

Motions

3:09-cv-00106-GCM U.S. Commodity Futures Trading Commission v. Barki, LLC et al

U.S. District Court

Western District of North Carolina

Notice of Electronic Filing

The following transaction was entered by Grier, Joseph on 11/18/2009 at 9:15 AM EST and filed on 11/18/2009

Case Name: U.S. Commodity Futures Trading Commission v. Barki, LLC et al

Case Number: 3:09-cv-00106-GCM

Filer: Joseph W. Grier, III

Document Number: 136

Docket Text:

MOTION for Disbursement of Funds, MOTION Receiver's Motion to Make Interim Distribution and to Establish Distribution Amounts by Joseph W. Grier, III. Responses due by 12/7/2009. (Attachments: # (1) Appendix Notice of Motion to Make Interim Distribution and to Establish Distribution Amounts w/COS)(Grier, Joseph)

3:09-cv-00106-GCM Notice has been electronically mailed to:

A. Cotten Wright cwright@grierlaw.com

Anna S. Gorman agorman@grierlaw.com

Charles Edward Lyons , II celyons@shadl.com

Gene Bryson Tarr gbt@blancolaw.com

James Carlos Smith jsmith@ba-boult.com, ynicholson@ba-boult.com

James F. Wyatt , III jfw@wyattlaw.net, gkaufman@wyattlaw.net, laheath@wyattlaw.net

Joseph Williamson Grier , III jgrier@grierlaw.com, agorman@grierlaw.com, kbuffaloe@grierlaw.com

Marc R. Gordon mg@ggandblaw.com

Robert Adams Blake , Jr rblake@wyattlaw.net, gkaufman@wyattlaw.net, laheath@wyattlaw.net

Robert J. Wishart robert.wishart@wnhplaw.com

Stephen Michael Humenik shumenik@cftc.gov, ATERMINE@CFTC.GOV, GLOWE@CFTC.GOV

3:09-cv-00106-GCM Notice will not be electronically mailed to:

L&J Family Limited Partnership
1100 Aylesford Road
Charlotte, NC 28211

Adam Walker Cox
1050 Pine Street, Apt 9
San Francisco, CA 94109

Alice Houle Evans
130 Winding Trail Ln
Midland, NC 28107

Bryan Evans
130 Winding Trail Ln
Midland, NC 28107

Diane M. Anderson
6517 Robin Hollow Drive
Mint Hill, NC 28227

Elliott Michael Cox
3526 Warp Street
Charlotte, NC 28205

Gene Hollifield Maye
7706 Pence Road
Charlotte, NC 28215

George Michael Cox
16422 New Providence Lane
Charlotte, NC 28277

Jeffrey A. Brotherton
JAZAC, LLC
154 Elysian Dr
Mooresville, NC 28117

Lloyd M. Lambeth
1100 Aylesford Road
Charlotte, NC 28211

Lucinda L. Chaney

Marianne D. Lambeth
309 Sardis Grove Lane
Matthews, NC 28105

Michael B. Anderson
6517 Robin Hollow Drive
Mint Hill, NC 28227

Rick Lambeth
7208 Seton House Lane
Charlotte, NC 28277

Robert Johnston

Samuel Theodore Cox

Steven D. Harris
3004 Misty Ridge Court
Gastonia, NC 28056

Teresia P. Maye

William Lane Maye

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1095689202 [Date=11/18/2009] [FileNumber=1309126-0] [db1166b5ce47d88f5cf4fba48d580fe03436c0089aeceae1bc5e7671ffa700fef14c0789a73a688c1b1b9f61cb922e995349d2a41543b8a7af367dd3ee518fcc]]

Document description:Appendix Notice of Motion to Make Interim Distribution and to Establish Distribution Amounts w/COS

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1095689202 [Date=11/18/2009] [FileNumber=1309126-1] [0a6a932a5ae501bb3cf2e68e91c601f7ba034f6de379adf5078aad9502270271433c1f9421efbb142cc38f9ee468426348fa75c950b1700d91189f18ad98d9f7]]

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

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

Plaintiff,

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

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.

