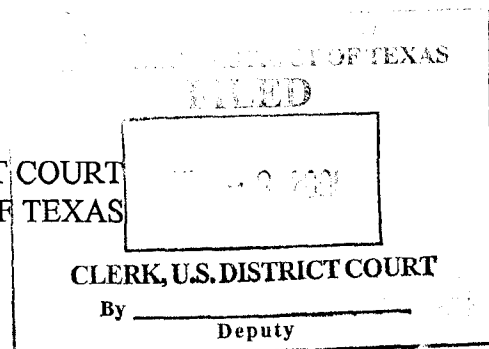


IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION



SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

VS.

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

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,

Defendants Solely for Purposes
of Equitable Relief.

**MOTION TO COMPEL RECONVEYANCE OF RECEIVERSHIP PROPERTY,
PAYMENT OF RENT AND VACATION OF PROPERTY BY
STRONG HEART, INC. AND BRIEF IN SUPPORT**

TO THE HONORABLE JEFF KAPLAN, UNITED STATES MAGISTRATE JUDGE:

COMES NOW, Michael J. Quilling in his capacity as Receiver for Howe Financial Trust
("Receiver") and files this his Motion to Compel Reconveyance of Receivership Property, Payment
of Rent and Vacation of Property by Strong Heart, Inc., and in support of such would show unto the

the Court as follows:

FACTUAL BACKGROUND

1. On November 13, 1998, the United States Securities and Exchange Commission ("SEC") initiated these proceedings and, in connection therewith, sought the appointment of a receiver. On November 13, 1998, the Court issued an Order Appointing Michael J. Quilling Receiver as to the Defendants and the Equity Relief Defendants named in the Complaint at that time ("Receivership Order"). One of the entities to which the receivership applies is Howe Financial Trust. On November 13, 1998 the Court also issued an Order Freezing the Assets of all the Defendants and Equity and Relief Defendants, including Howe Financial Trust ("Freeze Order").

2. Subsequent to being served with the Freeze Order and the Receivership Order, Howe Financial Trust engaged counsel and vigorously challenged the asset freeze, the receivership and the continuation of the receivership as to Howe Financial Trust.¹ Those efforts were unsuccessful. Specifically, at the conclusion of a hearing conducted on November 30, 1998, the Court ruled that the receivership would remain in place as to Howe Financial Trust and thereafter, on January 12, 1999 the Court entered its order continuing the receivership.

3. Subsequent to the Court's ruling on November 30, 1998, the Receiver and his accountants traveled to the offices of Howe Financial Trust in Elkhart, Indiana and met with various representatives of Howe Financial Trust to discuss its business operations, its assets and its liabilities. Specifically, the Receiver and his accountants met with Rodger Griggs, the so-called advisor to the Trust ("Griggs"), Art Edleman, Steve Gaby and Len Beiber, each of whom were

¹ By way of example, after being served with the SEC Complaint, the Freeze Order and the Receivership Order, Howe Financial Trust filed at least the following pleadings: (1) Emergency Motion to Dissolve Ex Parte TRO and to Stay Orders Pending Hearing; (2) Motion to Dismiss Without Leave to Amend; (3) Answer; (4) Motion to Abate and Modify Order Provisions; (5) Opposition to Motion for Preliminary Injunction, Motion for Appointment of Receiver, Motion for Asset Freeze and Motion to Expedite Discovery; and (6) Motion for Protective Order.

trustees of the Trust. Griggs told the Receiver that he could not act as trustee because he was a convicted felon.

4. Either in those initial meetings or in ones which occurred within a couple of months thereafter, the Receiver was advised by Griggs that Howe Financial Trust had been funding \$40,000 monthly payments with respect to a house allegedly owned and occupied by Griggs and his various family members. At no time was the Receiver told that the property was actually owned or under lease/purchase contract to Howe Financial Trust. In any event, the Receiver denied Griggs' request to continue utilizing Howe Financial Trust monies to make payments with respect to the house.

5. On January 5, 1999, upon information and belief, Griggs caused Strong Heart, Inc. to be incorporated in the State of Kentucky. In order to incorporate the entity, Griggs enlisted the services of James W. Conway, an attorney who had aided and abetted Howe Financial Trust in its bogus financial transactions and who the Receiver has sued under a number of theories. Griggs caused his brother, Don Griggs, to be named as president and his son-in-law, Shawn Shroyer, to be named as the secretary of the corporation. Regardless of who are the figurative officers, Griggs controls its affairs.

6. In late September 2000, in connection with performing other duties as receiver, the Receiver learned that Howe Financial Trust had originally contracted to acquire the house and that subsequent to the entry of the Receivership Order, unbeknownst to the Receiver, Griggs had caused the right to acquire the property to be transferred to Strong Heart, Inc. Specifically, as a result of further investigation by the Receiver, interviews of the realtor involved and a review of various subpoenaed documents, the following facts have been revealed:

- On March 12, 1998, Howe Financial Trust entered into a Contract to Purchase with Jack Warner for property having a street address of 58100 Pottawatomie, Ocoola, IN

for \$450,000 (the "Property"). The Property consists of approximately 17 acres and a 6000 square foot house with indoor pool. The Contract to Purchase was executed on behalf of Howe Financial Trust by Rodger Griggs, Agent.

