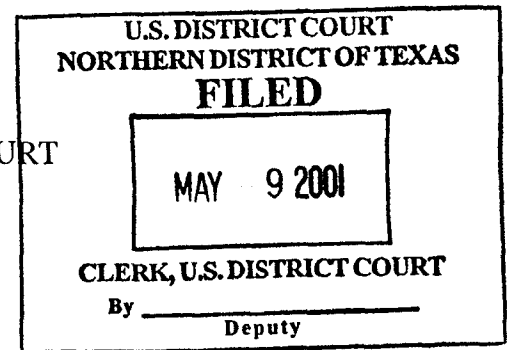


IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

SECURITIES AND EXCHANGE
COMMISSION

Plaintiff,

VS.

FUNDING RESOURCE GROUP
a/k/a FRG TRUST, ET AL.

Defendants.

§ § § § §

NO. 3-98-CV-2689-M

FINDINGS AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE

Michael J. Quilling, as Receiver for Robert Cord and Winterhawk West Indies, Ltd., has filed a motion to establish procedures for the resolution of objections and payment of claims. The motion has been referred to United States Magistrate Judge Jeff Kaplan for recommendation pursuant to 28 U.S.C. § 636(b) and a standing order of reference dated June 16, 2000.

I.

This is a civil action brought by the SEC against 16 defendants and 13 relief defendants arising out of the sale of non-existent "prime bank" securities. The SEC alleges that defendants raised more than \$14 million from unwitting investors by making false representations about the use and safety of investor proceeds and the expected rate of return on their investments. This conduct, if proved, constitutes a violation of the federal securities laws.¹

¹ The SEC alleges violations of Sections 5(a), (c) & 17(a) of the Securities Act of 1933, 15 U.S.C. §§ 77e(a), (c) & 77q(a), Section 10(b) of the Securities and Exchange Act of 1934, 15 U.S.C. § 78j(b), and Securities and Exchange Commission Rule 10b-5, 17 C.F.R. § 240.10b-5. (Plf. Third Am. Compl. ¶ 3).

Robert Cord a/k/a Robert Franklin Schoonover, Jr. and his wholly owned corporation, Winterhawk West Indies, Ltd. ("Winterhawk"), are named defendants in this case. On November 13, 1998, Michael J. Quilling was appointed as Receiver for Cord and Winterhawk. The order of appointment provides, in relevant part:

The Temporary Receiver shall take custody, possession and control of any and all assets, monies, securities and properties, real and personal, tangible and intangible, of whatever kinds and description, and wherever situated, belonging to [Cord and Winterhawk] . . . (hereinafter referred to as "Receivership Assets"), as well as any documents relating to the Receivership Assets.

ORDER APP. TEMP. RECEIVER, 11/13/98 at 2. To date, the Receiver has recovered more than \$2 million in assets traceable to Cord and Winterhawk. He now seeks an order establishing procedures for the resolution of objections and payment of claims to defrauded investors.

The Receiver was previously ordered to send court-approved claim forms to all known and possible claimants of the Cord/Winterhawk Estate. *See* ORDER, 1/12/01. These forms were to be completed and returned to the Receiver by March 31, 2001. A total of 47 claims were filed.² The Receiver allowed 28 of the claims and filed objections to 19 others. A hearing on the objections was held on April 27, 2001. Prior to the hearing, the Receiver resolved his objections with 16 of the claimants.³ Only three objections remain: (1) Merrill Maunder; (2) Paul Tinsley; and (3) H.E. Liner, as assignee of Blue Water Boys, Ltd. and Pickles Limited Liability Company.

² The Receiver also identified 10 potential claimants who did not return claim forms, could not be located, or agreed that they had no claim against the Cord/Winterhawk Estate. (Rec. Obj. to Claims at 3-4).

³ The Receiver agreed to allow general unsecured claims against the Cord/Winterhawk Estate to the following claimants: (1) Wanda Pack- \$35,069.60; (2) Bill & Betty Burger- \$32,877.75; (3) Robert & Joyce Cheatham- \$15,342.95; (4) J.R. & Betty Broadhurst- \$10,959.25; (5) Franklin & Sandra Crain- \$27,398.13; (6) Darrell & Betty Jean Crain- \$21,918.50; (7) Steve & Debra Rives and Brent & Kathy Beall- \$27,398.13; (8) Willie & Shirley Schoener- \$27,398.13; (9) Thomas & Charlotte Beville- \$5,479.62; (10) Ed & Robin Peters- \$4,383.70; (11) Ray & Shirley Barth- \$5,479.62; (12) Ray & Shirley Barth and David & Jana McDermott- \$5,479.62; (13) Leroy Yeagle- \$219,185.00; and (14) Asuncion Luyao- \$219,185.00. (Rec. Exhs. 3, 4 & 5).

II.

