

Motions

3:09-cv-00387-RJC-DCK US Commodity Futures Trading Commission v. Capitalstreet Financial, LLC et al

U.S. District Court**Western District of North Carolina****Notice of Electronic Filing**

The following transaction was entered by Gorman, Anna on 11/19/2009 at 9:34 AM EST and filed on 11/19/2009

Case Name: US Commodity Futures Trading Commission v. Capitalstreet Financial, LLC et al
Case Number: 3:09-cv-00387-RJC-DCK
Filer: Joseph W. Grier, III
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MOTION Receiver's Motion for Order Establishing Case Procedures by Joseph W. Grier, III. Responses due by 12/7/2009. (Attachments: # (1) Appendix Notice of Receiver's Motion for Order Establishing Case Procedures w/COS)(Gorman, Anna)

3:09-cv-00387-RJC-DCK Notice has been electronically mailed to:

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3:09-cv-00387-RJC-DCK Notice will not be electronically mailed to:

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

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[STAMP dcecfStamp_ID=1095689202 [Date=11/19/2009] [FileNumber=1309866-0] [3131bcbf6d4190e78b8ba043821a4cc37060a6bf991db117f159821bce7d2590f99c504c8c83b7c74992063bd8dd6536477aa2b706f91ff0aff30744c6ab9367]]

Document description:Appendix Notice of Receiver's Motion for Order Establishing Case Procedures w/COS

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1095689202 [Date=11/19/2009] [FileNumber=1309866-1] [6229ec8eac38609d603456dcac4bfff1353f14a0376b5b60c75df94225da77e7fd e14ab32bbe0220da55649b080d8cc99d02cec8441c608da95b9bd4f78b3b0d]]

**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 MOTION FOR ORDER ESTABLISHING CASE PROCEDURES

Joseph W. Grier, III, the duly appointed receiver in this case (the "Receiver"), through counsel, hereby moves the Court for entry of an Order establishing the procedures to be used in this case, and in support thereof, respectfully shows the Court as follows:

1. On September 9, 2009, the U.S. Commodity Futures Trading Commission (the "Commission") filed a Complaint naming CapitalStreet Financial, LLC and Sean F. Mescall as defendants ("Defendants"), and Gerald T. Mescall and Gaincapital, Inc. as relief defendants ("Relief Defendants"). (D.E. 1).

2. Also on September 9, 2009, the Court entered a statutory restraining order as to the Defendants and the Relief Defendants. (D.E. 8).

3. On September 16, 2009, the Court entered an Order appointing the Receiver (the

“Receivership Order”). (D.E. 14). Pursuant to the Receivership Order, the Receiver was charged with among other things, assuming full control and taking possession of all property, funds, or assets of the Defendants and the Relief Defendants, as well as doing anything necessary to conserve, hold, manage and preserve the value of the receivership estate (the “Estate”). (Receivership Order, ¶ 29). Based on the Receivership Order, the Receiver has begun marshaling the assets of the Estate.

4. On November 3, 2009, the Clerk of the United States District Court entered default against Defendants Capitalstreet Financial, LLC, Sean F. Mescall, Gerald T. Mescall and Gaincapital, Inc. after application of the Plaintiff for entry of default. (D.E. 18). Default was entered as Defendants failed to plead or otherwise defend this action.

5. Given the Entry of Default, the Receiver believes it is appropriate to begin to liquidate assets of Defendants that are in the possession of Receiver.

6. The Receivership Order is silent as to sale procedures, notice procedures and the like. Accordingly, the Receiver requests that the Court enter an Order setting forth the procedures that are to be used in this case.

7. The procedures proposed by the Receiver are as follows:

- a. In the event that the Receiver seeks to:
 - (i) Sell Estate assets;
 - (ii) Enter into a contract that obligates the Estate for more than \$5,000.00;
 - (iii) Pay professional fees or expenses;
 - (iv) Settle any litigation initiated by the Receiver; or
 - (v) Determine any claim against Estate assets,

then the Receiver shall file with the Court a motion describing the action that the Receiver proposed to take and seeking Court approval for that action (the “Motion”). The Receiver will serve a copy of the Motion on all customers of the Defendants or the Relief Defendants (the “Customers”) of which Receiver is aware and post a copy of the Motion on the receivership webpage (located at <http://www.grierlaw.com/CapitalStreet>). Unless otherwise requested by a Customer, service by email shall be sufficient. Customers shall have ten (10) calendar days in which to file a written objection to the Motion with the Court and serve that objection on the Receiver. Customers may serve the Receiver by email at capitalstreetreceivership@grierlaw.com. If no objection is filed, the Court will issue an order ruling on the Motion. If a Customer files an objection to the Motion, the Court will rule on the Motion and any objection(s) with or without a hearing, at the Court’s discretion.

b. Entry of an Order outlining procedures for this case shall be without prejudice to the rights of the Commission, the Receiver, or any Customer to subsequently move the Court to expand or limit the Customer’s ability to participate in this proceeding.

