

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

**SECURITIES AND EXCHANGE  
COMMISSION,**

**Plaintiff,**

**v.**

**ABC VIATICALS, INC.,  
C. KEITH LAMONDA,  
and JESSE W. LAMONDA, JR.,**

**Defendants.**

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**Cause No. 3:06-CV-2136-P**

**RECEIVER’S RESPONSE TO LAMONDA’S MOTION TO REMAND**

Michael J. Quilling, the Receiver for ABC Viaticals, Inc. and other related entities (“Receiver”) files this response to C. Keith LaMonda’s Motion for Remand to United States Magistrate Judge for Further Development of the Record through Discovery and Other Proceedings [Doc. 417].<sup>1</sup> In support, the Receiver would show as follows:

**I.  
INTRODUCTION**

On May 2, 2012, C. Keith LaMonda (“LaMonda”) filed a motion claiming he was due essentially 25% of the entire receivership estate under his settlement agreement with the Receiver. Following an evidentiary hearing, the Court denied that motion on the merits. LaMonda now asks for additional time to conduct discovery and another opportunity to submit evidence. The Court should deny his request as an untimely objection to the magistrate judge’s recommendation under Federal Rule of Civil Procedure 72(a). He fails to explain what specific records he hopes to obtain through discovery or how they would change the Court’s ruling. on

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<sup>1</sup> An ECF docket entry notes LaMonda’s Motion to Remand was “denied without merit.” Because it appears that ruling is not yet reflected in a signed order, the Receiver files this response out of an abundance of caution.

his Motion to Compel. He also complains about the Magistrate Judge's procedures without explaining how different procedures would have led to a different result. Therefore, the Court should deny LaMonda's motion to remand in its entirety.

## **II. BACKGROUND**

1. On May 2, 2012, LaMonda filed his Motion to Compel the Receiver to comply with the parties' Compromise and Settlement Agreement by paying essentially 25% of the entire receivership estate to LaMonda's family. Thereafter, LaMonda also filed a Motion to Freeze and Enjoin [Doc. 356], Motion for Sanctions [Doc. 366], and Motion to Intervene [Doc. 374] that alleged the same basic claims against the receivership estate.

2. The District Court referred those motions to United States Magistrate Judge Irma Carrillo Ramirez, who conducted an evidentiary hearing on February 20, 2013. The Magistrate Judge's Finding, Conclusions, and Recommendation ("Recommendation") construed LaMonda's requests as a motion to show cause why the Receiver should not be held in contempt, and recommended that it be denied. (Recommendation [Doc. 410] at 1.)

3. LaMonda objected to the Recommendation and then filed this Motion for Remand seeking further discovery and another chance to argue the same issues. (Objections [Doc. 415]; Motion for Remand [Doc. 417].) On March 28, 2013, the United States District Judge accepted the Recommendation in part, denied it in part, and denied LaMonda's Motion to Compel. (Order [Doc. 421] at 26.)

4. The Court should also deny LaMonda's Motion for Remand for the reasons explained more fully below.

**III.**  
**ARGUMENTS AND ANALYSIS**

**A. LaMonda’s Motion States Additional And Untimely Objections To The Magistrate’s Recommendation**

LaMonda’s Motion for Remand essentially states objections to the Recommendation that should be denied as untimely. Federal Rule of Civil Procedure 72(a) gave LaMonda fourteen days to file specific written objections after receiving service of the Recommendation, and the Magistrate Judge advised him of that deadline. (Recommendation [Doc. 410] at 26.) LaMonda filed a lengthy list of objections on March 12, 2013, which the District Judge addressed in his order. (Objections [Doc. 415]; Order [Doc. 421].) LaMonda’s attempt to state additional—and duplicative—objections through this motion should be denied as untimely under Rule 72(a).

**B. LaMonda Does Not Explain How Additional Discovery Or Documents Would Lead To A Different Result**

The Court should deny LaMonda’s request for additional discovery because he fails to identify any document or witness that would plausibly change the Court’s findings. He alleges the Magistrate Judge “decided to stymie further development of the record” and allegedly prevented him from “effecting service of subpoenas for witnesses and documents” or preparing for the hearing. (Motion for Remand [Doc. 417] ¶¶ 4, 6, 7.) However, LaMonda has been asserting his claims against the Receiver since 2010 and had ample time to research those claims and obtain 269 pages of material submitted as exhibits to his motion. (Mot. to Compel [Doc. 344] at 45-313; *see also* Mot. to Reconfirm Compromise and Settlement [Doc. 252]; Complaint [Doc. 1], No. 3:10-CV-1190-P (N.D. Tex.)) The Receiver also submitted an additional 54 exhibits at the hearing and provided testimony that thoroughly established the facts known to him. (Minute Entry dated Feb. 20, 2013.) Despite all of that information, LaMonda now asks to conduct additional discovery on: (1) a “full and complete accounting” of receivership estate

