
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.

**PETITION FOR RETURN OF RECEIVERSHIP ASSETS FROM
RESPONDENT NEW YORK COMMUNITY BANK**

Pursuant to this Court's Orders dated November 23, 2009, and July 20, 2010, Receiver R.J. Zayed brings this Petition For Return Of Receivership Assets From Respondent New York Community Bank ("NYCB") on behalf of the Defendants and Relief-Defendants in *SEC v. Cook et al.*, 09-cv-3333, and *CFTC v. Cook et al.*, 09-cv-3332, to recover funds properly belonging to the over 1,000 defrauded investors.

Specifically, the Receiver seeks an order (1) requiring NYCB to disgorge all Receivership funds received by AmTrust Bank ("AmTrust"), now a division of NYCB; (2) entering judgment against NYCB in an amount equal to all of the Receivership funds received by AmTrust; and (3) entering judgment against NYCB for prejudgment and post-judgment interest, attorneys' fees, costs and such other relief at law or in equity. In support of this Application, the Receiver states as follows:

PROCEDURAL BACKGROUND

1. On November 23, 2009, the Securities and Exchange Commission ("SEC") and the Commodity 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 case"), Docket No. 1 (Nov. 23, 2009); *Complaint for Injunctive and Other Equitable Relief and For Penalties under the Commodity Exchange Act*, No. 09-cv-3332 ("CFTC case"), Docket No. 1 (Nov. 23, 2009).

2. Trevor 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). Victims of the Scheme include over 1,000 investors who were defrauded of over \$190 million. *Id.*

3. On November 23, 2009, the Court established a Receivership in the related SEC and CFTC cases, appointed R.J. Zayed as Receiver, and froze all assets of the Receivership Entities. *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 Continuing Appointment of Temporary Receiver*, CFTC Docket No. 96 (Dec. 11, 2009).

4. The purpose of the Receivership is to marshal, preserve, account for and liquidate the assets of the Receivership. *Order Continuing Appointment of Temporary Receiver*, CFTC Docket No. 96, at 3. To accomplish this, the Receiver must take control of all assets of the Receivership—“wherever located”—including investor money fraudulently transferred to third parties.

5. On July 20, 2010, the Court entered an Order authorizing the Receiver to commence summary proceedings within the SEC and CFTC cases to recover

Receivership funds transferred to third parties. The Court retained jurisdiction of this matter for all purposes. *See Order of Preliminary Injunction, Asset Freeze, and Other Ancillary Relief*, SEC Docket No. 51, at 15 (Dec. 8, 2009); *Order Allowing Summary Proceedings*, SEC Docket No. 380 (July 20, 2010); *Order Allowing Summary Proceedings*, CFTC Docket No. 350 (July 20, 2010).

PARTIES

6. The Petitioner is Receiver R.J. Zayed, acting on behalf of all defrauded investors.

7. Respondent New York Community Bank is a New York State-chartered savings bank. AmTrust, now a division of NYCB, is headquartered at 1801 E. 9th Street, Suite 200, Cleveland, Ohio 44114.

8. NYCB will be served pursuant to the Federal Rules of Civil Procedure or by other means approved by order of this Court.

JURISDICTION AND VENUE

9. This Court has jurisdiction over this action, and venue is proper, under Section 22(a) of the Securities Act (15 U.S.C. § 77v(a)), Section 27 of the Exchange Act (15 U.S.C. § 78aa), Section 6d of the Commodity Exchange Act (7 U.S.C. § 13a-2(2)), Chapter 49 of Title 28, Judiciary and Judicial Procedure (28 U.S.C. § 754), and Chapter 85 of Title 28, Judiciary and Judicial Procedure (28 U.S.C. § 1367(a)).

10. Further, as the Court that appointed the Receiver, this Court has jurisdiction over any claim brought by the Receiver in furtherance of his Receivership powers and duties, including Summary Proceedings as per the Court's July 20, 2010 Order. *See*

Order of Preliminary Injunction, Asset Freeze, and Other Ancillary Relief, SEC Docket No. 51, at 15 (Dec. 8, 2009); *Order Allowing Summary Proceedings*, SEC Docket No. 380 (July 20, 2010); *Order Allowing Summary Proceedings*, CFTC Docket No. 350 (July 20, 2010).

11. This Court is the proper venue because the real property subject to the mortgage held by AmTrust, now a division of NYCB, is located in Minnesota.

FACTS

A. Trevor Cook Operated a Ponzi Scheme.

12. Trevor Cook, using the Receivership Entities, knowingly and intentionally created, devised, executed, and attempted to execute a scheme and artifice to defraud, and to obtain money and other things of value, by means of materially false and misleading statements and representations. *United States v. Trevor Gilson Cook*, No. 10-cr-00075, Docket No. 7, at 1–3.

13. During the course of the scheme, Cook, using the Receivership Entities, raised at least \$190 million from at least 1,000 investors by selling investments in a purported foreign currency trading program ("Trading Program"). *Id.* at 2. Investments in the Trading Program generated substantially all of the income for the Receivership Entities. *Id.*

14. In furtherance of the scheme, Cook caused false statements to be made to investors, including but not limited to, promising that the Trading Program would generate annual returns of 10% to 12% and that the currency trading involved little or no risk to the investors' principal. *Id.* at 2.

15. In furtherance of the scheme, Cook caused material information to be withheld from investors, including his knowledge of the precarious financial position—and eventual bankruptcy—of Crown Forex, SA, a Swiss entity through which Cook was placing currency trades and the fact that his currency trading during the period from July 1, 2006, through August 31, 2009, and that he had incurred trading losses in excess of \$35 million at PFG Best in Chicago. *Id.* at 2.

