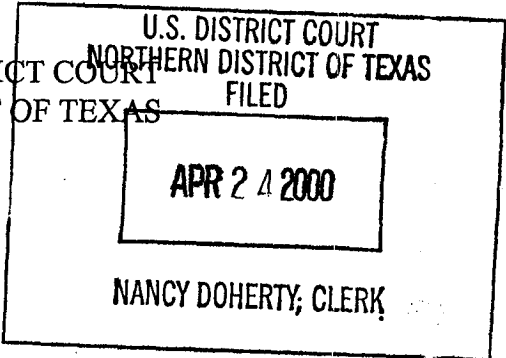


IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION



MICHAEL J. QUILLING, Receiver for
HOWE FINANCIAL TRUST, MVP
NETWORK, INC. d/b/a MVP TRUST,
and TREDS FINANCIAL TRUST

Plaintiff,

v.

JAMES W. CONWAY, an individual and,
JAMES W. CONWAY, P.S.C., a Kentucky
Professional Services Corporation

Defendants.

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

Consolidated with 3:99-CV-2699-M

FIRST AMENDED COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Michael J. Quilling, in his capacity as Receiver for Howe Financial Trust, MVP Network, Inc. d/b/a MVP Trust and Treds Financial Trust, and pursuant to Fed. R. Civ. P. 15a, files this his First Amended Complaint against James W. Conway and James W. Conway, P.S.C., and in support of such would show unto the Court as follows:

PARTIES

1. Plaintiff is Michael J. Quilling, who has been appointed as the Receiver for Howe Financial Trust, MVP Network, Inc. d/b/a MVP Trust and Treds Financial Trust, and others, in Civil Action No. 3:98-CV-2689-X, styled *Securities and Exchange Commission v. Funding Resource Group, et al.*, pending before the United States District Court for the Northern District of Texas, Dallas Division, the Honorable Joe Kendall presiding. Plaintiff is hereinafter referred to as "Receiver." This action is brought by the Receiver on behalf of all persons and entities who invested

money with Howe Financial Trust, including but not limited to MVP Network, Inc. d/b/a MVP Trust and Treds Financial Trust.

2. Defendants are James W. Conway, who is an individual attorney licensed to practice law in the Commonwealth of Kentucky, and James W. Conway, P.S.C., a Kentucky professional services corporation, which is Mr. Conway's incorporation of his law practice. Mr. Conway resides in Taylorsville, Kentucky, and James W. Conway, P.S.C. has its corporate offices at Mr. Conway's place of business at 279 South Buckman Street, Shepherdsville, Kentucky. Mr. Conway and James W. Conway, P.S.C. are hereinafter sometimes referred to collectively as "Conway."

JURISDICTION AND VENUE

3. 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. In addition, this Court has personal jurisdiction over the Defendants pursuant to 28 U.S.C. §§ 1692, 754, with service being proper pursuant to Fed. R. Civ. P. 4(k)(1)(D). The Court also has jurisdiction pursuant to 28 U.S.C. § 1332(a). The Plaintiff is a citizen of Texas and the Defendants are citizens of the State of Kentucky. The amount in controversy is more than \$75,000.00 exclusive of interest and costs.

4. Venue for this action is proper in the Northern District of Texas because the SEC Action referenced below is pending in this District and this action is ancillary to it, the Receiver was appointed in this District, and this action involves Receivership Assets within the meaning of the order appointing the Receiver. Further, the Order Appointing Temporary Receiver in the SEC Action (hereinafter defined) directs all actions such as this to be filed in the Northern District of Texas, Dallas Division.

BACKGROUND FACTS

5. On November 13, 1998, the United States Securities and Exchange Commission (“SEC”) instituted Civil Action 3:98-CV-2689-X, styled *Securities and Exchange Commission v. Funding Resource Group, Quentin Hix, Gene Coulter, Steven C. Roberts, MVP Network, Inc., FMCI Trust, Funders Marketing Company, Inc., Raymond G. Parr, Willard Vearl Smith, Earl D. McKinney, Fortune Investments, Ltd., Robert Cord, Winterhawk West Indies, Inc., IGW Trust, Carolyn Don Hicks and Carl LaDane Weaver; and Howe Financial Trust and Treds Financial Trust* (the “SEC Action”), pursuant to which the SEC alleged various counts of securities fraud by a number of individuals and entities and, in connection therewith, sought the appointment of a receiver.