assets, including amounts recovered from the sale of policies, settlement with Erwin & Johnson LLP, settlement with DMH Stallard, and recovery from David Goldenberg's life insurance policy; (2) the alleged "ulterior motive for the institution of the SEC's proceedings against the defendant"; and (3) the Receiver's alleged "bad faith" and "corrupt practices" in refusing to pay 25% of receivership estate assets to LaMonda's family. (Mot. to Remand [Doc. 417] ¶¶ 2, 11, 12, 14, 15.) First, those issues are irrelevant because they do not address the District Judge's reasons for denying LaMonda's Motion to Compel on the merits. (See Order [Doc. 421] at 10-11.) Second, LaMonda has not alleged facts suggesting the amounts recovered from the policies, Erwin & Johnson LLP, DMH Stallard, or David Goldenberg are in dispute. Third, LaMonda had an opportunity to explore those issues in his direct examination of the Receiver and does not identify what additional information would have changed the outcome of his Motion to Compel. Finally, if he truly believe additional records were critical to his claims, he had more than three years to seek that discovery and should have done so before filing his Motion to Compel.

The Court should also deny LaMonda's request for an accounting. He erroneously claims the Receiver "has never . . . provided a full and complete accounting, or for that matter, any accounting whatsoever . . ." (*Id.* at ¶ 2.) The Receiver's interim reports each contain an accounting that LaMonda has cited in the past. (See Mot. to Compel [Doc. 332] at 22, ¶ 19.) LaMonda fails to explain how those accounting statements are inadequate, what additional information he seeks, or how a different accounting would change the outcome of his Motion to Compel. His requests are merely a fishing expedition that would waste estate assets and delay a final distribution in this case.

### **C. The Court's Procedures Were Adequate**

The Court's order staying the filing of additional documents was appropriate and within its discretion. (Order [Doc. 399].) The District Court has broad powers and wide discretion to

employ summary procedures and adjudicate relief in equity receivership proceedings. *SEC v. Sharp Capital, Inc.*, 315 F.3d 541, 545 (5th Cir. 2003). Such decisions are committed to the Court's sound discretion and will not be disturbed absent a clear showing of abuse. *SEC v. Safety Fin. Serv., Inc.*, 674 F.2d 368, 373 (5th Cir. 1982). When disputing those procedures, LaMonda must show: (1) how he was prejudiced by the procedures used; and (2) how he would have been better able to defend himself in a plenary proceeding. *See SEC v. Elliott*, 953 F.2d 1560, 1567 (11th Cir. 1992).

When the Court entered its stay order, LaMonda had already filed numerous duplicative motions, including his Motion to Reconfirm Settlement Agreement [Doc. 252], Motion for Accounting [Doc. 263], Motion for Leave to Compel [Doc. 332], Motion to Compel [Doc. 344], Motion to Freeze and Enjoin [Doc. 356], Motion for Sanctions [Doc. 366], and Motion to Intervene [Doc. 374]. The Court set an evidentiary hearing on the Motion to Compel, which addressed allegations common to all of LaMonda's pleadings. LaMonda now complains the hearing and ruling were "premature" because he had "inadequate information." (Mot. to Remand [Doc. 417] ¶ 9.) Regardless of the procedures used, if LaMonda wished to conduct discovery he should have done so before filing his motion. The Local Civil Rules presume a motion is ripe for ruling when it is briefed and that no additional evidence will be taken at a hearing. LOC. CIV. R. 7.1(g). LaMonda cannot seriously claim the hearing and ruling were "premature" when they occurred more than nine months after he filed his motion and exhibits.

LaMonda also complains that the notice of hearing did not give him enough time to serve subpoenas for witnesses and documents, and that it somehow deprived him of unidentified personal property. (Mot. to Remand [Doc. 417] ¶¶ 6, 7.) Again, he fails to explain what witnesses or documents he hoped to have at the hearing that would have resulted in a different

outcome. His claim that Receiver was given “free reign” to rebut the allegations is also without merit. (*Id.* at ¶¶ 8, 14.) Both sides were given equal time for opening remarks, direct and cross-examinations, presentation of evidence, and closing remarks. Because LaMonda fails to identify what additional evidence or plenary procedures would have changed the outcome of this case, his motion should be denied.

WHEREFORE, the Receiver respectfully asks the Court to deny LaMonda’s motion and for such other and further relief, general or special, at law or in equity to which he may otherwise be entitled.

Respectfully submitted,

QUILLING, SELANDER, LOWNDS  
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