

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CAMDEN VICINAGE

COMMODITIES FUTURES TRADING
COMMISSION,

Plaintiff,

v.

EQUITY FINANCIAL GROUP, LLC,
et. al.,

Defendants.

Civil No. 04-1512-RBK-AMD

REPORT AND RECOMMENDATION

This matter having been brought before the Court by Steven T. Bobo, Equity Receiver ("Receiver") seeking an order disallowing claims of certain claimants. The Court entered an order dated October 6, 2005 requiring that certain claimants show cause why an order disallowing their claims should not be entered. No claimants named in the Order to Show Cause appeared at the hearing held November 2, 2005. Two individuals that invested through one of the claimants, Dream Venture, LLC, ("Dream Venture") appeared. For the reasons that follow, the Court recommends entry of an order disallowing the claims of the following claimants: Citco Global Custody N.V. (Stable Absolute Return), Peter Mt. Shasta, Bally Lines Ltd. c/o Dr. Edward J. Evors, Dream Venture Group c/o Gregg Amerman, ICC Finance Corp. c/o Shlomo Bitensky, and Quest for Life

c/o Samuel J. Grimes.¹

The background of this case has been set forth in the Court's prior Report and Recommendation dated September 2, 2005 and will not be repeated herein. See Commodity Futures Trading Commission v. Equity Financial Group, LLC, No. 04-1512, 2005 WL 2143975 (D.N.J. Sept. 2, 2005). On April 1, 2004, the Commodity Futures Trading Commission ("CFTC") filed a civil action against defendants, Equity Financial Group, LLC; Tech Traders, Inc.; Vincent J. Firth; Robert W. Shimer; J. Vernon Abernethy; Coyt E. Murray; Magnum Capital Investments, Ltd.; Magnum Investments, Ltd.; and Tech Traders, Ltd.. Thereafter, on April 1, 2004, the Court entered an Order appointing the Receiver for the purpose of "marshalling, preserving, accounting for and liquidating the assets that are subject to this Order and directing, monitoring and supervising Defendants' activities. . . ." See Order dated April 1, 2004 at 3-4. By Order dated September 26, 2005, the Court approved an interim distribution of funds (hereinafter Approved Interim Distribution Plan). See Commodity Futures Trading Commission v. Equity Financial Group, LLC, No. 04-1512, 2005 WL 2864781 (D.N.J. Sept. 26, 2006). Under the Approved Interim Distribution Plan, the Court determined that the most equitable way to distribute the funds would be to use a tiered system. Under this system, Tier I investors who invested directly with Tech

1. The Receiver's objections as to claimant Janelle A. Wagner Family Trust have been resolved and the Court entered a Consent Order dated May 26, 2006 with respect to such claimant.

Traders receive a percentage of their investment based upon a plan that accounts for prior withdrawals. A Tier II investor receives distributions based upon the amount distributed to such investor's Tier I investor.² The Approved Interim Distribution Plan also provided that prior withdrawals by a Tier I investor would be analyzed under the rising tide method under which "investors are permitted to retain previously received funds, but those withdrawals will be credited against the investors' respective pro rata shares calculated based on the full amounts invested." CFTC, 2005 WL 2143975 at *24. Under the Approved Interim Distribution Plan, the actual dollars invested by a Tier I investor are first multiplied by the pro rata multiplier and then the withdrawals previously received from such Tier I investor are subtracted from this amount. CFTC, 2005 WL 2142974 at *24.³

2. The Receiver initially proposed that investors of Shasta Capital Associates, LLC ("Shasta"), a Tier I investor, receive their pro rata distributions based upon a Tier I calculation as opposed to a Tier II calculation. The reasoning behind such proposed treatment was based on the fact that Shasta is a receivership entity. However, the Court adopted a second approach which treated Shasta investors as other Tier II investors. See, CFTC, 2005 2143975 at *26.

