

U.S. DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
**FILED**  
AUG 15 2001  
CLERK, U.S. DISTRICT COURT  
By \_\_\_\_\_  
Deputy



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

### Defendants Solely for Purposes of Equitable Relief.

TO THE HONORABLE JEFF KAPLAN, UNITED STATES MAGISTRATE JUDGE:

COMES NOW, Michael J. Quilling (“Receiver”) and files this his Unopposed Motion to Approve Treatment of Sims’ Claim and in support of such would show unto the Court as follows:

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. By Order dated November 13, 1998, the Court appointed Michael J. Quilling as Receiver and he has functioned in that capacity since that time. As set forth in the Receiver Order (“Receivership Order”), the receivership applies to Howe Financial Trust (“Howe”).

2. On March 9, 2001, the Receiver filed his Unopposed Motion to Designate

Receivership Estates. By Order entered March 13, 2001, the Court established four different receivership estates with respect to these proceedings. One of those established is the Howe Financial Trust Receivership Estate. It is comprised of the assets and claims with respect to Howe.

3. On January 12, 2001, the Receiver filed his Unopposed Motion to Establish Claim Procedures and to Approve Claim Form. By Order entered January 17, 2001, the Court approved an official claim form to be used in these proceedings and established procedures by which claims would be processed by the Receiver. The deadline for submitting the claim form to the Receiver was established as March 31, 2001.

4. On June 6, 2001, the Receiver filed his Statement of Allowed Claims filed against the Howe Financial Trust Receivership Estate and his Objections to Claims. After the hearing held on July 13, 2001 to consider the Receiver's Objections to Claims, on July 13, 2001 Judge Kaplan issued Findings of Fact and Recommendations which were adopted by the Court by Order dated July 25, 2001. By virtue of these rulings, all allowed claims against the Howe Financial Trust Receivership Estate have now been established.

5. One of the allowed claims was in favor of Nancy Sims ("Sims"), in the amount of \$100,000.00.

#### **Nancy Sims' Claim**

6. Sims made two investments with Howe. The first investment was in the amount of \$57,000.00 and was used to purchase certain real property. The real property, commonly described as 1721 South Main Street, Elkhart, Elkhart County, Indiana (the "Property"), was purchased jointly with Howe with title vested in the name of Howe and Nancy Sims Trust. The real property is one of the properties that the Receiver has taken control over as part of his duties.

7. The second investment was in the amount of \$43,000.00 in the form of a check made payable to Howe.

#### **Resolution of Sims' Claim**

8. Sims is an elderly investor residing in Chicago, Illinois. The Receiver has allowed and the Court has approved her claim of \$100,000.00.

9. The Receiver has offered to convey the property to Sims in satisfaction of \$57,000.00 of her total \$100,000.00 claim. However, she does not possess the expertise or resources to maintain and/or sell the property.

10. After numerous discussions, Sims and the Receiver have agreed, subject to Court approval, to treat her claim in two portions. First, the Receiver will continue to market the Property for sale and Sims will convey her interest in the Property to the Receiver. In the event of a sale, all net proceeds up to \$57,000.00 will be paid to Sims.<sup>1</sup> All net proceeds in excess of \$57,000.00 will be retained by the Howe Financial Trust Receivership Estate. In the event the net sales proceeds are less than \$57,000.00, Sims' \$57,000.00 claim will be completely extinguished by that amount, regardless of the net sales price. Second, the balance of her \$100,000.00 claim (\$43,000.00) will be treated just like all other investor claims and will be paid on a pro-rata basis. Attached hereto as Exhibit "1" and incorporated by reference is a true and correct copy of the letter acknowledging the agreement between the Receiver and Sims.

11. Court approval of this agreement will allow for an expedited distribution to the investors/creditors of Howe. The Receiver has filed separately his Interim Report and Proposed Interim Distribution Plan which is contingent upon this Court's approval of the treatment of Sims'

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<sup>1</sup>Net proceeds shall be equal to the gross sales price of the Property less any maintenance, marketing, closing and or legal costs associated with the sale.

claim. Should the Court deny the proposed treatment, Sims' claim will be contingent upon the sale of the Property and her claim to share pro rata with the rest of the investors/creditors will be unknown, effectively preventing any distribution to investors until the Property is sold.

**Conclusion**

12. WHEREFORE, PREMISES CONSIDERED, the Receiver prays that upon final hearing and consideration of this motion that the Court authorize the Receiver to treat Sims' claim in two portions. First, Sims be allowed a claim not to exceed \$57,000.00 against the net proceeds of the sale of the Property. Second, Sims be allowed a claim in the amount of \$43,000.00 against the Howe Financial Trust Receivership Estate to be paid on a pro rata basis with the rest of the investors/creditors. In addition, the Receiver prays 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.