**RECEIVER'S MOTION TO MAKE INTERIM DISTRIBUTION AND TO ESTABLISH
DISTRIBUTION AMOUNTS**

Joseph W. Grier, III as Receiver (the "Receiver") for the assets of Barki, LLC, Bruce C. Kramer, Rhonda A. Kramer and Forest Glen Farm, LLC, files this *Receiver's Motion to Make Interim Distribution and to Establish Distribution Amounts* (the "Motion") 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* ("Claim's Order") entered on August 5, 2009 (D.E. 97), *Receiver's Amended Report of Claims; Objections to Claims; and Recommendations Regarding Claims* ("Report of Claims") filed herein on November 10, 2009 (D.E. 129) and this Court's *Order for*

Claims Distribution Method (“Distribution Method Order”), entered on November 12, 2009 (D.E. 131).

Assets to Distribute.

As of the filing of this Motion the Receiver is holding the sum of \$2,056,811.80 in the Receivership bank account. As set forth the *Receiver’s Fourth Report* filed herein on November 17, 2009 (D.E. 135), the Edwards Plaintiffs obtained an order of attachment from the Mecklenburg County Superior Court prior to the initiation of this case and claim that, pursuant to the order of attachment, they hold a valid lien on the proceeds from certain bank accounts at BB&T and Wachovia (Wells Fargo). Though the Receiver disputes the validity of the order of attachment, the Receiver is obligated to hold funds in reserve representing these proceeds totaling \$188,669.72 pending resolution of the Edwards matter. Further, pursuant to the Claim’s Order the Receiver shall withhold anticipated costs of administration. The Receiver proposes to make an interim distribution of the sum of \$1,650,000 to Investors as set forth on the attached Exhibit A.

Customer Claims and Amount of Distribution.

In the Report of Claims the Receiver recommended treatment of Customer Claims including sums for Total Investments as well as Total Withdrawals for each Investor who filed a Claims Verification Form with the Receiver. Attached hereto is a spreadsheet, identified as “Exhibit A”, reflecting those claim amounts for Investors excluding “net-winner” Investors (Investors who received distributions exceeding amount invested). Exhibit A also includes Investor account 7.05 representing a claim which was received after the filing of the Report of Claims and Investor account 25.06 which represents a claim the Receiver expects to receive given recent contact with that Investor. Further, the spreadsheet reflects the Total Net

Investment for each non-net-winner Investor, and using the distribution amount of \$1,650,000 and applying the net investment distribution method pursuant to the Distribution Method Order, calculates the interim distribution amount for each non-net-winner Investor.

Relief Requested.

The Receiver seeks an Order approving the Report of Claims including the treatment of Customer Claims; allowing a claim for Investor account 7.05 as set forth on Exhibit A; and allowing a claim for Investor account 25.06 only in the event the Receiver receives a Claim Verification Form on that account and after it is reconciled with Barki bank account records. Further, the Receiver seeks an Order allowing him to make an interim distribution of \$1,650,000 in the amounts as set forth on the attached Exhibit A for each Investor whose claim is approved and reserving the interim distribution for account 25.06 to be paid only upon Receiver receiving and reconciling a Claim Verification Form.

Notice of This Motion.

The Receiver will email all Investors with valid email addresses notice of this Motion. In addition, this Motion will be posted on the Receivership's webpage. Notice of this Motion will direct Investors to make any objections they have to the Motion in writing and to file the same with the Court, providing a copy to the Receiver.

WHEREFORE, the Receiver prays that the Court will enter an Order:

- (1) Approving the Report of Claims including allowing the amounts therein for the Total Investments and Total Withdrawals for each Investor;
- (2) Approving a claim for Investor 7.05 as reflected on Exhibit A;

- (3) Approving a claim for Investor 25.06 upon such Investor providing Receiver with a Claim Verification Form and after it is reconciled with the Barki bank account records;
- (4) Approving the total interim distribution amount of \$1,650,000;
- (5) Authorizing the Receiver to make an interim distribution to Investors with approved claims as set forth on attached Exhibit A; and
- (6) Granting such further relief as is just and proper.