6. On November 13, 1998, in the SEC Action, the Court appointed Michael J. Quilling as the Receiver as to all named Defendants and Equity Relief Defendants. One of the Equity Relief Defendants in the SEC Action is Howe Financial Trust. Howe Financial Trust (“Howe”) is a trust organized under the laws of the State of Indiana, having its principal place of business in Elkhart, Indiana. At all relevant times, the business affairs of Howe were controlled by a board of trustees and Rodger Griggs (“Griggs”), a special advisor to the board. One of the business activities in which Howe was engaged was the making of high interest rate loans and the subsequent sale of the loans to third parties. In connection with making the loans and then selling the loans, Howe would solicit funds from investors. Over a period from late 1997 through September 1998, Howe obtained funds totaling approximately \$2.5 million from approximately eleven groups of investors. Two of the investors from whom Howe received funds were MVP Network, Inc. d/b/a MVP Trust (“MVP Trust”) and Treds Financial Trust (“Treds Financial”). The Receiver is also the receiver for MVP Trust and Treds Financial.

7. In connection with furthering its program to make loans and subsequently sell the loans, Howe enlisted the aid of Conway. In that regard, it was agreed that Conway would act as the attorney for Howe and as the escrow agent with respect to investor monies used to fund the loans. Conway was to be paid for his services. Additionally, Conway would maintain malpractice insurance in the amount of \$500,000 and an umbrella liability policy of \$1,000,000 for the benefit of Howe and its investors. Attached hereto as Exhibit 1 and incorporated herein by reference is a March 2, 1998 letter from Conway to Griggs which outlines some of the details of the relationship.

8. Shortly after establishing the relationship with Conway, Howe began seeking investors so that it could begin its program of making loans and then selling the loans. Initially, Howe raised \$250,000 from a group of several investors, including \$100,000 of which was invested by Treds Financial. By agreement dated February 25, 1998, Howe used these funds to make a loan to Hammersmith Trust LLC ("Hammersmith") which had an interest rate of 480% per annum. Attached hereto as Exhibit 2 is a true and correct copy of the loan agreement, promissory note and related documents which reflect this transaction. Conway acted as the attorney for Howe in connection with this transaction, knew how it was structured and how the loan was to be secured. As stated in the attached documents, the loan was to be repaid by virtue of twelve \$100,000 monthly installments of interest only beginning six weeks after funding of the loan, and all principal was to be repaid on March 27, 1999 or the thirteenth month.

9. Subsequent to making the loan to Hammersmith, Howe then set about to find someone to purchase the loan and its income stream. In that regard, Howe issued a so-called private placement memorandum directed to MVP Trust, a true and correct copy of which is attached as Exhibit 3 hereto and incorporated by reference. Conway acted as the attorney for Howe in connection with this transaction. As stated in the attached documents, over the course of one year,

MVP Trust was to be repaid \$1.2 million of interest in addition to repayment of the \$500,000 invested. Attached hereto as Exhibit 4 and incorporated by reference is a statement of payments issued by Howe to MVP Trust, which reflects that MVP Trust was to be paid \$141,666.66 per month. Conway knew or should have known that there was no conceivable way a note paying \$100,000 (the \$250,000 loan by Howe to Hammersmith) could possibly pay \$141,666.66 per month to the person purchasing it.

10. In an effort to induce MVP Trust to purchase the \$250,000 loan from Hammersmith for \$500,000, Conway sent a letter dated April 1, 1998 to Vearl Smith, the president of MVP Trust, in which he touts the logistics of the program, his insurance and the fact that the program had been observed by him to work. A true and correct copy of the letter is attached hereto as Exhibit 5 and is incorporated by reference for all purposes. Conway had not and could not have seen the transaction work as of that point in time.

