

IN RE: ROBERT W. SHIMER

NO. BD-2011-137

**S.J.C. Judgment of Disbarment entered by Justice Botsford on January 30, 2012,
with an effective date of February 29, 2012.¹**

SUMMARY²

The respondent was admitted to practice law in Massachusetts on December 19, 1973 and has not been admitted to practice law in any other state. Starting at least in 1992, the respondent maintained a law office and a client trust account in Pennsylvania without being authorized to practice law in that jurisdiction. This conduct violated Mass. R. Prof. C. 5.5(a) and Pennsylvania Rules of Professional Conduct (“Pa. R. Prof. C.”) 5.5(b)(1). The respondent also engaged in the unauthorized practice of law in New Jersey from at least 2001 through 2004 in violation of Mass. R. Prof. C. 5.5(a) and New Jersey Rules of Professional Conduct (“N. J. R. Prof. C.”) 5.5(b). Although the respondent’s principal office was in Pennsylvania, the rules of professional conduct applicable to the majority of respondent’s misconduct are the New Jersey Rules of Professional Conduct because the predominant effect of the respondent’s conduct was in New Jersey where his misconduct occurred. See Mass. R. Prof. C. 8.5(b)(2).

In 2001, the respondent represented both Equity Financial Group, a New Jersey LLC, and the president of Equity. The respondent and the president of Equity created Shasta Capital Associates to operate as a commodity pool trading commodity futures using investment funds provided by pool participants. Equity managed Shasta and controlled Shasta’s funds. The respondent was Shasta’s attorney.

Equity retained Tech Traders to conduct Shasta’s trades in return for a percentage of the profits. The respondent entered into an undisclosed side agreement with Tech Traders entitling him to a share of the profits Tech Traders claimed on Shasta Trades. This agreement gave the respondent a personal financial interest in the agreement between Tech Traders and Equity that materially limited his representation of Equity and Shasta. The

¹ The complete Order of the Court is available by contacting the Clerk of the Supreme Judicial Court for Suffolk County.

² Compiled by the Board of Bar Overseers based on the record filed with the Supreme Judicial Court.

respondent could not and did not obtain the informed consent of either Equity or Shasta to the conflict. This conduct violated N.J. R. Prof. C. 1.7(a)(2).

The respondent also prepared a private placement memorandum (“PPM”) containing intentionally false and misleading information about Shasta and the company conducting trades for Shasta that he and the president of Equity used to solicit potential investors in Shasta. The PPM did not disclose the side agreement the respondent had made with Tech Traders. This conduct violated N.J. R. Prof. C. 4.1(a) and 8.4(c).

The respondent directed investors in Shasta to wire investment funds to his attorney trust account in Pennsylvania. Between 2001 and 2004, the respondent received in the escrow account investor funds totaling approximately \$15,000,000. Pennsylvania law required the funds to be held in an IOLTA account, but the respondent’s trust account was not an IOLTA account. The failure to hold these funds in an IOLTA account violated Pa. R. Prof. C. 1.15(l).

Starting in 2002, the respondent drafted monthly account statements for Tech Traders that he knew were either false or likely false and sent them to a certified public accountant hired by Shasta to verify its trading results. The respondent did not inform the accountant that he and not Tech Traders was the source of the reports. The respondent also reported to Shasta investors substantial trading profits between June 2001 and April 2004. The respondent knew that the profits he reported to investors were at least inflated and inaccurate and had not been verified by any independent audit or examination. This conduct violated N.J. R. Prof. C. 4.1(a) and 8.4(c).

Between 2001 and 2004, Tech Traders paid \$1,314,940 into accounts controlled by the respondent pursuant to the undisclosed side agreement. The respondent intentionally misappropriated a portion of these funds for his own use in violation of N.J. R. Prof. C. 8.4(c).

By December 2003, the respondent knew that the Commodity Futures Trading Commission (“CFTC”) was investigating Shasta; that Shasta was operating as a commodity pool; that Equity was required to register with the CFTC as a commodity pool operator; that Tech Traders could not trade Shasta funds in its own name or commingle Shasta funds with other funds; and that he and Tech Traders were required to cure these improprieties. The

respondent took no steps of substance to register Equity and Shasta with the CFTC. The respondent also knowingly violated the Commodity Exchange Act by continuing to assist Shasta in soliciting and receiving funds from investors. This conduct violated N.J. R. Prof. C. 1.1, 1.2(d), 1.3, and 1.16(a).

On February 4, 2008, the United States District Court for the District of New Jersey found that the respondent had committed fraud by misrepresenting and failing to disclose material information about his qualifications and compensation, misrepresented the performance of the Shasta commodity pool and the role of the independent CPA, and accepted illegal disbursements of \$1,452,117 to which he was not entitled. *Commodity Futures Trading Commission v. Equity Financial Group, et al.*, 537 F. Supp.2d 677 (2008). On July 13, 2009, the United States Court of Appeals for the Third Circuit upheld the decision of the district court. *Commodity Futures Trading Commission v. Equity Financial Group, et al.*, 572 F.3d 150 (2009). The United States Supreme Court denied the respondent's petition for a writ of *certiorari* on March 8, 2010. *Shimer v. Commodity Futures Trading Commission*, 130 S.Ct. 1737 (2010.) On June 28, 2010, the respondent assumed retirement status in Massachusetts.

Bar counsel filed a petition for discipline against the respondent on July 26, 2011. Because the respondent failed to file an answer in conformance with the Rules of the Board of Bar Overseers, he was defaulted. The board offered the parties opportunity to file briefs on disposition, which they both did.

On December 12, 2011, the board voted unanimously to file an information with the Supreme Judicial Court recommending that the respondent be disbarred for his misconduct. On January 30, 2012, the Court (Botsford, J.) entered a judgment of disbarment against the respondent.