



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.

FINAL REPORT TO THE COURT
OF BOALE WOOD & COMPANY LTD.
JUDICIAL TRUSTEE AND RECEIVER

October 20, 2011

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A. APPOINTMENT

In September 2008, the management of Elite FX Group of Companies made an application to the Supreme Court of British Columbia to have a Judicial Trustee appointed. In an Affidavit sworn in support of the application, James Roland deposed that it was his view that the appointment of a Judicial Trustee was in the best interest of the investors.

On October 9, 2008, the Supreme Court of British Columbia granted that application and appointed Boale, Wood & Company Ltd. as Judicial Trustee and Receiver (in that capacity, the “**Judicial Trustee**”) 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 the above noted entities will be referred to in this report as “**Elite FX**”.

A copy of the Court Order dated October 9, 2008 can be found on our website at

<http://www.boalewood.ca/images/assets/elitefxorder.pdf>

We have been appointed as a result of a failed investment plan. Our mandate, as Judicial Trustee, has been to take possession and control of the property of Elite FX, including the recovery of monies owed to Elite FX, and to distribute the same on a fair and equitable basis to the stakeholders in Elite FX.

B. PURPOSE OF THIS REPORT

The purpose of this report is to update the Court on the activities of the Judicial Trustee's since being appointed, and to make recommendations with respect to the final distribution of the remaining funds in the Judicial Trustee's trust account. Specifically the Judicial Trustee is seeking an Order of the Court as follows:

- To authorize and direct the Judicial Trustee to disburse all remaining assets in such manner as set out more fully in this report;
- To authorize and direct the Judicial Trustee to allow the claim filed by E. Sands & Associates Inc., in its capacity as Trustee in Bankruptcy of the estate of Horizon FX Limited Partnership, in the amount of \$450,000 and to make a *pro rata* distribution to Trustee in Bankruptcy of the estate of Horizon FX Limited Partnership based on the amount of that claim;
- An order declaring that investors that have to-date not submitted a claim to the Judicial Trustee are no longer entitled to share in any distributions made by the Judicial Trustee;
- An order declaring that the commissioned sales people of Elite FX are not entitled to any payment from funds held by the Judicial Trustee;
- An order that that the Judicial Trustee be discharged without further Order upon payment of the final distribution;
- The accounts of the Judicial Trustee and of its legal counsel be approved, and their remuneration set, in the amounts set out below; and
- An order that Elite FX pay any unclaimed distributions of Proven Creditors into Court to the credit of this proceeding.

In preparing this report we have relied on the corporate and investment records of Elite FX as well as discussions with management. We have not audited, reviewed, or otherwise verified this information.

C. BACKGROUND

As set out in the Elite FX Offering Memorandum, the Partnership was formed by Elite FX Management Inc., General Partner, on January 18, 2006 and became a Limited Partnership under the laws of British Columbia on January 20, 2006. The purpose of the Partnership was to provide a structure to allow the Limited Partners to invest in foreign exchange contracts. James Roland was the sole Officer and Director of the General Partner. He was responsible for the administration of the Partnership and the trading in foreign exchange contracts conducted initially by Elite FX Investments Inc., and later by Elite FX Trading Inc. David Roland was an advisor in the formation of the Partnership.

The Elite FX records indicate that between January 2006 and September 2006, the Partnership raised approximately \$7,300,000 from 238 Limited Partners. We are advised by James Roland, that all of the funds raised (after deducting commissions, expenses and management fees) were invested with Razor FX, a New York company that purported to be experts in trading foreign exchange contracts and provided literature that indicated their clients were yielding returns as high as 60% annually.

According to James Roland, in September 2006 approximately 65% of the Limited Partners redeemed their investments in the Partnership and transferred those funds to a new Limited Partnership named Horizon FX. Horizon FX had been created by Gem Ali, a former Director of the Partnership. It was at this time that the Elite FX Limited Partnership Offering Memorandum was amended and Elite FX Trading Inc. took over the management of the partnership and trading in foreign exchange contracts.

