

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.

**SEVENTEENTH 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 Seventeenth Report summarizing the major activities undertaken since the filing of the Sixteenth Status Report on April 4, 2014. This Seventeenth Report covers the period from April 5, 2014 through November 25, 2015.

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 appealed their respective convictions and sentences to the United States Court of Appeals for the Eighth Circuit. On May 12, 2015, the Eighth Circuit affirmed the criminal convictions and sentences of each defendant. *U.S. v. Beckman et al.*, Nos. 13-1162, 1163, 2603, 2015 U.S. App. LEXIS 7805 (8th Cir. May 12, 2015). On October 5, 2015, the United States Supreme Court denied Beckman's Petition for Writ of Certiorari. 11-cr-192 at Dkt. 553. 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

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

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 should contact Leah Heino with the Probation Office at 612-664-5413 or Leah_Heino@mp.uscourts.gov.

B. Civil Cases

In March 2015, the SEC and CFTC filed dispositive motions in the civil cases. Specifically, the SEC filed motions for summary judgment against Kiley and Beckman, as well as motions for the entry of consent judgments against Cook and the various other Receiver Estates. The CFTC filed a motion for summary judgment against Kiley. All motions include requests for permanent injunctive relief. The proposed judgments will enable the Receiver to continue his duties under the Court's Receivership Orders.

Due to the pendency of the defendants' criminal appeals at the time the motions were filed, the Court continued the hearings until the appellate process was complete. The hearings on the civil motions are now scheduled to take place on Friday, December 11, 2015, at 10 a.m. before Judge Davis in courtroom 13E of the Minneapolis federal courthouse. Details of these motions can be found on the "Case Filings" tab of the Receiver's web site.

C. 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. *Zayed v. Associated Bank*, Case No. 13-cv-232 (D. Minn.).² The Receiver is represented by contingency fee counsel in this matter. Judge David S. Doty and Magistrate Judge Janie S. Mayeron are presiding over the case.

On September 30, 2013, Judge Doty granted Associated Bank's Motion to Dismiss the Receiver's Complaint under Federal Rule of Civil Procedure 12(b)(6). The Receiver appealed this decision to the United States Court of Appeals for the Eighth Circuit. On March 2, 2015, the Eighth Circuit reversed the dismissal of the Receiver's Complaint and remanded the case to the District Court for further proceedings. *Zayed v. Associated Bank*, 779 F.3d 727 (8th Cir. 2015).

When the case returned to the District Court, Associated Bank refiled its Motion to Dismiss as to the affirmative defenses of res judicata, in pari delicto and prudential standing. These issues were briefed and argued in Associated Bank's original motion, but not addressed by the District Court or the Eighth Circuit. On April 14, 2015, the parties re-submitted their original briefs on these issues. In the meantime, Magistrate Judge Mayeron conducted an early settlement conference with the parties on June 1, 2015. The case did not settle. Judge Doty denied Associated Bank's Motion on August 4, 2015. The case is now in discovery.

² 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 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 matters other than Associated Bank and will continue to employ the law firm of Carlson, Caspers, Vandeburgh, Lindquist & Schuman, P.A. with respect to the Receivership until its conclusion.

Details of the lawsuit can be found on the “Case Filings” tab of the Receiver’s web site.

D. 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, alleging nine separate causes of action to recover fraudulent transfers. Among other things, the Receiver alleged that PFG did not receive the challenged transfers in good faith because, in permitting the accounts to be opened, and then permitting the accounts to remain open and under Cook’s management, PFG violated industry rules, regulations, guidelines, and practices, as well as its own compliance policies and procedures. As detailed in the Receiver’s 207-paragraph complaint, PFG ignored myriad red flags that would have caused a reasonable broker in PFG’s position to refuse to open the accounts or, if the accounts were opened, to close them and prohibit any further trading.

As discovery in the Receiver’s case against PFG was about to begin, PFG’s CEO admitted he had been defrauding the company for over 20 years. The National Futures Association issued an emergency order freezing PFG’s operations, the Commodity Futures Trading Commission filed a civil action against the company, and criminal charges were brought against its CEO, who later pleaded guilty to embezzling more than \$100 million and is now serving a 50-year prison sentence. The company also filed a voluntary petition for relief under Chapter 7 of the Bankruptcy Code in the United States Bankruptcy Court for the Northern District of Illinois. In view of these proceedings,

Chief Judge Davis administratively closed the Receiver's case against PFG without prejudice.

The Receiver then filed 12 separate claims in the PFG Bankruptcy case. The PFG Trustee asserted various defenses, disputing the amount and merits of the Receiver's claims. From 2013 to early 2014, the Receiver, through his counsel, engaged in a detailed and extended dialogue with the PFG Bankruptcy Trustee in an attempt to resolve Receiver's claims. After almost a year of negotiations, the Receiver and the PFG Trustee reached a settlement under which the Receiver received an allowed general unsecured claim of \$10 million ("Allowed PFG Claim").

