

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

vs.

Case No. 05-4057-RDR

DAVID TANNER, d/b/a
Capital Enhancement Club,
et al.,
Defendants.

O R D E R

This matter is presently before the court upon the receiver's motion to approve plan of general distribution to allowed claims. The plan provides for distribution of recovered funds, net of expenses, to the holders of allowed claims. Several individuals have filed objections to the distribution plan. The court has carefully reviewed the objections and is now prepared to rule on the pending motion.

The court shall provide some background before we reach the issues raised by the objections. On May 4, 2005, the SEC initiated this securities fraud enforcement action. In the complaint, the SEC alleged that David Tanner and others had masterminded a scheme to defraud investors of at least \$15 million through the fraudulent offer and sale of securities referred to as a "private joint venture investment." The SEC further alleged that Tanner formed the Capital Enhancement Club (CEC) and promised potential investors

that the CEC would pay monthly interest of approximately 7% to 11% from "trading in international markets." The SEC further alleged that the CEC's trading program was nonexistent and investors funds were misappropriated by the defendants or transferred to several offshore institutions for the benefit of defendants.

The court, after a preliminary showing of securities fraud, issued a temporary restraining order, ordered an asset freeze, and appointed Larry E. Cook as the receiver. The receiver and his counsel then began the task of identifying the defrauded investors in this action and attempting to locate the investor funds. Both undertakings proved difficult for several reasons. The defendants refused to cooperate in any efforts to identify investors or the location of the investor funds. The accounting for receivership assets and identification of victims was compounded by the fact that a majority of investor funds were deposited into financial institutions located outside the United States. The fund transfers were facilitated by several "electronic currency" services which are unregulated internet commerce escrow and currency exchange operations. Most of the CEC investors who deposited funds with United States financial institutions did so with cashier or certified checks without noting any "remitter" or other identification indicating for whose benefit the investment was made.

Additional difficulties arose as the SEC learned that David

Tanner's real name is Scott Klion and that he had used James Tucker as another alias. Klion had previously been named as a defendant in a securities enforcement action brought by the SEC in 1998.

Early in this case Tanner, through his counsel, agreed to a settlement. Tanner and the SEC filed a motion on September 6, 2005 for an agreed order of permanent injunction and order of disgorgement. The court granted the motion on September 13, 2005. The order: (1) enjoined Tanner from further violations of the federal securities laws; (2) ordered Tanner to disgorge \$15 million; (3) authorized the receiver to petition the court for additional disgorgement if subsequent discovery demonstrated that CEC had actually raised an amount greater than \$15 million; and (4) allowed that the additional remedies of a civil penalty and pre-judgment interest were to remain unresolved until completion of discovery.

To date, the receiver has recovered approximately \$6.1 million in investor funds. The receiver has also identified and obtained orders directing the return of an additional \$8 million in investor funds deposited in United States and European banks. In addition, the receiver has pending motions for the turnover of approximately \$1.4 million in investor funds transferred to a foreign bank. Finally, the receiver has recovered two properties in Dayton, Nevada which have been listed for sale with a Nevada real estate agent. The receiver has identified approximately \$9 million of

investor funds transferred to forty-two individuals and companies. The receiver has issued demand letters for the return of these funds and is evaluating the recipients' defenses to the receiver's demands.

The receiver expended considerable time and effort to determine the identity of the investors. The receiver established a website to serve as a reference for the investors and to provide a place for the submission of claims.

On March 9, 2006, the receiver sought an order approving a claims solicitation procedure and establishing a claims bar date for investors and others. The court granted the receiver's motion on March 28, 2006 and established April 28, 2006 as the deadline for filing claims.

As of the claims bar date, the receiver had received approximately 1,200 claims totaling over \$18 million. On November 20, 2006, the court held a hearing on the receiver's motion to allow and disallow claims. Following the hearing, the court entered an order allowing approximately \$19,800,000 in claims.

