

1] (3:05-CV-1328). In connection therewith, the SEC sought to have a Receiver appointed for the defendants and relief defendant in that case. *Id.* The Court appointed Michael J. Quilling as Receiver for Megafund Corporation and he has since continued to function in that capacity. *Order Appointing Temporary Receiver* [Dkt. No. 9], as amended July 19, 2005 [Dkt. No. 36] (3:05-CV-1328).

3. In January 2006 the receivership was expanded to include Lancorp Financial Group, LLC and Lancorp Financial Fund Business Trust. *Agreed Order Expanding Receivership and Appointing Receiver* [Dkt. No. 84], as amended March 1, 2006 [Dkt. No. 98] (3:05-CV-1328). The Court appointed Michael J. Quilling as Receiver for those entities and he has since continued to function in that capacity. *Id.*

4. The Receiver has investigated the businesses, transactions, assets, liabilities, books, and records of Megafund Corporation (“Megafund”) and Lancorp Financial Group, LLC (“Lancorp”). *Receiver’s Declaration*, Exhibit “A” at ¶ 5. He has also interviewed witnesses, taken depositions, and reviewed all available documents concerning their investment programs. *Id.*

5. The Receiver’s investigation has revealed that both Megafund and Lancorp made substantial payments for the benefit of Gary McDuff who, in turn, transferred \$15,500.00 to his wife, Shannon McDuff, individually and d/b/a Secured Clearing Corp. *Id.* at ¶ 6. Those funds clearly constitute proceeds from fraudulent transfers and were, at all times, imposed with a constructive trust. *Id.*

6. Accordingly, the Receiver commenced this lawsuit by filing his Complaint on February 24, 2006. *Complaint* [Dkt. No. 1].

7. On June 26, 2006 Shannon McDuff appeared in this proceeding *pro se* and joined in the following pleadings: (1) a Notice of Surety-Act and Bond [Dkt. No. 8]; (2) an Amended and

Updated Commercial Affidavit of Facts [Dkt. No. 9]; and (3) a Waiver of Perjury-Immunity [Dkt. No. 10]. *Receiver's Declaration*, Exhibit "A" at ¶ 8.

8. On June 29, 2006 the Court issued an Order [Dkt. No. 11] ruling that these submissions did not constitute a valid answer or responsive pleading under the Federal Rules of Civil Procedure. *Id.* ¶ 9. Shannon McDuff was expressly directed to "file an appropriate motion under Fed. R. Civ. P. 12(b), or an answer that complies with the requirements of Fed. R. Civ. P. 8(b) . . ." *Order*, June 29, 2006 [Dkt. No. 11].¹

9. Shannon McDuff failed to make any further appearances in this case and the Court has specifically declared her to be in default: "Defendant Shannon M. McDuff has not filed an answer or otherwise appeared herein and is currently in default." *Order*, August 18, 2006 [Dkt. No. 19] (emphasis added).

10. The Clerk of this Court entered Defendant's default into the record on September 25, 2006 in accordance with Rule 55(b)(1) of the Federal Rules of Civil Procedure. *Clerk's Entry of Default* [Dkt. No. 25].

11. Shannon McDuff is an individual and not an incompetent, infant, person currently in military service, or any officer or agency of the United States. *Receiver's Declaration*, Exhibit "A" at ¶ 12.

II. ARGUMENT AND AUTHORITIES

12. A District Court may enter a final judgment by default. Fed. R. Civ. P. 55(b)(2). The Court has discretion to determine the most appropriate method for calculating damages for a default judgment. *Id.* It is not necessary to hold an evidentiary hearing to determine damages following a

¹ The Court directed the Court Clerk to send a copy of that Order to Shannon McDuff at 1314 Minchen Drive, Deer Park, Texas 77536. *Order*, June 29, 2006 [Dkt. No. 11].

party's default. *See, e.g., Leedo Cabinetry v. James Sales & Distrib., Inc.*, 157 F.3d 410, 414 (5th Cir. 1998). Instead, damages are often proven simply through affidavit. *Chemtall Inc. v. Citi-Chem, Inc.*, 992 F. Supp. 1390, 1412 (S.D. Ga. 1998). A Court's default judgment ruling on damages without an evidentiary hearing is reviewed only for abuse of discretion. *Leedo Cabinetry*, 157 F.3d at 414.

13. In the case at bar, the amount of damages is measured by the amount of funds fraudulently transferred to Shannon McDuff or transferred to her while imposed with a constructive trust. While there is no strict formula dictating when a District Court sitting in equity is bound to impose a constructive trust, this remedy is appropriate to protect investor funds paid into a fraudulent investment scheme. *See Meadows v. Bierschwale*, 516 S.W.2d 125, 131 (Tex.1974) (no strict formula for creating constructive trust under Texas law); *see also Duel v. Hollings*, 241 U.S. 523 (1916) (directing distribution of identifiable investments to wronged investors before other general creditors); *Phillips v. Baker*, 165 F.2d 578, 584 n. 5 (5th Cir. 1948) (noting that group of investors enjoyed undisputed preference to traceable investments); *SEC v. Paige*, 1985 WL 2335 (D.D.C. July 30, 1985), *aff'd* 810 F.2d 307 ("federal legal precedent [is] clear that a thief obtains no title to the stolen property and holds such property and the proceeds thereof in trust for the victim"); *United States v. Fontana*, 528 F.Supp. 137, 146 (S.D.N.Y. 1981) ("Where the title to property is acquired by one person under such circumstances that he is under a duty to surrender it, a constructive trust immediately arises"), quoting 5 A. Scott, LAW OF TRUSTS § 462.4 (3d ed. 1967).

14. The principal damages in this case stem from \$304,272.58 of investor funds that Gary McDuff received for recruiting Lancorp and other investors into the Megafund investment scheme. *Receiver's Declaration*, Exhibit "A" at ¶ 13. At all times, these funds were held in constructive trust for the benefit of the defrauded investors. *Id.* This constructive trust endured even as those funds

were laundered through accounts in the name of MexBank S.A. de C.V., First Global Foundation, Gary McDuff d/b/a Southern Trust Company, and Shannon McDuff d/b/a Secured Clearing Corp. *Id.* Receivership Estate records conclusively show that between April 22, 2005 and May 3, 2005, Shannon McDuff's received \$15,500.00 of funds traceable to Megafund and/or Lancorp. *Id.* Accordingly, she has no right to retain those funds and the damages that the Receiver should recover against her are easily ascertained at that amount. *Id.*

15. Because the Receiver has fully set forth all legal and factual bases for liability, there is no need for an evidentiary hearing to determine damages in this case. *Leedo Cabinetry*, 157 F.3d at 414.

WHEREFORE, PREMISES CONSIDERED, the Plaintiff requests that the Court enter a final default judgment against Shannon McDuff, individually and d/b/a Secured Clearing Corp, for \$15,500.00, plus pre- and post-judgment interest at the rate provided by law and for such other and further relief, general or special, at law or in equity, to which the Receiver may show himself justly entitled.

Respectfully submitted,

QUILLING SELANDER CUMMISKEY & LOWNDS, P.C.
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By: /s/ Michael J. Quilling
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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

On the 10th day of November, 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:

Shannon McDuff
1314 Minchen Drive
Deer Park, Texas 77536

/s/ Michael J. Quilling