

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.

**FIFTEENTH 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 Fifteenth Report summarizing the major activities that he has undertaken since the filing of the Fourteenth Status Report on January 31, 2013. This Fifteenth Report covers the period from February 1, 2013 through August 21, 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 Beckman to 30 years in prison for his role in the scheme, Durand to 20 years, and Christopher Pettengill (Case No. 11-cr-192) to 7.5 years. Sentencing for Kiley was continued pending a mental and physical examination ordered by the Court. On July 15, 2013, Chief Judge Davis sentenced Kiley to 20 years in prison. 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 Cook, 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 in the United States District Court for the District of Minnesota, 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. Judge David S. Doty and Magistrate Judge Janie S. Mayeron were assigned to the case.

On April 3, 2013, Chief Judge Davis granted the Receiver's request for leave to recuse himself from the Associated Bank matter and appoint Tara Norgard, Brian Hayes, and Russell Rigby to act collectively as Receivers in that matter. This recusal was made to avoid any potential conflict of interest in conjunction with Mr. Zayed's move to the law firm of Dorsey & Whitney. Mr. Zayed continues to serve as the Receiver with regard to all matters other than Associated Bank and will continue to employ the law firm of Carlson, Caspers, Vandenburg, Lindquist & Schuman, P.A. with respect to the Receivership until its conclusion.

The Associated Bank case originally was filed under seal because many of the facts alleged in the complaint and included in exhibits were subject to a Protective Order. The Receiver then moved the Court to allow the full complaint to be filed on the public docket. The Minneapolis Star-Tribune filed a similar motion. On April 15, 2013, Magistrate Judge Mayeron granted the motion in part, ordering the complaint and

exhibits to be publicly filed with certain redactions for the names and private information of non-parties.

On May 17, 2013, Judge Doty heard oral argument on Associated Bank's motion to dismiss the lawsuit. A ruling on the motions is expected later this year.

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 under an insurance policy that the Receiver acquired with that settlement, the Receiver filed suit against Baker's insurance carrier, Arch Insurance, in the United States District Court for the District of Minnesota. Judge Patrick J. Schiltz and Magistrate Judge Tony L. Leung were assigned to the case.

The parties argued cross motions for summary judgment on November 14, 2012 before Judge Schiltz. On March 20, 2013, the Court issued an Order finding that the intentional acts that the Receiver sought coverage for under the Arch policy are not insurable under Minnesota law. This was an issue that the parties had not raised, Minnesota courts had not previously addressed, and the Court raised on its own. The result of the Order eliminated the majority of the value of the Receiver's claims. One issue that the Receiver had raised at summary judgment was not decided by the Court.

On June 17, 2013, the parties participated in a day-long court ordered settlement conference with Magistrate Judge Leung. After carefully weighing the costs of appealing the Court's ruling, the likelihood of recovering those costs in the litigation, and the

likelihood of damages that would be awarded in view of the Court's rulings in the case and comments at the summary judgment hearing, the Receiver settled the case, with Arch agreeing to pay the Receiver \$120,000.00. Chief Judge Davis approved the Settlement Agreement on August 12, 2013. Arch's payment is due to the Receiver by August 26, 2013.

Details of the lawsuit, *Zayed v. Arch*, 11-cv-01319, are on the Receiver's website.

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. Since then PFG's founder, Russell Wasendorf, pled guilty to fraud and was sentenced to 50 years in prison 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 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 in the clawback action captioned *Zayed v. Buysse*, 11-cv-1042 (D. Minn.). The Receiver had previously settled his claims against John Dzik and William Harris, which stemmed from facts similar to the facts involving the Berg Investors. 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.

On February 22, 2013, Chief Judge Davis approved the Receiver's settlement agreements with the Berg Investors and Anderson. On May 16, 2013, after final payments from the Berg Investors had been made (Anderson is scheduled to make the balance of her payments by the end of the year), the Receiver dismissed the case. The Receiver distributed the vast majority of the proceeds from this settlement in the Fifth Interim Distribution, which was mailed to investors in June 2013. *See infra* Part I.

