

Vincent Firth
3 Aster Court
Medford, NJ 08055
(609) 714-1981

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

COMMODITY FUTURES TRADING :
COMMISSION, :

Plaintiff,

: Hon. Robert B. Kugler

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

Defendants.

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**PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW BY
DEFENDANT VINCENT FIRTH**

PRELIMINARY STATEMENT

Following a trial on the merits Vincent Firth ("Firth"), acting *pro se* now respectfully submits the following proposed facts and conclusions of law for consideration of the District Court and offers for the Court's consideration the following preliminary statement after a trial on the merits. Firth hereby incorporates by this reference all proposed findings of fact and conclusions of law stated with respect to Counts I, II, III, and IV contained in that certain separate document dated November 5, 2007 filed by defendant Robert W. Shimer with the Court entitled Proposed Findings of Fact and Conclusions of Robert W. Shimer.

REGARDING COUNT III

PROPOSED FINDINGS OF FACT

With respect to Firth's alleged violation of Section 13(b) of the CEA (7 U.S.C. § 13c(b))

Regarding the issue of whether Firth did not act in good faith and knowingly induced the purported violation of the entity Equity in violation of Section 13(b) of the CEA.

In addition to incorporating all facts previously stated with respect to the issue of whether Robert W. Shimer ("Shimer") violated Section 13(a) of the CEA by aiding and abetting Equity's purported violation of Section 4(m)1 of the CEA as stated in Shimer's separately Proposed Facts and Conclusions of Law filed with the Court by Shimer Firth also offers the following additional facts evidenced by the record:

Firth was aware of the education and background of Robert W. Shimer ("Shimer") and knew Shimer was an attorney and a member of the Massachusetts Bar .(Trial transcript 8/27/07 page 72, lines 18-25 & Trial Transcript 8/27/07, page 76, lines 2-4).

Firth did sufficient due diligence on Shimer to know that Shimer was a properly licensed attorney and had no question about Shimer's ability to draft documents necessary for the relationship between Shasta Capital Associates, LLC ("Shasta") (and Equity Financial Group, LLC ("Equity")) as Shasta's manager and the separate defendant entity Tech Traders, Inc. ("Tech"). (Trial Transcript 8/27/07 Page 164, line 3-10).

Shimer's role as attorney for Shasta or Equity did not require specific knowledge of commodity trading. Firth reviewed documents Shimer drafted and found them to be adequate. (Trial Transcript 8/27/07 page 164, lines 11-24).

Page 3 of Plaintiff's Exhibit # 650 paragraph 1, sentence 2 indicates that Shimer has been a member in good standing of the Massachusetts bar since 1973. The Plaintiff has introduced no evidence at trial contradicting the truth of that statement.

Firth reviewed the Commodity Exchange Act (CEA) and the CFTC's regulations to try to determine if they applied to the entity Equity. (Trial Transcript 8/27/07, page 136, lines 10-13).

Firth found the CFTC's regulations confusing. (Trial Transcript 8/27/07-page 136, lines 14 & 15).

Firth relied upon Shimer as legal counsel of Equity for advice with respect to legal issues that arose with respect to the entity Equity (Trial Transcript 8/27/07 page 76, lines 5-14).

Firth relied upon Shimer's legal conclusions about whether the entity Equity was required to register with the CFTC as a commodity pool operator (CPO). (Trial transcript 8/27/07 , page 76, lines 15-18).

Firth is sure he saw a copy of the legal memo Shimer prepared in the fall of 2001 concerning the registration issue with respect to both Shasta and Equity. (Trial Transcript 8/27/07 page 136, lines 16-20).

Shimer's initial conclusion that neither Shasta or Equity had to register with the CFTC did not raise a red flag in Firth's mind. (Trial Transcript 8/27/07 page 136, line 25 and page 137, lines 1-5).

Firth was told by Shimer that Shimer had received confirmation through an attorney that a bank had confirmed Shimer's conclusions about the issue of registration. (Trial Transcript 9/4/07 Page 16, lines 15-25). When Firth was told that information by Shimer Firth did not feel that any further research into the registration issue with respect to the entity Equity was necessary (Trial Transcript 8/27/07, page 137, lines 6-12).

In December of 2001 Firth concluded that registration of Equity with the CFTC was not necessary based upon the representations provide to him by Shimer. (Trial Transcript 8/27/07 page 137, lines 13-17).

Firth had two conversations with Susan Lee on his own in which he was pushing her to call the CFTC in Chicago because he knew they were investigating Shasta. Lee declined to call the CFTC suggesting that they should wait until they were able to go in together to the CFTC with Tech and Tech's attorneys (Trial Transcript 9/4/07, page 17, lines 16-25 and page 18, lines 1-25; page 19, lines 1-15).

Firth thought it was important for Arnold & Porter to let the CFTC know that A&P represented Shasta but she put it off. (Trial Transcript 9/4/07, page 20, lines 7-12).

Firth was more than willing to call the CFTC himself. (Trial Transcript 9/4/07, page 20, lines 19-23).

Lee advised Firth not to make that call on his own (Trial Transcript 9/4/07, page 21, lines 1-7).

PROPOSED CONCLUSION OF LAW

Regarding the issue of whether Firth did not act in good faith and knowingly and recklessly induced the purported violation of the entity Equity in violation of Section 13(b) of the CEA.

Conclusion: Firth did not act in bad faith and knowingly induce the purported violation by the entity Equity in violation of Section 13(b) of the CEA.

Argument:

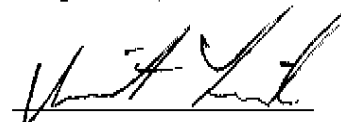
To make Firth liable under Section 13(b) of the CEA a showing of mere negligence on the part of Firth is insufficient. Plaintiff has to show by a preponderance of

the evidence that Firth's behavior in the fall of 2001 in connection with the issue of whether or not the entity Equity was required to register with the CFTC was reckless. *Monieson* at 860 citing *G.A. Thompson & Co., Inc. v. Partridge*, 636 F.2d 945, 959 (5th Cir. 1981), citing *Earnst & Earnst v. Hochfelder*, 425 U.S. 185, 209 (1975).

The Court may well conclude that it was negligent of Firth to rely solely upon the advice of Shimer based upon the reasons for Shimer's conclusion about the registration status of the entity Equity. Plaintiff attempted during the trial to belittle that particular communication from Shimer's legal colleague as "third hearsay" (Trial Transcript, 8/29/07, page 39, lines 17-25 & page 40, lines 1-12). However the telephone call Shimer received from his legal colleague confirming the correctness of the Shimer's conclusions in Shimer's legal memo (Plaintiff's Exhibit 411) did not take place in a court room. It was a communication from another attorney who had no reason at all to provide Shimer with inaccurate information that he had received confirmation of the correctness of Shimer's conclusion from no less than a Vice President of the prestigious Investment banking firm of JP Morgan Chase.

Firth's reliance upon Shimer as legal counsel to both Shasta and Equity was arguably reasonable. Taken in the very worst possible light it was, at most, arguably negligent but it certainly was not reckless or knowing inducement of Equity's purported violation. Firth's behavior as alleged by Plaintiff, therefore, does not meet the required legal standard to support a finding by the Court that Firth violated Section 13(b) of the CEA (7 U.S.C. § 13c(b)).

Respectfully submitted,



Vincent Firth