3. The Order approving the interim distribution provided that:

3. Each investor holding an allowed claim shall receive a thirty-eight percent (38%) pro rata distribution from the funds of Defendant Tech Traders, less any distributions previously received;

4. The interim distribution amount for each claim shall be calculated first by multiplying the total amount invested by thirty-eight percent (38%). This results in each investor's gross pro rata distribution amount (the 'Gross Distribution Amount');

The Receiver has proposed that the investors' claims subject to the Order to Show Cause be disallowed for the following reasons:

1. Bally Lines, Ltd. - failure to provide names of persons with beneficial interest in claimant;⁴

2. Citco Global Custody, N.V. (Stable Absolute Return) - failure to provide names of persons with beneficial interest in claimant;

3. Dream Venture - claimant received more than amount invested; failure to provide documentation supporting investments and withdrawals;

4. ICC Finance Corp. - claimant received more than amount invested;

5. Quest for Life - subject to CFTC's ongoing investigation; and

6. Peter Mt. Shasta - claimant recovered more than amount invested.

See Reply of Equity Receiver to Responses of James Roberts, Dave Williams and Janelle A. Wagner Family Trust to Order to Show Cause

5. From each investor's Gross Distribution Amount, the total of all withdrawal amounts already received by that investor on account of its investments with the Defendants is then subtracted. This difference, the 'Net Distribution Amount,' is the amount that the Receiver is authorized to distribute on account of allowed claims.

CFTC, 2005 WL 2864781 at *2.

4. Under the Approved Interim Distribution Plan, "entity investors must disclose the identity of all persons having a beneficial interest of any kind in the investor entity." CFTC, 2005 WL 2864781 at *1.

[276] hereinafter ("Reply of Equity Receiver") at Exhibit A. No responses were filed with respect to the Order to Show Cause and no appearances were made with respect to claimants Citco Global Custody N.V. (Stable Absolute Return), Peter Mt. Shasta, Bally Lines Ltd., ICC Finance Corp., Dream Venture, LLC, and Quest for Life. Two of these claimants, Citco Global Custody N.V. (Stable Absolute Return) and ICC Finance Corp. objected to the initial distribution plan, but their specific objections were overruled by the Court. CFTC, 2005 WL 2143974 at *12, 14.

However, two investors of Dream Venture, James Roberts and David Williams, appeared at the hearing and raised objections to the Receiver's treatment of Dream Venture. At the hearing, Mr. Roberts asserted he invested \$150,000.00 in Dream Venture and received back \$4,682.00. Mr. Williams asserted he invested \$30,000.00 with Dream Venture and received back \$1,794.00. Since both Mr. Roberts and Mr. Williams are Tier II investors, their distribution, if any, derives from Dream Venture as a Tier I investor in accordance with the Approved Interim Distribution Plan. The Receiver, as set forth above, has recommended that the claim of Dream Venture be disallowed because the entity received more funds than the distribution amount under the Approved Interim Distribution Plan.⁵ The Receiver has also listed Dream Venture on the disputed claims list because it has failed to provide the

5. The Receiver asserts that Dream Venture invested \$1,083,000.00, and that according to the Receiver's accountant, Dream Venture's withdrawals totaled \$1,278,495.00. See Reply of Equity Receiver, Doc. 276, at Exhibit A, p. 3.

information which is required to be disclosed under the Approved Interim Distribution Plan. Thus, if Dream Venture's claim is disallowed, claims of investors of Dream Venture would similarly be disallowed.

