

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION AT JACKSON

MICHAEL J. QUILLING, Receiver for
MICROFUND LLC, a Nevada
limited liability company,

Intervening-Plaintiff,

Vs.

No. 00-3041 G BRE
JURY DEMAND

MARK D. TALLEY, and
MARK D. TALLEY, P.C.,

Defendants.

ANSWER OF DEFENDANTS TO COMPLAINT

Come now defendants and for answer to the Complaint filed herein state:

FIRST DEFENSE

The Complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE

At all times alleged in the Complaint, defendant, Mark D. Talley, served as escrow agent for Luxor Capital Markets, Ltd. Mark D. Talley, P.C., had no involvement with Luxor nor with any of the other persons, entities or matters alleged in the Complaint.

THIRD DEFENSE

Upon information and belief, defendants deny that plaintiff, Michael J. Quilling, has been appointed as Receiver for Luxor Capital Markets, Ltd. Since defendant Mark Talley's services were rendered to Luxor, plaintiff lacks the capacity to sue.

FOURTH DEFENSE

The Complaint is barred by the Statute of Limitations.

FIFTH DEFENSE

Upon information and belief, defendants aver that most, if not all, of the inventors were knowledgeable, experienced, sophisticated investors who had the capability of making their own decisions with respect to investments and with whom to invest, and they had actually invested in Mr. Gilliland's programs on prior occasions, or had investigated and considered the potential of doing so. They relied upon their own judgment, experience, and knowledge in investing in Luxor Capital Markets, Ltd. and/or Mr. Gilliland's other programs, and assumed any risks associated therewith. Direct and proximate fault rests with those investors for any losses they may have incurred, not these defendants. Defendants are therefore not liable to the investors, nor are defendants liable to plaintiff who seeks recovery against these defendants for the benefit of the investors.

SIXTH DEFENSE

Answer each paragraph of the Complaint seriatim, defendants state:

1. Defendants do not object to the jurisdiction of this Honorable Court, but deny liability to plaintiff for any amount under any theory of law or fact.

2. Defendants do not object to the venue of this Honorable Court, but deny liability to plaintiff for any amount under any theory of law or fact.

3. Defendants deny that Luxor Capital Markets, Inc. (herein "Luxor") is an alter ego of Microfund. Upon information and belief, defendants admit the remainder of the allegations of paragraph 3 of the Complaint.

4. Defendants deny serving as attorneys for Luxor, but admit that at all times material hereto defendant Mark D. Talley (herein "defendant Talley") provided escrow account services for Luxor and therefore admit that defendant Talley owed certain escrow agent duties to Luxor but deny owing any other duties, and specifically deny owing legal and fiduciary duties to Luxor. Defendants admit that defendant Talley is a resident of Shelby County, Tennessee.

5. Defendants deny serving as attorneys for Luxor and therefore deny that they owe legal or fiduciary duties as attorneys. Defendants admit that Defendant Talley rendered escrow services to Luxor, but deny that Mark D. Talley, P.C. (herein "P.C.") had any involvement whatsoever with matters alleged in the Complaint, and rendered no services as attorney, agent, or otherwise.

6. Upon information and belief, defendants admit the allegations of paragraph 6 of the Complaint.

7. Upon information and belief, defendants admits that Microfund was an entity operated by Gilliland, but defendants aver that they have had no involvement with Microfund. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations of paragraph 7 of the Complaint.

8. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 8 of the Complaint.

9. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 9 of the Complaint. Defendants further aver that they have had no involvement with Hammersmith Trust LLC.

10. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 10 of the Complaint. In any event, defendants deny serving as escrow agent or having any involvement with Microfund. Defendants further make reference to said letter (Exhibit 1 to the Complaint), for the contents thereof, and aver that these defendants had no knowledge of any such letter at the time it was supposedly sent, nor did defendants have knowledge of the letter until it came to defendant Talley's attention several months after its date;

11. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 11 of the Complaint.

