
UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

U.S. COMMODITY FUTURES
TRADING COMMISSION,

Plaintiff(s)

Case No: 09-cv-3332 MJD/JJK

v.

TREVOR COOK d/b/a CROWN
FOREX, LLC, PATRICK KILEY d/b/a
CROWN FOREX, LLC, UNIVERSAL
BROKERAGE FX and UNIVERSAL
BROKERAGE FX DIVERSIFIED, OXFORD
GLOBAL PARTNERS, LLC, OXFORD
GLOBAL ADVISORS, LLC, UNIVERAL
BROKERAGE FX ADVISORS, LLC f/k/a
UBS DIVERSIFIED FX ADVISORS, LLC,
UNIVERSAL BROKERAGE FX
GROWTH, L.P. f/k/a UBS DIVERSIFIED FX
GROWTH L.P., UNIVERSAL BROKERAGE
FX MANAGEMENT, LLC f/k/a UBS
DIVERSIFIED FX MANAGEMENT, LLC
and UBS DIVERSIFIED GROWTH, LLC,

Defendant(s)

R.J. ZAYED,

Receiver.

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

UNITED STATES SECURITIES
AND EXCHANGE COMMISSION,

Case No: 09-cv-3333 MJD/JJK

Plaintiff(s)

v.

TREVOR G. COOK,
PATRICK J. KILEY,
UBS DIVERSIFIED GROWTH, LLC,
UNIVERSAL BROKERAGE FX
MANAGEMENT, LLC,
OXFORD GLOBAL ADVISORS, LLC,
and OXFORD GLOBAL PARTNERS, LLC,

Defendants

and

BASEL GROUP, LLC,
CROWN FOREX, LLC,
MARKET SHOT, LLC,
PFG COIN AND BULLION,
OXFORD DEVELOPERS, S.A.,
OXFORD FX GROWTH, L.P.,
OXFORD GLOBAL MANAGED
FUTURES FUND, L.P., UBS DIVERSIFIED
FX ADVISORS, LLC, UBS DIVERSIFIED
FX GROWTH, L.P., UBS DIVERSIFIED
FX MANAGEMENT, LLC, CLIFFORD
BERG, and ELLEN BERG,

Relief Defendants.

R.J. ZAYED,

Receiver.

**MEMORANDUM OF LAW IN SUPPORT OF RECEIVER'S MOTION FOR
SALE OF CERTAIN PERSONAL PROPERTY IN ITS POSSESSION**

FACTS

On November 24, 2009, this Court appointed R.J. Zayed, Carlson, Caspers, Vandenburg and Lindquist as Receiver in this action. *See Order Appointing Receiver*, Docket No. 13, at 4 (Nov. 23, 2009); *see also Amended Order Appointing Receiver*, Docket No. 18, at 4 (Nov. 24, 2009); *Second Amended Order Appointing Receiver*, Docket No. 68 (Dec. 11, 2009). Part of the Receiver's duties include "to take custody, control and possession of all the funds, property, premises, leases and other assets of or in the direct or indirect control of the Receiver Estates, to manage, control, operate and maintain the Receiver Estates, to use income, earnings, rents and profits of the Receiver Estates." *Order Appointing Receiver* at 3.

On January 28, 2010, this Court further authorized the Receiver to enter and fully inspect the residence of Gina and Trevor Cook at 12735 Dover Drive in Apple Valley and to seize assets in the possession or control of Gina and Trevor Cook. *Order Authorizing Receiver to Seize Assets*, Docket No. 189, at 1-2 (Jan. 28, 2010); *see also Order Authorizing Receiver to Seize Assets*, Docket No. 183, at 1-2 (Jan. 28, 2010).

The Receiver now wishes to sell certain personal property found in these residences, or surrendered by the Defendants, by retaining the services of Luther Auctions, 2556 East Seventh Avenue, North Saint Paul, Minnesota 55109, and Downtown Motor Car Sales, 2011 North Second Street, Minneapolis, Minnesota 55411.

The exact inventories of the personal property that Luther Auctions and Downtown Motor Car Sales would sell are attached to the Hayes Declaration as Exhibits 1 through 4.

Luther Auctions is willing to sell the items listed in Exhibits 1, 3 and 4 to the highest bidder by public auction, and has promised to provide substantial public advertising of the sale items in order to maximize the revenue from the sale. Hayes Decl., ¶ 9. As with the previous sale of personal property, the Receiver has negotiated a flat 20% commission rate on all sales by Luther Auctions of the items listed in Exhibits 1, 3 and 4, with the remaining portion going to the Receiver. This 20% fee covers the cost of staffing for the sale, advertising, website hosting and recycling of non-salable goods. Id., ¶ 10.

Downtown Motor Car Sales is willing to sell the items listed in Exhibit 2 to the highest bidder by public auction under terms and conditions similar to the prior auction authorized by this Court, and has promised to provide substantial public advertising of the sale items in order to maximize the revenue from the sale. Hayes Decl., ¶ 11.

