

("Judgment-Debtors").

2. Merrill, Lynch, Pierce, Fenner, & Smith, Inc. ("Garnishee") is an entity doing business in the Northern District of Texas and may be served through its registered agent, CT Corporation System, 350 North St. Paul Street, Dallas, Texas 75201.

3. Judgment-Debtors may be served with notice by mail at 938 Borebank Street, Winnipeg, Manitoba, Canada R3N 1G6.

Jurisdiction and Venue

4. This Court has jurisdiction over this matter pursuant to Fed. R. Civ. P. 69(a), which provides in relevant part:

The procedure on execution, in proceedings supplementary to and in aid of a judgment, and in proceedings on and in aid of execution shall be in accordance with the practice and procedure of the state in which the district court is held....

Accordingly, Garnishor files this Application for Writ of Garnishment in accordance with the practice and procedure of the State of Texas.

5. Venue is proper in this Court in that this is an ancillary proceeding to the original proceeding that was styled *Michael J. Quilling, Receiver for Hammersmith Trust, LLC, Hammersmith Trust, Ltd., Microfund, LLC, and B. David Gilliland v. Jerrold L. Gunn and Jerrold L. Gunn, LLB*, Civil Action No. 3-00-CV-1318-M in this Court.

Background and Bases for Issuance of Writ of Garnishment

6. On November 13, 1998 the Securities and Exchange Commission ("SEC") initiated Case No. 3:98-CV-2689-M styled *Securities and Exchange Commission v. Funding Resource Group, a/k/a FRG Trust; Quentin Hix; Gene Coulter; Steven C. Roberts; MVP Network, Inc., a Texas corporation a/k/a MVP Network (Trust); FMCI Trust; Funders Marketing Company, Inc., a*

Texas corporation; Raymond G. Parr; Willard Vearl Smith; Earl D. McKinney; Fortune Investments, Ltd., a Nevada corporation, Robert Cord, a/k/a Robert F. Schoonover, Jr.; Winterhawk West Indies, Inc.; IGW Trust; Carolyn Don Hicks; and Carl LaDane Weaver, Defendants, and Howe Financial Trust, an Indiana corporation; Treds Financial Trust; Mary Ann Bauce, Hammersmith Trust, L.L.C., a Tennessee limited liability company; Hammersmith Trust, Ltd., an Irish Corporation; Bridgeport Alliance, L.L.C., a Nevada limited liability company; Landfair Custodial Services, Inc., a Tennessee corporation; Microfund, L.L.C., a Nevada limited liability company; American Pacific Bank & Trust, Inc., an Antiguan corporation; Eurofund Investment Inc., a Tennessee corporation; B. David Gilliland; and Melody Rose, Defendants Solely for Purposes of Equitable Relief (the “SEC Proceedings”) and in connection therewith sought the appointment of a receiver as to the defendants and equity relief defendants. By order dated November 13, 1998 in the SEC Proceedings, Mr. Quilling was appointed as the receiver and has continued to serve in that capacity.

7. By subsequent order dated July 22, 1999 in the SEC Proceedings, the receivership was expanded to include a number of additional individuals and entities, including Hammersmith Trust, LLC (both the Tennessee and the Nevis West Indies entities), Hammersmith Trust, Ltd. (all of the Hammersmith entities are collectively referred to as “Hammersmith”), Microfund, LLC (“Microfund”) and B. David Gilliland (“Gilliland”). By virtue of the same order, Mr. Quilling was appointed as the receiver for each of the additional individuals and entities and he continues to serve in that capacity.

8. As the Court appointed receiver in the SEC Proceeding, the Receiver investigated the business, transactions, assets, liabilities, and books and records of Hammersmith, Microfund,

and Gilliland. Based upon his investigation, the Receiver was able to trace \$225,500.00 to Jerold Gunn's account at Merrill Lynch, account number 75023822.

9. On November 29, 1999, the Receiver filed his Emergency *Ex Parte* Application to Freeze Account and Brief in Support requesting the Court freeze Gunn's account at Merrill Lynch. On November 30, 1999, the Court ordered Account No. 75023822, in the name of Jerrold Gunn, at Merrill Lynch be frozen until further order by the Court. The account remains frozen to this day.

10. On June 16, 2000, the Receiver initiated a lawsuit against the Judgment-Debtors alleging negligence, aiding and abetting corporate waste, constructive trust and disgorgement, aiding and abetting breach of fiduciary duty, and money had and received.

11. After Judgment-Debtors were served and failed to answer, this Court entered a Final Default Judgment against them on December 14, 2000. At that time, the Court determined that the Judgment-Debtors were jointly and severally liable for \$10,000,000.00 (the "Judgment") and that Plaintiff be allowed all writs and processes as may be necessary to enforce and collect the judgment. Pursuant to the terms of the Judgment, that sum has been accruing and continues to accrue interest at the rate provided by law from the date of the Judgment until paid.

12. Garnishor is the owner and holder of the Judgment. The Judgment is valid, subsisting, unpaid, and no supersedeas bond has been filed or approved to suspend the execution of the Judgment. A true and correct copy of the Judgment is attached to the Affidavit of Michael J. Quilling as Exhibit "1." Mr. Quilling's affidavit is attached hereto as Exhibit "A."

12. Within Garnishor's knowledge neither of the, Judgment-Debtors possess property in Texas subject to execution sufficient to satisfy the Judgment. This garnishment is not sought to injure or harass either the Judgment-Debtors or Garnishee.

13. Based upon this Court's order freezing Judgment-Debtor's account with Garnishee, Garnishor believes that Garnishee is indebted to one or both of the Judgment-Debtors, or has in its possession effects belonging to one or both of the Judgment-Debtors.

14. Pursuant to Fed. R. Civ. P. 64, the remedies of the State of Texas are available for the seizure of property for the purpose of securing satisfaction of the judgment ultimately to be entered in this proceeding. The applicable statutes and rules for issuance of a writ of garnishment under Texas law are set forth in Tex. Civ. Prac. and Rem. Code Section 63.001, *et seq.*

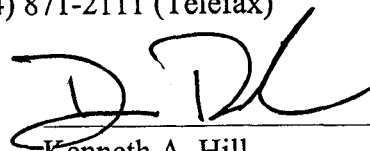
WHEREFORE, Garnishor prays that:

- (a) a writ of garnishment be issued to Garnishee as described above;
- (b) Garnishor be granted judgment against Garnishee for the amount of the Judgment, with the total not to exceed the amount admitted or found to be due Judgment-Debtors from Garnishee; and
- (c) Garnishor be granted such other and further relief, special or general, at law or in equity, to which Garnishor may show himself justly entitled.

Respectfully submitted,

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