

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

United States Securities
and Exchange Commission,

Plaintiff,

v.

MEMORANDUM OPINION
AND ORDER
Civil No. 09-3333 (MJD/JJK)

Trevor Cook, d/b/a Crown
Forex, LLC and Patrick J. Kiley,
d/b/a Crown Forex, LLC et al.,

Defendants

and

Basel Group, L.L.C., et al.,

Relief Defendants.

John E. Birkenheier, Adolph J. Dean, Jr., Steven L. Klawans and Justin M Delfino, and Robyn A. Millenacker, Assistant United States Attorney, Counsel for Plaintiff United States Securities and Exchange Commission ("SEC").

John C. Brink, Counsel for Relief Defendants Clifford and Ellen Berg.

This matter is before the Court upon the motion of Relief Defendants Clifford and Ellen Berg (the "Bergs") for clarification that the Court's November 23, 2009 Asset Freeze Orders (SEC Doc. No. 14 and CFTC Doc. No. 21) do not

apply to any of their assets. The SEC opposes the motion.

Pursuant to the Court's November 23, 2009 Asset Freeze Order "all funds, accounts, and other assets held by or for Relief Defendants Clifford Berg and Ellen Berg, which were received, directly or indirectly, from the Defendants or were acquired with funds or other assets received, directly or indirectly, from the Defendants are hereby frozen." (Doc. No. 14 at 3.) The Order further enjoined the Bergs from "transferring, selling, encumbering, receiving, changing, pledging, assigning, liquidating, incurring debt upon . . . or otherwise disposing of, or withdrawing, any funds, accounts or other assets . . . owned by, controlled by, held for the benefit of, or in the possession of the Defendant and/or Relief Defendants." (Id. at 4.) Certain accounts of the Bergs were thereafter identified in the Order that were subject to the Asset Freeze. (Id. at 6.)

The Bergs assert that there has been no showing that they have engaged in any acts, practices or transactions that violate any sections of the Securities Act of 1933 or the Exchange Act. The Bergs thus ask that the freeze be lifted with regard to their assets and accounts. In the alternative, the Bergs ask that at a minimum, the Court lift the Freeze Order as to those amounts of money that originated from the Bergs' income and retirement accounts, totaling \$472,056.58.

The SEC does not object to the Bergs opening a new account for the deposit of ongoing income. The SEC does object to allowing the Bergs access to funds currently frozen, the source of which is from accounts in the names of the Defendants or Defendant entities.

Based on the evidence presented at the hearing on the SEC's motion for preliminary injunctive relief, this Court finds that the SEC made a substantial showing that Defendants have engaged in acts, practices and transactions that violated 15 U.S.C. §§ 77e(a), 77e(c), 77q(a), 78j(b) and Rule 10b-5.

In support of the motion for injunctive relief, the SEC submitted a summary of transactions between the accounts of the Defendant entities UBS-Growth LLC, PFG Coin, Oxford Global Advisors, Oxford Global Partners and Crown Forex LLC and Clifford and Ellen Berg. (Doc. No. 4, Hlavcek Decl., Ex. 15.) This summary shows that on or about the end of June 2009, two checks written from the accounts of UBS Growth LLC at Wells Fargo were written to the Bergs. The first check, in the amount of \$192,906 was written to Ellen Berg. (Id.) The second check, in the amount of \$561,896, was written to Clifford Berg. (Id.) Clifford Berg went to the American Bank in Apple Valley, Minnesota, on June 30, 2009, to deposit the checks in their accounts. (12/04/09 Tr. (Karges) at 36.) Mr.

Berg briefly spoke with the bank manager, Kathryn Karges, and told her that he would be depositing two large checks. (Id. at 38.) He then made the comment that he was trying to help his son-in-law. (Id.) Mr. Berg thereafter deposited another check into his account on July 7, 2009, from the account of Oxford Global Partners, in the amount of \$74,666.56. (Id. at 46; Ex. 15.)

In addition to Mr. Berg's comment that he was depositing the monies to help his son-in-law, the timing of these deposits is also significant. The SEC conducted a surprise walk-in of Cook's offices in mid June 2009 and the CFTC issued a subpoena to Oxford Global Partners, LLC in care of Cook in June 2009 as well. Additionally, a civil lawsuit was filed in July 2009 against Cook, Kiley and others in which the plaintiffs alleged fraud. These facts suggest that Defendant Cook may have been attempting to hid funds from possible civil judgments by presenting checks to his in-laws for deposit into their accounts.

While the Bergs argue that they invested \$472,000 of their own funds into the investment programs run by Defendants, and that they should be entitled to have access to that amount, the Court notes that all defrauded investors could make the same argument. The fact that one of the Defendants is the Bergs son-in-law is not a basis to grant them a preference over other investors. At the

appropriate time, the Bergs may file a claim for the return of their funds. At this time, however, there is no basis before the Court that would support giving a preference to the Bergs over any other investor. See SEC v. Credit Bancorp, Ltd., 109 F. Supp. 2d 142, 146 (S.D.N.Y. 2000) (finding it premature to give preferential treatment to a creditor of a receivership estate).

Accordingly, to the extent the Bergs ask that the Court lift the freeze over approximately \$472,000, such request is denied.

IT IS HEREBY ORDERED that the Motion for Clarification by Clifford and Ellen Berg [Doc. No. 42] is DENIED, with the exception that the Bergs may open a new bank account for ongoing salary and pension income.

Date: February 24, 2010

s/ Michael J. Davis _____
Michael J. Davis
Chief Judge
United States District Court