
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.

DECLARATION OF RECEIVER R.J. ZAYED IN SUPPORT OF MOTION TO APPROVE THE PAYMENT OF FEES INCURRED BY THE RECEIVER THAT WERE NECESSARY TO ASSIST THE RECEIVER IN HIS DUTIES

I, R.J. Zayed, hereby declare as follows:

1. I am a partner with the law firm of Carlson, Caspers, Vandenburg & Lindquist (“CCVL”).
2. On November 23, 2009 the Court entered an order appointing me Receiver in the matter of *SEC v. Cook et al.*, for (1) the estates of Defendants Trevor G. Cook, Patrick J. Kiley; (2) Defendants UBS Diversified Growth LLC, Universal Brokerage FX Management, LLC, Oxford Global Advisors, LLC, Oxford Global Partners, LLC; (3) Relief Defendants 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, UBS Diversified FX Advisors, LLC, UBS Diversified FX Growth L.P., and UBS Diversified FX Management LLC; (4) all funds, accounts, and other assets held by or for Relief Defendants Clifford Berg and Ellen Berg, which were received, directly or indirectly, from the Defendants or were acquired with funds or other assets received, directly or indirectly, from the Defendants; and (5) every other corporation, partnership, trust and/or other entity (regardless of form) which is directly or indirectly owned by or under the direct or indirect control of Cook and Kiley (collectively the “Receiver Estates”). *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).

3. On November 23, 2009 the Court also entered an order appointing me Receiver in the matter of *CFTC v. Cook et al.*, for Defendants 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, Universal 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, and their affiliates and subsidiaries, and all funds, properties, premises, accounts and other assets directly or indirectly owned, beneficially or otherwise, by the Defendants individually or collectively, including, but not limited to, investors' funds. *Ex Parte Statutory Restraining Order*, Docket No. 21, at 7 (Nov. 23, 2009); *see also Order Continuing Appointment of Temporary Receiver*, Docket No. 96 (Dec. 11, 2009).

4. I make this declaration based on personal knowledge and offer it in support of the motion described more fully herein.

5. The motion seeks the Court's approval to pay three types of fees incurred by the Receiver, in or about May 2010, that were necessary to assist the Receiver in his duties. Specifically the motion seeks Court approval:

(A) to pay outstanding bills. "Outstanding bills" are those for which the Receiver seeks Court authorization to pay directly out of assets of the Receivership;

(B) to pay CCVL's attorneys' fees and reimburse CCVL for the necessary costs incurred and paid by CCVL;

(C) to pay the legal fees and costs charged by Swiss counsel in legal action involving Receivership assets in Switzerland; and

(D) to pay the legal fees and costs charged by Panamanian counsel in legal action involving Receivership assets in Panama.

(A) Outstanding Bills

6. With the Court's approval, I retained private investigators Rick Ostrom and Dennis Sackreiter and their firm WayPoint, Inc. to assist me in fulfilling my duties and obligations as Receiver.

7. I have received a statement from WayPoint, Inc. describing investigative work performed from May 1, 2010 through June 2, 2010. I am submitting this statement to the Court under separate correspondence for *in camera* review. The statement includes the date when work was performed, the name of the person performing the work, the applicable hourly rate, the time expended, a description of the tasks performed, and a description of additional expenses. The statement reflects the amount of compensation requested for the work performed by WayPoint, Inc. The statement sets forth \$8,704.45 in total fees.

8. I am familiar with the rates charged in the local community by other firms offering investigative services similar to those provided by WayPoint, Inc. and certify that the requested rates are within the range charged by investigative firms with comparable experience employed for work of a comparable nature and complexity.

9. I have reviewed the itemized statements describing services provided by WayPoint, Inc. and certify that all of the stated work was actually performed and was necessary to fulfill my duties and responsibilities as Receiver.

10. WayPoint investigated Receivership interests in certain properties, conducted background checks on persons suspected of holding Receivership assets, investigated entities suspected of holding Receivership assets, and reviewed database and interview records in efforts to retrieve Receivership assets from the Bergs.