8. In addition, the Receiver proposes that this action shall be without prejudice to the ability of any Customer to pursue individual claims upon the completion of the Commission’s prosecution of its claims and the Receiver’s duties in this action.

9. A proposed Order is attached hereto.

WHEREFORE, the Receiver prays that the Court enter an Order establishing the procedures to be used in this case and granting such further relief as is just and proper.

This is the 19th day of November, 2009.

/s/ Anna S. Gorman

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

A. Cotten Wright (State Bar No. 28162)

Anna S. Gorman (State Bar No. 20987)

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**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

ORDER ESTABLISHING CASE PROCEDURES

This matter came before the Court on the *Receiver's Motion for Order Establishing Case Procedures* filed on November 19, 2009 (the "Motion"). The Court, having reviewed the Motion and the record in this case, has determined that the Motion should be allowed.

IT IS, THEREFORE, ORDERED that:

1. The Motion is GRANTED.
2. In the event that the Receiver seeks to:
 - (a) Sell Estate assets;
 - (b) Enter into a contract that obligates the Estate for more than \$5,000.00;

- (c) Pay professional fees or expenses;
- (d) Settle any litigation initiated by the Receiver; or
- (e) Determine any claim against Estate assets,

then the Receiver shall file with the Court a motion describing the action that the Receiver proposed to take and seeking Court approval for that action (the "Motion"). The Receiver will serve a copy of the Motion on all customers of the Defendants or the Relief Defendants (the "Customers") of which Receiver is aware and post a copy of the Motion on the receivership webpage (located at <http://www.grierlaw.com/CapitalStreet>). Unless otherwise requested by a Customer, service by email shall be sufficient. Customers shall have ten (10) calendar days in which to file a written objection to the Motion with the Court and serve that objection on the Receiver. Customers may serve the Receiver by email at capitalstreetreceivership@grierlaw.com. If no objection is filed, the Court will issue an order ruling on the Motion. If a Customer files an objection to the Motion, the Court will rule on the Motion and any objection(s) with or without a hearing, at the Court's discretion.

3. Entry of this Order shall be without prejudice to the rights of the Commission, the Receiver, or any Customer to subsequently move the Court to expand or limit the Customer's ability to participate in this proceeding.

4. This action shall be without prejudice to the ability of any Customer to pursue individual claims upon the completion of the Commission's prosecution of its claims and the Receiver's duties in this action.

Signed: _____, 2009

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

U.S. COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

v.

CAPITALSTREET FINANCIAL, LLC,
And Sean F. Mescall,

Defendants, and

Gerald T. Mescall, and
Gaincapital, Inc.,

Relief Defendants.

CASE NO. 3:09-cv-00387 (RJC-DCK)

NOTICE OF RECEIVER'S MOTION FOR ORDER
ESTABLISHING CASE PROCEDURES

NOTICE IS HEREBY GIVEN that Joseph W. Grier, III, Temporary Receiver, has filed *Receiver's Motion for Order Establishing Case Procedures* (the "Motion").

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 7, 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 relief the Receiver requests and may enter an order approving the motions for compensation.

Dated this 19th 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 for Order Establishing Case Procedures, Proposed Order and Notice of Motion***, were served by CM/ECF system, electronic mail or U.S. Mail as indicated below, upon the following parties:

Investors by email

August A. Imholz, III
Kassra Goudarzi
Michael Solinsky
U.S. Commodity Futures Trading Commission
Division of Enforcement
Three Lafayette Center
1151 21st St., NW
Washington, DC 20851
Email: aimholtz@cftc.gov
Email: kgoudarzi@cftc.gov
Email: msolinsky@cftc.gov

Sean F. Mescall (individually)
4605 River Hills Drive
Denver, NC 28037

Sean F. Mescall (on behalf of CapitalStreet Financial, LLC)
4605 River Hills Drive
Denver, NC 28037

Sean F. Mescall (on behalf of Gaincapital, Inc.)
4605 River Hills Drive
Denver, NC 28037

Gerald Mescall
4605 River Hills Drive
Denver, NC 28037

This the 19th day of November, 2009.

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