

In The United States District Court
For the District of New Jersey

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U.S. DISTRICT COURT

2005 MAY -6 A 11:03

COMMODITY FUTURES TRADING COMMISSION,

Plaintiff

vs.

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

Defendants

Civil Action No. 04CV 1512

Honorable Robert B. Kugler

**CHALLENGE WITH RESPECT TO EQUITY RECEIVER'S OBJECTION
TO CLAIM OF ALISON E. SHIMER**

Alison E. Shimer hereby challenges the Equity Receiver's objection to her rightful claim as an investor in Shasta Capital Associates, LLC ("Shasta") to participate in the Equity Receiver's proposed interim distribution. The Equity Receiver's decision to exclude her from participation in the proposed interim distribution at this time is arbitrary and unreasonable and also violates the basic concepts of fairness for several reasons.

The Equity Receiver's attempt to offset my claim to an interim distribution as a legitimate member of Shasta by citing amounts repaid to Robert W. Shimer by the corporate entity Edgar Holding Group, Inc is arbitrary, unreasonable and unjustified.

The Equity Receiver inaccurately cites in his objections to certain investor claims (as a reason for disputing my rightful claim to an interim distribution as a member of Shasta) the allegation that my husband Robert W. Shimer purportedly received \$196,550.00 from the corporate entity Edgar Holding Group, Inc. ("Edgar"). It is unclear how the Equity Receiver arrived at that particular amount.

The accounting records of Edgar show that my husband Robert W. Shimer received \$41,350.00 from this corporate entity in early 2001 as partial repayment of a loan that Robert W. Shimer previously made to the corporate entity Edgar. The funds used to repay this amount to Robert W. Shimer were corporate funds that did *not* come from defendant Tech Traders. There is, therefore, absolutely no basis in fact for the Receiver to treat the amount of this particular repayment to my husband defendant Robert W. Shimer by the corporate entity Edgar as an offset against amounts due to me as an investor in Shasta.

The accounting records of the corporate entity Edgar also show that the balance of \$110,400.00 then still due defendant Robert W. Shimer as of April 1, 2001 for funds previously loaned to Edgar were completely repaid to Robert W. Shimer by the end of August, 2001—*a full 6 months before any funds were ever received by Tech Traders by any investor in Shasta and before (to the best of my knowledge) any funds were received by Tech Traders from any other current claimant.* While it is true that this amount of \$110,400.00 was repaid by Edgar to Robert W. Shimer as a result of amounts received by Edgar from repayments made to Edgar by defendant Tech Traders, Inc. it is highly doubtful that any of the other claimants invested any funds either directly or indirectly with defendant Tech Traders, Inc. before or during the time that Edgar received the repayment via Tech Traders.

In the absence of evidence that any of the other current claimants invested either directly or indirectly with defendant Tech Traders, Inc. prior to or concurrent to the time that Robert W. Shimer received repayment from Edgar, any such repayments by Edgar to Robert W. Shimer did not prejudice or diminish the claims of any other stated current claimants and, therefore, it is arbitrary and unreasonable for the Receiver to suggest that any such repayments properly made by Edgar to Robert W. Shimer during the summer of 2001 should be counted as an offset to the amount that I invested with Shasta in the fall of 2003.

As a further and additional and separate basis to accept my claim for participation in the interim distribution proposed by the equity Receiver I would point out that it may be true that the Plaintiff CFTC has allegedly uncovered evidence that purports to show that defendant Tech Traders, Inc. lost money while trading investor funds during the latter part of 2001 and that the defendant Tech Traders, Inc. also allegedly lost money trading in later calendar years. However, to my knowledge there has been no evidence presented to this Court that contradicts the positive, profitable trading performance reported by Defendant Coyt E. Murray to Robert W. Shimer during the early part of 2001 either prior to or during the time period when payments from defendant Tech Traders, Inc. to Edgar provided the basis for Edgar's ability to repay the amount of \$110,400.00 to Robert W. Shimer during the summer of 2001.

In the absence of clear evidence that Tech Traders lost money during the time that the principal amount of Edgar's funds were placed with Tech during the early part of 2001 it is completely arbitrary and totally unreasonable for either the equity Receiver or the Court to "assume" that Tech lost money during that period of time. In the absence of clear evidence to the contrary, payments made to the corporate entity Edgar by the entity defendant Tech Traders, Inc. that were used by Edgar to repay Robert W. Shimer during the summer of 2001 were amounts that were arguably profitably traded by Tech Traders, Inc.

