

**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 SECOND 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 Second 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, (4) determine the portion of assets

available to pay back customers, and (5) estimate the time to distribute assets to customers and wind up the Receivership. The Receiver's First Report was filed on November 17, 2009.

1. **Identification of Customers.** The Receiver has compiled a customer list derived from information on CapitalStreet hard drives as well as calls received from customers inquiring about the status of CapitalStreet. The Receiver has identified 102 customers at this point. The Receiver has 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). The Receiver may identify additional customers from the forensic examination being conducted by the CFTC.

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 \$210,172.53 and disbursed \$28,781.58 and is holding the balance, \$181,390.95. 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.* On January 7, 2010, the Court entered its *Order Granting Receiver's Motion for Authority to Retain Brokers and to Liquidate Certain Property Free and Clear of Liens and Encumbrances and to Deposit Net Proceeds into Receivership Bank Account*. Pursuant to this Order, the Receiver has directed that the vehicles secured be marketed and sold for the benefit of the Receivership Estate and is in the process of transferring certain personal property, more particularly described on Exhibit A, to Iron Horse Auction Company for liquidation; information about Iron Horse can be found at www.ironhorseauction.com.

c. *Discovery.* The Receiver and the CFTC are continuing to conduct discovery to investigate the assets of the Defendants and Relief Defendants as well as the possible involvement of others in the CapitalStreet scheme. 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 how long it will take to liquidate all assets. 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.

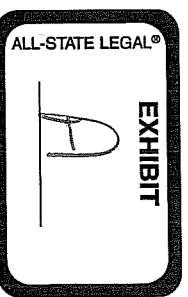
Respectfully submitted, this 26th day of January, 2010.

/s/ Joseph W. Grier, III
Joseph W. Grier, III (State Bar No. 7764)
Grier Furr & Crisp, PA
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Exhibits:

A. List of Assets

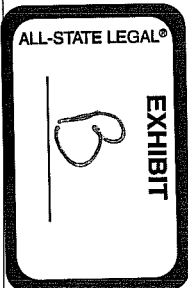
B. Receipts & Disbursements



ASSET	TITLE/OWNER	EST. VALUE/ SOURCE OF VALUE	STATUS	TO DO/INFORMATION 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		<i>Motion For Order to Show Cause as to Why Sean Mescall Should Note be Held in Contempt of Court by the Receiver and CFTC</i> is pending seeking to obtain information for use in obtaining these funds for Receiver's Estate
Rolux Watch	Sean Mescall	Purchased for \$8,043.75 5/4/09	Appraised for \$4,300.	In possession of Iron Horse Auction Company for liquidation.
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	Diamonds appraised at \$2800 and \$1750; \$8,402.00 in cash deposited into Receiver's account;	Coins to be appraised and thereafter liquidated. Gold, silver and diamonds in possession of Iron Horse Auction Company for liquidation

		coins and assorted loose money & coins	
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		Majority of contents was leased by Cort Furniture and MI Connection - Cort Furniture took possession of its property on 11/5/09 due to lease default; MI Connection took possession of its property on 11/30 due to lease default; remainder of property was removed by agent of Receiver after landlord decided not to seek landlord lien on the property; Receivership received \$423,10 in net proceeds after expenses of removal; lease of space in default – Receiver has received demands for rent payment.
2003 330 BMW	Sean Mescall		With car broker Bill Sparks – for sale
1997 Ferrari Spider	Sean Mescall and Gerald Mescall		With car broker Bill Sparks – for sale

Itemized Categories - All Dates
9/21/2009 through 1/25/2010



1/25/2010 Date Account Num Description Memo Amount Page 1

INCOME 210,172.53

Asset Sale 1,657.00

1/13/2010 CapitalStreet C... DEP S Classic Enterprises Of Locust Sale of office furn & equip 1,657.00

