

---

---

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

U.S. COMMODITY FUTURES  
TRADING COMMISSION,

Plaintiff(s)

Case No: 09-cv-3332 MJD/JJK

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/JJK

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.

---

**PETITION FOR RETURN OF RECEIVERSHIP ASSETS FROM  
RESPONDENT WELLS FARGO HOME MORTGAGE**

Pursuant to this Court's Orders dated November 23, 2009, and July 20, 2010, Receiver R.J. Zayed brings this Petition for Return of Receivership Assets from Respondent Wells Fargo Home Mortgage on behalf of the Defendants and Relief-Defendants in *SEC v. Cook et al.*, 09-cv-3333, and *CFTC v. Cook et al.*, 09-cv-3332, to recover funds properly belonging to the over 1,000 defrauded investors.

Specifically, the Receiver seeks an order (1) requiring Wells Fargo Home Mortgage to disgorge all Receivership funds received by Wells Fargo Home Mortgage; (2) entering judgment against Wells Fargo Home Mortgage in an amount equal to all of the Receivership funds received by Wells Fargo Home Mortgage; and (3) entering judgment against Wells Fargo Home Mortgage for prejudgment and post-judgment interest, attorneys' fees, costs and such other relief at law or in equity. The Receiver also requests that this Petition be treated as a Summary Proceedings Application pursuant to the Court's July 20, 2010 Order. In support of this Petition, the Receiver states as follows:

**PROCEDURAL BACKGROUND**

1. On November 23, 2009, the Securities and Exchange Commission ("SEC") and the Commodity Futures Trading Commission ("CFTC") filed separate lawsuits against Trevor Cook, Patrick Kiley, and various entities controlled by them (collectively referred to as the "Receivership Entities"). *Complaint*, No. 09-cv-3333 ("SEC case"),

Docket No. 1 (Nov. 23, 2009); *Complaint for Injunctive and Other Equitable Relief and For Penalties under the Commodity Exchange Act*, No. 09-cv-3332 (“CFTC case”), Docket No. 1 (Nov. 23, 2009).

2. Trevor Cook has since admitted to, among other things, knowingly and intentionally creating and executing a scheme and artifice to defraud. *See United States v. Trevor Gilson Cook*, No. 10-cr-00075, Docket No. 7, at 1–3 (April 13, 2010). Victims of the Scheme include over 1,000 investors who were defrauded of over \$190 million. *Id.*

3. On November 23, 2009, the Court established a Receivership in the related SEC and CFTC cases, appointed R.J. Zayed as Receiver, and froze all assets of the Receivership Entities. *See Order Appointing Receiver*, SEC Docket No. 13 (Nov. 23, 2009); *see also Amended Order Appointing Receiver*, SEC Docket No. 18 (Nov. 24, 2009); *Second Amended Order Appointing Receiver*, SEC Docket No. 68 (Dec. 11, 2009); *Order Imposing Asset Freeze and Other Ancillary Relief*, SEC Docket No. 14 (Nov. 23, 2009); *Order Identifying Frozen Accounts*, SEC Docket No. 15 (Nov. 23, 2009); *Ex Parte Statutory Restraining Order*, CFTC Docket No. 21 (Nov. 23, 2009); *Order Continuing Appointment of Temporary Receiver*, CFTC Docket No. 96 (Dec. 11, 2009).

4. The purpose of this Receivership is to marshal, preserve, account for and liquidate the assets of the Receivership. *Order Continuing Appointment of Temporary Receiver*, CFTC Docket No. 96, at 3. To accomplish this, the Receiver must take control of all assets of the Receivership—“wherever located”—including investor money

fraudulently transferred to third parties.

5. On July 20, 2010, the Court entered an Order authorizing the Receiver to commence summary proceedings within the SEC and CFTC cases to recover Receivership funds transferred to third parties. The Court retained jurisdiction of this matter for all purposes. *See Order of Preliminary Injunction, Asset Freeze, and Other Ancillary Relief*, SEC Docket No. 51, at 15 (Dec. 8, 2009); *Order Allowing Summary Proceedings*, SEC Docket No. 380 (July 20, 2010); *Order Allowing Summary Proceedings*, CFTC Docket No. 350 (July 20, 2010).

#### **PARTIES**

6. The Petitioner is Receiver R.J. Zayed.

7. Respondent Wells Fargo Home Mortgage is a division of Wells Fargo Bank, N.A. America's Servicing Company is a division of Wells Fargo Home Mortgage.

8. Wells Fargo Home Mortgage will be served pursuant to the Federal Rules of Civil Procedure or by other means approved by order of this Court.

