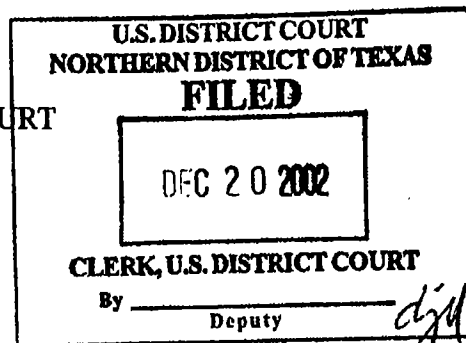


ORIGINAL

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



SECURITIES AND EXCHANGE  
COMMISSION

Plaintiff,

VS.

FUNDING RESOURCE GROUP  
a/k/a FRG TRUST, ET AL.

Defendants.

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NO. 3-98-CV-2689-M



**FINDINGS AND RECOMMENDATION OF THE  
UNITED STATES MAGISTRATE JUDGE**

Michael J. Quilling, as Receiver for Howe Financial Trust, has filed his final report and proposed distribution plan. This matter has been referred to U.S. Magistrate Judge Jeff Kaplan for recommendation pursuant to 28 U.S.C. § 636(b)(1)(B) and a standing order of reference dated June 16, 2000.

I.

This is a civil action brought by the Securities and Exchange Commission ("SEC") against 16 defendants and 13 equity relief defendants arising out of the sale of non-existent "prime bank" securities. The SEC alleges that defendants raised more than \$14 million from unwitting investors by making false representations about the use and safety of investor proceeds and the expected rate of return on their investments. After more than three years of litigation, the SEC either obtained default judgments or settled with all defendants and equity relief defendants. Agreed final judgments and orders of dismissal were entered on March 6, 2002.

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Howe Financial Trust is an equity relief defendant in this case. On November 13, 1998, Michael J. Quilling was appointed as Receiver for all defendants and equity relief defendants. The order of appointment provides, in relevant part:

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 kinds and description, and wherever situated, belonging to [Howe] . . . (hereinafter referred to as "Receivership Assets"), as well as any documents relating to the Receivership Assets.

ORDER APP. TEMP. RECEIVER, 11/13/98 at 2-3. Through October 31, 2002, the Receiver has taken possession of and administered cash and other assets belonging to the Howe Financial Trust Estate totaling \$1,868,048.35.<sup>1</sup> (*See* Rec. Mot., Exhs. 1 & 2). The cost of administration totals \$578,580.76.<sup>2</sup> (*See id.*). The court previously approved claims totaling \$2,353,244.08 and the Receiver has made an interim distribution of \$750,000.00. *See* FINDINGS & REC. OF MAG. JUDGE, 7/13/01 & 9/21/01, *adopted as modified*, ORDERS, 7/25/01, 9/21/01 & 10/19/01. This leaves \$488,467.59 available for final distribution to investors on a *pro rata* basis. Coupled with the prior interim distribution, each claimant will receive approximately 53.65% of their claim.

The Receiver was ordered to post a copy of his final report and proposed distribution plan on his website with instructions to all interested parties that any objections must be filed by December 16, 2002. No objections have been received by the Receiver or the court. A hearing was held on December 20, 2002. The Receiver notified all interested parties of the hearing date

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<sup>1</sup> This sum does not include \$250,049.18 in legal and accounting fees repaid by the Hammersmith Trust Estate. In addition, the Receiver collected \$644.79 in rent and \$51,000.00 in sales proceeds on certain real property located in Elkhart, Indiana after his final report and proposed distribution plan was filed. The sales proceeds were paid to Nancy Sims pursuant to a prior court order. The rent payment was added to the assets available for distribution to defrauded investors.

<sup>2</sup> This sum assumes payment of \$65,451.10 in unpaid legal and accounting fees and the allowance of a \$5,000.00 reserve. It is also net of the \$250,049.18 repaid by the Hammersmith Trust Estate.

by posting notice on his website. No one appeared at the hearing or otherwise objected to the report and proposed distribution plan. The Securities and Exchange Commission, through its regional counsel, has consented to the relief sought.

