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U.S. DISTRICT COURT

2005 MAR 21 A 11: 40

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

**COMMODITIES FUTURES TRADING )  
COMMISSION, )**

**Plaintiff, )**

**vs. )**

**Civil Action No.: 04CV 1512**

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

**Honorable Robert B. Kugler**

**Defendants.**

**RESPONSE TO  
STATEMENT OF STEPHEN T. BOBO, EQUITY RECEIVER,  
REGARDING CATEGORIES OF OBJECTIONS TO INTERIM  
DISTRIBUTION MOTION AND STATEMENT OF DISPUTED ISSUES OF FACT**

TO: THE HONORABLE ROBERT B. KUGLER AND THE UNITED STATES  
DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY.

This response became necessary in order to clarify statements made by the Receiver in his above titled Statement regarding Dr. DiIenno.

Initially, the Receiver attempts to undermine the facts concerning Dr. DiIenno's funds in an effort to render Dr. DiIenno's position somehow unaccountable or questionable. This is not founded. This attempt only tries to divert the Court's attention away from the most important point, which the Receiver can not reason to the contrary, that Dr. DiIenno is an individual who deposited funds into Tech Traders in the same manner and same fashion as the individuals of Shasta. And no matter how the original complaint was phrased, essentially excluding Dr. DiIenno as an individual, or how the Receiver chooses to rephrase it or attempts to undermine Dr. DiIenno's position, dilute it or omit pertinent information, in reality Dr. DiIenno is in fact on the same level as the individuals of Shasta.

#### I. INDIVIDUAL STATUS & PROTECTION OF THE INDIVIDUAL'S FUNDS

- A. In his above titled Statement, p.4, lines 11-12 of the paragraph, Mr. Bobo chose to restate Dr. DiIenno's original objection to the Interim Distribution Schedule, the Receiver says "His (Dr. DiIenno's) objection is essentially that he should be treated like a Tier One investor." That is the arbitrary diversion created by the original complaint and thus further pursued by the Receiver. Dr DiIenno is not seeking any special treatment ( nor any arbitrary treatment either ) as the Receiver suggests. Dr. DiIenno is seeking the same treatment offered those individuals of Shasta, because the level of deposition of funds was the same: an individual deposited funds into Tech Traders through a secondary company.
- B. The Receiver continues to take the position that Dr. DiIenno's funds should be effectively lumped together with those of Bally Lines, LTD. However, just as the

current, proposed interim distribution of the protected funds to each particular individual of Shasta is not being reduced because Shasta or others of Shasta received earlier returns from Tech Traders ( i.e. each particular individual of Shasta is considered separately, unaffected by the others in Shasta), likewise, Dr. DiIenno (who is in reality on the same level as those particular individuals of Shasta) should not have his particular individual status diluted or jeopardized because Bally or others in Bally received earlier returns from Tech Traders. The parallels are relevant and striking: an individual (whether Dr. DiIenno or an individual of Shasta) should not have his particular percentage of distribution or amount of distribution reduced because others in the secondary company (whether Bally or Shasta) received earlier returns.

## II. FACTS & AFFIRMATIONS

- A. The Receiver further continues to redirect the Court's attention away from Dr. DiIenno's individual status by trying to question in his above titled Statement, p.4, line 5 of the paragraph, "the source of information" regarding the funds of Bally and on p.4, lines 9-10, "how the funds that Tech Traders returned to Bally Lines were used," as if to intimate that either Bally Lines' or Dr. DiIenno's funds may somehow be tainted or unaccountable. This is unjustified and incorrect. The Receiver has the bank records and wire confirmations of all of Dr. DiIenno's \$790,00.00 deposited into Tech Traders' and Bally's accounts, which clearly show ( not "that tend to support his transfer" as purported by the Receiver on p.3, line 6, paragraph c., of his above Statement) \$390,000.00 transferred to Bally and the additional \$400,000.00 deposited directly to Tech Traders.
- B. In conjunction with the above, neither Dr. Evors, (owner of Bally Lines, LTD ) or Bally Lines LTD, have been named as defendants. And Dr. Evors has unequivocally

affirmed and attested, in the letter dated 1/25/05 attached to Dr. DiIenno's original objection, and in the letter to Raven Moore in response to communication of March 9, 2005, attached hereto, that of all the funds deposited into Tech Traders on behalf of Bally Lines, LTD, \$790,000.00 of those funds belonged to and are attributable to Dr. DiIenno's account. Equally as important, Dr. Evors also clearly states that Dr. DiIenno has received nothing in return from Dr. Evors, Bally, Tech Traders, any third party or anyone, for his \$790,000.00 deposited into Tech Traders. The Receiver has all of the bank records of Bally Lines, and Tech Traders to verify this: Therefore, the Receiver's round about attack of Dr. DiIenno's account is unwarranted and unjustified.