11. I therefore request Court approval to pay WayPoint, Inc. \$8,704.45 out of the assets of the Receivership.

(B) CCVL Attorneys' Fees and Costs

12. With the Court's approval, I retained the CCVL law firm to assist me in fulfilling my duties and obligations as Receiver. *Order Appointing Receiver*, 09-cv-3333, Docket No. 13, at 2 (Nov. 23, 2009); *Ex Parte Statutory Restraining Order*, 09-cv-3332, Docket No. 21, at 8 (Nov. 23, 2009); *see also Amended Order Appointing Receiver*, 09-cv-3333, Docket No. 18, at 2 (Nov. 24, 2009); *Second Amended Order Appointing Receiver*, 09-cv-3333, Docket No. 68, at 2 (Dec. 11, 2009); *Order Continuing Appointment of Temporary Receiver*, 09-cv-3332, Docket No. 96, at 4 (Dec. 11, 2009).

13. I have received a statement from CCVL describing work performed by me and my agents from May 1, 2010 through May 31, 2010. I am submitting this statement to the Court under separate correspondence for *in camera* review. The statement includes the date when work was performed, the name of the person performing the work, the applicable discounted hourly rate, the time expended, and a detailed description of the tasks performed. The statement sets out the amount of compensation requested for the work performed. It reflects legal fees of \$159,986.00.

14. I have reviewed the itemized statement describing services provided by CCVL and certify that all of the stated work was actually performed and was necessary to fulfill my duties and responsibilities as Receiver.

15. CCVL provided services relating to the Panamanian litigation, including investigating factual and legal bases for return of receivership assets, analyzing Panamanian legal documents and public records, and meeting with individuals and entities claiming interests in the Panamanian property. CCVL also prepared motions relating to the sale of personal property seized from various individuals associated with Trevor Cook's scheme and coordinated the auctioning-off of personal property. CCVL also resolved outstanding liens against Receivership real estate in Canada, coordinated appraisals of the Canadian property, reviewed potential real estate agents, and resolved tax issues regarding the Canadian property. CCVL also prepared motions and supporting documentation seeking the return of Receivership assets held by the Bergs. CCVL also responded to an average of ten investor calls per day and updated and maintained the database of investor information. CCVL also prepared a motion against Wells Fargo seeking the return of Receivership funds. CCVL also worked with Swiss counsel to pursue Receivership funds located in Switzerland. CCVL also reviewed, researched, and resolved tax and real estate issues regarding Receivership properties in Burnsville and Apple Valley. CCVL also performed various other asset recovery tasks which are in their initial, and non-public, stages.

16. I am familiar with the rates charged in the local community by attorneys performing services similar to those provided by CCVL and certify that the requested

rates are within the range charged by attorneys of comparable experience employed by comparable Minnesota law firms for work of a comparable nature and complexity.

17. I have received statements from various individuals and entities providing necessary services to the Receiver and related to preserving the Receivership properties for the month of May 2010. These expenses are summarized on page 15 of CCVL invoice number 6786, under the heading "Disbursements." I am submitting the invoiced bills to the Court under separate correspondence for *in camera* review, along with copies of checks showing payment provided out of CCVL's operating account. The invoiced bills include the date the work was performed and a description of the tasks performed or the specific expense incurred. The statements set out the amount of compensation requested for the work performed. They reflect total costs of \$20,255.67. These disbursements include, among other things, payments to contract attorneys, utility fees incurred by Receivership property, a mortgage payment on Receivership property, and translation services for legal documents related to the Panamanian litigation.

18. I have reviewed the itemized statement describing services provided to the Receivership and certify that all of the stated work was actually performed and was necessary to fulfill my duties and responsibilities as Receiver.

19. I am familiar with the rates charged in the local community by service providers similar to those employed by the Receivership and certify that the requested rates are within the range charged by service providers of comparable experience for work of a comparable nature and complexity.

20. I request Court approval to pay CCVL \$159,986.00 in fees and \$20,255.67 in costs, for a total of \$180,241.67 out of the assets of the Receivership.