This is the 18th day of November, 2009.

GRIER FURR & CRISP, PA

/s/ Joseph W. Grier, III

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

Anna S. Gorman (State Bar No. 20987)

101 North Tryon Street, Suite 1240

Charlotte, North Carolina 28246

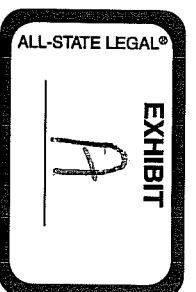
Phone: 704.375.3720; Fax: 704.332.0215

jgrier@grierlaw.com

agorman@grierlaw.com

Attorneys for Joseph W. Grier, III,

Court Appointed Receiver



Banki, LLC Interim Distribution Chart For \$1,650,000 Distribution

| Customer Account Number | Total Investments | Total Withdrawals | Total Net Investment | Net Investment Distribution of \$1,650,000 | Notes |
|-------------------------|-------------------|-------------------|----------------------|--|-------|
| 2.05 | \$1,857,000.00 | \$834,983.75 | \$1,022,016.25 | \$86,217.71 | |
| 3.05 | \$526,400.00 | \$284,500.00 | \$241,900.00 | \$20,406.78 | |
| 5.05 | \$300,000.00 | \$114,500.00 | \$185,500.00 | \$15,648.86 | |
| 7.05 | \$75,000.00 | \$53,670.00 | \$21,330.00 | \$1,799.41 | |
| 11.05 | \$670,000.00 | \$400,000.00 | \$270,000.00 | \$22,777.31 | |
| 13.05 | \$270,000.00 | \$60,000.00 | \$210,000.00 | \$17,715.69 | |
| 15.05 | \$900,000.00 | \$440,000.00 | \$460,000.00 | \$38,805.79 | |
| 16.05 | \$329,430.64 | \$100,000.00 | \$229,430.64 | \$19,354.86 | |
| 18.06 | \$230,000.00 | \$117,500.00 | \$112,500.00 | \$9,490.55 | |
| 20.06 | \$452,984.00 | \$222,000.00 | \$230,984.00 | \$19,485.90 | |
| 21.06 | \$927,000.00 | \$705,000.00 | \$222,000.00 | \$18,728.01 | |
| 22.06 | \$300,000.00 | \$94,000.00 | \$206,000.00 | \$17,378.24 | |
| 24.06 | \$425,000.00 | \$0.00 | \$425,000.00 | \$35,853.17 | |
| 25.06 | \$240,000.00 | \$196,000.00 | \$44,000.00 | \$3,711.86 | * |
| 26.06 | \$400,000.00 | \$22,000.00 | \$378,000.00 | \$31,888.23 | |
| 28.06 | \$410,000.00 | \$292,000.00 | \$118,000.00 | \$9,954.53 | |
| 29.06 | \$409,054.00 | \$0.00 | \$409,054.00 | \$34,507.96 | |
| 30.06 | \$225,838.64 | \$84,500.00 | \$141,338.64 | \$11,923.39 | |
| 31.06 | \$300,000.00 | \$130,009.00 | \$169,991.00 | \$14,340.51 | |
| 32.06 | \$1,200,000.00 | \$855,000.00 | \$345,000.00 | \$29,104.34 | |
| 34.06 | \$244,000.00 | \$53,000.00 | \$191,000.00 | \$16,112.84 | |
| 35.07 | \$660,000.00 | \$340,000.00 | \$320,000.00 | \$26,995.33 | |
| 36.07 | \$820,900.00 | \$415,500.00 | \$405,400.00 | \$34,199.71 | |
| 37.07 | \$308,733.00 | \$180,000.00 | \$128,733.00 | \$10,859.97 | |
| 38.07 | \$950,000.00 | \$607,322.00 | \$342,678.00 | \$28,908.46 | |
| 39.07 | \$296,000.00 | \$2,000.00 | \$294,000.00 | \$24,801.96 | |
| 40.07 | \$1,349,996.55 | \$649,152.03 | \$700,844.52 | \$59,123.53 | |
| 41.07 | \$364,000.00 | \$209,500.00 | \$154,500.00 | \$13,033.68 | 1 |
| 43.07 | \$535,000.00 | \$430,000.00 | \$105,000.00 | \$8,857.84 | |
| 44.07 | \$250,000.00 | \$178,816.74 | \$71,183.26 | \$6,005.05 | |
| 45.07 | \$475,600.00 | \$405,000.00 | \$70,600.00 | \$5,955.84 | |
| 46.07 | \$213,500.00 | \$12,000.00 | \$201,500.00 | \$16,998.62 | |
| 47.07 | \$100,000.00 | \$0.00 | \$100,000.00 | \$8,436.04 | |

