

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

U.S. Commodity Futures Trading Commission, Civil No. 09-3332 (MJD/FLN)

Plaintiff,

v.

Trevor Cook, et al.,

ORDER

Defendants.

and

United States Securities and Exchange Commission, Civil No. 09-3333 (MJD/FLN)

Plaintiff,

v.

Trevor Cook, et al.,

Defendants.

Tara C. Norgard & Joseph M. Kaczrowski for Receiver.
James S. Alexander for Plaintiffs U.S. Securities and Exchange Commission and
U.S. Commodity Futures Trading Commission.
Key Metze, *pro se* Claimant.
Mary Dingman, *pro se* Claimant.
David Cotton, *pro se* Claimant.
Michael, Terri and Stacey Fumiatti, *pro se* Claimants.
John and Mary Curtis, *pro se* Claimants.

THIS MATTER came before the undersigned United States Magistrate Judge on April 29, 2011 on the Receiver's Motion for Order Entering Recognized Claim Amounts for Five Disputed Claims (09-3332, ECF No. 699) (09-3333, ECF No. 744). Chief Judge Michael J. Davis issued an order on April 5, 2011, approving a process for judicial resolution of any challenges by investors to the Receiver's recognized claim amounts. (ECF Nos. 683 and 732.) Pursuant to the process established by that Order, the Court held a hearing on April 29, 2011, in order to resolve the remaining claim disputes. Claimants Mary Dingman, Michael Fumiatti, and David Cotton appeared

for the hearing.

Based upon the foregoing and all the files, records and proceedings herein, **IT IS HEREBY ORDERED** that the Receiver's Motion for Order Entering Recognized Claim Amounts for Five Disputed Claims (09-3332, ECF No. 699) (09-3333, ECF No. 744) is **GRANTED** as follows:

1. With respect to claimant Kay Metze, the Receiver's recognized claim amount of \$0.00 is hereby entered as final. Ms. Metze has failed to establish through documentation unrelated to the fraud itself that she invested \$20,000.00 cash with the Oxford Group.
2. With respect to claimant Mary Dingman, the Receiver's recognized claim amount of \$468,872.66 is hereby entered as final. Ms. Dingman claims that she made two additional deposits in the amounts of \$8,899.00 and \$12,146.00. Based on the documentation provided by Ms. Dingman, these credits to her account appear to be a percentage of fictitious profits attributed to other investors. (ECF Nos. 702 and 747, Kaczrowski Decl., Ex. 18.) These credits do not constitute actual losses and cannot be included in Ms. Dingman's recognized claim amount.
3. With respect to claimant David Cotton, the Receiver's recognized claim amount of \$100,000.00 is hereby entered as final. Mr. Cotton has failed to establish through documentation unrelated to the fraud that he invested an additional \$40,000 with a receivership entity.
4. With respect to claimants Michael, Terri and Stacy Fumiatti, the Receiver's recognized claim amount of \$52,471.13 is hereby entered as final. The Fumiattis provided documentation suggesting they deposited \$74,926.00 with RJ O'Brien and IFX Markets, however, these are not receivership entities. The Fumiattis failed to establish that they deposited more than the \$52,471.13 identified by the Receiver with receivership entities.
5. With respect to claimants John and Mary Curtis, the Receiver's recognized claim amount of \$60,000.00 is hereby entered as final. The Curtises' challenge of the Receiver's recognized claim amount was untimely. Chief Judge Michael J. Davis' Order Approving Interim Distribution Plan and Claim Finalization Procedures provides, "Any claimant who receives a letter from the Receiver detailing his or her recognized claim amount for civil restitution shall have thirty (30) days from the date of the Receiver's letter to challenge the recognized claim amount." (ECF Nos. 514 and 556.) The receiver sent the Curtises a letter detailing their recognized claim amount on November 12, 2010. (Kaczrowski Decl., Ex. 34.) The Curtises did not submit their challenge until February 15, 2011. (*Id.*, Ex. 35.) Even had the Curtises submitted a timely challenge, the Court finds that their challenge fails. The Curtises support their claim of an additional \$120,000.00 investment with a cancelled check

in that amount from Mary Curtis to Millennium Trust Company. *Id.* However, Millennium Trust Company is not a Receivership entity, and the Curtises have provided no documentation that shows the \$120,000.00 was ever transferred from Millennium Trust Company to a receivership entity.

DATED: May 12, 2011

s/ Franklin L. Noel
FRANKLIN L. NOEL
United States Magistrate Judge