11. Ultimately, MVP Trust did purchase the loan and the income stream for \$500,000 which money was sent by MVP Trust directly to Conway's escrow account. Conway then caused the \$500,000 to be sent to Hammersmith to fund a new loan by Howe to Hammersmith in the amount of \$500,000. Thereafter, Howe sold the \$500,000 note and its income stream to yet another investment group. This cycle of making and selling loans was repeated several times thereafter as Howe continued making loans to Hammersmith which ultimately totaled \$2,745,000 in the aggregate, almost all of which came from investors who bought the income streams from the loans. Each time, Conway functioned as the attorney for Howe and as the escrow agent for the investor group.

12. Conway is an experienced lawyer having been licensed to practice for over 25 years. Despite his experience, he never obtained signed escrow agreements with either Howe or any of the

investor groups, which clearly set forth his duties. Instead, he routinely and without exception simply followed whatever instructions were given to him by Howe with respect to the movement of monies in and out of the account. He never attempted to reconcile the money in versus money out and never understood how much Hammersmith owed to each investor group with respect to each note. In short, Conway did whatever Howe told him to do and never asked questions that a reasonable and prudent attorney/escrow agent would have asked. In addition, Conway routinely made statements in letters and affidavits which he knew were going to be given to investors which were either false or which he did not know were true. Representative samples of such affidavits are collectively attached hereto as Exhibit 6 and are incorporated by reference for all purposes. For example, in paragraph 5 of the March 12, 1998 affidavit, Conway falsely states that "Affiant maintains a lock-box in which he places notes and holds them in escrow for the term of the note." Despite his sworn assertion to investors to the contrary, Conway never held one single original note in his lock-box. Each time Conway issued false and misleading letters and affidavits, he knowingly helped induce investors to give their money to Howe and substantially assisted Howe in its efforts to obtain investors.

13. Hammersmith is nothing more than a huge international *Ponzi* scheme. Any experienced attorney would know or should have known that there is no legitimate way that an entity can pay 480% annual interest. Any experienced attorney would know or should have known that a "loan" bearing interest of 480% was blatantly illegal and constituted a nonsensical transaction. Any experienced attorney would know or should have known that the transactional documents attached hereto as Exhibit 2 (as well as each set of documents relating to the other loans made by Howe to Hammersmith) were gibberish.

14. Conway, as Howe's attorney, owed a duty to Howe to properly investigate Hammersmith and the representations made, among others, in Exhibit 2 hereto and to properly advise Howe in that regard. Conway completely failed to do so and as a result Howe went blindly forward with the transactions, believing them to be legitimate, enforceable and properly documented. But for Conway lending his name, credibility and insurance to the program and presumably verifying the legitimacy of the loans to Hammersmith, Howe would not have loaned money to Hammersmith. Similarly, as a result of Conway's letters and affidavits given to investors, they sent their money to Howe, believing the program to be legitimate, legally sound, blessed by an attorney and backed by the attorney's insurance if anything went wrong. But for Conway lending his name, credibility and insurance to the program, investors would not have sent money to Howe.

15. The last payments made by Hammersmith to Howe under the loans occurred in November 1998. As a result of the failure of Hammersmith to timely repay the loans, investors have lost at least \$2,745,000. In early December 1998, in connection with the SEC Action, the Receiver deposed Conway and thereafter met with representatives of Hammersmith to discuss the default situation. During the course of the deposition and the subsequent meeting, the Receiver discovered the fraudulent nature of the transaction, the illegitimacy of Hammersmith and the negligence of Conway.

COUNT ONE-NEGLIGENCE

16. Paragraphs 1-15 are incorporated herein by reference for all purposes.

17. Conway, acting as attorney for Howe, owed a duty of care to Howe to fully and properly perform his services and to properly investigate and advise Howe as to matters entrusted to him. Conway, acting as escrow agent to both Howe and the investor groups, owed a similar duty of care to each investor group.

