

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

U.S. COMMODITY FUTURES TRADING)	
COMMISSION,)	
)	
Plaintiff,)	
)	
vs.)	3:09-CV-106
)	
BARKI, LLC;)	
BRUCE C. KRAMER,)	
)	
Defendants,)	
)	
and)	
)	
RHONDA A. KRAMER; and)	
FOREST GLEN FARM, LLC,)	
)	
Relief Defendants.)	
-----)	

**RELIEF DEFENDANT RHONDA KRAMER’S MOTION FOR RETURN OF
PRE-BARKI INSURANCE PROCEEDS**

Relief Defendant Rhonda Kramer, through undersigned counsel, respectfully moves the Court for entry of an Order directing the Receiver to return to Ms. Kramer the proceeds from two insurance policies that were purchased prior to the unlawful activity alleged in this case. The Receiver is in agreement that these proceeds should be provided to Ms. Kramer. In support of this Motion, Ms. Kramer sets forth the following facts.

1. On March 17, 2009, the U.S. Commodity Futures Trading Commission (“CFTC”) filed its Complaint in this matter. The CFTC named as Defendants Bruce Kramer

and Barki, LLC. Ms. Kramer was named as a Relief Defendant only.

2. The CFTC alleges in its Complaint that Barki and Bruce Kramer engaged in unlawful conduct beginning in June 2004.

3. The Receiver's First Report (filed May 18, 2009) and Second Report (filed July 17, 2009) identify two life insurance policies insuring Mr. Kramer's life that were purchased prior to the unlawful activity alleged in the Complaint. Indeed, the Receiver's Reports specifically note that these policies were "purchased pre-Barki." Ms. Kramer is the beneficiary of these policies.

4. One of the pre-Barki policies is a Genworth Life Insurance Company/First Colony Policy in the face amount of \$100,000.00 that was purchased in October 1991. See Exhibit 1. The other pre-Barki policy is a Protective Life Insurance Company policy (originally issued by Zurich Kemper) in the face amount of \$100,000.00 that was issued in October 2001.¹ See Exhibit 2. The proceeds from both of the above policies have been paid to the Receiver.

5. On May 21, 2009, Ms. Kramer was deposed by the Receiver and the CFTC.² Upon information and belief, the Receiver has completed his evaluation of Ms. Kramer in this matter. The Receiver has indicated to counsel for Ms. Kramer that he does not intend

¹In addition to these two insurance policies, there was a \$1,000,000.00 insurance policy on Mr. Kramer's life with American General. This policy was purchased in June 2006, and Ms. Kramer is not seeking the proceeds from this policy.

²Prior to the date of her deposition, Ms. Kramer provided extensive cooperation to the CFTC and the Receiver.

to bring any claims against Ms. Kramer (other than the claims asserted against her as a Relief Defendant).

6. Ms. Kramer is requesting that the Court order that the Receiver pay to Ms. Kramer the insurance proceeds from the two pre-Barki policies, less the following amounts: (1) any amounts previously paid to Ms. Kramer as interim living expenses or otherwise paid by the Receiver for Ms. Kramer's personal expenses (\$12,831.02); (2) any amounts payable to Ms. Kramer's attorneys as reasonable and necessary attorneys' fees and expenses pursuant to the Court's Order of May 11, 2009 (\$18,118.89); and (3) the amount of insurance premiums paid on these policies subsequent to May 2004 (\$4,391.42). Reducing the policy amounts by the expenses noted above, Ms. Kramer seeks the total amount of \$165,699.52.³

7. Counsel for Ms. Kramer has communicated with the Receiver concerning this Motion. The Receiver agrees that Ms. Kramer is entitled to the amount of \$165,699.52, and supports the granting of this Motion.

8. Counsel for Ms. Kramer has also communicated with the CFTC concerning this Motion. The CFTC does not object to the granting of this Motion.

9. Ms. Kramer is in substantial need of these funds. She is currently working 25 hours a week for McKaig & McCutcheon at \$15 per hour, and is trying to find full time employment. She has been interviewing for full time legal secretary positions, but has not

³The total value of the Genworth policy is \$100,871.10, which includes the face amount of the policy, a premium refund, and interest. The total amount of the Protective Life policy is \$100,169.75, which includes the face amount of the policy and a premium refund.

been able to obtain a full time position. She has no other funds or assets, other than the amount that she earns from her part time employment and the amount of funds that she has received as interim living expenses. She needs to obtain the funds from the insurance proceeds in order to meet her basic living expenses and to be able to purchase a car and find a new place to live.⁴

10. As part of an Order directing the Receiver to pay the above funds to Ms. Kramer, Ms. Kramer seeks an Order from the Court modifying the preliminary injunction and the Court's Order of April 23, 2009 (authorizing an interim allowance and granting Ms. Kramer the right to open up a bank account) to no longer restrict Ms. Kramer from spending, depositing, opening up a bank account, or otherwise using any funds that lawfully belong to her. The CFTC and Receiver do not object to the granting of such a motion.

11. A Proposed Order is being submitted to the Court contemporaneous with the filing of this Motion.

⁴Ms. Kramer currently lives at the house on the farm which is being sold as part of the Receiver's Estate. Ms. Kramer has been able to greatly assist the Receiver by getting the house ready for real estate showings, and by otherwise keeping the house and farm in good condition.

This the 18th day of August, 2009.

Respectfully Submitted,

s/Robert A. Blake, Jr.

Robert A. Blake, Jr.

NC Bar #20858

James F. Wyatt, III

NC Bar #13766

WYATT & BLAKE, LLP

435 East Morehead Street

Charlotte, NC 28202

(704) 331-0767

(704) 331-0773

Attorneys for Relief Defendant

Rhonda Kramer

CERTIFICATE OF SERVICE

This is to certify that on this date a true and accurate copy of the foregoing pleading was electronically filed with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

Mr. Joseph Williamson Grier, III
Grier Furr & Crisp, PA
101 North Tryon Street, Suite 1240
Charlotte, NC 28246
jgrier@grierlaw.com

Stephen M. Humenik
Anne M. Termine
Gretchen L. Lowe
Division of Enforcement
Three Lafayette Centre
1151 21st Street NW
Washington, DC 20851
shumenik@cftc.gov
atermine@cftc.gov
glowe@cftc.gov

Gene B. Tarr
P.O. Box Drawer 25008
Winston-Salem, NC 27114-5008
gbt@blancolaw.com

James C. Smith
Bradley Arant Boult Cummings LLP
Bank of America Corporate Center
100 North Tryon Street, Suite 2690
Charlotte, North Carolina 28202
jsmith@ba-boult.com

Marc R. Gordon
Giordano, Gordon & Burns, P.L.L.C.
319 S. Sharon Amity Road
Suite 230
Charlotte, North Carolina 28211
mg@ggandblaw.com

This the 18th day of August, 2009.

s/Robert A. Blake, Jr.
ROBERT A. BLAKE, JR.