

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

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CLERK OF COURT
WESTERN DISTRICT OF TENNESSEE
MEMPHIS

MICHAEL J. QUILLING, Receiver for
HAMMERSMITH TRUST LLC, a Tennessee
limited liability company, HAMMERSMITH
TRUST LLC, a Nevis limited liability company,
and HAMMERSMITH TRUST, LTD., an Ireland
corporation.

Intervening-Plaintiff,

v.

DAVID JOHNSON, and
JOHNSON, GRUSIN, KEE & SURPRISE, P.C.,

Defendants.

No. 00 3094 G V.

JURY DEMAND

**COMPLAINT FOR DAMAGES FOR BREACH
OF CONTRACT, FRAUDULENT MISREPRESENTATION/DECEIT,
NEGLIGENT MISREPRESENTATION, PROFESSIONAL
NEGLIGENCE AND VIOLATION OF RACKETEER INFLUENCED
AND CORRUPT ORGANIZATIONS ACT, 18 U.S.C. § 1961, et seq.**

COMES NOW, as Plaintiff, Michael J. Quilling, in his capacity as Receiver for Hammersmith Trust, LLC (both the Tennessee and Nevis entities) and Hammersmith Trust, Ltd., by and through counsel, and for Complaint against the Defendant, DAVID JOHNSON respectfully states as follows:

JURISDICTION AND VENUE

1. Subject matter jurisdiction of this Court over the matters in controversy is founded on 28 U.S.C. §1331 as this Complaint arises under the laws of the United States. In addition, subject

matter jurisdiction may be founded upon 28 U.S.C. §1332, as there is diversity of citizenship between the parties and the matter in controversy exceeds \$75,000.00, exclusive of interest and costs.

2. Venue of this action is proper in this Court pursuant to 28 U.S.C. §1391(a), as a substantial part of the events and omissions giving rise to the claims occurred within this judicial district.

PARTIES

3. Plaintiff, Michael J. Quilling, has been appointed as the Receiver for Hammersmith Trust, LLC, a Tennessee limited liability company, Hammersmith Trust, LLC, a Nevis limited liability company, and Hammersmith Trust, Ltd., an Ireland corporation (all Hammersmith entities are referred to as “Hammersmith”), in an action styled *Securities and Exchange Commission v. Funding Resource Group, et al.*, civil action no. 3:98-CV-2689-M, pending in the United States District Court for the Northern District of Texas, Dallas Division.

4. Defendant David Johnson (Johnson) is a resident of Shelby County, Tennessee. At all relevant times, Johnson was the “trustee” and attorney for Hammersmith.

5. Defendant Johnson, Grusin, Kee & Surprise, P.C. (the Law Firm), is a Tennessee professional corporation engaged in the practice of law. The Law Firm’s principal place of business is Shelby County, Tennessee. Johnson and the Law Firm served as attorneys to Hammersmith and therefore owed it certain legal and fiduciary duties.

FACTUAL STATEMENT

6. In or around October 1996, Johnson and the law firm of Johnson, Grusin, Kee and Surprise, P.C. (the Law Firm) were retained to form a Tennessee limited liability company, Hammersmith Trust LLC, by Raymond E. “Sonny” Poole (Poole).

7. On or about October 4, 1996, Johnson and/or other attorneys of the Law Firm caused Hammersmith Trust, a Tennessee limited liability company, to be formed.

8. B. David Gilliland (Gilliland), a resident of Shelby County, Tennessee, was, at all relevant times, the Trust Fund Manager for Hammersmith.

9. On or about October 18, 1996, Johnson entered into a letter agreement with Hammersmith by which Johnson agreed to serve as “third party trustee and signatory” for certain “Master Accounts and other facilities.” (A copy of the October 18, 1996 letter agreement is attached hereto as Exhibit 1).

10. At or around the time Johnson agreed to serve as “third party trustee and signatory” for Hammersmith, Johnson participated in drafting the form agreement to be used by Hammersmith with “investors,” “lenders,” or “participants” in an investment scheme to be marketed by Hammersmith’s management. The form agreements used during the early part of the investment scheme were entitled “Hammersmith Sweep Account Participation Agreement.” Later, Hammersmith employed an agreement entitled “Hammersmith Borrowing Agreement.” Johnson participated in drafting each of these Agreements, as well as other documentation to be used in conjunction with the Hammersmith Agreements. (The Hammersmith Agreements are attached hereto as Collective Exhibit 2).

