
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 TO COMPEL WELLS FARGO TO RETURN RECEIVERSHIP FUNDS

R.J. Zayed, Receiver in *CFTC v. Cook et al.*, 09-cv-3332 and *SEC v. Cook et al.*, 09-cv-3333, has moved the Court for an Order compelling Wells Fargo to return \$9,275.22 in Receivership funds to the Receiver and for an award of attorneys fees incurred in the preparation of the pleadings filed herein.

FACTS

A. Trevor Cook's Ponzi Scheme

These cases concern a \$190 million Ponzi scheme run by Trevor Cook and others. On November 23, 2009, the Securities and Exchange Commission ("SEC") and the Commodities Futures Trading Commission ("CFTC") filed separate lawsuits against Trevor Cook, Patrick Kiley, and various entities controlled by them (collectively referred to as the "Receivership Entities"). *Complaint*, No. 09-cv-3333, SEC Docket No. 1 (Nov. 23, 2009); *Complaint for Injunctive and Other Equitable Relief and For Penalties under the Commodity Exchange Act*, 09-cv-3332, CFTC Docket No. 1 (Nov. 23, 2009). Trevor Cook ("Cook") has since admitted to, among other things, knowingly and intentionally creating and executing a scheme and artifice to defraud. *See United States v. Trevor Gilson Cook*, No. 10-cr-00075, Docket No. 7, at 1–3 (April 13, 2010).

B. The Court's Receivership and Asset Freeze Orders

On November 23, 2009, the Court appointed R.J. Zayed as Receiver in these cases and froze all assets of the Receiver Estates. *See Order Appointing Receiver*, SEC Docket No. 13 (Nov. 23, 2009); *see also Amended Order Appointing Receiver*, SEC Docket No.

18 (Nov. 24, 2009); *Second Amended Order Appointing Receiver*, SEC Docket No. 68 (Dec. 11, 2009); *Order Imposing Asset Freeze and Other Ancillary Relief*, SEC Docket No. 14 (Nov. 23, 2009); *Order Identifying Frozen Accounts*, SEC Docket No. 15 (Nov. 23, 2009); *Ex Parte Statutory Restraining Order*, CFTC Docket No. 21 (Nov. 23, 2009); *Order of Preliminary Injunction, Asset Freeze, and Other Ancillary Relief*, SEC Docket No. 51 (Dec. 8, 2009); *Order Continuing Appointment of Temporary Receiver*, CFTC Docket No. 96 (Dec. 11, 2009).

The Receiver is charged with locating and preserving all assets that remain from the scheme for the benefit of over 1,000 investors who were defrauded by Mr. Cook and his colleagues. In doing so, the Receiver is authorized, among other things, to “take custody, control and possession of all funds . . . under the direct or indirect control of the Receiver Estates.” *Second Amended Order Appointing Receiver*, SEC Docket No. 68, at I.D. The Receiver is further authorized “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.” *Id.* at I.D.

The Court’s Orders provide clear instruction to anyone in possession of Receivership assets. All persons in possession of Receivership assets must turn over to the Receiver “any and all property, including records of any nature, of which any of the Receiver Estates are the owners or have an interest in” *Second Amended Order Appointing Receiver*, SEC Docket 68, at IX. In addition, anyone holding or controlling Receivership assets is prohibited from taking any action that interferes with “the taking control, possession, or management, by the Receiver, of any assets of the Receiver

Estates, or . . . in any way interfere[s] with or harass[es] the Receiver, or . . . interfere[s] in any manner with the exclusive jurisdiction of this Court over the Receiver Estates.” *Second Amended Order Appointing Receiver*, SEC Docket No. 68, at VII.D; *see also Order Imposing Asset Freeze and Other Ancillary Relief*, SEC Docket No. 14, at 8; *Ex Parte Statutory Restraining Order*, CFTC Docket No. 21, at I.A.

