

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION
CIVIL ACTION NO. 3:13-CV-00710-TBR-DW**

SBAV LP, Plaintiff,

v.

PORTER BANCORP, INC., *et al.*, Defendants,

v.

BOARD OF GOVERNORS OF THE FEDERAL
RESERVE SYSTEM, *et al.* Intervenors.

MEMORANDUM OPINION

The Board of Governors of the Federal Reserve System and the Federal Deposit Insurance Corporation intervened in a discovery dispute between SBAV LP and Porter Bancorp, Inc., to contest this Court's prior opinion regarding the production of certain bank-examination documents. *See SBAV LP v. Porter Bancorp, Inc.*, No. 3:13-CV-00710-TBR-DW, 2015 WL 5971591, at *5 (W.D. Ky. Oct. 14, 2015). Shortly after setting a briefing schedule on that issue, however, the parties executed a confidential settlement agreement. In light of that settlement, the parties jointly move to dismiss this action with prejudice under Federal Rule of Civil Procedure 41(a)(2). R. 242 at 1 (Motion for Dismissal with Prejudice). Seeing no reason to refuse the parties' request, the Motion for Dismissal with Prejudice (R. 242) is **GRANTED**.

Because this controversy is now moot, the Agencies ask this Court to vacate its earlier opinion, *SBAV LP v. Porter Bancorp, Inc.*, No. 3:13-CV-00710-TBR, 2015 WL 1471020 (W.D. Ky. Mar. 31, 2015), *as amended* (W.D. Ky. Apr. 1, 2015), and that of the Magistrate Judge too, as neither are subject to review. R. 241 at 1 (Motion to Vacate).

The Court may vacate interlocutory orders under either Federal Rule of Civil Procedure 54(b) or its inherent, common law authority to control the administration of the case before it. *See Rodriguez v. Tenn. Laborers Health & Welfare Fund*, 89 F. App'x 949, 959 (6th Cir. 2004); *Mallory v. Eyrich*, 922 F.2d 1273, 1282 (6th Cir. 1991); *see also Persistence Software, Inc. v. Object People, Inc.*, 200 F.R.D. 626, 627 (N.D. Cal. 2001). Vacatur is generally appropriate to avoid entrenching an interlocutory decision rendered unreviewable through no fault of the moving party. *See U.S. Bancorp Mortg. Co. v. Bonner Mall P'ship*, 513 U.S. 18, 25 (1994). Such relief is warranted here: Happenstance has frustrated the Agencies' efforts to seek review of this Court's prior opinion—the Agencies' diligence notwithstanding. *See Sackman v. Liggett Grp.*, 189 F.R.D. 58, 59–60 (E.D.N.Y. 1999). Accordingly, the Memorandum Opinion and Order of March 31, 2015 (R. 197) and the Magistrate Judge's Order of January 16, 2015 (R. 179) are **VACATED AS MOOT**.

An appropriate Order will issue separate from this Memorandum Opinion.

Date:

cc: Counsel of Record