

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

**U.S. COMMODITY FUTURES TRADING
COMMISSION,**

Plaintiff,

v.

**BARKI, LLC, a North Carolina limited
liability company;
BRUCE C. KRAMER, an individual,**

Defendants, and

**RHONDA A. KRAMER, an individual, and
FOREST GLEN FARM, LLC, a North
Carolina limited liability company,**

Relief Defendants.

CASE NO. 3:09-CV-106 (GCM)

**RECEIVER’S REPORT OF CLAIMS; OBJECTIONS TO CLAIMS; AND
RECOMMENDATIONS REGARDING CLAIMS**

Joseph W. Grier, III, the duly appointed receiver (“Receiver”) in this case, through counsel, and pursuant to this Court’s *Order Granting Receiver’s Motion Relative to (1) Approval of Proposed Claims Verification Procedures and Claims Bar Date; and (2) for Authority to Make Interim Distributions to Customers; and Reserving Judgment as to Receiver’s Proposed Claims Distribution Method* (the “Order”) entered on August 5, 2009, hereby files this report of claims, objections to claims and recommendations regarding claims (the “Claims Report”). The Receiver has reviewed Claim Verification Forms submitted by customers of Barki, LLC (“Barki”), compared those forms with Barki records, bank account records and the accounting prepared by the Commodity Futures Exchange Commission (the “CFTC Report”) (collectively, the “Barki Records”) and has reconciled and calculated each investor’s claimed pre-Receivership

deposits and withdrawals to arrive at amounts for each customer’s total investments (“Total Investments”) and total withdrawals (“Total Withdrawals”). In cases where the Claim Verification Form did not reconcile with the Barki Records, the Receiver worked with individual claimants to resolve the differences. The Receiver respectfully requests that the Court approve the proposed treatment of investor claims as outlined in this Claims Report. In support of the Claims Report, the Receiver shows as follows:

1. This Claims Report addresses claims on file with the Receiver as of the deadline for filing claim verification forms established in this case, September 8, 2009, and claims tendered since the deadline for claims (collectively, the “Customer Claims”).

2. The Receiver recommends the following treatment of Customer Claims, listed by Barki account number in order to preserve customer privacy:

Claim No.	Customer Account Number	Total Investments Claimed	Total Withdrawals Claimed	Recommendation	Reason for Objection
56	1.05	\$2,700,000.00	\$2,740,000.00	Allow as filed.	
42	2.05	\$1,857,000.00	\$849,483.75	Allow Total Investments of \$1,857,000.00 and Total Withdrawals of \$834,983.75 after reconciliation with records and discussion with claimant.	
25	3.05	\$526,400.00	\$284,500.00	Allow as filed.	
59	5.05	\$300,000.00	\$110,000.00	Allow Total Investments of \$300,000.00 and Total Withdrawals of \$114,500.00 after reconciliation with records and discussion with claimant.	
19	11.05	\$670,000.00	\$400,000.00	Allow as filed.	
45	13.05	\$270,000.00	\$60,000.00	Allow as filed.	
7	15.05	\$900,000.00	\$440,000.00	Allow as filed.	
4	16.05	\$329,430.64	\$80,000.00	Allow Total Investments of \$329,430.64 and Total Withdrawals of \$100,000.00 after	

				reconciliation with records and discussion with claimant.	
21	18.06	\$230,000.00	\$115,000.00	Allow Total Investments of \$230,000.00 and Total Withdrawals of \$117,500.00 after reconciliation with records and discussion with claimant.	
46	20.06	\$452,984.00	\$222,000.00	Allow as filed.	
37	21.06	\$927,000.00	\$705,000.00	Allow as filed.	
51	22.06	\$300,000.00	\$92,000.00	Allow Total Investments of \$300,000.00 and Total Withdrawals of \$94,000.00 after reconciliation with records and discussion with claimant	
11	24.06	\$425,000.00	-0-	Allow as filed.	
48	26.06	\$400,000.00	\$22,000.00	Allow as filed.	
28	28.06	\$410,000.00	\$289,000.00	Allow Total Investments of \$410,000.00 and Total Withdrawals of \$292,000.00 after reconciliation with records and correspondence with claimant	
61	29.06	\$409,054.00	-0-	Allow as filed.	
52	30.06	\$225,838.64	\$84,500.00	Allow as filed.	
57	31.06	\$300,000.00	\$130,009.00	Allow as filed.	
54	32.06	\$1,200,000.00	\$855,000.00	Allow as filed.	
18	34.06	\$244,000.00	\$53,000.00	Allow as filed.	
14	35.07	\$660,000.00	\$340,000.00	Allow as filed.	
38	36.07	\$930,900.00	\$326,000.00	Allow Total Investments of \$820,900.00 and Total Withdrawals of \$415,500.00 for a net loss of \$405,400 – Customer’s Claim of Total Investments appears to include false profits however customer’s cover letter “net” amount of \$405,400 reconciles with bank records.	
60	37.07	\$308,733.00	\$128,733.00	Allow Total Investments of \$308,733.00 and	

