



contempt until he returns that amount to the Receivership Estate.

## II. BACKGROUND FACTS

1. The United States District Court for the Northern District of Texas has appointed Michael J. Quilling as Receiver for the defendants and relief defendant in *SEC v. Megafund Corporation, et al.*, Cause No. 3:05-CV-1328 (N.D. Tex.). *Receiver's Declaration*, Exhibit "A" at ¶ 1.

2. On July 19, 2005, this Court issued its Order Appointing Receiver, which expressly authorizes legal action to recover funds on behalf of the Receivership Estate:

The Receiver is hereby authorized to institute such actions or proceedings to impose a constructive trust, obtain possession and/or recover judgment with respect to persons or entities who received assets or funds traceable to investor monies.

*Order Appointing Receiver* [Dkt. No. 36] at ¶ 13; *see also Agreed Order Expanding Receivership and Appointing Receiver* [Dkt. No. 84], as amended on March 1, 2006 [Dkt. No. 98].

3. On February 16, 2006, the Receiver initiated this case against the Defendant to recover \$19,000.00 transferred from Megafund along with damages that Lancorp suffered when it relied on an opinion letter that he prepared. *See Complaint* [Dkt. No. 1]; *see also Defendant's Answer* [Dkt. No. 9] at ¶ 11.

4. On July 7, 2006, the Receiver filed a Motion for Partial Summary Judgment [Dkt. No. 21] on his claims for fraudulent transfer and negligent misrepresentation. After Defendant failed to file a timely response brief, the Magistrate Judge entered his Findings and Recommendation [Dkt. No. 23] to grant the Receiver's motion. Defendant then filed Exceptions to the Findings and Recommendation [Dkt. No. 30], which were overruled in the Court's Memorandum Order and

Opinion [Dkt. No. 33]. On December 7, 2006, the Court entered an Interlocutory Judgment that, among other things, directed Defendant to disgorge funds to the Receiver:

... judgment is hereby entered for Plaintiff on his fraudulent transfer claim against Defendant in the amount of \$19,000.00. Defendant is ordered to disgorge that amount and tender it to Plaintiff within sixty days . . .

*Interlocutory Judgment* [Dkt. No. 41] (emphasis added).

5. More than sixty days have passed since the Court's order to disgorge those assets and Defendant has not yet tendered that amount for payment. *Receiver's Declaration*, Exhibit "A" at ¶ 4. On February 5, 2007, in an effort to avoid Court intervention, the Receiver's counsel sent a letter reminding Defendant of his obligation under the disgorgement order. *See Letter to Defendant*, February 5, 2007, Exhibit "A-1". Defendant has not responded or otherwise indicated that he intends to comply with that order. *Receiver's Declaration*, Exhibit "A" at ¶ 4.

6. Accordingly, the Receiver respectfully requests that this Court impose appropriate civil contempt sanctions until Defendant fully complies with the Court's disgorgement order.

### III. ARGUMENTS AND AUTHORITIES

7. Defiance of a Court order is appropriately redressed by finding the responsible party in contempt of Court. Federal Courts have the inherent power to achieve orderly and expeditious disposition of their dockets by imposing reasonable sanctions for disobedience. *Natural Gas Pipeline Co. v. Energy Gathering, Inc.*, 86 F.3d 464, 465 (5th Cir. 1996). Accordingly, a person who fails to obey a lawful Court Order may be punished for contempt. *Travelhost, Inc. v. Blandford*, 68 F.3D 958, 961 (5th Cir. 1995). In a civil contempt proceeding, the party seeking relief must simply establish that: (1) a Court Order was in effect; (2) the Order required certain conduct by the

respondent; and (3) the respondent failed to comply with the Order. *See Am. Airlines, Inc. v. Allied Pilots Ass'n*, 228 F.3d 574, 581 (5th Cir. 2000), *cert. denied*, 121 S.Ct. 1190 (2001), *citing Martin v. Trinity Indus., Inc.*, 959 F.2d 45, 47 (5th Cir. 1992); *Lelsz v. Kavanagh*, 673 F.Supp. 828, 839 (N.D. Tex. 1987). The standard of proof is clear and convincing evidence. *Petroleos Mexicanos v. Crawford Enterprises, Inc.*, 826 F.2d 392, 401 (5th Cir. 1987). However, the conduct need not be willful so long as the respondent actually violated the Court's Order. *Allied Pilots Ass'n*, 228 F.3d at 581.

8. This Court has inherent authority to punish parties who refuse to surrender Receivership Estate assets according to a Court Order. For example, in *SEC v. AMX Int'l, Inc.*, 7 F.3d 71, 72-73 (5th Cir. 1993), the Fifth Circuit agreed that contempt was an appropriate remedy to enforce disgorgement orders in an SEC proceeding. It reasoned that an order to surrender property is simply an injunction in the public interest (as opposed to a money judgment) and is, therefore, properly enforced by the Court's contempt powers. *Id.* at 76 (noting that incarceration would be appropriate to bring about compliance). The Fifth Circuit also recognizes the use of contempt proceedings to enforce the rights of a court-appointed Receiver in performing his duties. *See, e.g., Santibanez v. Wier, McMahon & Co.*, 105 F.3d 234, 242 (5th Cir. 1997).

9. The undisputed facts in this case support a finding for civil contempt. The Interlocutory Judgment directed Defendant to disgorge \$19,000.00 and tender it to the Receiver within sixty days. That deadline has passed and Defendant has ignored the Receiver's demands for payment. Accordingly, the Receiver respectfully requests that this Court order that Defendant appear in these proceedings and show cause why he should not be held in civil contempt. Should this Court enter a finding of civil contempt, the Receiver submits that Defendant ought to remain in custody

until he has complied with the Court's disgorgement order. *See, e.g., Hicks v. Feiock*, 485 U.S. 624, 632 (1988) (imprisonment is an appropriate remedy for civil contempt if it stands until the contemnor performs all affirmative acts required by an order).

**IV.  
PRAYER FOR RELIEF**

WHEREFORE, PREMISES CONSIDERED, the Receiver prays as follows: (1) that this Court set a hearing for Defendant to appear and show cause why he should not be held in civil contempt for failing to disgorge \$19,000.00 according to the Court's Interlocutory Judgment; (2) that, following the show cause hearing, this Court find Defendant in civil contempt; (3) that this Court order Defendant to be held in custody until he disgorges \$19,000.00 to the Receiver along with the reasonable and necessary attorneys fees incurred through this action; and (4) for such other and further relief, general or special, at law or in equity, to which the Receiver may justly show himself entitled.

Respectfully submitted,

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ATTORNEYS FOR RECEIVER

**CERTIFICATE OF CONFERENCE**

Pursuant to Local Civil Rule 7.1, the Receiver would show unto the Court as follows:

On March 16, 2007, the undersigned made numerous attempts to initiate a telephone conference with the Defendant. As of this filing, however, those calls and messages went unreturned.

/s/ Brent J. Rodine

**CERTIFICATE OF SERVICE**

On March 19, 2007 a true and correct copy of the above and foregoing was sent by first class mail, with full and proper postage prepaid, to:

Kenneth Wayne Humphries  
Post Office Box 74  
110 East Ninth Street  
Hopkinsville, Kentucky 42241-0074

/s/ Brent J. Rodine