

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

U.S. DISTRICT COURT
 NORTHERN DISTRICT OF TEXAS
FILED
 JUN 4 2002
 CLERK, U.S. DISTRICT COURT
 By _____
 Deputy

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

VS.

FUNDING RESOURCE GROUP, a/k/a FRG Trust, et al,

Defendants,

and

HOWE FINANCIAL TRUST, an Indiana corporation,
 et al,

Defendants Solely for Purposes
 of Equitable Relief.

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

**RECEIVER'S FIFTH INTERIM APPLICATION TO
 ALLOW AND PAY (1) RECEIVER'S FEES AND EXPENSES
 AND (2) ATTORNEYS' FEES AND EXPENSES AND BRIEF IN SUPPORT
 (Quilling vs. Mark Talley pending in Memphis, Tennessee)**

TO THE HONORABLE JEFF KAPLAN, UNITED STATES MAGISTRATE JUDGE:

Michael J. Quilling, Receiver, files this his Fifth Interim Application to Allow and Pay (1) Receiver's Fees and Expenses and (2) Attorneys' Fees and Expenses with respect to litigation styled *Quilling vs. Mark Talley* pending in Memphis, Tennessee and in support of such would show unto the Court as follows:

BACKGROUND

1. On November 13, 1998, the Securities and Exchange Commission ("SEC") initiated Civil Action No. 3:98-CV-2689-M styled *Securities and Exchange Commission vs. Funding Resources Group, et al* (the "SEC Proceedings") and, in connection therewith, sought the

appointment of a receiver as to each of the named Defendants. On November 13, 1998, the Court issued its Order Appointing Temporary Receiver in the SEC Proceedings pursuant to which Michael J. Quilling was named Receiver (“Receiver”).

2. On July 23, 1999, the Court issued an Order in the SEC Proceedings freezing the assets of and appointing Michael J. Quilling as the Receiver for Hammersmith Trust, LLC and a number of related entities.

3. Pursuant to the terms of each of the foregoing Orders, the Receiver was authorized to employ such attorneys as is necessary and proper for the collection, preservation, maintenance and operation of the Receivership’s Assets. Subsequent to his appointment, the Receiver employed the law firm of Quilling, Selander, Cummiskey & Lownds, P.C. (“QSC&L”) as his general counsel. The Receiver is an attorney and a shareholder of the law firm and has rendered many of the legal services which are the subject of this Application as well as performing his duties as the Receiver.

4. In connection with performance of his duties as Receiver, the Receiver filed Civil Action No. 00-3041-G/BRE styled *Quilling v. Mark Talley* pending in the United States District Court for the Western District of Tennessee (“Talley Litigation”). The Receiver hired Bruce Kramer of Borod & Kramer to represent the Receiver in connection with the case. Mr. Kramer is handling most of the day-to-day work in the lawsuit and the Receiver is functioning more as the client.

5. On April 16, 2001, the Court entered its Order regarding the Receiver’s proposed budget as to the Talley Litigation pursuant to which the Court established procedures for fee applications to be submitted by the Receiver.

6. On June 4, 2001, the Receiver filed his First Interim Application to Allow and Pay (1) Receiver’s Fees and Expenses and (2) Attorney’s Fees and Expenses for the time period from December 1, 2000 through May 31, 2001. On July 16, 2001, the Court issued its Order approving

the Application and thereafter QSC&L was paid \$3,385.07 and Borod & Kramer was paid \$1,045.09.

7. On September 5, 2001 the Receiver filed his Second Interim Application to Allow and Pay (1) Receiver's Fees and Expenses and (2) Attorney's Fees and Expenses for the time period from June 1, 2001 through August 31, 2001. On October 18, 2001 the Court issued its Order Approving the Second Interim Application and thereafter QSC&L was paid \$2,801.74 and Borod & Kramer was paid \$1,105.46.

