

By this application, the Receiver seeks a turnover order pursuant to Rule 69(a) of the Federal Rules of Civil Procedure and Section 31.002 of the Texas Civil Practice and Remedies Code. A show cause hearing was held on March 9, 2001. Defendants Paul Pursehouse and Quentin Sheehan, Individually and d/b/a CASAVIC Capital Management Corporation were ordered to attend this hearing to show cause why the Receiver is not entitled to a turnover order as requested in his application. See SHOW CAUSE ORDER, 2/14/01. Defendants were duly notified of the hearing but failed to appear.¹ The magistrate judge now recommends that the application for turnover relief be granted.

II.

A federal court may enforce a monetary judgment "in accordance with the practice and procedure of the state in which the district court is held." FED. R. CIV. P. 69(a). Texas law provides for the collection of a judgment through a court proceeding. TEX. CIV. PRAC. & REM. CODE ANN. § 31.002 (Vernon 1986). The judgment creditor must show that the debtor owns non-exempt property that cannot be readily attached or levied on by ordinary legal process. *Id.* § 31.002(b); *Criswell v. Ginsberg & Foreman*, 843 S.W.2d 304, 306 (Tex. App.--Dallas 1992, no writ). The Court may then issue an injunction, appoint a receiver, or order the debtor to turn over non-exempt property for execution. TEX. CIV. PRAC. & REM. CODE ANN. § 31.002(b). However, turnover relief is not appropriate in all cases. The trial court has discretion to decide whether and in what form turnover relief should be ordered. See *Admiral Insurance Co. v. Baker*, 1998 WL 790815 at *2 (N.D. Tex. Sept. 28, 1998) (Kaplan, M.J.); *Brink v. Ayre*, 855 S.W.2d 44, 46 (Tex. App.--Houston [14th Dist.] 1993, no writ).

¹ A copy of the application for turnover relief and show cause order were sent to defendants at their last known address.

A.

The Receiver seeks an order requiring defendants to turnover their beneficial interests in a life insurance contract issued by The Travelers Life and Annuity Company and their claims against Empire State Financial Group, L.L.C. in a pending litigation matter. The Court finds that this is non-exempt property that cannot be readily attached or levied on by ordinary legal process. Although defendants were given an opportunity to file a response and present evidence in opposition to the application for turnover relief, they have failed to do so. Accordingly, the application should be granted.

B.

The Receiver also seeks attorney's fees and expenses in the amount of \$2,000. The turnover statute allows a judgment creditor to recover reasonable costs, including attorney's fees. TEX. CIV. PRAC. & REM. CODE ANN. § 31.002(e). The Court has discretion whether to award attorney's fees. *Oake v. Collin County*, 692 S.W.2d 454, 455 (Tex. 1985); *Thomas v. Thomas*, 917 S.W.2d 425, 436 (Tex. App.--Waco 1996, no writ). The Court may consider a number of factors, including: (1) the nature and complexity of the case; (2) the amount in controversy; (3) the amount of time and effort required; and (4) the expertise of counsel. *Admiral Insurance*, 1998 WL 790815 at *5; *Thomas*, 917 S.W.2d at 437.

The Court finds that the fees requested by the Receiver are manifestly reasonable given the nature and complexity of this case, the amount in controversy, the time and effort required, and the expertise of counsel. Therefore, plaintiff is entitled to attorney's fees in the amount of \$2,000.

RECOMMENDATION

The Receiver's application for turnover relief should be granted as follows:

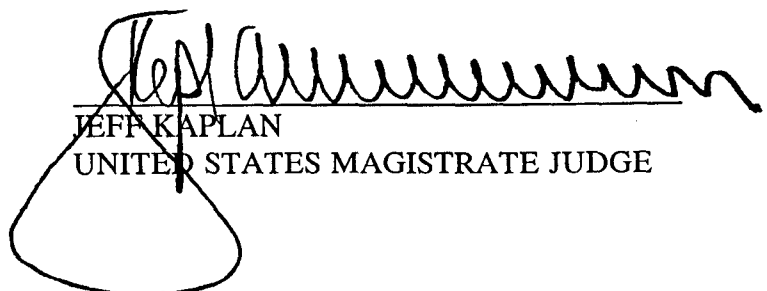
1. Defendants should be ordered to turnover their beneficial interests in a life insurance contract issued by The Travelers Life and Annuity Company, Policy No. 7365074, by assigning their interests in the policy to Michael J. Quilling, as Receiver for Funding Resource Group, FRG Trust, Robert Cord, and Steven C. Roberts;

2. Defendants should be ordered to turnover their causes of action against Empire State Financial Group, L.L.C., including a counterclaim in a lawsuit pending in the United States District Court for the Southern District of New York, styled *Empire State Financial Group, L.L.C. v. CASAVIC Capital Management Corp., et al.*, No. 00-CIV-2197-JGK, by assigning their interests in such claims to Michael J. Quilling, as Receiver for Funding Resource Group, FRG Trust, Robert Cord, and Steven C. Roberts;

3. Defendants should be ordered to execute the assignments attached to the proposed order submitted by the Receiver and deliver the original assignments to the Receiver within five calendar days from the date of the order adopting these findings; and

4. Defendants should be ordered to pay the Receiver \$2,000 in attorney's fees for bringing this application.

DATED: March 9, 2001.


JEFF KAPLAN
UNITED STATES MAGISTRATE JUDGE