

Group, et al (“Main Case”) and, in connection therewith, sought the appointment of a receiver. By Order dated November 13, 1998, Michael J. Quilling was appointed as the Receiver (“Receiver”) for the Defendants and equity relief Defendants named in the Complaint at that time.

2. By Order dated July 22, 1999, the receivership was extended to include a number of additional persons and entities including, Hammersmith Trust, LLC, Hammersmith Trust, Ltd., Microfund LLC, and B. David Gilliland.

3. On November 29, 1999, the Receiver filed, in the Main Case, an Emergency Ex Parte Application to Freeze Account pursuant to which he requested that the Court freeze an account in the name of Jerrold Gunn at Merrill Lynch, Pierce, Fenner & Smith, Inc. (“Merrill Lynch”).

4. On November 30, 1999, in the Main Case, the Court entered its Order pursuant to which Jerrold Gunn’s account at Merrill Lynch was ordered frozen until further order of the Court (the “Freeze Order”). A true and correct copy of the Freeze Order is attached hereto as Exhibit “1” and incorporated herein by reference for all purposes.

5. On November 30, 1999, the Receiver served a copy of the Freeze Order upon Charles V. Sentore, Vice President of Merrill Lynch via telecopy and regular mail.

6. On December 9, 1999, the Receiver caused a subpoena to be served upon Merrill Lynch via telecopy and regular mail, attention Jacqueline Lamberti, requesting that Merrill Lynch produce all account records with respect to the frozen account. No documents were ever produced pursuant to the subpoena by Merrill Lynch with respect to the account.

7. On June 16, 2000, the Receiver instituted Cause No. 3:00-CV-1318-M against Jerrold L. Gunn to recover money traceable to defrauded investors from him (the “Gunn Lawsuit”).

8. On December 14, 2000, the Court entered a Final Judgment in the Gunn Lawsuit in favor of the Receiver against Jerrold Gunn.

9. On January 25, 2001, the Receiver filed his Application for Writ of Garnishment as to Merrill Lynch thereby initiating Cause No. 3:01-CV-0177-M and seeking the issuance of a Writ of Garnishment so as to recover, toward satisfaction of the Final Judgment in the Gunn Lawsuit, all funds and securities on deposit in the account which had been frozen since November 30, 1999 (the "Garnishment Proceedings"). On January 25, 2001, the Clerk of this Court issued a Writ of Garnishment as to Merrill Lynch, which Writ was served on Merrill Lynch on January 31, 2001. A true and correct copy of the Writ of Garnishment is attached hereto as Exhibit "2" and incorporated herein by reference for all purposes.

10. On February 26, 2001, Merrill Lynch filed its Answer in the Garnishment Proceedings stating that on the date of service of the Writ (January 31, 2001) the account contained \$108,798.83 and on the date of the Answer (February 26, 2001) the account contained \$97,489.39.

11. On March 14, 2001, the Receiver served a Request for Production of Documents upon Merrill Lynch in the Garnishment Proceedings requesting copies of account opening documents and all account statements from inception of the account to present. On April 11, 2001, counsel for Merrill Lynch in the Garnishment Proceedings forwarded the requested documents to the Receiver via certified mail.¹

12. The account statements which were finally produced by Merrill Lynch in April, 2001, reflect that despite the Freeze Order and despite the Writ of Garnishment, Merrill Lynch did not freeze the account and has allowed continuous trading in the account from December, 1999 through at least February 20, 2001. Allowing such trading is a contemptuous violation of the Freeze Order and the Writ of Garnishment.

¹The last statement produced was for the period ending February 28, 2001. No statement has been produced for the month of March or April, 2001. As part of the requested show cause order, the Receiver requests that Merrill Lynch be ordered to produce to the Receiver at least two days prior to any scheduled hearing, all account statements for the period from March 1, 2001 through five days prior to the hearing so that the Court can determine the proper amount of contempt damages.

