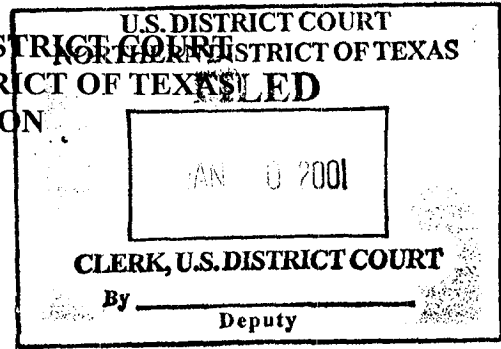


IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION



Michael J. Quilling, Receiver for  
Hammersmith Trust, LLC,  
Hammersmith Trust, Ltd.,  
Microfund, LLC, and Bridgeport  
Alliance, LLC

Plaintiff

vs.

Adam Shaw, Thomas R. Smith,  
Linda J. Smith, Michael Klein,  
Leon Hurst, Summit Marketing, Inc.,  
Bancorp Mortgage, Inc., Caton &  
Associates, Inc., Simplified  
Communications, Inc., Chatham  
International, Inc., Thomas McCrimmon  
United Holdings Corp., Greg Skibbee,  
Rick Shirrell, Jeffrey A. Matz,  
Christopher J. Carlson, Murray  
Stucker and Larry K. Lewis.

Defendants

Civil Action No. 3:00-CV-1405-M

(Jury Trial Demanded)

**MOTION FOR ENTRY OF DEFAULT JUDGMENT  
AGAINST CERTAIN DEFENDANTS, COMBINED WITH BRIEF IN SUPPORT**

TO THE HONORABLE BARBARA M.G. LYNN, UNITED STATES DISTRICT JUDGE:

Michael J. Quilling, as Receiver for Hammersmith Trust, LLC, Hammersmith Trust, Ltd.,  
Microfund, LLC, and Bridgeport Alliance, LLC, the plaintiff in the above-styled and numbered

cause (the "Plaintiff"), files this motion for entry of default judgment against Thomas R. Smith, Linda J. Smith, Bancorp Mortgage, Inc., Rick Shirrell, and Murray Stucker (collectively, the "Defaulting Defendants"), as follows:

### **I. FACTS AND PROCEDURAL HISTORY**

1. This Motion is supported by the Affidavit of Michael J. Quilling (the Quilling Aff."), which is attached hereto as Exhibit "A" and is fully incorporated herein.

2. 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. (Quilling Aff. at ¶ 2) By order dated

November 13, 1998 in the SEC Proceedings, the Plaintiff was appointed as the receiver and has continued to serve in that capacity. (*Id.*)

3. 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”). (Quilling Aff. at ¶ 3) By virtue of the same order, the Plaintiff was appointed as the receiver for each of the additional individuals and entities and he continues to serve in that capacity. (*Id.*)

4. As the court-appointed receiver in the SEC Proceeding, the Plaintiff investigated the business, transactions, assets, liabilities, and books and records of Hammersmith, Microfund, and Gilliland. (Quilling Aff. at ¶ 4). In that regard, the Plaintiff interviewed witnesses, took depositions, interviewed federal law enforcement officials, and reviewed all available documents concerning the fraudulent investment schemes. (*Id.*)

5. Hammersmith and Microfund operated huge international Ponzi schemes under the direction and control of Gilliland. (Quilling Aff. at ¶ 5) In particular, the scam required investors to invest funds with Hammersmith, which investments would be repaid by virtue of monthly interest payments at a rate of 480% percent per annum (and higher) for twelve months and a repayment of all principal in month thirteen. (*Id.*) The investments were supposedly secured by an assignment of a separate deposit account containing the investor’s money and by a United States Treasury Bill for the same amount. (*Id.*) The Microfund “program” differed in some respects but the intentions

were the same – promise huge returns based upon non-existent trading programs and then steal the money. (*Id.*)

6. As part of his overall scheme, Gilliland engaged Bridgeport Alliance, LLC (“Bridgeport”) to screen potential investors, which in essence required that Bridgeport make sure they had money, would not ask questions and were not really government agencies posing as investors. (Quilling Aff. at ¶ 6) Bridgeport, in turn, engaged the Defaulting Defendants and other entities and individuals to act as agents and/or brokers. (*Id.*) The Defaulting Defendants would locate and solicit potential investors, sell them on the “programs” being offered by Hammersmith and Microfund, and then submit the potential investors to Bridgeport for screening and approval. (*Id.*) Once a potential investor was approved, contracts would be signed with Hammersmith and/or Microfund and then funds would be wired to an account designated by Gilliland. (*Id.*)

