

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

Michael J. Quilling, Receiver for
Hammersmith Trust, LLC
and Microfund, LLC

Plaintiff

vs.

Anthony D. Cupini and
Cadet Holdings, Inc.

Defendants

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Civil Action No. 3:00-CV-2258-M

(Jury Trial Demanded)

FIRST AMENDED COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Michael J. Quilling, in his capacity as Receiver for Hammersmith Trust, LLC and Microfund LLC (“Receiver”) and files this his Complaint against Anthony D. Cupini and Cadet Holdings, Inc. and in support of such would respectfully show the Court as follows:

Parties

1. Michael J. Quilling is the Receiver appointed for Hammersmith Trust, LLC and Microfund, LLC in Civil Action No. 3:98-CV-2689-M, styled *Securities and Exchange Commission v. 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; 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, pending before the United States District Court for the Northern District of Texas, Dallas Division, the Honorable Barbara M.G. Lynn presiding.

2. Anthony D. Cupini is an individual resident and citizen of the State of Missouri and may be served with process at 81 Aberdeen, Clayton, Missouri 63105 or 10 South Brentwood Boulevard, Suite 416, Clayton, Missouri 63105.

3. Cadet Holdings, Inc. is a corporation organized under the laws of the State of Missouri and may be served with process at 10 South Brentwood Boulevard, Suite 416, Clayton, Missouri 63105 through its President, Anthony Cupini. Cadet Holdings, Inc. is believed to be the alter ego of Anthony D. Cupini

Jurisdiction and Venue

4. This Court has jurisdiction over the subject matter of this action because the actions stated herein constitute Receivership Assets within the meaning of the Order Appointing the Receiver. The Order Appointing the Receiver expressly states that all actions to determine disputes relating to Receivership Assets shall be filed in this Court. In addition, this Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 754, 1692, and Fed. R. Civ. P. 4(k)(1)(D).

5. Venue for this action is proper in the Northern District of Texas because: (1) the SEC Proceedings referenced below is pending in this District and this action is ancillary to it; (2) the Receiver was appointed in this District; and (3) this action involves Receivership Assets within the meaning of the Order Appointing the Receiver. The Order Appointing the Receiver expressly states that all actions to determine disputes relating to Receivership Assets shall be filed in this Court.

Background Facts

6. On November 13, 1998 the Securities and Exchange Commission ("SEC") initiated Case No. 3:98-CV-2689-M styled *Securities and Exchange Commission v. 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; Mary Ann Bauce, Hammersmith Trust, L.L.C., a Tennessee limited liability company; Hammersmith Trust, Ltd., and 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 Antigua corporation; Eurofund Investment Inc., a Tennessee corporation; B. David Gilliland; and Melody Rose, Defendants Solely for Purposes of Equitable Relief*, Defendants and in connection therewith sought the appointment of a Receiver as to the Defendants and Equity Relief Defendants. By Order dated November 13, 1998, entered in the SEC Proceedings, Michael J. Quilling was appointed as the Receiver and has continued to function in that capacity since that time.

7. By subsequent Order dated July 22, 1999, entered in the SEC Proceedings, the receivership was expanded to include a number of additional individuals and entities, including Hammersmith Trust, LLC (both the Tennessee and the Nevis West Indies), Hammersmith Trust, Ltd. (all of the Hammersmith entities are collectively referred to as "Hammersmith") and Microfund, LLC ("Microfund"). By virtue of the same Order, Michael J. Quilling was appointed as the Receiver for each of the additional individuals and entities and he continues to function in that capacity since that time.

8. Hammersmith and Microfund are entities which operated huge international Ponzi schemes under the direction and control of B. David Gilliland ("Gilliland"). In particular, the scam required investors (called "lenders") to "loan" funds to Hammersmith which loans would be repaid by virtue of monthly interest payments at a rate of 480% percent per annum (and higher) for twelve months and a repayment of all principal in month thirteen. The "loans" were supposedly secured by an assignment of a deposit account containing the investor's money and by a United States Treasury Bill for the same amount. The Microfund "program" differed in some respects but the intentions were the same - promise huge returns based upon non-existent trading programs and then steal the money.

9. As part of his overall scheme, Gilliland engaged Bridgeport Alliance, LLC ("Bridgeport") to screen potential "lenders," which in essence required that Bridgeport make sure they had money, would not ask questions and were not really government agencies posing as investors. Bridgeport, in turn, engaged various entities and individuals to act as agents and/or brokers. These agents/brokers would locate and solicit potential investors, sell them on the "program" being offered by Hammersmith and Microfund and then submit the potential lender/investor to Bridgeport for screening and approval. Once the potential lender/investor was

approved, a Loan Agreement would be signed with Hammersmith and/or Microfund and then funds would be wired to an account designated by Gilliland. Each lender/investor would also sign a Client Agreement with Bridgeport. As part of each transaction, the lender/investor would become obligated to pay the agent/broker which got them into the program a percentage of the alleged profits to be earned by the lender/investor from Hammersmith and/or Microfund. In some instances, Hammersmith or Microfund or Bridgeport would cause the agent to be paid and in some instances the lender/investor would pay the agent/broker. In all instances the funds used to pay the agents/brokers ultimately came from defrauded investors, duped into the "program" by the agents/brokers.