Mr. Roberts and Mr. Williams seek to be treated as individual Tier I investors, rather than Tier II investors. Both assert a number of reasons why the Court should accord them Tier I status. Mr. Roberts asserts that Dream Venture did not operate as a limited liability company and that therefore Dream Venture should not be counted as a Tier I entity. In support of his argument, Mr. Roberts asserts that Dream Venture has no operating agreement and that Gregg Amerman, the alleged officer of Dream Venture, failed to follow appropriate corporate formalities. Mr. Roberts also asserts that he was advised by Coyt Murray of Tech Traders that Mr. Roberts' investment through Dream Venture was for accounting and legal purposes. Mr. Roberts argues that Amerman acted as an "agent or pseudo partner" of Tech Traders, that Amerman recruited investors to invest in Tech Traders, and that Coyt Murray has a financial interest in Dream Venture. See Objection of James Roberts [272] dated October 15, 2005. He further asserts that as a result of the actions of Amerman and Murray, he should be treated as a Tier I investor.⁶ Mr. Williams relies on the same arguments

6. In support, the claimants submitted copies of an order in a class action filed in the District of Nevada, Federal Trade Commission v. Equinox International Corp., CV-S-99-0969, and assert that Amerman was associated with one of the named defendants in that action.

and also argues that part of the funds received by Dream Venture from Tech Traders should not be considered as distributions. Rather, Mr. Williams asserts that part of the funds were paid by Tech Traders to purchase equity in Dream Venture companies. See Objection of Dave Williams [271].⁷ Mr. Williams further asserts that the funds he contributed should be viewed as a direct loan to Tech Traders. Id.

The Receiver asserts that there is no indication that Tech Trader payments were used to invest in Dream Venture. See Reply of Equity Receiver [276] at 4. Moreover, the Receiver asserts that the arguments raised by these two investors do not warrant treating Dream Venture investors as Tier I investors. Specifically, the Receiver asserts that the approach would present a number of problems to the detriment of the investors as a whole, including "decreas[ing] the percentage distribution available to be paid out to each claim because it would ignore some or all of previous payments received by Tier I and Tier 2 entities that had not been distributed to each constituent member." Id. at 3.

The Court has considered the arguments and submissions of Mr. Roberts and Mr. Williams. The Court finds that funds received by

7. In support of this position, Mr. Roberts submitted copies of his agreement with Dream Venture dated February 3, 2004, along with a copy of a Corporate Promissory Note of Tech Traders, Ltd. dated February 9, 2004 payable to Dream Venture, LLC, with a hand-written notation providing, "Assigned to James Roberts." However, these submissions do not change the undisputed fact that it was Dream Venture and not Mr. Roberts or Mr. Williams that invested directly with Tech Traders. The alleged assignment of the loan does not alter that it was Dream Venture that invested in Tech Traders.

Dream Venture from Tech Traders should be treated as withdrawals regardless of whether Dream Venture used the funds for other purposes and regardless of whether Dream Venture failed to distribute the funds to its investors. The Court further finds that even if corporate formalities were not maintained, that reason would be insufficient to treat Mr. Roberts and Mr. Williams as individual investors with Tech Traders. Mr. Roberts and Mr. Williams did not invest directly with Tech Traders. Rather, it is undisputed that they invested with Dream Venture, notwithstanding their arguments that the funds invested should be classified as loans to it. The tier methodology does not hinge on whether the Tier I investor is a corporation or other legal entity. The critical inquiry is whether funds from the investor were placed directly with Tech Traders, and if so, the amount of funds invested and the amount of withdrawals. Since Mr. Roberts and Mr. Williams did not place funds directly with Tech Traders, they are not Tier I investors.

The Court previously rejected another claimant's similar request to have direct distribution to Tier II investors without regard to the withdrawals made by the investors' Tier I investor. See 2005 WL 2143975 at *15-16. In so doing, the Court determined that "[a]s noted by the Receiver, the 'separate treatment of all Tier Two claims would likely increase the aggregate distribution amount [to these claimants] . . . [as] Tier Two investors who received no withdrawals would receive a greater distribution amount if considered separately than if considered as part of the Tier One

investor's claim[.]' Reply to Response to Motion [132] at 14. The effect, the Receiver asserts, would 'necessarily dilute the amount available for all other claimants.'" 2005 WL 2143975 at *15. The same reasoning applies here as well.

