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**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 ROBERT W. SHIMER'S
MOTION FOR SUMMARY JUDGMENT**

Having Read the Brief dated April 6, 2006 and accompanying Exhibits filed in support of Defendant's Motion For Summary Judgment, 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 ("CEA") by Defendant Robert W. Shimer ("Shimer") that Summary Judgment is appropriate and is hereby

granted to Defendant Shimer for the reason that the material fact essential to Plaintiff's claim that the entity Shasta Capital Associates, LLC (hereinafter "Shasta") maintained an account in its name from which commodity interests were traded cannot be established and has no basis in fact. Controlling case law requires this fact to exist in order for this Court to hold, under the four-part test enunciated by the Ninth Circuit Court of Appeals in *Lopez v. Dean Witter Reynolds, Inc.* 805 F. 2d 880 (9th Cir. 1986) that the entity Shasta is a commodity pool. Absent that fact, this court adopts the logic and analysis of *Commodity Futures Trading Commission v Mass Marketing Media* 156 F. Supp. 2d 1323 (S.D. Fla. 2001) and finds no connection between the actions of defendant Shimer alleged by Plaintiff's in Counts I and II of Plaintiff's First Amended Complaint and the CEA.

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 for Summary Judgment is appropriate and is hereby granted to Defendant Shimer for the reason that the material fact essential to Plaintiff's claim that the entity Shasta maintained an account in its name from which commodity interests were traded cannot be established and has no basis in fact. Controlling case law requires this fact to exist in order for this Court to hold, under the four-part test enunciated by the Ninth Circuit Court of Appeals in *Lopez v. Dean Witter Reynolds, Inc.* 805 F. 2d 880 (9th Cir. 1986) that the entity Shasta is a commodity pool. Absent that fact, this court adopts the logic and analysis of *Commodity Futures Trading Commission v Mass Marketing Media* 156 F. Supp. 2d 1323 (S.D. Fla. 2001) and finds no connection between the actions of defendant Shimer alleged by Plaintiff in Count III of Plaintiff's First Amended Complaint and the CEA.

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 for Summary Judgment is appropriate and is hereby granted to Defendant Shimer for the reason that the material fact essential to Plaintiff's claim that the entity Shasta maintained an account in its name from which commodity interests were traded cannot be established and has no basis in fact. Controlling case

law requires this fact to exist in order for this Court to hold, under the four-part test enunciated by the Ninth Circuit Court of Appeals in *Lopez v. Dean Witter Reynolds, Inc.* 805 F. 2d 880 (9th Cir. 1986) that the entity Shasta is a commodity pool. Absent that fact, this court adopts the logic and analysis of *Commodity Futures Trading Commission v Mass Marketing Media* 156 F. Supp. 2d 1323 (S.D. Fla. 2001) and finds no connection between the actions of defendant Shimer alleged by Plaintiff in Count IV of Plaintiff's First Amended Complaint and the CEA.

4. With respect to Count V of Plaintiff's First Amended Complaint alleging a violation of Section 13(a) of the CEA 7 U.S.C. §13c(a) by Defendant Shimer in that he aided and abetted Defendant Equity's violation of Regulation 4.30 17 C.F.R. § 4.30 that Summary Judgment is appropriate and is hereby granted to Defendant Shimer for the reason that the material fact essential to Plaintiff's claim that the entity Shasta maintained an account in its name from which commodity interests were traded cannot be established and has no basis in fact. Controlling case law requires this fact to exist in order for this Court to hold, under the four-part test enunciated by the Ninth Circuit Court of Appeals in *Lopez v. Dean Witter Reynolds, Inc.* 805 F. 2d 880 (9th Cir. 1986) that the entity Shasta is a commodity pool. Absent that fact, this court adopts the logic and analysis of *Commodity Futures Trading Commission v Mass Marketing Media* 156 F. Supp. 2d 1323 (S.D. Fla. 2001) and finds no connection between the actions of defendant Shimer alleged by Plaintiff in Count V of Plaintiff's First Amended Complaint and the CEA.

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 Summary Judgment 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 with respect to the allegation that Defendant Shimer also 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 Summary Judgment 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 violated 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, 2006

UNITED STATES DISTRICT JUDGE