

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

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

Plaintiff, §

v. §

Civil Action No. 3-99-CV-2699-X

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

Defendants §

**DEFENDANTS JAMES W. CONWAY AND JAMES W. CONWAY, P.S.C.'s  
MOTIONS TO DISMISS FOR LACK OF PERSONAL JURISDICTION AND  
FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE  
GRANTED**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, James W. Conway, an individual, and James W. Conway, P.S.C.,  
a Kentucky Professional Services Corporation, (hereinafter "Conway"), appearing by and  
through its attorneys, and pursuant to Federal Rules of Civil Procedure 12(b)(2) and  
12(b)(6), and would respectfully show the Court the following:

1. James Conway resides in Taylorsville, County of Bullitt, Commonwealth of  
Kentucky. Aff. J. Conway ¶1; Complaint ¶ 2. James W. Conway, P.S.C. is a

Professional Services Corporation organized and existing under the laws of the Commonwealth of Kentucky with its principal place of business in Shepherdsville, Kentucky. Aff. J. Conway ¶2; Complaint ¶2. James W. Conway and James W. Conway, P.S.C. hereinafter are referred to as “Conway.”

2. Conway is an attorney licensed to practice in only the Commonwealth of Kentucky and the Western District of Kentucky. Aff. J. Conway ¶3.
3. Conway is a member of both bars in good standing. Aff. J. Conway ¶3.
4. Conway is not licensed to practice law in either the state or federal courts in Texas. Aff. J. Conway ¶ 3.
5. Conway is not licensed to conduct business in the State of Texas. Aff. J. Conway ¶ 5.
6. Conway does not own any assets or have any employees based in the State of Texas. Aff. J. Conway ¶ 7.
7. Conway is a sole practitioner with one secretary and a cleaning person. Neither the employees nor Conway has traveled to the State of Texas for the purpose of conducting any business on behalf of James W. Conway or James W. Conway, P.S.C. Aff. J. Conway ¶ 4.
8. Conway has neither solicited nor transacted business within this judicial district or within the State of Texas. Aff. J. Conway ¶ 8.
9. Conway has not placed any advertisement in any newspaper or magazine published in the State of Texas or on any television or radio station broadcast within the

State of Texas. Aff. J. Conway ¶ 9.

10. Michael Quilling, Receiver, (“Quilling”) filed this action on November 29, 1999.

Quilling alleges four claims under the laws of the Commonwealth of Kentucky: (1) Professional Negligence; (2) Negligent Misrepresentation; (3) Aiding and Abetting Corporate Waste; (4) and Breach of Contract. Complaint ¶¶ 16-28.

11. The Court would have jurisdiction over the parties to the same extent as a Texas court would.

12. Under Texas law, the Texas long-arm statute is co-extensive with the jurisdiction allowed under the United States Constitution.

13. Quilling’s complaint is devoid of any factual allegations to support personal jurisdiction over Conway within this judicial district.

14. As more fully set forth in the memorandum of points and authorities in support of this motion, Quilling has failed to plead a prima facie case of personal jurisdiction.

Further, Conway lacks sufficient “minimum contacts” with the State of Texas as required by the Due Process Clause of the Fourteenth Amendment to the United States Constitution. Exercising personal jurisdiction over Conway in this case would offend traditional notions of fair play and substantial justice.

15. Quilling has failed to plead any claim upon which relief can be granted.

16. This Court does not have subject matter jurisdiction because Quilling has failed to comply with 28 U.S.C. § 754.

18. The affidavit of James W. Conway is attached hereto, incorporated for all purposes herein, and is offered in support of this motion.

WHEREFORE, Defendants Conway respectfully request that this Court dismiss this action under FRCP 12(b)(2) and FRCP 12(b)(6).

Respectfully submitted,

**DEHAY & ELLISTON, L.L.P.**  
3500 Bank of America Plaza  
901 Main Street  
Dallas, Texas 75202-3736  
Telephone: (214) 210-2400  
Facsimile: (214) 210-2500

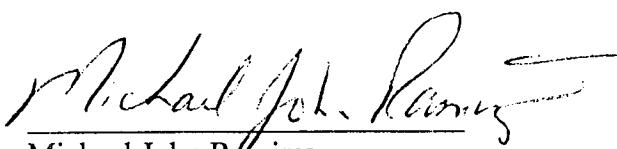
A handwritten signature in black ink, appearing to read "Michael John Ramirez", with a horizontal line underneath. To the right of the signature, the initials "GDE" are written.

GARY D. ELLISTON  
State Bar No. 06584700  
MICHAEL JOHN RAMIREZ  
State Bar No. 00788238  
**ATTORNEYS FOR  
DEFENDANTS CONWAY**

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing Motions to Dismiss have been served on counsel for Plaintiff via certified mail, return receipt requested on this the 31st day of January, 2000, a copy to:

Clark B. Will, Esq., Counsel for Plaintiff Receiver  
Quilling, Selander, Cumiskey, & Lownds, P.C.  
350 N. St. Paul St., Suite 2800  
Dallas, Texas 75201-4240  
(214) 871-2100  
(214) 871-2111 (facsimile)

  
Michael John Ramirez



place of business in Shepherdsville, Kentucky. Shepherdsville is located in Bullitt County, population approximately 57,000.

3. I am licensed to practice law in only the Commonwealth of Kentucky and the Western District of Kentucky. I am a member of both bars in good standing. I am not licensed to practice law in any other state or federal court.
4. I am a sole practitioner with one secretary, a receptionist I share with two other attorneys (she will be leaving our employ shortly), and a cleaning person. Neither the employees nor I have traveled to the State of Texas for the purpose of conducting any business on behalf of myself or James W. Conway, P.S.C.
5. James W. Conway, P.S.C. is not licensed to conduct business in the State of Texas.
6. I have no mailing address or telephone listing in Texas.
7. I do not own any assets or have any employees based in Texas.
8. I have neither solicited nor transacted business within this judicial district or within the State of Texas.
9. I have not placed any advertisement in any newspaper or magazine published in the State of Texas or on any television or radio station broadcast within the State of Texas.
10. I have read the complaint filed on behalf of Michael Quilling, Receiver, against James W. Conway and James W. Conway, P.S.C. None of my conduct, as alleged or in truth, occurred in or was directed towards the State of Texas.

18. On January 23, 2000, I searched the records of the Western District of Kentucky. Mr. Quilling or his agent(s) have not filed any papers in the Western District of Kentucky regarding this case or the case styled SEC v. Funding Resource Group, et al, 3:98-CV-2689-X.

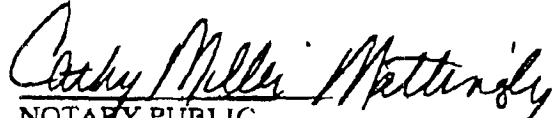
FURTHER YOUR AFFIANT SAYETH NOT.

Dated January 31, 2000

  
JAMES W. CONWAY

Commonwealth of Kentucky  
County of Bullitt

On the \_\_\_\_ day of January 2000, before me personally appeared James W. Conway, to me known, who first being duly sworn by me, did depose and say that he is the President of James W. Conway, P.S.C., that he has full and complete authority to execute the said instrument individually and in the name of and on behalf of the said corporation, and that the statements contained herein are true and correct to the best of his knowledge, information and belief.

  
NOTARY PUBLIC  
My commission expires 6-18-03