7. The programs offered by Hammersmith and Microfund were completely fraudulent. (Quilling Aff. at ¶ 7) The investor funds did not remain in segregated deposit accounts. (*Id.*) The investments were not secured by any treasury bills. (*Id.*) There was no trading program. (*Id.*) There was no generation of any income by either Hammersmith or Microfund which could be used to pay the fantastic returns promised to investors. (*Id.*) Instead, as funds were received, Gilliland caused Hammersmith and Microfund to systematically divert the funds to make Ponzi payments to prior investors, support the lavish lifestyle and spending of Gilliland, and pay the Defaulting Defendants’ purported fees and commissions. (*Id.*)

8. The Defaulting Defendants should have known the Hammersmith and Microfund programs were completely fraudulent. (Quilling Aff. at ¶ 8) As brokers, the Defaulting Defendants

that the programs, which promised interest rates of 480% and higher, were blatantly illegal and were completely nonsensical. (*Id.*) They knew that one could not simultaneously pledge funds in an account and purchase a treasury bill with them at the same time. (*Id.*) The Defaulting Defendants were critical participants in the fraudulent programs and actively assisted and perpetuated the entire fraudulent scheme. (*Id.*)

9. The Defaulting Defendants were paid handsomely for their assistance. (Quilling Aff. at ¶ 9) The Defaulting Defendants each received at least the following amounts from funds of defrauded investors:

Thomas R. Smith and Linda J. Smith	\$ 81,989.00
Bancorp Mortgage, Inc.	\$ 24,000.00
Rick Shirrell	\$ 98,250.00
Murray Stucker	\$156,700.00

(*Id.*)

10. Hammersmith, Microfund, and Gilliland defrauded investors out of more than \$10 million, with the aid of the Defaulting Defendants. (Quilling Aff. at ¶ 10) The Defaulting Defendants' knowing participation in the fraudulent "programs" was critical, and the schemes would not have succeeded without them. (*Id.*)

11. The Plaintiff commenced this lawsuit by filing his Complaint on June 28, 2000. (Quilling Aff. at ¶ 11) A true and correct copy of the Complaint is attached as Exhibit "A-1" to the Quilling Aff. and is fully incorporated herein. (*Id.*)

12. Thomas R. Smith signed a Waiver of Service of Summons on October 29, 2000, which made his answer due on or before November 13, 2000. A true and correct copy of that Waiver is attached as Exhibit "A-2" to the Quilling Aff. and is fully incorporated herein. (Quilling Aff. at ¶ 12)

13. Linda J. Smith signed a Waiver of Service of Summons on October 29, 2000, which made her answer due on or before November 13, 2000. A true and correct copy of that Waiver is attached as Exhibit "A-3" to the Quilling Aff. and is fully incorporated herein. (Quilling Aff. at ¶ 13)

14. Bancorp Mortgage, Inc. (by and through its authorized representative) signed a Waiver of Service of Summons on September 21, 2000, which made its answer due on or before November 13, 2000. A true and correct copy of that Waiver is attached as Exhibit "A-4" to the Quilling Aff. and is fully incorporated herein. (Quilling Aff. at ¶ 14)

15. Rick Shirrell was served with process by personally delivering a copy of the Summons and Complaint to him on November 22, 2000. A true and correct copy of the Summons and Return of Service for Rick Shirrell is attached as Exhibit "A-5" to the Quilling Aff. and is fully incorporated herein. (Quilling Aff. at ¶ 15) The Plaintiff mailed a notice and waiver of service of summons to Mr. Shirrell pursuant to Fed. R. Civ. P. 4(d), but Mr. Shirrell did not return the waiver. (*Id.*) The Plaintiff incurred costs of \$127.50 for a private process server to attempt to serve Mr. Shirrell personally with the summons. (*Id.*)

16. Murray Stucker signed a Waiver of Service of Summons on September 28, 2000, which made his answer due on or before November 13, 2000. A true and correct copy of that Waiver

is attached as Exhibit "A-6" to the Quilling Aff. and is fully incorporated herein. (Quilling Aff. at ¶ 16)

17. None of the Defaulting Defendants is an incompetent, infant, or person currently in military service or any officer or agency of the United States. (Quilling Aff. at ¶ 17)

18. As of the date of filing this Request, none of the Defaulting Defendants has filed an answer, motion under Fed. R. Civ. P. 12(b) or 56, or otherwise defended this lawsuit. (Quilling Aff. at ¶ 18)

19. The Clerk of this Court entered the Defaulting Defendants' default on the record in this case on January 16, 2001 pursuant to Fed. R. Civ. P. 55(b)(1). A true and correct copy of the Clerk's Entry of Default is attached hereto as Exhibit "B" and is fully incorporated herein.