11. In the Hammersmith Sweep Account Participation Agreements, Johnson agreed to act in a full fiduciary capacity as a dual signatory control with the Aggregator’s Funds Manager on the Trust’s master, sub-accounts, and all aggregation accounts where the Participant’s principal and interest funds are deposited and shall control the safekeeping of such funds and co-direct the payment of interest sums and the return of principal in accord with the terms of this Agreement.

(See Collective Exhibit 2).

12. Similarly, in the Hammersmith Borrowing Agreements, Johnson agreed:

to act in the capacity of Trustee pursuant to the terms contained within this Agreement and specifically as one of the joint signatories to the Paymaster Account, the Master Custodial Account, and for all purposes required of me as Trustee and described herein.

(See Collective Exhibit 2).

13. All of the Hammersmith Sweep Account Participation Agreements, Hammersmith Borrowing Agreements, and/or any other similar Hammersmith agreement required the signature of Johnson and he received copies of all fully executed agreements. (See Collective Exhibit 2).

14. By virtue of his agreements with Hammersmith and his execution of the Hammersmith Sweep Account Participation Agreements and the Hammersmith Borrowing Agreements as “trustee,” Johnson assumed responsibilities for guaranteeing the security of funds invested in the Hammersmith programs by assuring investors that he was acting as “trustee,” a position represented by him to mean that he would safeguard the funds “loaned” to Hammersmith and the bank guaranties and/or United States Treasury bills that were to secure the participants’ investments.

15. Although the Hammersmith Sweep Account Participation Agreement and the Hammersmith Borrowing Agreement purport to document legitimate investment programs designed to yield enormous annual profits, in some cases over 700% interest per year, the Hammersmith investment schemes were in actuality massive “Ponzi” schemes perpetrated by Hammersmith’s former management and others, including Johnson.

16. In furtherance of the Ponzi scheme and to escape regulatory review by the appropriate United States securities agencies, Gilliland caused Hammersmith Trust, LLC, a Nevis limited

liability company to be formed. Hammersmith Trust, LLC, the Tennessee limited company, was merged into the Nevis limited liability company.

17. Johnson, as an experienced attorney, knew or should have known that the Hammersmith investment programs were not legitimate and could not pay 700% annual interest to investors, participants, or lenders.

18. Despite the use of the term “trustee” with respect to Johnson, no “trusts” were ever formed. Johnson, as an experienced attorney, also knew or should have known that his consenting to act as “trustee,” when in fact there were no actual “trusts” in existence, was false and misleading.

19. In addition to purportedly acting as “trustee” for the protection of investors’ funds, Johnson actively participated in the marketing of the Hammersmith investment schemes. Johnson allowed his curriculum vitae to be sent to potential investors to induce them to enter into the Hammersmith agreements. In addition, Johnson periodically spoke with potential investors by telephone. During these telephone conversations, Johnson explained his role as “trustee” with dual signatory power on certain Hammersmith bank and brokerage accounts to potential investors to persuade them that their funds would be safe if provided to Hammersmith.

20. In addition, Johnson and/or the former management of Hammersmith marketed to potential investors the fact that Johnson and the Law Firm carried insurance as an additional security factor protecting the investors’ investment in the Hammersmith scheme. Johnson and/or Hammersmith’s former management sent to at least one potential investor an insurance certificate showing insurance limits of \$3,000,000 for the Law Firm and showing the potential investor as the “certificate holder.” (See Collective Exhibit 3).

21. In reliance upon the Law Firm's insurance certificate sent to them by Johnson and/or the former management of Hammersmith, the potential investor forwarded funds to Hammersmith for use in the Hammersmith scheme. Within one month from the investor's receipt of the insurance certificate showing insurance for Johnson and the Law Firm and the investor's investment with Hammersmith, the insurance policy was cancelled for non-payment of premiums. (See Collective Exhibit 3).

