

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

MICHAEL J. QUILLING, Receiver for
Lancorp Financial Group, LLC, and Lancorp
Financial Fund Business Trust

Plaintiff,

v.

ROBERT TRINGHAM, FIRST NATIONAL §
BAN CORP., FIRST ASSET MANAGEMENT §
CORP., MAX INTERNATIONAL BROKER §
DEALER CORP., and NIGEL GILBERT, §

Defendants.

CIVIL ACTION NO. 3:07-CV-0682-L

**ANSWER OF DEFENDANTS MAX
INTERNATIONAL BROKER
DEALER CORP. AND NIGEL
GILBERT**

JURY TRIAL DEMANDED

For their Answer to the Complaint, Defendants Max International Broker Dealer Corp. (“Max”) and Nigel Gilbert (“Gilbert”) (collectively “Defendants”) demand a jury trial pursuant to Federal Rule of Civil Procedure, Rule 38, and admit, deny and allege as follows:

Parties

1. Defendants admit the allegations of paragraph 1.
2. Defendants are without sufficient information to admit or deny the allegations of paragraph 2.
3. Defendants are without sufficient information to admit or deny the allegations of paragraph 3.
4. Defendants are without sufficient information to admit or deny the allegations of paragraph 4.

5. Defendants admit the allegation of paragraph 5 insofar as Max is a New York Corporation located at 75 Maiden Lane, Suite 503, New York, New York 10038. Max denies the remaining allegations of paragraph 4.

6. Defendants admit the allegation of paragraph 6 insofar as Nigel Gilbert is an individual residing in New York and deny the remaining allegations of paragraph 6.

Jurisdiction and Venue

7. Defendants admit the allegations of paragraph 7.

8. Defendants admit the allegations of paragraph 8.

Appointment of Receiver

9. Defendants admit the allegations of paragraph 9.

10. Defendants admit the allegations of paragraph 10.

Background Facts

11. Defendants admit the allegations of paragraph 11 insofar as Lancorp Financial Group, LLC (“Lancorp”) sent \$2,000,000.00 to First National Ban Corp.’s (“FNBC”) account at Max in October 2005; Gilbert was Max’s compliance officer for this account; and Gary Lancaster (“Lancaster”) was enrolled as an authorized representative of this account. Defendants deny the remaining allegations of paragraph 11.

12. Defendants admit that Robert Tringham began requesting that Gilbert transfer funds from FNBC’s account at Max to FNBC’s account at Wilshire State Bank in October 2005. Defendants deny the remaining allegations of paragraph 12.

13. Defendants are without sufficient information to admit or deny the allegations of paragraph 13.

14. Defendants admit the allegations of paragraph 14 except for the allegation that Defendants are responsible for causing Lancorp to suffer actual damages totalling at least \$884,371.23.

Count One – Negligence

15. Defendants reallege their answers to all allegations referred to in paragraphs 1-14.

16. Defendants are without sufficient information to admit or deny the allegations of paragraph 16 directed to Tringham, FNBC, and First Asset Management Corp. (“FAMC”) and deny the remaining allegations of paragraph 16.

Count Two – Breach of Contract

17. Defendants reallege their answers to all allegations referred to in paragraphs 1-16.

18. Defendants are without sufficient information to admit or deny the allegations of paragraph 18.

19. Defendants deny the allegations of paragraph 19.

Count Three – Conversion

20. Defendants reallege their answers to all allegations referred to in paragraphs 1-19.

21. Defendants are without sufficient information to admit or deny the allegations of paragraph 21.

Count Four – Unjust Enrichment

22. Defendants reallege their answers to all allegations referred to in paragraphs 1-21.

23. Defendants are without sufficient information to admit or deny the allegations of paragraph 23.

Count Five – Constructive Trust & Disgorgement

24. Defendants reallege their answers to all allegations referred to in paragraphs 1-23.

25. Defendants are without sufficient information to admit or deny the allegations of paragraph 25.

Count Six – Fraud

26. Defendants reallege their answers to all allegations referred to in paragraphs 1-25.

27. Defendants are without sufficient information to admit or deny the allegations of paragraph 27 directed to Tringham, FNBC, and FAMC and deny the remaining allegations of paragraph 27.

Count Seven – Breach of Fiduciary Duty

28. Defendants reallege their answers to all allegations referred to in paragraphs 1-27.

29. Defendants are without sufficient information to admit or deny the allegations of paragraph 29 directed to Tringham, FNBC, and FAMC and deny the remaining allegations of paragraph 29.

