

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.

**SIXTEENTH 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 Sixteenth Report summarizing the major activities that he has undertaken since the filing of the Fifteenth Status Report on August 22, 2013. This Sixteenth Report covers the period from August 23, 2013 through April 4, 2014.

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. Chief Judge Michael J. Davis sentenced Beckman to 30 years in prison for his role in the scheme, Durand to 20 years, Kiley to 20 years, and Christopher Pettengill (Case No. 11-cr-192) to 7.5 years.¹ Beckman, Durand and Kiley have each appealed their convictions and sentences to the United States Court of Appeals for the Eighth Circuit. 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

¹ Trevor Cook pleaded guilty in 2010 and was sentenced to 25 years in prison.

should contact Peter Madsen with the Probation Office at 612-664-5433 or Peter_Madsen@mp.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.

On September 30, 2013, Judge Doty granted Associated Bank's motion to dismiss the Receiver's complaint. The Receiver has appealed this decision to the United States Court of Appeals for the Eighth Circuit. The parties have completed briefing on the appeal and a hearing date is pending.

Details of the lawsuit, *Zayed v. Associated Bank*, Case No. 13-cv-232 (D. Minn.), *appeal* docketed, No. 13-3388 (8th Cir. Oct. 31, 2013), can be found on the Receiver's web site.

C. 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.

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. The details of the Receiver's lawsuit are on the Receiver's website.

D. "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, winning investors have repaid \$1,011,175.75

without the Receiver having to engage in legal action against them. Others have entered into agreements to repay approximately \$41,318.61 in winnings over time.

Although the Receiver has made every effort to work with all winning investors to avoid litigation, 27 winning investors 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 ("Winning Investor Defendants") to recover funds properly belonging to all the defrauded investors who were victims of this Ponzi scheme. Since the case was filed, sixteen of the twenty-seven Winning Investor Defendants have either settled or been dismissed from the action. Those who settled returned \$75,406.93 and pledged to return another \$19,977.25. An additional seven Winning Investor Defendants failed to answer and the Clerk made an entry of default against them; these default judgments total approximately \$70,000.

The Receiver's claims against four Winning Investor Defendants are moving forward in the litigation.² Details of the case, *Zayed v. Allen et al.*, 13-cv-1896, can be found on the Receiver's web site.

E. Panamanian Property

On June 20, 2013, the Receiver reached a settlement agreement with Panama Oxford Investment, S.A. ("Panama Oxford"), the entity that owns the land where Cook planned to build the Panama Bay Hotel & Casino. The Receiver agreed to dismiss his claims against Panama Oxford in exchange for a cash payment of \$1,000,000. The

² The Receiver's case is presently stayed pending Judge Rau's referral of the remaining defendants to the *Pro Se* Project for possible representation.

settlement funds were received in the Receiver's bank account on January 14, 2014. That same day, the Receiver filed a motion to distribute the settlement proceeds as part of the Sixth Interim Distribution, which the Court granted on January 16, 2014. This distribution of approximately \$1 million, which was made on a *pro rata* basis based on each claimant's Recognized Claim Amount, translated to 0.7 cents per dollar lost, bringing the total median distribution rate to approximately 6.2 cents paid out by the Receiver for every dollar that Cook and his cohorts stole. The checks for the Sixth Interim distribution were mailed on or about January 24, 2014.

The Receiver's case against the other defendants in the Panamanian litigation is still pending.

F. Crown Forex, SA

Crown Forex, SA was a Swiss-based forex brokerage firm run by Shadi Swais and Ibrahim Hasanein. Over the course of the Ponzi scheme, Cook and his cohorts sent approximately \$23 million of victims' funds to Crown Forex, SA, and received approximately \$8 million in return. In May 2009, the Swiss Financial Market Supervisory Authority (FINMA) put Crown Forex, SA into bankruptcy. The Receiver Estates filed claims in the Swiss proceedings, as did a number of individual investors.

In October 2013, the Swiss liquidators advised the Receiver that all claims filed in the name of the Receiver Estates had been rejected. The basis for the rejection was the Swiss liquidators' conclusion that there was no contractual relationship between Crown Forex, SA and the Receiver Estates. In other words, the Swiss liquidators determined that the Receiver Estates did not have accounts at Crown Forex, SA—the accounts that

Cook and his cohorts supposedly established at Crown Forex, SA were fake. The Swiss liquidators advised that in the aggregate, investors in Crown Forex, SA, including but not limited to the Receiver Estates, filed claims totaling approximately \$592 million (USD). Of those claims, the liquidators allowed claims totaling approximately \$17.3 million (USD). The liquidators have approximately \$3 million (USD) available to pay out those recognized claims. Unliquidated assets include a contested claim for approximately \$300,000 against the previous landlord of Crown Forex, SA, and a claim for unspecified damages against the directors and officers of Crown Forex, SA, and Receivership Estates UBS Diversified FX Growth LP and Trevor Cook.

As with all of his decisions, the Receiver conducted a thorough cost-benefit analysis to determine whether it would be in the best interest of the Receivership to appeal the Swiss liquidators' denial of the Receiver's claim in the Crown Forex, SA bankruptcy. After consulting with Swiss counsel, the Receiver concluded that there would be a high cost, with little to no gain, in such action. As an initial matter, the Receiver would have to engage Swiss counsel to pursue the appeal. If the Receiver lost the appeal, he would have to pay not only the fees and costs of his own Swiss counsel, but also the liquidators' fees and costs, and court fees for the appellate proceedings. If the Receiver succeeded in the appeal, the liquidators advised that they would offset the value of any claim amount the Receiver may be awarded with their own damages claim against UBS Diversified FX Growth, LP and Trevor Cook. Moreover, even if the Receiver were to prevail and emerge from the appeal with a claim that was unencumbered by the

liquidators' offsets, the value of any such claim would be negligible, given the minimal assets available to pay recognized claims.

For all of these reasons, the Receiver determined that any further pursuit of his claims in the Crown Forex, SA bankruptcy would be futile, at best. The Receiver does not oppose any efforts by individual investors to pursue individual claims in the Crown Forex, SA matter.

G. 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, (6) \$1,699,999.99 mailed on or about June 10-12, 2013, and (7) \$1,000,567.03 in funds mailed and credits made on or about January 24, 2014. The Receiver also released \$363,700.00 for purposes of criminal restitution.

In sum, to-date the Receiver has distributed approximately \$9,058,252.39 to the investor victims of the Ponzi scheme. This amount equals about 6.2 cents per every dollar stolen.³

³ 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*

H. Financial Status of Receivership

The Receiver has spent approximately \$7,956,740.59 in fees and expenses through November 30, 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; liLiquidprint; 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 approximately \$1,093,779.58 in the Receiver's bank account and approximately \$200,000 posted as bond in Panama.

In sum, the Receiver has collected, liquidated or frozen approximately \$18,308,627.05, paid \$7,956,740.59 in fees, expenses and other costs, and released \$9,058,106.88 for distribution to the victims of the Ponzi scheme.

rata rate for those investors as of the Sixth Interim Distribution is 5.4 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.

I. Other Assets

The Receiver continues to pursue the return of Receivership assets that were given to third parties and will bring those issues to a conclusion before the Receivership files are closed.

J. 1-800 Number

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

K. 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 161 such responses on the "FAQs" section of the Receiver's website. The Court also maintains a website for this case, which can be found at www.mnd.uscourts.gov/sec-cftc/index.shtml.

L. 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 on a periodic ongoing basis to summarize his activities since the last report.

Dated: April 4, 2014

Respectfully submitted,

s/ R.J. Zayed

R.J. Zayed, Receiver

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