

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

MICHAEL J. QUILLING, as Receiver
for Megafund Corporation and
Lancorp Financial Group, LLC,

Plaintiff,

v.

GARY McDUFF, et al.,

Defendants.

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NO. 3-06-CV-0959-L

ORDER

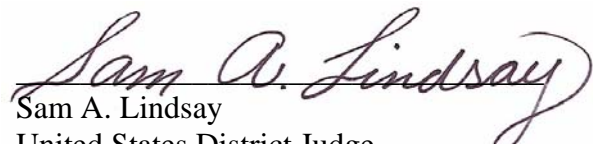
Defendant Gary McDuff, appearing *pro se*, has filed an application for an order staying enforcement of the judgment in this case pending appeal. For the reasons stated herein, the court **denies** the motion.

The federal rules permit a party to stay the execution of a judgment pending appeal by giving a supersedeas bond. *See* Fed. R. Civ. P. 62(d). Under Local Rule 62.1, such bond "shall be in the amount of the judgment, plus 20% of that amount to cover interest and any award of damages for delay, plus \$250.00 to cover costs." N.D. Tex. LCivR 62.1. Although a district court has discretion to stay the execution of judgment without a supersedeas bond or to reduce the amount of bond required for such a stay, the burden is on the moving party to objectively demonstrate the reasons for such a departure. *Poplar Grove Planting & Refining Co. v. Bache Halsey Stuart, Inc.*, 600 F.2d 1189, 1191 (5th Cir. 1979). Among the factors relevant to deciding whether to waive the requirement of a full supersedeas bond are: (1) the complexity of the collection process, (2) the amount of time required to obtain a judgment; (3) the availability of funds to pay the judgment; (4) whether the

debtor's ability to pay the judgment is so obvious that to require a bond would be a waste of money; and (5) whether the debtor's financial condition is so precarious that the requirement to post a bond would place other creditors in an insecure position. *Wykle v. City of New Orleans*, 1997 WL 266615 at *4 (E.D.La. May 20, 1997) (citing *Wilmer v. Board of County Commissioners of Leavenworth County, Kansas*, 844 F.Supp. 1414, 1419 (D. Kan. 1993), *aff'd*, 28 F.3d 114 (10th Cir. 1994)).

The amount of the judgment in this case, excluding prejudgment and postjudgment interest, attorney's fees, and court costs, is \$304,272.58. In order to stay execution of the judgment, McDuff must post a supersedeas bond in that amount, plus 20%, for a total of at least \$365,127.10. *See* N.D. Tex. LCivR 62.1. McDuff has failed to allege, much less prove, any reason for staying enforcement of the judgment without posting a supersedeas bond. Accordingly, the court **denies** his application for a stay [Doc. #43].

It is so ordered this 1st day of February, 2007.


Sam A. Lindsay
United States District Judge