

**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 FOURTH 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 Fourth 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 Third Report* was filed on March 31, 2010 (D.E. 40).

1. **Identification of and Contact With 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 107 customers. 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 (CapitalStreetReceivership@grierlaw.com). All of the pleadings and documents referred to herein are available on this website.

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 \$375,928.67 and disbursed \$61,034.36 and is holding the balance, \$314,894.31. 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. *Sale of assets.* At this time, the Receiver believes he has liquidated all tangible assets of Defendants but for the contents of the Mescall residence. The Receiver will complete an analysis of those items and do what is necessary to maximize its value to the Receivership Estate taking into consideration the costs involved to liquidate. Since the filing of the Third Report, the Receiver has cause to be sold two vehicles for the net amount of \$42,200.00. These proceeds have been deposited into the Receivership Account and are being held for the benefit of the Receivership.

c. *Discovery.* Since the filing of the Third Report, the court has heard the CFTC and Receiver's *Joint Motion for Order to Show Cause as to Why Defendant Sean F. Mescall Should Not be Held in Contempt of Court, Amended Joint Motion for Order to Show Cause as to Why Defendant Sean F. Mescall Should Not be Held in Contempt of Court* to address \$50,000.00 Sean Mescall transferred to a foreign bank account. On May 25, 2010 the Court entered an *Order* (D.E. 51) finding Sean Mescall in civil contempt of court and referring the matter to the United States Attorney's office for consideration as to pursuit of criminal contempt proceedings. The court found that S. Mescall withdrew \$49,665.28 in November, 2009 in violation of the Preliminary Injunction entered in this case and failed to remit those funds to the Receiver.

The Receiver believes he has identified all assets available to the Receivership for the benefit of the Receivership Estate.

3. **Determination of Amount Invested By Each Customer.** According to the Receiver's preliminary review and an analysis by the CFTC of the books and records of CapitalStreet, it appears that the collective amount invested by CapitalStreet could be as much as \$1,945,746.21.

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.* On May 20, 2010 (D.E. 46) the Receiver filed *Receiver's Motion for (1) Approval of Distribution Priority Scheme, (2) Proposed Claims Verification Procedures and Bar Date, (3) Establishment of Claims Review and Approval Process, (4)*

Approval of Manner to Address Tax Issues and (5) Approval of Distribution Method (“Claim Motion”). Upon approval of the Claim Motion, the Receiver will distribute a Notice and Claim Form to 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. Further, the Receiver will distribute a Notice and Claim Form to known creditors. The Claim Motion also seeks to set a deadline for customer and creditor claims as well as a procedure for claims review, objection and settlement. Finally, the Claim Motion addresses potential tax claims and reporting as well as distribution priority and method.

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

c. Winding Up. The Receiver anticipates that the claim filing, review and approval process will take no less than 120 days to complete once the court approves the claim forms and notices. After the claims are settled, the Receiver will seek approval of a distribution that depletes the Receivership Assets. Upon distribution of Receivership Assets, the Receivership will be concluded.

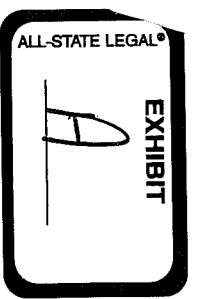
Respectfully submitted, this 27th day of May, 2010.

/s/Joseph W. Grier, III
Joseph W. Grier, III (State Bar No. 7764)
Grier Furr & Crisp, PA
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jgrier@grierlaw.com

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	Order entered May 25, 2010 by the Federal District Court holding Sean Mescall in Civil Contempt of Court and finding that S. Mescall withdrew \$49,665.28 from this account in November, 2009 thereby violating the Preliminary Injunction; the Order refers the matter to the United States Attorney for consideration as to whether criminal proceedings are appropriate.	
Rolux Watch	Sean Mescall		Received: \$5,500.00 on 3/22/10	
Lawrence R. Gelber, Attorney at Law, Brooklyn, NY	Attributable to either CapitalStreet or Sean Mescall held by Gelber Office		Received: \$393.61 9/21/09	
BB&T Safe Deposit Box Denver, NC	Sean Mescall	3 gold bars 7 silver bars 2 diamonds in box labeled "Blue Nile" \$8,400 in \$100 bills	Received: \$117,630.44 on 3/22/10 after sale at auction Received: \$8,402.00 in cash	

		7 Gold American Eagle coins and assorted loose money & coins	
House – 4605 River Hills Dr. Denver, NC 28037	Quitclaim Deed from Gerald Mescall to CapitalStreet Fin.		No Value for Receiver Estate, Receiver abandoning - Mortgage Loan Balance on two loans exceeds 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	No Value for Receiver Estate, Receiver abandoning - Loan balance exceeds value of boat and trailer
Personal property located at 17505 W. Catawba Ave., Suite 130	CapitalStreet Financial, LLC		Majority of contents was leased and recovered by lessors after default; Received: \$423.10 in net proceeds after sale at auction – Receiver has received demands for rent payment.
2003 330 BMW	Sean Mescall		Received: \$11,900.00 on 4/26/10 after sale by broker
1997 Ferrari Spider	Sean Mescall and Gerald Mescall		Received: \$30,300 on 4/26/10 after sale by broker

Itemized Categories - All Dates
9/21/2009 through 5/24/2010

Date Account Num Description Memo Tag Clr Amount

INCOME

375,928.67

Asset Sale

166,987.44

1/13/2010	CapitalStreet ... DEP		S Classic Enterprises Of Locust	Sale of office furn & ...		R	1,657.00
3/22/2010	CapitalStreet ... DEP		S Iron Horse Auction Co, Inc.			R	123,130.44
4/26/2010	CapitalStreet ... DEP		S Bill Sparks Automotive	Sale of 97 Ferrari		R	30,300.00
4/26/2010	CapitalStreet ... DEP		S Bill Sparks Automotive	Sale of 03 BMW		R	11,900.00
							207,706.18

