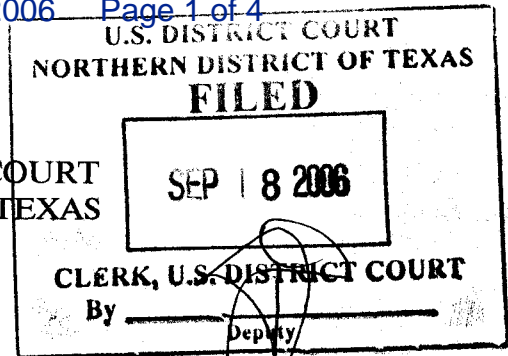


BD  
NOT



**ORIGINAL**

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

MICHAEL J. QUILLING, RECEIVER  
FOR MEGAFUND CORPORATION  
AND LANCORP FINANCIAL GROUP,  
LLC,

Plaintiff

Civil Action No. 3:06-CV-0299-(BD)

vs.

ECF  
Referred to U.S. Magistrate Judge

KENNETH WAYNE HUMPHRIES,

Defendant.

**DEFENDANT'S EXCEPTIONS TO THE FINDINGS  
AND RECOMMENDATIONS OF THE  
UNITED STATES MAGISTRATE JUDGE**

TO THE HONORABLE JEFF KAPLAN, UNITED STATES MAGISTRATE  
JUDGE:

Comes the Defendant, Kenneth W. Humphries, pro se, and submits these  
Exceptions to the Findings and Recommendations of the United States Magistrate  
Judge. The Court made two sets of findings, one pertaining to the negligence of the  
Defendant, and one pertaining to the fraudulent transfer of funds.

As to the fraudulent transfer of funds, the Court made no finding as to any  
intent on the part of the Defendant to defraud or otherwise knowingly engage in an  
unlawful act, nor was there any evidence of record to support an assertion of such by  
the Plaintiff or a finding by the Court. Accordingly, it is requested that a finding to

this effect be included in any order subsequently entered, specifically that there was no evidence, and the Court finds that the Defendant did not commit, an act of actual fraud, and that the Defendant did not knowingly engage in an unlawful or prohibited act.

As to the finding of negligent representation, the Court found that the Defendant was negligent in his representations made to Gary Lancaster, and recommended the entry of an order finding the Defendant responsible for the entire loss to the investors in the amount asserted by the Plaintiff. A limited finding of negligence is appropriate, but the Magistrate Judge's recommendation goes too far, as does the entry of judgment in the entire amount of the investors' current losses.


Such a judgment would be in error because it fails to take into consideration the Plaintiff's ongoing efforts to recover funds, efforts referred to by the Magistrate Judge in the order of September 8, 2006, efforts with which the Court is apparently quite familiar. The entry of judgment for an amount based on damages suffered should wait until the actual damages suffered are certain and have been fully ascertained. Otherwise the Court risks entry of judgments allowing for multiple recoveries on the same total claim. The Defendant is not responsible for losses which have been or will be recouped by the Plaintiff. As his efforts are ongoing, entry of a judgment for losses or damages which are recouped would be premature. Also, any judgment on the amount of damages needs to reflect any amount paid by the Defendant to the Plaintiff on the fraudulent transfer claim.

The degree of Defendant's negligence should also not be fixed until other factors are determined. To what degree did Gary Lancaster rely on the Defendant, or was the Defendant's letter merely the pretense Gary Lancaster used to make the investment? As the Court knows, Gary Lancaster made other investments which the Plaintiff is seeking to recover which were not based on the Defendant's representations, oral or written.

How sound was Gary Lancaster's judgment in placing any reliance on the letter? The Plaintiff asserts in his complaint that no attorney would make the representations made. If so, would any competent investment advisor rely on the same letter?

In conclusion, the degree of negligence should not be fixed until it is determined the degree to which reliance was properly placed by Gary Lancaster on the letter and its author. The amount of damages have not yet been determined, nor can they be. Thus, no judgment fixing their amount should be entered at this time.

Respectfully submitted, this 15<sup>th</sup> day of September, 2006.

  
\_\_\_\_\_  
KENNETH W. HUMPHRIES  
110 East Ninth Street  
P.O. Box 74  
Hopkinsville, Kentucky 42241  
(270) 886-5649  
Kentucky Bar Association # 34630

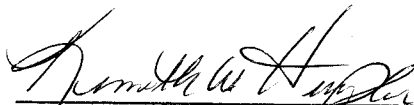
**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that a true copy of the foregoing was served upon the following by ~~Federal Express, Next Business Day Delivery~~, to:

*United States mail,*

Hon. Michael J. Quilling  
Hon. Brent Rodine  
Quilling Selander Cumiskey & Lownds, P.C.  
2001 Bryan Street, Suite 1800  
Dallas, Texas 75201-4240

This 15<sup>th</sup> day of September, 2006.



\_\_\_\_\_  
KENNETH W. HUMPHRIES