

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

R.J. ZAYED, In His Capacity
As Court-Appointed Receiver
For Oxford Global Partners, LLC,
Universal Brokerage FX, and Other
Receiver Entities,

Plaintiff

Case No: 013-cv-1896 SRN/SER

v.

David and Dao Allen, Judith Averett, Patricia and
Jasper Calandra, Rose Furner, Mark Hanby, Adel
("A.K.") Hilal, Geraldine Jackman, Norma Johnson,
Willis Wayne King, Don and Pamela Labbee,
Andrew Lyon, Jeffrey Lyon, Jeffrey Maki, Steven
Perkins, Richard Plantan, Douglas Reed, David
Sherman, John Sterback, Mark Stoltenberg, Jane
Wamsley as trustee for the Glen Van Lehn Living
Trust, Michael ("Bruce") Wu, Robert and Dianne
Birk, Margaret Anderson, Mary Francoeur, George
and Shirley Janssen, Joseph Koehnen, and Katherine
Sobieck,

Defendants.

**PLAINTIFF'S STATUS REPORT RELATED TO RECEIVER'S COMPLAINT
AGAINST REMAINING WINNING INVESTORS**

This status report is submitted in accordance with the Court's Order dated
December 20, 2013 (Docket No. 117). A status conference in this matter is scheduled for
Wednesday, January 29, 2014, at 2:00 p.m. before the United States Magistrate Judge
Steven E. Rau, 334 Warren E. Burger Federal Courthouse, 316 North Robert Street, Saint
Paul, Minnesota 55101.

I. Overview of the Case

These cases stem from the second largest Ponzi scheme in Minnesota history. The masterminds of this fraud, Trevor Cook, Jason Bo-Alan Beckman, Patrick Kiley, Gerald Durand and Christopher Pettengill (“Ponzi Felons”), stole over \$160 million from more than 700 investors in a foreign currency program that was entirely fake. As with any Ponzi scheme, early “investors” in the scheme were paid with money that was taken from later “investors.” When the Ponzi Felons refused withdrawal requests of certain investors in 2009, those investors sued and bank accounts known to be associated with the fraud were frozen. Government action followed. On the civil side, in November 2009, the U.S. Securities and Exchange Commission (“SEC”) and the U.S. Commodity Futures Trading Commission (“CFTC”) filed suit against Cook, Kiley and their entities. *SEC v. Cook, et al.*, 09-cv-3333 (D. Minn.), *CFTC v. Cook, et al.*, 09-cv-3332 (D. Minn.). In March 2011, the SEC filed suit against Beckman and his entities for his role in the scheme. *SEC v. Beckman, et al.*, 11-cv-574 (D. Minn.).

Chief Judge Michael J. Davis appointed Plaintiff R.J. Zayed as the Receiver in all three cases brought by the SEC and CFTC. The Receiver's mandate is to recover the funds that were stolen in this Ponzi scheme and return those funds to the victims of this fraud. The Receivership covers the estates of the individual defendants, as well as their fraudulent entities, including UBS Diversified Growth, LLC d/b/a UBS Diversified, Market Shot, LLC, Oxford Global Advisors, LLC, Oxford Global Partners, LLC, Oxford Global FX, LLC, Oxford FX Growth, L.P., The Oxford Private Client Group, LLC, and various other entities controlled by them (collectively, the “Receivership Estates”).

Criminal actions proceeded in parallel with the civil suits and the Receivership, resulting in guilty pleas or guilty verdicts for all five of the Ponzi Felons, who are now serving lengthy prison terms.¹

As part of his investigation into the fraud, the Receiver identified nearly 200 investors who received more from this Ponzi scheme than they invested (“Winning Investors”). The law is clear that profits from a Ponzi scheme are not legitimate and must be returned for equitable distribution to all victims. *Terry v. June*, 432 F. Supp. 2d 635, 642–43 (W.D. Va. 2006). The vast majority of Winning Investors settled with the Receiver and returned the overages they received from the fraud. Although the Receiver made every effort to work with each Winning Investor to avoid litigation, twenty-seven either declined the Receiver’s settlement offer or defaulted on their agreements to return their fraudulent profits. On July 15, 2013, the Receiver filed the present lawsuit against these remaining Winning Investors to recover funds properly belonging to all the defrauded investors who were victims of the Ponzi scheme. *Complaint*, 13-cv-1896 Docket 1 (Jul. 15, 2013). Since this suit was filed, thirteen Winning Investor Defendants have settled and seven have defaulted. *See infra* §§ II.A-B. The Receiver’s claims remain against the following four Winning Investor Defendants: Adel “A.K.” Hilal,