After considering all of the information available concerning the PFG Bankruptcy, the needs of the victims of this fraud, and his duties and responsibilities under this Court's Orders, and with the guidance and approval of the Court, on September 16, 2014, the Receiver held a public auction to sell the Allowed PFG Claim. The winning bid was \$1,430,000.00. The Court approved the sale and the Receiver's motion to distribute the full amount of the sale proceeds. Specifically, the Court ordered \$1,001,000.00 of the proceeds be paid to the victims of the fraud in the Seventh Interim Distribution. The Court also ordered payment to contingent fee counsel for their work on the PFG matter at the agreed upon rate of 30%, which totaled \$429,000.00.

The distribution rate for the Receiver's Seventh Interim Distribution was approximately 0.7%, bringing the total distribution rate to-date to 6.9%, or approximately seven cents for every dollar lost to the fraud. The Receiver's payments to victims in the Seventh Interim Distribution ranged from \$34.49 to \$40,085.19, with an average

distribution amount of \$1,392.21. With the Seventh Interim Distribution, the Receiver's total distribution to victims of the fraud to-date is \$10,059,106.88.

The details of the Receiver's lawsuit against PFG and the settlement, auction and distribution of the PFG proceeds are available on the Receiver's website.

E. "Winning" Investors

Through his investigation, the Receiver 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. The majority of winning investors settled with the Receiver. To date, these winning investors who settled with the Receiver have repaid \$1,058,029.75 without the Receiver having to initiate legal proceedings against them. Approximately \$23,093.40 remains to be repaid to the Receiver pursuant to agreements with these winning investors.

Although the Receiver made every effort to work with all winning investors to avoid litigation, 27 of these individuals 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. *Zayed v. Allen et al.*, 13-cv-1896 (D. Minn.). After the case was filed, 16 of the 27 Winning Investor Defendants either settled or were dismissed from the action. Those who settled after the case was filed have returned \$81,259.18 and agreed to return an additional \$6,525.00. Seven Winning Investor Defendants failed to answer and the

Clerk made an entry of default against them; these default judgments total approximately \$70,000.

On April 18, 2014, the Receiver filed a motion for summary judgment against the remaining Winning Investor Defendants on his fraudulent transfer claim under the Minnesota Uniform Fraudulent Transfer Act (“MUFTA”), as well as on his equitable claim for unjust enrichment. The Court heard oral argument on June 2, 2014. After oral argument, George and Shirley Janssen settled with the Receiver for \$9,000.00 and the claims against them were dismissed.

On March 10, 2015, Judge Susan Richard Nelson denied the Receiver’s summary judgment motion without prejudice in light of a change in the law that was made while the motion was under advisement. More specifically, on February 18, 2015, the Minnesota Supreme Court issued its opinion in *Finn v. Alliance Bank*, 860 N.S.2d 638 (Minn. 2015), which eliminated the “Ponzi Scheme Presumption” under the MUFTA. Although federal and state courts around the county, including those in Minnesota, have long held that the existence of a Ponzi Scheme establishes the element of fraudulent intent for a fraudulent transfer claim—the Ponzi Scheme Presumption—the *Finn* court took the opposite view. *See id.* at *7-8. Given that the Receiver’s motion relied on the Ponzi Scheme Presumption for the fraudulent intent element of his MUFTA claim, and that *Finn* was decided after the Receiver’s motion had been fully briefed and argued, the Court denied the Receiver’s motion without prejudice and allowed the parties leave to file amended dispositive motions within 30 days. In view of the Court’s Order and the change of the law in *Finn*, on March 9, 2015, the Receiver filed an amended motion for

summary judgment against the remaining Winning Investor Defendants. Judge Nelson held a hearing on the amended motion on July 16, 2015.

On November 16, 2015, the Court denied the Receiver's motion in part and granted it in part. The Court determined that the Receiver may pursue his fraudulent transfer claim under a badges-of-fraud analysis, but denied the Receiver's motion for summary judgment on his unjust enrichment claim, finding that the Receiver may not pursue the equitable remedy of unjust enrichment where an adequate remedy at law exists. The Court granted the Receiver's motion as to the defenses of statute of limitations, laches, accord and satisfaction, "payment," "facts and venue," and the adequacy of the Receiver's fraud allegations.

Further details about the case can be found on the Receiver's web site under the "Case Filings" tab.

F. Panama

On November 12, 2009, Oxford FX Growth, LP ("OFXG"), a Receiver Estate, filed a lawsuit in Panama against several entities and individuals related to real estate and related transactions that were made with Receivership funds in that country. Among other things, Cook and his cohorts were planning to build a condominium complex, called the Vineyards, and a hotel and casino, called the Panama Bay Hotel & Casino, in Panama City with money they had stolen from investors. As part of the lawsuit, OFXG posted a bond with Receiver assets to sequester the land that was the subject of these real estate deals.