| | | | | | |
|----------------|-----------------|-----------------|-----------------|----------------|---|
| 48.07 | \$370,000.00 | \$0.00 | \$370,000.00 | \$31,213.35 | |
| 49.07 | \$329,248.06 | \$85,000.00 | \$244,248.06 | \$20,604.87 | |
| 50.07 | \$469,248.06 | \$161,500.00 | \$307,748.06 | \$25,961.75 | |
| 51.07 | \$490,000.00 | \$253,250.00 | \$236,750.00 | \$19,972.33 | 2 |
| 54.07 | \$275,000.00 | \$145,000.00 | \$130,000.00 | \$10,966.85 | |
| 55.07-1 | \$250,000.00 | \$54,000.00 | \$196,000.00 | \$16,534.64 | |
| 55.07-2(56.07) | \$200,000.00 | \$0.00 | \$200,000.00 | \$16,872.08 | |
| 57.07 | \$250,000.00 | \$138,500.00 | \$111,500.00 | \$9,406.19 | |
| 58.07 | \$250,000.00 | \$0.00 | \$250,000.00 | \$21,090.10 | |
| 59.08 | \$913,000.00 | \$30,000.00 | \$883,000.00 | \$74,490.24 | 3 |
| 60.08 | \$425,000.00 | \$68,000.00 | \$357,000.00 | \$30,116.66 | |
| 61.08 | \$513,836.04 | \$195,000.00 | \$318,836.04 | \$26,897.14 | |
| 62.08 | \$950,000.00 | \$35,108.86 | \$914,891.14 | \$77,180.59 | |
| 63.08 | \$1,230,000.00 | \$51,000.00 | \$1,179,000.00 | \$99,460.92 | |
| 64.08 | \$725,000.00 | \$16,000.00 | \$709,000.00 | \$59,811.53 | |
| 65.08 | \$425,000.00 | \$0.00 | \$425,000.00 | \$35,853.17 | |
| 66.08 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | 4 |
| 67.08 | \$120,000.00 | \$35,000.00 | \$85,000.00 | \$7,170.63 | |
| 68.08 | \$750,000.00 | \$350,000.00 | \$400,000.00 | \$33,744.16 | |
| 69.08 | \$415,500.00 | \$318,000.00 | \$97,500.00 | \$8,225.14 | |
| 70.08 | \$348,000.00 | \$140,000.00 | \$208,000.00 | \$17,546.96 | |
| 71.08 | \$500,000.00 | \$0.00 | \$500,000.00 | \$42,180.20 | |
| 72.08 | \$723,000.00 | \$206,500.00 | \$516,500.00 | \$43,572.15 | 5 |
| 73.08 | \$336,524.73 | \$0.00 | \$336,524.73 | \$28,389.36 | |
| 74.08 | \$250,000.00 | \$0.00 | \$250,000.00 | \$21,090.10 | |
| 75.08 | \$800,000.00 | \$63,473.45 | \$736,526.55 | \$62,133.68 | |
| 76.08 | \$75,000.00 | \$0.00 | \$75,000.00 | \$6,327.03 | |
| 77.09 | \$407,378.58 | \$73,000.00 | \$334,378.58 | \$28,208.31 | 6 |
| 78.09 | \$659,052.17 | \$0.00 | \$659,052.17 | \$55,597.91 | |
| Totals | \$30,465,224.47 | \$10,906,285.83 | \$19,558,938.64 | \$1,650,000.00 | |

