



Court No. S086670
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF

TRUSTEE ACT R.S.B.C. 1996, C. 464, AS AMENDED

AND

LAW AND EQUITY ACT
R.S.B.C. 1996, CHAPTER 253, AS AMENDED

AND

ELITE FX LIMITED PARTNERSHIP
ELITE FX MANAGEMENT INC.
ELITE FX INVESTMENTS INC.
ELITE FX TRADING INC.

AFFIDAVIT

I, JOHN MCEOWN, Chartered Accountant, of Boale, Wood & Company Ltd., in the City of Vancouver, in the Province of British Columbia, MAKE OATH AND SAY AS FOLLOWS:

1. I am a licensed Trustee in Bankruptcy and a Chartered Accountant with Boale, Wood & Company Ltd. and as such have personal knowledge of the facts and matters hereinafter deposed to save and except where the same are stated to be based on information and belief and as to such matters I verily believe them to be true.
2. Pursuant to an Order (the "**Judicial Trusteeship Order**") pronounced October 9, 2008, Boale, Wood & Company Ltd. (the "**Judicial Trustee**") was appointed as Judicial Trustee and Receiver of the following entities:

Elite FX Limited Partnership (the "**Partnership**")
Elite FX Management Inc. ("**Management**")

Elite FX Investments Inc. (“**Investments**”)

Elite FX Trading Inc. (“**Trading**”)

(collectively, “**Elite FX**”)

Attached hereto and marked as *Exhibit “A”* is a copy of the Judicial Trusteeship Order.

3. I am the person with the Judicial Trustee with primary responsibility for this file.

Background

4. The Partnership was formed on or about January 20, 2006, to allow Limited Partners to invest in foreign exchange contracts.
5. James Rowland was the sole officer and director of Management, which is the General Partner of the Partnership. James Rowland’s father, David Rowland, acted as an advisor to Elite FX.
6. I am advised by James Rowland that all of the funds raised by the Partnership were invested in Razor FX Inc., a New York company that purported to trade in foreign exchange contracts.
7. On January 16, 2008, the Rowlands became aware that the Partnership was a victim of a Ponzi scheme operated by Razor FX. Apparently, Razor FX raised in excess of USD\$100 million from investors by representing that Razor FX would invest the funds in foreign exchange contracts, but instead defrauded investors by using the majority of the funds for personal expenses and for paying dividends, redemptions or “profit” back to investors. As such, any dividends, redemptions or “profits” paid to the Limited Partners of Elite FX were fictitious.
8. There are currently 173 remaining Limited Partners who still have \$5,380,435 of their initial capital invested with Elite FX (excluding any purported “profits”). Prior to Elite FX becoming aware of the fact that Razor FX was actually a Ponzi scheme, a number of the Limited Partners had already been repaid all of their initial capital investment, by way of a return of capital, payment of dividends, redemption or “profit”.

9. Included in the 173 remaining Limited Partners are 14 salespeople who were contracted to provide services to Elite FX. These salespeople were entitled to earn initial or front-end commissions from the sale of partnership units and were also entitled to trailing commissions based on the profit earned in relation to a particular Limited Partner. These 14 salespeople chose to invest their commissions and trailing commission in Elite FX by subscribing for units. In calculating the number of remaining Limited Partners and the initial capital invested by these Limited Partners, the Judicial Trustee has included the amount invested by the salespeople from the initial or front-end commissions to purchase units. The Judicial has not included in this calculation any of the trailing commissions that would have been payable to the salespeople or reinvested by the salespeople as these commission were based on fictitious profits. The total amount of initial or front-end commissions payable to these 14 salespeople that were used to purchase units of the Partnership was \$146,780.
10. The Judicial Trustee presently holds approximately \$1.150 million in trust for distribution to the Limited Partners. As noted in the Initial Report to the Court of the Judicial Trustee, there has been a claim filed with the U.S. Department of Justice for recovery of funds from Razor FX. At this time, I cannot estimate how much, if any, funds will be recovered.
11. Except for an amount of approximately \$2,000 as referenced in the Initial Report to the Court of the Judicial Trustee, I am not aware of any creditors of Elite FX save for amounts to be returned to the Limited Partners.

