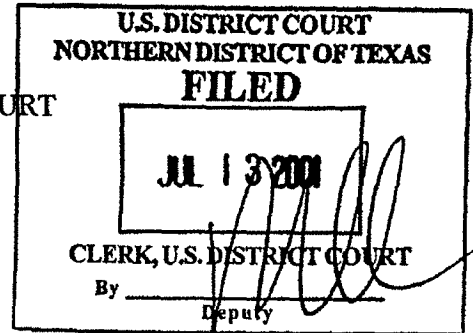


ORIGINAL

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



MICHAEL J. QUILLING, as Receiver §
for Hammersmith Trust, LLC, Hammersmith §
Trust, Ltd., Microfund, LLC and §
Bridgeport Alliance, LLC §

Plaintiff, §

NO. 3-00-CV-1405-M

VS. §

ADAM SHAW, ET AL. §

Defendants. §



ORDER

On June 1, 2001, the magistrate judge recommended that the *pro se* answer of Defendant Thomas McCrimmon be stricken and a default entered against him. This recommendation was based on McCrimmon's failure to attend a Rule 26(f) planning conference, participate in the preparation of a joint status report, and appear at a show cause hearing on June 1, 2001. See FINDINGS & RECOMMENDATION, 6/1/01 at 4. On June 19, 2001--after the deadline for filing objections to this recommendation had expired¹--McCrimmon filed a pleading entitled "Objection to Sanctions Under Fed. R. Civ. P. 37(b)(2)." The Court construed this pleading as a motion to reconsider the recommendation dated June 1, 2001.

A hearing was held on July 13, 2001. Defendant Thomas McCrimmon appeared *pro se*. Michael J. Quilling, as Receiver for Hammersmith Trust, LLC and related entities, appeared on

¹ An aggrieved party must file written objections to the recommended disposition of a dispositive motion referred to a magistrate judge within 10 days after being served with a copy of the report and recommendation. See 28 U.S.C. § 636(b); FED. R. CIV. P. 72(b).

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behalf of plaintiff. After considering the evidence and arguments presented by both parties, the Court finds that McCrimmon has failed to demonstrate excusable neglect for failing to attend the Rule 26(f) planning conference, participate in the preparation of a joint status report, or appear at the show cause hearing on June 1, 2001. Although McCrimmon states that he never received notice of the status conference on May 15, 2001, the Receiver has shown that notice was sent to him by regular mail and facsimile transmission on or about May 5, 2001. By his own admission, McCrimmon was notified of the June 1, 2001 show cause hearing on May 29, 2001. McCrimmon now claims that he could not attend the hearing because of difficulties in making last-minute travel arrangements. However, he never notified the Court of this hardship or requested a continuance.

Nevertheless, in the interest of justice, the magistrate judge will conditionally vacate the recommendation dated June 1, 2001. The report and recommendation will be vacated only if McCrimmon pays to the Receiver: (1) the sum of \$1,495.00 as ordered on June 1, 2001²; and (2) \$1,000.00 in attorney's fees reasonably incurred in obtaining a default against McCrimmon and responding to this motion. McCrimmon shall pay these sums, totaling \$2,495.00, to Michael J. Quilling, as Receiver for Hammersmith Trust, LLC, by August 13, 2001. Otherwise, the report and recommendation dated June 1, 2001 will remain in full force and effect.

SO ORDERED.

DATED: July 13, 2001.


JEFF KAPLAN
UNITED STATES MAGISTRATE JUDGE

² These costs were imposed against McCrimmon for failing to execute a waiver of service in accordance with Rule 4(d) of the Federal Rules of Civil Procedure. See FED. R. CIV. P. 4(d).