The accounting records of Edgar further show that in calendar year 2002, defendant Robert W. Shimer did not receive any payment for legal services that he rendered to Edgar. The accounting records of Edgar further show that during all of calendar year 2003 Robert W. Shimer received very modest legal fees in the total amount of \$24,375.00 from Edgar. However, only \$9,847.00 of this amount were funds received by Edgar that can be reasonably attributed to defendant Tech Traders, Inc. Defendant Robert W. Shimer received no funds from the corporate entity Edgar during calendar year 2004. Defendant Robert W. Shimer also still owes the corporate entity

Edgar a total amount of \$18,850.00 for several small loans made by Edgar to Mr. Shimer during calendar year 2002 and 2003.

The legal fees that Robert W. Shimer received from the corporate entity Edgar were reasonable, were received in good faith and were received without any knowledge of any prejudice to any other claimant and were certainly commensurate with the amount of work that he performed for the corporate entity Edgar. The small amount still owed by Mr. Shimer to the entity Edgar is a relatively small amount and represents a reasonable further accommodation by Edgar to Mr. Shimer for the legal services that Mr. Shimer continuously provided to Edgar. In light of all of the above facts and representations it is arbitrary and unreasonable for the Equity Receiver to cite payments by the corporate entity Edgar to Robert W. Shimer as a reason to deny me my rightful share of the Equity Receiver's proposed interim distribution.

The Equity Receiver's attempt to offset my claim to an interim distribution as a legitimate member of Shasta by citing amounts paid to our joint checking account is arbitrary, unreasonable and unjustified.

The Equity Receiver further states that I am not entitled to participate in the Receiver's proposed interim distribution because the joint banking account I share with my husband defendant Robert W. Shimer at Patriot Bank shows the receipt of the alleged amount of \$212,945.00 and also notes that my husband's escrow account at that same bank shows receipt of another \$24,150.00.

My husband worked for over three years on the Shasta project and much of that time that project required practically his full time attention. It is outrageous that the Equity Receiver should purport to withhold an interim distribution from me as a legitimate member of Shasta primarily because my husband was actually paid for legal work that he performed in good faith as an attorney for his legal clients.

The Equity Receiver is well paid for the services he is rendering in this matter to the immediate and direct detriment of every member of Shasta because every fee charged by the Equity Receiver comes directly out of the amount remaining for distribution to each of Shasta's members and other legitimate claimants. The Equity Receiver and every other attorney associated in any way with respect this matter is clearly being paid an hourly rate far in excess of the effective hourly rate that my husband received for the diligent and good faith legal advice and guidance he provided to his clients Shasta Capital Associates, LLC and to New Century Trading, LLC as well as to the managers of both of those entities over the course of more than 3 years.

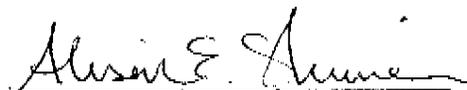
It is disingenuous and unreasonable for the Equity Receiver to take the position that other attorneys associated with this matter are fully entitled to be paid (to the current and continuing detriment of Shasta's members and other claimants) but somehow the payments previously received by my husband in good faith for legitimate legal work performed for his clients somehow occupy an "inferior" and or "suspect" category that require an offset against my legitimate and separate claim to participate in the proposed interim distribution. Such a position

on the part of the Equity Receiver is arbitrary, and it is unreasonable and it violates basic concepts of fairness.

Any hearing on the merits of my claim to participate in the interim distribution proposed by the Equity Receiver should be deferred until after the current return date for Robert W. Shimer's pending motions to dismiss.

Furthermore, it is worth noting that my husband Robert W. Shimer currently has filed with the Court several potentially dispositive motions to dismiss this matter under Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure with respect to himself. If either or both of those motions are granted by the Court, Robert W. Shimer's status in this matter may change dramatically from one of defendant to non defendant. At the very least it seems appropriate for the Court to defer a final decision with respect to my claim for participation in the proposed interim distribution until the Court has had an opportunity to rule on my husband's motions to dismiss filed recently with the Court.

Respectfully submitted,



Alison E. Shimer
1225 W. Leesport Rd.
Leesport, PA 19533
(610) 926-4278

CERTIFICATE OF SERVICE

I have forwarded by Federal Express, a copy of this Challenge To The Equity Receiver's Objection to My Claim to the Equity Receiver Stephen T. Bobo, Esq., Sachnoff & Weaver, Ltd. 10 S. Wacker Drive, Suite 4000, Chicago, Illinois 60606 on May 5, 2005.



Alison E. Shimer
Alison E. Shimer