

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

AES-APEX EMPLOYER SERVICES,
INC., AES-APEX EMPLOYER
SOLUTIONS, INC.,

Plaintiffs,

v.

Case No. 13-14519

DINO ROTONDO, RICHARD MARK, and
UNITED STATES DEPARTMENT OF
TREASURY - INTERNAL REVENUE
SERVICE,

Defendants,

and

AKOURI INVESTMENTS, LLC

Intervening Party.

ORDER OF REFERRAL

Before the court is the Report and Recommendation (“R&R”) (Dkt. # 83) of United States Magistrate Judge David R. Grand. The magistrate judge recommends that the Motions for Summary Judgment filed by Defendant United States and Intervenor Akouri Investments be denied and that Plaintiff’s Motion to Interplead Funds, for Dismissal, and for Costs and Attorney’s Fees be granted in part and denied in part. On August 12, 2015, Plaintiffs and Intervenor filed timely objections pursuant to 28 U.S.C. § 636(b)(1) and E.D. Mich LR 72.1(d)(2). (Dkt. ## 84, 85.) Additionally, on December 18, 2015, Intervenor filed a “Motion for Post Judgment Relief” based on developments in related litigation in state court. (Dkt. # 98.)

Having reviewed the Objections, the court believes that Magistrate Judge Grand should have an opportunity to reconsider the current R&R and also make a recommendation as to the resolution of Intervenor's recently filed "Motion for Post Judgment Relief." Federal Rule of Civil Procedure 72(b)(3) and 28 U.S.C. § 636(b)(1)(C) provide that a district court, after reviewing an R&R and Objections, may return the matter to the magistrate judge with instructions. Review of the parties' Objections has drawn the court's attention to a number of issues that appear to have been presented more cogently in the Objections than they were in the briefing reviewed by the magistrate judge. Thus, the court will vacate the R&R and recommit the matter to the magistrate judge to consider the Objections raised by the parties and either affirm his recommendation by issuing the same, or similar, R&R, or amend his recommendation through a revised R&R. The magistrate judge should consider this matter, in particular, in light of the Objections filed by Plaintiff AES, (Dkt. # 84), which appear, at least facially, to be persuasive. Additionally, by referring the matter back, Magistrate Judge Grand can also consider and provide a recommendation as to the resolution of Intervenor's "Motion for Post Judgment Relief." (Dkt. # 98.)

For those reasons, IT IS ORDERED that the current R&R (Dkt. 83) is VACATED and the parties' Objections (Dkt. ## 84, 85) are TERMINATED as moot.

IT IS FURTHER ORDERED that, pursuant to 28 U.S.C. § 636(b)(1)(C) and Federal Rule of Civil Procedure 72(b)(3), the matter is referred back to Magistrate Judge Grand to either reissue his R&R or alter the R&R in response to the filed Objections. Additionally, the court refers the matter of Intervenor's pending "Motion for Post Judgment Relief" (Dkt. # 98) for a recommendation from Magistrate Judge Grand.

IT IS FURTHER ORDERED that the parties shall have an opportunity to file objections to the new R&R subject to the usual limitations and requirements.

s/ Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: January 6, 2016

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, January 6, 2016, by electronic and/or ordinary mail.

s/ Lisa Wagner
Case Manager and Deputy Clerk
(313) 234-5522

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