

NO. 2024-75159

WM COMERCIAL ATACADISTA LTDA.	§	IN THE DISTRICT COURT OF
	§	
	§	
V.	§	HARRIS COUNTY, T E X A S
	§	
	§	
BAILEY LAW FIRM PLLC and JESSE LYNN BAILEY	§	80TH JUDICIAL DISTRICT

**PLAINTIFF’S MOTION FOR CONTEMPT, FOR SANCTIONS
AND FOR OTHER RELIEF**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW WM COMERCIAL ATACADISTA LTDA. (“WM Trading” or “Plaintiff”) who, pursuant to Rule 215 of the Texas Rules of Civil Procedure, §82.061 of the Texas Government Code, §82.063 of the Texas Government Code and the inherent power of the Court, files this its Motion for Contempt, For Sanctions and For Other Relief, and in support of which would respectfully show unto the Court as follows:

I.

Why This Motion?

As is detailed in Plaintiff’s Original Petition and Verified Application for Temporary Restraining Order, Temporary Injunction and Other Relief (“Plaintiff’s Petition”, on file with the Court and incorporated by reference herein):

1. Defendants Bailey Law Firm, PLLC and Jesse Lynn Bailey (collectively, “Bailey”) entered into an attorney-client relationship with Plaintiff WM Trading and agreed to hold over \$3 million of WM Trading’s money in Bailey’s IOLTA trust accounts subject to all the applicable provisions of Texas law, the Texas Lawyer’s Creed, and the Texas Disciplinary Rules of Professional Conduct; and
2. When circumstances developed which resulted in WM Trading instructing Bailey to return its money, Bailey refused and failed to do so and, instead, engaged in a now-months-long pattern of serious, inexcusable, dishonest and

unethical conduct violative of Texas law, the Texas Lawyer's Creed, and the Texas Disciplinary Rules of Professional Conduct and which left WM Trading with no choice other than to have to hire counsel to seek return of WM Trading's own funds and to incur substantial attorney's fees in that effort.

Even after being served last week with a Temporary Restraining Order requiring Bailey to timely provide WM Trading with "a full accounting of the entirety of the funds received from WM Trading", Bailey has failed to comply with both the letter and spirit of the Court's injunctive order.

Under prevailing Texas law, the Court's finding of contempt and the imposition of just and appropriate sanctions and other relief is not only permitted under these circumstances, it is necessitated to deter further wrongful conduct by Bailey against Bailey's own client.

II.

The Key Chronology Salient To This Motion

A. The Chronology Prior To The October 30, 2024 TRO

As is detailed in Plaintiff's Petition, pursuant to their July, 2024 Attorney Engagement Letter, WM Trading wired transferred \$3,038,251.13 to Bailey to hold in one or more of Bailey's IOLTA trust accounts pending consummation of a contemplated commercial transaction. When that transaction was not consummated and was formally terminated, WM Trading in early September, 2024 notified Bailey of that fact and requested the immediate return of its funds. Since that date, and over the ensuing eight weeks, Bailey has engaged in a pattern of outright, lies, nondisclosure and obfuscation **toward Bailey's own client** which is as outrageous as it is unethical. Consider the following chronology which Bailey cannot dispute:

1. On September 6, 2024 - WM Trading instructed Bailey to immediately return its \$3,038,251.13 ("the Funds"). **Bailey never replied to this express request.** This necessitated WM Trading having to retain New York counsel;
2. On September 17, 2024, Bailey represented to WM Trading's New York counsel in telephone conversation that the Funds remained in Bailey's trust

account. By Bailey's own recent admission (see below), ***we now know that statement was a lie***;

3. On September 24, 2024, WM Trading's New York counsel sent Bailey an e-mail reiterating WM Trading's prior request for documentation demonstrating that the Funds remained in Bailey's trust account. Once more, ***Bailey never replied to this express request***;
4. On September 27, 2024, WM Trading's New York counsel e-mailed Bailey a letter demanding the return and an accounting of the Funds. Once more, ***Bailey never replied to this express request***. This necessitated WM Trading having to retain the undersigned as its Houston counsel;
5. On October 15, 2024, the undersigned e-mailed Bailey a letter again demanding the return and an accounting of the Funds. Later that day, Bailey called the undersigned and again represented that the Funds were present in Bailey's trust account. By Bailey's own recent admission, ***we now know that statement was a lie***. Moreover, in that call, Bailey's claimed excuse for not returning the Funds was that there might be a contractual provision precluding Bailey from returning the Funds. Later that evening, Bailey was sent the contract in question which, of course, contained no such provision. By Bailey's own recent admission, ***we now know that excuse was a lie***;
6. On October 16, 2024, the undersigned e-mailed Bailey again demanding the return and an accounting of the Funds;
7. On October 17, 2024, Bailey wire transferred \$1,495,000 of the Funds to the undersigned's Firm's IOLTA account and represented that Bailey was unable to return the remaining \$1,543,251.13 of the Funds ("the remainder of the Funds") because Bailey's bank allegedly "had a [wire] limit of under \$1.5 million." Bailey further represented that Bailey had "made an appointment for Monday [October 21, 2024] at 1:15pm to wire another \$1,495,000.00 and then Tuesday [October 22, 2024] will be the remaining amount, appointment is for 2:30 p.m.". By Bailey's own recent admission, ***we now know that each of these representations were lies***;
8. On October 23, 2024, the undersigned advised Bailey that WM Trading intended to seek an injunction and other relief from the Court. Bailey responded that Bailey had "an appointment with a corporate banker scheduled for tomorrow [October 24, 2024] at 1:30 PM to resolve the transfer issue" and that Bailey had "encountered issues both on Monday and today" that prevented Bailey from wiring the remaining Funds. By Bailey's own recent admission, ***we now know that each of these representations were lies***;
9. On October 24, 2024, Bailey called the undersigned and represented that Bailey had visited the bank that afternoon and was told that the bank's

