
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 ITS POSSESSION**

FACTS

On November 24, 2009, this Court appointed R.J. Zayed, Carlson, Caspers, Vandenburg and Lindquist as Receiver in this action. *See Order Appointing Receiver*, Docket No. 13, at 4 (Nov. 23, 2009); *see also Amended Order Appointing Receiver*, Docket No. 18, at 4 (Nov. 24, 2009); *Second Amended Order Appointing Receiver*, 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.” *Order Appointing Receiver* at 3.

On July 23, 2010, agents from the Federal Bureau of Investigation (“FBI”) and the Internal Revenue Service (“IRS”) turned over to the Receiver several boxes of cash, coins, jewelry, bars of precious metals, and various sports memorabilia and collectibles recovered at a residence currently occupied by the brother of Defendant Trevor Cook (“FBI/IRS Items”). *See Hayes Decl.*, ¶¶ 4-5, Ex. 1.

On July 23, 2010, designees of the Receiver deposited the cash into the Receiver’s bank account. Beginning on July 23, 2010, the Receiver and his agents inventoried the FBI/IRS Items and contacted several numismatists and jewelers regarding appraising and selling the items. *Hayes Decl.*, ¶¶ 6-9.

The Receiver now wishes to sell the 2,891 coins recovered by the FBI and IRS to American Rare Coin and Collectibles, LLC (“ARCC”). The exact inventory of the coins to be sold is attached to the Hayes Declaration as Exhibit 2.

1. Over the last few weeks, the Receiver contacted several numismatists and obtained appraisals for the sale of the coins recovered by the FBI and IRS. Additionally, the Receiver obtained four purchase offers for the purchase or sale of the coins. These offers were provided on a confidential basis without knowing the other buyers’ identity or amount of the other bids; to make sure that the bids were consistent, all appraisals and offers were based on benchmark prices of twelve hundred twenty-five dollars (\$1,225) per ounce for gold and eighteen dollars (\$18) per ounce per silver. Hayes Decl., ¶ 10. Because these offers are confidential in nature, the Receiver is submitting these offers to the Court under separate correspondence for *in camera* review. Hayes Decl., ¶ 11.

Based on the bids submitted, the Receiver requests permission to accept the offer of ARCC as providing the greatest benefit to the Receivership. ARCC’s offer is price-adjusted, which is to say that the final amount also will be based on changes in the per ounce prices for gold and silver on the date of sale. Hayes Decl., ¶ 12. Accordingly, the final price will differ from ARCC’s offer based on the deviation from the benchmark prices on the date of the actual sale (e.g., if the price of gold is higher than \$1,225 at the sale date, the Receiver will receive a better price for the gold coins). The Receiver anticipates that the final amount obtained for the sale of the coins will be between \$230,000 and \$285,000.

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, at 7 (Doc. 21) (D. Minn. 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, No. 09-cv-3332, at 3 (Doc. 96) (D. Minn. 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, No. 09-cv-3333, at I(D) (Doc. 68); Order Continuing Appointment of Temporary Receiver, No. 09-cv-3332, at F (Doc. 96). 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, No. 09-cv-3333, at I(G) (Doc. 68); Order Continuing Appointment of Temporary Receiver, No. 09-cv-3332, at D, E (Doc. 96).

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, No. 09-cv-3332, at 2 (Doc. 96). The Receiver was 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 coins identified in Exhibit 2 of the Hayes Declaration. *See Order Continuing Appointment of Temporary Receiver*, No. 09-cv-3332, at I(A) (Doc. 96). These coins are property of the Receiver Estates. Further, the Receiver has a reasonable basis to believe this collection of coins was purchased, maintained, enhanced or augmented with investor funds.

The Receiver, therefore, 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. This action will preserve and increase the assets of the Receivership, and ultimately maximize distributions to defrauded investors and other claimants.

The sale of personal property by the receiver is governed by 28 U.S.C. § 2004, 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 28 U.S.C. § 2001(a) 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.

Section 2004 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).

This Court appointed the Receiver to marshal, preserve, account for and liquidate assets of the Receivership. One of the Receiver’s primary duties is to maximize distributions to defrauded investors and other claimants. 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 almost three thousand coins recovered by the FBI and IRS on July 23, 2010 to ARCC.

As indicated by the facts section, *supra*, the Receiver respectfully requests that the Court approve the private sale of the coins listed in Exhibit 2 of the Hayes Declaration to American Rare Coin and Collectibles, LLC as per the terms of ARCC's purchase offer to the Receivership. The sale of these items would 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: September 3, 2010

Respectfully submitted,

s/ Brian Hayes

R.J. Zayed (MN Bar No. 309,849)

Tara C. Norgard (MN Bar No. 307,683)

Russell J. Rigby (MN Bar No. 323,652)

Brian W. Hayes (MN Bar No. 294,585)

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Relief Defendants.

R.J. ZAYED,

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CERTIFICATE OF WORD COUNT COMPLIANCE

I, Brian Hayes, certify that the Receiver's Memorandum of Law in Support of Receiver's Motion for Sale of Certain Personal Property in Its Possession complies with Local Rule 7.1(c).

I further certify that, in preparation of this memorandum, I used Microsoft Word 2003, and that this word processing program has been applied specifically to include all text, including headings, footnotes, and quotations in the following word count. I further certify that the above referenced memorandum contains no more than 1,690 words.

Dated: September 3, 2010

Respectfully submitted,

s/ Brian Hayes

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