The Court also ordered that a copy of the *Second Amended Order Appointing Receiver* be filed in the Phillips case. *Second Amended Order Appointing Receiver*, SEC Docket No. 68, at XX. Moreover, the Court specifically gave the Receiver authority “to take custody, control and possession of all assets of Receiver Estates that are frozen in the [Phillips case].” *Id.*

The Receiver served Wells Fargo with the Receivership and Asset Freeze Orders on December 18, 2009. Declaration of Peter M. Kohlhepp, May 26, 2010 (“Kohlhepp Decl.”), ¶ 13, Ex. 12.

C. The Phillips Litigation and Restraining Orders

On July 7, 2009, certain investors in Trevor Cook’s scheme sued Cook and other named Defendants in this Court for various counts of fraud. *See Phillips et al. v. Cook et al.*, No. 09-cv-1732 (Complaint) [hereinafter “Phillips” case]. The Phillips lawsuit is based on the same set of operative facts that underlie the appointment of the Receiver by this Court in the above-captioned cases. Subsequent amended complaints alleged that the Phillips plaintiffs invested approximately \$35 million with various Receivership entities in a fraudulent foreign currency arbitrage program. *Third Amended Verified Complaint*, Phillips Docket No. 197, at 14 (Nov. 4, 2009).

Also on July 7, 2009, this Court entered a temporary restraining order, which expressly directed Wells Fargo to freeze any account belonging to any Defendant, and specifically named Trevor Cook as a Defendant. *See* Kohlhepp Decl. ¶ 2, Ex. 1.

D. Wells Fargo Failed to Freeze Account Numbers xxx-xxx6543 and xxx-xxx2702, Held in the Name of Trevor Cook

On July 9, 2009, Wells Fargo sent a letter to Phillips plaintiffs' attorney, Michael Podolsky, listing a total of eight (8) accounts frozen in response to the Court's July 7, 2009 Temporary Restraining Order. Kohlhepp Decl. ¶ 4, Ex. 3. Although account numbers xxx-xxx6543 and xxx-xxx2702 were in existence at that time and contained \$21,115.70, these accounts were not included among the eight (8) accounts Wells Fargo identified for the Court. *See id.*

On July 24, 2009, after stipulation of the parties, the Court issued an Order that, among other things, continued the freeze on accounts identified in the July 9, 2009 Wells Fargo letter. *See* Kohlhepp Decl. ¶ 7, Ex. 6. In continuing the freeze, the Court relied on the list of accounts provided by Wells Fargo in the July 9, 2009 letter—a list that later proved to be incomplete. The Phillips case is now stayed. *Order Appointing Receiver*, SEC Docket No. 18, at VII.A.

Subsequent investigation by the SEC revealed the existence of two additional accounts subject to the July 7, 2009 Temporary Restraining Order, but not listed or referenced in Wells Fargo's July 9, 2009 letter—namely, the above-referenced account numbers xxx-xxx6543 and xxx-xxx2702, both held in the name of Trevor Cook. *See Order of Preliminary Injunction, Asset Freeze, and Other Ancillary Relief*, SEC Docket

No. 51, at 8. As of November 2009, account numbers xxx-xxx6543 and xxx-xxx2702 remained active, despite this Court's July 7, 2009 Temporary Restraining Order specifically directing Wells Fargo to freeze any accounts held by Trevor Cook. *See* Kohlhepp Decl. ¶¶ 5-6, 8-9, Exs. 4-5, 7-8.

In December 2009, the Receiver called Wells Fargo to determine why these two Cook accounts had not been frozen. Kohlhepp Decl. ¶ 14. In response, Wells Fargo left a voice message implying that a name search of "Trevor Cook" returned multiple hits, and having no additional identifying information, Wells Fargo simply did nothing further. *Id.* ¶ 15, Ex. 13. But Wells Fargo's July 9, 2009 letter to the Phillips' attorney—the letter relied upon by this Court—fails to mention that Wells Fargo conducted a search for accounts held by "Trevor Cook", that Wells Fargo received multiple "hits" in response to this search, and that because no additional information was provided, Wells Fargo did not freeze those accounts. *Id.* ¶ 4, Ex. 3.

