

ROBERT W. SHIMER, ESQ., *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 ROBERT W. SHIMER’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 & 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 Robert W. Shimer (“Shimer”) that Summary Judgment is appropriate and is hereby granted to Defendant Shimer for the reason that Plaintiff is unable to overcome clear and convincing evidence in the record that Defendant Shimer 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 ("Shasta") 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 Shimer 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 Shimer 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 and, with respect to Plaintiff's further allegation in Count III that defendant Shimer aided and abetted defendant Equity's violation of Section 4m(1) in violation of Section 13(a), Defendant's Motion to Dismiss for Lack of Subject Matter Jurisdiction is appropriate and is hereby granted to Defendant Shimer for the reason that by application of the required four part test set forth in controlling case law defendant Shimer's client Shasta is not a commodity pool and, Shimer's client Equity Financial Group, LLC ("Equity") is not, therefore, a commodity pool operator as alleged by Plaintiff in Count III. Defendant Shimer'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 Shimer 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 Shimer for the reason that by application of the required four part test set forth in controlling case law defendant Shimer's client Shasta is not a commodity pool and, therefore, Defendant Shimer's client Equity is not a commodity pool operator as alleged by Plaintiff in Count IV. Defendant Shimer's behavior, therefore, cannot be held to be a violation of the Commodity Exchange Act as alleged by Plaintiff.

4. With respect to Count V of Plaintiff's First Amended Complaint alleging a violation of Section 13(a) of the Commodity Exchange Act that Summary Judgment is appropriate and is hereby granted to Defendant Shimer because Plaintiff has not established to the Court's satisfaction that defendant Tech acted as a Commodity Trading Advisor to Defendant Shimer's

client Shasta nor, in light of the substantial and credible evidence of defendant Shimer's good faith and lack of any intention to further Tech's alleged violation of Regulation 4.30 can Plaintiff meet its burden to prove the scienter required by applicable case law sufficient to support a finding by this Court that Shimer aided and abetted Tech's alleged violation of Regulation 4.30.

**IT IS HEREBY ORDERED THAT:**

Summary Judgment be entered in favor of Defendant Shimer with respect to all allegations contained in Counts I and II of Plaintiff's First Amended Complaint that Shimer 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 Defendant Shimer with respect to the allegation contained in Count III of Plaintiff's First Amended Complaint that Shimer violated Section 13(b) of the Commodity Exchange Act by inducing defendant Equity's alleged violation of Section 4m(1) and also similarly that Defendant Shimer violated Section 13(a) of the Commodity Exchange Act in that he aided and abetted defendant Equity's 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 Defendant Shimer with respect to the allegation contained in Count IV of Plaintiff's First Amended Complaint that Shimer violated Section 4k(2) of the Commodity Exchange Act in that defendant Shimer did not register as an AP of defendant Equity Financial Group,

**IT IS FURTHER ORDERED** that Summary Judgment be entered in favor of Defendant Shimer with respect to the allegation contained in Count V of Plaintiff's First Amended Complaint that Shimer violate Section 13(a) of the Commodity Exchange in that Shimer aided and abetted defendant Tech Traders, Inc.'s alleged violation of Regulation 4.30 17 C.F.R. § 4.30.

**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 Defendant Shimer, 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 Shimer is no longer a defendant in this matter.

**IT IS FURTHER ORDERED** that Shimer 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 Shimer and all authority of the receiver to require any delivery by Shimer in any manner as further stated in Section IV of this Court's previous order is hereby rescinded and revoked as to Shimer by reason of the fact that Shimer 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 Shimer are hereby rescinded and revoked as to Shimer by reason of the fact that Shimer is no longer a defendant in this matter.

**IT IS FURTHER ORDERED** that any requirement previously imposed upon Shimer 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 Shimer by reason of the fact that Shimer is no longer a defendant in this matter.

**IT IS FURTHER ORDERED** that any requirement previously imposed upon Shimer 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 Shimer 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 Shimer by reason of the fact that Shimer is no longer a defendant in this matter.

SO ORDERED \_\_\_\_\_ May, 2005

---

UNITED STATES DISTRICT JUDGE