

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,

vs.

KENNETH WAYNE HUMPHRIES,

Defendant.

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

ECF

Referred to U.S. Magistrate Judge

**PLAINTIFF’S MOTION FOR PARTIAL
SUMMARY JUDGMENT**

TO THE HONORABLE JEFF KAPLAN, UNITED STATES MAGISTRATE JUDGE:

COMES NOW, Michael J. Quilling in his capacity as Receiver for Megafund Corporation and Lancorp Financial Group, LLC, (“Receiver”) and files this his Motion for Partial Summary Judgment against Kenneth Wayne Humphries (“Defendant”) and in support of such would respectfully show the Court as follows:

**I.
SUMMARY**

As permitted by Local Rule 56.3(b) of the Local Rules of the United States District Court for the Northern District of Texas, the elements of each claim on which a summary judgment is being sought is set for in Plaintiff’s Brief in Support of his Motion for Partial Summary Judgment, which is being filed simultaneously herewith.

II.

SUMMARY JUDGMENT EVIDENCE

Plaintiff's Motion for Partial Summary Judgment is based on the evidence listed below, as well as all other summary judgment evidence on file or to be filed herein:

1. Declaration of Michael J. Quilling (Appendix ("App.") at 2-19);
2. Declaration of Gary Lancaster (App. at 20-24); and
3. Excerpts from the Deposition of Kenneth Wayne Humphries (App. at 25-31).

Further, Plaintiff requests the Court to take judicial notice of the pleadings and others documents contained in this Court's file for the above-styled and numbered cause, as well as *Securities and Exchange Commission v. Megafund et al.*, Cause No. 3:05-CV-1328 (N.D. Tex.).

III.

STATEMENT OF UNDISPUTED MATERIAL FACTS

1. This case arises out of a lawsuit brought by the Securities and Exchange Commission ("SEC") against numerous defendants involved in different levels of a purported investment program. *See Securities and Exchange Commission, v. Megafund Corporation, et al.*; Cause No. 3:05-CV-1328-L (N.D. Tex.). The SEC brought that suit against Stanley A. Leitner, Megafund Corporation, and others for promising high-yield returns to investors and then squandering their money on undisclosed expenditures. *See Complaint* [Dkt. 1] (3:05-CV-1328).

2. By order of July 5, 2005, the Court overseeing that case appointed Michael J. Quilling as Receiver for the defendants and relief defendant and he has since continued to function in that capacity. *See Order Appointing Temporary Receiver* ("Order Appointing Receiver") [Dkt. No. 9], as amended July 19, 2005 [Dkt. No. 36] (3:05-CV-1328).

3. The Court later expanded the Receivership Estate to include Lancorp Financial Group, LLC and Lancorp Financial Fund Business Trust and appointed Michael J. Quilling to act as Receiver for those entities. *See Agreed Order Expanding Receivership and Appointing Receiver* [Dkt. No.84], as amended on March 1, 2006 [Dkt. No. 98] (3:05-CV-1328).

4. The Order Appointing Receiver 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.

5. Accordingly, the Receiver filed this action against Defendant to recover \$19,000.00 of investor money transferred from Megafund. *See Complaint* [Dkt. No. 1]. Defendant himself admits that this transfer did, in fact, occur. *Defendant's Answer* [Dkt. No. 9] at ¶ 11.

6. The Receiver also seeks more than \$9 million dollars for damages suffered by Lancorp when it relied on an opinion letter that Defendant prepared. *Complaint* [Dkt. No. 1]. Defendant admits signing a letter dated February 5, 2005, which was addressed to Gary Lancaster, the director of Lancorp. *Defendant's Answer* [Dkt No. 9] at ¶ 8; *see also Declaration of Gary Lancaster* ("Lancaster's Declaration"), Exhibit "B" at ¶¶ 3-5 (App. at 21-22). Defendant's letter falsely represented that "all funds involved in the 'trading program' are secured in a brokerage account at a major investment institution" and that the principal amount of any funds invested would be "insured against losses of every description". *Humphries' Letter*, Exhibit "B-1", (App. at 24). Defendant now admits that his representations were "inaccurate, false, and misleading" even though

Lancorp was the intended beneficiary of that letter. *Defendant's Answer* [Dkt. No. 9] at ¶¶ 8, 15, 19. Lancorp invested more than \$9 million in Megafund based upon Defendant's assurances. *Lancaster's Declaration*, Exhibit "B" at ¶ 6 (App. at 22).

7. As explained more fully below, these material facts are uncontested and support a finding for summary judgment in favor the Receiver on both claims against the Defendant.

IV **REQUESTED RELIEF**

As permitted by Rule 56 of the Federal Rules of Civil Procedure, Plaintiff requests the entry of a Judgment in his favor in the amounts listed below on Plaintiff's fraudulent transfer and negligent misrepresentation claims because there is no genuine issue as to any material fact that Plaintiff is entitled to the requested relief as a matter of law:

- a. With respect to Plaintiff's fraudulent transfer claim, a Judgment against Kenneth Wayne Humphries in the amount of \$19,000, plus pre- and post-judgment interest at the highest rate permitted by law; and
- b. With respect to Plaintiff's negligent misrepresentation claim, a Judgment against Kenneth Wayne Humphries in the amount of \$9,635,000.00, plus pre- and post-judgment interest at the highest rate permitted by law.

WHEREFORE, PREMISES CONSIDERED, the Receiver respectfully requests that the Court enter a judgment in his favor as requested above, plus an award of the Receiver reasonable attorneys' fees, expenses, costs, and interest, and such other and further relief, at law or in equity, to which he is justly entitled.

Respectfully submitted,

QUILLING SELANDER CUMMISKEY & LOWNDS, P.C.
2001 Bryan Street, Suite 1800
Dallas, Texas 75201-4240
(214) 871-2100 (Telephone)
(214) 871-2111 (Facsimile)

By: /s/ Michael J. Quilling
Michael J. Quilling
State Bar No. 16432300
Email: mquilling@qsclpc.com
Brent J. Rodine
State Bar No. 24048770
Email: brodine@qsclpc.com

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

On the 7th day of July, 2006 a true and correct copy of the above and foregoing was sent via first class mail, with full and proper postage prepaid thereon, to:

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

 /s/ Michael J. Quilling