

ROBERT W. SHIMER, ESQ. *Pro se*

**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

Notice of Motion For
Summary Judgment pursuant to
Federal Rule Of Procedure 56(b)

Defendants.

-----X

TO: Elizabeth Streit, Esq.
Commodity Futures Trading Commission
525 West Monroe St., Suite 1100
Chicago, Illinois 60661

AUSA Paul Blaine, Esq.
Camden Federal Building
401 Market Street, 4th Floor
Camden, New Jersey 08101

Stephen T. Bobo, Esq. (Receiver)
Bina Sanghavi, Esq.
Raven Moore, Esq.
Sachnoff & Weaver, Ltd.
10 South Wacker Drive, Suite 4000
Chicago, Illinois 60606-7507

Cirino M. Bruno, Esq.
Martin H. Kaplan, Esq.
Melvyn J. Falis, Esq.
Gusrae, Kaplan, Bruno & Nusbaum, PLLC
120 Wall Street
New York, New York 10005

Samuel F. Abernethy, Esq.
Menaker & Herrmann
10 E. 40th Street, 43rd Floor
New York, New York 10016-0301

Jack Vernon Abernethy
413 Chester Street
Gastonia, NC 28052

Vincent J. Firth
3 Aster Court
Medford, New Jersey 08055

PLEASE TAKE NOTICE that on Friday, August 5, 2005 at 10:00 A.M., or as soon thereafter as movant may be heard, the undersigned *pro se* defendant, Robert W. Shimer will move before the Hon. Robert B. Kugler, U.S.D.J., sitting at the U.S. District Courthouse at 4th and Cooper Streets, Camden, New Jersey, for an order granting Summary Judgment in favor of Defendant Shimer pursuant to Federal Rule 56(b) with respect to all Counts of Plaintiff's First Amended Complaint For Injunctive And Other Equitable Relief And Civil Monetary Penalties Under the Commodity Exchange Act, 7 U.S.C. §§ 1 *et seq.*

ORAL ARGUMENT IS HEREBY REQUESTED.

In support of this motion, movant relies upon the Brief and its attached Exhibits submitted herewith. A proposed form of order granting the relief sought is also submitted.



ROBERT W. SHIMER, Esq., *pro se*
1225 W. Leesport Rd.
Leesport, PA 19533
(610) 926-4278
(610) 926-8828 (fax)

CERTIFICATE OF SERVICE

The undersigned does hereby certify that on July 7, 2005 he caused a true and correct copy of the foregoing Brief with supporting Exhibits, Motion for Summary Judgment, Notice of Motion, Certificate of Service and Proposed Order to be sent via regular U.S. Mail to the following.

Elizabeth M. Streit, Esq.
Commodity Futures Trading Commission
525 West Monroe St., Suite 1100
Chicago, Illinois 60661

AUSA Paul Blaine, Esq
Camden Federal Building
401 Market Street, 4th Floor
Camden, NJ 08101

Stephen T. Bobo, Esq. (Receiver)
Bina Sanghavi, Esq.
Raven Moore, Esq.
Sachnoff & Weaver, Ltd.
10 South Wacker Drive, Suite 4000
Chicago, Illinois 60606-7507

*On behalf Coyt E. Murray, Tech Traders, Inc. Ltd.,
Magnum Investments, Ltd., & Magnum
Capital Investments, Ltd.*
Cirino M. Bruno, Esq.
Martin H. Kaplan, Esq.
Melvyn J. Falis, Esq.
Gusrae, Kaplan, Bruno & Nusbaum, PLLC
120 Wall Street
New York, New York 10005

On behalf of Equity Financial Group, LLC
Samuel F. Abernethy, Esq.
Menaker and Herrmann
10 E. 40th St., 43rd Floor
New York, NY 10016-0301

Defendant J. Vernon Abernethy, pro se
Mr. Jack Vernon Abernethy
413 Chester Street
Gastonia, NC 28052

Defendant Vincent J. Firth, pro se
Vincent J. Firth
3 Aster Court
Medford, New Jersey 08055



ROBERT W. SHIMER, *pro se*

ROBERT W. SHIMER, ESQ., Pro se
1225 W. Leesport Rd.
Leesport, PA 19533
(610) 926-4278

**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., : Motion For Summary Judgment
MAGNUM CAPITAL INVESTMENTS, LTD.,
VINCENT J. FIRTH, ROBERT W. SHIMER,
COYT E. MURRAY, & J. VERNON ABERNETHY
Defendants.

