

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

U.S. COMMODITY FUTURES
TRADING COMMISSION,
Plaintiff,

v.

Case No. 09-cv-3332 (MJD/FLN)

TREVOR COOK et al.,
Defendants,

R.J. ZAYED,
Receiver.

UNITED STATES SECURITIES
AND EXCHANGE COMMISSION,
Plaintiff,

v.

Case No. 09-cv-3333 (MJD/FLN)

TREVOR G. COOK, et al.,
Defendants,

R.J. ZAYED,
Receiver.

UNITED STATES SECURITIES
AND EXCHANGE COMMISSION,
Plaintiff,

v.

Case No. 11-cv-574 (MJD/FLN)

JASON BO-ALAN BECKMAN, et al.,
Defendants,

R.J. ZAYED,
Receiver.

**FOURTEENTH STATUS REPORT OF RECEIVER R.J. ZAYED IN
CFTC v. COOK, et. al. (09-cv-3332),
SEC v. COOK, et. al. (09-cv-3333), and SEC v. BECKMAN, et. al. (11-cv-574)**

R. J. Zayed, the Receiver for Defendants and Relief Defendants in these cases, submits this Fourteenth Report summarizing the major activities that he has undertaken since the filing of the Thirteenth Status Report on August 8, 2012. This Fourteenth Report covers the period from August 9, 2012 through January 30, 2013.

A. Criminal Cases

On June 12, 2012, the jury in the criminal case against Jason Bo-Alan Beckman, Gerald Joseph Durand, and Patrick Joseph Kiley (Case No. 11-cr-228) returned a verdict of guilty as to each defendant on all charges. On January 3, 2013, Chief Judge Michael J. Davis sentenced Mr. Beckman to 30 years in prison for his role in the scheme, Mr. Durand to 20 years, and Christopher Pettengill (Case No. 11-cr-192) to 7.5 years. Sentencing for Mr. Kiley has been continued pending a mental and physical examination that has been ordered by the Court. More information about the criminal action is available on the U.S. Attorney's website at www.justice.gov/usao/mn/beckman.html.

The Receiver continues to provide the U.S. Probation Office with updated information about the victim claims that have been recognized by the Receiver and confirmed by the Court in the civil cases brought by the SEC and CFTC. Anyone who wishes to provide additional information to the Probation Office relating to losses resulting from the fraudulent activities of Beckman, Durand, Kiley, and Pettengill should contact Peter Madsen with the Probation Office at 612-664-5433 or Peter_Madsen@mnp.uscourts.gov.

B. Associated Bank

On January 29, 2013, the Receiver filed a lawsuit against Associated Bank, alleging claims for aiding and abetting fraud, breach of fiduciary duty, conversion, and false representations and omissions. The Receiver is represented by contingency fee counsel in this matter. The case was filed under seal because many of the facts alleged in the complaint presently are subject to a Protective Order. The Receiver plans to move the Court to allow the full complaint to be publicly filed. Details of the lawsuit, *Zayed v. Associated Bank*, 13-cv-00232, can be found on the Receiver's web site.

C. Arch Insurance

The Receiver entered into a *Miller-Shugart* settlement with Ed Baker and his companies. Pursuant to the rights acquired under that settlement, the Receiver filed suit against Baker's insurance carrier, Arch Insurance, in the United States District Court for the District of Minnesota. The details of the lawsuit are on the Receiver's website.

The parties argued cross motions for summary judgment on November 14, 2012 before Judge Patrick J. Schiltz. Judge Schiltz then requested supplemental briefing from the parties regarding the insurability of certain claims under Minnesota law. Those briefs were filed by the parties on November 28, 2012. A ruling on the parties' summary judgment motions is expected some time this year.

D. Peregrine Financial Group ("PFG")

The Receiver, represented by contingency fee counsel, filed suit against PFG on February 1, 2012 in the United States District Court for the District of Minnesota. The

details of the Receiver's lawsuit are on the Receiver's website. PFG filed a motion to transfer the case to the Northern District of Illinois, which was denied on June 22, 2012.