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

Details of the lawsuit, *Zayed v. Buysse*, 11-cv-1042, are on the Receiver's website.

F. "Winning" Investors

The Receiver has identified nearly 200 investors who received more from this Ponzi scheme than they invested. Starting in December 2010, the Receiver sent demand letters to these "winning" investors, informing them of the Receiver's legal claims against them and offering to settle for their overages. Of those who received letters, the majority have settled with the Receiver. To date, these winning investors have repaid \$967,712.26. Others have entered into agreements to repay approximately \$90,000 in winnings over time.

Although the Receiver has made every effort to work with all winning investors to avoid litigation, 27 of these individuals have either declined the Receiver's settlement offer or defaulted on their agreement to return the overages. On July 15, 2013, the Receiver filed a lawsuit against these remaining winning investors to recover funds properly belonging to all the defrauded investors who were victims of Trevor Cook's

Ponzi scheme. The Receiver will wait 45 days to formally serve the Complaint in a final attempt to resolve the case without further litigation.

Details of the case, *Zayed v. Allen et al.*, 13-cv-1896, can be found on the Receiver's web site.

G. Panamanian Property

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

H. Scottsdale Insurance Company

On March 22, 2013, the Court approved the Receiver's settlement with the Scottsdale Insurance Company. This Settlement Agreement relates to the Receiver's previous actions relating to NRP Financial, Inc. ("NRP") and Western International Securities ("Western"), as well as the FINRA Claimants. The Receiver alleged that Scottsdale was legally responsible to pay the Receiver for certain damages related to the FINRA Actions. Pursuant to the settlement agreement, Scottsdale agreed to pay the Receiver \$100,000.00. Full payment of the settlement amount has been received.

I. 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) \$1,163,249.78 on or about May 7, 2012, and (6) \$1,699,999.99 mailed on or about June 10-12, 2013. The Receiver also released \$363,700.00 for purposes of criminal restitution.

In sum, to-date the Receiver has distributed approximately \$8,057,539.85 to the investor victims of the Ponzi scheme. This amount equals about 5.5 cents per every dollar stolen.¹

J. Financial Status of Receivership

The Receiver has spent approximately \$7,820,009.40 in fees and expenses through May 31, 2013. 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.

¹ Several investors voluntarily opted out of the Fourth Interim Distribution, which distributed the proceeds from the Receiver's settlement with NRP and Western. The *pro rata* rate for those investors as of the Fifth Interim Distribution is 4.7 cents per dollar lost. The *pro rata* distribution rate for these investors will always be 0.8% below the median recovery rate for all other claimants.

The Receiver has a cash balance of approximately \$808,569.74 in the Receiver's bank account and \$200,000 posted as bond in Panama.

In sum, the Receiver has collected, liquidated or frozen approximately \$16,886,118.99, paid \$7,820,009.40 in fees, expenses and other costs, and released \$8,057,539.85 for distribution to the victims of the Ponzi scheme.

K. 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 SA, 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.

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.

L. 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 was retained to handle the Receiver's law suit against Associated Bank. On April 11, 2013, the Court granted the Receiver's motion to retain Mr. Keith A. Vogt, Esq., the law firm of Flachsbart & Greenspoon, LLC, and the law firm of McVey & Parsky, LLC. These attorneys are now representing the Receivers in the Associated Bank matter.

M. 1-800 Number

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

N. 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 148 such responses on the "FAQs" section of the Receiver's website. Among other things, the Receiver has recently posted summary information about Fifth Interim Distribution, the status of the Crown Forex SA

liquidation, and demographic data 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.

O. 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: August 22, 2013

Respectfully submitted,

R.J. Zayed

R.J. Zayed, Receiver

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