10. The programs offered by Hammersmith and Microfund were completely fraudulent. The lender/investor funds did not remain in segregated deposit accounts. There were no treasury bills which secured each loan/investment. There was no trading program. There was no generation of any income by either Hammersmith or Microfund which could be used to pay the fantastic returns promised to lenders/investors. Instead, as funds were received, Gilliland caused Hammersmith and Microfund to systematically divert the funds to make Ponzi payments to prior investors and support the lavish lifestyle and spending of Gilliland. The agents/brokers knew or should have known that the programs were fraudulent.

11. The Defendants in this action are agents/brokers who were paid substantial sums for their "services" out of investor proceeds. Based upon records currently available to the Receiver, the total amount paid to the Defendants is \$502,028.00.

COUNT ONE

Constructive Trust & Disgorgement

12. The Receiver incorporates paragraphs 1 through 11 set forth above as if set forth verbatim hereat.

13. The funds paid to the Defendants constitute and are directly traceable to the funds of the defrauded lenders/investors. As such, they are impressed with a constructive trust and constitute Receivership Assets. The Defendants should be required to disgorge their ill-gotten gains.

14. Pursuant to principles of equity, the Receiver seeks the imposition of a constructive trust upon all funds paid to the Defendants and a judgment against each of them requiring disgorgement of all amounts received. To the extent either of the Defendants is unable to disgorge the funds received, the Receiver seeks a money judgment against each of them in an amount equal to the funds received.

COUNT TWO

Aiding and Abetting Breach of Fiduciary Duty

15. The Receiver incorporates paragraphs 1 through 14 set forth above as it set forth verbatim hereat.

16. Hammersmith, Microfund and Gilliland owed fiduciary duties to each of the lenders/investors to properly represent the programs, make full and complete disclosure of all material facts and to handle and invest the money properly.

17. Hammersmith, Microfund and Gilliland breached their fiduciary duties to the lenders/investors. By locating, soliciting and selling the lenders/investors on the programs, the Defendants aided and abetted the breaches of fiduciary duty.

18. As a result of the aiding and abetting conduct of the Defendants, the lenders/investors, Hammersmith and Microfund were damaged for which damages the Receiver hereby sues.

COUNT THREE

Aiding and Abetting Corporate Waste

19. The Receiver incorporates paragraphs 1 through 18 set forth above as if set forth verbatim hereat.

20. The funds invested by the lenders/investors constitute corporate assets of Hammersmith and Microfund. Gilliland and the management of Hammersmith and Microfund prior to the receivership wasted the corporate assets by diverting them for improper purposes, including payments to the Defendants. The conduct of the Defendants in locating, soliciting and selling the program to lenders/investors substantially assisted Gilliland and management in their efforts and constitutes aiding and abetting of corporate waste.

21. As a result of the aiding and abetting conduct of the Defendants, the lenders/investors, Hammersmith and Microfund have been damaged for which damages the Receiver hereby sues.

COUNT FOUR

Fraudulent Transfer

22. The Receiver incorporates paragraphs 1 through 21 set forth above as if set forth verbatim hereat.

23. The Hammersmith and Microfund programs were Ponzi schemes. Consequently, all funds the Defendants received from those entities constitute fraudulent transfers. The Receiver is entitled to recover all such funds from the Defendants as fraudulent transfers, for which amounts the Receiver hereby sues.

COUNT FIVE

Fees, Expenses, Cost and Interest

24. The Receiver incorporates paragraphs 1 through 23 set forth above as if set forth verbatim hereat.

25. As a direct result of the Defendants' conduct, as alleged above, it has been necessary for the Receiver to file this action. Such action necessarily requires that the Defendants be required to pay the costs of this action, as well as pre-judgment and post-judgment interest on all sums recovered, at the highest lawful rate. The Receiver sues for all costs, expenses, attorneys' fees and pre-judgment and post-judgment interest to which he is entitled under the law or at equity.

JURY DEMAND

26. The Receiver respectfully requests that this case be tried before a jury.

WHEREFORE, PREMISES CONSIDERED, the Receiver prays that upon final trial hereof that the Court enter judgment in favor of the Receiver against each of the Defendants in an amount equal to the amount of investor funds received by each of them, plus pre-and post-judgment interest, attorney fees and costs of court 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.

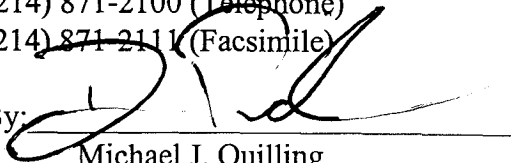
2001 Bryan Street, Suite 1800

Dallas, Texas 75201

(214) 871-2100 (Telephone)

(214) 871-2111 (Facsimile)

By:



Michael J. Quilling

State Bar No. 16432300

D. Dee Raibourn, III

State Bar No. 24009495

ATTORNEYS FOR RECEIVER

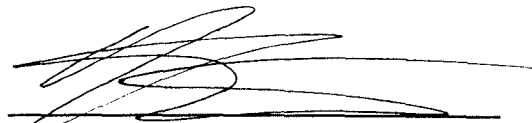
CERTIFICATE OF SERVICE

A true and correct copy of this document was served on the 15th day of ^{June}~~May~~, 2001, via first class mail, on the following:

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

J. Robert Forshey
Forshey & Prostok L.L.P.
777 Main Street, Suite 1285
Fort Worth, Texas 76102

R. C. Wuestling
Wuestling & James, L.C.
1015 Locust Street, Suite 730
St. Louis, Missouri 63101



Kenneth A. Hill