

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

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

Plaintiff,

v.

**CapitalStreet Financial, LLC,
Sean F. Mescall,**

Defendants,

and

**Gerald T. Mescall,
and Gaincapital, Inc.,**

Relief Defendants.

CASE NO. 3:09-cv-387-RJC-DCK

RECEIVER'S FIRST REPORT

Joseph W. Grier, III as temporary Receiver (the "Receiver") for the assets of CapitalStreet Financial, LLC ("CapitalStreet"), Sean F. Mescall (collectively, the "Defendants"), Gerald T. Mescall and Gaincapital, Inc. ("Gaincapital") (collectively, the "Relief Defendants"), files this *Receiver's First Report* pursuant to this Court's *Order* entered herein on September 16, 2009 (the "Receivership Order") in response to a *Motion for an Ex Parte Statutory Restraining Order, Appointment of Receiver, An Accounting, Expedited Discovery, and an Order to Show Cause Regarding Preliminary Injunction and Other Equitable Relief* filed by the Commodity Futures Trading Commission (the "CFTC"). Pursuant to paragraph 33 of the Receivership Order, this report outlines the steps taken to (1) identify customers, (2) marshal assets, (3)

determine the amount invested by each customer, and (4) determine the portion of assets available to pay back customers.

1. **Identification of Customers.** The Securities Division of the North Carolina Secretary of State's office forwarded electronic copies of CapitalStreet and Gaincapital records in its possession to the Receiver. Further, the CFTC has forwarded a computer hard drive containing electronic data from six computers originally located in the office of CapitalStreet to the Receiver. The Receiver has partially examined those records to determine the customers of CapitalStreet and has identified one hundred and nine customers. Further, the Receiver has and continues to receive calls from customers inquiring about the status of CapitalStreet. The Receiver is in the process of compiling a list of customers discovered via the records as well as calls which will reflect name, contact information, total deposited by each customer and amount withdrawn.

The Receiver has also set up a web site for posting information about the status of the receivership (www.grierlaw.com/CapitalStreet) and established an email address for inquiries from customers about the receivership status (CaptialStreetReceivership@grierlaw.com).

2. **Marshaling of Assets.**

a. *Identification of Assets.* Attached as Exhibit A is a chart listing all assets identified by the Receiver as assets of Defendants or Relief Defendants, along with their status and estimated value where known. As of the date of this report, the Receiver has received \$199,845.06 and disbursed \$1,703.85 and is holding the balance, \$197,141.21. A detailed listing of all receipts and disbursements of the Receiver to date, as well as the balance on hand, is attached as Exhibit B.

b. *Procedure for sale of assets.* The Receiver has not yet received the authority of the Court to begin to liquidate assets for the benefit of the Receivership but anticipates requesting that the Court grant that authority shortly in light of the Entry of Default entered by the Court on November 3, 2009 as to the Defendants and Relief Defendants.

c. *Discovery.* The Receiver and the CFTC are conducting discovery to investigate the assets of the Defendants and Relief Defendants as well as the possible involvement of others in the CapitalStreet scheme. The Receiver has participated in the depositions of Sean F. Mescall, Gerald T. Mescall and Erin C. Mescall. Further, the Receiver has interviewed other individuals in an effort to locate assets. After completion of this discovery, the Receiver will evaluate any claims that would be beneficial to the receivership estate and take such additional action as is appropriate under the circumstances.

3. Determination of Amount Invested By Each Customer. According to the Receiver's preliminary review of the records of CapitalStreet, it appears that the collective amount invested by CapitalStreet could be as high as \$1,945,746.21. The Receiver understands that the CFTC is conducting a forensic accounting of the financial records of CapitalStreet. Prior to determining whether to conduct his own forensic accounting, the Receiver is waiting to review the results of the CFTC accounting. The preliminary determination by the Receiver is subject to adjustment after the conclusion of the forensic examinations.

4. Portion of Assets Available to Pay Back Customers. All funds collected by the Receiver as property of the receivership estate, less the costs of administration of the receivership and any other disbursements approved by the Court, should be available to pay back customers.

5. Distribution of Assets and Winding Up of Receivership.

a. *Claims Process.* The Receiver is working on a claim form to distribute to customers that will solicit from each customer the dates and amounts of all investments, copies of checks or wire transfers to CapitalStreet, the dates and amounts of any and all withdrawals from CapitalStreet to each customer, and other relevant information. The Receiver will seek Court approval of the claim form, the deadline for filing claims, and the process for handling claims.

b. *Distribution.* The Receiver anticipates that there will be funds available, after administration of the estate, to distribute to CapitalStreet customers.

c. *Winding Up.* In order to wind up the Receivership estate, the Receiver will need to liquidate all assets. At this point, the Receiver does not know when he will have the authority to liquidate assets or how long it will take. In addition, there may be litigation as to the liquidation of other assets. Accordingly, the Receiver is unable at this time to forecast the time it will take to liquidate all estate assets, but will, by filing periodic reports, keep the Court and customers apprised of his best estimate of the progress of the Receivership and estimated time to conclude the Receivership.

Respectfully submitted, this 17th day of November, 2009.