12. Defendants aver that they had no participation in the preparation or sending of the letter, nor were they aware of the existence of any such letter until it came to the attention of defendant Talley several months after its date. Defendants further aver that the letter speaks for itself. Defendants deny having any involvement with Microfund. Defendants admit that Defendant Talley opened an escrow account for Luxor (not Microfund nor Microfund/Luxor) at First American National Bank.

13. Defendants admit that in or around February 1999 Defendant Talley entered into an agreement with Gilliland, as representative of Luxor, for Talley to furnish escrow

services for Luxor, but deny that Talley served as attorney for Luxor or Gilliland.

Defendants deny that P.C. was involved in any agreement and deny that P.C. provided any services.

14. Defendants admit that Defendant Talley opened an escrow account at First American Bank with the purpose of receiving funds to be escrowed, and aver that Talley's services were only those related to serving as escrow agent. Defendants deny the remainder of the allegations of paragraph 14 of the Complaint.

15. Defendants deny the allegations of paragraph 15 insofar as said allegations are directed toward defendants. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations pertaining to Gilliland.

16. Defendants admit that Defendant Talley received investor's funds into the Luxor escrow account. Defendants deny the remainder of the allegations of paragraph 16 of the Complaint.

17. Admitted.

18. Defendants admit that by the end of April 1999 Talley had disbursed approximately all of the \$1,000,000.00 that had been deposited into the escrow account, and none of the money was disbursed for the purchase of U.S. Treasury Bills. Defendants aver, however, that disbursement of funds was pursuant to instructions from Gilliland, as representative of Luxor, in accordance with Defendant Talley's agreement with Gilliland/Luxor, and there were no improper acts or omissions by defendants as alleged in the Complaint, or otherwise. Defendants deny the remainder of the allegations of paragraph 18 of the Complaint insofar as said allegations are adverse to their interests.

19. Denied.

20. Defendants admit that Defendant Talley acted in accordance with the instructions of Gilliland, as representative of Luxor, with respect to withdrawal of funds from the escrow account and the disbursement of those funds, but aver that his so doing was in accordance with his agreement with Gilliland/Luxor, and there was no improper acts or omissions on his part nor any misuse of funds, and all allegations of the Complaint to the contrary are denied. Defendants deny that Defendant Talley authorized the use of investor money for any improper purpose and avers that, to the contrary, Defendant Talley lacked the right to authorize the disbursement of funds, but, to the contrary, acted in accordance with instructions of Gilliland/Luxor, pursuant to his agreement to so do. Defendants deny the remainder of the allegations of paragraph 20 of the Complaint.

21. Defendants aver that they were unaware that funds deposited into his escrow account were to be used to purchase United States Treasury Bills and therefore deny the allegations of paragraph 21 of the Complaint.

22. Defendants admit to disbursing no funds to investors but avers that no earnings came into Defendant Talley's escrow account for such disbursement. Defendants deny the remainder of the allegations of paragraph 22 of the Complaint.

23. Denied.

24. Reference is made to Exhibit 2 to the Complaint for the terms, conditions and language of the order. Upon information and belief, defendants admit that plaintiff Quilling was appointed as a receiver for Microfund, Landfair and Hammersmith, and has duties of recovering assets for those entities as set forth in paragraph 24 of the Complaint.

Upon information and belief, defendants deny that plaintiff Quilling has been appointed as receiver for Luxor, and therefore deny that plaintiff Quilling has the right, duty, or capacity to pursue this litigation against defendants inasmuch as Defendant Talley's services and involvement have been only for Luxor.

25. Defendants are without knowledge or information sufficient to form a belief as to the extent of plaintiff's investigation of fact, but defendants deny any involvement with the operation of a scheme or doing any tortuous acts or causing any injuries to investors. Defendants deny the remainder of the allegations of paragraph 25 of the Complaint.

26. Defendants admit that Gilliland, Defendant Talley and others were recently indicted in the United States District Court for the Northern District of Florida, Pensacola Division and admit that the case is still pending, but deny that these Defendants have perpetrated any fraud or committed any criminal act. Defendants deny the remainder of the allegations of paragraph 26 of the Complaint.