13. The statements produced by Merrill Lynch with respect to the account for the period ending December 31, 1999 (the time frame immediately subsequent to the issuance of the Freeze Order) indicates that the account had a value as of December 31, 1999 in the amount of \$129,662.00. Had the account remained frozen, the value of the account as of April 19, 2001 would be \$168,783.01 plus interest, dividends and recoupment of unauthorized expenses in the amount of \$21,770.01 for a total value of \$190,553.02. An analysis of the account prepared by the Receiver reflecting the foregoing figures is attached hereto as Exhibit "3" and is incorporated herein by reference for all purposes.

14. Accordingly, as a result of the intentional violation by Merrill Lynch of the Freeze Order, there has been a diminution in the value of the account as of April 19, 2001 in the amount of at least \$96,070.53. At least \$11,309.44 of this loss occurred after the issuance of the Writ of Garnishment.

15. On April 20, 2001, counsel for the Receiver sent counsel for Merrill Lynch a letter stating the foregoing facts and demanding payment of the loss to the Receiver. A true and correct copy of the letter (without exhibits) is attached hereto as Exhibit "4" and is incorporated herein by reference for all purposes. Other than requesting additional time to respond (to May 7, 2001 to which the Receiver agreed) no response to the letter has been made by Merrill Lynch.

Argument and Authorities

16. The Freeze Order states in pertinent part:

"IT IS ORDERED that account number 75023822 in the name of Jerrold Gunn at Merrill Lynch is hereby frozen until further order of this Court."

Merrill Lynch violated the Freeze Order by continuing to allow trading in the account.

17. The Writ of Garnishment provides in pertinent part:

“YOU ARE FURTHER COMMANDED NOT to pay to defendant any debt or to deliver to him any effects, pending further orders of this Court.”

Merrill Lynch violated the Writ of Garnishment by continuing to allow trading in the account.

18. A violation of a court order constitutes contempt. 18 U.S.C. § 401. A court has the power to punish those who violate its orders. *Id.*

19. Contempt proceedings can be initiated by a party requesting that the court issue a show cause order. *See, generally, Quilling v. Funding Resource Group*, 227 F. 3d 231, 233 (5th Cir. 2000) (contempt proceedings commenced by order to show cause); *Smith v. Smith*, 145 F. 3d 335, 341 (5th Cir. 1998) (notice of contempt proceedings may be given by order to show cause). Here, the Receiver requests that the Court issue a show cause order as to why Merrill Lynch should not be held in civil contempt of this Court for its violation of the Freeze Order and the Writ of Garnishment.

20. Contempt proceedings are “summary in form and swift in execution.” *American Airlines, Inc. v. Allied Pilot’s Ass’n.*, 228 F. 3d 574, 583 (5th Cir. 2000). All that is required is “notice and an opportunity to be heard.” *Id.* The Receiver requests that the Court issue a show cause order which gives notice to Merrill Lynch and an opportunity to be heard at an evidentiary hearing to be held at such time as to give Merrill Lynch adequate time to prepare.

21. A court can punish those who violate its orders by fine or imprisonment. 18 U.S.C. § 401. The court may also award other relief such as damages and attorney’s fees. *American Airlines, Inc. v. Allied Pilot’s Ass’n.*, 228 F. 3d 585.

22. In accordance with the foregoing authorities, the Receiver seeks sanctions against Merrill Lynch in an amount equal to the difference between the account value as of the time of the contempt hearing and what value it would have had as of the same date if Merrill Lynch had complied with the Freeze Order and the Writ of Garnishment. In addition, the Receiver seeks as a sanction, recovery of all legal fees and costs incurred in connection with these contempt proceedings

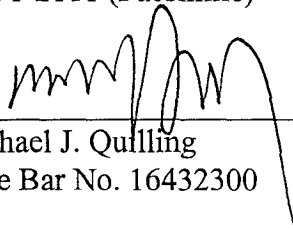
in amounts to be established at the time of the hearing. Finally, the Receiver seeks an order disallowing any claim of Merrill Lynch for attorney's fees in this case.

