

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-13-90012

BEFORE
Lynch, Chief Circuit Judge

ORDER

ENTERED: OCTOBER 31, 2013

Complainant is a pro se debtor in a Chapter 13 bankruptcy proceeding. Complainant filed a complaint, under 28 U.S.C. § 351(a), alleging that the bankruptcy judge exhibited poor judicial temperament, improperly dismissed complainant's case, and wrongfully communicated with a state court judge about the proceeding.

Complainant first alleges that, at a motion hearing, the judge "mocked" complainant by "laughing at" him, after orally dismissing complainant's petition at the conclusion of the hearing. Complainant contends that this "mockery" demonstrates an inferior "judicial temperament."

Complainant next asserts that, by dismissing the proceeding, the judge refused to "apply the equitable powers of the laws" against the bank, a creditor in the case, instead

engaging in "mockery" of complainant.

Finally, in supplementary materials, complainant asserts that the federal judge must have improperly communicated with a state court judge who presided over a related proceeding that complainant filed against the same bank in state court. Complainant asserts that, during a recent hearing in this case, the judge responded to complainant's argument by stating that "this is not what [the bankruptcy judge] said" Complainant infers from this alleged statement that the bankruptcy judge discussed complainant's case with the state judge and that this was done in violation of federal law and the canons of judicial ethics.

As part of a limited inquiry into complainant's allegations, my staff and I have reviewed the docket, pleadings, and court orders entered in the bankruptcy case. This includes listening to the complete audio recordings of both relevant hearings - the hearing on the trustee's motion to dismiss before the bankruptcy judge and the recent motion hearing in state court. See Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rule 11(b) (providing for a limited inquiry by the chief judge in determining what action to take in response to a judicial misconduct complaint).

The audio recordings of both of the relevant hearings fail to lend any support to complainant's allegations or refute them. During the hearing before the bankruptcy judge on the trustee's motion to dismiss, the judge remained invariably calm, polite and respectful of complainant throughout. The court heard fully from complainant

before determining that federal law obligated the court to dismiss the petition for failing to comply with a statutory requirement that credit counseling be completed within the 180 days before the filing of a Chapter 13 petition. The judge explained that, as this was complainant's second bankruptcy case, the court was not persuaded by complainant's apparently inconsistent arguments that he thought he had complied with the law and that he could not afford to do so.

Complainant appears to think the judge's demeanor as he left the bench showed disrespect to complainant. If so, that would, of course, be inappropriate. But there is nothing to substantiate this perception, and it would be entirely inconsistent with the respectful treatment given during the hearing. At no point during the recorded hearing did the judge laugh at, "mock," or in any way show disrespect to complainant. There is no record that the judge laughed at all or, if he did so after the conclusion of the hearing, that it was in any way related to complainant's case or the judge's opinion of complainant. Accordingly, the claim that the judge manifested an improper judicial temperament at this hearing is dismissed as unsupported, pursuant to 28 U.S.C. § 352(b)(1)(B). See also Rules of Judicial-Conduct, Rule 11(c)(1)(D).

Complainant's claim that the state court judge said that the bankruptcy judge had communicated with the court about complainant's bankruptcy case is disproved by the record. The audio recording of the state court hearing demonstrates that the presiding judge made a single reference to the bankruptcy judge's public "order" dismissing the

complainant's bankruptcy petition; at no time did the court state or imply that the bankruptcy judge had communicated directly or indirectly with the state court concerning complainant's case or any other matter. Accordingly, this claim is dismissed as conclusively refuted, pursuant to 28 U.S.C. § 352(b)(1)(B). See also Rules of Judicial-Conduct, Rule 11(c)(1)(D).

The remaining allegation that the judge improperly applied the law in dismissing complainant's bankruptcy petition is not cognizable. This assertion reflects complainant's disagreement with the judge's decision to allow the trustee's motion to dismiss the proceeding. "Cognizable misconduct . . . does not include . . . an allegation that is directly related to the merits of a decision or procedural ruling" Rules of Judicial-Conduct, Rule 3(h)(3)(A). Accordingly, the misconduct complaint is dismissed as not cognizable, pursuant to 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(B).

For the reasons stated, Complaint No. 01-13-90012 is dismissed, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii), and 352(b)(1)(B). See also Rules of Judicial-Conduct, Rules 11(c)(1)(B), and 11(c)(1)(D).

10/31/13

Date

Stanley Lynch

Chief Judge Lynch