

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-13-90008

BEFORE
Lynch, Chief Circuit Judge

ORDER

ENTERED: SEPTEMBER 26, 2013

Complainant, who appeared as an unsecured creditor in a bankruptcy proceeding, filed a complaint, under 28 U.S.C. § 351(a), alleging that the presiding bankruptcy judge was biased and impatient. The complainant contends that the judge was biased against complainant because of his race and exhibited insufficient "patience and calmness . . . when he abruptly ended" a hearing.

The complainant further asserts that the judge improperly reprimanded complainant in his absence and that this reprimand is further evidence of the judge's racism. Complainant adds that the judge improperly issued an order discharging the case and questioned complainant's standing as a creditor. Complainant concludes that these orders demonstrate the judge's bias and an inadequate understanding of the issues before

the court.

A limited inquiry, undertaken pursuant to Rule 11(b) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), demonstrates that the complainant's allegations lack any factual basis. My staff and I have reviewed the misconduct complaint, the dockets of the proceedings, pertinent pleadings, and court orders, as well as the audio recording of the relevant hearing.

The record indicates that the debtors added complainant as an unsecured creditor to their bankruptcy petition after complainant filed suit against them in federal district court alleging breach of contract and copyright infringement. The bankruptcy court subsequently issued an order discharging the debtors and closing the case. Roughly four months later, complainant moved to revoke the court's order of discharge. The judge struck this pleading on the ground that it was not in conformity with federal law or procedure and suggested that complainant consult counsel.

Thereafter, the debtors moved to reopen the case in order to amend their financial statement. They explained that this correction would resolve claims and counterclaims raised in the civil action that complainant had filed against them. Complainant filed a lengthy response to the debtors' motion. When complainant failed to appear at the hearing on the debtors' motion, the judge issued the "reprimand" to which complainant objects in the misconduct complaint. The judge granted the debtors' motion to reopen the case, "admonished" complainant for not appearing at the hearing, noted that the

complainant's response to the motion appeared to have been "in retaliation" for the debtors' past conduct, and "warned" complainant to conform his actions to the governing bankruptcy rules.

Complainant filed a motion to reconsider the court's order reopening the case which the judge scheduled for a hearing. The audio recording of this hearing demonstrates that complainant was heard in full. The judge patiently inquired about complainant's interest in the case. Complainant explained his pending lawsuit against the debtors and his reason for failing to appear at the previous hearing. The judge methodically reiterated each of complainant's contentions to be sure that the court understood them correctly. The court observed that complainant did not in fact oppose the reopening of the case but had concerns about the debtors' underlying motivation that he wanted to bring to the attention of the court.

After complainant conceded that he did not oppose the debtors' motion to reopen the case, the judge stated that the court would deny complainant's motion to reconsider. The court explained that, since complainant did not actually object to the reopening of the case, the court had no reason to reconsider its decision allowing it. Clearly dissatisfied with this result, the complainant stated that the court was not an "advantageous place" for complainant because of his race and pro se status. The judge replied that he was offended at this charge and asked complainant if he had anything else relevant to the pending matter. When complainant continued to pursue the issue of race, the court terminated the

hearing.

The court had heard from complainant in full and had ruled on the pending motion when complainant raised the issue of bias. Complainant's dissatisfaction with this ruling apparently precipitated the accusation. The judge, nonetheless, gave complainant another opportunity to state anything relevant to the pending matter. When complainant failed to do so, the hearing was finally terminated.

There is no evidence of racial or other bias either during the hearing or elsewhere in the reviewed record. The fact that complainant and the judge are of different races does not alone provide grounds for a claim of bias. Therefore, this allegation is dismissed as factually unfounded, pursuant to 28 U.S.C. § 352(b)(1)(B). See also Rules of Judicial-Conduct, Rule 11(c)(1)(D).

Nor did the judge terminate the hearing prematurely or exhibit insufficient patience. While a judge's tone is not alone indicative of misconduct, see Boudin, C.C.J., Order, In Re: Complaint No. 444, January 23, 2007, at 4, the judge in the present matter did not raise his voice or address complainant in a rude or discourteous manner. The court provided complainant a full and complete opportunity to be heard. Accordingly, complainant's claims that the judge was impatient or denied complainant an adequate opportunity to present his views during the hearing are conclusively refuted by the record. See 28 U.S.C. § 352(b)(1)(B), and Rules of Judicial-Conduct, Rule 11(c)(1)(D).

Further, the judge's reprimand of complainant for failing to appear at the first

hearing, warning to complainant to conform to the governing rules, and questioning complainant's standing do not, on the present record, evidence bias or otherwise constitute misconduct. See 28 U.S.C. § 352(b)(1)(A)(i), and Rules of Judicial-Conduct, Rule 11(c)(1)(A).

As there is no evidence of bias or other improper motivation on the part of the judge, complainant's disagreement with orders issued in the case - including the original order of discharge, the order to reopen the case and the denial of complainant's motion to reconsider - does not constitute a cognizable misconduct complaint. Accordingly, the misconduct complaint is also dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(ii). See Rules of Judicial-Conduct, Rules 3(h)(3), and 11(c)(1)(B).

For the reasons stated, Complaint No. 01-13-90008 is dismissed, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i), 352(b)(1)(A)(ii), and 352(b)(1)(B). See also Rules of Judicial-Conduct, Rules 11(c)(1)(A), 11(c)(1)(B), and 11(c)(1)(D).

9/26/13

Date

Sarah S. Lynch

Chief Judge Lynch