

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS
TOPEKA DIVISION

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

DAVID TANNER, Individually, and d/b/a
CAPITAL ENHANCEMENT CLUB,
ROCKY D. SPENCER,
MARROC CORP., and
RICHARD P. KRINGEN,

Defendants,

and

MARGARET F. SPENCER,
OMNIBUS LLC,
VECTRA RESOURCES, LLC, and
DYNAMIC ENVIRONMENTAL SOLUTIONS, INC.,

Relief Defendants.

Civil Action No.
05-4057-RDR

**MOTION FOR INSTRUCTION REGARDING TRANSFER OF PORTION OF
RECOVERED FUNDS FROM CAPITAL ENHANCEMENT CLUB RECEIVERSHIP
TO SEAFORTH MERIDIAN RECEIVERSHIP**

Receiver Larry E. Cook (“Receiver”), hereby submits his Motion for Instruction Regarding the Transfer of \$1,513,070.70 in recovered funds from the Capital Enhancement Club Receivership to the Seaforth Meridian Receivership. In support of this Motion, the Receiver respectfully shows the Court as follows:

Introduction

1. The Receiver is the court-appointed Receiver in two SEC enforcement actions pending before this Court: SEC v. David Tanner d/b/a Capital Enhancement Club, et al.,

(“CEC”), Case No. 05-4057; and SEC v. Seaforth Meridian Ltd, et. al., (Seaforth”), Case No. 06-4107.

2. Prior to the commencement of the Seaforth case, the Receiver traced approximately \$8.99 million of CEC funds transferred to Seaforth accounts. Seaforth agreed to return the \$8.99 million to the CEC receivership estate. Seaforth returned \$4.1 million of this amount before it defaulted on paying the balance. At the time, the Receiver believed Seaforth’s representations that it had sufficient assets to repay the CEC investors in full and that Seaforth could then continue with its operations.

3. However, upon the Receiver’s investigation into Seaforth’s finances, it now appears the \$4.1 million Seaforth returned to the CEC receivership represented all of Seaforth’s assets. The remaining funds raised by Seaforth have been lost or misdirected by the Seaforth principals. Accordingly, as it now stands, the Seaforth investors have lost nearly all of their investment in Seaforth while the CEC receivership has recovered a significant portion of the CEC funds transferred to Seaforth.

4. Numerous Seaforth investors filed motions in the Seaforth case (Doc. #'s 51, 54-56, 60-65) seeking the return of the \$4.1 million paid to the CEC Receivership. By this Motion, the Receiver requests the Court’s instruction regarding a transfer of a portion of the funds recovered from Seaforth back to Seaforth; and to provide for an equitable division between Seaforth investors and CEC investors of future funds recovered for the Seaforth estate.

Facts

5. On May 4, 2005, the Commission filed suit against David Tanner, individually, and d/b/a Capital Enhancement Club, and others alleging that Tanner engaged in violations of federal securities laws.

6. On that same date, the Commission moved, and the Court granted, the appointment of Larry E Cook as Receiver.

7. During the course of his investigation into the financial transactions of CEC, the Receiver identified \$8,998,407 in CEC funds transferred to Seaforth Meridian. On August 11, 2005, the Court entered a Stipulated Order whereby Seaforth Meridian was ordered to return the \$8.99 million by October 15, 2005 (Doc. # 84 in the CEC case).

8. Between August 11, 2005 and October 15, 2005, Seaforth paid \$4.1 million to the Receiver in partial satisfaction of the \$8.99 million agreed to in the October 15, 2005 Stipulated Order. Following extensive discovery and contempt litigation over Seaforth's refusal to pay the balance due the Receiver, the Commission initiated a separate securities fraud case against Seaforth Meridian and others on September 14, 2006 (Case No. 06-4107) wherein Larry E. Cook was appointed Receiver for Seaforth (the "Seaforth Receivership").

9. During the course of his investigation into Seaforth's financial transactions, the Receiver has produced the following accounting¹:

A. Seaforth collected a total of \$21,837,706 during its operation, including the \$8,998,407 of CEC funds. Seaforth refunded a total of \$4,128,685.80 to investors (excluding the \$4.1 million returned to the CEC Receiver) during this time, leaving a balance of \$17,709,020.20 in net investments in Seaforth.

¹ See Declaration of Larry Cook attached as Exhibit A.

B. Accordingly, 50.81 percent of Seaforth's net investments were CEC funds ($\$8,998,407/17,709,020.20 = 50.81\%$) and 49.19% of Seaforth's net investments were non-CEC funds.

C. Seaforth paid the Receiver \$4,110,118.90 pursuant to the August 11, 2005 Order. Using the pro rata investment ratios, 50.81% of \$4,110,118.90 (\$2,088,351.40) is attributable to CEC investors and the balance (\$2,021,767.50) is attributable to Seaforth investors.

D. The Receiver has reviewed the fee applications submitted and approved in the CEC case and submits that \$508,969.81 in expenses incurred by the CEC investors should be borne by the Seaforth's investors. Deducting the Seaforth investors' share of expenses from the recovery attributable to Seaforth investors results in a net recovery due to the Seaforth receivership of \$1,513,070.70 ($\$2,021,767.50 - 508,696.81$ in expenses = \$1,513,070.70).