On July 10, 2012 the United States Commodities Futures Trading Commission ("CFTC") filed suit against PFG in the Northern District of Illinois after it was discovered that over \$200 million was missing from the company. The suit accuses PFG and its founder of fraud and misuse of customer funds. Criminal charges also have been filed and PFG has filed for bankruptcy. In view of these proceedings, Chief Judge Davis administratively closed the Receiver's case against PFG without prejudice.

The Receiver has now filed his claims in the PFG bankruptcy proceedings and is awaiting the bankruptcy trustee's response.

E. The Berg Investors and Dot Anderson

The Receiver has settled his claims against the remaining Respondents in the clawback action captioned *Zayed v. Buysse*, 11-cv-1042 (D. Minn.). This case was brought to recover money that Trevor Cook transferred to people who had invested through his father-in-law, Clifford Berg, and through one of his employees, Grant Gryzbowski, as the scheme was collapsing. The Receiver settled his claims against Respondents John Dzik and William Harris early in the litigation. Dzik and Harris have made their settlement payments in full. The case continued against the remainder of the Respondents, David Buysse, Steven and Pamela Cheney, Walter Defiel, Terry Frahm, Steven and Jenene Fredell, Michael and Jennifer Heise, Michael and Cynthia Hillesheim, Larry Hopfenspirger, Steven Kautzman, James McIntosh, George and Karen Morrisset, Reynold Sundstrom (collectively "the Berg Investors") and Dot Anderson.

On February 13 and 14, 2012, Judge Susan Richard Nelson heard cross motions for summary judgment that had been brought by the Receiver, the Berg Investors and Dot Anderson. On April 26, 2012, the Receiver and the Berg Investors argued *Daubert* motions to exclude each other's experts from testifying in the case. On September 27, 2012, Judge Nelson issued a 120-page opinion granting in part and denying in part the Receiver's motion for summary judgment, denying the summary judgment motions brought by the Berg Investors and Dot Anderson, granting the Receiver's *Daubert* motion to exclude the Berg Investors' expert, and granting the Berg Investors' motion to exclude the Receiver's rebuttal expert. The Court also ordered the parties to participate in settlement conferences with Magistrate Judge Noel.

On November 26, 27, 28 and 29, 2012, Magistrate Judge Noel conducted individual settlement conferences between the Receiver and each of the Berg Investors. (The Receiver reached a settlement with Dot Anderson before her scheduled settlement conference.) As a result of those conferences, the Receiver settled all remaining claims in that clawback action. On January 25, 2013, the Receiver, the Berg Investors and Dot Anderson filed a Joint Motion to approve the settlement agreements. A hearing on the motion is scheduled before Chief Judge Davis on February 4, 2013 at 9:00 a.m. Pursuant to the terms of the settlement agreements, payments in full (except for Anderson who is on a one-year payment plan) are due within 60 days of entry of the Court's Order approving the settlements. Upon the receipt of the settlement payments from all of the Berg Investors, the Receiver anticipates asking the Court to make another interim

distribution, including the proceeds from the settlement agreements with the Berg Investors and Dot Anderson.¹

A summary of the settlements of all claims in the originally filed action is set forth below:

Respondent	Settlement Amount	Claimed Amount
Anderson	\$ 48,000.00	\$ 102,000.00
Buysse	\$ 141,285.00	\$ 360,700.00
Cheney	\$ 572,705.00	\$ 1,636,300.00
Defiel	\$ 37,980.00	\$ 94,950.00
Dzik	\$ 687,900.00	\$ 753,900.00
Frahm	\$ 280,000.00	\$ 916,570.00
Fredell	\$ 112,380.00	\$ 280,950.00
Harris	\$ 244,850.00	\$ 413,600.00
Heise	\$ 318,364.80	\$ 795,911.53
Hillesheim	\$ 102,460.00	\$ 256,150.00
Hopfenspirger	\$ 80,800.00	\$ 202,000.00
Kautzman	\$ 47,820.00	\$ 119,550.00
McIntosh	\$ 100,000.00	\$ 250,000.00
Morisset	\$ 24,420.00	\$ 61,050.00
Sundstrom	\$ 34,180.00	\$ 85,450.00
	\$ 2,833,144.80	\$ 6,329,081.53