27. Defendants incorporate by reference their answers to paragraph 1 through 26 of the Complaint.

28. Defendants aver that the only agreement pertaining to the escrow account was an oral agreement between Talley and Luxor/Gilliland. Defendants therefore deny the allegations of paragraph 28 of the Complaint.

29. Denied.

30. Denied.

31. Defendants incorporate by reference their answers to paragraphs 1 through 30 of the Complaint.

32. Defendants admit that Defendant Talley owed a duty to serve as escrow agent for Luxor, and to discharge his duties as escrow agent in accordance with Talley's agreement with Gilliland/Luxor. Defendants deny the remainder of the paragraphs of paragraph 32 of the Complaint.

33. Denied.

34. Denied.

35. Defendants incorporate by reference their answers to paragraph 1 through 34 of the Complaint.

36. Defendants aver that Defendant Talley acted honestly, in good faith, and with reasonable care in performing his duties as an escrow agent for Luxor, but deny having any duties as an attorney for Luxor, not having served in that capacity. Defendants deny the remainder of the allegations of paragraph 36 of the Complaint.

37. Denied.

38. Denied.

39. Denied.

40. Denied.

41. Denied.

42. Defendants incorporate by reference their answers to paragraphs 1 through 41 of the Complaint.

43. Admitted.

44. Defendants admit that funds were disbursed from the escrow account by Defendant Talley, as escrow agent for Luxor, at the instructions of Gilliland, as

representative of Luxor, and defendants aver that in so doing Defendant Talley was complying with his agreement with Gilliland/Luxor, and was guilty of no improper act, omissions or disbursements. Defendants deny the remainder of the allegations of paragraph 44 of the Complaint.

45. Denied.

46. Denied.

47. Defendants incorporate by reference their answers to paragraphs 1 through 46 of the Complaint.

48. Denied.

49. Denied.

50. Denied.

51. Defendants incorporate by reference their answers to paragraphs 1 through 50 of the Complaint.

52. Defendants deny that they have violated the Racketeer Influence and Corrupt Organization Act.

53, 54, 55, 56, 57, and 58. Defendants deny the allegations of these paragraphs of the Complaint insofar as said allegations pertain to these defendants. Defendants have not answered the allegations of these paragraphs of the Complaint insofar as said allegations are directed toward others under the belief that they are not required to do so. In the event that they are mistaken, defendants respectfully reserve the right to amend their answer to the Complaint to respond to said allegations. In any event, defendants deny having any knowledge at the time that defendant Talley handled investor's funds as an escrow agent

for Luxor of any fraud, schemes, artifices, improper and illegal activities, acts or omissions by Microfund, Luxor, Hammersmith, Gilliland, or others as alleged in these paragraphs of the Complaint.

59. Denied.

60. Defendants deny that plaintiffs are entitled to any of the relief or damages sought in the prayers of the Complaint.

All matters neither hereinabove admitted, denied, explained or plead alternatively are here and now denied.

NOW, having fully answered the Complaint, defendants pray that it be dismissed at plaintiff's cost.

Respectfully submitted,

McWHIRTER & WYATT

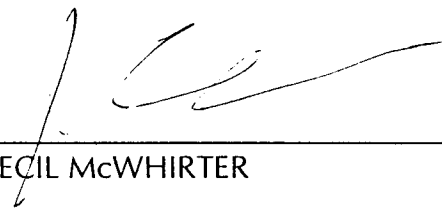
Attorneys for Defendants
73 Union Avenue
Memphis, Tennessee 38103
(901) 522-1813

BY: 

J. CECIL McWHIRTER, #8826

CERTIFICATE OF SERVICE

I do hereby certify that a copy of the foregoing Answer has been mailed, postage prepaid, to Mr. Bruce S. Kramer, Attorney for Plaintiffs, 245 Wagner Place, Suite 350, Memphis, TN 38103, on this the 19 day of Dec., 2000.



J. CECIL McWHIRTER