¹ Cook and Pettengill pleaded guilty in connection with the scheme. *See United States v. Trevor Gilson Cook*, 10-cr-75 Docket 7, at 1–3 (Apr. 13, 2010); *United States v. Trevor Gilson Cook*, 10-cr-75 Docket 17 (Aug. 24, 2010); Plea Agreement, *United States v. Christopher Pettengill*, 11-cr-192 Docket 6 (Jun. 21, 2011); Amended Judgment, *United States v. Christopher Pettengill*, 11-cr-192 Docket 35 (Jan. 22, 2013). Kiley, Beckman and Gerald Durand were convicted by a jury on several counts stemming from the scheme. *See Jury Verdicts, United States v. Beckman et al.*, 11-cr-228 Docket 303, 305 & 307 (Jun. 12, 2012).

Robert and Dianne Birk, Mark Stoltenberg, and George and Shirley Janssen.

In this action, the Receiver asserts fraudulent transfer and unjust enrichment claims to retrieve the fraudulent profits that the Ponzi Felons gave to the remaining Winning Investor Defendants. The Uniform Fraudulent Transfer Act (“UFTA”), which has been adopted by Minnesota, states that a transfer of funds, such as the so-called “profits” that were transferred to the Winning Investor Defendants, may be voided if the transfer was made with actual intent to hinder, delay, or defraud any creditor of the debtor. Minn. Stat. 513.44(a)(1). The transfers need not be unlawful in the abstract, and any participation in the fraud (or lack thereof) on the part of the recipients is irrelevant. *SEC v. Brown*, 643 F. Supp. 2d at 1082; *Warfield v. Byron*, 436 F.3d 551, 559 (5th Cir. 2006). It is undisputed that the Ponzi Felons operated the second largest Ponzi scheme in Minnesota history. Criminal convictions of the Ponzi scheme operators preclude litigation on the existence of the Ponzi scheme and its operators’ fraudulent intent. *Terry v. June*, 432 F. Supp. 2d 635, 640 (W.D. Vir. 2006) (collecting cases); *see also In re Manhattan Inv. Fund Ltd.*, 397 B.R. 1, 12 (S.D.N.Y. 2007). Under the well-established “Ponzi scheme presumption”, which holds that proof of a Ponzi scheme conclusively establishes that transfers pursuant to the scheme were made with actual intent to hinder, delay, or defraud, all transfers to the Defendants were undeniably fraudulent.² *See, e.g., Donell v. Kowell*, 533 F.3d 762, 770 (9th Cir. 2008); *In re Slatkin*, 525 F.3d 805, 814 (9th

² Chief Judge Davis has also found in the civil cases that all transfers from the Receivership Entities, including those from which all the funds in this action can be traced, were made with actual intent to hinder, delay, or defraud. *See Order Allowing Summary Proceedings*, 09-cv-3333 Docket 380 (Jul. 20, 2011).

Cir. 2008); *Warfield v. Byron*, 436 F.3d 551, 558 (5th Cir. 2006); *In re M&L Bus. Mach. Co.*, 59 F.3d 1078, 1079–80 (10th Cir. 1995); *Scholes v. Lehmann*, 56 F.3d 750, 757 (7th Cir. 1995); *SEC v. Brown*, 643 F. Supp. 2d 1077, 1082 (D. Minn. 2009).

Because the transfers were fraudulent as a matter of law, it becomes each Winning Defendant's burden to show they *both* took the funds in good faith *and* provided reasonably equivalent value to the Receiver Estates. *See, e.g.*, *Donnell*, 533 F.3d at 771; *Warfield*, 436 F.3d at 560; *Armstrong v. Collins*, No. 01 Civ. 2437, 2010 U.S. Dist. LEXIS 28075, at 67-68 (S.D.N.Y. Mar. 24, 2010).