F. “Winning” Investors

In December 2010, the Receiver sent out approximately 150 demand letters to individuals who, according to bank records, received more money from Receivership Entities than they invested. The Receiver’s demand letters informed these “winning investors” of the claims the Receiver has against them and offered to settle these claims for the investors’ profits. Of those who received letters, the majority have accepted the

¹ John Dzik and William Harris had paid their settlement amounts in full by September 2010 and November 2011, respectively. The proceeds from these two earlier settlements were accounted for in previous distributions to investor victims.

Receiver's settlement offer or provided third-party documentation to show that they were not, in fact, winning investors. Twenty-one have either not responded or have rejected the Receiver's demand. The Receiver anticipates filing clawback actions against the winning investors who have not settled.

In January 2013, the Receiver sent out approximately 33 new demand letters to additional individuals who have been identified as profiting from their investments in the fraudulent entities. As with the original group, the Receiver's demand letters to this second group of "winning investors" informs them of the claims the Receiver has against them and offers to settle for the investors' profits. Responses from this second group of winning investors are due mid-February. Nine of the people who received letters in January 2013 have settled with the Receiver.

To date, "winning investors" have pledged to repay \$960,781.83. Of this, \$777,058.26 has been received and deposited in the Receivership's bank account.

G. Panamanian Property

There have been no new developments since the Receiver's previous Status Report.

H. Distributions to Investor Victims of Ponzi Scheme

Pursuant to the Court's Orders, the Receiver has made the following distributions to the investor victims of this Ponzi scheme (1) \$2,250,000.00 on or about November 12, 2010; (2) \$39,820.48 on or about November 29, 2010 to the employee investor victims; (3) \$133,230.44 on or about May 5, 2011 to additional victims who were identified after the initial distribution and to victims whose claims were adjusted by the Receiver; (4)

\$1,027,729.04 on or about August 2, 2011; (5) \$1,379,955.63 on or about March 28, 2012; (6) and \$1,163,249.78 on or about May 7, 2012. The Receiver also released \$363,700.00 for purposes of criminal restitution. As mentioned above, the Receiver plans to move the Court to distribute the proceeds from his settlement with the Berg Investors and Dot Anderson when those funds are received.

In sum, to-date the Receiver has distributed approximately \$6,357,685.37 to the investor victims of the Ponzi scheme. This amount equals about 4.3 cents per every dollar stolen.

I. Financial Status of Receivership

The Receiver has spent approximately \$7,587,588.78 in fees and expenses through December 31, 2012. These fees and expenses were paid to service providers including: Carlson, Caspers, Vandenburg, Lindquist & Schuman; Dorsey & Whitney; Weiler, Maloney, and Nelson; Miller Thompson LLP; McMillan LLP; Morgan & Morgan; BMG Avocats; Leonard, O'Brien, Spencer, Gale & Sayre, Ltd.; Messerli & Kramer; Kelly & Berens; Willeke & Daniels; Greene Espel; Lewis and Roca; Ernst & Young; Computer Forensics; WayPoint, Inc.; Avalon Security; Safety Net Security; liQuidprint; 33rd Co. Inc.; Bernick, Lifson, Greenstein, Greene & Liszt; Lindquist & Vennum; and Ernst & Young. These fees and expenses also include the loan that the Court ordered the Receiver to make to Jason Bo-Alan Beckman on April 4, 2011 for living expenses. The details of all fees and expenses can be found on the Receiver's website under fee petitions.

The Receiver has a cash balance of \$762,870.55 in the Receiver's bank account and \$200,000 posted as bond in Panama.