By: 


Michael J. Quilling  
State Bar No. 16432300  
D. Dee Raibourn, III  
State Bar No. 24009495

2001 Bryan Street, Suite 1800  
Dallas, Texas 75201  
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(214) 871-2111 (Fax)

ATTORNEYS FOR THE RECEIVER

### CERTIFICATE OF CONFERENCE

I certify that prior to filing this Motion I conferred with Robert Brunig of the SEC and he does not oppose the Motion. None of the Defendants represented by counsel are affected by the Motion and it is presumed that they do not oppose it. Accordingly, the Motion is presented as unopposed. In an effort to save estate resources, the Receiver has not contacted each investor holding an allowed claim against the Howe Financial Trust Receivership Estate, but, as indicated below, each claimant is being served with a copy of this Motion.

  
D. Dee Raibourn, III

### CERTIFICATE OF SERVICE

I hereby certify that on the 15<sup>th</sup> day of August, 2001 a true and correct copy of the foregoing document was served via first class mail, postage pre-paid, to the following parties:

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


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

Raymond Parr  
8524 Hwy 6 North  
Suite 340  
Houston, Texas 77095

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

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

And each investor on the attached list.

  
D. Dee Raibourn, III

Keith Abbott  
3853 E 30th Road  
Sheridan, IL 60551

Beverly J Bakke  
550 75th St #205  
Downers Grove, IL 60516

Delores J Branka  
351 Constance Lane  
Chicago Heights, IL 60411

Thomas Cardosi  
1131 Coram St  
Park Hills, KY 41011

Angelo L Clementi  
13 N Irving Ave  
Hillside, IL 60162

Michael P Flick  
2570 Hwy 120 North  
Lake Geneva, WI 53147

Bertha Anne Godette  
17721 S 67th Court  
Tinley Park, IL 60477

William T Hock  
6930 W Touhy Ave  
Niles, IL 60714

Richard Iwanski, SR  
C/O Ronald Iwanski  
2210 E Sand Lake Road  
Lindenhurst, IL 60046

Johnny Mark  
56761 Raider Dr  
Elkhart, IN 46516

Kiran & Nisha Patel  
2030 Hgwy 41 North  
Henderson, KY 42420

Rudolph A Rueff  
2400 S Finley Rd #138  
Lombard, IL 60148

Ann Saele  
C/O Sandra Saele - Markvart  
197 Tuma Road  
Yorkville, IL 60560

Wayne & Mary Silvey  
16 Donna Dr  
Normal, IL 61761

Wallace D Simpson  
127 E Lasalle Ave  
Mishawaka, IN 46545

Nancy Sims  
9049 S Sacramento  
Evergreen Pk, IL 60805

Joseph Studzinski  
939 Stratford Court  
Grayslake, IL 60030

Tim Taylor  
215 W Sycamore St  
Kokomo, IL 46903

Martha A Todd  
410 Westgate  
Park Forest, IL 60466

John V Tuider  
5529 Fairmont Ave  
Downers Grove, IL 60516

Howard L Warber  
412 Kishwaukee Dr  
Sycamore, IL 60178

**QUILLING, SELANDER, CUMMISKEY & LOWNDS**

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ATTORNEYS AND COUNSELORS

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

August 6, 2001

**VIA FACSIMILE AND**  
**FIRST CLASS MAIL**

Ms. Nancy Sims  
9049 South Sacramento  
Evergreen Park, Illinois 60805

Re: Civil Action No. 3-98CV2689-M; *Securities and Exchange Commission vs. Funding Resource Group, et al* (N. D. Tex.)

Dear Ms. Sims:

This letter will confirm our agreement regarding your claim against the Howe Financial Trust receivership estate. We have agreed to the following terms:

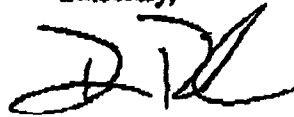
- 1) You will have a general claim against the estate in the amount of \$43,000.
- 2) You have a claim against the net proceeds from the sale of real property located at 1725 South Main Street, Elkhart, Indiana up to a maximum of \$57,000. Should the net proceeds be more than this amount, the difference will be placed into the receivership estate. Should the net proceeds be less than \$57,000, the entire proceeds will be distributed to you.
- 3) The net proceeds is defined as the gross sales price of the property less any commissions, marketing costs, closing costs, insurance, maintenance, and attorney fees that are incurred during the course of marketing and selling the property.
- 4) You have agreed to undertake reasonable efforts to aid in the sale of the property. This includes completing the necessary documents to transfer ownership of the property.
- 5) This agreement is subject to court approval.

I believe that this accurately reflects our agreement. Should you disagree with any of the foregoing, please notify me immediately so that we may discuss the issue(s). Alternatively, please sign below acknowledging your agreement.

August 6, 2001  
Ms. Nancy Sims  
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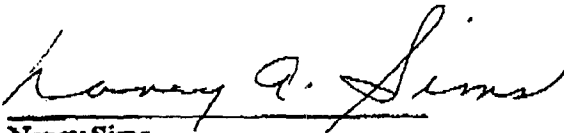
For clarification, your general claim against the estate (Item 1), will be paid on a pro rata distribution based on the total amount available for distribution divided by the amount of allowed claims. Should you have any questions, please do not hesitate to contact me.

Sincerely,



D. Dee Raibourn, III

Agreed to:

  
Nancy Sims

DDR/dh