#### **JURISDICTION AND VENUE**

9. This Court has jurisdiction over this action, and venue is proper, under Section 22(a) of the Securities Act (15 U.S.C. § 77v(a)), Section 27 of the Exchange Act (15 U.S.C. § 78aa), Section 6d of the Commodity Exchange Act (7 U.S.C. § 13a-2(2)), Chapter 49 of Title 28, Judiciary and Judicial Procedure (28 U.S.C. § 754), and Chapter 85 of Title 28, Judiciary and Judicial Procedure (28 U.S.C. § 1367(a)).

10. Further, as the Court that appointed the Receiver, this Court has jurisdiction over any claim brought by the Receiver in furtherance of his Receivership powers and

duties, including Summary Proceedings as per the Court's July 20, 2010 Order. *See Order of Preliminary Injunction, Asset Freeze, and Other Ancillary Relief*, SEC Docket No. 51, at 15 (Dec. 8, 2009); *Order Allowing Summary Proceedings*, SEC Docket No. 380 (July 20, 2010); *Order Allowing Summary Proceedings*, CFTC Docket No. 350 (July 20, 2010).

11. This Court is the proper venue because the real property subject to the mortgage held by Wells Fargo Home Mortgage d/b/a America's Servicing Company is located in Minnesota.

## FACTS

### A. Trevor Cook Operated a Ponzi Scheme.

12. Trevor Cook, using the Receivership Entities, knowingly and intentionally created, devised, executed, and attempted to execute a scheme and artifice to defraud, and to obtain money and other things of value, by means of materially false and misleading statements and representations. *United States v. Trevor Gilson Cook*, No. 10-cr-00075, Docket No. 7, at 1–3.

13. During the course of the scheme, Cook, using the Receivership Entities, raised at least \$190 million from at least 1,000 investors by selling investments in a purported foreign currency trading program ("Trading Program"). *Id.* at 2. Investments in the Trading Program generated substantially all of the income for the Receivership Entities. *Id.*

14. In furtherance of the scheme, Cook caused false statements to be made to investors, including but not limited to, promising that the Trading Program would

generate annual returns of 10% to 12% and that the currency trading involved little or no risk to the investors' principal. *Id.* at 2.

15. In furtherance of the scheme, Cook caused material information to be withheld from investors, including his knowledge of the precarious financial position—and eventual bankruptcy—of Crown Forex, SA, a Swiss entity through which Cook was placing currency trades and the fact that his currency trading during the period from July 1, 2006, through August 31, 2009, and that he had incurred trading losses in excess of \$35 million at PFG Best in Chicago. *Id.* at 2.

16. In furtherance of the scheme, Cook caused an account to be opened in the name of Crown Forex LLC at Associated Bank, where he caused investor funds to be deposited and then diverted for personal use. *Id.* at 2.

17. In furtherance of the scheme, Cook caused statements to be sent to investors that misrepresented the value of their investments in the Trading Program. *Id.* at 2-3.

18. In furtherance of the scheme, Cook withheld from the investors the fact that he was using their money for non-investment purposes, including, but not limited to, the acquisition and maintenance of various real property holdings. *See id.* at 3.

**B. Trevor Cook Transferred at Least \$137,307.22 in Receivership Funds to Wells Fargo Home Mortgage, and Wells Fargo Home Mortgage Received at Least \$155,754.75 of Receivership Funds.**

19. Upon information and belief, on May 31, 2005 Trevor Cook entered into a mortgage agreement for the amount of \$359,500.00 in connection with the purchase of real property located at: Parcel A: That part of lot Twenty seven (27), Block Two (2),

Tuxedo Park, lying within the Northwest Quarter of section 16, Township 115, Range 20 (Abstract) AND Parcel B: That part of lot Twenty Seven (27), Block Two (2), in Tuxedo Park, according to the recorded plat thereof, lying within the Northwest Quarter of the Northeast Quarter of Section 16, Township 115, Range 20, Dakota County, Minnesota. (Torrens - Certificate Number 116659), DAKOTA COUNTY, MINNESOTA, located at 12644 Tiffany Court, Burnsville, Minnesota ("12644 Tiffany Court").

20. Upon information and belief, Wells Fargo Home Mortgage d/b/a America's Servicing Company currently holds the promissory note and mortgage connected to the 12644 Tiffany Court property, and has received all payments made on the \$359,500.00 mortgage from August 2, 2005 through the present.

21. From August 2005 through November 2009, Defendant Trevor Cook transferred Receivership funds to Wells Fargo Home Mortgage for payment of the Wells Fargo Home Mortgage obligation. These payments total \$137,307.22.

22. The Receiver has a duty to preserve the value of the assets of the Receiver Estates, including 12644 Tiffany Court. *See Order Continuing Appointment of Temporary Receiver*, CFTC Docket No. 96, at I.C.

23. From January 2010 to the present, in order to preserve the value of Receivership Assets and the status quo while he investigated how and where Receivership funds were used by Cook, the Receiver continued to pay monthly mortgage payments to Wells Fargo Home Mortgage from the Receivership funds. These payments total \$18,447.53 in Receivership funds.

