

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINTS NOS. 01-10-90010 AND 01-10-90011

BEFORE
Lynch, Chief Circuit Judge

ORDER

ENTERED: JUNE 29, 2010

Complainants are litigants who filed a complaint of judicial misconduct, under 28 U.S.C. § 351(a), against two bankruptcy judges in the First Circuit who presided over the complainants' bankruptcy petition and two related adversary proceedings. The case was presided over by the first of the charged judges for about a year before it was transferred to the second judge. The complainants were represented by counsel at several intervals during the proceedings but otherwise appeared pro se.

The complainants first present an array of generalized allegations of judicial impropriety, followed by several specific claims pertaining to the conversion of the case and to the court's acceptance of a settlement agreement. The complainants allege that the judges wrongfully authorized the conversion of their case from a Chapter 13 to a Chapter 7 proceeding, based upon "fraudulent" tax information and the alleged unlawful conveyance of complainants' real property.

As to the settlement, the complainants charge that the judges conspired with the trustee and

others to coerce the complainants into accepting a disadvantageous settlement agreement. They add that the court denied the complainants an opportunity to object to the settlement agreement, overlooked the "possible criminal acts" of the trustee and others in procuring the agreement, and wrongfully failed to recuse themselves pursuant to Canon 3(C)(1) of the Code of Conduct for United States Judges (Code of Conduct).

My staff and I have reviewed the record, including the misconduct complaint, its addendum and attachments, the dockets of the three cited cases, the transcripts of the hearings, as well as relevant pleadings and court orders. Because I find no basis in fact or law for the claims of complaint, I dismiss the complaint. The complainants' charges are addressed in turn.

Generalized Claims of Wrongdoing

The complaint consists mostly of conclusory allegations that the judges engaged in "fraudulent and felonious conduct, [and] misfeasance and nonfeasance in the administration of justice." These statements -- including, for example, the claims that the judges "conspired . . . to obstruct justice and perpetuate a fraud," intentionally disregarded established precedent, and generally engaged in "malfeasance and nonfeasance" -- are provided without any basis in facts or with reference to the lengthy record. Accordingly, they are dismissed as frivolous pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial Misconduct), Rule 11(c)(1)(C).

Conversion from Chapter 13 to Chapter 7

While the complainants supply few fact-specific allegations, they clearly charge that the court wrongfully authorized the conversion of their primary case from a Chapter 13 to a Chapter 7 proceeding. The complainants assert that the wrongful conversion was based, in part, on

"fraudulent" tax information that the court acquired by means of a "private IRS computer that sits adjacent to the clerk in-take office in the public access area of the court." The allegedly fraudulent information concerns a federal tax lien that the complainants contend the Internal Revenue Service (IRS) did not properly record.

The charge of judicial impropriety relating to the court's conversion of the case is refuted by the record. The issue arose in connection with the federal tax lien and the apparent unauthorized transfer of a piece of real property. The transcripts of the multiple hearings addressing these issues do not show any suggestion of wrongdoing.

The hearing transcripts demonstrate that, while the court first ordered the IRS to produce a "time-stamped copy" of its lien, it became apparent that such liens were routinely filed electronically. The judge ruled this issue moot, having determined that the IRS had produced the outstanding documents. The court subsequently sustained the IRS' objection to confirmation of the debtors' plan because the plan failed to provide for the IRS' secured claim (to which no objection had been filed).

Meanwhile, one of the creditors moved to convert that case to a Chapter 7 proceeding on the ground that the complainants had fraudulently transferred real property to a third party. The court initially exercised its "discretion to refrain from converting the case . . . ," despite errors in the complainants' schedules that would have warranted conversion. However, it ordered the complainants to comply with certain requirements in order to prevent the subsequent conversion of the case, including the retention of counsel.¹

¹The judge noted that the complainants have filed a "number of motions that border on frivolous," that it is "impossible" for a Chapter 13 debtor to proceed pro se, and that the complainants' income is such that counsel would be affordable.

Counsel appeared temporarily on the complainants' behalf. Nevertheless, the judge issued a show cause order requiring the complainants to demonstrate why the case should not be converted to Chapter 7 for failure to comply with the conditions previously set forth by the first judge, including confirmation of a discharge plan. Counsel withdrew and the court authorized complainants' requests, pro se, for continuances of the hearing on the show cause order. The complainants continued to object to the IRS' failure to produce "a federal tax lien bearing a docket number and a time date stamp" and to the "private computer just for filing the [IRS'] stuff with the . . . Court." The judge ordered the case converted to a Chapter 7 proceeding, and a trustee was appointed.