-----X
Pursuant to Federal Civil Procedure Rule 56(b) defendant Robert W. Shimer, Esq. *pro se* respectfully moves the Court for Summary Judgment for himself with respect to Counts I, II, III, IV and V of Plaintiff's First Amended Complaint For Injunctive and Other Equitable Relief And Civil Monetary Penalties Under the Commodity Exchange Act, 7 U.S.C. §§ 1 *et seq.* (hereinafter "CEA"). More specifically, Robert W. Shimer moves for Summary Judgment pursuant to Federal Rule 56(b) with respect to each of the following:

- 1) Plaintiff's claim in Count I that defendant Shimer violated Section 4b(a)(2) of the Commodity Exchange Act 7 U.S.C. §§ 6b(a)(2). Controlling federal case law requires that a motion for summary judgment by a Defendant be granted against Plaintiff if a material fact essential to Plaintiff's claim cannot be established and has no basis in fact.

For Plaintiff to succeed with respect to its allegation that Shimer violated Section 4b(a)(2) of the CEA Plaintiff must be able to “connect” Shimer’s alleged acts to the CEA. That “connection” is critically dependent upon a finding by the Court that the entity Shasta Capital Associates, LLC (hereinafter “Shasta”) is a “commodity pool”. Controlling case law of *Lopez v. Dean Witter Reynolds, Inc.* requires that for an entity such as Shasta to be a “commodity pool” it must own *in its name* a trading account from which commodity interests were traded on its behalf. Because no such account in the name of Shasta ever existed, Shasta is not a “commodity pool” and, therefore, Defendant Shimer is entitled, as a matter of law, to summary judgment with respect to Count I of Plaintiff’s First Amended Complaint because Plaintiff has not and cannot make a sufficient showing on an essential element necessary to sustain Plaintiff’s allegation in Count I that Defendant Shimer violated Section 4b(a)(2)(i)-(iii) of the CEA. In support of his motion for summary judgment with respect to Count I Defendant Shimer respectfully refers the Court to his Brief and Exhibits filed in support thereof;

- 2) Plaintiff’s claim in Count I that Defendant Shimer violated Section 13(b) of the Commodity Exchange Act, 7 U.S.C. §13c(b) by knowingly inducing Defendant Equity’s alleged violation of Section 4(b)(2)(i)-(iii) of the Commodity Exchange Act 7 U.S.C. §§ 6b(a)(2)(i)-(iii). Controlling federal case law requires that a motion for summary judgment by a Defendant be granted against Plaintiff if a material fact essential to Plaintiff’s claim cannot be established and has no basis in fact. For Plaintiff to succeed with respect to its allegation that Shimer violated Section 13(b) of the CEA Plaintiff must be able to “connect” Shimer’s alleged acts to the CEA. That “connection” is critically dependent upon a finding by the Court that the entity Shasta is a “commodity pool” and that Defendant Equity Financial Group, LLC (hereinafter “Equity”) is, therefore, the “operator” of that alleged “commodity pool”. Controlling case law of *Lopez v. Dean Witter Reynolds, Inc.* requires that for an entity such as Shasta to be a “commodity pool” it must own *in its name* a trading account from which commodity interests were traded on its behalf. Because no such account in the name of Shasta ever existed, Shasta is not a “commodity pool” and, therefore, Defendant Shimer is entitled, as a matter of law, to summary judgment with respect to Count I of Plaintiff’s First Amended Complaint

because Plaintiff has not and cannot make a sufficient showing on an essential element necessary to sustain Plaintiff's allegation in Count I that Defendant Shimer violated Section 13(b) of the CEA. In support of his motion for summary judgment with respect to this allegation contained in Count I Defendant Shimer respectfully refers the Court to his Brief and Exhibits filed in support thereof;