Moreover, Trevor Cook maintained a debit card in his name for Oxford Global Advisors account number xxx-xxx5614, one of the accounts that Wells Fargo did in fact freeze in response to the July 7, 2009 Order. *Id.* ¶¶ 4, 21, Exs. 3, 18. Wells Fargo failed to cross-reference the accounts they did freeze (e.g., xxx-xxx5614), where a Trevor Cook was expressly listed as the holder of a debit card, with the other Trevor Cook accounts they located. *See id.* ¶¶ 4, 21, Exs. 3, 18. Further, the two Trevor Cook accounts not frozen by Wells Fargo, numbers xxx-xxx6543 and xxx-xxx2702, list the same address—12644 Tiffany Court, Burnsville, Minnesota—as the other accounts that Wells Fargo did freeze in July 2009. *Id.* ¶ 18-20, Exs. 15-17.

E. Wells Fargo's Failure to Freeze Account Numbers xxx-xxx6543 and xxx-xxx2702 Caused the Loss of at Least \$9,275.22 in Receivership Funds

The balance in account xxx-xxx6543 on July 7, 2009, the date Wells Fargo should have frozen it, was \$15,528.48. Kohlhepp Decl. ¶ 5, Ex. 4. On December 16, 2009, Wells Fargo cashed-out this account and remitted \$2,743.93 to the Receivership. *Id.* ¶ 11, Ex. 10.

The balance in account xxx-xxx2702 on July 7, 2009, the date Wells Fargo should have frozen it, was \$5,587.22. *Id.* ¶ 6, Ex. 5. On December 16, 2009, Wells Fargo cashed-out this account—at that time the account contained \$9,096.55, which Wells Fargo remitted to the Receivership. *Id.* ¶ 12, Ex. 11.

The net difference between the combined account balances on July 7, 2009, when this Court ordered the accounts frozen, and the combined amount ultimately remitted to the Receivership on December 16, 2009 is \$9,275.22. *Id.* ¶ 17, Ex. 14.

Although the net difference is only \$9,275.22, Wells Fargo's failure to freeze these accounts allowed Cook to funnel thousands of dollars in Receivership funds through these two accounts between July 7, 2009 and November 2009. *Id.* ¶¶ 8-9, 17-23, Exs. 7-8, 14-20. These transfers resulted in the further dissipation and concealment of investor funds. *See id.* For example, Cook used the accounts to pay a purported independent contractor, Mike Shutze, \$60,000.00 on July 30, 2009. *Id.* ¶ 22, Ex. 19. Cook also used the accounts to purchase a \$20,000 Lexus in November 2009 and to make mortgage payments on the Dover Drive residence he shared with his wife. *Id.* ¶¶ 8-9, Exs. 7-8; *see also Amended Stipulation*, SEC Docket No. 284, ¶¶ 3-5 (Apr. 28, 2010). In

fact, Cook used the accounts right up until this Court issued the Receivership Orders: Cook paid down his Citi Card by \$2,000.00 on November 20, 2009, with account number xxx-xxx6543, and wrote a check to Dakota County BLC on November 16, 2009, with account number xxx-xxx2702. *Id.* ¶ 23, Ex. 20.

F. Wells Fargo Has Refused to Return to the Receiver \$9,275.22 in Receivership Funds

On January 29, 2010, the Receiver sent a letter to Wells Fargo, specifically requesting that Wells Fargo return the \$9,275.22 in Receivership funds that they still retained. Kohlhepp Decl. ¶ 17, Ex. 14.