WHEREFORE, PREMISES CONSIDERED, the Receiver requests that upon final consideration of this Motion that the Court issue a Show Cause Order consistent with the foregoing and for such other and further relief, general or special, at law or in equity, to which the Receiver may show himself 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

I certify that Merrill Lynch opposes the relief requested herein.



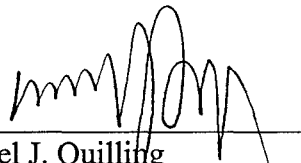
Michael J. Quilling

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of May, 2001, 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

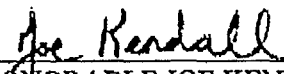
Kenneth Stein
Matthews, Carlton & Stein
8131 LBJ Freeway, Suite 700
Dallas, Texas 75251



Michael J. Quilling

IT IS FURTHER ORDERED that a hearing will be held at 2:00 p.m. on December 13, 1999,
at which time the Court will consider whether the freeze shall remain in place or whether it should
be lifted or modified.

Signed this 29th day of November, 1999.



THE HONORABLE JOE KENDALL
United States District Court Judge

After entry, return to:

Michael J. Quilling
Quilling, Selander, Cumiskey & Lownds, P.C.
350 N. St. Paul, Suite 2800
Dallas, TX 75201
(214) 871-2111 (Facsimile)

003362

813

GARNISHMENT -- AFTER JUDGMENT

RUSH

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

TO: Merrill, Lynch, Pierce, Fenner & Smith, Inc., by and through its registered agent,
CT Corporation System, or any other officer authorized to accept service of a
garnishment on behalf of Merrill, Lynch, Pierce, Fenner & Smith, Inc.
350 North St. Paul Street
Dallas, Texas 75201

3-01CV0177-M

Whereas, on the 25th day of January, A.D. 2001, Michael J. Quilling, Receiver for Hammersmith Trust, LLC., Hammersmith Trust, Ltd., Microfund, LLC., and B. David Gilliland filed an Application for a Writ of Garnishment after judgment stating that on the 14th day of December, A.D. 2000, in the United States District Court for the Northern District of Texas, Dallas Division, Michael J. Quilling, Receiver for Hammersmith Trust, LLC., Hammersmith Trust, Ltd., Microfund, LLC., and B. David Gilliland recovered against Jerrold L. Gunn and Jerrold L. Gunn, LLB., a judgment for the sum of \$10,000,000.00, jointly and severally; that said judgment still remains due and unsatisfied, and that the defendants Jerrold L. Gunn and Jerrold L. Gunn, LLB., have not within affiant's knowledge, property in their possession, within this State, subject to execution, sufficient to satisfy such judgment; and that the plaintiff has reason to believe and does believe that Merrill, Lynch, Pierce, Fenner & Smith, Inc., a resident of Dallas County, Texas is indebted to the defendants or that it has in its hands effects belonging to the defendant, and has applied for a writ of Garnishment against the said Merrill, Lynch, Pierce, Fenner & Smith, Inc.

THEREFORE, you are hereby commanded to be and appear before the said United States District Court for the Northern District of Texas, Dallas Division, to be held at Dallas, in Dallas County, on Monday, at or before 10:00 o'clock a.m. on the Monday next following the expiration of twenty days from the date of service hereof, then and there to answer upon oath, what, if anything you are indebted to the said defendants, Jerrold L. Gunn and Jerrold L. Gunn, LLB., and were when this writ was served upon you, and what effects, if any, of the said defendants, Jerrold L. Gunn and Jerrold L. Gunn, LLB., you have in your possession, and had when this writ was served, and what other persons, if anything within your knowledge, are indebted to the said defendants, Jerrold L. Gunn and Jerrold L. Gunn, LLB., or have effects belonging to said defendants, Jerrold L. Gunn and Jerrold L. Gunn, LLB., in their possession; YOU ARE FURTHER COMMANDED NOT to pay to defendant any debt or to deliver to him any effects, pending further orders of this Court.