## II.

In his final report and proposed distribution plan, the Receiver seeks authorization to: (1) pay \$46,145.30 in attorneys's fees and expenses and \$19,305.80 in accounting fees; (2) reserve \$5,000.00 in attorney's fees and expenses necessary to close the Estate; and (3) distribute all remaining receivership assets to investors on a *pro rata* basis. The court will address each request in turn.

### A.

The Receiver seeks \$46,145.30 for legal services performed and costs incurred on behalf of the Howe Financial Trust Estate from July 31, 2001 through October 31, 2002. Although no investors have objected to this fee request, the court must nevertheless carefully examine the application to determine whether the time spent, services performed, expenses incurred, and hourly rates charged by the Receiver are justified under the factors set forth in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974).

To date, the Receiver has been paid approximately \$2.4 million for services performed and expenses incurred on behalf of the Howe Financial Trust, Hammersmith Trust, Funding Resource Group, and Cord/Winterhawk Estates. Of this sum, \$338,388.66 has been allocated to the Howe Financial Trust Estate. Although the Receiver has always maintained separate accounts for each estate, this procedure was not formalized until March 12, 2001 when the court required him to designate four separate receivership estates for purposes of handling claims and making distributions to defrauded investors. *See* ORDER, 3/12/01. In reconciling his records, the Receiver

determined that \$806,296.82 had been advanced by other estates to pay fees and expenses properly attributable to the Hammersmith Trust Estate.<sup>3</sup> The Receiver then promptly moved to allocate fees between the various receivership estates. By order dated April 13, 2001, the court authorized the Receiver to cause the Hammersmith Trust Estate to repay advances made by the other estates, including \$250,049.18 to the Howe Financial Trust Estate. *See* ORDER, 4/13/01. These payments will be made “at such time as such funds are needed to make interim and final distributions to investors as may hereafter be approved by the Court.” *Id.*

As a result of the Receiver’s diligent efforts, over \$1.8 million in cash and other assets have been recovered on behalf of defrauded investors of the Howe Financial Trust Estate. If the current fee application is granted in its entirety, the attorney’s fees and expenses incurred by the Estate will total \$384,533.96, or less than 21% of the total recovery. This is manifestly reasonable, especially in light of the difficulties encountered by the Receiver in tracing investor proceeds and liquidating concealed assets. Moreover, the court finds that the time spent, services performed, expenses incurred, and hourly rates charged by the Receiver are justified under the factors set forth in *Johnson*. Accordingly, the Receiver should be authorized to pay the law firm of Quilling, Selander, Cummiskey & Lownds, P.C. the sum of \$46,145.30 in attorney’s fees and expenses.

The Receiver also seeks \$19,305.80 in accounting fees incurred from February 1, 2002 through October 31, 2002. To date, the court has authorized payment of accounting fees totaling \$529,148.90. Of this sum, \$99,844.51 has been allocated to the Howe Financial Trust Estate. The court finds that the additional fees requested by the Receiver are reasonable and were

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<sup>3</sup> This sum represents: (1) 317,857.87 advanced by the Cord/Winterhawk Estate; (2) \$238,389.77 advanced by the Funding Resource Group Estate; and (3) \$250,049.18 advanced by the Howe Financial Trust Estate.

necessarily incurred for the preparation of tax returns and other accounting services. Therefore, the Receiver should be authorized to pay the firm of Litzler, Senger, Shaw & McKenney the sum of \$19,305.80.

B.

The Receiver estimates that he will incur another \$5,000.00 in legal fees and expenses for preparing and mailing distribution checks, performing final bank reconciliations, and communicating with claimants. The court finds that these fees are reasonable and the anticipated services necessary to close the Receivership Estate. Accordingly, the Receiver is authorized to reserve this sum from funds available for final distribution.

C.