In February 2010 an attorney in the Wells Fargo legal department telephoned the Receiver and requested additional information regarding this Court's Orders and the Receiver's January 29, 2010 letter requesting the remittance of \$9,275.22. *Id.* ¶ 24. The telephone conference did not produce the remittance of said funds. *Id.*

On at least two subsequent occasions, the Receiver called the Wells Fargo attorney regarding this matter—on each occasion a voicemail was left asking to the attorney to provide the Receiver with Wells Fargo's response to the Receiver's January 29, 2010 letter. *Id.* ¶ 25. One such telephone call occurred on March 18, 2010. *Id.* Wells Fargo failed to respond to these voicemails. *Id.*

On May 18, 2010, the Receiver called the Wells Fargo attorney again. *Id.* ¶ 26. On May 19, 2010, the Wells Fargo attorney contacted the Receiver, but Wells Fargo remained unwilling to return the Receivership funds. *Id.* ¶ 27.

ARGUMENT

This Court appointed the Receiver “for the purpose of marshalling, preserving, accounting for and liquidating the assets” of the Receiver Estate. *Order Continuing Appointment of the Temporary Receiver*, CFTC No. 96, at 3. 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 “only 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). To maximize distributions, the Receiver must work diligently to recover all Receivership assets, including the full balance of Receivership funds in Trevor Cook’s Wells Fargo account numbers xxx-xxx6543 and xxx-xxx2702 on July 7, 2009, the date they should have been frozen. Kohlhepp Decl. ¶¶ 5-6, 8-9, 17, Exs. 4-5, 7-8, 14.

A. This Court’s Receivership Orders Apply to the Balance That Existed In Wells Fargo Accounts xxx-xxx6543 and xxx-xxx2702 on July 7, 2009

On July 7, 2009, Trevor Cook’s Wells Fargo account numbers xxx-xxx6543 and xxx-xxx2702 contained \$21,115.70. *Id.* ¶¶ 5-6, Exs. 4-5. This Court’s Receivership Orders properly apply to that balance.

This Court’s Receivership Orders specifically give the Receiver authority to take possession of all assets frozen in the Phillips case. *See Second Amended Order Appointing Receiver*, SEC Docket No. 68, at XX; *Order Continuing Appointment of the Temporary Receiver*, CFTC Docket No. 96, at V. Wells Fargo accounts xxx-xxx6543

and xxx-xxx2702 were frozen on July 7, 2009 by the Temporary Restraining Order issued in the *Phillips* case. *Id.* ¶¶ 2, 7, 17, Exs. 1, 6, 14. However, Wells Fargo failed to effectuate the freeze. Wells Fargo cannot now argue that its inexcusable failure to freeze the two Cook accounts somehow reduced the amount it must turn over to the Receiver to the sum left in the accounts when the Receiver brought this error to its attention in December 2009.

B. Wells Fargo Has Violated This Court’s Receivership and Asset Freeze Orders by Failing to Return \$9,275.22 in Receivership Funds Held for the Benefit of Trevor Cook

The Receiver is entitled to \$21,115.70—the balance of funds in Trevor Cook’s Wells Fargo accounts xxx-xxx6543 and xxx-xxx2702 on July 7, 2009. Kohlhepp Decl. ¶¶ 5-6, Exs. 4-5. To date, Wells Fargo has returned only \$11,840.48. *Id.* ¶¶ 11-12, Exs. 10-11. Wells Fargo has refused to return the remaining \$9,275.22 to the Receiver. *Id.* ¶¶ 24-27.

This Court specifically empowered the Receiver to “take custody, control and possession of all the funds . . . in the possession or under the direct control of the Receiver Estates.” *Second Amended Order Appointing Receiver*, SEC Docket No. 68, at I.C. Moreover, the Receiver is authorized to take possession of all funds held for the benefit of Trevor Cook, *wherever situated*. *Order Continuing Appointment of the Temporary Receiver*, CFTC Docket No. 96, at I.A. Additionally, as an entity through which Trevor Cook funneled money in furtherance of his fraudulent scheme, Wells Fargo is stayed from “[d]oing any act to interfere with the taking control, possession, or management, by the Receiver, of any assets of the Receiver Estates, or to in any way

interfere[s] with or harass[es] the Receiver, or to interfere in any manner with the exclusive jurisdiction of this Court over the Receiver Estates.” *Second Amended Order Appointing Receiver*, SEC Docket No. 68, at VII.D.