TO: JERROLD L. GUNN AND JERROLD L. GUNN, LLB.
938 BOREBANK STREET
WINNIPEG, MANITOBA, CANADA R3N1G6

CONSTABLE - PCT. 8
01 JAN 30 AM 11:42
DEFENDANT

You are hereby notified that certain properties alleged to be claimed by you have been garnished. If you claim any rights in such property, you are advised:

"YOU HAVE A RIGHT TO REGAIN POSSESSION OF THE PROPERTY BY FILING A 'REPLEVY' BOND. YOU HAVE A RIGHT TO SEEK TO REGAIN POSSESSION OF THE PROPERTY BY FILING WITH THE COURT A MOTION TO DISSOLVE THIS WRIT."
HEREIN FAIL NOT, but of this writ make due return as the law directs.

WITNESS my official seal and signature, at my office, in the City of Dallas, Texas, on this 25th day of January, 2001.

KAREN MITCHELL, Acting Clerk of Court
United States District Court for the
Northern District of Texas, Dallas Division

By: [Signature], Deputy.

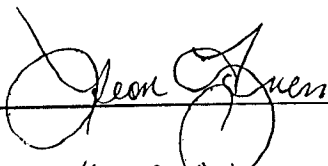


OFFICER'S RETURN

Came to hand on the ~~JAN 30~~ 2001 day of _____, A.D. 20____ and executed on the 31st day of JAN @ 8:30 AM, A.D. 2001 by _____

DELIVERING TO: MERRILL LYNCH, PIERCE, FENNER & SMITH, INC. by delivering to G.T. CORPORATION SYSTEM, by delivering to SHIRLEY DILLON its registered agent for service at 350 N. St. Paul, Dallas, TX 75201.

Returned on this the 2 day of FEB, A.D. 2001

By:  Deputy #110.00

F. Bagby
County Constable County, Texas

OFFICER'S RETURN

No. _____

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

Michael J. Quilling, Receiver for Hammersmith Trust, LLC., Hammersmith Trust, Ltd., Microfund, LLC., and B. David Gilliland

V. .

Merrill Lynch, Pierce, Fenner & Smith, Inc.

and

Jerrold L. Gumm and Jerrold L. Gumm, LLB

GARNISHMENT AFTER JUDGMENT

ISSUED

This day of A.D. 2001

Karen Mitchell, Acting Clerk of Court United States District Court for the Northern District of Texas, Dallas Division

By: Deputy.

D. Dee Raibourn, III Quilling, Selander, Cumminskey & Lownds, P.C. 2001 Bryan Street, Suite 1800 Dallas, Texas 75202

Attorney for Plaintiff

Gunn Account Analysis

Merrill Lynch Account Number 750-23B22
(Adjustments)

<u>December 31, 1999</u>	<u>Quantity</u>	<u>Value</u>	<u>Total</u>	<u>Value Today</u>
Cash	48170	\$ 1.00	\$ 48,170.00	\$ 48,170.00
NXY-	400	\$ 23.25	\$ 9,300.00	\$ 10,120.00
TFI-A	300	\$ 25.81	\$ 7,743.00	\$ 7,572.00
C	150	\$ 55.68	\$ 8,352.00	\$ 7,545.00
CNX	1000	\$ 10.00	\$ 10,000.00	\$ 39,850.00
HPT	1000	\$ 19.06	\$ 19,060.00	\$ 26,120.00
MER	100	\$ 83.31	\$ 8,331.00	\$ 6,430.00
NWAC	400	\$ 22.25	\$ 8,900.00	\$ 10,960.00
PFE	300	\$ 32.43	\$ 9,729.00	\$ 11,940.00
Debt Strategies Fund II	11	\$ 7.00	\$ 77.00	\$ 76.01
<hr/>				
Total			\$ 129,662.00	\$ 168,783.01
<hr/>				
Add Adjustments				\$ 21,770.01
<hr/>				
New Total				\$ 190,553.02
<hr/>				