16. In furtherance of the scheme, Cook caused an account to be opened in the name of Crown Forex LLC at Associated Bank, where he caused investor funds to be deposited and then diverted for personal use. *Id.* at 2.

17. In furtherance of the scheme, Cook caused statements to be sent to investors that misrepresented the value of their investments in the Trading Program. *Id.* at 2-3.

18. In furtherance of the scheme, Cook withheld from the investors the fact that he was using their money for non-investment purposes, including, but not limited to, the acquisition and maintenance of various real property holdings. *See id.* at 3.

B. Trevor Cook Transferred at Least \$160,452.91 in Receivership Funds to AmTrust, now a division of NYCB.

19. Upon information and belief, on July 29, 2005 AmTrust, now a division of NYCB, operating under the name Ohio Savings Bank, entered into a promissory note and mortgage with Gina Cook, wife of Defendant Trevor Cook, in her personal capacity in connection with real property located at: LOT THREE (3), BLOCK THREE (3), HEARTHSTONE, DAKOTA COUNTY, MINNESOTA, located at 12735 Dover Drive,

Apple Valley, Minnesota (“12735 Dover Drive”).

20. Upon information and belief, AmTrust, now a division of NYCB, ceased using the trade name “Ohio Savings Bank” in 2007.

21. Upon information and belief, AmTrust, now a division of NYCB, continues to hold the promissory note and mortgage connected to the 12735 Dover Drive property and has received all payments made on that mortgage.

22. Upon information and belief, AmTrust is now a division of New York Community Bank.

23. Upon information and belief, in April 2010 NYCB revived the trade name “Ohio Savings Bank” as a division of NYCB.

24. From August 2005 through November 2009, Defendant Trevor Cook transferred Receivership funds to AmTrust, now a division of NYCB, for payment of the 12735 Dover Drive mortgage obligation.

25. On April 28, 2010, Gina Cook, wife of Defendant Trevor Cook, entered an Amended Stipulation with the Receiver acknowledging that the Receivership has an interest of \$316,354.24 in the Dover Drive residence. Included in this \$316,354.24 interest are fifty-three payments made using Receivership funds, totaling \$160,452.91. *Amended Stipulation*, SEC Docket No. 284 (April 28, 2010), at 1-2; *see also Amended Stipulation*, CFTC Docket No. 274 (April 28, 2010), at 1-2.

26. The Receiver has traced funds from three accounts held in the name of Trevor Cook, including account number xxxx-xxxx-5942 at U.S. Bank and account numbers xxx-xxx6543 and xxx-xxx2702 at Wells Fargo, being transferred directly to

AmTrust, now a division of NYCB, in the form of monthly mortgage payments. As identified in the Amended Stipulation, AmTrust, now a division of NYCB, received \$160,452.91 of Receivership funds. *Id.* A copy of the summary of payments made to AmTrust, now a division of NYCB, is attached hereto as **Exhibit 1**.

27. The \$160,452.91 was for payments made on the personal obligations of Gina Cook. Trevor Cook and PFG Coin and Bullion did not owe AmTrust, now a division of NYCB, money for any obligations themselves or for other Receivership entities.

28. The \$160,452.91 came directly from funds provided by investors in Cook's fraudulent scheme, and AmTrust, now a division of NYCB, was not entitled to receive the funds.

29. NYCB has a lien and/or contractual interest in 12735 Dover Drive.

COUNT I
UNJUST ENRICHMENT

30. The Receiver realleges and adopts by reference the allegations contained in paragraphs 1 through 29, inclusive herein.

31. As discussed above, AmTrust, now a division of NYCB, received transfers from Defendant Trevor Cook in the amount of \$160,452.91.

32. Respondent has been unjustly enriched by the receipt of Receivership funds. Respondent's retention of these funds violates fundamental principles of justice, equity and good conscience.

33. Respondent has no moral or equitable claim to the funds. The source of the

payments was a theft by Cook from his investors.

34. Respondent knowingly received something of value, not being entitled to the benefit, and under circumstances that would make it unjust to permit its retention. The funds transferred to Respondent belong, in equity and good conscience, to the Receivership for ultimate distribution among *all* defrauded investors and creditors.

35. The doctrine of unjust enrichment and the principles of law and equity require that the funds received by Respondent be returned to the Receiver for equitable distribution to all of defrauded investors and other creditors.

COUNT II
FRAUDULENT TRANSFER (Minn. Stat. § 513.41, *et. seq.*)

36. The Receiver realleges and adopts by reference the allegations contained in paragraphs 1 through 35, inclusive herein.

37. Cook and the Receivership Entities transferred funds to Respondent with actual intent to hinder, delay, or defraud their creditors.

38. At all relevant times and as a consequence of the transfers, Trevor Cook knew the funds remaining with Trevor Cook, PFG Coin and Bullion and the other Receivership entities were insufficient to pay their creditors and/or investors.

39. At the time of the transfers, Trevor Cook and the other Receivership entities had at least one creditor who remains unpaid.

40. Pursuant to Minn. Stat. § 513.41, *et. seq.*, or other applicable laws, such transfers were fraudulent transfers as to the other creditors and investors defrauded by the scheme, and the Receiver has the power to avoid such transfer.

PRAYER FOR RELIEF

WHEREFORE, the Petitioner respectfully requests the Court enter an Order:

- (a) Requiring Respondent NYCB to disgorge all Receivership funds received by AmTrust;
- (b) Entering judgment against NYCB in an amount equal to all such Receivership funds received by AmTrust;
- (c) Entering judgment against NYCB for pre-judgment and post-judgment interest, attorneys' fees, costs and for such other relief at law or in equity; and
- (d) Granting such other further relief as the Court deems proper under the circumstances.

Dated: July 23, 2010

Respectfully submitted,

s/ Brian W. Hayes
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