Of the remaining 35% of Limited Partners (the “**Elite Investors**”) in the Partnership, some had redeemed all or part of their investment prior to the appointment of the Judicial Trustee, while others have not redeemed any portion.

On January 16, 2008 James Roland became aware that Razor FX was basically a ponzi scheme whereby the new capital invested by parties was used to satisfy withdrawals or redemptions, and that Razor FX did not engage in any meaningful trading with the funds. The principals of Razor

FX, MacCaul and Eisner, have both pleaded guilty to conspiracy to commit mail and wire fraud and have since been sentenced and currently are serving jail time.

D. ELITE INVESTORS SUMMARY

Based on the records of Elite FX we summarized the Elite Investors as follows in our Initial Report to the Court as follows:

		Invested	Repaid	Net Investment
Total Elite Investors	238	\$7,311,053	\$2,511,918	\$4,799,135
Investors who received returns equalling at least 100% of their principal investment	65	1,395,463	1,976,763	(581,300)
Remaining Elite Investors	173	\$5,915,590	\$535,155	\$5,380,435

The above summary is calculated assuming that all investments and repayments were of principal only, and does not account for any interest or profits that may have been previously reported to the Elite Investors.

We further understand the Remaining Elite Investors include 14 sales agents that chose to invest their commissions and related parties:

After conducting a more thorough review of the Elite FX records and completing the claims process (discussed more fully below), the following is an updated summary of the amounts invested by Elite Investors net of redemption/profits:

	#	Amount
Investors that advanced funds after October 18, 2007	15	\$ 390,060.38
Investors that advances funds before October 18, 2007	156	5,013,681.60
Claim of the Trustee for Horizon FX	1	450,452.38
Commissioned salespeople that invested their commissions	<u>14</u>	<u>136,223.13</u>
	<u>186</u>	<u>\$ 5,990,902.78</u>

E. ASSETS RECOVERED

To date we have recovered funds totalling CDN\$2,769,981.74. The source of those funds can be generally summarized as follows:

Cash Received From Elite FX	\$ 1,135,731.70
Recovery from US Treasury re: Razor FX	1,557,795.49
Interest	12,633.40
Other Receivables and Miscellaneous refund	<u>63,821.15</u>
	<u>\$ 2,769,981.74</u>

The only other asset of which the Judicial Trustee is aware is Elite FX's potential claim against legal counsel for Elite FX that were involvement in the preparation of the Offering Memorandum issued to investors. The Court Order did not specifically provide the Judicial Trustee with authority to pursue that potential claim and to date the Judicial Trustee has not taken any steps to advance or investigate this potential claim.

The Judicial Trustee is aware that the Trustee in the matter of the bankruptcy of Horizon FX has investigated a similar potential claim that Horizon FX may have against its legal counsel for their involvement in the preparation of the offering memorandum issued to the Horizon FX investors. The Judicial Trustee has been advised that the Trustee for Horizon FX, after its preliminary investigation of the potential claim, have decided not to pursue the matter.

F. CLAIMS PROCESS AND INTERIM DISTRIBUTIONS

By order pronounced March 20, 2009, the Court approved a Claims Process and Distribution Scheme relating to payment of funds by the Judicial Trustee to the Limited Partners. As part of that order, the Court also ordered the following:

- David Morrison, Cognoscente Consulting Limited and other investors that advanced funds to Elite FX after October 18, 2008, be repaid the full amount of their advances;
- the Judicial Trustee was directed to make interim distributions to Limited Partners based on a *pro rata* calculation of their Net Investment; and
- Until further Order of the Court, the Judicial Trustee withholds any distributions to commissioned sales people of Elite FX.

