
UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

R.J. Zayed, in his Capacity as
Court-Appointed Receiver for Trevor G.
Cook et al.,

Petitioner,

Case No: 11-cv-01042 SRN/FLN

v.

David Buysse, Steven and Pamela Cheney,
Walter Defiel, John Dzik, Terry Frahm,
Steven and Jenene Fredell, William Harris,
Michael Heise, Michael and Cynthia Hillesheim,
Larry Hopfenspirger, Steven Kautzman,
James McIntosh, George and Karen Morrisset,
Reynold Sundstrom, and Dot Anderson,

Respondents.

**RESPONDENT DOT ANDERSON'S SUPPLEMENTAL ANSWERS AND
OBJECTIONS TO THE RECEIVER'S FIRST SET OF INTERROGATORIES**

Pursuant to Rule 33 of the Federal Rules of Civil Procedure, Respondent Dot Anderson
("Mrs. Anderson") provides the following supplemental answers to the Receiver's

Interrogatories:

GENERAL OBJECTIONS

1. Mrs. Anderson objects to each and every discovery request to the extent that it calls for information that is beyond the scope of permissible discovery under the Federal Rules of Civil Procedure.
2. Mrs. Anderson objects to each and every discovery request to the extent it calls for information that is subject to the attorney-client privilege or any other privilege, the work

product doctrine, or calls for a response that would require disclosure of the mental impressions, conclusions, or legal theories of Mrs. Anderson's attorneys or other representatives of Mrs. Anderson or that Mrs. Anderson has engaged in connection with this and any related litigation.

3. Mrs. Anderson objects to each and every discovery request to the extent that it calls for disclosure of proprietary or otherwise confidential information including, but not limited to, financial data, tax information, or other confidential data.

4. Mrs. Anderson objects to each and every discovery request to the extent that it, whether standing alone or taken in conjunction with any other request, is vague or overly broad, or is calculated, or would operate to annoy, embarrass, oppress, unduly burden, or unduly cause expense to Mrs. Anderson, or would be unduly vexatious or unduly burdensome to respond to, on the ground that it exceeds the permissible scope of discovery available under the Federal Rules of Civil Procedure.

5. Mrs. Anderson objects to each and every discovery request to the extent that it requires Mrs. Anderson to produce information in the possession, custody or control of the requesting party. The ability to obtain such information is the same for Mrs. Anderson and the requesting party and the burden of obtaining it is no greater for the requesting party than for Mrs. Anderson. Therefore, the requesting party should be required to obtain such information or documents from its own records and information or those under its control.

6. Mrs. Anderson objects to each and every discovery request to the extent that it requires her to produce information that is irrelevant to the issues in this action and not

reasonably calculated to lead to the discovery of admissible evidence, on the grounds that it exceeds the permissible scope of discovery available under the Federal Rules of Civil Procedure.

7. Mrs. Anderson objects to each and every discovery request asking her to identify documents in her possession that are relevant to this action, or might lead to the discovery of admissible evidence, on the grounds that the Federal Rules of Civil Procedure, including, specifically, Rule 34, cover the request for disclosure of documents in connection with the lawsuit. Mrs. Anderson will comply with the obligation under Rule 34 of the Federal Rules of Civil Procedure and will respond to request for production of documents.

8. Mrs. Anderson objects to the instructions and definitions contained in plaintiff's Interrogatories to the extent that they make discovery request unduly burdensome, ambiguous, and confusing.

9. The following answers are based upon information presently available to Mrs. Anderson and, except for facts explicitly admitted herein, no incidental or implied admissions are intended. The fact that Mrs. Anderson answered or objected to part or all of any interrogatory should not be taken as an admission that she accepts or admits the existence of any facts set forth or assumed by such interrogatory or that such responses or objections constitute admissible evidence. The fact that Mrs. Anderson answered part or all of any Interrogatory is not intended and should not be construed to be a waiver of all or any part of any objection to any Interrogatory.

