

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION**

IN THE MATTER OF THE POSSESSION            )  
AND CONTROL OF THE COMMISSIONER        )    No. 00 CH 5905  
OF BANKS AND REAL ESTATE OF            )  
INDEPENDENT TRUST CORPORATION         )    Judge Jones  
a/k/a INTRUST, an Illinois Corporate fiduciary    )

**Motion of ALVIN M. CONN, JR. and REBECCA D. CONN To Exclude  
Intrust Accounts 840266, 840336, and 840341 From Any Allocation Of The Cash  
Shortage Referred To In The Receiver's Recommendation Dated June 23, 2000**

Alvin M. Conn, Jr. and Rebecca D. Conn ("Movant"), pursuant to the Court's comments at the July 28, 2000 hearing and the Order entered on August 2, 2000, in this matter, moves the Court to enter an Order precluding the Receiver from allocating any portion of the Intrust cash shortage to Movant's three accounts. As grounds for this motion, and in support thereof, Movant states:

1. Alvin M. Conn, Jr., established an account with Intrust on or about August 12, 1998, which account was assigned account number 840336 (IRA #61138).
2. Rebecca D. Conn established an account with Intrust on or about November 3, 1997, which account was assigned account number 840266.
3. Rebecca D. Conn also established an account with Intrust on or about September 21, 1998, which account was assigned account number 840341 (IRA #61211).
4. Throughout the period during which Movant had accounts at Intrust, Financial Timing Services, Inc., acted as Movant's investment adviser and managed Movant's accounts.
5. On or about July 14, 2000, Movant served on the Receiver's attorney, and filed with this Court, Objections to the Receiver's Recommendation concerning the allocation of

Intrust cash shortages. True and correct copies of Movant's Objection as to each account are annexed hereto as Exhibit 1.

6. The Receiver and its counsel have advised that the cash shortage identified in the Receiver's report and recommendation can be traced to one or more transfers of cash from Intrust to Intercounty Title. The Receiver and its counsel have further advised that such transfers occurred only on the dates listed in the document entitled "Intrust Preliminary Detailed Listing of Transactions With Intercounty Title Company of Illinois," which the Receiver has posted on the Intrust.com website and which is attached as Exhibit 2 hereto.<sup>1</sup>

7. A review of the records relating to Movant's Intrust accounts shows that none of the cash transfers reflected on Exhibit 2 occurred at a time when Intrust held any cash or cash equivalents on behalf of Movant's accounts.

8. Attached hereto as Exhibit 3 is a complete copy of the monthly account statements for Movant's Intrust account 840336 from the inception of that account to and including June 30, 1999. Attached hereto as Exhibit 4 is a complete copy of the monthly account statements for Movant's Intrust account 840266 from the inception of that account to and including June 30, 1999. Attached hereto as Exhibit 5 is a complete copy of the monthly account statements for Movant's Intrust account 840341 from the inception of that account to and including June 30, 1999. As the Receiver noted during the July 28, 2000 hearing, Tr. 214, the statements of an account holder such as Movant, who had an investment adviser, detail every transaction in the Movant's

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<sup>1</sup> Regardless of when the money sitting at Intercounty was misappropriated, it obviously was only the money that had been transferred to Intercounty, on these dates, that could have been the subject of the misappropriation.

account. The account statements confirm that Movant opened the accounts on or around the dates specified in ¶¶ 1-3.

**9.** It was Intrust's practice, upon receipt of funds for deposit in accounts managed by Financial Timing Services, Inc., to report the receipt of such funds to Financial Timing Services immediately after the funds became available to Intrust for investment pursuant to the instructions of Financial Timing Services, Movant's agent. (See Affidavit of Bruce Freimuth, filed in support of Mr. Freimuth's and Mr. Terry Bommer's motions to exclude their accounts from any allocation of the Intrust cash shortage.) Thus, deposits into such accounts by check were reported to Financial Timing Services by Intrust when the check cleared; deposits made to such accounts via wire transfer were reported to Financial Timing Services upon receipt of the wire transfer.

**10.** As attested to in Mr. Freimuth's affidavit, upon receipt of notice from Intrust that funds deposited by a Financial Timing Services customer were available for investment, Financial Timing Services would issue instructions to Intrust to transmit the funds to one or more mutual fund families, for investment in particular mutual funds.

**11.** Upon receipt of such instruction from Financial Timing Services, Intrust would wire funds to the designated mutual fund for Movant's account. In short, funds deposited with Intrust by Movant were transferred out of Movant's account either on the same day as, or within very few days after, the funds were received.