The following claims have been allowed by the Receiver and should be approved by the

Court:

<u>Claimant</u>	<u>Amount of Claim</u>
Sue Bailey	\$ 35,000.00
Billy Evans	\$ 40,000.00
Dennis Cates	\$ 127,371.45
Terry Edwards	\$ 61,000.00
Jerry Crangle	\$ 61,000.00
Gary Johnson	\$ 61,000.00
Charles Fleming	\$ 280,000.00
Daniel Hansen	\$ 183,000.00
Diana Haskell	\$ 205,857.52
Kenneth S. Johnson	\$ 167,000.00
Atul Laddu	\$ 9,972.00
Madhukar Deshmukh	\$ 10,500.00
Prashanta Laddu	\$ 2,105.00
Ravindra Laddu	\$ 2,105.00
Garrett Lee	\$ 2,105.00
Mhaskar Yashanad	\$ 1,578.00
Aarti Raut	\$ 42,090.00
Premanand Raut	\$ 21,045.00
Tom Lamb	\$ 140,000.00

Christopher Limerick	\$ 250,000.00
Jack R. Littell	\$ 140,000.00
Donald Metz	\$ 234,127.60
David Pettman	\$ 163,000.00
Richard Simmons	\$ 190,760.76
John Spranger	\$ 100,000.00
William Wood	\$ 50,911.33
Tom Wurst	\$ 183,000.00
Funding Resource Group	\$2,881,115.31
Wanda Pack	\$ 35,069.60
Bill & Betty Burger	\$ 32,877.75
Robert & Joyce Cheatham	\$ 15,342.95
J.R. & Betty Broadhurst	\$ 10,959.25
Franklin & Sandra Crain	\$ 27,398.13
Darrell & Betty Jean Crain	\$ 21,918.50
Steve & Debra Rives and Brent & Kathy Beall	\$ 27,398.13
Willie & Shirley Schoener	\$ 27,398.13
Thomas & Charlotte Beville	\$ 5,479.62
Ed & Robin Peters	\$ 4,383.70
Ray & Shirley Barth	\$ 5,479.62
Ray & Shirley Barth and David & Jana McDermott	\$ 5,479.62
Leroy Yeagle	\$ 219,185.00

Asuncion Luyao	\$ 219,185.00
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Total:	\$6,303,198.97
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III.

The Receiver has objected to claims filed on behalf of: (1) Merrill Maunder in the amount of \$367,000.00; (2) Paul Tinsley in the amount of \$56,000.00; and (3) H.E. Liner, as assignee of Blue Water Boys, Ltd. and Pickles Limited Liability Company, in the amount of \$183,000.00. The Court will address each objection in turn.

A.

Merrill Maunder has filed two claims totaling \$367,000.00. (Rec. Exh. 6). The claim forms and supporting documentation indicate that Maunder entered into a contract with an entity known as AmeriCorp., Ltd. on June 7, 1996. Although the contract is not signed by Cord, he is listed as "Attorney-in-Fact" for the partnership. Maunder sent one payment of \$200,000.00 to AmeriCorp Holdings, Ltd. in St. Johns, Antigua. Another payment of \$167,000.00 was sent by Maunder to Swiss Bank Corporation for Banco Inversion Madrid. (*Id.*). The Receiver objects to these claims because there is no evidence that Maunder invested her money with Robert Cord or Winterhawk.

In response, Maunder points to documents filed in a related forfeiture proceeding in the Southern District of Texas. *United States of America v. A Certain Tract of Land, et al.*, No. H-97-3600. These documents show that Maunder invested a total of \$367,000.00 in Winterhawk, an entity controlled by Cord. Maunder told FBI Agent Ronald Grosse that she learned about the Winterhawk investment program through George Padillo. Grosse and another FBI agent interviewed Padillo, who acknowledged that Maunder had invested \$200,000.00 in the

Winterhawk program. (Resp. to Rec. Obj., Exh. A).

The Receiver does not dispute that Maunder invested \$367,000.00 with some entity affiliated with Cord. His only objection is that there is insufficient evidence that the investment was related to Winterhawk. The Court disagrees. The documents from the forfeiture proceeding are sufficient to show that Maunder invested in the Winterhawk program. In addition, there is at least one letter on Winterhawk stationery from Cord to Maunder relating to her investment. (Rec. Exh. 6). The Court finds that this claim should be allowed in its entirety.

B.

Paul Tinsley has filed a claim in the amount of \$56,000.00. (Rec. Exh. 12). This sum represents a \$6,000.00 wire transfer made by B&J Transportation a \$50,000.00 wire transfer made by Tinsley on July 16, 1997.⁴ The Receiver objects to this claim because Tinsley "was in cahoots with Cord and received numerous benefits and funds which are not accounted for." (Rec. Obj. to Claims at 4). No evidence was adduced at the hearing to support this assertion. Instead, the Receiver argued that Carissa Tinsley, Paul's daughter, had a relationship with Cord and received a house, car, and other property. The Receiver further alleges that B&J Transportation was paid \$410,000.00 by Cord, a portion of which was used to purchase a truck stop in Vidor, Texas.