compliance department refused to approve Bailey's requested international wire transfer to WM Trading's account and would not give her a reason why. By Bailey's own recent admission, ***we now know that statement was a lie***; and

10. On October 25, 2024, Bailey texted the undersigned and represented that Bailey was attempting to get to her bank to initiate the transfer of the remaining Funds. By Bailey's own recent admission, ***we now know that statement was a lie***.

B. The October 30, 2024 TRO Hearing

At the October 30, 2024 TRO hearing presided over by Judge Reeder, the Court granted WM Trading's request for injunctive relief and, immediately following the hearing, entered an Order ("the TRO Order") ordering Defendants, no later than 5:00 p.m. on November 1, 2024, either to return the remaining \$1,543,251.13 of the Funds or to provide WM Trading with "with a full accounting of the entirety of the funds received from WM Trading ...".

At the TRO hearing, the undersigned asked Judge Reeder for the Court's guidance as to what would be permitted by way of next steps should Bailey fail to timely comply with the TRO Order. Judge Reeder responded: "File a motion for contempt".

C. Bailey's Response To The October 30, 2024 TRO Hearing

At 4:53 p.m., seven minutes before the Court's deadline, Bailey's counsel sent the undersigned a letter, a copy of which is attached hereto as Exhibit "A" and is incorporated by reference herein. In that letter:

1. Bailey revealed, for the first time that, back in July (no actual dates provided), Bailey had wire transferred the remaining Funds to a company in Cyprus - which, if true, constitutes an admission that all of Bailey's aforementioned representations suggesting that the remaining Funds were in Bailey's trust account (as well as Bailey's alleged efforts to wire transfer them) were lies;
2. Bailey claimed that the company in Cyprus had, ten days earlier, initiated a wire transfer returning the remaining Funds and that it was Bailey's hope "that the funds will arrive, quite literally, any day now." Not surprisingly, no credible documentary evidence that any such wire ever existed has since been provided by Bailey; and

3. In response to the Court's Order to provide "a full accounting of the entirety of the funds received from WM Trading", Bailey provided no bank statements and nothing beyond a narrative (whose credibility, for obvious reasons based upon past conduct, was gone) and, instead, provided a simple screen shot of one alleged trust account's balance.

D. Bailey Has Failed - Then And Since - To Comply With The Court's Order

In reply to the November 1, 2024 letter, and in light of the foregoing chronology and circumstances, on November 4, 2024, the undersigned informed Bailey's counsel that Bailey had failed to comply with the Court's TRO Order for "a full accounting of the entirety of the funds received from WM Trading" in several ways, including but not limited to the following:

1. There were no bank statements provided from any of Bailey's IOLTA accounts which housed the Funds and which would have reflected and accounted for the movement of the remaining Funds in and out of each account;
2. No explanation has ever been provided for why Bailey's Wells Fargo IOLTA account, to which over \$3 million of WM Trading's money had been transferred, was closed by Wells Fargo on August 15, 2024; and
3. Bailey's November 1, 2024 letter represents that Bailey originally transferred \$56,316.73 from one of its trust accounts to its operating account in payment of paymaster fees, but no documentation has ever been provided to corroborate the transfer of those funds.

Demand was made that Bailey immediately produce the requested documentation - that request has gone unfulfilled. It is clear that only the imposition of sanctions and further orders from the Court will motivate Bailey to comply with Bailey's legal, moral and ethical obligations *to its own client*.

III.

Under These Circumstances, A Finding Of Contempt Is Justified And the Imposition Of Sanctions And Other Relief Is Permitted And Necessary

§82.061(a) of the Texas Government Code permits the Court to fine Bailey for misbehavior or for contempt of the Court.