* Receiver expects to receive Claim Verification Form

- 1-Combined with 17.05 due to "transfer" of funds to this account.
- 2-Combined with 19.06 due to "transfer" of funds to this account.
- 3-Combined with 42.07 due to "transfer" of funds to this account.
- 4-Reconciled with 67.08 and 2.05 due to "transfer" of funds between accounts.
- 5-Combined with 33.06 due to "transfer" of funds to this account.
- 6-Combined with 52.07 due to "transfer of funds to this account.

**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)

**NOTICE OF RECEIVER'S MOTION TO MAKE INTERIM DISTRIBUTION AND TO
ESTABLISH DISTRIBUTION AMOUNT**

NOTICE IS HEREBY GIVEN that Joseph W. Grier, III, Receiver, has filed a *Motion to Make Interim Distribution to Investors and to Establish Distribution Amount* (the "Motion"). Copies of the Motion are being distributed to Barki, LLC investors via email. The Motion will be posted on the Barki Receivership webpage at www.Grierlaw.com/Barki.

If you do not want the Court to approve the Motion, or if you want the Court to consider your views, then on or before **December 9, 2009**, you or your attorney must do the following:

1. **File with the Court a written response explaining your position.** The response must be filed electronically with the United States District Court for the Western District of North Carolina, www.ncwd.uscourts.gov. Under certain circumstances, if you are an individual who is not represented by an attorney, you may hand deliver your response to the Clerk of the United States District Court, 401 West Trade Street, Charlotte, NC 28202. If you qualify to file by hand delivery, you must deliver the response to the Court on or before the date stated above.

2. **On or before the date stated above for filing your written response, you must also mail, fax or email a copy of your written response to:**

Joseph W. Grier, III
Grier, Furr & Crisp, P.A.
101 N. Tryon St., Suite 1240
Charlotte, NC 28246
Fax: 704 332-0215
Email: jgrier@grierlaw.com

If the Court schedules a hearing, you or your attorney must attend the hearing, which will be held at a time and date which will be noticed only to any party who files a response, at the United States District Court, 401 West Trade Street, Charlotte, NC 28202.

If you or your attorney do not take these steps, the Court may decide that you do not oppose the Motion and may enter an order approving the Motion.

Dated this 18th day of November, 2009.

/s/ Anna S. Gorman

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

Anna S. Gorman (State Bar No. 20987)

Grier Furr & Crisp, PA

101 North Tryon Street, Suite 1240

Charlotte, North Carolina 28246

Phone: 704.375.3720

Fax: 704.332.0215

jgrier@grierlaw.com

agorman@grierlaw.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that copies of the ***Receiver's Motion to Make Interim Distribution and To Establish Distribution Amounts*** and ***Notice of Receiver's Motion to Make Interim Distribution and To Establish Distribution Amounts***, were served by 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

Robert J. Wishart
Megan Sadler
Wishart Norris Henninger & Pittman, PA
6832 Morrison Blvd.
Charlotte, NC 28211
Bob.wishart@wnhplaw.com
Megan.sadler@wnhplaw.com

This the 18th November, 2009.

/s/ Joseph W. Grier, III
Joseph W. Grier, III
Grier Furr & Crisp, PA
101 N. Tryon St., Ste. 1240
Charlotte, NC 28246
(704) 332-0215 - Fax