				Total Withdrawals of \$180,000.00 after reconciliation with records and discussion with claimant's counsel.	
34	38.07	\$950,000.00	\$607,321.87	Allow as filed.	
41	39.07	\$360,500.00	\$522,270.00	Allow Total Investments of \$296,000.00 and Total Withdrawals of \$2,000.00 after reconciliation with records and discussion with claimant.	
35	40.07	\$1,349,996.55	\$649,152.03	Allow as filed.	
31	41.07 (combined with 17.05 due to transfer of funds to this account)	\$316,000.00	\$161,500.00	Allow Total Investment of \$364,000.00 and Total Withdrawals of \$209,500.00 after combining accounts and correspondence with claimant)	
2	43.07	\$535,000.00	\$430,000.00	Allow as filed.	
43	44.07	\$250,000.00	\$178,816.74	Allow as filed.	
53	45.07	\$475,600.00	\$405,000.00	Allow as filed.	
66	46.07	\$427,000.00	414,620.00	Allow Total Investment of \$213,500.00 and Total Withdrawals of \$12,000.00 after reconciliation with records and discussion with claimant.	
58	47.07	\$100,000.00	-0-	Allow as filed.	
17	48.07	\$370,000.00	-0-	Allow as filed.	
36	49.07	\$329,248.06	\$85,000.00	Allow as filed.	
26	50.07	\$469,248.06	\$161,500.00	Allow as filed.	
50	51.07 (combined with 19.06 due to transfer of funds to this account)	\$490,000.00	\$253,250.00	Allow as filed.	
55	53.07 (combined with 12.05 due to transfer of funds to this account)	\$3,279,752.00	\$3,379,943.31	Allow Total Investment of \$3,284,566.00 and Total Withdrawals of \$3,379,943.00 after reconciliation with records and correspondence with claimant.	

20	54.07	\$275,000.00	\$145,000.00	Allow as filed.	
3	55.07-1	\$250,000.00	\$46,000.00	Allow Total Investment of \$250,000.00 and Total Withdrawals of \$54,000.00 after reconciliation with records and discussion with claimant.	
39	55.07-2 / 56.07	\$200,000.00	-0-	Allow as filed.	
23	57.07	\$250,000.00	\$134,500.00	Allow Total Investments of \$250,000.00 and Total Withdrawals of \$138,500.00 after reconciliation with records and correspondence with claimant	
13	58.07	\$250,000.00	-0-	Allow as filed.	
33	59.08 (combined with 42.07 due to transfer of funds to this account)	\$913,000.00	\$30,000.00	Allow as filed.	
30	60.08	\$425,000.00	\$68,000.00	Allow as filed.	
12	61.08	\$513,836.04	\$195,000.00	Allow as filed.	
24	62.08	\$950,000.00	\$35,108.86	Allow as filed.	
22	63.08	\$1,230,000.00	\$51,000.00	Allow as filed.	
16	64.08	\$725,000.00	\$16,000.00	Allow as filed.	
6	65.08	\$425,000.00	-0-	Allow as filed.	
40	66.08 (reconciled with 67.08 and 2.05 due to transfer of funds between accounts)	\$260,135.73	\$3,637.00	Allow Total Investment of \$0 and Total Withdrawal of \$0 after combining accounts, reconciliation with records and discussion with claimant.	
29	67.08	\$383,772.79	\$35,000.00	Allow Total Investment of \$120,000.00 and Total Withdrawal of \$35,000.00 after combining accounts, reconciliation with records and correspondence with claimant.	

44	68.08	\$750,000.00	\$350,000.00	Allow as filed.	
65	69.08	\$604,620.00	\$328,000.00	Allow Total Investment of \$415,500.00 and Total Withdrawal of \$318,000.00 after reconciliation with records and discussion with claimant.	
10	70.08	\$348,000.00	\$140,000.00	Allow as filed.	
15	71.08	\$500,000.00	-0-	Allow as filed.	
9	72.08 (combined with 33.06 due to transfer of funds in account)	\$723,000.00	\$206,500.00	Allow as filed.	
1	73.08	\$336,524.73	-0-	Allow as filed.	
27	74.08	\$250,000.00	-0-	Allow as filed.	
49	75.08	\$800,000.00	\$63,473.45	Allow as filed.	
8	76.08	\$75,000.00	-0-	Allow as filed	
47	77.09 (combined with 52.07 due to transfer of funds to this account)	\$262,500.00	-0-	Allow as filed.	
5	78.09	\$659,052.17	-0-	Allow as filed	

