

VINCENT J. FIRTH, *Pro se*

**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.,
MAGNUM CAPITAL INVESTMENTS, LTD.,
VINCENT J. FIRTH, ROBERT W. SHIMER,
COYT E. MURRAY, & J. VERNON ABERNETHY

Defendants.

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**PROPOSED ORDER GRANTING DEFENDANT VINCENT J. FIRTH'S
MOTION FOR SUMMARY JUDGMENT AND MOTION TO DISMISS FOR LACK OF
SUBJECT MATTER JURISDICTION**

Having Read the Brief filed in support of Defendant's Motion For Summary Judgment, and Defendant's Motion To Dismiss For Lack Of Subject Matter Jurisdiction and the accompanying Affidavit and Statement of Uncontested Facts and having reviewed and considered Plaintiff's response thereto;

THE COURT FINDS:

1. With respect to Counts I and II of Plaintiff's First Amended Complaint, alleging a violation of Sections 4b(a)(2), 13(b) and 4o(1) of the Commodity Exchange Act by Defendant Vincent J. Firth ("Firth") that Summary Judgment is appropriate and is hereby granted to Defendant Firth for the reason that Plaintiff is unable to overcome clear and convincing evidence in the record that Defendant Firth acted with good faith and neither knew nor had reason to know the actual trading performance of defendant Tech was at variance with the trading performance

consistently reported by Vernon Abernethy, CPA to Elaine Teague, the CPA of Shimer's client Shasta Capital Associates, LLC and Plaintiff has further failed to provide this Court with any credible indication that at trial Plaintiff can establish the requisite scienter required by applicable case law to support a finding that Firth violated Sections 4b(a)(2); 13(b) and 4o(1) of the Commodity Exchange Act;

2. With Respect to Count III of Plaintiff's First Amended Complaint which alleges a violation of Section 13(b) of the Commodity Exchange Act in that defendant Firth did not act in good faith and allegedly induced defendant Equity's alleged violation of Section 4m(1) by failing to register as a commodity pool operator Defendant's Motion to Dismiss for Lack of Subject Matter Jurisdiction is appropriate and is hereby granted to Defendant Firth for the reason that by application of the required four part test set forth in controlling case law Shasta Capital Associates, LLC is not a commodity pool and Firth's company Equity Financial Group, LLC is, therefore, not a commodity pool operator as alleged by Plaintiff in Count III. Defendant Firth's behavior, therefore, cannot be held to be a violation of the Commodity Exchange Act as alleged by Plaintiff.

3. With respect to Count IV of Plaintiff's First Amended Complaint alleging a violation of Section 4k(2) of the Commodity Exchange Act in that defendant Firth did not register as an AP of defendant Equity Financial Group, LLC Defendant's Motion to Dismiss for Lack of Subject Matter Jurisdiction is appropriate and is hereby granted to Defendant Firth for the reason that by application of the required four part test set forth in controlling case law Shasta Capital Associates, LLC is not a commodity pool and, therefore, Defendant Firth's company Equity Financial Group, LLC is not a commodity pool operator as alleged by Plaintiff in Count IV. Defendant Firth's behavior, therefore, cannot be held to be a violation of the Commodity Exchange Act as alleged by Plaintiff.

IT IS HEREBY ORDERED THAT:

Summary Judgment be entered in favor of Defendant Firth with respect to all allegations contained in Counts I and II of Plaintiff's First Amended Complaint that Firth violated Sections 4b(a)(2), 13(b) and 4o(1) of the Commodity Exchange Act.

IT IS FURTHER ORDERED that Defendant's Motion to Dismiss For Lack of Subject Matter Jurisdiction be entered in favor of Firth with respect to the allegation contained in Count

III of Plaintiff's First Amended Complaint that Firth violated Section 13(b) of the Commodity Exchange Act by inducing defendant Equity's alleged violation of Section 4m(1).

IT IS FURTHER ORDERED that Defendant's Motion to Dismiss For Lack of Subject Matter Jurisdiction be entered in favor of Firth with respect to the allegation contained in Count IV of Plaintiff's First Amended Complaint that Firth violated Section 4k(2) of the Commodity Exchange Act in that defendant Firth did not register as an AP of defendant Equity Financial Group,

IT IS FURTHER ORDERED that every aspect and provision of this Court's previous Statutory Restraining Order and Asset Freeze found in Section I of the Court's Statutory Restraining Order and Order Appointing Receiver previously entered against Firth, as Amended by that certain Consent Order of Preliminary Injunction and Other Ancillary Relief previously entered by this court is hereby revoked and is of no longer any force and effect and is hereby rescinded by reason of the fact that Firth is no longer a defendant in this matter.

IT IS FURTHER ORDERED that Firth be immediately removed from receivership as previously ordered by Section II of this Court's Statutory Restraining Order and Order Appointing Receiver (as Amended by that certain Consent Order of Preliminary Injunction and Other Ancillary Relief previously entered by this Court) and that all further authority and power of the Court appointed equity receiver over Firth and all authority of the receiver to require any delivery by Firth in any manner as further stated in Section IV of this Court's previous order is hereby rescinded and revoked as to Firth by reason of the fact that Firth is no longer a defendant in this matter.

IT IS FURTHER ORDERED that all powers of the Receiver as stated in Section III of this Court's Statutory Restraining Order and Order Appointing Receiver as those powers might be applied to Firth are hereby rescinded and revoked as to Firth by reason of the fact that Firth is no longer a Defendant in this matter.

IT IS FURTHER ORDERED that any requirement previously imposed upon Firth to cooperate with the Receiver as required by Section V of this court's previous Statutory Restraining Order and Order Appointing Receiver is hereby revoked and rescinded as to Firth by reason of the fact that Firth is no longer a defendant in this matter.

IT IS FURTHER ORDERED that any requirement previously imposed upon Firth as required by Section VI of this court's previous Statutory Restraining Order and Order Appointing Receiver to stay any claim, right or interest for, against, on behalf of, or in the name of Firth as specified particularly in paragraphs A through D of that Section VI (as Amended by that certain Consent Order of Preliminary Injunction and Other Ancillary Relief previously entered by this Court) is hereby revoked and rescinded as to Firth by reason of the fact that Firth is no longer a defendant in this matter.

SO ORDERED _____ May, 2005

UNITED STATES DISTRICT JUDGE