- On March 12, 1998, Howe Financial Trust entered into a Real Estate Lease/Option Purchase Agreement with Jack Warner for the property pursuant to which Howe Financial Trust agreed to pay \$40,000 per month until the date of closing to occur on February 20, 1999 at which time all remaining amounts would be paid. The Lease/Option was executed by Griggs' wife, Julie Griggs, as Co-Trustee of Howe Financial Trust.
- Thereafter, Howe Financial Trust paid at least \$320,000 toward the purchase price prior to the appointment of the Receiver.
- On June 1, 1999, after entry of the Receivership Order and without the consent or knowledge of the Receiver, the rights of Howe Financial Trust under the Real Estate Lease/Option Agreement were assigned to Strong Heart, Inc. No consideration was paid by Strong Heart, Inc. to Howe Financial Trust for the assignment.
- On June 1, 1999, after entry of the Receivership Order and without the consent or knowledge of the Receiver, Strong Heart, Inc. closed the purchase of the Property and was given credit for the \$320,000 paid by Howe Financial Trust to Jack Warner. No consideration was paid by Strong Heart, Inc. to Howe Financial Trust for the credit and use of trust funds.
- On June 1, 1999, Strong Heart, Inc., after entry of the Receivership Order and without the consent or knowledge of the Receiver, received a Warranty Deed from

Jack Warner to the Property. To date, the Property remains titled in the name of Strong Heart, Inc.

- At all times subsequent to November 30, 1998, including June 1, 1999, Rodger Griggs, Julie Griggs and Don Griggs were each aware of the existence of the Receivership Order and the Receiver.
- At all times subsequent to November 30, 1998 to the present, Griggs and his followers have been in possession of the property and have occupied it to their benefit and to the detriment of the receivership estate. No funds have been paid to the receivership estate for such use and enjoyment.

7. Subsequent to learning the foregoing facts, the Receiver and his attorneys met with Griggs at the Property on November 9, 2000 to discuss resolution of the receivership's interest in the Property and a repayment of the monies at issue. During the meeting, Griggs agreed that he or one of his companies would pay the Receiver \$320,000.00 to resolve all issues relating to the Property and that he would do so on or before December 1, 2000. Despite making such an agreement, Griggs failed to do so and, instead, has embarked on a pattern of consistent delays designed to retain possession and use of the Property at the expense of the receivership estate and to the detriment of defrauded investors.

8. Accordingly, the Receiver seeks an order from this Court requiring Strong Heart, Inc. to immediately:

- a. Execute a Warranty Deed to the Receiver thereby conveying the Property to the receivership estate so that it can be marketed for sale. In that regard, Strong Heart, Inc. can have a claim against the receivership estate for any legitimate

amounts paid by Strong Heart, Inc. for the Property in connection with acquiring title on June 1, 1999.

- b. Pay rent to the Receiver in an amount to be determined by the Court for the period of time from June 1, 1999 to present.
- c. Vacate the Property.
- d. Provide evidence to the Receiver that the Property is insured and cause the Receiver to be named as an additional loss payee.

Each of the components of the requested order is necessary to protect the receivership estate's interest in the Property.

9. In addition, the Receiver seeks an order from this Court requiring Rodger Griggs, personally, to pay all attorney's fees and costs incurred by the Receiver in investigating the transfer of the Property and in bringing this Motion. Such a requested payment is an appropriate sanction for the conduct of Griggs as outlined above.

ARGUMENTS AND AUTHORITIES

10. The Receivership Order provides in pertinent part as follows:

B. The Temporary Receiver shall take custody, possession and control of any and all assets, monies, securities and properties, real and personal, tangible and intangible, of whatever kind and description, and wherever situated, belonging to . . . Howe and Treds (hereinafter referred to as "Receivership Assets"), as well any documents relating to the Receivership Assets.

* * *

D. All persons and entities, including . . . Howe and Treds, and their officers, agents, servants, employees, attorneys, and all persons in active concert or participation with

them . . . who receive actual notice of this Order Appointing Temporary Receiver, by personal service or otherwise, shall promptly deliver and surrender to the Temporary Receiver all Receivership Assets in the possession of or under the control of any one or more of them and shall promptly surrender all books and records of any kind pertaining or belonging to Defendants which relate to Receivership Assets.

E. All persons and entities, including Defendants and their officers, agents, servants, employees, attorneys, creditors and all other persons with actual notice of this Order Appointing Temporary Receiver, be and hereby are enjoined from in any way disturbing the Receivership Assets . . .

