

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.

**TENTH 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 Tenth Report summarizing the major activities that he has undertaken since the filing of the Ninth Status Report on June 28, 2011. This Tenth Report covers the period from June 29, 2011 through September 13, 2011.

A. U.S. Properties

The Receiver has filed motions to sell the following properties: 5463 Brookfield Road, South Haven, Minnesota 55382; 7432 Golf Drive, Mission, Texas 78572; and 2400 Paseo Del Lago, Mission, Texas 78573. The Receiver also has moved to release 5140 Terraceview Lane North, Plymouth, Minnesota 55446 because that property is worth substantially less than what could reasonably be obtained through a sale. The details of all of these motions can be found on the Receiver's web site.

1. South Haven, MN

On June 23, 2011 the Court entered an Order Authorizing the Private Sale, Hiring Real Estate Agents and Publishing Notice of Offers for Sale for this property, which was formerly owned by Grant Gryzbowski. The Court selected Marci Segner and Pat Hill of Re/Max as the Real Estate agents for the sale. The Receiver obtained three independent appraisals as required by federal statute, 28 U.S.C. § 2001. The South Haven property was placed on the market by Ms. Segner and Mr. Hill in July 2011, and the Receiver reached an agreement to sell the property for \$286,000.00, with closing to occur on or before September 15, 2011. The selling price was about \$5700 above the average

appraised value. While the Court's confirmation of the sale was pending, the Receiver worked to remove the Minnesota state tax liens that were placed on the property due to Grzybowski's inability to pay his delinquent state income taxes, totaling \$6,038.36. The Receiver satisfied all provisions of 28 U.S.C. § 2001(b), and, on September 6, 2011, the Court confirmed the sale of this property. On September 7, 2011, the Minnesota Department of Revenue advised the Receiver that the Lien Release Application has been approved, thereby removing any requirement that the Receiver pay off the lien to sell the property. There are no mortgages on the property, and so the Receiver will recover all funds at closing after costs and commissions are deducted.

2. Golf Drive, TX

On June 23, 2011 the Court entered an Order Authorizing the Private Sale, Hiring Real Estate Agents and Publishing Notice of Offers for Sale for the Golf Drive property, which was formerly owned by Jason Bo-Alan Beckman and inhabited by Hollie Beckman's parents, Robert and Dianne Birk. The Court selected Joseph Holand of Holand & Associates as the Real Estate agent for the property. The Receiver obtained three independent appraisals as required by 28 U.S.C. § 2001. The Golf Drive property was placed on the market by Mr. Holand in July 2011, and the Receiver reached an agreement to sell the property for \$112,500.00, with closing to occur on or before September 23, 2011. The selling price was about \$15,000 less than the average appraised value, but more than the two-thirds appraised value that is required by the statute. Given the market conditions in Texas, the Receiver believes that this was the best value that he could obtain for the property. The Receiver has satisfied all provisions of 28 U.S.C. §

2001(b), and has filed a motion with the Court to confirm the sale of this property, which is scheduled to be heard on September 16, 2011. There are no mortgages on the property, so the Receiver will recover all funds at closing after costs and commissions are deducted.

3. Paseo Del Lago, TX

On June 23, 2011 the Court entered an Order Authorizing the Private Sale, Hiring Real Estate Agents and Publishing Notice of Offers for Sale for the Paseo Del Lago property, which also was owned by Beckman. The Court selected Joseph Holand of Holand & Associates as the Real Estate agent for the property. The Receiver obtained three independent appraisals as required by 28 U.S.C. § 2001.

On August 12, 2011, the Receiver entered into an agreement to sell the Paseo Del Lago property for \$1,200,000.00. The selling price was about \$100,000 less than the average appraised value. After publishing notice of the sale in the newspapers as required by statute, however, the Receiver received a bona fide offer from a second buyer to purchase the Paseo Del Lago property for \$1,400,001.00, which is more than ten percent (10%) above the original offer and about \$100,000 above the average appraised value. As required by 28 U.S.C. § 2001(b), the Receiver canceled the purchase agreement with the first buyer and attempted to return their earnest money. The purchase agreement with the first buyer incorporated the terms of the statute and the Receiver's obligations therein, and further stated that the United States District Court for the District of Minnesota had exclusive venue and jurisdiction over all disputes relating to the purchase agreement.

On August 30, 2011, the Receiver entered into an agreement to sell the Paseo del Lago property for \$1,400,001.00 to the second buyer. The offer is for approximately fifty percent (50%) cash, including earnest money of \$100,000.00, with the balance of the purchase price from financing secured against the property. The agreement is set for closing on or before October 27, 2011.

