
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 IN SUPPORT OF RECEIVER’S MOTION TO SELL
PROPERTY, AUTHORIZE THE HIRING OF REAL ESTATE AGENT,
AND TO SEEK CANADIAN ORDER AUTHORIZING SALE**

R.J. Zayed, Receiver, moves the Court pursuant to 28 U.S.C. § 2001(b) to approve and authorize the private sale of the real estate property located at Parcel 4178 Rainy River, Island G 1251, containing 2.3 acres situated in Rainy Lake, West of Sand Point Island District of Rainy River (the “Rainy Lake Property”). The Rainy Lake Property is located in Ontario, Canada. The Receiver’s request to market and sell the Rainy Lake Property furthers the objectives of the Receivership because proceeds from the sale will be used to compensate victims of the fraud in these cases.¹

Factual And Legal Support

R.J. Zayed was appointed by the Court as Receiver in this matter on November 23, 2009. (*Order Appointing Receiver*, SEC Docket No. 13, at 1-2 (Nov. 23, 2009); *see also Amended Order Appointing Receiver*, SEC Docket No. 18, at 1-2 (Nov. 24, 2009); *Second Amended Order Appointing Receiver*, SEC Docket No. 68, 1-2 (Dec. 11, 2009) (“SEC Orders”). Specifically, the Court entered an order appointing R.J. Zayed as Receiver in this matter for (1) the estates of Defendants Trevor G. Cook, Patrick J. Kiley; (2) Defendants UBS Diversified Growth LLC, Universal Brokerage FX Management, LLC, Oxford Global

¹ A contractor, TLC Builders, currently has a claim against the Rainy Lake Property in the amount of \$35,885.83 for labor, materials, and equipment used in connection with the construction and renovation of the cabin located on the Rainy Lake Property. TLC Builders provided the foregoing labor, materials, and equipment between February 20, 2009 and November 27, 2009.

Advisors, LLC, Oxford Global Partners, LLC; (3) Relief Defendants 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, UBS Diversified FX Advisors, LLC, UBS Diversified FX Growth L.P., and UBS Diversified FX Management LLC; (4) all funds, accounts, and other assets held by or for Relief Defendants Clifford Berg and Ellen Berg, which were received, directly or indirectly, from the Defendants or were acquired with funds or other assets received, directly or indirectly, from the Defendants; and (5) every other corporation, partnership, trust and/or other entity (regardless of form) which is directly or indirectly owned by or under the direct or indirect control of Cook and Kiley (collectively the “Receiver Estates”).

R.J. Zayed also was appointed as Receiver in the matter of *CFTC v. Cook*, No. 09-cv-3332 MJD/JJK (D. Minn. Nov. 23, 2009). (Ex Parte *Statutory Restraining Order*, CFTC Docket No. 21, at 7; *see also Order Continuing Appointment of Temporary Receiver*, CFTC Docket No. 96, at 2-3 (Dec. 11, 2009) (“CFTC Orders”). As the Receiver Estates in this case largely overlap with the Receivership assets in *CFTC v. Cook*, the Receiver has filed a parallel motion in *CFTC v. Cook*.²

On November 23, 2009, the Court entered an Order freezing all assets of the foregoing Defendants. (*Order Imposing Asset Freeze*, SEC Docket No. 14

² Although the Receiver is filing parallel motions, it seeks only a single Order in this motion.

(Nov. 23, 2009)). The Rainy Lake Property was explicitly included in the assets frozen and placed into the Receivership. (*Id.* at 7.)

The Ontario Superior Court of Justice entered an order (“Canadian Order”) on December 21, 2009, that recognized R.J. Zayed as Receiver in Canada. (Declaration of Samuel T. Lockner (“Lockner Decl.”), ¶ 3; Ex. A). Specifically, the Canadian Order ordered, among other things, that the SEC Orders and CFTC Orders (collectively “the U.S. Receivership Proceedings”) were recognized as a “foreign proceeding” for the purposes of sections 267 and following of the *Bankruptcy and Insolvency Act* and that the Ontario proceeding be constituted as an ancillary proceeding to the U.S. Receivership Proceedings, which is recognized as the main proceeding. (*Id.* at p. 2.) The Canadian Order ordered that the U.S. Receivership Proceedings were recognized under the common law and are to be given full force and effect in Ontario. (*Id.*)

The Canadian Order further sets forth the powers granted to R.J. Zayed as the recognized Receiver within Canada, including:

- (a) To use reasonable efforts to determine the nature, location and value of all assets and property which the Respondents own, possess, have a beneficial interest in, or control;
- (b) To engage and employ the law firm of Carlson, Caspers, Vandenburg & Lindquist, and, with the approval of the District Court of Minnesota, any individuals or entities the Receiver deems necessary to assist in his duties (“Retained Personnel”);
- (c) To take custody, control and possession of all the funds, property, premises, leases, and other assets of or in the possession or under the direct or indirect control of the

Respondents, to manage, control, operate and maintain the Respondents, to use income, earnings, rents and profits of the Respondents, with full power to sue for and collect, recover, receive and take into possession all goods, chattels, rights, credits, monies, effects, lands, books and records of accounts and other papers of the Respondents;

- (d) To bring such legal actions based on law or equity in any state, federal, or foreign court as he or she deems necessary or appropriate in discharging his or her duties as Receiver;
- (e) To pursue, resist and defend all suits, actions, claims and demands which may now be pending or which may be brought by or asserted against the Respondents;
- (f) To make sure payments and disbursements from the funds so taken into his or her custody, control and possession or thereafter received, and to incur such expenses as may be necessary are advisable in the ordinary course of business in discharging his or her duties as Receiver;
- (g) To 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 Respondents;
- (h) To have the authority to issue subpoenas (or summons to witnesses) to compel testimony of persons or production or records, concerning any subject matter relating to the identification, preservation, collection and/or liquidation of the Respondents;
- (i) To take any action which could be taken by the officers, directors, partners, members, and trustees of the Respondents;
- (j) To suspend, terminate or grant a leave of absence to any employees of the Respondents; and
- (k) To take such other action as may be approved by this Court.

(*Id.* at pp. 3-4.)

The Receiver now respectfully requests that the Court authorize the Receiver to conduct a private sale of the Rainy Lake Property in accordance with the requirements set forth under 28 U.S.C. § 2001(b) and any additional requirements under Canadian law. Specifically, the Receiver moves the Court to enter an Order permitting the Receiver to:

- (1) market and sell the Rainy Lake Property;
- (2) retain a real estate agent to assist with the marketing and sale of the Rainy Lake Property;³ and
- (3) request the Ontario Superior Court of Justice to expressly adopt the Order permitting the Receiver to market and sell the Rainy Lake Property.

The Receiver believes that the sale of the Rainy Lake Property would further the objectives of the Receivership because proceeds from the liquidation will be used to compensate victims of the fraud in these cases.

³ The Receiver respectfully suggests that it provide the Court with the names of three potential real estate agents capable of assisting with the marketing and sale of the Rainy Lake Property, namely, Alan Zucchiatti, Dan Cousineau and David Kircher. (*See* Lockner Decl. ¶ 4.) In order to conserve resources, the Receiver respectfully suggests the Court arrange telephonic conferences to interview and evaluate each candidate's qualifications to market and sell the Rainy Lake Property. The Receiver further respectfully suggests that the Court then select which real estate agent should be hired to market and sell this Receivership asset. The Receiver will then proceed with a private sale of the properties under 28 U.S.C. § 2001(b) and any applicable requirements under Canadian law.

Dated: May 11, 2010

Respectfully submitted,

s/ R.J. Zayed

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