10. By responding to any discovery request, Mrs. Anderson does not concede the

relevancy or materiality of any such request, or the subject matter to which such request refers. Mrs. Anderson's response to any discovery request is made expressly subject to and without in any way waiving or intending to waive any questions or objections as to the competency, relevancy, materiality, privilege or admissibility of such evidence or for any purpose.

11. Insofar as any of the discovery requests seek information which any of the foregoing general objections apply, specification of or failure to note the general objections in the particular response to discovery is not intended nor shall it be construed as a waiver of those or other general objections with respect to any of the discovery requests.

12. Mrs. Anderson reserves the right to supplement her answers if and when additional pertinent information is discovered.

Subject to the general objections noted above, and any specific objections noted below, Mrs. Anderson responds to the interrogatories as follows:

INTERROGATORIES.

INTERROGATORY NO. 2:

Identify every person with knowledge of facts relevant to (1) Respondent's defenses to the claims in the Receiver's Petition, or (2) to any transfer of funds made by or to Respondent related to the claims in the Receiver's Petition, and further summarize in detail each person's knowledge.

ANSWER: Mrs. Anderson objects to this interrogatory because it is vague and ambiguous, and requests information protected by the attorney work product doctrine. Mrs. Anderson has not yet made a determination of all applicable defenses, especially in

light of the fact that she has not been required to answer given the pending motion to dismiss. That motion in part identifies some of her defenses to the claims. Subject to these objections, Mrs. Anderson believes that she, Dave Anderson, Grant Gryzbowski, Trevor Cook, and other employees of the Receivership Entities have information relating to the claims and defenses.

Mrs. Anderson believes that she, Dave Anderson, and Grant Gryzbowski all have information relating to her decision to invest, her decision to withdraw her investment and close her account, the paperwork that she filled out requesting the transfer, the fact that she acted in good faith when requesting the return to her of the money she invested, and the fact that she was not unjustly enriched by the return of her investment to her. TCF bank employees presumably have information that Mrs. Anderson wrote a \$102,000 check from a TCF account to make her initial investment in a Receivership Entity.

Mrs. Anderson believes that Cook and other employees of the receivership entities have information that Cook was not involved in Mrs. Anderson's request to withdraw her money, or the return to her of the funds she had invested.

Discovery continues, and Mrs. Anderson reserves the right to supplement this answer.

SUPPLEMENTAL ANSWER:

Additionally, Ryan Moeller has information consistent with his deposition testimony that the Receivership Entities were no longer taking in additional funds when respondents received payments. Accordingly, payments to Respondents were not made to induce

further investors. Additionally, Mrs. Anderson, Dave Anderson, Grant Gryzbowski, and other employees of the Receivership Entities know that Mrs. Anderson invested \$102,000 in the currency Trading Program run by one or more of the Receivership Entities, and pursuant to the terms of the investment agreement, the Receivership Entities were contractually and equitably obligated to return her principal investment to her, which they held for investment purposes only. To the extent that the Receiver's claims against Mrs. Anderson are successful, the claims in the Petition should be reduced or barred by the doctrines of reasonably equivalent value, recoupment and/or set-off for the obligation the Receivership Entities owed Mrs. Anderson for the return to her of her principal investment.

Mrs. Anderson, Trevor Cook, Grant Gryzbowski, Julia Smith and other employees of the Receivership Entities know that the transfer at issue was received in good faith (entitling Mrs. Anderson to a lien on or right to retaining an interest in the funds) and that reasonably equivalent value was given in exchange for the transfer because Mrs. Anderson closed her account, reducing her claim against the Receivership Entities and a reduction in the amount of any Liability on any judgment entered against her in this case. With regard to the affirmative defenses of *in pari delicto*, unclean hands, waiver, laches and estoppels, the SEC employees, Trevor Cook and other employees of the Receivership entities know of the Receivership entities improper and unlawful actions.

Discovery and investigation continues. The Receiver has refused to be deposed, or produce a corporate representative for deposition, and has refused to produce a number of relevant documents. Accordingly, Mrs. Anderson reserves the right to supplement this

answer pending that discovery, and the Receiver's complete production of responsive documents called for by Mrs. Anderson's discovery requests.