22. In part due to Johnson's participation in the marketing of the Hammersmith program, Hammersmith was able to induce investors, participants, and/or lenders to "invest" over \$40,000,000 in the Hammersmith programs. Indeed, but for Johnson lending his and the Law Firm's name, credibility, and insurance to the program, investors would not have sent money to Hammersmith.

23. Contrary to his representation that he would control the safekeeping of investor funds, Johnson routinely and without exception followed whatever instructions were given to him by Gilliland, the former Hammersmith fund manager, with respect to transferring money out of the Hammersmith accounts to off-shore banking and brokerage accounts—accounts over which Johnson did not have joint signatory control. Johnson also authorized payments from new investor funds to prior investors in furtherance of the "Ponzi" scheme.

24. Indeed, although under the Hammersmith Agreements, Hammersmith was obligated to purchase either secured "bank guaranties" (Hammersmith Sweep Account Participation Agreement) or United States Treasury Bills (Hammersmith Borrowing Agreement), which securities were to be held in a Hammersmith account over which Johnson had joint signatory control, Johnson knew such securities were not being purchased by Hammersmith when he authorized the transfer of investor funds from Hammersmith accounts to non-Hammersmith accounts.

25. Johnson knew that the representations he made to certain Hammersmith investors that United States Treasury Bills were deposited in Hammersmith accounts were false and materially misleading. (See letters to investors from David Johnson, attached hereto as Collective Exhibit 4). Johnson knew or should have known that Hammersmith's former management only purchased a small number of Treasury Bills and that those Treasury Bills were purchased on margin. Johnson knew or should have known that the investors' funds were not fully secured as represented to the investors in the Hammersmith Agreements.

26. Moreover, Johnson knew that his representations to investors wherein he provided CUSIP numbers for specific United States Treasury Bills were false, misleading, and fraudulently represented that the total funds invested by each investor had been used to purchase that particular Treasury Bill. (See Collective Exhibit 4). Johnson used the same CUSIP numbers numerous times for different investors to convince them that the United States Treasury Bills had been purchased and were on deposit in the Hammersmith Master Custodial Account.

27. Indeed, by the time Johnson made the above representations to investors, Johnson knew that several investors in the Hammersmith Ponzi scheme had filed lawsuits asserting that the Hammersmith investment program was fraudulent and a Ponzi scheme. Hammersmith's Trust Fund Manager, Gilliland, consulted with Johnson about these lawsuits, which were filed in 1996 and 1997. Johnson also consulted with Hammersmith's local counsel in at least one of the lawsuits.

28. By late 1998 and/or early 1999, Hammersmith became unable to continue making Ponzi payments to each of its investors. To hide the fact that Hammersmith could not pay its investors because the Hammersmith investment program was in reality nothing but a fraudulent Ponzi scheme, Hammersmith mailed and/or faxed a letter dated February 23, 1999 to "Hammersmith

Trust LLC Client[s],” acknowledging that it was in default of the Borrowing Agreements and making certain representations regarding Hammersmith’s intent to remit partial payments to Plaintiff. (See Hammersmith letter dated February 23, 1999 attached hereto as Exhibit 5).

29. Johnson knew that investors were not getting paid from any of Hammersmith’s purported trading programs. Johnson and other members of the Law Firm dealt with investor complaints on an almost daily basis beginning in late 1998. At that time, Johnson knew that investor money was being transferred to offshore accounts over which he had no control. Johnson also knew that investor funds were being used to make Ponzi payments to other investors, to make payments to Gilliland, and to pay Johnson’s fees.

30. During the period in which the Hammersmith Ponzi scheme was being operated, the Law Firm formed an entity called Landfair Custodial Services, Inc. (Landfair). Melody Rose was the President of Landfair. Landfair’s only client was Microfund, LLC, (Microfund) a Tennessee limited liability company controlled by Gilliland. Through Microfund, Gilliland operated a similar investment scheme as the Hammersmith scheme. In the Microfund investment scheme, Landfair acted as an “independent custodian” for funds invested in the Microfund scheme. Much like the “trustee” role Johnson played in the Hammersmith investment scheme, Landfair was marketed as a security feature for the protection of Microfund investor funds.

