

The above quoted statement by the Receiver has no basis in fact yet the Receiver clearly allowed his attorneys to insert that statement into his brief filed in support of his motion to compel *when both the Receiver and his attorneys* knew or should have known that the above cited statement is not factually accurate. The Receiver has had ample opportunity to review all bank statements from all possible sources involved with this case. There is absolutely no evidence that Mr. Firth received ANY "investor source funds" since March 2004.

Furthermore, discovery in this case has clearly revealed that Mr. Firth only received funds that originated from Tech Traders as a result of legitimate agreements executed by authorized parties for the period of time between June 2002 and March 2004, which is less than two years. Moreover the Receiver and his attorneys also know that all payments made during that period of time to Mr. Firth were based upon performance numbers first "verified" by CPA Vernon Abernethy, (an individual whose resume clearly reflected sufficient experience and ability to perform a simple "rate of return" calculation based upon a review of brokerage statements) and then received by Shasta's CPA before being forwarded to Mr. Firth by Shasta's CPA without ever 1) *any indication* to Mr. Firth that Shasta's CPA had a reason to doubt the accuracy of the performance numbers being provided to him and 2) without *any indication from Shasta's CPA* that the procedures Defendant Abernethy consistently stated in writing he was applying to perform his "verification" of Defendant Tech Traders' performance numbers were in any way "flawed" or "inappropriate". In short, Mr. Firth had a clear and reasonable basis to believe that all Shasta or Tech source funds received by him during that period of time were legitimate payments received for work performed.

The above-cited quote from the Receiver's brief in support of his motion to compel Defendant Firth's tax returns is simply a continuation of the fabrications that have plagued the papers and briefs in this case. These fabrications started with the Plaintiff Commodity Future Trading Commission's ("CFTC") brief in support of the receivership that has been imposed upon Mr. Firth for over two years since the inception of the current matter. In support of the CFTC's request for appointment of a Receiver over Mr. Firth the Plaintiff attempted to "imply" in paragraphs 28 and 29 on page 10 of its Original Complaint for Injunctive and Other Equitable Relief that there was an apparent "shortfall" or "discrepancy" of \$5.3 million dollars between the amounts received into Defendant Robert Shimer's attorney escrow account for the benefit of

Shasta's members and the amounts actually transferred out of that account to Defendant Tech Traders, Inc.

Plaintiff CFTC refuses to provide any documents to substantiate how that previous alleged "discrepancy" (clearly inserted into its Original complaint to justify its request for a statutory restraining order) was ever computed. Instead, Plaintiff claimed in its Response to a specific request by Defendant Robert Shimer to Produce Documents that any requests for such documents "have been rendered moot" by a later filing (Plaintiff's First Amended Complaint) which never again referred to that alleged "discrepancy"! ¹

1. It is not "moot" to Mr. Firth or to his wife since that cleverly worded "allegation" caused three armed US Marshals to enter Mr. Firth's home and treat Mr. Firth and his wife as if they were criminals.
2. It is not "moot" since it caused the Receiver to remove everything from Mr. Firth's home office including items having nothing to do with this case: returning computers and his PDA after 3 weeks in non working order and documents months later in a complete shambles.
3. It is not "moot" to Mr. Firth's children who had their individual bank accounts frozen.
4. It is not "moot" to Mr. Firth's potential clients that can still read on the Internet that he is allegedly involved in a fraud case and that "\$5.3 million" is allegedly "missing".
5. It is not "moot" since the initial investigation was completely and utterly botched. After 5 months of investigating, the Plaintiff CFTC still apparently did not know that there were two CPA companies responsible for either verifying Tech's performance and/or conveying the results of that verification to the entities Shasta and Equity. One of those CPAs was specifically listed on the website referred to several times by Plaintiff in its Original Complaint! The Plaintiff CFTC also did not know that the former head of Plaintiff's own Enforcement Division had been retained to represent the interests of both the entity Equity and the entity Shasta before the CFTC.

The "game plan" apparently followed by Plaintiff in obtaining its initial restraining order and now taken up by the Equity Receiver is to engage in a campaign to inflame the Court against the defendant by making totally ridiculous and outrageous claims and allegations prior to any

¹ That alleged "discrepancy" never appeared in any later filing with this Court for a very good reason—it simply was not true because there was never a shred of evidence to support that allegation.

application of the rules of evidence in the hope that the restraining order (and now, in the context of a motion to compel) that the Receiver's request for Mr. Firth's tax returns will be granted by the Court.

Background Chronology

The Receiver was appointed by the Court on April 1, 2004 to assert receivership responsibilities and duties with respect to alleged violations by Defendant Firth of the Commodity Exchange Act from June 2001 through March 2004. As reflected on page 5 of the First Amended Complaint Plaintiff alleges that "(f)rom June 2001 through March 2004 Defendants Equity Firth and Shimer solicited approximately \$15 million...for trading by Tech Traders in commodity futures contracts".²

On April 3, 2004, the Receiver had three armed US Marshals with a representative from the Receiver enter Mr. Firth's house and remove all items in his home office. This included all possible documentation related to this case including all previous tax returns and financial information and many documents having nothing to do with this case, including unrelated company documents and personal information (even copies of grocery receipts). Even after this extraordinary and unnecessarily drastic measure, Mr. Firth through his previous attorneys Menaker & Hermann cooperated completely with the Receiver and the Plaintiff CFTC by providing any and all other information requested since it was his belief that once they determined the facts they would conclude Mr. Firth was wrongfully accused and that the complaint against him would be dismissed. Mr. Firth never imagined that this case would continue to drag on for well over two years.