3) Plaintiff's claim in Count II that defendant Shimer violated Section 4o(1) of the CEA 7 U.S.C. §6o(1). Controlling federal case law requires that a motion for summary judgment by a Defendant be granted against Plaintiff if a material fact essential to Plaintiff's claim cannot be established and has no basis in fact. For Plaintiff to succeed with respect to its allegation that Shimer violated Section 4o(1) of the CEA Plaintiff must be able to "connect" Shimer's alleged acts to the CEA. That "connection" is critically dependent upon a finding by the Court that the entity Shasta is a "commodity pool" and that Defendant Equity is, therefore, the "operator" of that alleged "commodity pool". Controlling case law of *Lopez v. Dean Witter Reynolds, Inc.* requires that for an entity such as Shasta to be a "commodity pool" it must own *in its name* a trading account from which commodity interests were traded on its behalf. Because no such account in the name of Shasta ever existed, Shasta is not a "commodity pool" and, therefore, Defendant Shimer is entitled, as a matter of law, to summary judgment with respect to Count II of Plaintiff's First Amended Complaint because Plaintiff has not and cannot make a sufficient showing on an essential element necessary to sustain Plaintiff's allegation in Count II that Defendant Shimer violated Section 4o(1) of the CEA. In support of his motion for summary judgment with respect to this allegation contained in Count II Defendant Shimer respectfully refers the Court to his Brief and Exhibits filed in support thereof;

4) Plaintiff's claim in Count II that Defendant Shimer violated Section 13(b) of the Commodity Exchange Act, 7 U.S.C. §13c(b) by knowingly inducing Defendant Equity's alleged violation of Section 4o(1) of the CEA, 7 U.S.C. §6o(1). Controlling federal case law requires that a motion for summary judgment by a Defendant be granted against

Plaintiff if a material fact essential to Plaintiff's claim cannot be established and has no basis in fact. For Plaintiff to succeed with respect to its allegation that Shimer violated Section 13(b) of the CEA Plaintiff must be able to "connect" Shimer's alleged acts to the CEA. That "connection" is critically dependent upon a finding by the Court that the entity Shasta is a "commodity pool" and that Defendant Equity is, therefore, the "operator" of that alleged "commodity pool". Controlling case law of *Lopez v. Dean Witter Reynolds, Inc.* requires that for an entity such as Shasta to be a "commodity pool" it must own *in its name* a trading account from which commodity interests were traded on its behalf. Because no such account in the name of Shasta ever existed, Shasta is not a "commodity pool" and, therefore, Defendant Shimer is entitled, as a matter of law, to summary judgment with respect to Count II of Plaintiff's First Amended Complaint because Plaintiff has not and cannot make a sufficient showing on an essential element necessary to sustain Plaintiff's allegation in Count II that Defendant Shimer violated Section 13(b) of the CEA. In support of his motion for summary judgment with respect to this allegation contained in Count II Defendant Shimer respectfully refers the Court to his Brief and Exhibits filed in support thereof;

- 5) Plaintiff's claim in Count III that Defendant Shimer violated Section 13(b) of the Commodity Exchange Act, 7 U.S.C. §13c(b) by knowingly inducing Defendant Equity's alleged violation of Section 4m(1) of the CEA, 7 U.S.C. §6m(1). Controlling federal case law requires that a motion for summary judgment by a Defendant be granted against Plaintiff if a material fact essential to Plaintiff's claim cannot be established and has no basis in fact. For Plaintiff to succeed with respect to its allegation that Shimer violated Section 13(b) of the CEA Plaintiff must be able to "connect" Shimer's alleged acts to the CEA. That "connection" is critically dependent upon a finding by the Court that the entity Shasta is a "commodity pool" and that Defendant Equity is, therefore, the "operator" of that alleged "commodity pool". Controlling case law of *Lopez v. Dean Witter Reynolds, Inc.* requires that for an entity such as Shasta to be a "commodity pool" it must own *in its name* a trading account from which commodity interests were traded on its behalf. Because no such account in the name of Shasta ever existed, Shasta is not a "commodity pool" and, therefore, Defendant Shimer is entitled, as a matter of law, to

summary judgment with respect to Count III of Plaintiff's First Amended Complaint because Plaintiff has not and cannot make a sufficient showing on an essential element necessary to sustain Plaintiff's allegation in Count III that Defendant Shimer violated Section 13(b) of the CEA. In support of his motion for summary judgment with respect to this allegation contained in Count III Defendant Shimer respectfully refers the Court to his Brief and Exhibits filed in support thereof;