The Court is not inclined to disallow this claim without competent evidence that Tinsley was "in cahoots" with Cord. However, Tinsley and B&J Transportation previously were ordered to pay the Receiver the sum of \$13,500.00. (Rec. Exh. 15).⁵ That order remains unsatisfied. The

⁴ The parties agree that B&J Transportation is owned by Tinsley.

⁵ The Vidor truck stop was one of the properties at issue in the forfeiture proceeding in the Southern District of Texas. On May 12, 1999, the Receiver filed a motion to compel Tinsley and B&J Transportation to turnover rent collected on that property from October 1998 through April 1999. (Rec. Exh. 14). The Court ordered Tinsley and B&J Transportation to turnover the sum of \$13,500.00. (Rec. Exh. 15).

Receiver has represented that, even if Tinsley's claim is allowed, it would be offset entirely by the amount due under the court order after a *pro rata* distribution of assets of the Cord/Winterhawk Estate. Based on this representation, the Court determines that the claim should be allowed and offset pursuant to the court order.

C.

Finally, the Receiver objects to a \$183,000.00 claim filed by H.E. Liner, as assignee of Blue Water Boys, Ltd. ("BWB") and Pickles Limited Liability Company ("Pickles"). The Receiver states that this claim has been transferred several times and he "wants to insure that the person who invested the funds receives the distribution." (Rec. Obj. to Claims at 4).

The evidence adduced at the hearing, as supplemented on May 7, 2001, shows that Pickles entered into a contract with Winterhawk on May 17, 1997.⁶ The sum of \$183,000.00 was paid to Winterhawk at or near the time the contract was executed. (Rec. Exh. 9). According to Liner, Pickles assigned all rights to the return of this investment to BWB in July 1997. The assignment was allegedly made through an irrevocable power of attorney executed by Paul W. Floyd. BWB then assigned its claim to Linder on November 10, 1998. (Rec. Exh. 11; Supp. Exh. G).

The Receiver correctly points out that the assignment from Pickles to BWB has not been produced. Moreover, David Kramer signed a verified Petition in Remission on behalf of Pickles in the forfeiture proceeding on August 10, 1998--more than one year after the alleged assignment to BWB. The petition states, in relevant part:

I, David M. Kramer, managing partner of Pickles Limited Liability Company, assert that *I am a victim of the offense committed by Robert Cord*, who stands indicted in Criminal Action No. H-98-101. Petitioner has lost the following property: The sum of One Hundred

⁶ David M. Kramer executed the contract on behalf of Pickles. (Rec. Exh. 9).

Eighty-Three Thousand And No/100 (\$183,000) Dollars, U.S. currency, which was seized by the United States of America in Civil Action No. 97-2625.

(Rec. Exh. 11) (emphasis added). This sworn petition indicates that, as of August 10, 1998, Pickles still owned the claim against Cord and Winterhawk. None of the supplemental evidence submitted by Liner supports a different conclusion. In fact, the only document that can be construed as an assignment is dated June 1, 1998. (Supp. Exh. C). That document also predates the verified petition filed on behalf of Pickles and does not mention BWB.

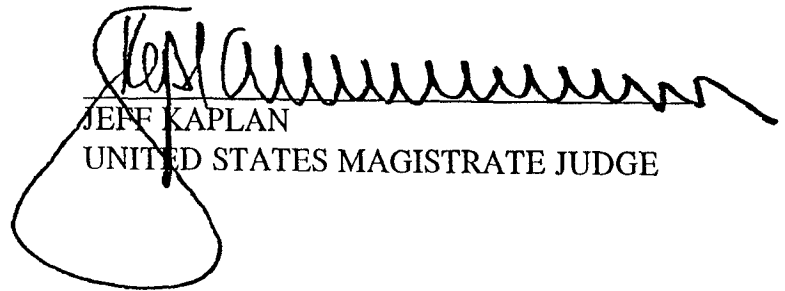
These inconsistencies lead the Court to conclude that Pickles did not assign its right to recover the sum of \$183,000.00 to BWB in July 1997. Without a valid assignment to from Pickles to BWB, the assignment to Liner is not enforceable. This claim should be disallowed.

RECOMMENDATION

The Court should approve \$6,303,198.97 in claims allowed by the Receiver as set forth in Paragraph II of this report and recommendation. In addition, the Court should allow the \$367,000.00 claim filed by Merrill Maunder and the \$56,000.00 claim filed by Paul Tinsley. H.E. Linder's claim in the amount of \$183,000.00 should be disallowed.

The Receiver is ordered to post a copy of this report and recommendation on his website, WWW.SEC RECEIVER.COM. Any claimant or interested party may file written objections to this recommendation by **May 25, 2001**. The failure to file written objections shall bar the aggrieved party from appealing the factual findings and legal conclusions of the magistrate judge that are accepted or adopted by the district court, except upon grounds of plain error or manifest injustice. *See Douglass v. United Services Automobile Ass'n*, 79 F.3d 1415, 1417 (5th Cir. 1996).

DATED: May 9, 2001.



JEFF KAPLAN
UNITED STATES MAGISTRATE JUDGE