The Receiver also asserts a claim of unjust enrichment against the Winning Defendants. The theory of unjust enrichment supports recovery in situations of fraud “where it would be morally wrong for one party to enrich himself at the expense of another.” *Brown*, 643 F. Supp. 2d at 1083. “[U]njust enrichment does not require that the defendant committed a wrong, but only requires that the defendant benefit from another's wrong.” *Id.*; *Hartford Fire Ins. Co. v. Clark*, 727 F. Supp. 2d 765, 777–78 (D. Minn. 2010); *Kranz v. Koenig*, 484 F. Supp. 2d 997, 1001 (D. Minn. 2007).

II. Defendants

A. Dismissed Defendants

After initiating this lawsuit, the Receiver was able to resolve his claims against the majority of the Winning Defendants. These Defendants, and the date of their dismissals, are identified in the table below:

Defendant	Date Dismissed
David and Dao Allen	September, 26, 2013
Judith Averett	October 21, 2013
Jasper and Patricia Calandra	October 30, 2013
Mark Hanby	September 26, 2013
Geraldine Jackman	November 18, 2013
Norma Johnson	September 26, 2013
Willis Wayne King	September 26, 2013
Andrew Lyon	October 30, 2013
Jeffrey Lyon	October 30, 2013
Douglas Reed	November 12, 2013
John Sterback	October 30, 2013
Jane Wamsley, trustee for Glen Van Lehn Trust	November 12, 2013
Margaret Anderson	November 18, 2013
Mary Francoeur	November 12, 2013
Joseph Koehnen	October 30, 2013
Katherine Sobieck	October 30, 2013

B. Default Judgments

Despite being properly served, a number of Winning Defendants failed to answer or otherwise defend in this action. These Defendants are identified in the table below:

Defendant	Default Entered	Default Judgment Entered	Amount	State
Rose Furner	October 16, 2013	October 24, 2013	\$8,986	OK
Don & Pamela Labbee	October 16, 2013	October 24, 2013	\$9,501	WA
Richard Plantan	October 16, 2013	October 24, 2013	\$1,000	IL
David Sherman	October 16, 2013	October 24, 2013	\$4,690	WA
Michael Wu	October 16, 2013	October 24, 2013	\$14,754	MA
Steven Perkins	November, 6, 2013	November 13, 2013 ³	\$14,849	MN
Jeffrey Maki	December 10, 2013 ⁴			MN

³ Defendant Steven Perkins, a resident of Spicer, Minnesota, failed to answer or otherwise defend in this action. Default Judgment in the amount of \$14,849.00 was entered against Defendant Perkins in November. *Judgment by Default*, 13-cv-1896 Docket 104 (Nov. 13, 2013).

⁴ Defendant Jeffrey Maki, a resident of Britt, Minnesota, failed to answer or otherwise defend in this action. In December, the Clerk's Entry of Default was recorded against Defendant Maki. *Clerk's Entry of Default*, 13-cv-1896 Docket 116 (Dec. 10, 2013).

C. Remaining Defendants

Four Winning Defendants timely answered the Receiver's Complaint. The following table summarizes the transactions between each remaining Defendant and Receiver Estates:

Defendant	Transfers From Defendant to Receiver Estates	Transfers To Defendant from Receiver Estates	Excess (Total False Profits)
Mark Stoltenberg	-	\$3,500.00	\$3,500.00
Robert and Dianne Birk	\$187,779.36	\$300,459.65	\$112,680.29
A.K. Hilal	\$49,000.00	\$56,201.14	\$7,201.14
George and Shirley Janssen	\$50,000.00	\$60,250.00	\$10,250.00

Upon information and belief, no defendants have retained counsel in this action and all are proceeding *pro se*.

1. Stoltenberg

Defendant Stoltenberg answered the Complaint on October 1, 2013. *Answer*, 13-cv-1896 Docket 34 (Oct. 1, 2013). Defendant Stoltenberg admits he received funds from Receiver Estates but denies those receipts exceeded any reasonably equivalent value he provided to Receiver Estates. No evidence has been found in the Receiver's investigation and Defendant Stoltenberg has not produced any to show that he provided reasonably equivalent value for the funds he received from the Receiver Estates.⁵ As discussed

⁵ Defendant Stoltenberg has mentioned a prior investment housed at Peregrine Financial in Chicago ("PFG"). However, PFG is not a Receivership Entity, and any consideration given to PFG is not reasonably equivalent value for funds he received from the Receiver Estates. In fact, the Receiver filed suit against PFG, which subsequently commenced

supra, the transfer to Defendant Stoltenberg was undeniably fraudulent and it is now his burden to prove both good faith and reasonably equivalent value for the \$3,500 he received from the Receiver Estates.