18. The forgoing acts and omissions of Conway constitutes negligence as to both his duties as an attorney and as an escrow agent. In the course of performing the acts and failing to perform the acts described above, Conway failed to adhere to the standards of care of a reasonable and prudent attorney

19. As a direct and proximate cause of the negligence of Conway, Howe and the investor groups have been damaged in an amount equal at least to the amount of the principal and interest which Hammersmith failed to pay under the loans, for which amount the Plaintiff hereby sues.

COUNT TWO-NEGLIGENT MISREPRESENTATION

20. Paragraphs 1-15 are incorporated herein by reference for all purposes.

21. Many of the letters and affidavits issued by Conway contained statements which were false, misleading or which Conway failed to properly investigate. Such statements constitute negligent misrepresentations to both Howe and the investor groups.

22. As a direct and proximate cause of the negligent misrepresentations of Conway, Howe and the investor groups have been damaged in an amount equal to at least the amount of the principal and interest which Hammersmith failed to pay under the loans, for which amount the Plaintiff hereby sues.

COUNT THREE-AIDING AND ABETTING CORPORATE WASTE

23. Paragraphs 1-15 are incorporated herein by reference for all purposes.

24. The monies paid by the investor groups to Howe to purchase the loans constituted corporate assets of Howe. The management of Howe in place before the appointment of the Receiver wasted the assets by loaning them to Hammersmith. Conway substantially assisted prior management of Howe in connection with the wasting of the assets thereby aiding and abetting Howe in the wasting of the assets.

25. As a result of the conduct of Conway in aiding and abetting such corporate waste, Howe and the investor groups have been damaged in an amount equal to at least the amount of the principal and interest which Hammersmith failed to pay under the loans, for which amount the Plaintiff hereby sues.

COUNT FOUR-BREACH OF CONTRACT

26. Paragraphs 1-15 are incorporated hereby by reference.

27. By acting as escrow agent for Howe and the investor groups, and issuing confirming letters to each group, a contract arose between Conway, Howe and the investor groups. The actions and inactions of Conway constitute a breach of those contracts.

28. As a result of Conway's breach of the contracts, Howe and the investor groups have been damaged in an amount in excess of the minimum jurisdictional levels of this Court, for which amounts the Receiver hereby sues.

COUNT FIVE -FEES, EXPENSES, COSTS AND INTEREST

29. Paragraphs 1-28 are incorporated herein by reference for all purposes.

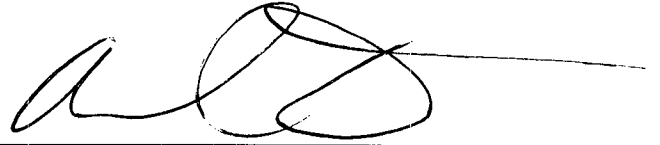
30. As a direct result of the Defendants' misconduct, as alleged hereinabove, it has been necessary for the Receiver to file this action. Such action necessarily requires the expenditure of litigation costs and expenses, and the hiring of attorneys. Further, equity requires that Defendants be required 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. Plaintiff hereby sues for all costs, expenses, attorneys' fees, and pre-judgment and post-judgment interest to which he is entitled under law or at equity.

WHEREFORE, PREMISES CONSIDERED, the Receiver prays that upon final trial of this matter that he recover judgment against the Defendants, jointly and severally, in accordance with

the foregoing, and for such other and further relief, general or special, at law or in equity, to which he may show himself justly entitled.

Respectfully submitted,

By:



Andrew M. Trusevich
State Bar No.: 00785119

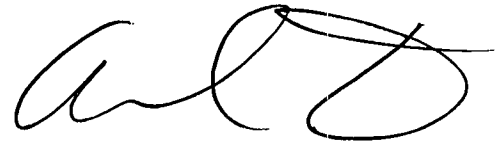
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Dallas, Texas 75201
(214) 871-2100
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ATTORNEY FOR RECEIVER

CERTIFICATE OF SERVICE

The undersigned certifies that on this 24th day of April, 2000 a true and correct copy of this Response was sent, via the U.S. Postal Service, certified mail, R.R.R., to the following:

Mr. Gary D. Elliston
DeHay & Elliston, L.L.P.
3500 Bank of America Plaza
901 Main Street
Dallas, Texas 75202-3736



Andrew M. Trusevich