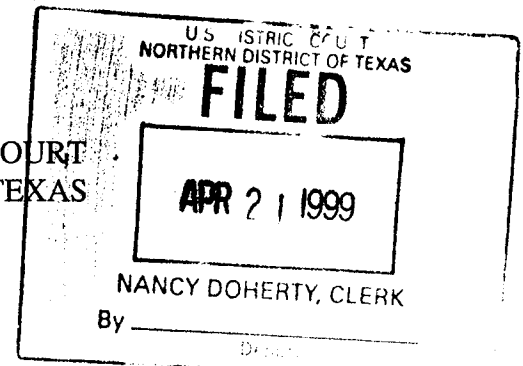


IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION



SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

VS.

FUNDING RESOURCE GROUP, a/k/a FRG Trust;
QUENTIN HIX; GENE COULTER; STEVEN C.
ROBERTS; MVP NETWORK, INC., a Texas corporation,
a/k/a MVP Network (Trust); FMCI TRUST; FUNDERS
MARKETING COMPANY, INC., a Texas corporation;
RAYMOND G. PARR; WILLARD VEARL SMITH;
EARL D. McKINNEY; FORTUNE INVESTMENTS,
LTD., a Nevada corporation; ROBERT CORD, a/k/a
Robert F. Schoonover, Jr.; WINTERHAWK WEST
INDIES, INC.; IGW TRUST; CAROLYN
DON HICKS; and CARL LaDANE WEAVER,

Defendants,

and

HOWE FINANCIAL TRUST, an Indiana corporation;
TREDS FINANCIAL TRUST; and
MARY ANN BAUCE, HAMMERSMITH TRUST, L.L.C.,
a Tennessee limited liability company; HAMMERSMITH
TRUST, LTD. an Irish Corporation; BRIDGEPORT
ALLIANCE, L.L.C., a Nevada limited liability company;
LANDFAIR CUSTODIAL SERVICES, INC., a Tennessee
corporation; MICROFUND, L.L.C., a Nevada limited
liability company; AMERICAN PACIFIC BANK &
TRUST, INC., an Antiguan corporation; EUROFUND
INVESTMENT INC., a Tennessee corporation;
B. DAVID GILLILAND; and MELODY ROSE,

Defendants Solely for Purposes
of Equitable Relief.

CIVIL ACTION NO.
3:98-CV-2689-X

MOTION FOR SHOW CAUSE ORDER AND BRIEF IN SUPPORT

TO THE HONORABLE JOE KENDALL, UNITED STATES DISTRICT JUDGE:

COMES NOW, Michael J. Quilling, the Receiver appointed by the court in the above captioned matter (hereinafter the "Receiver") and moves the court for an Order, Ordering B. David Gilliland, Hammersmith Trust, Ltd., an Irish Corporation and Hammersmith Trust, L.L.C., at Tennessee limited liability company, Defendants for the purposes of equitable relief, in the above referenced cause, to appear and show cause why they should not be held in contempt or why sanctions should not be decreed against them, for violating this Courts order of March 26, 1999¹ and would show unto the court as follows:

I.

CERTIFICATE OF CONFERENCE

1. On April 21, 1999, a telephone conference was attempted to Paul Lackey, counsel for B. David Gilliland, Hammersmith Trust, Ltd. and Hammersmith Trust, L.L.C.. (the "Affected Defendants") regarding the merits of this motion. Although Mr. Lackey has been called by the Receiver's counsel on several occasions, he has not returned those calls. Additionally, on April 21, 1999, a conference was conducted between Douglas Gordimer, counsel for the SEC and the Receiver's counsel. Mr. Gordimer indicated that the SEC was in agreement with relief sought in this motion. As no agreement can be reached with counsel for the Affected Defendants, it is submitted to the court for resolution.

¹. After a lengthy hearing, and as a result of substantial negotiation between counsel for various relief defendants, counsel for the Securities and Exchange Commission ("SEC") and Michael J. Quilling (the "Receiver"), the parties entered into the Agreed Order Modifying and Abating Orders of January 21, 1999, and March 11, 1999, Freezing Assets and Appointing Temporary Receiver (the "Abatement Order"). As is set forth in the Abatement Order, which is a matter of record in this case, the Freeze Order Parties (as described in the Abatement Order) were ordered to make certain payments to the Receiver.

II.