Financial Account Cash Proceeds 207,672.38

1/22/2010 CapitalStreet C... DEP Cash From Safe Deposit Box 8,402.00

9/21/2009 GFC Trust Acc... DEP Bank Of America ****813 Close out bank account 106,128.90

9/21/2009 GFC Trust Acc... DEP Bank Of America ****786 Close out bank account 82,913.42

9/21/2009 GFC Trust Acc... DEP Bank Of America ****971 Close out bank account 70.00

9/22/2009 GFC Trust Acc... DEP People's Bank ****843 Close out bank account 10,158.06

Interest Inc 434.94

9/30/2009 CapitalStreet S... Interest Earned 25.00

10/30/2009 CapitalStreet S... Interest Earned 156.07

11/30/2009 CapitalStreet S... Interest Earned 143.38

12/31/2009 CapitalStreet S... Interest Earned 110.49

Refund 408.21

1/12/2010 CapitalStreet C... DEP GMAc Insurance 14.60

9/21/2009 GFC Trust Acc... DEP Lawrence Gelber Unused legal retainer 393.61

EXPENSES -28,781.58

Investigation Expense -1,833.85

10/19/2009 CapitalStreet C... 1003 Ivze Of Charlotte electronic database -660.00

10/29/2009 CapitalStreet C... 1004 Adams & Holt, Inc. deposition -873.85

11/16/2009 CapitalStreet C... 1005 Alan M. Fisher personal prop appraisal -300.00

Misc. 0.00

1/12/2010 CapitalStreet C... NSF: Returned Item Fee Fo... Failed to transfer funds -35.00

1/25/2010 CapitalStreet C... DEP Grier Furr & Crisp, PA Reimburse NSF charge 35.00

Professional Fees -25,543.83

1/11/2010 CapitalStreet C... 1006 Grier Furr & Crisp, PA attorneys fees -25,543.83

Sale Expense -1,403.90

10/19/2009 CapitalStreet C... 1002 BB&T safe deposit box -170.00

1/13/2010 CapitalStreet C... DEP S Classic Enterprises Of Locust commission -331.40

Moving exp -550.00

Pro-rata adv. -352.50

TRANSFERS 0.00

CapitalStreet Checking -33,849.00

9/30/2009 CapitalStreet S... TXFR Transfer Receiver Savings ... -170,000.00

Itemized Categories - All Dates
9/21/2009 through 1/25/2010

Date	Account	Num	Description	Memo	Tag	Clr	Amount
1/12/2010	CapitalStreet S...		Transfer From Savings To ...			R	-25,000.00
9/24/2009	GFC Trust Acc...	TXFR	Transfer Trust Act To Recei...				-25.00
9/30/2009	GFC Trust Acc...	TXFR	Transfer Receiver Checking...				161,176.00
CapitalStreet Savings							
9/30/2009	CapitalStreet C...		Transfer Receiver Checking...			R	170,000.00
1/12/2010	CapitalStreet C...	TXFR	Transfer From Savings To ...			R	25,000.00
9/28/2009	GFC Trust Acc...	TXFR	Transfer Trust Act To Recei...				-360,814.99
GFC Trust Account							
9/24/2009	CapitalStreet C...		Transfer Trust Act To Recei...			R	25.00
9/30/2009	CapitalStreet C...		Transfer Receiver Checking...			R	-161,176.00
9/28/2009	CapitalStreet S...		Transfer Trust Act To Recei...			R	360,814.99

OVERALL TOTAL 181,390.95

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

CERTIFICATE OF SERVICE

The undersigned hereby certifies that copies of the *Second Motion for Compensation to Grier Furr & Crisp, PA, Attorneys for Temporary Receiver and Receiver's Second Report*, 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
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Division of Enforcement
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Sean F. Mescall (on behalf of Gaincapital, Inc.)
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Denver, NC 28037

Gerald Mescall
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This the 26th day of January, 2010.

/s/ Joseph W. Grier, III
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