

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.

-----X

**PROPOSED ORDER GRANTING DEFENDANT VINCENT J. FIRTH'S
MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF
CAN BE GRANTED**

Having read the Brief filed in support of Defendant's Motion To Dismiss For Failure To State A Claim Upon Which Relief Can Be Granted and Defendant's Motion For Summary Judgment and 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 & II of Plaintiff's First Amended Complaint, alleging violations of Sections 4b(a)(2), 13(b) and 4o(1) of the Commodity Exchange Act by Defendant Vincent J. Firth ("Firth") Defendant's Motion to Dismiss for Failure To State A Claim Upon Which Relief Can Be Granted 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 ("Shasta") is not a commodity pool and, therefore, Defendant Firth's company

Equity Financial Group, LLC (“Equity”) is not a commodity pool operator nor are Shasta’s members commodity pool participants as specifically alleged with respect to the conduct of defendant Firth in said Counts I and II. Defendant Firth cannot, therefore, be held to have violated any of the above provisions of the Commodity Exchange Act as alleged by Plaintiff and the relief, therefore, requested in Plaintiff’s First Amended Complaint with respect to Defendant Firth’s violation of the Commodity Exchange Act as alleged in Counts I & II cannot be granted.

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 Failure To State A Claim Upon Which Relief Can Be Granted 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 is not a commodity pool and, therefore, Defendant Firth’s company Equity is not a commodity pool operator as alleged by Plaintiff and the relief, therefore, requested in Plaintiff’s First Amended Complaint with respect to Defendant Firth’s violation of the Commodity Exchange Act as alleged in Count III cannot be granted.

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 Defendant’s Motion to Dismiss for Failure To State A Claim Upon Which Relief Can Be Granted 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 is not a commodity pool and, therefore, Defendant Firth’s company Equity is not a commodity pool operator as alleged by Plaintiff in Count IV and the relief, therefore, requested in Plaintiff’s First Amended Complaint with respect to Defendant Firth’s violation of the Commodity Exchange Act as alleged in Count IV cannot be granted.

IT IS HEREBY ORDERED THAT:

Defendant’s Motion to Dismiss For Failure To State A Claim Upon Relief Can Be Granted be entered in favor of Defendant Firth with respect to all allegations contained in Counts I & 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 Failure To State A Claim Upon Which Relief Can Be Granted be entered in favor of Defendant 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 Failure To State A Claim Upon Which Relief Can Be Granted be entered in favor of Defendant 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, LLC.

IT IS FURTHER ORDERED that aspects and provisions 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 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 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 said 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 as Amended by that certain Consent Order of Preliminary Injunction and Other Ancillary Relief 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 in paragraphs A through D of that Section VI as Amended by that certain Consent Order of Preliminary Injunction and Other Ancillary Relief 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