Actions undertaken by the Judicial Trustee

12. Since October 9, 2008, I have undertaken the following:
 - (a) taken possession and control of the personal property of Elite FX, including approximately \$1,200,000 that has being recovered from bank accounts and funds held in trust for Elite FX;

- (b) reviewed the investment records of Elite FX, as provided by James Rowland, to determine the claims of the Limited Partners that have advanced principal to the Partnership, and who have had principal returned from the Partnership;
- (c) prepared and filed the Initial Report to the Court of the Judicial Trustee dated November 20, 2008;
- (d) delivered an investment statement to all remaining Limited Partners of Elite FX, which included a statement setting out the amounts advanced or invested by that Limited Partner and amounts returned to that particular Limited Partner according to the records of Elite FX. Other than Limited Partners who were also salespeople, I have not had any response that contradicted the investments records of Elite FX. In relation to the salespeople, the investment statement inadvertently omitted the sales commissions that had been invested. This has now been corrected;
- (e) corresponded with various Limited Partners with respect to the Initial Report to the Court of the Judicial Trustee and the investment information provided to Limited Partners.

Attached hereto and marked as *Exhibit "B"* is a copy of the Initial Report to the Court of the Judicial Trustee dated November 20, 2008.

13. The records of Elite FX, as they relate to investments by Limited Partners, appear to be complete, and I am advised by James Rowland that the records are complete. I am confident that the Judicial Trustee has compiled a list of all Limited Partners, the amounts advanced by each Limited Partner and amount returned to each Limited Partner. Attached hereto and marked as *Exhibit "C"* is a spreadsheet I prepared of the 173 remaining Limited Partners listing:

- (a) the principal amount advanced by each Limited Partner;
- (b) the principal amount returned to each Limited Partner.

I have omitted from the spreadsheet the names of the Limited Partners because of confidentiality concerns. Note that the details, including amounts, in this spreadsheet may change as the Judicial Trustee receives more information from various stakeholders.

14. I have received responses from approximately 10% of the Limited Partners, primarily in relation to requests for changes of address or changes of personal information. A few Limited Partners have expressed concern as to whether the salespeople and other individuals related to Elite FX would share in any distribution. David and James Rowland have consented to not receiving any distribution from the Judicial Trustee.

Proposed Claims and Distribution Process

15. It is the opinion of the Judicial Trustee that the most fair and equitable manner of distribution to Limited Partners is a *pro rata* distribution based on the principal amount invested or sales commission reinvested, less any amounts already returned to Limited Partners as dividends, redemptions or “profits”, without regard to any interest, fees, charges or notional profits purported to be earned by Limited Partners.
16. The Judicial Trustee proposes to administer a claims process in accordance with the draft Order attached to the motion to which this application relates. In summary, that claims process would be administered as follows:
 - (a) the Judicial Trustee will determine the amounts owing to each claimant, and in the case of Limited Partners will determine the amount owing by looking only at the principal amount invested by that Limited Partner and the amount returned to that Limited Partner (which shall be deemed to be a return of principal, and not as payment of profit);
 - (b) each claimant will receive notice of the amounts owing to that claimant;
 - (c) if the claimant agrees with the amount owing, they need not respond or take any further steps;

- (d) if the claimant disagrees with the Judicial Trustee's calculation of the amount owing, that claimant may file a Proof of Claim setting out the facts and argument on which they rely;
 - (e) the Judicial Trustee may allow or disallow the Proof of Claim as filed;
 - (f) if the Judicial Trustee disallows the Proof of Claim, that claimant may appeal to this Court.
17. Once the claims process has been completed, the Judicial Trustee intends to make an interim distribution in the aggregate amount of approximately \$900,000.
18. I note that three Limited Partners have requested that the Judicial Trustee repay their whole investment based on the fact that those particular subscriptions were not completed at the time that the British Columbia Securities Commission issued a Cease Trade Order in respect of Elite FX. A summary of those claims are as follows:
- (a) David Morrison and Cognoscente Consulting Limited have commenced a proceedings against Elite FX seeking a return of \$100,000 paid to Elite FX. A copy of these pleadings are attached to the Affidavit of James Rowland sworn September 19, 2008. The Judicial Trustee invited David Morrison and Cognoscente Consulting Limited to provide evidence and argument as to why they should be exempted from this proposed *pro rata* distribution and instead receive a full refund of the \$100,000 advanced to Elite FX. Attached hereto and marked as *Exhibit "D"* is a copy of a letter dated December 29, 2008, from Scott Kugler of Gowling Lafleur Henderson LLP, with enclosures, setting out these facts and argument. Based on these materials, it is the Judicial Trustee's opinion that David Morrison and Cognoscente Consulting Limited should be exempted from the proposed *pro rata* distribution and instead receive a full refund of the \$100,000 advanced to Elite FX.
 - (b) Doug Smart has alleged that on or about October 17, 2007, he delivered a cheque to Elite FX, but that the cheque was not negotiated until after the Cease Trade Order has been issued.