Count Eight – Aiding and Abetting Breach of Fiduciary Duty

30. Defendants reallege their answers to all allegations referred to in paragraphs 1-29.

31. Defendants deny the allegations of paragraph 31.

Count Nine – Civil Conspiracy

32. Defendants reallege their answers to all allegations referred to in paragraphs 1-31.

33. Defendants are without sufficient information to admit or deny the allegations of paragraph 33.

Count Ten – Fees, Expenses, Costs, and Interest

34. Defendants reallege their answers to all allegations referred to in paragraphs 1-33.

35. Defendants are without sufficient information to admit or deny the allegations of paragraph 35 directed to Tringham, FNBC, and FAMC and deny the remaining allegations of paragraph 35.

Count Eleven – Exemplary Damages

36. Defendants reallege their answers to all allegations referred to in paragraphs 1-35.

37. Defendants are without sufficient information to admit or deny the allegations of paragraph 37 directed to Tringham, FNBC, and FAMC and deny the remaining allegations of paragraph 37.

Affirmative Defenses

As separate and distinct affirmative defenses to Plaintiff's Complaint and alleged claims for relief, Defendants allege as follows:

Affirmative Defense I

The Complaint fails to state claims for which relief may be granted.

Affirmative Defense II

Plaintiff failed to mitigate its damages.

Affirmative Defense III

Plaintiff failed to use the requisite diligence in the monitoring, trading, managing and handling of its account.

Affirmative Defense IV

Defendants maintained an adequate and reasonable system of supervision over its employees and agents, and at all times acted in good faith and did not directly or indirectly induce any act or acts constituting a cause of action.

Affirmative Defense V

To the extent Plaintiff suffered the damages alleged in the Complaint, such damages were caused by Plaintiff's own negligent or intentional conduct, or the negligent or intentional conduct of a third party or third parties.

Affirmative Defense VI

Plaintiff knowingly, willingly and voluntarily assumed the risk of any alleged harm of which it now complains.

Affirmative Defense VII

Plaintiff ratified the acts and transactions complained of and upon which recovery is sought, and is accordingly estopped from recovering for the harm alleged.

Affirmative Defense VIII

Plaintiff is barred from maintaining any action against Defendants based on the matters alleged in the Complaint because it expressly and/or impliedly consented to the actions taken by Defendants as alleged in the Complaint.

Affirmative Defense IX

If Defendants are found liable to Plaintiffs for any of the alleged losses suffered, such liability shall be limited to the percentage of each Defendant's fault for said damages.

Affirmative Defense X

At all times mentioned in the Complaint, Defendants acted reasonably, with due care, without malice and with a good faith belief in the propriety of their conduct at all times material to the allegations in the Complaint.

Affirmative Defense XI

Defendants allege that their conduct was justified.

Affirmative Defense XII

Defendants allege immunity.

Affirmative Defense XIII

Plaintiffs' claim for fraud is not pled with requisite particularity

Affirmative Defense XIV

Plaintiff fails to state facts sufficient to provide a legal or factual basis to award punitive or special damages, statutory or otherwise, under any of the causes of action alleged in the Complaint, and, further, excessive punitive damages awards violate the due process clause of the United States Constitution.

Affirmative Defense XV

There is no basis to award Plaintiff attorneys' fees or costs and, therefore, Plaintiff is not entitled to attorneys' fees or costs.

Defendants expressly reserve the right to assert any and all affirmative defenses which may be appropriate, and the failure to list such affirmative defenses above is not intended as a waiver.

Defendants demand a trial by jury pursuant to Federal Rule of Civil Procedure 38 of any issue triable of right by a jury.

WHEREFORE,

Defendants pray that Plaintiff be awarded nothing on all causes of action asserted in the Complaint and that Defendants be awarded the costs of defense, including reasonable attorneys' fees, and such other and further relief as this Court deems just, fair and equitable.

Respectfully submitted,

BY: /s/ Brad G. Repass

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Attorneys for Defendants Max International Broker Dealer
Corp. and Nigel Gilbert

CERTIFICATE OF SERVICE

On June 14, 2007, a true and correct copy of this answer was served on all interested parties through the Court's electronic filing system and by U.S. Mail, first-call postage prepaid, to:

Monica E. Tait
Assistant U.S. Attorney
Asset Forfeiture Division
312 North Spring Street, 14th Floor
Los Angeles, California 90012

 /s/ Brad G. Repass
Brad G. Repass