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)

STEVEN D. HARRIS, INVESTOR; COMMENTS CONCERNING CLAIMS DISTRIBUTION METHOD

The Honorable Graham C. Mullen;

Thank you again for the opportunity to express my observations and viewpoint. I do not envy your charge of making the decision for the most equitable distribution method between the two proposals, but I do feel that the net investment method is the most fair for all parties. I recognize that we are deliberating over pennies on the dollar in recovery, but at this painful point, it now boils down to the principle of the matter and the most just solution.

As you may be aware, I am an early investor in Barki with my first contribution in January of 2006. I made contributions after that date with my single largest and most recent in September of 2008. I also made some withdrawals over the period, particularly for tax payments on the

reported income and some other personal needs. I probably was supported in my earlier withdrawals by others' contributions; however, I probably supported others' withdrawals with my later investment. And like many others I'm sure, I looked the man straight in the eye, shook his hand in surety, and entrusted him with funds to invest on my behalf.

As we all learned in Finance 101, in order to make an equitable distribution some method of determining the time value of money would need to be employed. I believe that probably the most equitable method would be to trace each individual contribution and weight it for the length of time invested to determine lost opportunity costs. Those earlier investors had their money tied up longer in the scheme and had the truth been know, could have opted to withdraw and invest elsewhere. The Barki net book value would be a way to include the time value of money, but to do so would accept the excessive returns reported to us monthly. Looking at another return in an outside publicly traded hedge fund would be a proxy for an alternative investment, but choosing the appropriate fund would be difficult and subjective at best. My review of some of these funds over the time horizon yielded a slightly positive return while some yielded a slightly negative return – averaged out to be about a wash. And this idea does not take into consideration the sheer accounting cost of tracking each investor's individual contributions. Not a reasonable nor achievable method.

The rising tide method looks to payout first to those that chose not to take withdrawals or who made withdrawals and replaced their investment back in Barki. It would appear that 13 people made that election out of the 75 or so investors. Upon examination, those investors' initial contributions span the time line back to 2006 in a reasonably even pattern – 2 in 2006, 4 in 2007, 5 in 2008, and 2 in 2009 - not the heavy concentration of latter entry investors as one might

think. Nine more investors withdrew less than 10% of their contributions but again were spread evenly back to 2006.

On the surface, the rising tide method makes sense, but only if there had been a restriction on our ability to withdraw funds which was not the case. This spread of investors substantiates my assertion that we each received a statement every month, had Kramer's assurance of full liquidity and made an investment decision each month. We could withdraw an unlimited percentage of our funds, contribute more money, rollover our "earnings," or any combination. So from my perspective, we were all in parity each month, no one more or less favored. The rising tide method would certainly unduly benefit those 13 investors who chose each month to stay in fully while omitting the majority 47 net loss investors that stayed invested as well but not to the full exposure. Again, not a fair or equitable method.

This leaves the pure net investment method to review. This method obviously would be the most inclusive capturing all 60 net loss investors. It would also be the most straightforward and easy to compute. This method assumes parity of all investors at the time of collapse. The net investment method takes out of the equation the activity of many investors like me that invested and withdrew over the time horizon but just happened to be invested at a particular level when the collapse occurred. In my opinion, the net investment method is truly the most equitable, practical and logical method to employ. It's certainly not a sophisticated formula, but it just seems to make common sense to me.

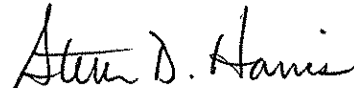
The receiver recently disclosed a recent case of similar nature, ***SEC v. Byers***, whereby the judge

concluded that the net investment method "would provide the greatest number of investors with the greatest recovery possible without inequitably rewarding some investors at the expense of others." This conclusion surely represents the latest of case law in this current post-Madoff climate.

Your Honor, thank you again for this chance to weight the option between "rising tide "and "net investment" methods. I respect that the final decision is yours and I do plead for your decision to truly be the most equitable.

This is the 15th day of October, 2009

Respectfully,



Steven D. Harris