Financial Account Cash Proceeds

8,402.00

1/22/2010	CapitalStreet ... DEP		Cash From Safe Deposit Box			R	8,402.00
3/1/2010	CapitalStreet ... DEP		Misc Coins From Safe Deposit ...			R	33.80
9/21/2009	GFC Trust Ac... DEP		Bank Of America ****813	Close out bank acco...		R	106,128.90
9/21/2009	GFC Trust Ac... DEP		Bank Of America ****786	Close out bank acco...		R	82,913.42
9/21/2009	GFC Trust Ac... DEP		Bank Of America ****971	Close out bank acco...		R	70.00
9/22/2009	GFC Trust Ac... DEP		Peoples Bank ****843	Close out bank acco...		R	10,158.06
							826.84

Interest Inc

25.00

9/30/2009	CapitalStreet ...		Interest Earned			R	25.00
10/30/2009	CapitalStreet ...		Interest Earned			R	156.07
11/30/2009	CapitalStreet ...		Interest Earned			R	143.38
12/31/2009	CapitalStreet ...		Interest Earned			R	110.49
1/29/2010	CapitalStreet ...		Interest Earned			R	89.24
2/26/2010	CapitalStreet ...		Interest Earned			R	76.56
3/30/2010	CapitalStreet ... DEP		Interest Earned			R	94.67
4/30/2010	CapitalStreet ... DEP		Interest Earned			R	131.43
							408.21

Refund

14.60

1/12/2010	CapitalStreet ... DEP		GMAC Insurance	returned ins premium		R	14.60
9/21/2009	GFC Trust Ac... DEP		Lawrence Gelber	Unused legal retainer		R	393.61

EXPENSES

-61,034.36

Investigation Expense

-1,833.85

10/19/2009	CapitalStreet ... 1003		Inze Of Charlotte	electronic database		R	-660.00
10/29/2009	CapitalStreet ... 1004		Adams & Holt, Inc.	deposition		R	-873.85
11/16/2009	CapitalStreet ... 1005		Alan M. Fisher	personal prop apprai...		R	-300.00

Misc.

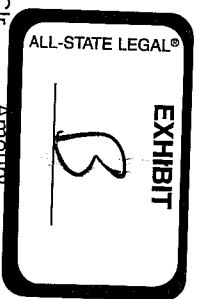
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1/12/2010	CapitalStreet ...		NSF: Returned Item Fee For Ac...	Failed to transfer fun...		R	-35.00
1/25/2010	CapitalStreet ... DEP		Grier Furr & Crisp, PA	Reimburse NSF cha...		R	35.00

Professional Fees

-36,578.06

1/11/2010	CapitalStreet ... 1006		Grier Furr & Crisp, PA	attorneys fees		R	-25,543.83
3/10/2010	CapitalStreet ... 1008		Grier Furr & Crisp, PA	attorneys fees		R	-6,644.45



Itemized Categories - All Dates
9/21/2009 through 5/24/2010

Date	Account	Num	Description	Memo	Tag	Clr	Amount
5/5/2010	CapitalStreet ...	1009	Grier Furr & Crisp, PA	attorneys fees		R	-4,389.78
Sale Expense							-22,622.45
10/19/2009	CapitalStreet ...	1002	BB&T	safe deposit box		R	-170.00
1/13/2010	CapitalStreet ...	DEP	S Classic Enterprises Of Locust	commission		R	-331.40
				Moving exp		R	-550.00
				Pro-rata adv.		R	-352.50
3/1/2010	CapitalStreet ...	1007	Lois Bouchard, GIA	ring appraisals		R	-65.00
3/22/2010	CapitalStreet ...	DEP	S Iron Horse Auction Co, Inc.	Commission		R	-9,850.43
4/26/2010	CapitalStreet ...	DEP	S Bill Sparks Automotive	Ferrari towing, repai...		R	-7,877.12
				Ferrari commission		R	-500.00
4/26/2010	CapitalStreet ...	DEP	S Bill Sparks Automotive	BMW sale expenses		R	-2,426.00
				BMW commission		R	-500.00
							0.00
TRANSFERS							
CapitalStreet Checking							
9/30/2009	CapitalStreet ...	TXFR	Transfer Receiver Savings Act ...			R	-170,000.00
1/12/2010	CapitalStreet ...		Transfer From Savings To Chec...			R	-25,000.00
3/26/2010	CapitalStreet ...		Transfer From Checking To Sav...			R	100,000.00
9/24/2009	GFC Trust Ac...	TXFR	Transfer Trust Act To Receiver ...				-25.00
9/30/2009	GFC Trust Ac...	TXFR	Transfer Receiver Checking Act...				161,176.00
							-265,814.99
CapitalStreet Savings							
9/30/2009	CapitalStreet ...		Transfer Receiver Checking Act...			R	170,000.00
1/12/2010	CapitalStreet ...	TXFR	Transfer From Savings To Chec...			R	25,000.00
3/26/2010	CapitalStreet ...	TXFR	Transfer From Checking To Sav...			R	-100,000.00
9/28/2009	GFC Trust Ac...	TXFR	Transfer Trust Act To Receiver ...				-360,814.99
							199,663.99
GFC Trust Account							
9/24/2009	CapitalStreet ...		Transfer Trust Act To Receiver ...			R	25.00
9/30/2009	CapitalStreet ...		Transfer Receiver Checking Act...			R	-161,176.00
9/28/2009	CapitalStreet ...		Transfer Trust Act To Receiver ...			R	360,814.99
							314,894.31

OVERALL TOTAL

314,894.31