BACKGROUND FACTS

2. On January 21, 1999, this Court entered its Order Freezing Assets and Appending Temporary Receiver, and again on March 11, 1999 this Court entered another order Freezing Assets and Appointing Temporary Receiver (together, the "Temporary Receivership Orders") *inter alia* freezing the assets of the Affected Defendants and ordering an accounting. On March 22, 1999, a hearing was held regarding the Temporary Receivership Orders and the agreements that led to the Abatement Order were entered into. The Abatement Order provided in pertinent part:

"1. The Affected Parties shall pay to the Receiver, the total sum of Two million seven hundred forty five thousand dollars (\$2,745,000.00) as follows:

(a) Eight hundred fifty thousand dollars (\$850,000.00) shall be paid, by wire transfer to: Mellon Bank Pittsburgh, Pa., ABA Routing #043000261, for credit to: Merrill Lynch Account #101-1730, for further credit to Michael J. Quilling, Receiver, Account #540-07229 (the "Receiver's Account"), to be *received* therein, not later than 3:00 p.m. CST, on March 29, 1999, or at such time as agreed in writing between the Receiver and the Affected Parties. Before 3:00 p.m., CST on March 29, 1999, or at such time as agreed in writing between the Receiver and the Affected Parties, the Affected Parties shall identify to the Receiver, funds of \$1,395,000.00 U.S.D., by account number and location (the "Account"). The Account shall remain frozen pursuant to the Freeze Order until \$1,395,000.00 U.S.D. is transferred to the Receiver's Account.

(b) One million three hundred ninety-five thousand dollars (\$1,395,000.00) shall be paid, by wire transfer to the Receiver's Account, to be *received* therein, not later than 3:00 p.m. CST, on April 19, 1999.

(c) The Affected Parties are *initially* credited with Five Hundred Thousand dollars (\$500,000.00) from the sale of the Airplane², pursuant to the Airplane Order, *however*, if the net proceeds of the Airplane do not produce \$500,000.00 to the Receiver, then within seven (7) calendar days of the sale of the Airplane, the Affected Parties shall immediately pay, by wire transfer to the

². The Airplane is described in this Court's order of March 22, 1999, styled "Order Permitting Sale of Airplane" (the "Airplane Order").

Receiver's Account, the difference between the net proceeds of the sale of the Airplane and \$500,000.00.

2. Attached hereto as Exhibit "A" and incorporated by reference herein for all purposes is the Declaration of Clark B. Will, authenticating the various correspondence between the Receiver, and counsel for the Affected Parties regarding the Affected Parties failure to pay the funds as required under the Abatement Order. As can be seen from said declaration, as of the filing of this motion, the Affected Parties have failed and refused, and continue to fail and refuse to perform as ordered by this court.

III.

BRIEF OF AUTHORITIES AND ARGUMENT

3. A contempt of court is the disregard of judicial authority. *Sigety v. Abrams*, 632 F.2d 969, 976 (2nd Cir. 1980). Stated another way, Federal Courts have inherent powers necessary to achieve the orderly and expeditious disposition of their dockets and these powers include the authority to punish for contempt in order to maintain obedience to court orders and authority to impose reasonable and appropriate sanctions on errant lawyers practicing before the court. *Natural Gas Pipeline Co. of America v. Energy Gathering, Inc.*, 86 F.3d 464, 465 (5th Cir. 1996). Ms. Graner has more than shown her disregard of the judicial authority of this court.

4. The United States Court of Appeals for the Fifth Circuit has recognized that a contempt proceeding is an appropriate mechanism to enforce the rights of a court appointed receiver in the performance of his duties. *Santibanez v. Wier McMahon & Co.*, 105 F.3d 234 (5th Cir. 1997). Civil contempt proceedings are appropriate to protect the rights of parties to the litigation or those who have an interest in the subject matter of the lawsuit. *Louisiana Educ. Ass'n v. Richaland*

Parish School Bd., 421 F.Supp. 973, 975 (D.C. La. 1976). The Will Declaration shows a *prima facie* case that the Affected Parties have refused, and continue to refuse, to comply with the clear requirements of the Abatement Order. Accordingly, in order for the Receiver to perform his duties, the Receiver requests the assistance of the court.

IV.