The purchase agreement with the second buyer, like the cancelled agreement with the first buyer, included all personal property located in the house as of the buyers' inspections in August of 2011, including furniture, electronics and other items. The Receiver had an independent appraiser value the personal property who valued it at about \$57,000. The Receiver believes that the sales price and the condition of the McAllen housing market justify including the personal property in the sale of the home, as the buyers in the local market strongly prefer buying fully outfitted houses.

The Receiver has complied with 28 U.S.C. § 2001(b), and will move the Court to confirm the sale of the Paseo Del Lago property to the second buyer on September 16, 2011. There is one Bank of America mortgage on the property for \$745,123.02; the Receiver expects to recover about \$540,000.00 at closing after the mortgage is satisfied and costs and commissions are deducted.

4. Plymouth, MN

The Beckmans' Plymouth property has substantial negative equity. The remaining mortgage balances on the Plymouth property are at least \$1,124,239.47 (to Bank of America) and \$299,538.67 (to JPMorgan Chase). The average appraised value for the property is \$680,000. The Receiver has recovered \$50,420.80 from the sale of personal

property seized from the home, and reached a \$100,000.00 settlement agreement with Bank of America (the “Bank”) on August 8, 2011 relating to mortgages held by the Bank against properties owned by the Beckmans, including the Plymouth property.

The Receiver does not believe that any additional funds may be recovered from the Plymouth property. Accordingly, the Receiver will move the Court on September 16, 2011 for an Order granting the Receiver’s Motion to release the real property located at 5140 Terraceview Lane North, Plymouth, Minnesota 55446, from both the Receivership and the Court’s Asset Freeze Order, thereby returning the property to the custody, control and possession of the Beckmans.

B. Panamanian Property

The Receiver is still awaiting a ruling from the Panamanian Court on what evidence will be admissible in the case and the issuance of a scheduling order which will establish the schedules for hearings, expert reports, and trial. Given the caseload in Panama, the Receiver does not expect a scheduling order from the Panamanian judge until early next year.

In the interim, Panama Oxford, one of the defendants in the Receivership action in Panama, filed a petition asking the Panamanian Court to substitute the attachment on the Panama Bay property with a \$1 million U.S. bond. (See the Second and Third Status Reports for more information on the Panama Bay property). The Receiver filed an opposition to the petition, arguing that under Panamanian law a bond cannot be substituted for land in any *in rem* lawsuit like the one before the Court. This is the second time that Panama Oxford has attempted to lift the attachment. The trial court

ruled that the attachment could be substituted by the bond. The Receiver immediately appealed the decision, and the appeal has stayed the lifting of the attachment. The Receiver anticipates that the appeal will take at least two years or more before it is decided.

C. Distributions to Investor Victims of Ponzi Scheme

Pursuant to the Court's orders, the Receiver has distributed the following funds to the investor victims of the Ponzi scheme (1) \$2,250,000.00 on or about November 12, 2010; (2) \$39,820.48 to the employee investor victims on or about November 29, 2010; (3) \$133,230.44 to additional victims who were identified after the initial distribution and to victims whose claims were adjusted by the Receiver; and (4) \$1,027,729.04 on or about August 2, 2011. The Receiver also released \$363,700.00 for purposes of criminal restitution. In sum, the Receiver has distributed \$3,814,479.96 to the investor victims of the Ponzi scheme. This amount equals about 2.52 cents per every dollar stolen.

On July 22, 2011, the Court entered the First Amended Final Claims List, which entered Recognized Claim Amounts for 725 investor victims. This amended list incorporated final amounts for five claims that were disputed and resolved by the Court. The publically filed list includes the recognized claim amounts for the 725 investor victims, identified only by number who lost a total of \$158,879,471.06. The Court has received a list of the recognized claim amount along with the names of each investor victim.

D. Cash in Receivership Accounts

The Receiver has paid \$4,596,048.59 in expenses and fees. These expenses are through July 31, 2011. The details of these expenses can be found on the Receiver's website under fee petitions. This amount includes the Receiver's loan, pursuant to Court order, of \$5,151.20 to Jason Beckman on April 4, 2011 for living expenses. Details of the loan and its terms are set forth under the "Receiver Filings" tab of the Receiver's web site. As of this filing, Beckman has failed to repay the loan.

The Receiver has a cash balance of approximately \$1,331,072 in the Receiver's bank account and \$200,000 posted as bond in Panama.

In sum, the Receiver has collected, liquidated or frozen approximately \$9,941,601.42, spent \$4,596,048.59, and released \$3,814,479.96 for distribution to the victims of the Ponzi scheme.

E. Other Assets

The Receiver is still investigating the disposition of other Receivership assets including those that were given to, among others, James Pieron, JDFX, JP Fund Services, Capricorn, Crown Forex, Shadi Swais, Ibrahim Hasanein, Gary Saunders, Holger Bauchinger, Jason "Bo" Beckman, Chris Pettengill, Gerald Durand, and Pat Kiley.