**12.** A review of Movant's account statements (Exhs. 3-5) reveals that almost all of the activity in Movant's accounts consisted of exchanges between mutual funds at a particular mutual fund family. The only significant cash transactions for Movant's accounts were as follows:

**a. Account 840336 (Alvin IRA):**

<b>Cash In</b>		<b>Cash Out</b>	
8/12/98	Deposited \$7,531	8/13/98	Bought \$7,531 mut. funds
9/23/98	Deposited \$13,467	9/24/98	Bought \$13,467 mut. funds
11/5/98	Deposited \$9,041	11/9/98	Bought \$9,043 mut. funds

**b. Account 840266 (Rebecca):**

<b>Cash In</b>		<b>Cash Out</b>	
11/3/97	Deposited \$25,000	11/7/97	Bought \$25,000 mut. funds
4/6/98	Deposited \$500	4/21/98	Bought \$500 mut. funds
5/5/98	Deposited \$500	5/8/98	Bought \$500 mut. funds
6/5/98	Deposited \$500	6/11/98	Bought \$500 mut. funds
7/2/98	Deposited \$500	7/16/98	Bought \$500 mut. funds
8/5/98	Deposited \$500	8/12/98	Bought \$500 mut. funds
9/4/98	Deposited \$500	9/11/98	Bought \$500 mut. funds
10/5/98	Deposited \$500	10/9/98	Bought \$500 mut. funds
11/5/98	Deposited \$500	11/9/98	Bought \$500 mut. funds
12/4/98	Deposited \$500	1/19/99	Bought \$1,001 mut. funds
1/5/99	Deposited \$500		
2/5/99	Deposited \$500	2/12/99	Bought \$501 mut. funds
3/5/99	Deposited \$500	3/10/99	Bought \$500 mut. funds
4/5/99	Deposited \$500	4/8/99	Bought \$500 mut. funds
5/5/99	Deposited \$500	5/13/99	Bought \$500 mut. funds
6/4/99	Deposited \$500	6/11/99	Bought \$500 mut. funds

**c. Account 840341 (Rebecca IRA):**

<b>Cash In</b>		<b>Cash Out</b>	
9/23/98	Deposited \$10,397	9/24/98	Bought \$10,397 mut. funds

In each of these transactions, Movant held cash at Intrust for no more than a few days before all of the cash was invested in mutual funds.

**13.** A comparison of the brief periods during which Intrust actually held funds for Movant's accounts in cash, as set forth in the preceding paragraph, and the times when Intrust transferred cash to Intercounty Title (Exh. 2) demonstrates that Intrust never simultaneously held cash for either of Movant's accounts and transferred cash into Intercounty Title. (There were *no* transfers to Intercounty between July 29, 1996, and April 21, 1999, see Exh. 2, lines 209 - 246.)

**14.** As a result of this lack of overlap between the transfers from Intrust to Intercounty Title and Intrust's handling of cash for Movant's accounts, it is clear that none of the funds ultimately misappropriated from Intrust were funds deposited at Intrust for the account of Movant in account number 840336 or account number 840266.

**15.** The Receiver's purported need for administrative convenience cannot justify charging Movant for losses which clearly did not involve the use of Movant's funds. Movant has demonstrated that "[s]ubstantially all cash in the account was not subject to risk," as set forth in the Court's Order of August 2, 2000. This Court should not permit the Receiver, for reasons of administrative convenience, to charge Movant with losses that are properly attributable to other accounts.

**16.** Movant also made a number of deposits to Alvin's IRA account (840336) and Rebecca's account (840266) *after* April 23, 1999. On August 4, 1999, Alvin deposited \$5,780, see August 1999 statement, Exh. 6 hereto. Rebecca continued depositing \$500 per month after April. The portion of Movant's accounts represented by those deposits must be excluded

from the allocation of loss, even if any other part of Movant's accounts were included, as they occurred after the last transfer from Intrust to Intercounty, and therefore could not have been the subject of the misappropriation.

**17.** Movant continues to object to any allocation of the Intrust cash shortage to Movant's Intrust accounts on the further grounds set forth in the Objections, and those stated and further explained in the suggestions of Terry Bommer and Bruce Freimuth in support of their objections to the Receiver's Recommendation, all of which are incorporated herein by reference.

WHEREFORE, Movant requests that this Court enter an order directing the Receiver to exclude account numbers 840336, 840266, and 840341 from any allocation of the Intrust cash shortages.

Respectfully submitted,

ROTHSCHILD, BARRY & MYERS

By: \_\_\_\_\_  
One of the Attorneys for Objector/Movant  
Alvin M. Conn, Jr. and Rebecca D. Conn

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