(C) BMG Avocats (Swiss law firm)

21. BMG Avocats is a law firm located in Geneva, Switzerland. With the Court's approval, I retained BMG Avocats to advise me as to matters of Swiss law and to assist me in locating and retrieving Receivership assets located in Switzerland.

22. I have received a statement from BMG Avocats describing work performed from January 1, 2010 through March 31, 2010. I am submitting this statement to the Court under separate correspondence for *in camera* review. The statement includes a description of the tasks performed and sets out the amount of compensation requested for the work performed. The statement reflects \$9,685.00 in legal fees and \$347.40 in expenses incurred, for a total amount due of \$10,032.40.

23. I have reviewed the itemized statements describing services provided by BMG Avocats and certify that all of the stated work was actually performed and was necessary to fulfill my duties and responsibilities as Receiver.

24. BMG Avocats assisted the Receiver in dealing with Swiss liquidators working on the Crown Forex SA bankruptcy and the Swiss magistrate conducting a criminal investigation into Trevor Cook. BMG Avocats also helped the Receiver in investigating, corresponding with, and obtaining information from Swiss banks, and by advising the Receiver as to strategies available to recover Receivership assets located in Switzerland.

25. I am familiar with the rates charged in the local community by attorneys performing services similar to those provided by BMG Avocats and certify that the requested rates are within the range charged by attorneys of comparable experience employed by comparable Swiss law firms for work of a comparable nature and complexity.

26. I request Court approval to pay BMG Avocats \$10,032.40 out of the assets of the Receivership.

(D) Morgan & Morgan (Panamanian law firm)

27. As this Court has been advised, prior to the appointment of the Receiver, Relief Defendant Oxford FX Growth, L.P. (“OFXG”) deposited Receivership funds with the MMG Bank Corporation, a banking institution organized under the laws of Panama (the “MMG Account”). The MMG Account was established to retain legal services and secure a Panamanian court order freezing assets and property in Panama that are now subject to the Receivership. Outside counsel for OFXG retained Morgan & Morgan, a Panamanian law firm, prior to the date the Receivership was created for the purpose of obtaining the Panamanian court order freezing assets. With the Court’s approval, the Receiver has assumed control of the Panamanian litigation and has continued using Morgan & Morgan to help the receiver repatriate assets located in Panama. The initial \$25,000 retainer has been exhausted and all future payments to Morgan & Morgan will have to be paid directly by the Receiver.

28. I have received statements from Morgan & Morgan describing work performed from May 1, 2010 through May 31, 2010. I am submitting this statement to

the Court under separate correspondence for *in camera* review. The statement includes the date when work was performed, the name of the person performing the work, the time expended, and a description of the tasks performed. The statements sets out the amount of compensation requested for the work performed. Invoice number 993297 reflects attorneys' fees of \$11,700, office expenses and fees of \$1,075.30, and taxes of \$632.84, for a total amount due of \$13,408.14.

29. I have reviewed the itemized statement describing services provided by Morgan & Morgan and certify that all of the stated work was necessary to fulfill my duties and responsibilities as Receiver.

30. Morgan & Morgan has helped the Receiver in his efforts to retrieve Receivership funds paid by Trevor Cook towards the purchase of two sets of properties in Panama. Among other things, Morgan & Morgan helped the Receiver meet with individuals claiming interests in the Panamanian property, prepared and filed court documents with Panamanian courts in connection with maintaining the attachment orders on the Panamanian properties in force, and advised the Receiver on Panamanian law relating to various claims and disputes the Receiver has in Panama.

31. The applicable rates are within the range charged by attorneys of comparable experience employed by comparable Panamanian law firms for work of a comparable nature and complexity.

32. I request Court approval of the Receiver's fee application in favor of Morgan & Morgan in the total amount of \$13,408.14 for attorneys' fees and expenses incurred in and around May 2010 out of the assets of the Receivership.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: June 23, 2010

s/ R. J. Zayed
R.J. Zayed (MN Bar No. 309,849)
Carlson, Caspers, Vandenburg &
Lindquist, P.A.
225 South Sixth Street, Suite 3200
Minneapolis, MN 55402
Telephone: (612) 436-9600
Facsimile: (612) 436-9605
Email: rzayed@ccvl.com