2. Hilal

Defendant Hilal answered the Complaint on October 18, 2013. *Answer*, 13-cv-1896 Docket 59 (Oct. 18, 2013). Defendant Hilal apparently denies having invested in the Ponzi scheme. However, Defendant Hilal signed an agreement with Crown Forex, received statements from Receiver Estates including “The Oxford,” “UBFX Diversified,” and “UBS Diversified,” and his statements from Millennium Trust, the third party administrator through which he made his investments, show a \$49,000 position in UBS Diversified FX Growth, yet another Receiver Estate. Most importantly, bank records show that Defendant Hilal transferred \$49,000 to UBS Diversified Growth through his Millennium Trust account. The evidence also establishes that UBS Diversified Growth transferred a total of \$56,201.14 back to Defendant Hilal's Millennium Trust account. The transfer to Defendant Hilal was undeniably fraudulent and it is now his burden to prove both good faith and reasonably equivalent value for the \$7,201.14 in fraudulent profits he received from the Receiver Estates.

3. Janssens

Defendants George and Shirley Janssen answered the Complaint on October 23, 2013, including a “Counterclaim for Interpleader.” *Answer and Counterclaim for*

bankruptcy proceedings stemming from an unrelated fraud, in early 2012. *See Complaint*, 12-cv-269 Docket 1 (Feb. 3, 2012); *Notice of Filing Bankruptcy and Automatic Stay*, 12-cv-269 Docket 31 (Jul. 12, 2012).

Interpleader, 13-cv-1896 Docket 77 (Oct. 23, 2013). Defendants Janssen do not deny that they invested \$50,000 and that they received \$60,250.00 from the Receiver Estates. In what is styled as a counterclaim, Defendants Janssen appear to assert a claim for indemnification against their investment advisor, Kristi Lefferts and Calton & Associates, because they assert their deposit was under Lefferts's and Calton's "dominion and control." *Id.* However bank records show that the Janssens invested in the Ponzi scheme by writing a check directly to UBS Diversified Growth in the amount of \$50,000.00 and that Oxford Global Advisors and UBS Diversified Growth transferred a total of \$60,250.00 directly back to the Janssens. As discussed *supra*, the transfers to Defendants Janssen were undeniably fraudulent and it is now their burden to prove both good faith and reasonably equivalent value for the \$10,250.00 in "profits" transferred to them by the Receiver Estates.

4. Birks

Defendants Robert and Dianne Birk are Hollie Beckman's parents. Ms. Beckman is married to Ponzi Felon Bo Beckman and is personally named as a Relief Defendant in one of the SEC's civil suits. *SEC v. Beckman, et al.*, 11-cv-574 (D. Minn.).

The Birks answered the Receiver's Complaint on October 15, 2013, and respond to the Receiver's Complaint on a number of grounds. *Answer to Summons in a Civil Action*, 13-cv-1896 Docket 54 (Oct. 15, 2013). For example, the Birks assert in their Answer that the Receiver must plead and establish a fraud pertaining to specifically to them. The law holds otherwise. The Receiver does not need to show any wrongdoing by the Birks and the transfer need not be unlawful in the abstract. *Brown*, 643 F. Supp.

2d at 1082. Any participation in the fraud (or lack thereof) on the part of the Birks also is irrelevant. *Warfield*, 436 F.3d at 559. The Birks also suggest that they can prevail if they show that they had good faith in receiving transfers from the Receiver Estates or if they can establish that they provided reasonably equivalent value for the transfers they received from the Receiver Estates. Here again, the law is otherwise. Section 513.44 requires the Birks show *both* good faith *and* reasonably equivalent value; the defense is conjunctive, not disjunctive, as the Birks assert.