Wells Fargo’s continued refusal to return to the Receiver \$9,275.22 in Receivership funds, the outstanding balance of the \$21,115.70 it held for the benefit of Trevor Cook as of July 7, 2009, violates this Court’s Receivership Orders. *See id.*

C. To Allow Wells Fargo to Retain \$9,275.22 in Receivership Funds Would Be Unjust and Inequitable

Wells Fargo would have the amount held for the benefit of Trevor Cook in accounts xxx-xxx6543 and xxx-xxx2702 limited to the combined balance of the accounts on December 16, 2009, the date Wells Fargo finally froze them. *See Kohlhepp Decl.* ¶¶ 11-12, Exs. 10-11. But this would allow Wells Fargo to benefit from its mistake at the cost of over 1,000 defrauded investors. Absent a reasonable excuse, this result would be both illogical and unjust.

D. Wells Fargo’s Failure to Freeze Two Cook Accounts Is Inexcusable

Wells Fargo attempted to explain its failure to freeze account numbers xxx-xxx6543 and xxx-xxx2702 by noting that it “was not provided any [other] identifying information for Mr. Cook” and that “pages of Trevor Cooks came up” after a name search. *Kohlhepp Decl.* ¶ 15, Ex. 13. Instead of inquiring further, or at a minimum informing the Court and counsel of these facts, Wells Fargo simply did nothing. *Id.* ¶¶ 8-9, 15, 24-27, Exs. 7-8, 13.

Certainly, Wells Fargo's efforts to comply with a Court-ordered asset freeze must include a minimum quantum of diligence. It is hardly unduly burdensome to expect a sophisticated bank to seek out further identifying information when faced with multiple accounts in the name of Trevor Cook. Indeed, it has been the common practice of banks in receipt of the Court's Asset Freeze and Receivership Orders to call the Receiver seeking further identifying information. *Id.* ¶ 16. Moreover, Trevor Cook maintained a debit card in his personal name attached to at least one of the accounts Wells Fargo did freeze on July 9, 2009. *See id.* ¶ 21, Ex. 18.

Further, had Wells Fargo simply looked at the addresses on account for the "myriad" Trevor Cooks, they would have seen that account numbers xxx-xxx6543 and xxx-xxx2702 express the exact same Tiffany Court address as the other accounts that Wells Fargo did freeze in July 2009. *Id.* ¶¶ 18-20, Exs. 15-17. Finally, Wells Fargo failed to even mention the fact that it had found accounts held by "Trevor Cook" in its July 9, 2009 letter to counsel for plaintiffs in the Phillips case, disingenuously implying to the parties and the Court that a thorough search had been conducted. *See id.* ¶ 4, 15, Exs. 3, 13.

Wells Fargo's failure to exercise even the most basic level of due diligence in its efforts to comply with this Court's Orders directly resulted in the dissipation of at least \$9,275.22 in Receivership funds by Trevor Cook. *Id.* ¶ 17, Ex. 14.

CONCLUSION

In the interests of justice, defrauded investors must not be punished for Wells Fargo's inexcusable mistake. For all the forgoing reasons, the Receiver respectfully

requests that this Court issue an Order compelling Wells Fargo to comply with this Court's Receivership Orders and return \$9,275.22 in outstanding Receivership funds to the Receiver. The Receiver further requests that the Court award attorneys' fees incurred in preparation of the pleadings filed herewith and impose such other relief or sanctions as the Court deems necessary under the circumstances.

Dated: June 2, 2010

Respectfully submitted,

s/ RJ Zayed

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