31. Landfair, however, did not act in anyway to protect Microfund investor funds. Rather, Landfair routinely and without exception followed whatever directions were given by Gilliland with respect to transferring investor money out of Landfair’s accounts. At Gilliland’s direction, Landfair caused Microfund investor money to be transferred to Hammersmith for

“investment.” In addition, Microfund investor money was used to make Ponzi payments to other investors, including Hammersmith investors.

32. On information and belief, Martin Grusin, an attorney with the Law Firm, was an investor and/or officer of Landfair and received part of the monthly fees paid to Landfair by Microfund.

33. At Gilliland’s direction, Johnson caused Hammersmith investor money to be transferred to Microfund and/or Landfair.

34. To appease disgruntled investors, Hammersmith’s former management, with the participation of Johnson, drafted “Settlement Agreements” and sent them to Hammersmith investors. Although the Settlement Agreements ostensibly were for the final settlement of investor claims, the Settlement Agreements were merely another delay tactic used to keep investors from filing complaints with the appropriate authorities. The Settlement Agreements contained certain representations designed to provide comfort to investors. Chief among these representations was the representation that funds would be wired directly to Johnson’s escrow account for Johnson to disburse to investors. Johnson allowed these representations to be made and knew that they were intended to induce investors to enter into the Settlement Agreements.

35. Johnson knew or should have known that the Settlement Agreements were being used by Gilliland as a means to delay disgruntled investors, to hide the fact that the Hammersmith investment program was nothing more than a Ponzi scheme, and to buy Gilliland more time to raise more money from other investors to make Ponzi payments to the existing, but unpaid, investors. Johnson knew or should have known that notwithstanding the representations contained in the

Settlement Agreements, Gilliland and others operating the Ponzi scheme had no intent of returning any principal to the investors.

36. Many investors executed the Settlement Agreements in reliance, among other things, upon the representations that Johnson would control the disbursement of funds to them.

37. Johnson established a special “escrow” account at Regions Bank for the receipt of funds to pay off disgruntled investors. Little, if any, money was wired to Johnson’s special “escrow” account and few, if any, investors actually received a disbursement from that account.

38. Notwithstanding Defendant Johnson’s representations that he had received monies to be deposited in his trust account and used for repayment of principal, most investors have not been repaid the principal of each of their respective Loans.

39. Defendant Johnson acting with full knowledge of the pertinent facts and circumstances acted negligently, intentionally, with conflicts of interest arising from his services to Hammersmith and Gilliland, and in concert with Hammersmith and Gilliland to conceal the misapplication, waste, diversion, and embezzlement of assets belonging to Plaintiffs by certain insiders of Hammersmith. Johnson materially assisted in the massive fraud perpetrated by Hammersmith’s former management. Johnson helped to clothe the fraudulent activities of Gilliland and others with legitimacy by lending his name and the fact that he carried insurance to the enterprise, by setting up numerous corporations for use in transferring investors’ money, by negotiating settlements with disgruntled investors, and by lending his name to the Settlement Agreements entered into by investors.

40. In July 1999, Plaintiff Quilling was appointed as a Receiver for Hammersmith. (See copy of Order Freezing Assets, Reinstating Appointment of Receiver and Authorizing Expedited

Discovery, attached hereto as Exhibit 6). By the terms of this Order, the Receiver is charged with the duty of recovering all assets of Hammersmith and is granted broad powers to accomplish such task, including the filing of the instant action.

41. Although the Receiver diligently investigated all facts pertinent to the operation of the Ponzi scheme by Hammersmith's former management and to ascertain the scope of Johnson's involvement with Hammersmith and the operation of the scheme, many, if not all, of the key people with knowledge of the inner workings of the scheme operated by Gilliland, and which Johnson facilitated, refused to cooperate with the Receiver out of fear of criminal prosecution. Indeed, despite repeated requests from investors and the Receiver, Johnson refused and continues to refuse to disclose the location of investors' principal, to give an accounting to the Receiver, or to offer any explanation as to what happened to investors' principal.

