

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 03-80612-Civ-MARRA/SELTZER

SECURITIES AND EXCHANGE COMMISSION

Plaintiff

vs.

MICHAEL LAUER,
LANCER MANAGEMENT GROUP, LLC, and
LANCER MANAGEMENT GROUP II, LLC,

Defendants

and

LANCER OFFSHORE, INC.,
LANCER PARTNERS, LP,
OMNIFUND, LTD.,
LSPV, INC., and LSPV, LLC,

Relief Defendants.

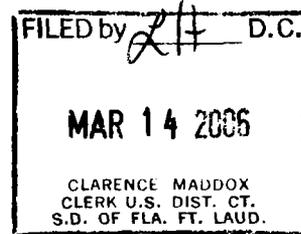
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In re:

LANCER PARTNERS L.P.

Debtor.

_____ /



ORDER

THIS CAUSE is before the Court upon Plaintiff Securities and Exchange Commission's Motion For Clarification of Order Affirming in Part Magistrate Judge's Report and Recommendation [DE 1246]. This matter is fully briefed and ripe for review and the Court is fully advised in the premises.

1246
[signature]

In this Court's January 24, 2006 Order [DE 1218], the Court attempted to articulate clearly the sanctions that were to be imposed upon Defendant Michael Lauer, including the evidentiary limitations that would be placed on Lauer at the trial on the merits. In view of the instant motion brought by the Securities and Exchange Commission ("SEC") and Defendant Lauer's response, it is apparent the Court failed to accomplish its goal. The parties now dispute whether the sanction which prohibited Defendant Lauer from presenting any witness or introducing any evidence "that has not already been disclosed or produced by him to the SEC" applied to Defendant Lauer's own testimony at trial.

In the January 24, 2006 Order finding Defendant Michael Lauer in contempt, the Court concluded that Lauer's contemptuous conduct was sufficient to justify the entry of a default judgment. Because of the seriousness of the SEC's charges and the federal policy favoring decisions on the merits, the Court attempted to strike a balance which would punish sufficiently Lauer for his egregious violations of this Court's orders, but which would not at the same time hand the SEC a victory by default. The Court believed that the SEC should be required to prove its allegations to a trier of fact under circumstances that would not prejudice the SEC and would not permit Lauer to profit from his wrongdoing.

To allow Lauer to testify on his own behalf at the trial, without having been subject to a full and complete examination by the SEC at his deposition and without complying fully with his obligations to produce documents and answer interrogatories,

would reward Lauer for his contemptuous behavior. The fact that Lauer sat for deposition for four (4) days is of no moment if he did not provide all the information needed by the SEC to confront his assertions and if he failed to allow the SEC to complete the examination. Therefore, the Court intended from the outset to preclude Lauer from testifying at trial. To the extent the language of the Court's Contempt Order did not articulate that intention clearly, the Court now does so.

Consistent with the Court's prior pronouncement, the SEC should not be entitled to a victory by default to the extent it has not been prejudiced by Lauer's contemptuous conduct. Lauer shall be entitled to cross-examine and attack the credibility of the evidence presented by the SEC, but he shall not be permitted to present any witnesses or evidence which were not properly, fully, and timely disclosed under the Federal Rules of Civil Procedure and this Court's prior orders. By virtue of Lauer's contemptuous conduct, his own testimony was not properly, fully and timely disclosed to the SEC. Any suggestion by Lauer that he is now willing to comply with his discovery obligations, as previously ordered, comes too late. Accordingly, it is hereby

ORDERED AND ADJUDGED that Plaintiff Securities and Exchange Commission's Motion For Clarification of Order Affirming in Part Magistrate Judge's Report and

Recommendation [DE 1246] is GRANTED.¹ Defendant Lauer shall not be permitted to testify at the trial on his own behalf.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, this 14th day of March, 2006.



KENNETH A. MARRA
United States District Judge

copies to:

Magistrate Judge Seltzer
Christopher Martin, Esq.
Marty Steinberg, Esq.
Carl Schoeppl, Esq.

¹ The Court is only providing clarification as to the issue raised in the SEC's Motion For Clarification.