Rule 215.2 of the Texas Rules of Civil Procedure permits the Court to sanction Bailey for failure to comply with the TRO Order.

Where, as has transpired here, an attorney has received money for a client and has subsequently refused to pay the money back upon demand, §82.063 of the Texas Government Code authorizes the Court, upon WM Trading's motion, to render judgment against Bailey for the amount collected or received plus at least 10 percent but not more than 20 percent damages on the principal sum. In Plaintiff's Petition (at p.12), WM Trading previously asserted such a motion seeking this relief.

Moreover, courts have the inherent power to discipline attorneys by imposing sanctions. *In re Bennett*, 960 S.W.2d 35, 40 (Tex. 1997) (orig. proceeding) (per curiam); *Westview Drive Invs., LLC v. Landmark Am. Ins. Co.*, 522 S.W.3d 583, 613 (Tex.App. - Houston [14th Dist.] 2017, pet. denied). A court also may employ sanctions to aid in the exercise of its jurisdiction or in the administration of justice. *Id.* Upon a finding of bad faith or intentional conduct, a trial court has inherent power to impose sanctions for abuse of the judicial process not covered by rule or statute. *Brewer v. Lennox Hearth Prods.*, 601 S.W.3d 704, 718 (Tex.2020).

Pursuant to Tex.R.Civ.P. 215.2(b), sanctions must be just, meaning a direct relationship must exist between the offensive conduct and the sanction imposed and they must not be excessive. *Schindler Elevator Corp. v. Ceasar*, 670 S.W.3d 577, 589 (Tex.2023); *Brewer, supra*, 601 S.W.3d at 718. Moreover, the Court should impose the sanctions against the actual offender. *Nath v. Texas Children's Hospital*, 446 S.W.3d 355, 363 (Tex.2014).

IV.

Relief Requested

In addition to the entry of a temporary injunction already requested in Plaintiff's Petition, and in light of the foregoing, WM Trading requests the Court:

1. Find Bailey to be in contempt of the Court and impose the following just and appropriate sanctions:
 - a. Order Bailey, within 3 days following the entry of the Court's order, to pay \$25,000 of WM Trading's attorney's fees; and
 - b. Order Bailey, within 3 days following the entry of the Court's order, to send WM Trading's counsel copies of the following:
 - (1) Bank statements from every account into or out of which any portion of the Funds were ever transferred which reflect the transfer or movement of any portion of the Funds; and
 - (2) Communications with any individual or entity (other than Bailey's counsel) which mention, refer or reference the transfer or movement of any portion of the Funds;
2. Permit WM Trading to immediately propound a set of interrogatories and requests for production to Bailey which, without prejudice to any answer or defense Bailey may file in this action, Bailey must fully and completely answer within 30 days following Bailey's counsel's receipt of the same;
3. Order that Bailey must appear for a deposition at WM Trading's counsel's office within 14 days of the date the aforementioned discovery is due; and
4. Render judgment, pursuant to §82.063 of the Texas Government Code, against Bailey for the remaining Funds (\$1,543,251.13) plus at least 10 percent but not more than 20 percent damages on that principal sum.

WHEREFORE, PREMISES CONSIDERED, Plaintiff WM Comercial Atacadista Ltda. respectfully prays that the Court enter the aforementioned relief, and for such other and further relief, whether general or special, legal or equitable, to which WM Trading may be justly entitled.

Respectfully submitted,

LAPIN & LANDA, L.L.P.

By: /s/ Robert E. Lapin

Robert E. Lapin
State Bar Card No. 11945050
500 Jefferson Street, Suite 2000
Houston, Texas 77002-7371
(713) 756-3232
(713) 654-8704 (Fax)
blapin@lapinlanda.com

ATTORNEYS FOR PLAINTIFF

Unofficial Copy Office of Marilyn Burgess District Clerk

CERTIFICATE OF SERVICE

On this the 8th day of November, 2024, in accordance with the Texas Rules of Civil Procedure, I hereby certify that a true and correct copy of the above and foregoing pleading was duly served upon all parties and/or their counsel of record via e-service, hand delivery, facsimile and/or certified mail, return receipt requested.

Cordt C. Akers - **Via E-mail**
Brock Akers
The Akers Firm
3401 Allen Parkway, Suite 1101
Houston, Texas 77019

/s/ Robert E. Lapin
Robert E. Lapin

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Heather Mathews on behalf of Robert Lapin

Bar No. 11945050

hmathews@lapinland.com

Envelope ID: 94089681

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Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Robert Lapin		blapin@lapinland.com	11/8/2024 11:31:10 AM	SENT
Brock Akers	953250	bca@akersfirm.com	11/8/2024 11:31:10 AM	SENT
Cordt Akers	24080122	cca@akersfirm.com	11/8/2024 11:31:10 AM	SENT

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