

**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 MOTION FOR APPROVAL OF SETTLEMENT

Joseph W. Grier, III, as Receiver (the "Receiver") for the assets of Barki, LLC ("Barki"), Bruce C. Kramer ("Kramer"), Rhonda A. Kramer and Forest Glen Farm, LLC, files *Receiver's Motion for Approval of Settlement* seeking this Court's approval of a settlement agreement reached with David F. ("Klein") with respect to a "Net-Gain."

BACKGROUND

1. On March 17, 2009, the Commodity Futures Trading Commission filed a Complaint in the United States District Court for the Western District of North Carolina (the "Court") against Barki and Kramer, alleging that Barki had violated the Commodity Exchange Act (the "Act") in Case No. 3:09CV106 (the "Commission Proceeding").

2. The Complaint alleges that Barki and Kramer “operated a Ponzi scheme and misappropriated millions of dollars.” *Barki Compl.* at 2.

3. Also on March 17, 2009, the Court entered its *Order Granting Plaintiff's Motion for Statutory Restraining Order, Appointment of Receiver, an Accounting, Expedited Discovery, and to Show Cause Regarding Preliminary Injunction, and Other Equitable Relief* (the “Receivership Order”) putting Barki into a receivership (the “Receivership”) and on March 24, 2009, Joseph W. Grier, III was appointed as the Receiver in the Commission Proceeding.

4. The duties of the Receiver include marshaling and liquidating Barki’s assets so that distributions can be made to Barki investors. *See Receivership Order.*

5. Pursuant to the Receivership Order, the Receiver is authorized to

h. initiate, defend, compromise, adjust, intervene in, dispose of, or become a party to any actions or proceedings in state, federal or foreign court necessary to preserve or increase the assets of the Defendants or the Relief Defendants or to carry out his or her duties pursuant to this Order.

Receivership Order at 10.

6. Further, the Receiver is authorized to assume control of Barki and its assets; to sue for, collect and receive all monies of Barki; and to issue subpoenas and conduct discovery on behalf of the Barki Receivership. *Id.* at 9-11.

7. During the period from approximately June, 2006 until February, 2009 Kramer misappropriated Barki funds for personal uses or to make purported profit payments or return principal to existing customers. *Barki Compl.* at 2,9.

8. Upon information and belief, Klein, as investors in Kramer’s investment scheme, made payments to Kramer for investment with Barki in the amount of \$270,209.00 and received

from Kramer and/or Barki total distributions of \$477,592.00. Thus, Klein received \$207,383.00 over and above the principal amount they paid into Barki (the "Net Gain")

9. The Receiver made a demand on Klein for return of the Net Gain for the benefit of the Receivership Estate (the "Demand").

10. The Receiver and Klein have negotiated a settlement ("Settlement") with respect to the Demand. Pursuant to this Settlement, Klein will pay the sum of \$165,906.40 on into the Receivership Estate or before May 31, 2010, and the Receiver and Klein will grant each other mutual releases.

11. Klein has turned over \$100,000.00 to the Receiver, and the Receiver is holding that amount in trust pending court approval of the Settlement; Klein will pay the balance of \$65,906.40 on or before May 31, 2010.

12. Upon payment of the full \$165,906.40 plus interest at the rate of 1.5% per annum from and after December 22, 2009, on or before May 31, 2010, a mutual release between the Receiver and Klein will become effective regarding the Demand and the Net-Gain.

RELIEF REQUESTED AND BASIS FOR RELIEF

13. The Receiver and Klein negotiated the Settlement with regard to the Net-Gain at arms' length, and the Receiver respectfully requests that the Court approve the Settlement.

14. The Receiver seeks approval of the Settlement pursuant to the procedures set forth in the *Consent Order Resolving Manzella Plaintiff's Request for Intervention, the Opposition and Response by the Receiver and the Opposition and Response by the Commodity Futures Trading Commission* (D.E. 38) which permits approval of a settlement upon 10-days notice to the Investors.

15. In the opinion of the Receiver, the Settlement reflects a full and fair resolution of the issues regarding the Net-Gain. In particular, the Settlement avoids the costs and delays associated with litigation, the uncertainty of litigation, the likely difficulties in collection and reflects the best interests of the Barki Investors.

16. For these reasons, the Receiver respectfully requests that the Settlement be approved.

WHEREFORE, for the reasons outlined herein, the Receiver requests entry of an Order approving the Settlement and granting such other relief as is just and proper.

This is the 1st day of March, 2010.

/s/ Joseph W. Grier, III

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

Anna S. Gorman (State Bar No. 20987)

Grier Furr & Crisp, PA

101 N. Tryon Street, Suite 1240

Charlotte, NC 28246

Telephone: (704) 332-0207; Fax (704) 332-0215

jgrier@grierlaw.com

agorman@grierlaw.com

**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 APPROVE SETTLEMENT AGREEMENT

NOTICE IS HEREBY GIVEN that Joseph W. Grier, III, Receiver, has filed a *Motion to Approve Settlement Agreement* (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 March 11, 2010, 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 1st day of March, 2010.

/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

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

U.S. COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

vs.

BARKI, LLC,
BRUCE C. KRAMER,

Defendants,

vs.

RELIEF DEFENDANTS
RHONDA A. KRAMER,
FOREST GLEN FARM, LLC.

Civil Docket Number: 3:09-cv-106

CERTIFICATE OF SERVICE

The undersigned hereby certifies that copies of the *Receiver's Motion for Approval of Settlement and Notice of Receiver's Motion to Approve Settlement Agreement*, 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@babbc.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

Mitchell & Culp, PLLC
Richard M. Mitchell
Heather W. Culp
Counsel to Dr. David Klein
1001 Morehead Square Dr.
Suite 330
Charlotte, NC 28203
hculp@mitchellculp.com

This the 1st day of March, 2010.

/s/ Anna S. Gorman
Anna S. Gorman
Grier Furr & Crisp PA
101 N. Tryon St., Ste. 1240

(704) 332-0208
(704) 332-0215 - Fax