

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

SECURITIES AND EXCHANGE
COMMISSION

Plaintiff,

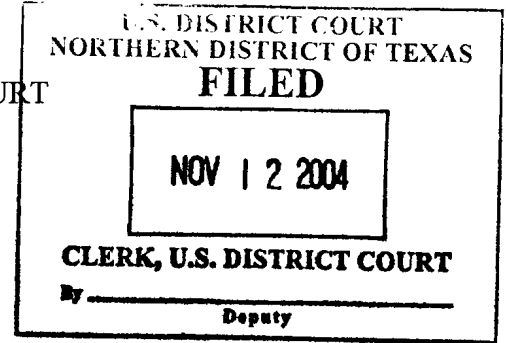
VS.

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 the Hammersmith Trust Estate, has filed: (1) a final report and proposed distribution plan; and (2) an application for approval of \$127,686.48 in attorney's fees and expenses incurred on behalf of the Estate. 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. This conduct, if proved, constitutes a violation of the federal securities laws.¹

¹ The SEC alleges violations of Sections 5(a), (c) & 17(a) of the Securities Act of 1933, 15 U.S.C. §§ 77e(a), (c) & 77q(a), Section 10(b) of the Securities and Exchange Act of 1934, 15 U.S.C. § 78j(b), and Securities and Exchange Commission Rule 10b-5, 17 C.F.R. § 240.10b-5. (Plf. Third Am. Compl. ¶ 3).

Hammersmith Trust, L.L.C., Hammersmith Trust, Ltd., Bridgeport Alliance, L.L.C., Landfair Custodial Services, Inc., Microfund, L.L.C., American Pacific Bank and Trust, Inc., Eurofund Investment, B. David Gilliland, and Melody Rose, collectively referred to as the "Hammersmith Trust Estate," are named defendants in this case. On January 21, 1999, Michael J. Quilling was appointed as Receiver for Hammersmith Trust, L.L.C. The order of appointment authorizes the Receiver to:

take custody, possession and control of all assets, monies, securities and properties, real and personal, tangible and intangible, of whatever kind and description and wherever situated, belonging to Hammersmith Trust, L.L.C. or in which Hammersmith Trust, L.L.C. has any interest whatsoever ("Receivership Assets"), as well as any documents relating to the Receivership Assets.

ORDER, 1/21/99 at 3. Through September 15, 2004, the Receiver has recovered cash and other assets belonging to the Hammersmith Trust Estate totaling \$5,072,954.49 and made disbursements on behalf of the Estate totaling \$3,316,987.81.² By separate motion, the Receiver has requested authority to pay \$127,686.48 in attorney's fees and expenses and to reserve \$5,000.00 for future administrative expenses. If the court approves this fee application, \$1,623,280.20 would be available for final distribution to claimants on a *pro rata* basis. The court previously approved claims totaling \$28,438,498.00. *SEC v. Funding Resource Group*, 2004 WL 1189996 (N.D. Tex. May 27, 2004), *rec. adopted as modified*, 2004 WL 1882972 (N.D. Tex. Aug. 20, 2004). Therefore, each claimant will receive approximately 5.7% 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 October 29, 2004. No objections have been received by the court or the Receiver. A hearing was held on

² These receipts and disbursements include \$1,500,000.00 paid directly to investors by Landfair Custodial Services, Inc.

November 12, 2004. The Receiver notified all interested parties of the hearing date by posting notice on his website. No one appeared at the hearing or otherwise objected to the final report and proposed distribution plan. The SEC, through its regional counsel, has consented to the relief requested.

II.

In his final report and proposed distribution plan, the Receiver seeks authorization to: (1) pay \$127,686.48 in attorneys's fees and expenses; (2) reserve \$5,000.00 for future administrative expenses; 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 \$124,674.00 in attorney's fees incurred on behalf of the Hammersmith Trust Estate from December 15, 2000 through September 15, 2004, and \$3,012.48 in expenses incurred on behalf of the Estate from August 1, 2001 through September 15, 2004. Although no investors have objected to this request, the court nevertheless must carefully examine the fee 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 \$2,649,738.28 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, \$1,330,834.67 has been allocated to the Hammersmith 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.³ 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. *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 \$5 million in cash and other assets have been recovered on behalf of defrauded investors of the Hammersmith Trust Estate. If the current fee application is granted in its entirety, the attorney's fees and expenses incurred by the Estate will total \$1,463,521.15, or less than 30% of the total recovery. Although this fee-to-recovery ratio is slightly higher for the Hammersmith Trust Estate than the other receivership estates, it is manifestly reasonable, especially in light of the difficulties encountered by the Receiver in tracing investor proceeds and liquidating concealed assets. (*See* Heldmyer Decl. at 2-4, ¶¶ 3-7). 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., now known as Quilling Selander Cummiskey Lownds, P.C., the sum of \$127,686.48 in attorney's fees and expenses.