42. Gilliland, Johnson, and others were recently indicted for their role in perpetrating a massive fraud upon investors and a criminal action is pending in the United States District Court for the Northern District of Florida, Pensacola Division. On or about August 21, 2000, Gilliland entered into a Plea and Cooperation Agreement (Plea Agreement). (a copy of the Plea Agreement is attached hereto as Exhibit 7).

43. Only subsequent to Gilliland entering into the Plea Agreement has the Receiver learned the scope of services rendered by Johnson, both legal and as "trustee," to Hammersmith and that Johnson breached certain duties he owed to Hammersmith as its attorney. In addition, the Receiver has only learned of the extent of Johnson's participation in and facilitation of the fraudulent Ponzi scheme operated by Gilliland and others since Gilliland entered into the Plea Agreement.

CLAIMS FOR RELIEF

**COUNT I
BREACH OF CONTRACT**

44. The allegations of Paragraphs 1-44 are hereby incorporated by reference into this Count of the Complaint, as if set forth verbatim herein.

45. On or about October 18, 1996, Defendant Johnson entered into a valid, binding contract with Hammersmith to “serve as third party trustee and signatory” for certain Hammersmith bank and brokerage accounts.

46. By committing the foregoing acts, Defendant Johnson wrongfully breached his written agreement with Hammersmith to act as trustee and joint signatory on the Master Custodial Accounts.

47. As a result of Defendant Johnson’s breach of the obligation to act as Trustee in accord with his agreement with Hammersmith, Hammersmith has been injured for which the Receiver is entitled to recover damages.

**COUNT II
FRAUDULENT MISREPRESENTATION/DECEIT**

48. The allegations of Paragraphs 1-47 are hereby incorporated by reference into this Count of the Complaint, as if set forth verbatim herein.

49. Defendant Johnson intentionally misrepresented that investors’ funds were secured by U.S. Treasury obligations that had been purchased by Hammersmith when he knew that investors’ funds were not fully secured by U. S. Treasury obligations.

50. Defendant Johnson misrepresented that U.S. Treasury obligations were being held in the Master Custodial Account or otherwise being held by brokerage firms acting under the control of

Hammersmith as security for investors' funds when he knew that he had previously authorized the transfer of all of the investors' funds to off-shore accounts not controlled by him or authorized the use of investor funds to pay other investors Ponzi payments.

51. Defendant Johnson made multiple misrepresentations to investors regarding the repayment of their money. As set forth above, Defendant Johnson misrepresented that he had received funds to be used for repayment of investors' principal and that he had deposited such funds into his trust account.

52. Defendant Johnson misrepresented to investors that he, Hammersmith, and Gilliland intended to act in accordance with their earlier representations concerning the repayment of principal to Plaintiffs when he knew that Gilliland and others were operating a fraudulent Ponzi scheme.

53. Defendant Johnson misrepresented that certain wire transfers had been authorized to repay investors' principal. Defendant Johnson also misrepresented that these wire transfers had not been effectuated due to various errors.

54. Despite repeated requests from investors and the Receiver, Defendant Johnson has refused and continues to refuse to disclose the location of investors' principal, to give an accounting to the Receiver, or to offer any explanation as to what happened to the investors' money

55. Each of the above representations was false and misleading.

56. Defendant knew or should have known such representations were false.

57. Defendant Johnson has failed to disclose material facts to the Receiver under circumstances where he had a duty to disclose such facts.

58. These material omissions of fact by Johnson resulted in investors being misled and the dissipation of investors' money.

59. Investors reasonably relied upon the representations of Johnson.

60. Investors reasonably relied upon Johnson to fully disclose all material facts to them in his status as “trustee”.

61. Investors have been injured as a result of their reasonable reliance upon the representations and material omissions of Defendant. The Receiver is charged with the duty of recovering all assets of Hammersmith for eventual distribution to such injured investors and therefore, is entitled to recover damages.

COUNT III NEGLIGENT MISREPRESENTATION

62. The allegations of Paragraphs 1-61 are hereby incorporated by reference into this Count of the Complaint, as if set forth verbatim herein.

63. In the course of their business, Johnson supplied false information to investors for the guidance of investors in their business transactions with Hammersmith.