/s/Joseph W. Grier, III
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Exhibits:

A. List of Assets

B. Receipts & Disbursements



ASSET	TITLE/OWNER	EST. VALUE/ SOURCE OF VALUE	STATUS	TO DO/INFORMATON NEEDED
Bank of America *****813	CapitalStreet Financial		Received: \$106,128.90 on 9/21/09	
Bank of America *****786	CapitalStreet Financial		Received: \$82,913.42 on 9/21/09	
Bank of America *****971	CapitalStreet Financial		Received: \$70.00 on 9/21/09	
Peoples Bank *****843	GainCapital, Inc.		Received: \$10,254.06 on 9/22/09	
FBME Bank, Nicosia, Cypress and Debit Card	Patrick Fitzgerald Financial, Inc.	\$50,000 originally wire transferred to this overseas account; know \$10,000 of this was uploaded to a debit card		Determine best avenue to obtain the funds
Rolex Watch	Sean Mescall	Purchased for \$8,043.75 5/4/09	Was Pawned at Lassys's Fine Jewelry for \$3,000.00 on 9/29/09 (we have the \$3,000.00 check) & the watch; jewelry appraiser looked at watch 11/6/09	Waiting for appraisal
Lawrence R. Gelber, Attorney at Law, Brooklyn, NY	Total Assets attributable to either CapitalStreet or Sean Mescall held by Gelber Office		\$393,61 received 9/21/09	
BB&T Denver, NC	Sean Mescall	3 gold bars 7 silver bars 2 diamonds in box labeled "Blue Nile" \$8,400 in \$100 bills 7 Gold American Eagle coins and assorted loose money & coins	Diamonds appraised at \$2800 and \$1750;	Coins to be appraised.

House – 4605 River Hills Dr. Denver, NC 28037	Quitclaim Deed from Gerald Mescall to CapitalStreet Fin.			Mortgage Loan Balance on two loans appear to exceed value of home	
Personal Property located inside of house at 4605 River Hills Dr., Denver, NC				Contents of house inventoried by Alan M. Fisher, Classic Auction & Real Estate on 10/8/09 – the value of the whole of the contents was set at \$7,085.00	
Bayliner, 22 ft. with trailer	Gerald Mescall	Financed through Key Bank Amt. Financed: \$25,760.00 5/26/05		Loan balance appears to exceed value of boat/trailer	
Personal property located at 17505 W. Catawba Ave., Suite 130	CapitalStreet Financial, LLC			Office furniture leased by Cort Furniture picked up 11/5/09 – lease in default; telephone equipment leased by MI Connection – to be picked up week of 11/10 – lease in default; lease for office space in default – remaining items to be abandoned to landlord to be applied to liquidated damages of lessor	
2003 330 BMW	Sean Mescall			Stored with car broker Bill Sparks	
1997 Ferrari Spider	Sean Mescall and Gerald Mescall			Stored with car broker Bill Sparks	

Itemized Categories - YTD
1/1/2009 through 11/11/2009



Date	Account	Num	Description	Memo	Clr	Amount
INCOME						
Interest Inc						
9/30/2009	CapitalStreet...		Interest Earned		R	25.00
10/30/2009	CapitalStreet...		Interest Earned		R	156.07
Other Inc						
9/21/2009	GFC Trust A... DEP		Bank Of America ****813	Close out bank account		106,128.90
9/21/2009	GFC Trust A... DEP		Bank Of America ****786	Close out bank account		82,913.42
9/21/2009	GFC Trust A... DEP		Bank Of America ****971	Close out bank account		70.00
9/21/2009	GFC Trust A... DEP		Lawrence Gelber	Unused legal retainer		393.61
9/22/2009	GFC Trust A... DEP		Peoples Bank ****843	Close out bank account		10,158.06
EXPENSES						
Uncategorized						
10/19/2009	CapitalStreet...1002		BB&T	safe deposit box	R	-170.00
10/19/2009	CapitalStreet...1003		Ivize Of Charlotte	electronic database	R	-660.00
10/29/2009	CapitalStreet...1004		Adams & Holt, Inc.	deposition	R	-873.85
TRANSEERS						
CapitalStreet Checking						
9/30/2009	CapitalStreet... TXFR		Transfer Receiver Savings Act To Receiver Checking Act		R	-170,000.00
9/24/2009	GFC Trust A... TXFR		Transfer Trust Act To Receiver Checking Act			-25.00
9/30/2009	GFC Trust A... TXFR		Transfer Receiver Checking Act To Trust Act (to Correct Error)			161,176.00
CapitalStreet Savings						
9/30/2009	CapitalStreet...		Transfer Receiver Checking Act To Receiver Savings Act		R	170,000.00
9/28/2009	GFC Trust A... TXFR		Transfer Trust Act To Receiver Savings Act			-360,814.99
GFC Trust Account						
9/24/2009	CapitalStreet...		Transfer Trust Act To Receiver Checking Act		R	25.00
9/30/2009	CapitalStreet...		Transfer Receiver Checking Act To Trust Act (to Correct Error)		R	-161,176.00
9/28/2009	CapitalStreet...		Transfer Trust Act To Receiver Savings Act		R	360,814.99
OVERALL TOTAL						198,141.21