8. On December 4, 2001 the Receiver filed his Third Interim Application to Allow and Pay (1) Receiver's Fees and Expenses and (2) Attorney's Fees and Expenses for the time period from September 1, 2001 through November 30, 2001. On January 25, 2002 the Court issued its Order Approving the Third Interim Application and thereafter QSC&L was paid \$1,571.18 and Borod & Kramer was paid \$6,428.13.

9. On March 5, 2002 the Receiver filed his Fourth Interim Application to Allow and Pay (1) Receiver's Fees and Expenses and (2) Attorney's Fees and Expenses for the time period from December 1, 2001 through February 28, 2002. On April 19, 2002 the Court issued its Order Approving the Fourth Interim Application and thereafter QSC&L was paid \$1,594.00 and Borod & Kramer was paid \$11,506.50.

10. This Application seeks approval and payment of the fees and reimbursement of expenses for the Receiver and QSC&L for the time period from March 1, 2002 through May 31, 2002. This Application also seeks approval and payment of the fees and reimbursement of expenses for the Receiver's counsel in Memphis, Borod & Kramer, for the period from February 1, 2002 through April 30, 2002.

10. During the period covered by this Application, the Receiver has incurred fees and expenses in the Talley Litigation with respect to his activities as Receiver and with respect to QSC&L and Borod & Kramer on a monthly basis as follows:

<u>QSC&L</u>		
<u>Month</u>	<u>Fees</u>	<u>Expenses</u>
March, 2002	\$ 776.00	\$ 4.00
April, 2002	\$ 372.50	\$ 83.31
May, 2002	\$ 302.50	\$ 0.00
TOTAL:	<u>\$1,451.00</u>	<u>\$ 87.31</u>

<u>Borod & Kramer</u>		
<u>Month</u>	<u>Fees</u>	<u>Expenses</u>
February, 2002	\$ 5,698.75	\$ 125.77
March, 2002	\$ 1,602.75	\$ 0.00
April, 2002	\$ 1,252.50	\$ 707.55
TOTAL:	<u>\$ 8,554.00</u>	<u>\$ 833.32</u>

11. Exhibit "A," which is attached hereto and incorporated herein by reference for all purposes conveys the following information for the time period of March 1, 2002 through May 31, 2002 as to services rendered by QSC&L: (a) the number of hours worked by each attorney and staff member on a particular day, (b) the manner and type of work performed by each attorney and staff member, (c) the customary billing rate for each person rendering service in this matter, and (d) the monetary value assigned to each task performed by a given attorney and/or staff member. Each of the invoices attached hereto as Exhibit "A" reflect aggregate expenses by category during a given month. Expense items in excess of \$500.00, if any, have been itemized under Exhibit "B." The

invoices of Borod & Kramer for the time period from February 1, 2002 through April 30, 2002 are attached hereto as Exhibit "C" and are incorporated herein by reference. They convey the same information.

JOHNSON FACTORS

12. In support of this request for allowance of compensation and reimbursement of expenses, the Receiver, QSC&L and Borod & Kramer respectfully direct this Court's attention to those factors generally considered by courts in awarding compensation to professionals for services performed in connection with the administration of a receivership estate. As stated by the Fifth Circuit Court of Appeals in *Migis v. Pearle Vision, Inc.*, 135 F.3d 1041, 1047 (5th Cir. 1998) "The calculation of attorneys fees involves a well-established process. First, the court calculates a 'lodestar' fee by multiplying the reasonable number of hours expended on the case by the reasonable hourly rates for the participating lawyers. (cite omitted.) The court then considers whether the lodestar figure should be adjusted upward or downward depending on the circumstances of the case. In making a lodestar adjustment the court should look at twelve factors, known as the Johnson factors, after *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974)." Those factors as applied to the services rendered in this case by the Receiver, QSC&L and Borod & Kramer are addressed below.

(a) **The Time and Labor Required.** The Receiver, QSC&L and Borod & Kramer respectfully refer the Court's attention to Exhibits "A" and "C" which detail the involvement of the Receiver, QSC&L's and Borod & Kramer's attorneys in this case during the three month period covered by this Application during which a total of more than forty-nine (49) hours of attorney and Receiver time have been expended.

