the Court to Defendant Shimer's Brief dated July 7, 2005 and Exhibits filed in support thereof;

- 3) Plaintiff's claim in Count II that Defendant Firth violated Section 4o(1) of the CEA 7 U.S.C. §6o(1). Controlling federal case law requires that a motion for summary judgment by a Defendant be granted against Plaintiff if a material fact essential to Plaintiff's claim cannot be established and has no basis in fact. For Plaintiff to succeed with respect to its allegation that Firth violated Section 4o(1) of the CEA Plaintiff must be able to "connect" Firth's alleged acts to the CEA. That "connection" is critically dependent upon a finding by the Court that the entity Shasta is a "commodity pool" and that Defendant Equity is, therefore, the "operator" of that alleged "commodity pool". Controlling case law of *Lopez v. Dean Witter Reynolds, Inc.* requires that for an entity such as Shasta to be a "commodity pool" it must own *in its name* a trading account from which commodity interests were traded on its behalf. Because no such account in the name of Shasta ever existed, Shasta is not a "commodity pool" and, therefore, Defendant Firth is entitled, as a matter of law, to summary judgment with respect to Count II of Plaintiff's First Amended Complaint because Plaintiff has not and cannot make a sufficient showing on an essential element necessary to sustain Plaintiff's allegation in Count II that Defendant Firth violated Section 4o(1) of the CEA. In support of his motion for summary judgment with respect to this allegation contained in Count II Defendant Firth respectfully refers the Court to Defendant Shimer's Brief dated July 7, 2005 and Exhibits filed in support thereof;
- 4) Plaintiff's claim in Count II that Defendant Firth violated Section 13(b) of the Commodity Exchange Act, 7 U.S.C. §13c(b) by knowingly inducing Defendant Equity's alleged violation of Section 4o(1) of the CEA, 7 U.S.C. §6o(1). Controlling federal case law requires that a motion for summary judgment by a Defendant be granted against

Plaintiff if a material fact essential to Plaintiff's claim cannot be established and has no basis in fact. For Plaintiff to succeed with respect to its allegation that Firth violated Section 13(b) of the CEA Plaintiff must be able to "connect" Firth's alleged acts to the CEA. That "connection" is critically dependent upon a finding by the Court that the entity Shasta is a "commodity pool" and that Defendant Equity is, therefore, the "operator" of that alleged "commodity pool". Controlling case law of *Lopez v. Dean Witter Reynolds, Inc.* requires that for an entity such as Shasta to be a "commodity pool" it must own *in its name* a trading account from which commodity interests were traded on its behalf. Because no such account in the name of Shasta ever existed, Shasta is not a "commodity pool" and, therefore, Defendant Firth is entitled, as a matter of law, to summary judgment with respect to Count II of Plaintiff's First Amended Complaint because Plaintiff has not and cannot make a sufficient showing on an essential element necessary to sustain Plaintiff's allegation in Count II that Defendant Firth violated Section 13(b) of the CEA. In support of his motion for summary judgment with respect to this allegation contained in Count II Defendant Firth respectfully refers the Court to Defendant Shimer's Brief dated July 7, 2005 and Exhibits filed in support thereof;

- 5) Plaintiff's claim in Count III that Defendant Firth violated Section 13(b) of the Commodity Exchange Act, 7 U.S.C. §13c(b) by knowingly inducing Defendant Equity's alleged violation of Section 4m(1) of the CEA, 7 U.S.C. §6m(1). Controlling federal case law requires that a motion for summary judgment by a Defendant be granted against Plaintiff if a material fact essential to Plaintiff's claim cannot be established and has no basis in fact. For Plaintiff to succeed with respect to its allegation that Firth violated Section 13(b) of the CEA Plaintiff must be able to "connect" Firth's alleged acts to the CEA. That "connection" is critically dependent upon a finding by the Court that the entity Shasta is a "commodity pool" and that Defendant Equity is, therefore, the "operator" of that alleged "commodity pool". Controlling case law of *Lopez v. Dean Witter Reynolds, Inc.* requires that for an entity such as Shasta to be a "commodity pool" it must own *in its name* a trading account from which commodity interests were traded on

its behalf. Because no such account in the name of Shasta ever existed, Shasta is not a “commodity pool” and, therefore, Defendant Firth is entitled, as a matter of law, to summary judgment with respect to Count III of Plaintiff’s First Amended Complaint because Plaintiff has not and cannot make a sufficient showing on an essential element necessary to sustain Plaintiff’s allegation in Count III that Defendant Firth violated Section 13(b) of the CEA. In support of his motion for summary judgment with respect to this allegation contained in Count III Defendant Firth respectfully refers the Court to Defendant Shimer’s Brief dated July 7, 2005 and Exhibits filed in support thereof;

- 6) Plaintiff’s claim in Count IV that Defendant Firth violated Section 4k(2) of the CEA, 7 U.S.C. §6k(2) by failing to register as an alleged AP (Associated Person) of Equity. Controlling federal case law requires that a motion for summary judgment by a Defendant be granted against Plaintiff if a material fact essential to Plaintiff’s claim cannot be established and has no basis in fact. For Plaintiff to succeed with respect to its allegation that Firth violated Section 4k(2) of the CEA Plaintiff must be able to “connect” Firth’s alleged acts to the CEA. That “connection” is critically dependent upon a finding by the Court that the entity Shasta is a “commodity pool” and that Defendant Equity is, therefore, the “operator” of that alleged “commodity pool”. Controlling case law of *Lopez v. Dean Witter Reynolds, Inc.* requires that for an entity such as Shasta to be a “commodity pool” it must own *in its name* a trading account from which commodity interests were traded on its behalf. Because no such account in the name of Shasta ever existed, Shasta is not a “commodity pool” and, therefore, Defendant Firth is entitled, as a matter of law, to summary judgment with respect to Count IV of Plaintiff’s First Amended Complaint because Plaintiff has not and cannot make a sufficient showing on an essential element necessary to sustain Plaintiff’s allegation in Count IV that Defendant Firth violated Section 4k(2) of the CEA. In support of his motion for summary judgment with respect to this allegation contained in Count IV Defendant Firth respectfully refers the Court to Defendant Shimer’s Brief dated July 7, 2005 and Exhibits filed in support thereof;

Date: July 7, 2005

Respectfully submitted,

s/ Vincent J. Firth

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