10. The Receiver submits that the transfer of \$1,513,070.70 from the CEC Receivership to the Seaforth Receivership is proper under the circumstances. The information available to the Receiver at the time of the August 11, 2005 Order suggested that Seaforth had sufficient assets to pay the amounts due the CEC Receiver and still leave Seaforth with assets for its remaining investors. However, the information now available to the Receiver suggests the \$4.1 million in payments from Seaforth to the CEC Receiver in 2005 represented all of Seaforth's assets. In short, Seaforth had already misdirected or "lost" the remaining \$13.6 million. The formulas set forth below, and the transfer requested by this Motion, will essentially place the CEC and Seaforth investors on even footing.

11. The Receiver further requests the Court's instruction whether any future recovery of Seaforth assets, net of expenses incurred, be divided as follows: 49.19% to the Seaforth

Receivership and 50.81% to the CEC Receivership until the CEC Receivership has received the balance of the \$8.99 million in CEC investor funds transferred to Seaforth.

12. The Commission has reviewed this Motion and concurs in the relief sought herein.

WHEREFORE, the Receiver requests the Court enter an Order: (i) Instructing the Receiver whether he should transfer \$1,513,070.70 from the CEC Receivership to the Seaforth Receivership; (ii) Instructing the Receiver whether future recovery of Seaforth assets, net of expenses incurred, be divided 49.19% to the Seaforth Receivership and 50.18% to the CEC Receivership until the CEC Receivership has received the balance of the \$8.99 million in CEC investor funds transferred to Seaforth; and (iii) For such further relief as the Court deems just and proper.

Dated: January 17, 2007

Respectfully submitted,

Lathrop & Gage L.C.

/s/ Brian M. Holland

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Attorneys for Larry E. Cook, Receiver

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of January, 2007, I electronically filed the foregoing, with the Clerk of the Court for the District of Kansas, Topeka Division, by using the CM/ECF system which will send a notice of electronic filing to the following CM/ECF participants:

-Steven Cohen, Douglas J. Schmidt, & Terrance M. Summers—Counsel for Server to Go, Inc.

-J. Kevin Edmundson, SEC

In addition, I hereby certify that on the same date, a copy of the foregoing was sent via e-mail to all holders of an allowed claim in the CEC Case (Case No. 05-5047) to the e-mail address, if any, provided by the holders of such allowed claims.

In addition, I hereby certify that on the same date, a copy of this Motion was posted on the CEC Receiver's website: www.ceclubreceiver.com.

s/ Brian M. Holland
An Attorney for Larry E. Cook, Receiver

Exhibit A

DECLARATION OF LARRY E. COOK, RECEIVER

I, Larry E. Cook, do hereby declare under penalty of perjury, in accordance with 28 U.S.C. Section 1746, that the following is true and correct, and I am competent to testify as to matters stated herein.

1. I am over 21 years of age. Since January 2000, I have been employed as a fraud examiner, investigator, and consultant providing investigative and consulting services to private and government clients nationwide. In this capacity, I have been appointed as a Receiver in U.S. District Court in Kansas in civil actions filed by the United States Securities and Exchange Commission, Case No. 05-4057 (Capital Enhancement Club) and Case No. 06-4107 (Seaforth Meridian).
2. In the course of my duties as Receiver in the Seaforth case, I have determined that during its operation, Seaforth raised a net amount of \$21,837,706. Seaforth refunded a total of \$8,238,804.70 to investors, resulting in a net investment of \$13,598,901.30. \$4,110,118.90 of the total amount refunded to investors was paid to the CEC Receiver. Adding the \$4,110,118.90 back to the \$13,598,901.30 results in a total net investment of \$17,709,020.20.
3. CEC investor funds totaling \$8,998,407 were transferred to Seaforth during its operation. Accordingly, the CEC investors represented a 50.18 per cent investment in Seaforth ($\$8,998,407 / \$17,709,020.20 = 50.18\%$) and non-CEC investors invested 49.19 percent of the net amount raised by Seaforth.

4. In the course of my duties as Receiver in the CEC case, I recovered a total of \$4,110,118.90 from Seaforth for the benefit of CEC investors. Excluding potential recovery actions, this amount appears to be the all of Seaforth's assets.
5. I have reviewed the fee applications filed and awarded in the CEC case and submit that \$508,696.81 in expenses paid by the CEC Receivership should be borne by the Seaforth investors if the Court instructs me to transfer a portion of the recovered funds back to the Seaforth Receivership for the benefit of the Seaforth investors.
6. Of the \$4,110,118.90 recovered from Seaforth, 49.19% may be viewed as the pro rata share attributable to Seaforth investors which is \$2,021,767.50. Deducting the Seaforth investors' share of the expenses incurred results in a net recovery due to the Seaforth receivership of \$1,513,070.70 ($\$2,021,767.50 - \$508,696.81$ in expenses = \$1,513,070.70).

I declare under the penalty of perjury that the foregoing is true and correct.

Executed this 17th day of January, 2007.

/s/ Larry E. Cook

Larry E. Cook, Receiver