PRAYER FOR RELIEF

5. WHEREFORE, PREMISES CONSIDERED, the Receiver prays this court to enter an order, ordering B. David Gilliland, Hammersmith Trust, Ltd. and Hammersmith Trust, L.L.C., to appear in person, before this court, then and there to show cause, if any there be, why sanctions should not be entered against them, and why they should not be held in contempt, for refusing to comply with the clear terms of the Abatement Order, and at the hearing, to find the Affected Parties in contempt, for failing to comply with the requirements of the Abatement Order, and ordering that the Affected Parties each be fined \$10,000.00 per day, until they purge themselves of contempt, and that the Affected Parties be ordered to pay the Receiver the costs incurred in obtaining such order, including, but not limited to, reasonable and necessary attorneys fees incurred, together with such other and further relief, both at law and in equity, to which the Receiver may justly show himself entitled.

Respectfully submitted,

QUILLING, SELANDER, CUMMISKEY, CLUTTS
AND LOWNDS, P.C.

by: 

Clark B. Will, P.C.

350 N. St. Paul, Ste. 2800

Dallas, Texas 75102

(214) 871-2100

(214) 871-2111 (facsimile)

ATTORNEYS FOR MICHAEL J. QUILLING
RECEIVER

V.

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing has been served upon all parties and counsel of record pursuant to Fed. R. Civ. P. 5.

DATED April 21, 1999.



Clark B. Will

Page 1

2. "Attached hereto as Exhibit A is a true and correct copy of a letter that I prepared and caused to be sent to Paul Lackey, on or about April 19, 1999.

3. "Attached hereto as Exhibit B is a true and correct copy of a letter that I received from Paul Lackey, on or about April 19, 1999.

4. "Attached hereto as Exhibit C is a true and correct copy of a letter that I received from Paul Lackey, on or about April 20, 1999.

5. "As of the making of this declaration, \$1,395,000.00 has not been received in the Receiver's account as required by the Abatement Order."

6. "I declare under penalty of perjury that pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct and this declaration was executed on ^{April 21, ahw}~~January 27~~, 1999, at Dallas, Texas."



Clark B. Will

Attorney for Michael J. Quilling, Receiver

QUILLING, SELANDER, CUMMISKEY, CLUTTS & LOWNDS

A PROFESSIONAL CORPORATION
ATTORNEYS AND COUNSELORS

ONE DALLAS CENTRE
350 NORTH ST. PAUL, SUITE 2800
DALLAS, TEXAS 75201-4240

CLARK B. WILL

TELEPHONE: (214) 871-2100
TELECOPIER: (214) 871-2111

April 19, 1999

Via Facsimile No. (214) 653-1015

Mr. Paul B. Lackey
Bickel & Brewer
4800 Bank One Centre
1717 Main Street
Dallas, Texas 75201

Re: Civil Action No. 3:98-CV-2689-X; *Securities and Exchange Commission v. Funding Resource Group, a/k/a FRG Trust, et al.*; United States District Court, Northern District of Texas, Dallas Division

Dear Paul;

As Michael J. Quilling (the "Receiver") is on the road until Thursday of this week, he has asked that I contact you regarding your clients' default under the Agreed Order Modifying and Abating Orders of January 21, 1999, and March 11, 1999, Freezing Assets and Appointing Temporary Receiver (the "Agreed Order"). We have not been able to verify, as of the time of the sending of this letter, that the \$1,395,000.00 payment has been received. The plain language of the Agreed Order requires that said amount be received in the Receiver's Account no later than 3:00 p.m., today.

Notwithstanding the tardy payment of the initial \$850,000.00 nor the utter failure of your client to fund the special frozen account with \$1,395,000.00, should the funds not be received today, as required by the Agreed Order, then a show cause hearing will be requested to the court. Please call me, and provide me with any confirmatory documentation that would reflect the funds have been delivered as required by the Agreed Order.

On a different note, there seems to be no interest in the Cessna 525, at least not at the price indicated by your clients. We have had only the one offer, and since it was far below what Mr. Gilliland represented the plane was worth, we countered at the number indicated in my letter to you. The buyer bought a different aircraft. There is the issue of an additional \$500,000.00 that needs to be addressed. Please give me your thoughts on that, as well.

Very truly yours,

QUILLING, SELANDER, CUMMISKEY,
CLUTTS & LOWNDS, P.C.

By:



Clark B. Will, P.C.

CBW/cam
Enclosures
cc: Robert A. Brunig