As directed in the Claims Process and Distribution order, the Judicial Trustee implemented a claims process as follows:

- The Judicial Trustee sent notice to each known claimant, including investors, and set out the amounts owing to each claimant based on the records of Elite FX.
- The Judicial Trustee calculated the claim of each investor based on the principal amount advanced by each investor and the amount returned to each investor, without regard to how those amounts were characterised (e.g. as interest, dividends, redemptions or profits).
- If an individual claimant disagreed with the Judicial Trustee's calculation of his/her/its claim as set out in the notice, that claimant was entitled to file a proof of claim with the Judicial Trustee within 21 days of receipt of the Claim Package.
- Any other person, regardless of whether he/she/it received a Claims Package or was listed in the records of Elite FX, could request a Claims Package from the Judicial Trustee and file a proof of claim.

- Unless a proof of claim was submitted, the claimant's claim as set out in the Claims Package was deemed to be correct and was considered a Proven Claim.

To date the Judicial has received claims from all but 16 of the Elite FX investors, excluding commissioned salespeople. The total of the estimated claims of those investors that have not submitted claims is \$80,188.55. The Judicial Trustee has been unsuccessful in locating addresses or other contact information for these investors.

In about July 2009, the Judicial Trustee made an interim distribution to all proven claimants, save and except for commissioned salespeople representing 10% of Proven Claims. In January 2011, the Judicial Trustee made a second interim distribution to all proven claimants, against excluding commissioned salespeople, representing a further 20% of Proven Claims.

The following chart summarized these two initial distributions:

First Distribution	Amount	% of Investment
Investors that advanced funds after October 18, 2007	\$ 390,060.38	100%
Investors that advanced funds after October 18, 2007	<u>497,654.07</u>	10%
	<u>\$ 887,714.45</u>	
Second Distribution		
Investors that advanced funds after October 18, 2007	<u>\$ 982,498.63</u>	20%

The Judicial Trustee has withheld funds totalling approximately \$800,000 to account for the following contingencies:

- Any amounts found to be due or owing to commissioned salespeople of Elite FX;
- The claim by the Trustee of Horizon FX; and
- The fees and expenses of the Judicial Trustee and its' legal counsel.

G. HORIZON FX CLAIM

As mentioned early in this report in September 2006 approximately 65% of the Limited Partners of Elite FX transferred their investment in the Partnership to a new Limited Partnership named Horizon FX that was formed by Gem Ali, a former Director of the Partnership.

Similar to Elite FX, the investors that transferred their investments to Horizon continued to have their funds invested with Razor FX. In fact, Razor FX was never advised of the transfer of investments from Elite FX to Horizon FX.

Horizon FX and its related companies are now bankrupt. Information relating to Horizon FX can be found at: <http://www.sands-trustee.com/business-solutions/current-engagements/creditors-horizon-fx>

The Trustee, upon review the records of Horizon FX and discussions with Gem Ali determined that the claim submitted by Elite FX against Razor FX that resulted in a recovery from the US Treasury of approximately \$1,500,000 improperly included funds that were intended to be transferred from Elite FX to Horizon FX investors.

The Judicial Trustee has reviewed the claim submitted by Elite FX against Razor FX and concurs that Elite FX's claim includes amounts invested by the Horizon FX investors that should properly have been claimed by Horizon FX and paid to the Trustee.

The Judicial Trustee has met with the Trustee for Horizon and reached an agreement, subject to Court approval, to allow Horizon to submit a claim against Elite FX for \$450,452.38 which represents the amount that Horizon FX has paid out to Horizon FX Investors that were formerly investors Elite FX. Had the investments accounts been properly transferred from Elite FX to Horizon FX this amount would have been claimable by Horizon FX against Razor.

If Horizon FX is permitted to make a claim against Elite FX in this amount, The Trustee of Horizon FX will receive a distribution of approximately \$ 180,000 from Elite FX for the benefit of the investors of Horizon FX.

H. CLAIMS OF COMMISSIONED SALESPEOPLE

We have considered whether or not to include the sales agents in the *pro rata* distribution.

