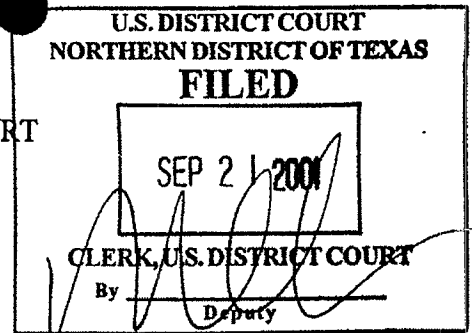


ORIGINAL

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.

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NO. 3-98-CV-2689-M



**FINDINGS AND RECOMMENDATION OF THE
UNITED STATES MAGISTRATE JUDGE**

Michael J. Quilling, as Receiver for Howe Financial Trust, has filed an interim report and proposed interim distribution plan. This matter 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 equity 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).

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Howe Financial Trust is an equity relief defendant in this case. On November 13, 1998, Michael J. Quilling was appointed as Receiver for all defendants and equity relief defendants. 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 [Howe] . . . (hereinafter referred to as "Receivership Assets"), as well as any documents relating to the Receivership Assets.

ORDER APP. TEMP. RECEIVER, 11/13/98 at 2-3. To date, the Receiver has recovered \$1,525,688.69 in claims, cash, and other assets belonging to the Howe Financial Trust Estate.² The costs of administration total \$502,976.62.³ The Receiver has requested a reserve of \$22,662.89 to cover future expenses until the time for final distribution. This leaves \$750,000.00 available for interim distribution to 21 investors on a *pro rata* basis. The Court previously approved claims totaling \$2,353,244.08,⁴ which means that each investor would receive approximately 31.87% of their claim.

² Only three assets remain unliquidated: (1) a house located at 1725 Main Street, Elkhart, Indiana; (2) a house located at 58100 Pottawatomie, Osceola, Indiana; and (3) a Chrysler automobile. These assets are currently listed for sale.

³ These costs include \$72,879.14 in attorney's fees and expenses requested by the Receiver, and assumes that the Hammersmith Trust Estate repays \$250,049.18 to the Howe Financial Trust Estate when this case is ready for final distribution. See ORDER, 4/13/01.

⁴ The total amount of claims approved by the Court was \$2,410,244.08. See FINDINGS & RECOMMENDATION OF MAG. JUDGE, 7/13/01, *adopted as modified* by ORDER, 7/25/01. However, by separate order this date, the Court authorized the Receiver to treat the \$100,000.00 claim filed by Nancy Sims in two portions. The first portion of the claim, in an amount not to exceed \$57,000.00, will be paid to Sims out of the net proceeds of the sale of certain real property located at 1721 South Main Street, Elkhart, Indiana. All net proceeds in excess of \$57,000.00 will be retained by the Howe Financial Trust Estate. If the net sales proceeds are less than \$57,000.00, those proceeds will be paid to Sims in full satisfaction of her claim against the Estate. If the net sales proceeds exceeds \$57,000.00, the remaining portion of Sims' claim, or \$43,000.00, will be treated the same as all other investor claims and will be paid on a *pro rata* basis. See ORDER, 9/21/01.

The Receiver was ordered to post a copy of his interim report and proposed interim distribution plan on his website with instructions to all interested parties that any objections must be filed by September 11, 2001. Michael P. Flick timely objected to the amount of fees charged by the Receiver and using assets of Howe Financial Trust to pay fees and expenses incurred by other receivership estates. No other objections have been received. A hearing was held on September 21, 2001. The Receiver notified all interested parties of the hearing date by posting notice on his website. No one appeared at the hearing to present any objections to the interim report and proposed distribution plan. The Securities and Exchange Commission, through its regional counsel, has consented to the relief sought.

II.

In his interim report and proposed interim distribution plan, the Receiver seeks authorization to: (1) pay \$72,879.14 in attorney's fees and related expenses; (2) reserve \$22,662.89 to cover future expenses; and (3) make an interim distribution of the remaining assets to investors on a *pro rata* basis. The Court will address each request in turn.

A.

The Receiver seeks \$72,879.14 for legal services performed and costs incurred on behalf of the Howe Financial Trust Estate from December 1, 2000 through July 31, 2001. One investor, Michael P. Flick, objects to the amount of fees as "entirely out of line for the work that was done in relation to the Howe Financial Trust and the recovery of those funds." (Flick Ltr., 9/10/01). Flick further objects to "loaning" assets of the Howe Financial Trust Estate to pay fees and expenses properly charged to the Hammersmith Trust, Funding Resource Group, and Cord/Winterhawk Estates.