(b) The Novelty and Difficulty of the Questions. Many of the tasks reflected in Exhibits “A” and “C” involved factual and legal questions which were of substantial complexity.

(c) The Skill Requisite to Perform the Service. The Receiver believes that the services performed in this case have required individuals possessing considerable experience in asset seizure, tracing and liquidation and legal malpractice litigation. Both the Receiver, QSC&L and Borod & Kramer have considerable experience in such areas.

(d) The Preclusion of Other Employment Due to Acceptance of the Case. The Receiver and QSC&L have not declined any representation solely because of their services as Receiver and counsel for the Receiver. Borod & Kramer has not declined any representation because of its representation of the Receiver.

(e) The Customary Fee. The hourly rates sought herein are commensurate with the rates charged by other practitioners of similar experience levels in the Northern District of Texas. During the course of these proceedings, the following lawyers at QSC&L have performed legal services on behalf of the Receiver with respect to these proceedings: Mike Quilling (\$275.00 per hour), licensed in 1982 and Board Certified in Business Bankruptcy Law and Civil Trial Law; Ken Hill (\$200.00 per hour) licensed in 1991; and Dee Raibourn (\$170.00 per hour), licensed in 1998. During the course of these proceedings, the following lawyers at Borod & Kramer have performed legal services on behalf of the Receiver: Bruce Kramer (\$305.00 per hour) licensed in 1969; Scott Kramer (\$175.00 per hour) licensed in 1996.

(f) Whether the Fee is Fixed or Contingent. The Receiver’s, QSC&L’s and Borod & Kramer’s fees are fixed insofar as monies exist by way of Receivership Assets from which to pay such fees. Payment of such fees, however, is subject to Court approval.

(g) Time Limitations Imposed by the Client or Other Circumstances. The time requirements during the period covered by this Application have been normal.

(h) The Amount Involved and the Results Obtained. This is an action by the Receiver against Memphis lawyer Mark Talley who handled funds belonging to Microfund investors. The lawsuit alleges several different tort theories, including legal malpractice and seeks recovery under a \$5 million malpractice policy. During the period covered by this Application the Receiver has continued discovery in the case and has filed papers to intervene in a related lawsuit involving Mark Talley in which his malpractice insurance carrier sought to deny coverage.

(i) The Experience, Reputation, and Ability of the Attorneys. QSC&L has several attorneys who specialize exclusively in the practice of civil trial law. The practice of those attorneys regularly includes the representation of bankruptcy trustee and receivers. The reputation of QSC&L's attorneys is recognized and respected in the community. Borod & Kramer is an experienced law firm and regularly handles legal malpractice cases. Its reputation in its community is well-respected.

(j) The Undesirability of the Case. The representation of the Receiver incident to this case has not been undesirable.

(k) The Nature and Length of the Professional Relationship with the Client. QSC&L did not represent the Receiver in these proceedings prior to being retained in these proceedings. Borod & Kramer was also hired by the Receiver to handle the Johnson Litigation which is also pending in Memphis.

(l) Award in Similar Cases. The Receiver believes that the fees requested in this case are less than or equal to those which have been awarded in similar cases in this District.

WHEREFORE, PREMISES CONSIDERED, the Receiver, QSC&L and Borod & Kramer request that this Court approve all of the fees and expenses as set forth herein and for such other and further relief, general or special, at law or in equity, to which the Receiver, QSC&L and Borod & Kramer may show themselves 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

ATTORNEYS FOR RECEIVER

CERTIFICATE OF CONFERENCE

Prior to filing this Application, as required by the Order Appointing Temporary Receiver, I conferred with Bob Brunig of the SEC regarding the filing of this Application. The SEC consents to payment of the requested fees and expenses and believes them to be necessary and reasonable.

Michael J. Quilling

CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of June, 2002 a true and correct copy of the foregoing document was served via first class mail, postage pre-paid, on:

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

The Application will also be posted on the Receiver's website www.secreceiver.com immediately after filing.

Michael J. Quilling