There is no evidence in the reviewed materials that either judge harbored any illicit animus or engaged in any wrongdoing during the multiple proceedings that precipitated the conversion of the case. Both judges gave the complainants ample opportunities to address the issues that resulted in the conversion and made repeated attempts to facilitate the complainants' retention of counsel to address the issues. Moreover, there are no facts corroborating the claims that the court relied on "fraudulent" information, from the "IRS computer" or from any other source, in reaching its decision to convert the case. As the charges arising from the conversion of the case from a Chapter 13 to a Chapter 7 proceeding are presented without any factual foundation, they are dismissed pursuant to 28 U.S.C. § 352(b)(1)(B). See also Rules of Judicial Misconduct, Rule 11(c)(1)(d).

Acceptance of Settlement Agreement

The complainants next charge that, after the case was wrongfully converted, the judges collaborated with the Chapter 7 trustee and others to coerce the complainants into accepting a disadvantageous settlement which unlawfully prohibited them from fully adjudicating their

claims, and resulted in the "felonious taking of [their] real property" As part of this claim, the complainants assert that the second judge who presided over the case wrongfully allowed the trustee's motion for approval of the settlement agreement without giving the complainants an opportunity to be heard, and that the judges wrongfully overlooked "possible criminal acts" by the trustee and others in procuring the settlement agreement.

The complainants' allegation that the judges conspired with the Chapter 7 trustee and others to coerce the complainants into accepting a disadvantageous settlement agreement is baseless. Shortly after his appointment, the Chapter 7 trustee filed two related adversary proceedings and a motion for court approval of a settlement agreement. The complainants retained new counsel who filed an appearance on their behalf in both the original matter and the two adversary cases. As no objection was filed, the second judge approved the settlement, discharged the complainants/debtors, and dismissed the related adversary proceedings.

After counsel again withdrew, the complainants, pro se, sought to vacate the settlement agreement on the ground that they had been under duress when they had agreed to it. After an evidentiary hearing, the judge issued a memorandum of decision denying the complainants' motion. The court summarized the evidence presented at the hearing in the context of the applicable law, and determined that the complainants had "failed to establish economic duress as a defense to the enforcement of the settlement agreement." The judge further found that the complainants' contention that they "felt overwhelming pressure" to accept the settlement was "not credible."

There is no evidence that the judges conspired with the trustee or with anyone else to obtain the complainants' consent to the settlement agreement. The record does not show that the

judge who presided over this part of the case(s) harbored any improper animus -- either in allowing the trustee's initial motion to approve the settlement or in denying the complainants' subsequent motion to vacate it. There are likewise no facts indicating that either judge overlooked the "possible criminal acts" of the trustee or any other party to the case(s), in connection with the settlement or any other matter.

Further, the complainants were not denied an opportunity to object to the trustee's motion requesting approval of the settlement; they merely failed to do so. As noted by the judge, no objection was filed during the several weeks the motion was pending before it was allowed. Complainants' claims of conspiracy or other impropriety in connection with the court's acceptance of the settlement agreement are dismissed as unfounded pursuant to 28 U.S.C. § 352(b)(1)(B). See also Rules of Judicial Misconduct, Rule 11(c)(1)(d).

Absent evidence of bias (of which there is none), insofar as the complaint is based on the complainants' disagreement with orders issued in the case(s), including, but not limited to, the order converting the case to Chapter 7, the order accepting the IRS' production of the lien, or any of the orders relating to the settlement agreement, it is not cognizable. See 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules of Judicial Misconduct, Rule 11(c)(1)(B).

Recusal

The complainants' final claim is that the judges improperly failed to recuse themselves pursuant to Canon 3(C)(1) of the Code of Conduct. This charge is also without merit. As the complainants presented no grounds for the judges' withdrawal, their failure to do so is not suggestive of misconduct. See 28 U.S.C. § 352(b)(1)(A)(i). See also Rules of Judicial Misconduct, Rule 11(c)(1)(A).

For the reasons stated, Judicial Misconduct Complaints No.01-10-90010 and No.01-10-90011 are dismissed, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i), 352(b)(1)(A)(ii), 352(b)(1)(A)(iii), and 352(b)(1)(B).

6/29/10
Date

Sandra L. Lynch
Chief Judge Lynch