ARGUMENT

The purpose of this Receivership is the marshalling, preserving, accounting for and liquidating the assets of the Receivership. Ex Parte Statutory Restraining Order, No. 09-cv-3332, at 7 (Doc. 21) (D. Minn. Nov. 23, 2009). To accomplish this mandate, the Receiver must take exclusive custody, control and possession of all assets of the Receivership wherever situated. Order Continuing Appointment of Temporary Receiver, No. 09-cv-3332, at 3 (Doc. 96) (D. Minn. Dec. 11, 2009).

This Court's Orders appointing the Receiver authorize the Receiver to bring legal actions based on law or equity in any state, federal, or foreign court that he deems necessary to preserve or increase the assets of the Receivership or to carry out his duties as Receiver. Second Amended Order Appointing Receiver, No. 09-cv-3333, at I(D) (Doc. 68); Order Continuing Appointment of Temporary Receiver, No. 09-cv-3332, at F (Doc. 96). The Receiver must also take such action as necessary and appropriate to prevent the dissipation or concealment of any funds or assets or for the preservation of any such funds and assets of the Receivership. Second Amended Order Appointing Receiver, No. 09-cv-3333, at I(G) (Doc. 68); Order Continuing Appointment of Temporary Receiver, No. 09-cv-3332, at D, E (Doc. 96).

This Court appointed the Receiver for the Defendants and all property and assets directly or indirectly owned, beneficially or otherwise, by the Defendants individually or collectively. Order Continuing Appointment of Temporary Receiver, No. 09-cv-3332, at 2 (Doc. 96). The Receiver was directed and authorized to take exclusive custody, control and possession of property and other assets in the possession of, or under the control of, Trevor Cook, Patrick Kiley and all the other Defendants. *Id.* at I(A). This Court also authorized the Receiver to seize assets of the Receivership in the possession or control of Gina and Trevor Cook, including but not limited to collections of Faberge eggs and watches and a ROM exercise machine. Order Authorizing the Receiver to Seize Assets, No. 09-cv-3332, at 1-2 (Doc. 189).

Further, one of the Receiver's primary duties is to maximize distributions to defrauded investors and other claimants. *See Scholes v. Lehmann*, 56 F.3d 750, 755 (7th

Cir. 1995) (receiver's "object is to maximize the value of the [Receivership assets] for the benefit of their investors and any creditors"); *SEC v. TLC Invs. & Trade Co.*, 147 F. Supp. 2d 1031, 1042 (C.D. Cal. 2001); *SEC v. Kings Real Estate Inv. Trust*, 222 F.R.D. 660, 669 (D. Kan. 2004).

Pursuant to this Court's Orders, the Receiver, having a reasonable basis to believe the assets and property are related to this action and seizure of said assets and property would be consistent with this Court's Orders, took exclusive custody, control and possession of the property and assets identified in Exhibits 1 through 4 of the Hayes Declaration. *See* Order Continuing Appointment of Temporary Receiver, No. 09-cv-3332, at I(A) (Doc. 96). These assets and personal property are property of the Receiver Estates. Further, the Receiver has a reasonable basis to believe these assets were purchased, maintained, enhanced or augmented with investor funds.

The Receiver, therefore, now moves to fulfill the duties delegated to him by this Court by liquidating the assets and property of the Receiver Estates now in his exclusive custody, control and possession. This action will preserve and increase the assets of the Receivership, and ultimately maximize distributions to defrauded investors and other claimants.

The public sale of personal property by the receiver is governed by 28 U.S.C. § 2004, which directs the sale of any "personalty" sold under order or decree of the United States to be in accordance with section 2001 of the same title. The pertinent section of 28 U.S.C. § 2001(a) reads as follows:

Property in the possession of a receiver or receivers appointed by one or more district courts shall be sold at public sale in the district wherein any such receiver was first appointed, at the courthouse of the county, parish, or city situated therein in which the greater part of the property in such district is located, or on the premises or some parcel thereof located in such county, parish, or city, as such court directs, unless the court orders the sale of the property or one or more parcels thereof in one or more ancillary districts.

As indicated by the facts section, *supra*, the Receiver respectfully requests that the Court authorize Luther Auctions to conduct a public sale of the items listed in Exhibits 1, 3 and 4 of the Hayes Declaration at 2556 East Seventh Avenue, North Saint Paul, Minnesota 55109. The Receiver further respectfully requests that the Court authorize Downtown Motor Car Sales to conduct a public sale of the items listed in Exhibit 2 of the Hayes Declaration at 2011 North Second Street, Minneapolis, Minnesota 55411. The sale of these items would be conducted in such a fashion as to maximize revenue, and accordingly the Receiver asserts that this sale would further the objectives of the Receivership.

Dated: April 16, 2010

Respectfully submitted,

s/ R.J. Zayed

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