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UNITED DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY (Camden)

COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

v.

Civil Action No. 04-CV-1512

Hon. Robert B. Kugler

EQUITY FINANCIAL GROUP. LLC,
TECH TRADERS, INC., TECH
TRADERS, LTD., MAGNUM
CAPITAL INVESTMENTS, LTD.,
VINCENT J. FIRTH, ROBERT W.
SHIMER, COYT E. MURRAY, and J.
VERNON ABERNATHY,

Defendants.

**RESPONSE OF CLAIMANT NANCY OMAHA BOY
TO EQUITY RECEIVER'S OBJECTION TO CLAIM**

The Claimant, Nancy Omaha Boy, submits the following as and for her response to the Equity Receiver's Objection to her claim.

PRELIMINARY STATEMENT

Claimant Nancy Omaha Boy's response to the Equity Receiver's objection to her claim involves intertwined questions of law and fact. Ms. Omaha Boy occupies a position different from

each of the other claimants in this case. The Receiver has proposed a formula that appears to actually grant Ms. Omaha Boy's claim, but due to both an incorrect view of the facts and a misapplication of the law, she will receive no return of any portion of her \$195,000 investment.

FACTUAL AND LEGAL OBJECTION

The Receiver essentially takes the position that Ms. Omaha Boy invested \$195,000 in Shasta/Tech Traders. He states that Ms. Omaha Boy received \$180,000 in connection with her earlier Kaivalya Holding Group investment which he claims is traceable to Tech Traders. The Receiver takes the position that Ms. Omaha Boy later invested that money in Shasta, along with an additional \$15,000. While it is accurate that Ms. Omaha Boy paid \$195,000 for what she believed would be a legitimate investment, the Receiver's position is factually wrong on at least two significant counts. First, Ms. Omaha Boy received only \$175,000 which the Receiver could claim to trace to Tech Traders. An additional \$5,000 was paid to her in connection with her Kaivalya investment, which is not traceable to Tech Traders, but instead to Robert Shimer personally. Second, Ms. Omaha Boy never received a withdrawal of funds from her investment in Shasta or Tech Traders. Instead, the funds that the Receiver claims are traceable to Tech Traders were turned over to her *prior to making her investment in Shasta*.

The Receiver has chosen to ignore the actual chronology of events. Although it is clear that Ms. Omaha Boy invested money in Shasta/Tech Traders and *never* received any money back, the Receiver creates the legal fiction that she withdrew \$180,000 from Tech Traders. At the time she thought she was recouping her investment in Kaivalya, Ms. Omaha Boy was not even familiar with Tech Traders. The actual chronology of events is as follows;

1. Ms. Omaha Boy invested her own funds in the amount of \$175,000 in Kaivalya;

2. She received \$5,000 from Robert Shimer to help pay tax obligations purportedly arising out of the investment;
3. She received an additional \$175,000 which the Receiver claims can be traced to Tech Traders;
4. She invested \$195,000 in Shasta; and
5. She received no money back and took no withdrawals from Shasta/Tech Traders.

Although he is fully aware of the correct chronology, the Receiver treats the transactions as if they occurred chronologically as follows:

1. Ms. Omaha Boy invested her own funds in the amount of \$175,000 in Kaivalya;
2. She then invested \$195,000 in Shasta;
3. She took a \$180,000 withdrawal from Tech Traders.

The Receiver appears to contend that Ms. Omaha Boy was unwittingly repaid \$175,000 or \$180,000 for her Kaivalya investment with tainted Tech Traders funds and later invested those funds into Shasta/Tech Traders. While Ms. Omaha Boy does not accept that factual premise, if the Receiver is otherwise correct, a more fair and equitable treatment does exist, *i.e.*, Ms. Omaha Boy's putative investment of tainted funds in the very entity from which the funds were derived, should be treated as a nullity. At worst, the transaction should be treated as a wash as to the portion of funds derived from Tech Traders. The remaining \$20,000, which is untainted, should be subject to the 38% payout.

If Ms. Omaha Boy was never entitled to the \$175,000 purportedly received from Tech Traders, it is entirely illogical that her investment of those funds should be deemed valid. It would be analogous to John Doe unwittingly receiving \$175,000 stolen from a savings and loan society robbery and then bringing back the \$175,000 in the red-dye soaked bills, along with \$20,000 in

pristine new currency and depositing it. If the S&L later failed and the RTC or the Savings Association Insurance Fund comes in pay off the depositors at 85 cents on the dollar, Mr. Doe is not going to be told that he has already been paid. Mr. Doe is going to receive 85% of the \$20,000 that was clean. The major difference in this case is that Ms. Omaha Boy did not try to deposit a red-dye soaked stack of bills, *i.e.*, there was no way that she could have known the money she received back from the Kaivalya investment was tainted. Therefore, why should she be treated worse than Mr. Doe, who clearly could see there was a problem with that stack of currency?

It would be particularly unfair for Ms. Omaha Boy to be treated the same as investors who actually did receive withdrawals in excess of 38% of their original investment and have that money available to them right now. Ms. Omaha Boy has nothing to show for her investment in Kaivalya or Shasta/Tech Traders. The Receiver refuses to attempt to enlarge the pool of resources by seeking the recovery of the excess amounts – *i.e.*, over 38% – returned to those investors who pulled out the “investment” early. If Nancy Omaha Boy had not “invested” any of the \$175,000 she received back from the Kaivalya, would the Receiver have treated her the same as those who are sitting on the funds withdrawn from their Tech Trader investment? In all likelihood not, if the Receiver truly believed that \$175,000 was tainted. He would in all likelihood have grabbed all \$175,000 – and not left 38% – because in his view – one Ms. Omaha Boy is not yet prepared to embrace – that \$175,000 was never Ms. Omaha Boy’s in the first place. Under the Receiver’s view of things, it belong entirely to the other investors. Therefore, Ms. Omaha Boy could not have legitimately invested it in the first place, as it was never hers.

CONCLUSION

It would be fundamentally unfair to treat Ms. Omaha Boy as if she invested her own money in Shasta/Tech Traders and was then repaid the bulk of it, if those are not the specific facts established by the Receiver. If the Receiver is correct that the \$175,000 “invested” by Ms. Omaha was not her own money, then that portion of her “investment” should be disregarded and she should receive 38% of the remaining \$20,000. If the Receiver cannot establish that any of the funds – *i.e.*, the \$175,000 plus the \$20,000 – were tainted, then Ms. Omaha Boy should receive 38% of \$195,000.

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