

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-L (BD)

**ECF**  
**Referred to U.S. Magistrate Judge**

**PLAINTIFF’S RESPONSE REGARDING THE FINDINGS  
 AND RECOMMENDATION OF THE U.S. MAGISTRATE JUDGE**

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, (“Plaintiff” or “Receiver”) and files this his response to the Defendant’s Exceptions to the Findings and Recommendations of the United States Magistrate Judge (“Defendant’s Exceptions”) [Dkt. No. 30]. In support of such, the Receiver would respectfully show the Court as follows:

**BACKGROUND FACTS**

1. On July 7, 2006, the Receiver filed his motion seeking summary judgment on his claims for negligence and fraudulent transfer. *Motion for Partial Summary Judgment* [Dkt. No. 21].
2. On July 10, 2006, this Court issued a scheduling order requiring Defendant to file a response brief by August 7, 2006. *Order of July 10, 2006* [Dkt. No. 22]. Defendant, however, did

not file any response to the Receiver's motion.

3. Accordingly, the Magistrate Judge issued his findings and recommendation on August 14, 2006. *Findings and Recommendation of the United States Magistrate Judge* ("Findings and Recommendation") [Dkt. No. 23].

4. Defendant now files an objection to the Court's Findings and Recommendation. *Defendant's Exceptions* [Dkt. No. 30]. As explained more fully below, the Receiver submits that the objection is without any legitimate basis in law or fact.

### **ARGUMENTS AND ANALYSIS**

In its current form, the Court's Findings and Recommendation adequately addresses the issues and evidence raised in the Receiver's motion for summary judgment. Defendant, however, now asks the Court to make additional findings that (1) are not supported by evidence before the Court, (2) were not timely raised in a response brief, and (3) are otherwise unwarranted or based on erroneous statements.

In particular, Defendant asks this Court to expressly find that he did not commit actual fraud or knowingly engage in unlawful conduct with respect to the underlying transactions. *Defendant's Exceptions* [Dkt. No. 30] at 1-2. That issue, however, is outside the scope of the Receiver's motion for partial summary judgment and has not been briefed by the parties. The Receiver only seeks summary judgment on two causes of action: negligence and fraudulent transfer. *Brief in Support of Plaintiff's Motion for Partial Summary Judgment* [Dkt. No. 21]. Actual fraud and willful conduct are not elements for either of those claims. *Id.* at 4-7. While fraudulent transfer claims generally require a finding of intent to "hinder, delay, or defraud" a creditor, that element is presumed in this case because Defendant received those funds from a *Ponzi* scheme. *Id.* at 6-7. Put simply,

Defendant's state of mind is not an issue in this case and there is no evidence before the Court to support a ruling on that matter.

Defendant also asks that this Court reduce the judgment amount to prevent "multiple recoveries" that may occur as a result of the Receiver's collection efforts. *Defendant's Exceptions* [Dkt. No. 30] at 2. However, even if Defendant were able to satisfy the entire \$9.365 million judgment, the Receivership Estate could not possibly obtain a double recovery from other sources. First, the Receiver has not filed any other lawsuits relating to the funds at issue in this case. Second, the Receiver's claims review process eliminates the possibility of obtaining multiple recoveries when funds are distributed from one estate to another. It is true that Lancorp may end up filing an investor claim to receive its *pro rata* share of distributions from the Megafund Receivership Estate. However, Lancorp's claim would be limited to its actual losses and would not include any amount recovered from Defendant. In effect Lancorp will look to recover first from Defendant and then, if necessary, from the Megafund Receivership Estate. Therefore, there is absolutely no chance that the Receiver will realize "multiple recoveries" on the amounts addressed in this Court's Findings and Recommendation.

Defendant also raises, for the first time, a question of fact regarding Gary Lancaster's reliance on Defendant's representations. The only evidence before this Court is Gary Lancaster's affidavit, which conclusively establishes that (1) he relied on Defendant's representations and (2) but for those representations, Lancorp would not have invested any money in Megafund. *Id.* at 5-6, App. at 22. If Defendant wished to challenge this issue of fact, he could have done so by filing a response brief as directed by the Court. *Order of July 10, 2006* [Dkt. No. 22]. As it stands, the Court's ruling is clearly supported by the evidence and Defendant's plea for relief is untimely.

Respectfully submitted,

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ATTORNEYS FOR PLAINTIFF

**CERTIFICATE OF SERVICE**

On the 21st day of September, 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  
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Hopkinsville, Kentucky 42241-0074

        /s/ Brent J. Rodine