INTERROGATORY NO. 10:

Identify each defense that Respondent intends to assert, and for each defense identify all facts on which Respondent relies for such assertions, all persons with knowledge of such facts, and all documents on which Respondent relies for such assertions.

ANSWER: Mrs. Anderson objects to this interrogatory because it is overly broad, and unduly burdensome to the extent it asks for "all facts" and the identification of "all documents" in support of the defense. Additionally, the interrogatory calls for information protected from disclosure by the attorney work product doctrine. Subject to and without waiving these objections, Mrs. Anderson states that she has not yet been required to answer the petition, and has not yet made a determination about each defense to assert. The defenses may include, without limitation, that the Receiver's Petition for Return of Receivership assets from Investor Respondents ("the Petition") does not pass muster under *Twombly*, as applied to the claims against Mrs. Anderson. The Receiver purports to assert claims on behalf of the individual investors in Cooks's scheme, claiming the return to Mrs. Anderson of her principal investment was "preferential." But preferences are a matter of bankruptcy law, and there is no basis under Minnesota law to undo a "preferential" transfer outside of a bankruptcy action.

Additionally, the Receiver was appointed to act on behalf of the Receiver

Entities, not the investors who were unfortunately bilked by the alleged Ponzi scheme. Minnesota's fraudulent transfer statute grants a cause of action to defrauded creditors – it does not empower the Receiver who represents the debtor entity that made the transfer to undo the transaction by asserting claims on behalf of the other investors. The fraudulent transfer claims at issue do not belong to the Receiver, who lacks standing to sue for fraudulent transfer. Claims for fraudulent transfer arising under the Minnesota Uniform Fraudulent Transfer Act, Minn. Stat. § 513.41, *et seq.*, (“MUFTA”) necessarily involves a three part arrangement: (1) **a creditor with a claim** against a debtor; (2) **a debtor that makes a transfer** to a third party, which renders the debtor unable to pay the creditor's claim; and (3) **a third party that receives the transfer** from the debtor/transferor. The remedy to avoid the transfer is available only to the creditor. *See* Minn. Stat. § 513.47 (“Remedies of Creditors”). Here, the claims against Mrs. Anderson are brought by the debtor that made the transfer, not a creditor allegedly defrauded by the transfer.

The unjust enrichment claim is also pled as being unjust to the other defrauded investors. The Petition makes no allegation that the return to Mrs. Anderson's of her principle investment is unjust as it relates to any Receivership Entity represented by the Receiver. Accordingly, Mrs. Anderson has asserted the defense that the Petition fails to state a valid cause of action as a matter of law.

Mrs. Anderson did not profit from her brief investment, unlike the other investors against whom the Receiver has asserted claims. She received at most her

principal investment back. As a matter of law, Dot Anderson was not unjustly enriched when she received at most the principal amount of her investment back. Mrs. Anderson had a contractual right, under the terms of her investment with a Receivership Entity, to close her account and have her funds returned to her. The return to her of the amount she invested, or less, is not unjust enrichment. Additionally, investors in Ponzi schemes have a claim for restitution or rescission against the defrauding entity in the amount of the principal they invested. One is not unjustly enriched by receiving what they have a legal right to claim. Anderson's investigation continues, and she agrees to supplement this interrogatory answer. Additionally, Mrs. Anderson acted in good faith and had no idea that Cook allegedly operated a Ponzi scheme when she decided to close her account and asked for her money to be returned to her. She was not aware of any potential red flags that would detract from a finding of good faith. Discovery continues, and Mrs. Anderson reserves the right to supplement this response.

SUPPLEMENTAL ANSWER:

See Mrs. Anderson's Answer to the Petition, and the supplemental answer to Interrogatory No. 2. Discovery and investigation continues. The Receiver has refused to be deposed, or produce a corporate representative for deposition, and has refused to produce a number of relevant documents. Accordingly, Mrs. Anderson reserves the right to supplement this answer pending that discovery, and the Receiver's complete production of responsive documents called for by Mrs. Anderson's discovery requests.

