

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 TO COMPEL

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, files this its Motion to Compel Defendants Bailey Law Firm, PLLC (“Bailey Law Firm”) and Jesse Lynn Bailey (“Bailey”) to promptly produce copies of all their communications with Aspo Energy, Ltd., 4-S Media Group, Inc. and Mishel Asraf, and in support of which would respectfully show unto the Court as follows:

I.

Nature of this lawsuit

As is detailed in Plaintiff's First Amended Petition (on file with the Court and incorporated by reference herein) and in documents obtained by WM Trading:

1. In July of 2024, Bailey and Bailey Law Firm entered into an attorney-client relationship with WM Trading and agreed to hold \$3,038,251.13 of WM Trading's money in Bailey Law Firm's IOLTA trust accounts subject to: (a) the fulfillment of conditions precedent to the consummation of a commercial transaction contemplated to take place between WM Trading's client and Aspo Energy, Ltd. (“Aspo Energy”), a company headquartered in the Republic of Cyprus, and (b) all the applicable provisions of Texas law, the Texas Lawyer's Creed, and the Texas Disciplinary Rules of Professional Conduct;

2. The conditions precedent to the consummation of the anticipated transaction between WM Trading's client and Aspo Energy never occurred and, on September 6, 2024, WM Trading instructed Bailey and Bailey Law Firm to return WM Trading's money which had been held in Bailey Law Firm's IOLTA trust accounts;
3. Between September and November of 2024, Bailey refused and failed to return all of WM Trading's money (\$1,543,251.13 remained unreturned) and, instead, engaged in a pattern of lies and unethical conduct violative of Texas law, the Texas Lawyer's Creed, and the Texas Disciplinary Rules of Professional Conduct before finally, in response to this Court's October 30, 2024 Order Granting Temporary Restraining Order, representing to WM Trading by a letter dated November 1, 2024 that:
 - a. Bailey and Bailey Law Firm had Bailey had "mistakenly" wire transferred \$1,521,549.37 of WM Trading's money to Aspo Energy in Cyprus and had transferred \$56,316.73 of WM Trading's money to Bailey Law Firm's own checking account; and
 - b. Aspo Energy had, in response, initiated a wire transfer returning the funds and that it was Bailey's hope "that the funds will arrive, quite literally, any day now.";
4. In fact, Bailey's November 1, 2024 representations, *in response to the Court's order*, were yet further lies upon lies;
5. What has since been confirmed through Bailey's own admissions is that none of WM Trading's money was wire transferred to Aspo Energy in Cyprus and that, in fact, Bailey and Bailey Law Firm, without WM Trading's knowledge or consent, transferred \$1,496,549.37 of WM Trading's money to accounts held in the name of 4-S Media Group, Inc. ("4-S Media"), a Texas corporation whose registered agent is Bailey Law Firm, whose registered address is the Bailey Law Firm's address, and whose Director is Mishel Asraf ("Asraf"); and
6. On February 17, 2025, Bailey and Bailey Law Firm filed a Motion for Leave to Designate Responsible Third Parties in which Bailey and Bailey Law Firm admit and allege that Bailey and Bailey Law Firm transferred WM Trading's money into the hands of Asraf and the two companies he controls, 4-S Media and Aspo Energy.

II.

Why this motion?

On November 26, 2024, WM Trading served separate initial set of requests for production upon Bailey and Bailey Law Firm, copies of which are attached hereto as Exhibits “A” and “B”. Included in those requests were requests that Bailey and Bailey Law Firm produce communications between Bailey and Bailey Law Firm, on the one hand, and Aspo Energy (encompassing its principals and affiliates, thereby including Asraf and 4-S Media) on the other hand.

On January 2, 2025, Bailey and Bailey Law Firm served its responses to WM Trading’s requests for production and refused to produce any communications between Bailey and Bailey Law Firm, on the one hand, and Aspo Energy, Asraf and/or 4-S Media, on the other hand, claiming that doing so would violate privileged client communications.