11. Similarly, the Freeze Order provides in pertinent part as follows:

1. Defendants Funding Resource Group, a/k/a/ a FRG Trust . . . and relief Defendants Howe Financial Trust and Treds Financial Trust, individually and jointly, and their agents, employees, servants, attorneys and all person in active concert or participation with him who receive actual notice of this Order Freezing Assets, by personal service or otherwise, be and hereby are restrained and enjoined from, directly or indirectly, making any payment or expenditure of funds, effecting any sale, gift, hypothecation or other disposition of any asset, pending a showing to this Court that he, she or it has sufficient funds or assets to satisfy all claims arising from the violations of the federal securities laws alleged in Plaintiff Securities and Exchange Commission's Complaint, or the posting a bond or surety sufficient to assure payment of any such claim.

Both the Freeze Order and the Receivership Order were made permanent and extended by virtue of the Court's Order of January 12, 1999.

12. Howe Financial Trust, including its advisor, Griggs and its co-trustee Julie Griggs undeniably had notice of the foregoing provisions of the Receivership Order and the Freeze Order provisions and, indeed, undertook vigorous efforts to have them dissolved and/or modified. Don Griggs, an employee of Howe Financial Trust likewise had notice of the provisions. However, in direct contravention of these Orders, Griggs and his family members clandestinely orchestrated a conveyance of the Property which undeniably was, and is, a receivership asset purchased with funds from defrauded investors. Their actions were contemptuous and wrongful and should be immediately reversed by this Court.

13. In this instance, it is clear that Strong Heart, Inc. was, at best, the gratuitous donee of at least \$320,000.00 of funds belonging to Howe Financial Trust. Under such circumstances it is clear that the Property is impressed with a constructive trust in favor of the Receiver. *See i.e., SEC v. Better Life Club of America*, 995 F. Supp. 167, 180 (D.D.C. 1998). The only relevant way to arguably avoid the constructive trust is if the transferee (Strong Heart, Inc.) is a bona fide purchaser. It cannot be seriously argued that Strong Heart, Inc. is a bona fide purchaser. It gave no consideration for the transfer and had complete knowledge of the receivership.

14. A constructive trust also arises when a party receives property as the result of a breach of fiduciary duty by the party conveying the property. *Harris Trust and Savings Bank v. Salomon Smith Barney, Inc.*, 530 U.S. 238, 120 S. Ct. 2180, 2189 (2000); *Dyll v. Adams*, 167 F. 3d 945 (5th Cir. 1999). Here, it is undeniable that Griggs and his wife each owed a fiduciary duty to Howe Financial Trust and the innocent investors who sent their money to Howe Financial Trust. It is also undeniable that diversion of funds to purchase a house in the name of the trust, yet for the use and benefit of the so-called trustee and advisors is a breach of that duty. An even more egregious breach


occurred when Griggs and his wife conspired with other family members to transfer the Property for no consideration.

15. A constructive trust is usually created where it would be inequitable for a party to retain possession of the property at issue. The reason for the creation of the trust is to prevent unjust enrichment. *Dyll v. Adams*, 167 F. 3d at 948. Here, in order to rectify the unjust enrichment which has been bestowed upon Strong Heart, Inc. by virtue of the wrongdoing of Griggs and his wife, it is imperative that the Court impose a constructive trust and issue an order consistent with the relief requested by the Receiver.

WHEREFORE, PREMISES, CONSIDERED, the Receiver prays that the Court set this matter for an evidentiary hearing and that upon final hearing the Court issue an order as requested above, and for such other and further relief, general or special, at law or in equity, to which the Receiver may show himself justly entitled.

Respectfully submitted,

QUILLING, SELANDER, CUMMISKEY
& LOWNDS, P.C.
2001 Bryan Street, Suite 1800
Dallas, Texas 75201
(214) 871-2100 (Telephone)
(214) 871-2111 (Facsimile)

By: 
Michael J. Quilling
State Bar No. 16432300

ATTORNEYS FOR RECEIVER

CERTIFICATE OF CONFERENCE

The SEC does not oppose the relief requested by the Receiver. The relief requested does not effect any other Defendants and they were not contacted because they have no interest in the outcome of the Motion. Despite repeated attempts to reach Rodger Griggs to discuss resolution he could not be reached. It is presumed he opposes the Motion.



Michael J. Quilling

CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of February, 2000 a true and correct copy of the foregoing document was served via first class mail, postage pre-paid, on:

Robert B. Brunig
Securities & Exchange Commission
801 Cherry Street, 19th Floor
Fort Worth, Texas 76102

Deborah Goodall
Goodall & Sooter
12830 Hillcrest Rd., Suite 111
Dallas, Texas 75230

Wendell A. Odom, Jr.
440 Louisiana, Suite 800
Houston, Texas 77002

Dan R. Waller
Secore & Waller, LLC
13355 Noel Road, Suite 2290
Dallas, Texas 75240

S. Cass Weiland
Sheinfeld, Maley & Kay, P.C.
1700 Pacific Avenue, Suite 4400
Dallas, Texas 75201-4618

And via first class mail and overnight courier upon:

Rodger Griggs
58100 Pottawatomie
Osceola, Indiana 46561

James Conway
Registered Agent for Strong Heart, Inc.
279 South Buckman Street
Shepherdsville, Kentucky 40165

Strong Hart, Inc.
58100 Pottawatomie
Osceola, Indiana 46541



Michael J. Quilling