The record of evidence that is in possession of the Plaintiff CFTC and the Receiver clearly confirms that Mr. Firth should not have been party to the Original Complaint, let alone the First Amended Complaint. Mr. Firth is a businessman and expects that when a professional is hired that it is their duty as a professional to perform the duty hired to perform.

- He expected Mr. V. Abernethy to complete the duties he himself set out.
- He expected Ms. E. Teague to complete the duties as agreed
- He expected Mr. R. Shimer to complete the duties as agreed

² See page 5, paragraph 4 of First Amended Complaint filed by Plaintiff on June 24, 2004.

- He expected Attorney Aronow to work with his former employer, contact them and determine a course of action
- He expected his previous law firm, Menaker and Hermann, to represent and defend him vigorously by pointing out to the Court that no precedent exists for the CFTC's allegation that the entity Shasta is a commodity pool and that the case law actually cited by Plaintiff in support of this crucial and pivotal issue does not favor Plaintiff's position.

By letter dated September 8, 2005 Bina Sanghavi, legal counsel for the Receiver requested that Mr. Firth provide a current statement of his assets and liabilities as well as a statement of his current monthly expenses. She also requested a copy of Mr. Firth's joint tax return filed with his wife Patricia (who has nothing to do whatsoever with this case) for the tax year 2004 and subsequent request for tax year 2005. To date, as the result of all the documentation previously provided by Defendant Firth and obtained through others, the Equity Receiver has been able to meticulously trace every single dollar that was ever paid from Defendant Tech to *any entity in any way associated with Defendant Firth*. Mr. Firth cooperated fully with that endeavor on the part of the Receiver because all payments from Defendant Tech and received by any entity associated with Mr. Firth were received in good faith with *no knowledge* (either actual or constructive) that the trading performance numbers being consistently verified locally month after month by CPA Vernon Abernethy and provided each month to the CPA of Shasta were flawed or incorrect in any way. The conclusion that any and all payments from Tech to any entity associated with Defendant Firth were received in good faith and with no knowledge of the fact that Tech was suffering losses instead of profits is reasonable and is supported by a preponderance of the evidence found in the pre-trial discovery record.

Regarding the Receiver's Request for Defendant Firth's 2004 and 2005 tax returns

Why are these additional tax returns "critical " now for the execution of the Equity Receiver's duties? As the facts and evidence of this case will prove upon presentation at trial, Mr. Firth had no knowledge of the fact that Tech Traders was suffering losses instead of profits. That had the Plaintiff CFTC completed a responsible and thorough investigation and had not misled this Court in the Original Complaint, Mr. Firth would not even be a party to this Receivership.

It is reasonable and responsible for this Court to deny the Receiver's request at this time for several reasons: 1) Mr. Firth's tax return information is highly confidential and should not be compelled to be produced if there is any possibility that a final determination on the merits will eliminate the Receiver's authority to request such information from Mr. Firth and 2) the Receiver's ultimate responsibility in this matter is not impaired in any way if he is simply forced to renew his request for this sensitive and proprietary financial information of Mr. Firth at a later time after a trial on the merits or at least until after a ruling by the Court with respect to the dispositive motions currently before the Court. The legal basis offered to the Court by the Plaintiff in support of its allegations of Commodity Exchange Act violations alleged against Mr. Firth and the resulting receivership of Mr. Firth is apparently an issue of first impression in the Federal courts. A decision by this Court in favor of Mr. Firth's current motion to dismiss would remove any authority of the Equity Receiver to compel tax returns from Mr. Firth.

It is true that the Receiver has the responsibility to trace and account for every dollar paid to anyone by Defendant Tech Traders, Inc. or by any other entity owned or controlled by Defendant Coyt E. Murray. In recognition of that responsibility, all banking records and all accounting records in the possession of Defendant Firth were made available to the Receiver.

The Receiver's present Motion to Compel proposes to take the Receiver far beyond any responsibility to account for the funds received by the entity Shasta and forwarded to the Defendant Tech Traders. Receivership funds originally placed by Shasta's investors with Shasta and consequently forwarded by Shasta to defendant Tech Traders should not be spent by the Receiver or his accountants and attorneys attempting to "prove" that somehow, in some way, Mr. Firth's income or lack thereof for 2004 and 2005 are important to this overall case.

Mr. Firth would welcome oral argument on the points discussed in both his Brief and the Equity Receiver's. The Equity Receiver's purported concerns about Mr. Firth's joint tax returns with his wife for 2004 and 2005 and his current financial status are unwarranted at this time and have no basis in fact.

Dated: July 12, 2006

Respectfully submitted,



Vincent J. Firth, *pro se*

CERTIFICATE OF SERVICE

The undersigned does hereby certify that on July 13, 2006 he caused copies of his Opposition To the Temporary Equity Receiver's Motion To Compel Vincent Firth to Produce Tax Returns to be served upon the following parties at the address indicated below by First Class mail.

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