

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CAMDEN VICINAGE

COMMODITY FUTURES TRADING	:	
COMMISSION,	:	
	:	
Plaintiff,	:	Civil No. 04-1512 (RBK)
	:	
v.	:	OPINION
	:	
EQUITY FINANCIAL GROUP LLC,	:	
et al.,	:	
	:	
Defendants.	:	

KUGLER, United States District Judge:

This matter comes before the Court upon the motion of Sterling Trust (Anguilla), Ltd. ("Trust") to intervene in this action as a matter of right pursuant to Federal Rule of Civil Procedure 24(a)(2). This Court denied Trust's original motion to intervene on May 14, 2004. Trust now renews its motion to intervene, this time "for the limited purpose of moving for partial relief from this Court's order dated August 24, 2004 . . . granting the CFTC's preliminary injunction motion on consent."

"[A] non-party is permitted to intervene under Fed. R. Civ. P. 24(a)(2) only if: (1) the application for intervention is timely; (2) the applicant has a sufficient interest in the litigation; (3) the interest may be affected or impaired, as a

practical matter by the disposition of the action; and (4) the interest is not adequately represented by an existing party in the litigation." See Mountain Top Condo. Ass'n v. Dave Stabbert Master Builder, Inc., 72 F.3d 361, 366 (3d Cir. 1995). This Court denied Trust's first motion to intervene because it found that Trust's interest was adequately represented by the CFTC and the Receiver. (Tr. of 5/14/04 at 43-46.) Trust now argues that the entry of preliminary injunction on August 24, 2004, upon consent of the CFTC and the Receiver, shows that these parties do not adequately represent Trust's interest. In fact, Trust argues, the interests of those parties were adverse to that of Trust: "The CFTC was the movant and sought the preliminary injunction. The Receiver wished to maximize the amount of assets he has to administer and was aligned with the CFTC." (Trust's Br. at 7.)

However, the CFTC correctly points out that "[t]he purpose of a preliminary injunction is not to determine pool participant rights to those assets." Rather, the preliminary injunction "maintains a freeze on their assets and otherwise maintains the status quo while the Commission and the Receiver determine how and to whom the limited frozen assets are distributed." Therefore, Trust's argument has merit only if the maintenance of a freeze per se signals inadequate representation of Trust's interest in immediate access to the funds. However,

this Court rejected that idea on May 14, 2004, when it found that Trust's interest was adequately represented despite the freeze that had been placed on the assets claimed by Trust. See Tr. of 5/14/04 at 43-46; see also Mem. Supp. First Mot. to Intervene at 11 ("These goals are not adverse to the interests of the Intervenors, but they are inconsistent with the Intervenors' current need for release of their funds. In addition, the CFTC and the receiver have demonstrated their disparate interest by seizing and then refusing to release funds that clearly are not involved in the fraud alleged in the complaint."). Therefore, Trust has still not demonstrated that its interests are not adequately protected by a current party to this litigation, and has still not satisfied the fourth factor for intervention as of right.

Trust's argument that intervention is the only way in which it can be afforded due process is likewise unpersuasive. As the CFTC correctly points out, this Court "already noted in its May ruling on Sterling's first motion to intervene that it will afford claimants an opportunity to be heard if they object to the Receiver's recommended distribution. All known claimants have been and will be afforded adequate notice and an opportunity to be heard." Trust's claim of right to the seized funds will be determined at the hearing on its objection to the receiver's proposed interim distribution.

For the reasons expressed above and on the record of May 14, 2004, this Court will deny Trust's renewed motion to intervene.

The accompanying Order shall enter today.

Dated:

3-4-05



ROBERT B. KUGLER
United States District Judge