To date, the Receiver and his accountants have been paid approximately \$2.1 million for services performed and expenses incurred on behalf of the Howe Financial Trust, Hammersmith Trust, Funding Resource Group, and Cord/Winterhawk Estates. Of this sum, only \$365,354.03 has been allocated to the Howe Financial Trust Estate. Although the Receiver has always maintained separate accounts for each estate, this procedure was not formalized until March 12, 2001 when the Court required him to designate four separate receivership estates for purposes of handling claims and making distributions to defrauded investors. *See* ORDER, 3/12/01. In reconciling his records, the Receiver determined that \$806,296.82 had been advanced by other estates to pay fees and expenses properly attributable to the Hammersmith Trust Estate.⁵ The Receiver then promptly moved to allocate fees between the various receivership estates. By order dated April 13, 2001, the Court authorized the Receiver to cause the Hammersmith Trust Estate to repay advances made by the other estates, including \$250,049.18 to Howe Financial Trust. *See* ORDER, 4/13/01. These payments will be made "at such time as such funds are needed to make interim and final distributions to investors as may hereafter be approved by the Court." *Id.*

As a result of the Receiver's diligent efforts, over \$1.5 million in assets has been recovered on behalf of defrauded investors of the Howe Financial Trust Estate. The fees and expenses incurred by the Estate are \$365,354.03, or less than 25% of the total recovery. This is manifestly reasonable under any standard. Moreover, the Court finds that the time spent, services performed, expenses incurred, and hourly rates charged by the Receiver are justified under the factors set forth in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974). Accordingly, the Receiver should be authorized to pay the law firm of Quilling, Selander, Cummiskey &

⁵ This sum represents: (1) 317,857.87 advanced by the Cord/Winterhawk Estate; (2) \$238,389.77 advanced by the Funding Resource Group Estate; and (3) \$250,049.18 advanced by the Howe Financial Trust Estate.

Lownds, P.C. the sum of \$72,879.14 in attorney's fees and expenses. Michael P. Flick's objections to the interim report and proposed interim distribution plan should be overruled.

B.

The Receiver has asked for a reserve of \$22,662.89 to cover future expenses until the time for final distribution. Most of these expenses are related to two pieces of real property in the possession of the Receiver and currently being marketed for sale: (1) a house located at 1725 Main Street, Elkhart, Indiana; and (2) a house located at 58100 Pottawatomie, Osceola, Indiana. In addition, the Receiver likely will incur additional legal fees and expenses for preparing and mailing distribution checks, communicating with claimants, and selling the Main Street and Pottawatomie properties. The Court therefore finds that \$22,662.89 should be reserved from sums available for interim distribution.

C.

The Court previously approved 21 claims totaling \$2,353,244.08. There is currently \$750,000.00 available for distribution on a *pro rata* basis. See *SEC v. Forex Asset Management Co.*, 242 F.3d 325, 331 (5th Cir. 2001) (approving *pro rata* distribution to investors). Therefore, each claimant should be paid as follows:

<u>Claimant</u>	<u>Amount of Claim</u>	<u>Distribution Amount</u>
Keith Abbott	\$ 107,750.00	\$ 35,485.59
Beverly J. Bakke	\$ 7,875.00	\$ 2,593.49
Delores and Edward Branka	\$ 44,258.34	\$ 14,575.71
Thomas Cardosi	\$ 90,000.00	\$ 29,639.93
Angelo L. Clementi	\$ 65,000.00	\$ 21,406.62
Michael P. Flick	\$ 250,000.00	\$ 82,333.15

Bertha Anne Godette	\$ 19,750.00	\$ 6,504.32
William T. Hock	\$ 37,510.92	\$ 12,353.57
Richard Iwanski	\$ 36,667.00	\$ 12,075.64
Johnny Mark	\$ 6,000.00	\$ 1,976.00
Kiran and Nisha Patel	\$ 500,000.00	\$164,666.30
Rudolph Rueff	\$ 27,500.00	\$ 9,056.65
Ann and Joseph Saele	\$ 70,000.00	\$ 23,053.28
Wayne and Mary Silvey	\$ 363,159.67	\$119,600.32
Wallace Simpson	\$ 15,000.00	\$ 4,939.99
Nancy Sims	\$ 100,000.00	\$ 14,161.30
Joseph & Hazel Studzinski	\$ 163,631.90	\$ 53,892.61 ⁶
Tim Taylor	\$ 49,000.00	\$ 16,137.30 ⁷
Tim Taylor	\$ 200,000.00	\$ 65,866.52
Tim Taylor	\$ 170,000.00	\$ 55,986.54
Martha Todd	\$ 9,875.00	\$ 3,252.16
John V. Tuider	\$ 9,875.00	\$ 3,252.16
Howard Warber	\$ 67,381.25	\$ 22,190.84

The Receiver should issue interim distribution checks to each claimant in the amounts set forth above. The checks shall be void if not cashed within 45 days from the date of issuance. The

⁶ The Studzinskis received an emergency distribution of \$25,000.00 in May 1999. They will receive another \$28,892.61 under the interim distribution plan.

⁷ The three distributions to Tim Taylor total \$419,000.00, the same amount as the claim filed by Premier Investment Club. *See FINDINGS & RECOMMENDATION OF MAG. JUDGE, 7/13/01 at 3, adopted as modified by ORDER, 7/25/01.* The Court assumes that Taylor and Premier Investment Club are one in the same.

Receiver should be authorized to send a cover letter to each claimant in the form attached to his report.

RECOMMENDATION

The Court should approve the Receiver's interim report and proposed interim distribution plan in accordance with the above recommendation.

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 **October 5, 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: September 21, 2001.


JEFF KAPLAN
UNITED STATES MAGISTRATE JUDGE