On April 13, 2007, the receiver filed the instant motion. On April 30 and May 5, 2007, the court received various letters from individuals who identified themselves as investors in CEC. The court had these letters filed as objections to the distribution plan. The court notes that only three of the individuals who filed objections have filed claims in this case.

In the various letters, the individuals generally raise the following arguments: (1) the CEC was a valid investment program; (2) the amount of attorney's fees paid to the receiver and his counsel is excessive; and (3) the SEC and the receiver have acted or have threatened to act unjustly and unconstitutionally in this action.

The court has examined this case from its beginning. The court has reread and again carefully considered all of the information that has been presented by the SEC and the receiver. The evidence presently before the court is overwhelming that Klion a/k/a Tanner a/k/a Tucker established a Ponzi scheme designed to defraud investors. Despite complaints by some investors to the contrary, there can be no other explanation for this investment scheme. No evidence has been presented that any of the investors' funds were placed in investment vehicles that would have produced the promised investment yields. In fact, the evidence suggests quite clearly that a large amount of the funds were paid directly or indirectly to Klion and the other defendants and relief defendants. For example, the court notes the following withdrawal of CEC funds: (1) \$5.1 million to Server To Go by Tucker, Klion's alias; (2) \$9.5 million to Seaforth Meridian by Tucker; (3) \$1.0 million to relief defendant Dynamic Environmental Systems; (4) \$2.75 million to purchase jewelry by Tucker; and (5) \$1.9 million in cash withdrawals by Tucker. Some of the investors apparently

continue to believe that this was a legitimate operation because they received monies during the course of its life. This, of course, fails to counter the other facts that the court has received. These investors may not want to believe they were duped or they may genuinely believe that the operation was on the up and up because they profited from it. Nevertheless, they have not provided the court with any evidence suggesting that the CEC was a legitimate investment for all investors. All of the evidence points to the opposite conclusion. The court is confident that the actions of the receiver will result in the return of more monies to the investors than they would have received if the CEC had continued to exist.

The court does agree with some of the comments concerning the amount of fees that have been awarded to the receiver and his counsel. The court is concerned by these amounts. However, the court also recognizes that the receiver and his counsel are extremely experienced in this area of the law. The court further understands that this case has some extraordinary circumstances that have led to the large attorney fee amounts. As noted above, the process of identifying investors and the location of investor funds has been excruciatingly difficult. Having reviewed the entirety of the case and once again reviewed each of the attorney's fees requests, the court is persuaded that the fees and expenses are fair and reasonable. The court will continue to monitor

closely the requested fees. The court hopes this matter is rapidly proceeding to a conclusion. The court will continue to exert pressure upon the receiver and his counsel to move with dispatch to conclude this case.

Finally, the court wants to address allegations concerning the actions of the receiver and his counsel. It is very difficult to understand the nature of these complaints because of the lack of specificity in the letters. The letters refer to purported nefarious activities but fail to provide any detail concerning them. The court fails to find that any of the actions taken by the receiver and his counsel to date were improper. In addition, the court does not believe that the proposed plan of distribution provides the receiver or his counsel with any improper or illegal authority.

In reaching the aforementioned conclusions, the court has relied upon the vast amount of information that has been provided in this case. The individuals in the letters have suggested that the court needs to consider additional facts and information. The court is willing to do so and has always been willing to do so, but very little specific information has been provided to the court in these letters. Vague, unsubstantiated complaints form the basis of most of the letters. The court simply cannot take any action based upon such complaints.

Accordingly, the court shall grant the receiver's motion to

approve plan for general distribution to investors. The court shall also grant the receiver's tenth application for approval of payment of receiver's professional fees and expenses. The court intends to issue separate orders granting both of these motions.

IT IS SO ORDERED.

Dated this 22nd day of May, 2007 at Topeka, Kansas.

s/Richard D. Rogers
United States District Judge