The Judicial Trustee's preliminary view was that commissioned salespeople should be treated the same as the other investors given that their "investments" represented commissions earned from the sale of partnership units in Elite FX.

At the Court hearing on March 20, 2009, certain creditors voiced their opposition to commissioned salespeople be treated the same as other investors. Based on this opposition the Court ordered that the Judicial Trustee withhold any distributions to commissioned sales people of Elite FX, with leave to the commissioned salespeople to make application to Court to seek orders allowing them to participate in the distributions.

The Judicial Trustee is not aware that any applications have been made by any commissioned salespeople to have their claims accepted and treated the same as the claims of the other investors.

The Judicial Trustee has received claims from 9 commissioned salespeople totalling \$122,502.71.

Given that there was opposition by certain investors at the hearing held on March 20, 2009, and that no commissioned salespeople have made an application to the Court to have their claim accepted and treated the same as the claims of the other investors, the Judicial Trustee is of the view that commissioned salespeople should not be allowed to share in any distributions being made by the Judicial Trustee.

I. PROPOSED FINAL DISTRIBUTION AND DISCHARGE

The Judicial Trustee has enclosed as Appendix A to this report a Final Statement of Receipts and Disbursements in this administration. This statement includes the estimated fees and disbursements, including legal fees, to obtain an Order authorizing a final distribution and to implement that final distribution.

The final *pro rata* distribution to proven claimants represents 10.4% of their Proven Claim resulting in a total distribution of 40.4% of their Proven Claim.

The Judicial Trustee's fees for this administration total \$120,000 which is less than 5% of the amount distributed to investors.

The legal fees and disbursements for this administration total \$62,000 which represents approximately 2.4% of the amount distributed to investors.

Upon the direction of the Court, the Trustee would pay the remaining administration costs, make a final distribution to the investors and three months thereafter would pay into Court any unclaimed distributions.

Dated at Vancouver, British Columbia, this 20th day of October, 2011.

Boale Wood & Company Ltd.

In its Capacity as Judicial Trustee and
Receiver of Elite FX Limited Partnership et al

Per:  John McEown, CA•CIRP

ELITE FX LIMITED PARTNERSHIP
Final Statement of Receipts & Disbursements

	Actual To Date	Proposed Final Distribution	Total
Cash Receipts			
Retainer from Elite FX limited Partnership	\$ 10,000.00	\$ -	\$ 10,000.00
Cash in Lawyers Trust Account	1,065,581.60		1,065,581.60
Cash on Hand	594.47	-	594.47
Cash in Bank Accounts	59,555.63	-	59,555.63
Funds recovered from Razor FX	1,557,795.49	-	1,557,795.49
Other Receivables	51,887.42	-	51,887.42
Miscellaneous Refunds	11,933.73	-	11,933.73
Interest	12,633.40	-	12,633.40
	2,769,981.74	-	2,769,981.74
Cash Disbursements			
Fees paid to Court	60.00	-	60.00
Bank Charges	88.00	-	88.00
Postage	456.36	-	456.36
Photocopies	122.85	-	122.85
Courier services	96.03	-	96.03
GST/HST paid on invoices	2,623.61	2,400.00	5,023.61
Judicial Trustee/Receiver fees	100,000.00	20,000.00	120,000.00
GST/HST paid on Judicial Trustee/Receiver fees	7,100.00	2,400.00	9,500.00
Legal fees and disbursements	41,708.80	20,000.00	61,708.80
	152,255.65	44,800.00	197,055.65
Net Cash Receipts Available For Distribution	2,617,726.09	(44,800.00)	2,572,926.09
Distributions to Investors			
Investors advancing funds after October 17, 2009	390,060.38	-	390,060.38
Investors advancing funds prior to October 17, 2009	1,480,152.70	702,713.01	2,182,865.71
	1,870,213.08	702,713.01	2,572,926.09
Closing Cash Balance	\$ 747,513.01	\$ (747,513.01)	\$ (0.00)