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 entities. Two of those parties are NRP and Western. The details of the Receiver's potential claims against NRP and Western are set forth in the Receiver's motion to enjoin the distribution of settlement proceeds to certain FINRA Claimants which is posted on

the Receiver's website. The Court has scheduled a hearing on this matter for October 21, 2011. Thus, the Receiver has until to October 21, 2011 to bring his claims against NRP and Western. The Receiver also is actively investigating potential receivership claims against other third parties including financial institutions and brokerage firms.

The Receiver entered into a Miller-Shugart settlement with Ed Baker and his companies. Pursuant to the rights acquired under that settlement, the Receiver filed suit against the insurance carrier, Arch Insurance. That litigation is in its initial stages.

The Receiver also filed a lawsuit against Michael Kabarec based on Receivership funds that went to Baker's company, Mesa Holdings. Details of the Baker settlement, the complaint against Arch and the complaint against Kabarec are set forth under the "Receiver Filings" tab of the Receiver's web site.

The Receiver has settled his lawsuit with Kabarec. Kabarec agreed to pay the Receiver \$55,000 in two installments. Kabarec paid the first installment of \$20,000 on August 17, 2011. The second installment of \$35,000 is due by December 1, 2011.

The Receiver is continuing to receive monthly payments from Jared Jenkins pursuant to an agreement to pay back a loan he received from Trevor Cook prior to the Receivership.

On June 23, 2011 the Court issued an Order approving the Receiver's motion to sell the Beckmans' personal property seized from their Plymouth, Minnesota residence. The details of the Receiver's motion and the Court's Order approving it can be found on the Receiver's web site. The sale of this personal property netted \$50,420.80.

On June 21, 2011, Cook's co-conspirator Christopher Pettengill pled guilty to securities fraud, conspiracy to commit wire fraud and money laundering. As part of his plea agreement with the government, Pettengill has agreed to cooperate with the Receiver. The Receiver will coordinate with the United States Attorney's office concerning Pettengill's anticipated cooperation.

On July 20, 2011, Jason Bo-Alan Beckman, Gerald Durand, and Patrick Kiley were indicted on wire and mail fraud, conspiracy to commit wire and mail fraud, and money laundering. The indictment also seeks criminal forfeiture of all proceeds traceable to the fraud.

F. Other Legal Proceedings

The Receiver is continuing to litigate claw-back claims against William Harris, 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. On June 1, 2011, U.S. District Court Judge Susan Richard Nelson denied the motions to dismiss filed by the Berg Investors and Anderson. The Court's Order is posted on the Receiver's website. Fact discovery is set to close on September 15, 2011, with non-dispositive motions and dispositive motions to follow. The trial ready date for this case is February 15, 2011.

As mentioned above, the Receiver is in the initial stages of its lawsuit against Arch Insurance.

In December 2010, the Receiver sent out approximately 150 demand letters to individuals who, according to bank records, received more money from Receivership Entities than they invested. These individuals are situated differently than the Berg Investors and Anderson against whom the Receiver has filed Summary Proceedings Action in that the Receiver does not currently believe that these investors had an inside connection or received preferential treatment in withdrawing the money after the SEC announced its investigation.

The Receiver's demand letters informed these "winning investors" of the claims the Receiver has against them and offered to settle these claims for the investors' profits. Of those who received letters, 28 provided third-party documentation to show that they were not, in fact, winning investors. Ninety-one of those who were winning investors have accepted the Receiver's settlement offer. Thirty "winning investors" have either not responded or have rejected the Receiver's demand. The Receiver anticipates filing clawback actions against this last group of "winning investors."

To date, "winning investors" have pledged to repay \$810,659. Of this, \$629,221.23 has already been received and deposited in the Receivership's bank account.

G. 1-800 Number

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

H. Receiver Website

The Receiver continues to operate a website for investors and other members of the public at www.cookkileyreceiver.com. As a means to address commonly asked

questions and to improve communications with investors, the Receiver has agreed to post on a periodic basis responses to investor questions. To date the Receiver has posted 101 responses on the website. The Court has also posted a web site for this case, which can be found at www.mnd.uscourts.gov/sec-cftc/index.shtml.

I. Taxes

The Receiver is continuing discussions, through Ernst & Young, 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 under 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: September 13, 2011

Respectfully submitted,

s/ R.J. Zayed

R.J. Zayed, Receiver

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CERTIFICATE OF SERVICE

I hereby certify that on September 13, 2011, I caused the foregoing to be filed electronically with the Clerk of Court through ECF, and that ECF will send an electronic notice of the electronic filing to the following:

Cook v. SEC – Court File No. 09-cv-3333

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Dated: September 13, 2011

s/R.J. Zayed

R.J. Zayed