The court previously approved 24 claims totaling \$2,353,244.08 and the Receiver has made an interim distribution of \$750,000.00. There is currently \$488,467.59 available for final distribution on a *pro rata* basis. See *SEC v. Forex Asset Management Co.*, 242 F.3d 325, 331 (5th Cir. 2001) (approving *pro rata* distribution to investors). Therefore, each claimant should be paid in accordance with the schedule attached hereto as Exhibit "A." The Receiver should issue distribution checks to each claimant in the amounts set forth in the schedule. The checks shall be void if not cashed within 45 days from the date of issuance. The Receiver should be authorized to send a cover letter to each claimant in the form attached to his report.

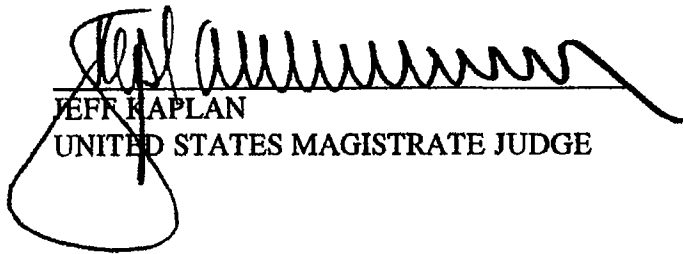
**RECOMMENDATION**

The court should approve the Receiver's final report and proposed distribution plan in accordance with the above recommendation.

The Receiver is ordered to post a copy of this report and recommendation on his website, [www.secreceiver.com](http://www.secreceiver.com). Any claimant or interested party may file written objections to this

recommendation by January 10, 2003. The failure to file written objections shall bar the aggrieved party from appealing the factual findings and legal conclusions of the magistrate judge that are accepted or adopted by the district court, except upon grounds of plain error or manifest injustice. *See Douglass v. United Services Automobile Ass'n*, 79 F.3d 1415, 1417 (5th Cir. 1996).

DATED: December 20, 2002.



JEFF KAPLAN  
UNITED STATES MAGISTRATE JUDGE

## Howe Investor Claims and Final Distribution

Last Name	First Name	Agreed Claim	Final Distribution Amount
Abbott	Keith	\$ 107,750.00	\$ 22,365.88
Bakke	Beverly J	\$ 7,875.00	\$ 1,634.63
Branka	Delores J & Edward(Deceased)	\$ 44,258.34	\$ 9,186.79
Cardosi	Thomas	\$ 90,000.00	\$ 18,681.48
Clementi	Angelo L	\$ 65,000.00	\$ 13,492.18
Flick	Michael P	\$ 100,000.00	\$ 20,757.20
Flick	Michael P	\$ 150,000.00	\$ 31,135.80
Godette	Bertha Anne	\$ 19,750.00	\$ 4,099.55
Hock	William T	\$ 37,510.92	\$ 7,786.22
Iwanski, SR	Richard(Deceased)	\$ 36,667.00	\$ 7,611.04
Mark	Johnny	\$ 6,000.00	\$ 1,245.43
Patel	Kiran & Nisha	\$ 500,000.00	\$ 103,786.01
Rueff	Rudolph A	\$ 27,500.00	\$ 5,708.23
Saele	Ann & Joseph(Deceased)	\$ 70,000.00	\$ 14,530.04
Silvey	Wayne&Mary	\$ 363,159.67	\$ 75,381.78
Simpson	Wallace D	\$ 15,000.00	\$ 3,113.58
Sims	Nancy	\$ 43,000.00	\$ 8,925.60
Studzinski	Joseph&Hazel	\$ 163,641.90	\$ 33,967.48
Taylor	Tim	\$ 49,000.00	\$ 10,171.03
Taylor	Tim	\$ 200,000.00	\$ 41,514.40
Taylor	Tim	\$ 170,000.00	\$ 35,287.24
Todd	Martha A	\$ 9,875.00	\$ 2,049.77
Tuider	John V	\$ 9,875.00	\$ 2,049.77
Warber	Howard L	\$ 67,381.25	\$ 13,986.46

Total	\$ 2,353,244.08	\$ 488,467.59
Distribution Amount	\$ 488,467.59	
Distribution %	20.757201%	

EXHIBIT "A"