On June 20, 2013, the Receiver reached a settlement agreement with defendant 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 \$1,000,000.00. With the Court’s approval, the Receiver distributed the settlement funds as part of the Sixth Interim Distribution. This distribution of these settlement funds was made on a *pro rata* basis based on each claimant’s Recognized Claim Amount and translated to 0.7 cents per dollar lost. The checks for the Sixth Interim Distribution were mailed on or about January 24, 2014.

In 2014, the land and bank accounts associated with the Ponzi Scheme’s dealings in Panama became the subject of a governmental freeze instituted under the Mutual Lateral Assistance Treaty (“MLAT”) between the United States and Panama. Among the assets frozen pursuant to the MLAT was a bank account of a Panamanian company called Orlando Holdings S.A. (“Orlando Holdings”). During the Ponzi Scheme, Receivership funds were transferred to Orlando Holdings as part of a real estate transaction that was never completed. The Receiver and Orlando Holdings resolved the matter for a settlement of \$101,500.00 to be paid when Orlando Holdings’ account is unfrozen by the Panamanian authorities.

With the MLAT in place and directed to the same assets that were the focus of the Receiver’s lawsuit in Panama, the Receiver determined that it was in the best interest of the Receivership to dismiss his lawsuit in Panama and defer to the government to repatriate any Receivership assets that may remain in Panama. By dismissing his civil

lawsuit and deferring to the government's MLAT process, the Receiver avoids the cost, time and uncertainties of that litigation, while entrusting any remaining asset collection activities to the United States government. On June 8, 2015, \$196,514.56 that was posted as security in the lawsuit was returned to the Receiver from Panama. Any further repatriation of Receivership funds from Panama is now in the hands of the United States government.

G. Receivership Assets held by Patricia Edenborg-Gorman and Dennis Gorman

On April 9, 2015, the Receiver filed a Summary Proceeding Petition for the return of \$153,071.20 in Receivership assets that Jason Bo-Alan and Hollie Beckman had transferred to Patricia Edenborg-Gorman and Dennis Gorman (collectively, the "Gormans") during the course of the Ponzi scheme. Patricia Edenborg-Gorman is the sister of Hollie Beckman's mother, Dianne Birk. The Gormans used at least \$118,371.20 of the money from the Beckmans to purchase a winter home in Mission, Texas, where the Beckmans and the Birks also vacationed in the winter months. The Receiver's action asks, among other things, for that home to be put in a constructive trust so that the Receiver can liquidate that asset and return the proceeds to the victims of this fraud.

The Gormans complied with the Receiver's request to waiver service and have answered the Receiver's petition. On November 4, 2015, the Receiver filed a Motion for Summary Judgment for the return of the \$139,871.20 and a constructive trust over the home purchased with those Receivership assets. A hearing on the Receiver's motion is set for February 12, 2016 at 10 a.m. before Judge Davis in courtroom 13E of the Minneapolis federal courthouse.

Further details about the Receiver's petition can be found on the Receiver's web site under the "Case Filings" tab.

H. 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 on or about June 10-12, 2013, (7) \$1,000,567.03 on or about January 24, 2014, and (8) \$1,001,000.00 on or about December 19, 2014. The Receiver also released \$363,700.00 for purposes of criminal restitution, which was distributed by the U.S. Probation Office in November 2010.

The Receiver has been working to identify investors who have yet to cash one or more distribution checks and to find those individuals or their heirs to ensure that the appropriate people receive replacements for past uncashed checks. Investors who have lost checks, changed addresses, or otherwise need to update their information with the Receiver for purposes of distributions should contact the Receiver either by phone (local (612-436-9664) and toll-free (877-316-6129)) or email (info@cookkileyreceiver.com).

In sum, to-date the Receiver has distributed approximately \$10,059,252.39 to the investor victims of the Ponzi scheme. This amount equals about 6.9 cents per every dollar stolen.³

I. Financial Status of Receivership

The Receiver has spent approximately \$8,802,069.87 in fees and expenses billed through September 30, 2015. 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; liQuidprint; 33rd Co. Inc.; Bernick, Lifson, Greenstein, Greene & Liszt; Lindquist & Vennum; Ernst & Young; and Reid, Collins & Tsai. 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.

As of September 31, 2015, the Receiver has a cash balance of approximately \$960,346.79 in the Receiver's bank account.

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 rata* distribution rate for these investors will always be 0.8% below the median recovery rate for all other claimants.

In sum, the Receiver has collected, liquidated or frozen approximately \$19,821,523.54, paid \$8,802,069.87 in fees, expenses and other costs, and released \$10,059,252.39 for distribution to the victims of the Ponzi scheme.

J. 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.

K. 1-800 Number

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

L. 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 174 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.

M. 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: November 25, 2015

Respectfully submitted,

R.J. Zayed

R.J. Zayed, Receiver

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