

**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.

**BAR KI, 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 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 Jennifer Puckett ("Puckett") with respect to "Net Gains" of Barki Account 1.04.

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 (the “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, Account 1.04 identified in the books and records of Barki as being in the name of “Ryan Puckett,” reflects payments to Kramer for investment with Barki in the collective amount of \$331,000.00 and reflects distributions from Kramer and/or

Barki in the total amount of \$832,996.00. Thus, Account 1.04 reflects \$501,996.00 disbursed over and above the principal amount paid into Barki (the “Net Gains”)

9. Ryan Puckett died on June 23, 2009.

10. The Receiver made a demand on Puckett for return of the Net Gains for the benefit of the Receivership Estate (the “Demand”).

11. Since Ryan Puckett’s death, Puckett has caused historical tax returns to be amended (“Amended Tax Returns”) and expects substantial tax refunds (“Tax Refunds”) related to taxes paid on false profits relative to the Barki scheme from both Federal and State taxing authorities (the “Taxing Authorities”). The Taxing Authorities are in the process of reviewing the Amended Tax Returns and Tax Refunds have not yet been received. Other than the Tax Refunds, Puckett has no assets available to address the Demand.

12. The Receiver and Puckett have negotiated a settlement (“Settlement”) with respect to the Demand. Pursuant to this Settlement, Puckett and the Receiver have agreed that 80% of the Tax Refunds actually received by Puckett, after payment of reasonable accounting fees, including any interest paid thereon will be paid to the Receiver to be included in the Receivership Estate.

13. Puckett has agreed to keep the Receiver apprised of any dealings with the Taxing Authorities as the Amended Tax Returns are processed.

14. Further, Puckett has agreed to work with the Receiver in good faith with respect to obtaining any approvals the Receiver deems necessary with respect to the Settlement, including but not limited to resolving issues with any decedent’s estate that may be opened in the name of Ryan Puckett.

15. Upon payment of the 80% of the Tax Refunds to the Receiver, a mutual release between the Receiver and Puckett will become effective regarding the Demand and the Net Gains.

RELIEF REQUESTED AND BASIS FOR RELIEF

16. The Receiver and Puckett negotiated the Settlement with regard to the Net Gains at arms' length, and the Receiver respectfully requests that the Court approve the Settlement.

17. 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.

18. In the opinion of the Receiver, the Settlement reflects a full and fair resolution of the issues regarding the Net Gains. 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.

19. 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 10th day of May, 2010.

/s/Anna S. Gorman

Anna S. Gorman (State Bar No. 20987)

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

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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 May 20th, 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 10th day of May, 2010.

/s/ Anna S. Gorman

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

Anna S. Gorman (State Bar No. 20987)

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