

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

RICK D. LANGE, as Chapter 7)	4:12CV3148
Trustee of the Bankruptcy Estate of)	
TierOne Corporation,)	
)	
Plaintiff,)	MEMORANDUM
)	AND ORDER
)	
v.)	
)	
)	
KPMG LLP,)	
)	
Defendant.)	
)	

This matter is before the court on the findings, recommendation and order entered by Magistrate Judge Cheryl R. Zwart on March 5, 2013 (filing [79](#)).¹ Judge Zwart has recommended that: (1) filing [42](#), the defendant’s motion to compel arbitration should be granted in part and denied in part; (2) filings [5](#) and [13](#), the defendant’s previously filed motions to compel arbitration, should be denied as moot; and (3) filing [30](#), the plaintiff’s motion to remand and abstain, should be denied. She

¹ Three weeks after Judge Zwart entered the findings, recommendation and order, this case was referred to the bankruptcy court because the plaintiff had raised certain jurisdictional issues concerning a complaint in intervention that was filed by the Federal Deposit Insurance Corporation, as receiver for TierOne Bank. The referral was withdrawn on October 24, 2013, but proceedings were then stayed while the plaintiff, FDIC-R, and individual defendants (former officers and directors of TierOne Corporation) engaged in settlement negotiations. Those negotiations have now been successfully concluded, and today a final judgment has been entered dismissing with prejudice the plaintiff’s claims against the individual defendants and FDIC-R’s complaint in intervention. The judgment renders moot a motion for summary judgment that was filed by FDIC-R while the case was on referral to the bankruptcy court, and leaves for decision only the claims alleged by the plaintiff against KPMG.

also granted in part and denied in part filing [57](#), the plaintiff's motion to allow the filing of supplemental evidence, an evidentiary hearing and oral argument on the motion to compel arbitration. On March 19, 2012, the plaintiff objected to Judge Zwart's findings, recommendation, and order, and requested oral argument (filing [81](#)).

I find and conclude after de novo review, and without need for any additional discussion, that Judge Zwart has correctly found the facts and applied the law. Her findings and recommendation will be adopted,² her order will be sustained, and the plaintiff's objections and request for oral argument will be denied.

Accordingly,

IT IS ORDERED:

1. The intervenor's motion for summary judgment (filing [90-1](#)) and any related filings are denied as moot.
2. The magistrate judge's findings, recommendation and order (filing [79](#)) are adopted and sustained.
3. The plaintiff's statement of objections and request for oral argument (filing [81](#)) are denied.
4. The defendant's motion to compel arbitration (filing [42](#)) is granted, and this case is stayed; in all other respects, the motion is denied.
5. The parties shall each file a status report, not less than once every 4 months, regarding the progress of their arbitration.

² I will, however, direct the parties to file periodic status reports regarding the progress of their arbitration.

6. The defendant's previously filed motions to compel arbitration (filing [5](#), [13](#)) are denied as moot.
7. The plaintiff's motion to remand and abstain (filing [30](#)) is denied.
8. The clerk of the court shall close this case for statistical purposes.

April 21, 2014.

BY THE COURT:

s/ Richard G. Kopf
Senior United States District Judge