The Court further rejects Mr. Roberts' and Mr. Williams' claim that they should not be restricted by Dream Venture's previous withdrawals of funds in calculating their distribution amounts because of the conduct of Amerman, the alleged relationship of Murray with Dream Venture or Amerman, or because the amounts were alleged to be loans. As previously noted by the Court, "Tier II investors who assert that their Tier I entity improperly utilized their investment may seek relief against such Tier I entity. Similarly, if a Tier I investor is placed and remains on the Disputed Claim Schedule, its Tier II investors may seek legal recourse against such Tier I investors that are not receivership entities." 2005 WL 2143975 at *5. The Receiver argues that the result advocated by Mr. Roberts and Mr. Williams would be "that all ultimate investors would be treated identically, regardless of whether they were Tier I or Tier 4 with respect to Tech Traders, and regardless whether the respective entities with which they invested already received back all or none of their investments, and whether those entities had multiple other unrelated business or investment activities or none." See Reply of Equity Receiver at 3. The Court previously rejected the approach advocated by Mr. Roberts and Mr. Williams and none of the arguments raised support altering the tier approach for Dream Venture investors. For the foregoing

reasons, this Court recommends that the Receiver's objections be sustained and the claim of Dream Venture be disallowed.

Finally, as the Receiver has proposed that the investors' claims set forth herein be disallowed and no appearances having been made by claimants Citco Global Custody N.V. (Stable Absolute Return), Peter Mt. Shasta, Bally Lines Ltd., ICC Finance Corp., and Quest for Life to the Order to Show Cause, and the Court having previously overruled the objections of Citco Global Custody N.V. (Stable Absolute Return) and ICC Finance Corp., the Court recommends that an Order be entered disallowing these claims in their entirety.

I am filing this Report and Recommendation with the Clerk of the Court and sending a copy of same to all parties on the attached service list. Any objections to this Report and Recommendation must be filed within ten (10) days of service pursuant to L. Civ. R. 72.1(c)(2) and Fed. R. Civ. P. 72(b).

Dated: June 19, 2006

s/ Ann Marie Donio
ANN MARIE DONIO
UNITED STATES MAGISTRATE JUDGE

cc: Hon. Robert B. Kugler
(See attached Service List)

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Equity Financial Group, LLC, et al.
Civil No. 04-1512

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CAMDEN VICINAGE
HONORABLE ROBERT B. KUGLER

COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

v.

EQUITY FINANCIAL GROUP, LLC,
et al.,

Defendants.

Civil No. 04-1512-RBK-AMD

ORDER

THIS MATTER having been brought before the Court by way of Order to Show Cause directing certain claimants to appear and show cause why an Order disallowing these claims should not be entered, and the Court having considered the papers filed by Stephen T. Bobo (the "Receiver"), the Equity Receiver for Equity Financial Group, LLC, Tech Traders, Inc., Tech Traders, Ltd., Magnum Investments, Ltd., Magnum Capital Investments, Ltd., Robert W. Shimer and Vincent J. Firth, the objections received, as well as the Report and Recommendation submitted by the Honorable Ann Marie Donio, United States Magistrate Judge, pursuant to 28 U.S.C. § 636(b)(1)(B) and (C); and the Court having made a *de novo* review; and for good cause shown:

IT IS on this ____ day of _____, 2006

ORDERED that the Report and Recommendation is **ADOPTED**;
and it is further

ORDERED that the claims of Citco Global Custody N.V. (Stable Absolute Return), Peter Mt. Shasta, Bally Lines Ltd. c/o Dr. Edward J. Evors, Dream Venture Group, LLC c/o Gregg Amerman, ICC Finance Corp. c/o Shlomo Bitensky, and Quest for Life c/o Samuel J. Grimes, shall be, and hereby disallowed in their entirety.

ROBERT B. KUGLER,
UNITED STATES DISTRICT JUDGE

cc: See Attached Service List

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Commodity Futures Trading Commission v.
Equity Financial Group, LLC, et al.
Civil No. 04-1512

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