In sum, the Receiver has collected, liquidated or frozen approximately \$14,907,999.19, paid \$7,587,588.78 in fees, expenses and other costs, and released \$6,357,685.37 for distribution to the victims of the Ponzi scheme. As noted above, the Receiver anticipates asking the Court for another interim distribution upon receiving the settlement payments from all of the Berg Investors.

J. Other Assets

The Receiver is still investigating the disposition of other Receivership assets including those that were given to, among others, James Pieron, JDFX, Capricorn, Crown Forex, Shadi Swais, Ibrahim Hasanein, Gary Saunders, and Holger Bauchinger,.

The Receiver is also investigating possible claims against various third parties who may have aided and abetted the fraud that was perpetrated against the Receivership Estates. Specifically, the Receiver is actively investigating potential claims against other third parties including financial institutions, law firms, and brokerage firms.

The Receiver filed a lawsuit against Michael Kabarec based on Receivership funds that went to Baker's company, Mesa Holdings. The case settled with Kabarec agreeing to pay the Receiver \$55,000.00. The full amount has been paid to the Receiver. The details of the settlement are on the Receiver's web site.

The Receiver settled with JP Fund Services. JP Fund Services agreed to pay the Receiver \$350,000.00 in fourteen monthly installments beginning December 1, 2011, and

agreed to submit to the jurisdiction of the Court for purposes of enforcing the settlement. JP Fund Services has now completed its settlement payments to the Receiver.

Jared Jenkins is delinquent under an agreement to pay back a loan he received from Trevor Cook prior to the Receivership. The Receiver will pursue necessary actions to ensure full payment is made.

K. Outside Counsel

On October 19, 2011, and September 13, 2012, the Court granted the Receiver's motions to retain outside counsel for purposes of pursuing claims against third parties. The Receiver negotiated a structure where outside counsel would pursue claims on behalf of the Receiver in exchange for a fair and reasonable contingency fee to be paid solely from the proceeds of a judgment or settlement, with outside counsel assuming all costs of the anticipated litigation. Pursuant to the Court's October 19, 2011 Order, the Receiver retained the law firm of Reid Collins & Tsai LLP. Reid Collins assisted in the settlement of the Receiver's claims against Western and NRP and is handling the lawsuit against PFG. Pursuant to the Court's September 13, 2012 Order, the Receiver retained the Stadheim & Grear Ltd. law firm. Stadheim Grear is handling the Receiver's law suit against Associated Bank.

L. 1-800 Number

The Receiver continues to operate local (612-436-9664) and toll-free (877-316-6129) numbers for investor inquiries.

M. Receiver Website

The Receiver operates a website for investors and other members of the public at www.cookkileyreceiver.com. The Receiver continues to post selected filings from the three main cases, as well as various additional cases that have stemmed from this fraud and the Receiver's efforts to collect stolen assets. That section, formerly labeled "Receiver Filings" and now labeled "Case Filings", has been reorganized to allow users to more easily navigate the large volume of information that can be found there. The Receiver also continues to post responses to commonly asked questions as a means to provide current information and maintain active ongoing communications with investors. To date the Receiver has posted 145 such responses on the "FAQS" section of the Receiver's website. Among other things, the Receiver has recently posted summary information about investor victims, including the geographic locations, ages, self-reported annual income and net worth, and maximum, minimum and average claim amounts. The Court also maintains a website for this case, which can be found at www.mnd.uscourts.gov/sec-cftc/index.shtml.

N. Taxes

The Receiver is continuing discussions with the Internal Revenue Service and Minnesota Department of Revenue in an effort to minimize any filing and tax obligations that might be applicable to the Receivership Entities. The Receiver has posted a number of responses to frequently asked questions regarding taxes on the "FAQS" section of the Receiver's website.

CONCLUSION

The Receiver will submit a report approximately every 60 days to summarize his ongoing activities since the last report.

Dated: January 31, 2013

Respectfully submitted,

R.J. Zayed

R.J. Zayed, Receiver

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