B.

The Receiver estimates that he will incur another \$5,000.00 in legal fees and expenses for preparing and mailing distribution checks, reconciling bank statements, and communicating with

³ 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.

investors. 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 claims totaling \$28,438,498.00. There is currently \$1,623,280.20 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."⁴ 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.

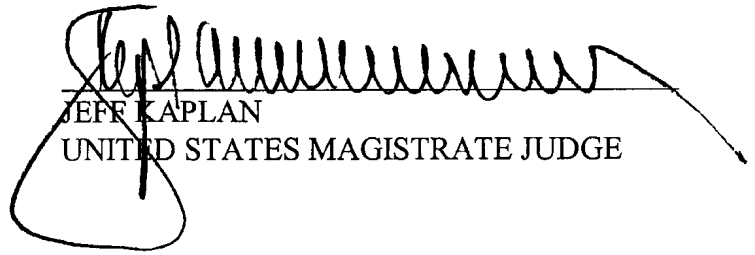
RECOMMENDATION

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. Any claimant or interested party may file written objections to this recommendation by **November 29, 2004**. 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. See *Douglass v. United Services Automobile Ass'n*, 79 F.3d 1415, 1417 (5th Cir. 1996).

⁴ The Receiver will continue to receive nominal monthly restitution payments after the date of this recommendation until the funds are disbursed to investors. Accordingly, the amounts set forth in Exhibit "A" will increase slightly through the date the funds are actually disbursed.

DATED: November 12, 2004.



JEFF KAPLAN
UNITED STATES MAGISTRATE JUDGE

Distribution

	First Name	Last Name	Allowed Claim	Amount
1	Mehrdad	Amin	\$ 95,000.00	\$ 5,425.55
2	Claudio	Antonini	\$ 74,637.50	\$ 4,262.63
3	Richard	Assaly	\$ 90,000.00	\$ 5,140.00
4	Henry	Back	\$ 430,000.00	\$ 24,557.76
5	Ellis	Barnes	\$ 107.83	\$ 6.16
6	Elaine	Boiko	\$ 70,000.00	\$ 3,997.77
7	Connie	Boothe	\$ 21,262.00	\$ 1,214.30
8	Theodor	Brinek	\$ 64,381.00	\$ 3,676.87
9	Joseph	Cardozo	\$ 95,000.00	\$ 5,425.55
10	Vernon	Carlson	\$ 99,461.00	\$ 5,680.32
11	Lynn Dysart	Cashwell	\$ 17,000.00	\$ 970.89
12	Lynn Dysart	Cashwell	\$ 11,036.00	\$ 630.28
13	William	Cox	\$ 1,896.56	\$ 108.31
14	Michael	De Prince	\$ 211,500.00	\$ 12,078.99
15	Arun Kumar	Dosaj	\$ 166,950.00	\$ 9,534.69
16	Regina	Drennen	\$ 515.74	\$ 29.45
17	Linda Turner	Dysart	\$ 26,710.00	\$ 1,525.44
18	Idora L	Eldred	\$ 100,000.00	\$ 5,711.11
19	George R	Fairman	\$ 16,711.00	\$ 954.38
20	Bradley	Farmer	\$ 350.42	\$ 20.01
21	Robert	Gilmore	\$ 255,000.00	\$ 14,563.32
22	Andrew J	Glenn, III	\$ 118,750.00	\$ 6,781.94
23	Wanda	Gurski	\$ 1,651.84	\$ 94.34
24	Stephen	Guy	\$ 1,628.89	\$ 93.03
25	Janalee	Hawkins	\$ 45,000.00	\$ 2,570.00
26	Joe	Hensley	\$ 688.26	\$ 39.31
27	John	Hillis Estate	\$ 933,333.00	\$ 53,303.64
28	Dennis	Hudson	\$ 184,751.00	\$ 10,551.33
29	Evelyn	Jarrard	\$ 43.96	\$ 2.51
30	Bill	Jennings	\$ 9,649.00	\$ 551.06
31	Sarah	Johnson	\$ 29,062.50	\$ 1,659.79
32	William	Jones	\$ 619.44	\$ 35.38
33	Christopher	Kazana	\$ 400,000.00	\$ 22,844.43
34	Robert	Koontz	\$ 367.07	\$ 20.96
35	Billy	Lawson	\$ 285.39	\$ 16.30
36	Dinah	Lawson	\$ 229.42	\$ 13.10
37	Cecil	Light	\$ 917.69	\$ 52.41
38	Bo Ewert	Linne	\$ 960,000.00	\$ 54,826.63
39	Bo Ewert	Linne	\$ 506,000.00	\$ 28,898.20
40	Bo Ewert	Linne	\$ 270,000.00	\$ 15,419.99
41	Michael Carl	Manley	\$ 54,018.00	\$ 3,085.03
42	Donnie	Marshall	\$ 2,294.22	\$ 131.03
43	John K	McAllister	\$ 1,644.00	\$ 93.89
44	John K	McAllister	\$ 1,370.00	\$ 78.24
45	Richard	McFarland	\$ 1,227.96	\$ 70.13
46	John Joseph	McGarry	\$ 315,000.00	\$ 17,989.99
47	Harold	Miller	\$ 80,000.00	\$ 4,568.89
48	Michael	Mitchell	\$ 100,000.00	\$ 5,711.11
49	Amal E	Moorad	\$ 137,500.00	\$ 7,852.77
50	Marshall	Olchoway	\$ 103,500.00	\$ 5,911.00
51	Robert	Page	\$ 1,468.30	\$ 83.86
52	Alvin	Perry	\$ 100,000.00	\$ 5,711.11
53	Elizabeth Holland	Rachels	\$ 193,000.00	\$ 11,022.44