64. Defendant Johnson, as “trustee”, owed a duty of reasonable care to investors in obtaining and/or communicating information to investors regarding the status of repayment of each of investors’ respective principal, whether or not investors’ principal was secured by U.S. Treasury obligations deposited in the Master Custodial Account, and whether funds existed for the repayment of investors’ principal, but did not exercise reasonable care in doing so.

65. Investors justifiably relied upon the information supplied by Defendant Johnson.

66. Investors have been injured as a result of their reasonable reliance upon the representations and material omissions of Defendant. The Receiver is charged with the duty of

recovering all assets of Hammersmith for eventual distribution to such injured investors and therefore, is entitled to recover damages.

COUNT IV NEGLIGENCE

67. The allegations of Paragraphs 1-66 are hereby incorporated by reference into this Count of the Complaint, as if set forth verbatim herein.

68. As Hammersmith's attorney and as a "trustee" acting on its behalf, Johnson and the Law Firm owed Hammersmith a duty to act honestly, in good faith, and with reasonable care in performing his duties as an attorney, "trustee" and as a joint signatory on the Master Custodial Account and the Paymaster Account.

69. Johnson and the Law Firm breached the duty of reasonable care owed to Hammersmith by failing to adequately perform the duties as "trustee" and as a joint signatory on the Master Custodial Account and the Paymaster Account, by failing to perform any due diligence into the propriety of the Hammersmith investment scheme, by facilitating the Hammersmith Ponzi scheme, by assisting Gilliland and others in their fraudulent and criminal activities when Johnson and the Law Firm knew such activities were fraudulent and criminal, by failing to direct Hammersmith to stop such fraudulent activities, by failing to inform investors that they were being defrauded, by failing to report such fraudulent and criminal activities to the appropriate regulatory agencies, and by failing to advise Hammersmith that the intentional misrepresentations of the existence of assets and the misuse of investor funds breached duties Hammersmith owed to the investors. Rather, Johnson and the Law Firm abandoned all professional responsibilities owed to

Hammersmith and joined Gilliland and others in misappropriating investors' money in the operation of the fraudulent Ponzi scheme.

70. By acting with full knowledge of the pertinent facts and circumstances set forth herein, with conflicts of interest arising from the provision of services to Hammersmith, Landfair and Gilliland, and in concert with Hammersmith's former management, Microfund's former management, Landfair's former management and Gilliland in a scheme to conceal the misapplication, waste, diversion, and embezzlement of assets belonging to Plaintiffs by certain insiders of Hammersmith, Johnson and the Law Firm acted unreasonably and recklessly and breached the duty of care to Hammersmith.

71. Johnson's failure to discharge his duties as an attorney, as "trustee" under the Borrowing Agreements, and as a joint signatory on the Paymaster Account and the Master Custodial Account directly and proximately caused the investors' loss of the money invested in Hammersmith. Johnson, however, was paid in excess of One Hundred Thousand Dollars (\$100,000) for his role in assisting and facilitating the operation of the fraudulent Ponzi scheme. Johnson's failure to discharge the duties he owed to Hammersmith directly and proximately led to the establishment of a Receivership and the end of Hammersmith as a viable, legitimate entity.

72. The Law Firm knew of and participated in Johnson's service to Hammersmith as "trustee." Moreover, the Law Firm facilitated Gilliland's massive fraudulent Ponzi scheme by forming the entities through which Gilliland ran his scheme. With knowledge that Gilliland's investment scheme was fraudulent, the Law Firm or members of the Law Firm were paid compensation from the fruits of the fraudulent scheme run by Gilliland and others.

73. As a result of Defendants' negligence, Hammersmith has suffered damages for which the Receiver is entitled to recover.

**COUNT V
CONVERSION**

74. The allegations of Paragraphs 1-73 are hereby incorporated by reference into this Count of the Complaint, as if set forth verbatim herein.

75. Defendant Johnson received funds constituting investors' principal or which was to be used for the repayment of investors' principal and deposited these funds into his trust account. Further, Johnson was paid fees with investor money when Johnson was acting in furtherance of the Ponzi scheme operated by Gilliland and others.

76. The funds deposited in Defendants' trust account were never paid to the Hammersmith investors.

77. Defendant misappropriated or converted such funds constituting investors' principal for his own and/or Gilliland's use and benefit. Johnson did not earn the fees which he has been paid and is not entitled to keep over \$100,000 in investors' money.

