

**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.

**EIGHTEENTH 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 Eighteenth Report summarizing the major activities undertaken since the filing of the Eighteenth Status Report on November 25, 2015. This Eighteenth Report covers the period from November 26, 2015 through January 11, 2016.

A. Criminal Cases

Trevor Cook, Jason Bo-Alan Beckman, Gerald Joseph Durand, Patrick Joseph Kiley, and Christopher Pettengill have all either pleaded or been found guilty for their roles in this Ponzi scheme. Judge Michael J. Davis sentenced Cook to 25 years in prison for his role in the scheme, Beckman to 30 years, Durand to 20 years, Kiley to 20 years, and Christopher Pettengill 7.5 years. 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.

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 included requests for permanent injunctive relief.

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. 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), and on October 5, 2015, the United States Supreme Court denied Beckman's Petition for Writ of Certiorari. 11-cr-192 at Dkt. 553. On January 12, 2016, Judge Davis granted the SEC and CFTC's motions for summary judgment and entered final judgment as to all defendants in the civil actions. The judgments close the civil actions brought by the SEC and CFTC, but enable the Receiver to continue his duties under the Court's Receivership Orders.

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.).¹ The Receiver is

¹ 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. In October 2016, Mr. Rigby moved from the District of Minnesota and the Carlson Caspers firm. As such, he is no longer serving as a Receiver or counsel in this matter.

represented by contingency fee counsel in this matter. Judge David S. Doty and Magistrate Judge Steven E. Rau are presiding over the case.²

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 either 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, and the parties thereafter began the fact discovery phase of the case. Judge Mayeron conducted a second settlement conference on May 25, 2016 and again, no settlement was reached. Since then, the parties completed fact and expert discovery and nondispositive motion practice.

² In view of Magistrate Judge Janie S. Mayeron's upcoming retirement, on November 2, 2016 the case was re-assigned to Magistrate Judge Rau.

The case is now in the dispositive motion phase. The parties filed opening briefs on dispositive motions on October 28, 2016, responsive briefs on November 18, 2016, and reply briefs on November 28, 2016.

Associated Bank filed three dispositive motions and the Receiver filed two. First, Associated Bank filed a Motion for Summary Judgment arguing that (1) there is no evidence that anyone at the Bank had actual knowledge of the Ponzi scheme, (2) there is no evidence that the Bank provided substantial assistance to the scheme, and (3) the Receiver has no evidence of damages. As to the first two points, the Receiver's position is that the evidence, when taken as a whole, shows both actual knowledge and substantial assistance of the underlying torts. On the third point, the Bank contends that the Receiver needs an expert to prove damages. The Receiver's position is that the damages evidence is straightforward and does not require an expert. The Receiver's damages are based on the Court's Third Amended Claims list and the testimony of SEC accountant, Scott Hlavacek.

Second, the Bank filed a motion for Sanctions or Adverse Inference. This motion alleges, among other things, that Cook and others engaged in bad faith document destruction in the waning days of the scheme. The Bank seeks an adverse inference that there was no meeting involving Bank Vice President Lien Sarles, Trevor Cook, Patrick Kiley and Mr. Pettengill in the spring of 2008 in which the insolvency of Crown Forex S.A., among other things, was discussed. In the alternative, the Bank seeks an order excluding the Receiver's evidence about this meeting, including Mr. Pettengill's declaration on that point and any testimony by Mr. Pettengill about the meeting. The

Receiver responded that the Bank failed to show the legal requirements that (1) the Receiver destroyed evidence or that it acted in bad faith with a desire to suppress the truth and (2) that the Bank failed to show prejudice because it is free to show evidence to the contrary.

Finally, the Bank moved to Exclude the Receiver's Expert, Catherine Ghiglieri. Ms. Ghiglieri is an expert in banking practices directed at detecting fraudulent activity. Her report catalogs the myriad violations Associated Bank made in the course of opening and servicing the Ponzi scheme accounts. The Bank has moved to exclude her testimony on grounds that it is (1) not relevant to the Bank's actual knowledge of the scheme, (2) not relevant because it does not concern any individual Associated Bank employee, and (3) not relevant to the Bank's substantial assistance of the fraud. It is the Receiver's position that, unlike the Bank's experts, Ms. Ghiglieri does not extend beyond her expertise to conclude the Bank, in fact, had actual knowledge of the torts. However, her expertise is necessary to help the jury understand what the Bank was supposed to do with regard to the Ponzi scheme accounts, and how it was fully derelict in complying with those duties. She is the witness who puts the entire catalog of the Bank's infractions together.

The Receiver filed two dispositive motions. First, the Receiver moved to Exclude Associated Bank's Damages Expert, Karl Jarek. Mr. Jarek, a CPA, is the Bank's damages expert. Among other things, Mr. Jarek opines that the claim amounts identified in the Third Amended Claims List are unreliable, that the analysis and declaration of Scott Hlavacek is unreliable, and that the proper measure of damages in the case is \$0.

The Receiver moved to strike improper legal arguments offered by Mr. Jarek, as well as his set off theory, which is not based on reliable principles and methods.

Second, the Receiver moved to Exclude Associated Bank's Banking Expert, Charles Grice. Mr. Grice spends the majority of his opinion improperly weighing evidence and providing factual and legal conclusions about whether the Bank had knowledge of the underlying torts. The Receiver's motion is based on the premise that Mr. Grice's opinions about the state of mind of the Bank, its employees, and others is not within the expertise of Mr. Grice, whose area is limited to banking compliance rules and procedures.

Judge Doty heard oral argument on these motions on December 9, 2016, and took them under advisement. Magistrate Judge Rau has now ordered a settlement conference to take place on February 17, 2017.

Public versions of the dispositive motions filings, along with other information about the case, can be found on the "Case Filings" tab of the Receiver's web site.

D. "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 \$1,058,279.75 without the Receiver having to

engage in legal action against them. Approximately \$22,843.40 remains to be repaid to the Receiver pursuant to agreements with these winning investors.

E. Panama

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 Legal 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"). 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 upon the unfreezing of Orlando Holdings' account by the Panamanian authorities. Those settlement funds have now been fully paid to the Receiver. Any further repatriation of Receivership funds from Panama is now in the hands of the United States government.

F. 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 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. On August 29, 2016, the Court granted the Receiver's motion and entered judgment in the amount of \$139,871.20 against the Gormans. The Gormans have paid the judgment in full.

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

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 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

H. Financial Status of Receivership

The Receiver has spent approximately \$9,159,863.97 in fees and expenses billed through November 30, 2016. 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; 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

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.

living expenses. The details of all fees and expenses can be found on the Receiver's website under fee petitions.

As of January 11, 2016, the Receiver has a cash balance of approximately \$928,601.23 in the Receiver's bank account.

In sum, the Receiver has collected, liquidated or frozen approximately \$20,066,670.43, paid \$9,159,863.97 in fees, expenses and other costs, and released \$10,059,252.39 for distribution to the victims of the Ponzi scheme.

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 173 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: January 12, 2017

Respectfully submitted,

s/ R.J. Zayed

R.J. Zayed, Receiver

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