

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION

FILED  
CHARLOTTE, NC

JUL 16 2009

U.S. DISTRICT COURT  
WESTERN DISTRICT OF NC

U.S. COMMODITY FUTURES TRADING :  
COMMISSION, :

Plaintiff, :

v. :

Case No. 3:09-CV-106(GCM)

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 :

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RESPPONSE OF FREDERICK T. DANSER, III, AND BONNIE DANSER  
APPEARING PRO SE, TO RECEIVER'S MOTION FOR (1) APPROVAL  
OF PROPOSED CLAIMS VERIFICATION PROCEDURES, CLAIMS  
BAR DATE, AND PROPOSED CLAIMS DISTRIBUTION METHOD; AND  
(2) FOR AUTHORITY TO MAKE INTERIM DISTRIBUTIONS TO INVESTORS

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Frederick T. Danser, III and Bonnie Danser (here "Danser") investors in Barki, LLC, appearing, Pro Se, hereby respond to the Receiver's Motion for (1) Approval of Proposed Claims Verification Procedures, Claims Bar Date and Proposed Distribution Method and (2) for Authority to Make Interim Distribution to Investors (the "Motion"), and state that they have no objection to the relief requested in the Motion except as to the Proposed Distribution Method.

Danser opposes the “rising tide” method of distribution advocated by the receiver and urges the Court to approve both interim and any subsequent distributions based upon the net investment theory. The basis for this opposition is set forth as follows:

Investors who requested and received withdrawals must account for them. They should not, however, be punished for their receipt of such withdrawals which will occur if the “rising tide” method of distribution is approved by this Court.

The Receiver notes at page 6 of his first report that he intends:

“...to recommend to the Court that the allowance of the principal amount invested by each customer not to include any profit reported by Barki, and, for purposes of distributions by the Receiver, taking into account any withdrawals by customers from Barki.”

Danser agrees that withdrawals must be accounted for before any distributions are made, and that withdrawals represent repayment of investment – not profits. There were no profits. Regrettably, all investors believed otherwise until the fatal events unfolded in February 2009.

Further, at page 6 of his First report the Receiver notes:

“In a Ponzi scheme, there can be no winners because even the winners were defrauded in that their returns were illusory, and those winners may be required to return the distributions they received “long after the money has been spent.”

Accordingly, Danser agrees that there are no winners in the Barki scheme. Instead, all investors have lost and the issue at hand for this Court to determine is the next chapter of this saga which is the appropriate method to distribute the assets marshaled by the receiver among the investor losers.

Finally, at page 7 of his report the Receiver sets forth his proposed methodology for distribution known as the “rising tide” method. He then uses an example assuming a 25% pro rata distribution to illustrate the “fairness” of this approach.

Whether 25% is an accurate representation of the distribution percentage and how that percentage distribution number is determined is unclear at this time. What is also unclear is how the excess money, if any, is distributed from amounts deducted from investors under the rising tide method of distribution.

What is clear, however, is that the rising tide method will disenfranchise a vast majority of investors in this case – which is a result that I am sure this Court will examine very closely before approving.

The problem with rising tide is its perspective. It looks at total receipts by investors and attempts to balance those receipts by its method of distribution. In the Barki tragedy, receipts by investors in the form of withdrawals took place over varying periods of time and for varying reasons based upon life circumstances for each investor. Those relatively few investors (perhaps 15% of total) who chose not to withdraw did so for their own reasons – presumably not needing the cash and wishing to maximize the growth of the investment. It also appears that over one half of the investors who took no withdrawals did not become investors until 2008 or later. The end result of the rising tide method is to pit one group of investors against another group when in fact all investors are similarly situated as people who have suffered a major loss, and all should be so treated when the issue of distribution of marshaled assets is presented. Based upon the aforementioned statistics, another unfair consequence of the Receiver’s proposed method of distribution is to reward many of the latest investors over the

majority of investors who had been involved with Barki over a longer period of time.  
(A form of LIFO which also appears to undermine efforts at equitable distribution)

Conversely, the net investment theory treats every investor equitably at the point in time when the fraud was uncovered. Withdrawals are netted against investment and those with net investment loss are treated alike in respect to distribution of the pot of marshaled assets. This method of distribution puts the withdrawals in their proper perspective – namely that they are an historical event in this story that must be reconciled, but once they are used to net the investments that reconciliation is completed and a new chapter in the story dealing with distribution is set to begin. This chapter must be about fundamental fairness to all victims and that objective compels use of the net investment theory to distribute the marshaled assets.

Accordingly, Danser requests this Court to reject the Receiver's proposed distribution method and instead order the use of the net investment method in this case.

Respectfully submitted,

  
Frederick. T. Danser, III

Dated: July 13, 2009

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that the foregoing response to Receiver's Motion for (a) Approval of Proposed Claims Verification Procedures, Claims Bar Date and Proposed Claims Distribution Method; and (2) for Authority to Make Interim Distributions to investors was filed with the Court and served upon the Receiver listed below by U.S. Mail.

Joseph W. Grier, III  
Grier, Furr & Crisp, P.A.  
101 N. Tryon Street, Suite 1240  
Charlotte, NC 28246

This the 13<sup>th</sup> day of July 2009.

  
Frederick T. Danser, III