## **II. ARGUMENT AND AUTHORITIES**

14. A district court may enter a final judgment by default. Fed. R. Civ. P. 55(b)(2). A trial court has discretion in determining the most appropriate method of determining the amount of damages for a default judgment. *Id.* It is not necessary to hold an evidentiary hearing to determine damages in a default situation. *E.g., Leedo Cabinetry v. James Sales & Distrib., Inc.*, 157 F.3d 410, 414 (5<sup>th</sup> Cir. 1998). The use of affidavits to prove damages is a widely accepted method for awarding damages in a default judgment. *Chemtall Inc. v. Citi-Chem, Inc.*, 992 F. Supp. 1390, 1412 (S.D. Ga. 1998). A district court's ruling on damages in a default situation without an evidentiary hearing is reviewed only for abuse of discretion. *Leedo*, 157 F.3d at 414.

15. In the case at bar, the amount of damages caused by each of the Defaulting Defendants' knowing and intentional wrongdoing, including aiding and abetting breach of fiduciary

duty and aiding and abetting corporate waste, is a liquidated amount and is and proved by the Affidavit of Michael J. Quilling. The legal bases for liability and amount of damages are established by the facts set forth above and in the Quilling Aff. Thus, no evidentiary hearing is necessary to determine the damages to be awarded against the Defaulting Defendants in this case.

### III. CONCLUSION

WHEREFORE, PREMISES CONSIDERED, the Plaintiff requests that the Court enter a final default judgment against the Defaulting Defendants for the following amounts, plus post-judgment interest at the rate provided by law:

- a. Thomas R. Smith and Linda J. Smith, jointly and severally, for \$81,989.00;
- b. Bancorp Mortgage, Inc. for \$24,000.00;
- c. Rick Shirrell for \$98,377.50 (\$98,250.00 in investor funds received plus \$127.50 for costs of serving the summons); and
- d. Murray Stucker for \$156,700.00.

Respectfully submitted,

QUILLING, SELANDER, CUMMISKEY & LOWNDS, P.C.  
2001 Bryan Street, Suite 1800  
Dallas, Texas 75201  
(214) 871-2100 (Telephone)  
(214) 871-2111 (Telefax)

BY: 

Kenneth A. Hill  
State Bar No. 09646950

ATTORNEYS FOR PLAINTIFF



**CERTIFICATE OF SERVICE**

I hereby certify that on the 30<sup>th</sup> day of January, 2001, a true and correct copy of the foregoing document was served via certified mail, return receipt requested upon the following:

**Via Certified Mail, Return Receipt Requested:**

Robert B. Brunig  
Securities & Exchange Commission  
801 Cherry Street, 19<sup>th</sup> Floor  
Fort Worth, Texas 76102

Deborah Goodall  
Goodall & Sooter  
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Dallas, Texas 75230

Wendell A. Odom, Jr.  
440 Louisiana, Suite 800  
Houston, Texas 77002

Dan R. Waller  
Secore & Waller, LLC  
13355 Noel Road, Suite 2290  
Dallas, Texas 75240

S. Cass Weiland  
Sheinfeld, Maley & Kay, P.C.  
1700 Pacific Avenue, Suite 4400  
Dallas, Texas 75201-4618

Rick Shirrell  
6472 Murdoch Avenue  
St. Louis, MO 63109

Mary Ann Wunder  
Wunder & Wunder  
4949 S. Carson Avenue  
Indianapolis, IN 46227

Ernest Leonard  
Friedman, Driegert & Hsuey  
8117 Preston Road  
570 Preston Commons West  
Dallas, Texas 75225

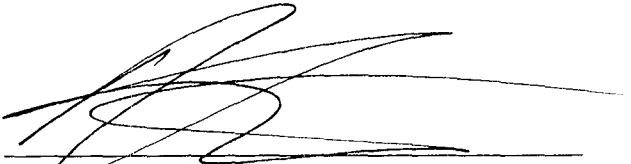
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Murray Stucker  
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Memphis, TN 38119

Linda J. Smith  
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Zionville, IN 46077

Bancorp Mortgage, Inc.  
c/o Robert Rung, Chief Executive Officer  
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Kansas City, MO 64118

Rick Shirrell  
6263 Nottingham #5  
St. Louis, MO 63109

  
Kenneth A. Hill