INTERROGATORY NO. 11:

Identify all facts on which Respondent relies for the contention that no fraudulent transfer occurred, all persons with knowledge of such facts, and all documents on which Respondent relies for such contentions.

ANSWER: Mrs. Anderson objects to this interrogatory because it is overly broad and unduly burdensome to the extent it asks for the identification of "all facts" and "all documents" upon which Mrs. Anderson may rely. Subject to and without waiving these objections, Mrs. Anderson states that there is no evidence that the return to Mrs. Anderson of her money, when she asked to close her account was done with the actual intent to hinder, delay, or defraud any creditor of the debtor. Mrs. Anderson had no dealings with Trevor Cook, and Mrs. Anderson believes that Mr. Cook was not involved at all in the process of her closing her account. Additionally, Mrs. Anderson acted in good faith. See also Answer to Interrogatory No. 10. Discovery continues, and Mrs. Anderson reserves the right to supplement this response.

SUPPLEMENTAL ANSWER:

Additionally, Mrs. Anderson, David Anderson, Grant Gryzbowski, and Trevor Cook have information that no fraudulent transfer occurs. Mrs. Anderson incorporates the deposition testimony of Trevor Cook, who testified that the return to Mrs. Anderson of her money was not in furtherance of the Ponzi scheme. The trading platform for Basel, to whom Mrs. Anderson provided her money, was never established, and Cook and the Receivership Entities were taking steps to identify the investors in the entity and return their funds. Mr. Kiley and Ms. Smith may also have information relating to Basel.

There is no evidence that the return to Mrs. Anderson of the amount she provided for investment was in furtherance of the Ponzi scheme.

Discovery and investigation continues. The Receiver has refused to be deposed, or produce a corporate representative for deposition, and has refused to produce a number of relevant documents. Accordingly, Mrs. Anderson reserves the right to supplement this answer pending that discovery, and the Receiver's complete production of responsive documents called for by Mrs. Anderson's discovery requests.

INTERROGATORY NO. 12:

Identify all facts on which Respondent relies for the contention that she took the funds identified in the Receiver's Petition and the attached Exhibits 1 and 2 in good faith, all persons with knowledge of such facts, and all documents on which Respondent relies for such contentions.

ANSWER: Mrs. Anderson objects to this interrogatory because it is overly broad and unduly burdensome to the extent it asks for the identification of "all facts" and "all documents upon which she relies for the contention. Discovery has just started in this action. Subject to and without waiving these objections, Mrs. Anderson acted in good faith when she made the decision to close her account and ask that the money she invested be returned to her. She did not know that the Receivership Entities were involved in an alleged Ponzi scheme, and simply wanted to close her account. She did not have knowledge of facts that should have reasonably put her on notice that the transfer was made in order to delay, hinder, or defraud creditors of the debtor, especially in light of the

fact that she requested that her account be closed and her money be returned to her. Additionally, there is no evidence that Trevor Cook was involved in any way in any transfer to Mrs. Anderson or her decision to close her account. Discovery continues, and Mrs. Anderson reserves the right to supplement this response.

SUPPLEMENTAL ANSWER:

Additionally, Mrs. Anderson incorporates the deposition testimony of Trevor Cook, who testified that the return to Mrs. Anderson of her money was not in furtherance of the Ponzi scheme. The trading platform for Basel, to whom Mrs. Anderson provided her money, was never established, and Cook and the Receivership Entities were taking steps to identify the investors in the entity and return their funds.

See also the answers and supplemental responses to interrogatory Nos. 2, 10, and 11. Discovery and investigation continues. The Receiver has refused to be deposed, or produce a corporate representative for deposition, and has refused to produce a number of relevant documents. Accordingly, Mrs. Anderson reserves the right to supplement this answer pending that discovery, and the Receiver's complete production of responsive documents called for by Mrs. Anderson's discovery requests.

Dated: September 15, 2011

/s Adam S. Huhta

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