
UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

U.S. COMMODITY FUTURES
TRADING COMMISSION,

Plaintiff(s)

Case No: 09-cv-3332 MJD/FLN

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/FLN

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 HIS POSSESSION

INTRODUCTION

To further the objectives of the Receivership and return funds to the defrauded investor, the Receiver respectfully requests that the Court enter an Order granting the Receiver's Motion for Sale of Certain Property in His Possession.

FACTS

On November 24, 2009, this Court appointed R.J. Zayed of Carlson, Caspers, Vandenburg and Lindquist as Receiver in this action (hereafter, "the Receiver"). *See Order Appointing Receiver*, 09-cv-3333 ("SEC" cases), Docket No. 13, at 4 (Nov. 23, 2009); *see also Amended Order Appointing Receiver*, SEC Docket No. 18, at 4 (Nov. 24, 2009); *Second Amended Order Appointing Receiver*, SEC 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 . . ." *Second Amended Order Appointing Receiver*, SEC Docket No. 68, at 3.

On July 23, 2010, agents from the Federal Bureau of Investigation ("FBI") and the Internal Revenue Service, Criminal Investigation Division ("IRS") turned over to the Receiver several boxes of cash, coins, jewelry, bars of precious metals, and various sports memorabilia and collectibles recovered at the residence of Graham Cook, brother to

Defendant Trevor Cook (“FBI/IRS Items”). *See* Declaration of Brian W. Hayes, Dec. 17, 2010 (“Hayes Decl.”), ¶¶ 4-5, Ex. 1.

Beginning on July 23, 2010, the Receiver and his agents inventoried the FBI/IRS Items and contacted several numismatists and jewelers regarding the appraising and potential sale of the items. Hayes Decl., ¶ 6. On September 17, 2010, this Court entered an Order approving the sale for some, but not all, of the FBI/IRS Items. *Id.* ¶ 7; *see also Order Granting Receiver’s Motion for Sale of Certain Personal Property in Its Possession*, Docket No. 503 (Sep. 17, 2010); *Order Granting Receiver’s Motion for Sale of Certain Personal Property in Its Possession*, Docket No. 459 (Sep. 17, 2010).

The Receiver subsequently transferred and sold those items as set forth in his pleadings filed in conjunction with the September 17, 2010 Orders. *See id.* However, several items were not included in the previous Motion for Sale of Personal Property because potential buyers, appraisals, and bids were not obtained at that time. Hayes Decl., ¶¶ 8-10, Exs. 2-4. The remaining items to be sold, and which are subject to the Receiver’s motion filed herewith, include twenty-seven watches, seven bars of indium, several assorted baseball cards, and a hockey jersey. *See id.*

On October 15, 2010, the Receiver learned that there may be additional items of value belonging to Trevor Cook located at his former residence of 12735 Dover Drive, Apple Valley Minnesota 55124 (the “Dover Drive property”). *Id.* ¶ 11. On November 5, 2010, the Receiver inventoried the Dover Drive property and seized several miscellaneous personal property items. *Id.* ¶¶ 12-13, Exs. 5-6. Those items seized include, but are not limited to, a bear rug, telescope, various pictures and prints, two

leather chairs, hockey equipment, compact discs, stereo equipment, record albums, and a replica airplane propeller. *See id.*

Over the last few weeks, the Receiver contacted several jewelers, numismatists, and others in order to obtain appraisals, offers, and/or bids for the sale of the remaining watches and indium. Hayes Decl., ¶ 17. Indium is not a frequently traded commodity, nor is there a large retail market for the element. *See id.* ¶ 18. Despite the lack of potential buyers, the Receiver obtained an offer to purchase the indium which he believes will provide maximum value for the defrauded investor. *Id.*

As to the remaining watches and other personal property, the Receiver approached Luther Auctions, as he did with prior sales of personal property items, in order to determine whether an auction would provide a cost-effective solution for the sale of those items. *Id.* ¶¶ 13-15, Ex. 6. Certain offers relating to the watches, indium, and personal effects (both for an auction and for direct purchase of the goods) were provided on a confidential basis without knowing the other buyers' identities, or the amount of the other bids. *Id.* ¶ 19. Because these offers are confidential in nature, the Receiver is submitting these offers to the Court under separate correspondence for *in camera* review. *Id.*

With the Court's permission, the Receiver now respectfully requests to sell those items referenced above as follows: i) the seven (7) indium bars to American Rare Coin and Collectibles, LLC ("ARCC"); and ii) the watches and all other personal property items through Luther Auctions. *Id.* ¶¶ 14-19.

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 (“CFTC” case), Docket No. 12, at 7 (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*, CFTC Docket No. 96, at 3 (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*, SEC Docket No. 68, at I.D.; *Order Continuing Appointment of Temporary Receiver*, CFTC Docket No. 96, at F. 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*, SEC Docket No. 68, at I.G.; *Order Continuing Appointment of Temporary Receiver*, CFTC Docket No. 96, at D, E.

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*, CFTC Docket No. 96, at 2. The Receiver is 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.

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 watches, indium, and other personal property effects identified in the Hayes Declaration. *See Order Continuing Appointment of Temporary Receiver*, CFTC Docket No. 96, at I.A; *see also* Hayes Decl., ¶¶ 4, 11, Ex. 1-6. These items are property of the Receiver Estates and, therefore, the Receiver has a reasonable basis to believe the items were purchased, maintained, enhanced or augmented with investor funds. *See id.*

Accordingly, the Receiver 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. *See id.*; *see also Order Continuing Appointment of Temporary Receiver*, CFTC Docket No. 96, at 3. The auction of the remaining personal property (and the sale of the indium to American Rare Coin and Collectible) will preserve

and increase the assets of the Receivership, maximizing distributions to defrauded investors and other claimants.

The sale of personal property by the receiver is governed by Title 28, Chapter 127, Section 2004 of the United States Code, 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, unless the court orders otherwise. The pertinent section of the Code 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.

28 U.S.C. § 2001(a).

Further, the Code specifically empowers this Court to exercise its broad discretion over equity receiverships to order a sale of personal property in the manner most beneficial to the Receiver Estates. 28 U.S.C. § 2004; *see, e.g., SEC v. Safety Finance Service, Inc.*, 674 F.2d 369, 371 (5th Cir. 1982) (holding that the court overseeing the receivership is given “wide discretionary power” to determine the appropriate relief in an equity receivership, including liquidation of receivership assets); *SEC v. Wencke*, 783 F.2d 829, 837 n.9 (9th Cir. 1986); *SEC v. Lincoln Thrift Association*, 577 F.2d 600, 606 (9th Cir. 1978).

As discussed, this Court appointed the Receiver to marshal, preserve, account for and liquidate assets of the Receivership. *See Ex Parte Statutory Restraining Order*,

CFTC Docket No. 12, at 7. One of the Receiver's primary duties is to maximize distributions to defrauded investors and other claimants. *Scholes*, 56 F.3d at 755. Upon information and belief, the Receiver has concluded that the Receivership, and ultimately the hundreds of defrauded investors, will be most benefited by the private sale of the watches, indium, and personal property as requested in the pleadings filed herewith. Hayes Decl., ¶ 19.

CONCLUSION

For all the foregoing reasons, the Receiver respectfully requests that the Court enter an Order approving the private sale of the watches, indium, and other personal property as requested herein. With this Court's approval, the sale of these items will be conducted in such a fashion as to maximize revenue and, accordingly, the Receiver asserts that these sales would further the objectives of the Receivership.

Dated: December 17, 2010

Respectfully submitted,

s/ Brian Hayes

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