78. As a result of Defendant's action in converting investors' principal to his own use and benefit, investors' have been damaged for which the Receiver is entitled to recover.

**COUNT VI
CIVIL CONSPIRACY**

79. The allegations of Paragraphs 1-78 are hereby incorporated by reference into this Count of the Complaint as if set forth verbatim.

80. Defendant Johnson agreed and conspired with Gilliland and others to market and operate a fraudulent Ponzi scheme disguised as an investment program.

81. Defendant Johnson, Gilliland and others took overt actions in furtherance of the conspiracy to bilk investors of millions of dollars through operation of a fraudulent Ponzi scheme.

82. As a result of the actions of Johnson, Gilliland and others, the Hammersmith investors lost millions of dollars, which the Receiver is entitled to recover

**COUNT VII
VIOLATION OF RACKETEER INFLUENCE
AND CORRUPT ORGANIZATIONS ACT, 18 U.S.C. § 1961, et seq.**

83. The allegations of Paragraphs 1-82 are hereby incorporated by reference into this Count of the Complaint, as if set forth verbatim herein.

84. This Count arises under the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. 1961, *et seq.*

85. Hammersmith, Gilliland, and Johnson are enterprises within the meaning of 18 U.S.C. § 1961(4) which are engaged in, or the activities of which affect, interstate commerce. Numerous fraudulent misrepresentations were made to Hammersmith investors in the fraudulent letters and/or facsimile transmissions from Defendant Johnson.

86. The fraudulent misrepresentations as set forth above represent a scheme and artifice to defraud each of the investors which scheme and artifice was facilitated by use of the United States Mail. Such scheme and artifice was caused by Gilliland, Johnson and others, and constitutes mail fraud within the meaning of 18 U.S.C. § 1341 and/or wire fraud within the meaning of 18 U.S.C. § 1343.

87. Such mail fraud constitutes racketeering activity as defined in 18 U.S.C. § 1961(1)(B).

88. Gilliland, Johnson, and others made multiple fraudulent misrepresentations to investors for purposes of defrauding each of them. Such multiple fraudulent misrepresentations constitute a pattern of racketeering activity within the meaning of 18 U.S.C. § 1961(5).

89. Gilliland, Johnson, and their agents, associates, employees, and representatives have conducted, and have conspired to conduct, the affairs of Hammersmith through a pattern of racketeering activity in violation of 18 U.S.C. § 1962(c) and (d).

90. As a direct and proximate result of said violations of 18 U.S.C. § 1962(c) and (d), investors have suffered actual damages as a result of injury to their business and property for which the Receiver is entitled to recover.

91. The Receiver is entitled to a judgment for treble damages, together with all costs of this action, including reasonable attorney's fees, pursuant to 18 U.S.C. § 1964(c).

REQUESTS FOR RELIEF

WHEREFORE PREMISES CONSIDERED, Plaintiff request the following relief:

- a) Judgment against Defendants Johnson and the Law Firm, for compensatory damages under each Count hereof in an amount to be proven at trial;
- b) Judgment against Defendant Johnson, for punitive damages under Counts II, V, and VI in an amount to be proven at trial for Defendants' intentional, fraudulent, malicious and/or reckless conduct;
- c) Judgment against Defendant Johnson under Count VI for treble damages suffered by reason of injury to its business and property as a result of Defendants' violations of 18 U.S.C. § 1962(c) and (d), as proven at trial, pursuant to 18 U.S.C. § 1964(c).
- d) All costs of this action, including without limitation reasonable attorney's fees

pursuant to 18 U.S.C. § 1964(c).

- e) Prejudgment and post judgment interest to the fullest extent permitted by law; and
- f) All such other relief, both equitable and legal, deemed appropriate by the Court.

PLAINTIFF REQUESTS A JURY TO DETERMINE ALL JURY ISSUES.

Respectfully submitted,

BOROD & KRAMER, P.C.
245 Wagner Place, Suite 350
Memphis, TN 38103
(901) 524-0200

By: _____

Bruce S. Kramer (7472)
Jeffrey C. Smith (16295)