Adjustments			
Description	Date	Amount	Total
1st Quarter			
Dividend Debt Strategies	1/21/2000	\$ 0.96	
Div HPT	2/17/2000	\$ 690.00	
Div MER	2/24/2000	\$ 27.00	
Div C	2/25/2000	\$ 24.00	
Div CNX	2/28/2000	\$ 280.00	
Div Debt Strat	2/29/2000	\$ 1.00	
Div PFE	3/9/2000	\$ 27.00	
Bond Int Occidental	3/31/2000	\$ 243.75	
Bond Int TCI	3/31/2000	\$ 187.50	
Div Debt Strat	28-Apr	\$ 0.94	
2nd Quarter			
Div PFE	6/8/2000	\$ 27.00	
Div CNX	5/30/2000	\$ 280.00	
Div MER	5/14/2000	\$ 30.00	
Div HPT	5/25/2000	\$ 690.00	
Div C	5/26/2000	\$ 24.00	
Bond Int Occidental	6/31/2000	\$ 243.75	
Bond Int TCI	6/31/2000	\$ 187.50	
3rd Quarter			
Div PFE		\$ 27.00	
Div CNX		\$ 280.00	
Div MER		\$ 30.00	
Div HPT		\$ 690.00	
Div C		\$ 24.00	
Bond Int Occidental	9/31/2000	\$ 243.75	
Bond Int TCI	9/31/2000	\$ 187.50	
4th Quarter			
Div PFE		\$ 27.00	
Div CNX		\$ 280.00	
Div MER		\$ 30.00	
Div HPT		\$ 690.00	
Div C		\$ 24.00	
Bond Int Occidental	12/31/2000	\$ 243.75	
Bond Int TCI	12/31/2000	\$ 187.50	
1st Quarter, 2001			
Div PFE		\$ 27.00	
Div CNX		\$ 280.00	
Div MER		\$ 30.00	
Div HPT		\$ 690.00	
Div C		\$ 24.00	
Bond Int Occidental		\$ 243.75	
Bond Int TCI		\$ 187.50	

Stock Dividends

QUILLING, SELANDER, CUMMISKEY & LOWNDS, P.C.

A PROFESSIONAL CORPORATION
ATTORNEYS AND COUNSELORS

2001 BRYAN STREET, SUITE 1800
DALLAS, TEXAS 75201

KENNETH A. HILL
kenhill@qsclpc.com

TELEPHONE: (214) 871-2100
TELEFAX: (214) 871-2111

April 20, 2001

*Via Telecopy (972) 234-1750
and Via Certified Mail*

Kenneth Stein
Matthews, Carlton & Stein, Et Al
8131 LBJ Freeway, Suite 700
Dallas, Texas 75251

Re: Civil Action No. 3-01CV0177-M; *Michael J. Quilling, as Receiver for Hammersmith Trust, LLC, Hammersmith Trust, Ltd., Microfund, LLC, and B. David Gilliland vs. Merrill Lynch, Pierce, Fenner & Smith, Inc. and Jerrold L. Gunn and Jerrold L. Gunn, L.L.B.*

Dear Mr. Stein:

As you are aware, I represent Michael J. Quilling, the Receiver appointed by the Court in Case No. 3:98-CV-2689-M, styled *Securities and Exchange Commission vs. Funding Resource Group, et al* ("Main Case"). The Receiver initiated the above-referenced proceedings against your client, Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch"). I have reviewed the documents which were produced by Merrill Lynch pursuant to our Request for Production of Documents.

Your client has a serious problem. Specifically, I recite to you the following facts:

- On November 13, 1998, the Main Case was initiated by the SEC and I was appointed as receiver for the defendants and equity relief defendants named in the complaint at that time.
- On July 22, 1999, the receivership was expanded to include a number of additional individuals and entities and I was appointed receiver for each of them.