#### FURTHER CONSIDERATIONS:

The Receiver proceeds to state on page 4, line 12 of his above titled Statement, "The Receiver believes that the distribution should be made directly to Tier One investors (like Bally Lines, LTD.)..." This argument is completely couched within the confines of the original complaint. The Receiver's beliefs, restricted in scope as to how the funds are to be distributed, effectively and arbitrarily excludes Dr. DiIenno as an individual and includes the individuals of Shasta. The statement of fact is that Dr. DiIenno is actually on the same level as the individuals of Shasta, regardless of how the Receiver tries to misdirect it, rephrase it or believes otherwise. Just as the funds of each particular individual of Shasta are protected and the proposed percentage of distribution to each individual of Shasta is independent and not effectively reduced due to prior distributions made to others of Shasta, so too Dr. DiIenno's individual funds should be protected and granted the same level of distribution proposed to be afforded to the individuals of Shasta and not effected by prior distributions made to others of Bally. That is

what would be consistent and not arbitrary. Overall and fundamentally the Receiver fails to demonstrate why Dr. DiIenno should not be considered an individual. The inconsistencies in the Receiver's argument remain with attempts to minimize or omit important information in regard to Dr. DiIenno's account.

The attacks on Dr. DiIenno's account are unwarranted and Dr. DiIenno has received no consideration of any kind in return for his \$790,000.00 deposited into Tech Traders.

Should it be the Receiver's "beliefs," which are truncated and arbitrary, that determine Dr. DiIenno's individual status? Dr. DiIenno's status is determined by his level of involvement, by the very fact of his level of deposition of funds into Tech Traders: being on the same level as those individuals of Shasta. That is what establishes Dr. DiIenno as an individual on par with the individuals of Shasta.

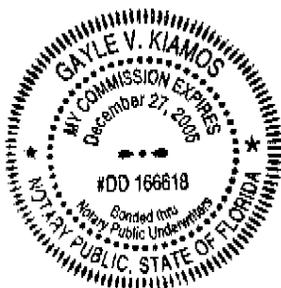
Dr. DiIenno hopes the Court recognizes the above and that the resulting interim distribution of funds proposed for the individuals of Shasta also be appropriately allocated to Dr. DiIenno, as the Court so determines.

March 17, 2005

Respectfully submitted,



Donald A. DiIenno, M.D.



*Gayle V. Kiamos*  
03/17/05

Response to communication of March 9, 2005

Dear Ms. Moore,

I have tried to give you data as I can assemble with limited information, as I have no access to Tech Traders banking records. The \$ 50,000.00 in question is eluding me at present. I don't understand why an accounting statement and a promissory note are not acceptable? On further review the statement provided by Tech traders indicates a deposit of \$50k was in July not JUNE. I still cannot find what source it came from. So, I assume your firm will make a determination to accept or deny this claim.

Dr. DiInneo has made several private placement loans to Bally Lines. His first loan of \$100k was placed in a different program as Bally lines did not have a contract with Tech traders until MAY 30, 2002. His original loan was to Bally for Tech was the \$290K, his \$100 k was liquidated in another program then placed with Tech as the provided results appeared better. There was a \$ 60k and a \$40k subsequently loaned to Tech on his behalf. Bally lines agrees with Dr. DiInneo's claim for a total of \$790K. We have both asked to have him separated from Bally's claim and be dealt with as a separate entity to ease the return of funding he provided to Bally Lines, Ltd.

Enclosed is a copy of Bally/Tech contract for private placement loan

I respectfully request to be informed of the next hearing date as to make arrangements to attend .I have questions and concerns as to WHAT amount was ACTUALLY confiscated from Tech Traders as the numbers are not accurate.

The receiver states in documents that APPRXIMATELY 10.4 M may be a 38% distribution of 27M. The latest amount is being stated, as APPROXIMATELY \$20m is available. WHAT is correct? Also ,I assume these funds are drawing interest, how much will be distrib uted to each claimant?

I have asked several questions before and not received answers.

Finally, is there any date that this might get to resolution?

Thank you for consideration in this matter.

  
Dr. Edward J. Byers