3. During the review of Claim Verification Forms and reconciliation Barki Records an issue arose whereby on several occasions funds from a Barki account with an individual account holder were “transferred” to a new account, typically an account held by a limited liability company, controlled by the individual who originally held the account in his/her individual name. The funds “transferred,” according to the bank records and claims forms, were never actually withdrawn from Barki, LLC but moved in bookkeeping entries. These transfers generally included false profits. To avoid the circumstance where each individual who made such a transfer would be charged with a large withdrawal, the Receiver’s analysis combines the individual accounts with the subsequent LLC accounts for purposes of establishing claim

amounts. Ultimately, the Receiver recommends that any distribution on these accounts will be made payable to the final account held with Barki, LLC, which in all cases is a limited liability company.

4. The Receiver did not receive Claim Verification Forms for eleven (11) Barki, LLC accounts. These customers can be characterized into the following three groups:

- a. Upon information and belief, account holders of account 1.04 and 14.05 are deceased. Both of these accounts are “net-winners” whereby the Total Withdrawals exceeded the Total Investments. Upon information and belief, estates have not yet been opened for either account holder; the Receiver is monitoring the respective county clerk’s offices and will participate in estate administration for each.
- b. Account holders of accounts 4.05, 6.05, 8.05, 9.05, 10.05, 23.06 and 27.06 are “net-winners” whereby Barki Records reflect that these account holders’ Total Withdrawals exceeded the Total Investments. The Receiver speculates that due to the “net-winner” status, these account holders chose not to participate in the claims process. The Receiver reserves all rights to pursue these and other “net-winner” account holders for amounts they may have received over and above the amounts deposited into Barki.
- c. Account holders of accounts 7.05 and 25.06 are account holders whereby Total Investments exceeded Total Withdrawals. The Receiver has been in touch with both of these account holders,

either directly or indirectly, and believes that they intentionally did not file a Claim Verification Form with the Receiver. Due to the lack of filing of a Claim Verification Form, the Receiver recommends that these account holders' be denied any claim in the Receivership.

5. The Receiver's proposed treatment of claims is not an indication or statement regarding the validity of any claim not listed herein. The Receiver reserves the right to object to any such claims on any ground permitted by law or equity.

WHEREFORE, the Receiver prays that the Court will enter an Order: approving the Receiver's proposed treatment of claims as outlined herein, including allowance of the Total Investments and Total Withdrawals for each Customer Claim; and granting such other relief as is just and proper.

This is the 7th day of October, 2009.

GRIER FURR & CRISP, PA

/s/ Joseph W. Grier, III

Joseph W. Grier, III (State Bar No. 7764)

A. Cotten Wright (State Bar No. 28162)

Anna S. Gorman (State Bar No. 20987)

101 North Tryon Street, Suite 1240

Charlotte, North Carolina 28246

Phone: 704.375.3720; Fax: 704.332.0215

jgrier@grierlaw.com

cwright@grierlaw.com

agorman@grierlaw.com

Attorneys for Joseph W. Grier, III,

Court Appointed Receiver

CERTIFICATE OF SERVICE

The undersigned hereby certifies that copies of the *Notice of Additional Authority Relative to Distribution Methodology* were served by email or the CM/ECF system upon the following parties:

Investors by email

Stephen M. Humenik
Anne M. Termine
Gretchen L. Lowe
U.S. Commodity Futures Trading Commission
Division of Enforcement
Three Lafayette Center
1151 21st St., NW
Washington, DC 20851
Email: shumenik@cftc.gov
Email: atermine@cftc.gov
Email: glowe@cftc.gov

Robert A. Blake, Jr.
James F. Wyatt, III
Wyatt & Blake, LLP
435 East Morehead Street
Charlotte, NC 28202
Email: rblake@wyattlaw.net
Email: jwyatt@wyattlaw.net

James C. Smith, Esq.
Bradley Arant Boult & Cummings
Bank of America Corporate Center
100 N. Tryon St., Ste. 2690
Charlotte, NC 28202
Email: jsmith@babco.com

Gene B. Tarr
PO Drawer 25008
Winston-Salem, NC 27114-5008
Email: gbt@blancolaw.com

Marc R. Gordon
Giordano, Gordon & Burns, PLLC
319 S. Sharon Amity Road, Ste. 230
Charlotte, NC 28211
Email: mg@ggandblaw.com

This the 7th day of October, 2009.

/s/ Joseph W. Grier, III
Joseph W. Grier, III
Grier Furr & Crisp, PA
101 North Tryon Street, Suite 1240
Charlotte, North Carolina 28246