24. The Receiver has traced Receivership funds from four (4) accounts held in

the name of Trevor Cook and other Receivership entities, including account number xxxx-xxxx-5942 at U.S. Bank, account numbers xxx-xxx6543 and xxx-xxx2702 at Wells Fargo, and account number xxx-xxx2331 at Associated Bank being transferred directly to Wells Fargo Home Mortgage in the form of monthly mortgage payments. With the mortgage payments made to date by the Receiver, Wells Fargo Home Mortgage received \$155,754.75 of Receivership funds. A copy of the summary of payments made to Wells Fargo Home Mortgage is attached hereto as **Exhibit 1**.

25. The \$155,754.75 came directly from funds provided by investors in Cook's fraudulent scheme, and Wells Fargo Home Mortgage is not entitled to receive the funds.

26. Wells Fargo Home Mortgage has a lien and/or contractual interest in 12644 Tiffany Court.

**COUNT I**  
**UNJUST ENRICHMENT**

27. The Receiver realleges and adopts by reference the allegations contained in paragraphs 1 through 26, inclusive herein.

28. As discussed above, Wells Fargo Home Mortgage received transfers from Trevor Cook and from the Receiver, which came directly from funds provided by investors in Cook's fraudulent scheme, in the amount of \$155,754.75.

29. Wells Fargo Home Mortgage has been unjustly enriched by the receipt of Receivership funds. Wells Fargo Home Mortgage's retention of these funds violates fundamental principles of justice, equity and good conscience.

30. Wells Fargo Home Mortgage has no moral or equitable claim to the funds.

The source of the payments was a theft by Cook from his investors.

31. Wells Fargo Home Mortgage knowingly received something of value, not being entitled to the benefit, and under circumstances that would make it unjust to permit its retention.

32. The Receiver has a duty to preserve the value of the assets of the Receiver Estates. *See Order Continuing Appointment of Temporary Receiver*, CFTC Docket No. 96, at I.C. While investigating claims against the Receiver Estates and marshalling the Receivership assets and accounts, the Receiver had a duty and obligation to continue making payments on the mortgage in order to preserve the value of the Receivership asset at 12644 Tiffany Court.

33. The Receivership funds transferred to Wells Fargo Home Mortgage belong, in equity and good conscience, to the Receivership for ultimate distribution among *all* defrauded investors and creditors.

34. The doctrine of unjust enrichment and the principles of law and equity require that the funds received by Wells Fargo Home Mortgage, including those transfers made by the Receiver, be returned to the Receiver for equitable distribution to all of defrauded investors and other creditors.

**COUNT II**  
**FRAUDULENT TRANSFER (Minn. Stat. § 513.41, *et. seq.*)**

35. The Receiver realleges and adopts by reference the allegations contained in paragraphs 1 through 34, inclusive herein.

36. As discussed above, Wells Fargo Home Mortgage received transfers from

Trevor Cook in the amount of \$137,307.22.

37. Cook and the Receivership Entities transferred these funds to Wells Fargo Home Mortgage with actual intent to hinder, delay, or defraud their creditors.

38. At all relevant times and as a consequence of the transfers, Trevor Cook knew the funds remaining with Trevor Cook, PFG Coin and Bullion, Market Shot LLC, Oxford Global FX LLC and the other Receivership entities were insufficient to pay their creditors and/or investors.

39. At the time of the transfers, Trevor Cook and the other Receivership entities had at least one creditor who remains unpaid.

40. Pursuant to Minn. Stat. § 513.41, *et. seq.*, or other applicable laws, the transfers from Trevor Cook were fraudulent transfers as to the other creditors and investors defrauded by the scheme, and the Receiver has the power to avoid such transfer.

#### **PRAYER FOR RELIEF**

WHEREFORE, the Receiver respectfully requests the Court enter an Order:

- (a) Requiring Wells Fargo Home Mortgage to disgorge all Receivership funds received by Wells Fargo Home Mortgage;
- (b) Entering judgment against Wells Fargo Home Mortgage in an amount equal to all such Receivership funds received by Wells Fargo Home Mortgage;
- (c) Entering judgment against Wells Fargo Home Mortgage for pre-judgment and post-judgment interest, attorneys' fees, costs and for such other relief at law or in equity; and

(d) Granting such other further relief as the Court deems proper under the circumstances.

Dated: July 23, 2010

Respectfully submitted,

s/ Brian W. 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)

Carlson, Caspers, Vandenburg &

Lindquist, P.A.

225 South Sixth Street, Suite 3200

Minneapolis, MN 55402

Telephone: (612) 436-9600

Facsimile: (612) 436-9605

Email: [bhayes@ccvl.com](mailto:bhayes@ccvl.com)