Mr. Kenneth Stein
April 20, 2001
Page Two

- On November 29, 1999, I filed an Emergency Ex Parte Application to Freeze Account in the Main Case requesting that the Court freeze Jerrold Gunn's account at Merrill Lynch.
- By Order entered November 30, 1999 in the Main Case, the Court ordered Jerrold Gunn's account at Merrill Lynch frozen until further order of the Court.
- On November 30, 1999, I served a copy of the Order Freezing Account upon Charles V. Sentore, Vice President of Merrill Lynch via telecopy and regular mail.
- On December 9, 1999, I served a subpoena upon Merrill Lynch via telecopy and regular mail, attention Jacqueline Lamberti, requesting that Merrill Lynch produce all account records with respect to the frozen account. Such documents were never produced.
- On April 11, 2001, you forwarded the documents produced by your client via certified mail.
- The statement which Merrill Lynch produced for the account dated December 31, 1999 reflects that the account had a value as of December 31, 1999 in the amount of \$129,662.00. Had the account remained frozen, the value of the account as of April 19, 2001 would be \$168,783.01 plus interest, dividends, and unauthorized expenses in the amount of \$21,770.01 for a total value of \$190,553.02. An analysis reflecting these values is attached hereto for your convenience.
- The account statements which Merrill Lynch produced reflect that Merrill Lynch, despite the freeze order, has consistently allowed trading within the account in violation of the Order.
- On June 26, 2000, the United States of America, in connection with criminal proceedings against Jerrold Gunn and others pending in Pensacola, Florida, was granted a temporary injunction (and ultimately permanent injunction) freezing the account at Merrill Lynch in the name of Jerrold Gunn.
- On July 7, 2001, the United States of America served Merrill Lynch with an injunction freezing the account. Prior to the service, it is my understanding that there was a telephone conference between a representative of Merrill Lynch and the U.S. Attorney's office in Pensacola informing your client of the pending freeze. Despite the government's injunction freezing the account, Merrill Lynch has continued to allow trading within the account.

Mr. Kenneth Stein
April 20, 2001
Page Three

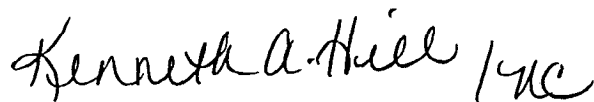
- The Writ of Garnishment issued in these proceedings was served on Merrill Lynch on February 2, 2001.
- Despite the Writ of Garnishment, Merrill Lynch, as recently as February 20, 2001, continued to allow trading within the account. No statement for March, 2001 has yet been produced but I suspect it reflects continued trading.
- The statement which Merrill Lynch produced for the period ending February 28, 2001 reflects that as of that date the account had a value of \$96,074.04. As of April 19, 2001, the account value is \$94,482.49.

It is apparent, therefore, that as a result of your client's intentional failure to comply with the Order freezing the account as well as the Writ of Garnishment, there has been a loss in value in the account as of April 19, 2001 in the amount of \$96,070.53. That amount will change depending upon the market value of the securities that were supposed to be frozen in the account. It is our position that Merrill Lynch is responsible for this difference in value.

Accordingly, please consider this our demand that Merrill Lynch pay the Receiver the amount of \$190,553.02 less your reasonable attorney's fees for answering the Writ of Garnishment. If we have not resolved this matter within 10 days from the date of this letter, please be advised that we intend to file a motion with the Court for the issuance of a show cause order as to why Merrill Lynch should not be held in contempt for its intentional violations of the Order freezing the account and the Writ Garnishment.

I look forward to hearing from you.

Very truly yours,



Kenneth A. Hill

KAH/nc
Enclosure

Mr. Kenneth Stein
April 20, 2001
Page Four

cc: Mr. Robert A. Brunig
Securities and Exchange Commission
(via telecopy 817-978-2700)

Ms. Michelle Heldmyer
Assistant United States Attorney
(via telecopy 850-434-0329)

Mr. Michael J. Quilling

Mr. D. Dee Raibourn