On January 7, 2025, WM Trading served Bailey and Bailey Law Firm with First Amended Notices of Intention to Take the Depositions of both Bailey and Bailey Law Firm, copies of which are attached hereto as Exhibits “C” and “D”. Included in each such notice was a subpoena duces tecum instructing Bailey and Bailey Law Firm to produce, at or in advance of the depositions, copies of all communications between Bailey and Bailey Law Firm, on the one hand, and Aspo Energy, Asraf and/or 4-S Media, on the other hand.

Neither Bailey nor Bailey Law Firm timely objected under the Texas Rules of Civil Procedure to the subpoenas duces tecum contained in their deposition notices and thereby waived any and all objections thereto.

Yet, when Bailey appeared for her deposition on January 29, 2025, neither Bailey nor Bailey Law Firm produced a single communication with Aspo Energy, Asraf and/or 4-S Media, refusing to disclose why under a claim of an alleged Fifth Amendment right against self-incrimination.

Hence, it is obvious that only this motion, and a subsequent order by the Court, will result in Bailey and Bailey Law Firm producing their communications with Aspo Energy, Asraf and 4-S Media, all of which are discoverable in this case.

III.

WM Trading is entitled to these communications

WM Trading is entitled to all of Bailey's and Bailey Law Firm's communications with Aspo Energy, Asraf and 4-S Media for the following reasons:

1. The communications are clearly relevant to this lawsuit:
 - a. There is no dispute that Bailey and Bailey Law Firm, without WM Trading's knowledge or consent, wrongfully transferred \$1,496,549.37 of WM Trading's money to accounts held in the name of 4-S Media, whose registered agent is Bailey Law Firm, whose registered address is the Bailey Law Firm's address, and whose Director is Asraf; and
 - b. Moreover, in their Motion for Leave to Designate Responsible Third Parties, Bailey and Bailey Law Firm admit and allege that Bailey and Bailey Law Firm transferred WM Trading's money into the hands of Asraf and the two companies he controls, 4-S Media and Aspo Energy;
2. Neither Bailey nor Bailey Law Firm timely objected under the Texas Rules of Civil Procedure to the subpoenas duces tecum contained in their deposition notices and thereby waived any and all objections and claims of privilege to non-production of their communications with Aspo Energy, Asraf and 4-S Media; and
3. Even had their objections and claims of privilege not been waived:
 - a. Leaving aside for the moment whether Bailey has a legitimate claim to assert a Fifth Amendment right against self-incrimination, the law is clear that Bailey Law Firm has no right to assert any Fifth Amendment right against self-incrimination. See *Braswell v. United States*, 487 U.S. 99 (1988) in which the U.S. Supreme Court held that a corporate entity has no right to assert a Fifth Amendment privilege against self-incrimination to avoid producing corporate records, even if those records may personally incriminate its principal; and

- b. Nor may Bailey assert any attorney-client privilege here to preclude production of her records because, pursuant to *United States v. Zolin*, 491 U.S. 554 (1989), when a client uses a lawyer in furtherance of a crime or fraud, then the client's communications with the lawyer are not privileged under the "crime fraud exception" to the privilege.

In light of the above, it is abundantly clear that Bailey and Bailey Law Firm have ignored their obligations under the Texas Rules of Civil Procedure and have committed an abuse of discovery. Rules 215.2 and 215.3 of the Texas Rules of Civil Procedure address conduct of this ilk and permit a range of suitable sanctions to remedy such conduct.

IV.

Relief Requested

WM Trading therefore requests the Court order Bailey and Bailey Law Firm, no later than 7 days following the entry of the Court's order:

1. To deliver to WM Trading's counsel copies of all communications between Bailey and/or Bailey Law Firm, on the one hand, and Aspo Energy, Asraf and/or 4-S Media (or any agents or representatives thereof), on the other hand, which mention, refer or reference the subject, transfer or movement of any portion of any of the funds originally sent by WM Trading to Bailey and/or Bailey Law Firm; and
2. To pay WM Trading's counsel a sanction in an amount which this Court deems reasonably represents the attorney's fees necessarily incurred by WM Trading to research, file and prosecute this motion.

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

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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

On this the 24th day of March, 2025, 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

Unofficial Copy Office of Marilyn Burges District Clerk

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Filing Code Description: Motion (No Fee)
Filing Description: Plaintiff's Motion to Compel
Status as of 3/24/2025 11:50 AM CST

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