- 6) Plaintiff's claim in Count III that Defendant Shimer violated Section 13(a) of the CEA, 7 U.S.C. §13c(a) as an alleged principal of Equity by accepting funds in an attorney escrow account thereby aiding the alleged violation by Equity of Section 4m(1) of the CEA, 7 U.S.C. §6m(1). Controlling federal case law requires that a motion for summary judgment by a Defendant be granted against Plaintiff if a material fact essential to Plaintiff's claim cannot be established and has no basis in fact. For Plaintiff to succeed with respect to its allegation that Shimer violated Section 13(a) of the CEA Plaintiff must be able to "connect" Shimer's alleged acts to the CEA. That "connection" is critically dependent upon a finding by the Court that the entity Shasta is a "commodity pool" and that Defendant Equity is, therefore, the "operator" of that alleged "commodity pool". Controlling case law of *Lopez v. Dean Witter Reynolds, Inc.* requires that for an entity such as Shasta to be a "commodity pool" it must own *in its name* a trading account from which commodity interests were traded on its behalf. Because no such account in the name of Shasta ever existed, Shasta is not a "commodity pool" and, therefore, Defendant Shimer is entitled, as a matter of law, to summary judgment with respect to Count III of Plaintiff's First Amended Complaint because Plaintiff has not and cannot make a sufficient showing on an essential element necessary to sustain Plaintiff's allegation in Count III that Defendant Shimer violated Section 13(a) of the CEA. In support of his motion for summary judgment with respect to this allegation contained in Count III Defendant Shimer respectfully refers the Court to his Brief and Exhibits filed in support thereof;

- 7) Plaintiff's claim in Count IV that Defendant Shimer violated Section 4k(2) of the CEA, 7 U.S.C. §6k(2) by failing to register as an alleged AP (Associated Person) of Equity. Controlling federal case law requires that a motion for summary judgment by a Defendant be granted against Plaintiff if a material fact essential to Plaintiff's claim cannot be established and has no basis in fact. For Plaintiff to succeed with respect to its allegation that Shimer violated Section 4k(2) of the CEA Plaintiff must be able to "connect" Shimer's alleged acts to the CEA. That "connection" is critically dependent upon a finding by the Court that the entity Shasta is a "commodity pool" and that Defendant Equity is, therefore, the "operator" of that alleged "commodity pool". Controlling case law of *Lopez v. Dean Witter Reynolds, Inc.* requires that for an entity such as Shasta to be a "commodity pool" it must own *in its name* a trading account from which commodity interests were traded on its behalf. Because no such account in the name of Shasta ever existed, Shasta is not a "commodity pool" and, therefore, Defendant Shimer is entitled, as a matter of law, to summary judgment with respect to Count IV of Plaintiff's First Amended Complaint because Plaintiff has not and cannot make a sufficient showing on an essential element necessary to sustain Plaintiff's allegation in Count IV that Defendant Shimer violated Section 4k(2) of the CEA. In support of his motion for summary judgment with respect to this allegation contained in Count IV Defendant Shimer respectfully refers the Court to his Brief and Exhibits filed in support thereof;
- 8) Plaintiff's claim in Count V that defendant Shimer violated Section 13(a) of the Commodity Exchange Act, 7 U.S.C. §13c(a) by aiding and abetting defendant Equity's violation of Regulation 4.30 17 C.F.R. § 4.30. Controlling federal case law requires that a motion for summary judgment by a Defendant be granted against Plaintiff if a material fact essential to Plaintiff's claim cannot be established and has no basis in fact. For Plaintiff to succeed with respect to its allegation that Shimer violated Section 13(a) of the CEA Plaintiff must be able to "connect" Shimer's alleged acts to the CEA. That "connection" is critically dependent upon a finding by the Court that the entity Shasta is a "commodity pool" and that Defendant Equity is, therefore, the "operator" of that alleged "commodity pool". Controlling case law of *Lopez v. Dean Witter Reynolds, Inc.* requires

that for an entity such as Shasta to be a “commodity pool” it must own *in its name* a trading account from which commodity interests were traded on its behalf. Because no such account in the name of Shasta ever existed, Shasta is not a “commodity pool” and, therefore, Defendant Shimer is entitled, as a matter of law, to summary judgment with respect to Count V of Plaintiff’s First Amended Complaint because Plaintiff has not and cannot make a sufficient showing on an essential element necessary to sustain Plaintiff’s allegation in Count V that Defendant Shimer violated Section 13(a) of the CEA. In support of his motion for summary judgment with respect to this allegation contained in Count V Defendant Shimer respectfully refers the Court to his Brief and Exhibits filed in support thereof;

Date: July 7, 2005

Respectfully submitted,



ROBERT W. SHIMER, Esq.
1225 W. Leesport Rd.
Leesport, PA 19533
(610) 926-4278
(610) 926-8828 (fax)