

ALD-198

May 15, 2008

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. **07-4789**

COMMODITY FUTURES TRADING COMMISSION

VS.

EQUITY FINANCE GROUP LLC, ET AL.

Alison E. Shimer, Appellant

(D. N.J. Civ. No. 04-cv-01512)

Present: SLOVITER, FISHER and HARDIMAN, CIRCUIT JUDGES

Submitted are:

- (1) Motion of appellee Stephen T. Bobo, equity receiver, to dismiss appeal;
- (2) Appellant's response in opposition thereto;
- (3) Appellee Stephen T. Bobo's reply to appellant's response; and
- (4) Motion of appellee Commodity Futures Trading Commission to dismiss appeal

in the above-captioned case.

Respectfully,

Clerk

MMW/EGL/awi

ALD-198
(continued)

May 15, 2008

Commodity Futures Trading Commission

vs.

Equity Finance Group LLC, et al.

C.A. No. **07-4789**

ORDER

The foregoing motions to dismiss this appeal are granted. “[I]f an event occurs . . . that makes it impossible for the court to grant ‘any effectual relief whatever’ to a prevailing party, the appeal must be dismissed.” Church of Scientology v. United States, 506 U.S. 9, 12 (1992) (citation omitted). See also Donovan v. Punxsutawney Area Sch. Bd., 336 F.3d 211, 216 (3d Cir. 2003) (“The court’s ability to grant effective relief lies at the heart of the mootness doctrine. . . . If a case has become moot after the district court’s entry of judgment, an appellate court no longer has jurisdiction to entertain the appeal.”). In this case, the District Court denied appellant’s claim in a receivership proceeding. All parties agree that the final distribution of receivership funds already has occurred without payment on appellant’s denied claim. If we were to conclude that the District Court erred in denying appellant’s claim, the only effective relief that we could grant would be to direct the District Court to allow appellant’s claim, recall the distribution from all other investors, and order a re-distribution that would include payment to appellant. Assuming without deciding that it would be possible for us to grant that relief, appellant has expressly disclaimed it, and has made clear that she seeks merely a legal ruling that the District Court erred in denying her claim. Thus, appellant in effect seeks an advisory opinion, which we lack authority to issue. See Church of Scientology, 506 U.S. at 12; Donovan, 336 F.3d at 216; In re Cantwell, 639 F.2d 1050, 1054 (3d Cir. 1981). We reject appellant’s argument that a ruling in her favor would be of practical consequence to her by allowing her to consider bringing a hypothetical and unidentified claim against the Receiver, whose conduct is not at issue in this appeal. See In re Cantwell, 639 F.3d at 1054. Accordingly, the motions to dismiss are granted, and this appeal is hereby dismissed.



By the Court,

/s/ D. Michael Fisher
Circuit Judge

Dated: 20 May 2008 *Marcia M. Waldron*
Marcia M. Waldron, Clerk