EXHIBIT "A"

	First Name	Last Name	Allowed Claim	Distribution Amount
54	David and Valerie	Romanow	\$ 1,010,402.00	\$ 57,705.14
55	Joseph	Romanow	\$ 694,618.00	\$ 39,670.38
56	Donald Duane	Rose	\$ 131,875.00	\$ 7,531.52
57	Leif	Rosengaard	\$ 154,000.00	\$ 8,795.10
58	Robert	Schmidt	\$ 50,000.00	\$ 2,855.55
59	Gabriella & Seymour	Scholnick	\$ 94,620.00	\$ 5,403.85
60	Barry	Siskind	\$ 374,242.05	\$ 21,373.36
61	Norman	Spahr	\$ 52,000.00	\$ 2,969.78
62	Franklin	Spivey	\$ 2,772.87	\$ 158.36
63	Neal	Stevens	\$ 261,000.00	\$ 14,905.99
64	Jurgen	Tagert-Stavenow	\$ 121,438.00	\$ 6,935.45
65	Ramsinh	Tantod	\$ 650,000.00	\$ 37,122.19
66	Judy	Tate	\$ 596.50	\$ 34.07
67	Ira	Taylor	\$ 1,605.95	\$ 91.72
68	Jo Ann	Temple	\$ 100,000.00	\$ 5,711.11
69	Jo Ann	Temple	\$ 38,000.00	\$ 2,170.22
70	Aaron	Turner	\$ 21,262.00	\$ 1,214.30
71	Lee I	Turner	\$ 237,500.00	\$ 13,563.88
72	Menno	Wagler	\$ 448,267.95	\$ 25,601.06
73	Donna	Walker	\$ 29,062.50	\$ 1,659.79
74	Iris	Ward	\$ 917.69	\$ 52.41
75	Peter	Wolk	\$ 96,061.57	\$ 5,486.18
76	Paul	Zhernakov	\$ 120,500.00	\$ 6,881.88
77	Kim	Zuber	\$ 95,000.00	\$ 5,425.55
78	Atlantic Star Investments		\$ 525,000.00	\$ 29,983.31
79	Byron W Bacchi Irrevocable Trust		\$ 115,000.00	\$ 6,567.77
80	CEMA Trust		\$ 240,625.00	\$ 13,742.35
81	Dominic Cusumano		\$ 123,750.00	\$ 7,067.49
82	Eddie M & Virginia Bacchi 1991 Living Trust		\$ 57,500.00	\$ 3,283.89
83	Granite Holdings		\$ 1,754,000.00	\$ 100,172.81
84	HY Associates		\$ 466,667.00	\$ 26,651.85
85	Jodman, Inc		\$ 280,000.00	\$ 15,991.10
86	Jodman, Inc		\$ 271,500.00	\$ 15,505.66
87	John Papagni and Pamela Albion		\$ 42,496.00	\$ 2,426.99
88	JRT Family Trust		\$ 620,000.00	\$ 35,408.86
89	The Law Society		\$ 109,975.22	\$ 6,280.80
90	Olympus Pointe Investment Trust		\$ 720,000.00	\$ 41,119.97
91	Peter Dyer and Investors		\$ 1,400,000.00	\$ 79,955.50
92	Sercom One Ltd		\$ 984,220.00	\$ 56,209.86
93	Southeastern Oklahom Indian Credit Union		\$ 830,500.00	\$ 47,430.74
94	Southstar I		\$ 152,827.71	\$ 8,728.15
95	Southstar I		\$ 100,000.00	\$ 5,711.11
96	Sterling Management Services, Inc		\$ 8,349,676.00	\$ 476,858.91
97	The John Varga Revocable Trust		\$ 50,000.00	\$ 2,855.55
98	William & Terri Bachi Revocable Trust		\$ 57,500.00	\$ 3,283.89
Total			\$ 28,438,498.00	\$ 1,624,153.02