

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

COMMODITY FUTURES
TRADING COMMISSION,

Plaintiff,

v.

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

Defendants.

Civil Action No. 04-1512

Honorable Robert B. Kugler

**CERTIFICATION IN SUPPORT
OF NOTICE OF MOTION TO
VACATE COURT IMPOSED
STAY**

Terry Brown, being of full age, hereby certifies as follows:

I am a Senior Assct Manager for Eastern Savings Bank, FSB ("Eastern") and in this capacity I am authorized to make the within Certification.

1. This is an action arising pursuant to a case under Title 7 of the United States Code.
2. Eastern is a federal savings bank organized and existing under the laws of the United States of America and duly authorized to conduct business in all states, including the State of New Jersey.
3. Vincent Firth ("Firth") is a named defendant in the above-captioned case.

4. Firth is currently obligated to Eastern, under the terms of a certain Note (the "Note") dated August 14, 2003, in the original principal amount of \$442,000.00, bearing interest at the rate of 12.99%, and payable in monthly installments of \$6,350.47.

5. As security for repayment of the Note, Firth executed a certain Mortgage (the "Mortgage") dated August 14, 2003, in the amount of \$442,000.00, in favor of Eastern, encumbering certain real property located at 3 Aster Court, Medford, New Jersey 08055 ("Real Property"). The Note and Mortgage are attached hereto as Exhibit "A".

6. On April 1, 2004, this Court entered a Statutory Restraining Order and Asset Freeze ("Order") on all assets in the name of or under the control of Equity Financial Group, Tech Traders, Vincent Firth, and Robert W. Shimer.

7. Under the terms of the Order, Eastern is prohibited from instituting any action to collect payment on the Note, including but not limited to, a foreclosure action against the Real Property.

8. Since the entry of the Order Firth ceased making monthly payments to Eastern, thereby defaulting on the Note.

9. Firth remains in default under the terms of the Note and Mortgage and is currently due for the September 19, 2004 payment.

10. Eastern has been unable to institute a foreclosure action due to the Order.

11. Since the entry of the Order, Eastern and it's counsel have communicated with the Receiver, Stephan T. Bobo, Esq., on several occasions.

12. On or about October 20, 2005 and other occasions, Mr. Bobo advised during a telephone conversation that he would have no objection to the modification of the Statutory

Restraining Order and Asset Freeze to permit Eastern to institute legal action to enforce its rights under the Note and Mortgage, including foreclosure upon the Real Property.

13. Upon information and belief, in addition to the Mortgage in favor of Eastern, the Real Property is encumbered by several liens to other creditors, and Firth has no equity in the Real Property. Attached hereto as Exhibit "B" is an opinion of value establishing a value estimate of \$670,000.00 as of November 9, 2004. Against this value are the following liens of record (as established in a title search attached hereto as Exhibit "C").

- Judgment by Oberecker for \$67,500.00 plus interest since March 25, 1993.
- Mortgage with America Financial for \$200,000.00.
- Certificate of Sale for \$2,391.22 plus interest since September 16, 1996.
- Federal Tax Lien for \$40,239.56 plus interest since December 5, 1996.
- Mortgage to Eastern which has a current payoff in excess of \$520,000.00.
- Federal Tax Lien for \$18,094.27 plus interest since January 19, 2005.
- Judgment by Schwarzwaelder for \$110,484.88 plus interest since November 4, 1996.
- Judgment by Levine and Nielsen for \$49,066.67 plus interest from December 11, 2000.
- Judgment by Ohio Feed Lot LLC for \$81,035.00 plus interest since June 9, 2004.

14. The above liens total \$1,010,811.60, however, with interest, penalties and current outstanding real estate taxes that number could very well be doubled. Given the Real Property has a value of approximately \$670,000.00, clearly there is no equity in the Real Property for Firth or any of his creditors. Eastern, however, continues to be prejudiced by not being able to enforce its mortgage debt while Firth remains in default. The Order restraining Eastern from foreclosing is solely being used as a protective measure by Firth to avoid paying his mortgage obligation. For

this reason, it is respectfully requested that Eastern be given relief from the Order to pursue collection of its Mortgage debt.

I certify that the foregoing statements made by me are true to the best of my knowledge. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Eastern Savings Bank, FSB

By: 
Terry Brown, Sr. Asset Manager