The Birks go on to assert that they provided reasonably equivalent value for the money they received by providing services for Receivership properties and businesses that were held in the Beckmans' names. Chief Judge Davis has already rejected the Birks' real property arguments. *See, e.g., Memorandum Opinion and Order*, 11-cv-574 Docket 214 (Sep. 21, 2011) (“The Court finds that the Birks have not demonstrated a cognizable interest in the Golf Drive property. Accordingly, their motion to intervene [to object to the sale of that property] must be denied.”). The Birks also claim to have provided services as employees of the Receiver Estates, but the case law is clear that the purported services allegedly performed (or intended to be performed) by the Birks does not constitute reasonably equivalent value to the Receiver Estates. *See Warfield*, 436 F.3d at 560 (“[i]t takes cheek to contend that in exchange for the payments he received, the [] Ponzi scheme benefitted from [the transferor's] efforts to extend the fraud by securing new investments.”); *see also Redacted Transcript*, 11-cr-228 Docket 520 at 136 (Oct. 29, 2013). Indeed, Mrs. Birk testified at the criminal trial of her son-in-law that any “services” that she and her husband were engaged to provide were illusory:

16 Q. Okay. I want to turn your attention, if I could, to
17 2008 and the time period that precedes May of 2008. In that
18 time period were you and your husband contemplating retiring
19 or trying to retire?

20 A. We were, yes.

21 Q. And in that mid 2008 time frame could you have afforded
22 to retire, to basically quit working and to stop receiving a
23 paycheck?

24 A. No.

25 Q. Did your son-in-law and your daughter come to you with

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1 an idea of how you could, in fact, retire?

2 A. They came to us and wanted to help my husband out, yes,
3 and get him out of the job that he was at.

4 Q. Okay. And so they came to you with a way that would
5 help you retire where you could still receive some money; is
6 that correct?

7 A. That's correct.

Redacted Transcript, 11-cr-228 Docket 520 at 134-5.

5 Q. Did you ever hold such a symposium?

6 A. We didn't, no. We didn't have enough time to do that.

Id. at 139.

21 Q. What I'm asking you is: Were there seminars in the --

22 A. No, there were no seminars yet, no.

Id. at 151.

13 | Q. Okay. Did you pitch this investment to friends or
14 | neighbors?

15 | A. I wasn't really pitching an investment.

Id. at 139.

5 | Q. And did you take friends and acquaintances down in Texas
6 | out to golf with Mr. Beckman?

7 | A. Yes.

8 | Q. And was that part of the job that you were getting paid
9 | to do?

10 | A. Well, yes, I would consider that part, but it also --
11 | you know, you are also mixing family here too. So, yes,
12 | that was part of it, but also some of those people just
13 | because -- he's my family. He taught me how to golf and I
14 | am proud of his golfing. So you are mixing different things
15 | here.

Id. at 140.

5 | Q. So the people that you would bring to introduce to
6 | Mr. Beckman, were these people that you otherwise would not
7 | have socialized with down in Texas but for this arrangement
8 | with Mr. Beckman?

9 | A. We would have socialized with them probably in our own
10 | home setting. There would have been no reason, unless we
11 | wanted them to meet Bo, to bring them to the big house.

Id. at 151.

The transfers to Defendants Birk were undeniably fraudulent and it is now their burden to prove both good faith *and* reasonably equivalent value for the \$112,680.29 transferred to them from the Receiver Estates.

III. Pending Motions

On November 13, 2013, the Receiver filed a motion to dismiss the Janssen's

counterclaim. The Janssens have not responded.⁶ On February 5, 2014, the Receiver will file a motion for summary judgment as to the four remaining Winning Defendants. The Defendants' responses, if any, are due on or before February 26, 2014. Should any Defendants file a response, the Receiver's reply is due on or before March 12, 2014. A hearing on the Receiver's motions is scheduled to take place before Judge Susan Richard Nelson on March 19, 2014, at 9:30 a.m.

IV. Settlement

The Receiver has made several efforts to settle this matter, both before and after filing his Complaint, but was unable to reach an agreement with any of the four remaining Winning Defendants.

The Receiver believes the facts and law are clear in this matter: the Defendants all received fraudulent transfers and were unjustly enriched, and must return the amount they received in excess of any transfers to Receiver Estates for equitable distribution to the victims of the fraud. Despite his firm belief that he will ultimately prevail on the merits of his claims, the Receiver remains open to settling this matter without further litigation.

⁶ Under Local Rule 7.1(c)(2), Defendants' response was due on December 4, 2013, which is twenty-one days after the Receiver filed his motion.

Dated: January 22, 2014

s/ Joseph M. Kaczrowski

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