

JUDICIAL COUNCIL  
OF THE FIRST CIRCUIT

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IN RE  
COMPLAINT NO. 01-13-90011

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BEFORE  
Lynch, Chief Circuit Judge

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ORDER

ENTERED: OCTOBER 16, 2013

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Complainant is a plaintiff represented by counsel in a civil case filed against several financial institutions alleging fraud and misrepresentation. Complaint filed a complaint, under 28 U.S.C. § 351(a), alleging that the presiding district judge mishandled the proceeding.

Complainant alleges that the judge blocked complainant's access to the courts by depriving her of notice of a motion hearing, failing to consider her argument on the invalidity of an arbitration agreement and not ruling on a motion to alter the judgement entered in the case. Complainant stresses that her concern is not with what she calls "bad rulings" by the court.

Complainant asserts first that the court denied a joint motion to convert a

scheduling conference to a hearing on defendant's motion to compel arbitration.

Complainant continues that, in reliance on this ruling, she and her family did not attend the proceeding. Complainant contends that the judge then heard argument on the motion, contrary to his previous ruling, "with zero notice to the parties, thereby denying [complainant's] family a chance to attend [the] case."

Complainant next claims that, at this motion hearing, the judge improperly refused to consider complainant's argument on the invalidity of the arbitration agreement.

Complainant contends that the judge relied on defendants' assertion that there was a binding arbitration agreement and failed to consider complainant's argument that the agreement was fraudulent, thereby "unfairly block[ing]" complainant's access to the courts. Complainant argues that the court then wrongfully dismissed the case with prejudice.

Complainant further alleges that the judge failed to rule on a motion complainant filed seeking to alter the judgment to a dismissal without prejudice. Complainant concludes that the judge served as a "blockade to the public courts . . . ."

My staff and I have reviewed the record - including the misconduct complaint, case docket, pleadings, court orders, and the transcript of the relevant hearing. 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). Complainant's concerns appear to

be based on misunderstandings.

As to complainant's notice of the hearing on defendants' motion to compel arbitration, complainant correctly observed that the judge denied the parties joint request to convert the scheduling conference to a motion hearing. About a week before the hearing, counsel for both parties filed a joint statement which anticipated that the defendants' motion to compel arbitration would be heard at that time and appeared in court prepared to address it. In fact, counsels' jointly submitted proposed agenda identified the motion as the first order of business. We have no information about communications between complainant's counsel and complainant on this topic.

Complainant apparently drew an incorrect inference that the motion would not be heard. But that is inconsistent with the pleading filed on complainant's behalf and in no way suggests that the judge denied complainant notice to which she was entitled. This claim 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).

Complainant's next claim is that the judge failed to consider complainant's argument on the invalidity of the arbitration agreement. But that is not true. The transcript of the hearing demonstrates that the court gave complainant's counsel an opportunity to argue, both orally and in writing, complainant's position on whether the court or the arbitrator should decide the validity of the arbitration agreement. Complainant was heard in full on this issue before the judge determined that Supreme

Court precedent required that the validity of the arbitration agreement be determined by the arbitrator, and rejected complainant's argument. Complainant's objection to this ruling, which was made based on the law, is not cognizable. "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 claim is not cognizable under the judicial misconduct statute. See 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(B).

Finally, complainant complains that the judge declined to take any formal action on complainant's motion to alter the judgment to a dismissal without prejudice. But the court clarified the scope of the dismissal order, explaining that complainant's claims in her individual capacity were dismissed with prejudice because she lacked standing while the claims regarding the arbitration agreement were referred to an alternative forum and thus dismissed without prejudice. This was a ruling of law and is not cognizable as a misconduct complaint. The claim to that effect is dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(i). See also Rules of Judicial-Conduct, Rule 11(c)(1)(A).

For the reasons stated, Complaint No. 01-13-90011 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).

10/16/13

Date

Sandra L Lynch

Chief Judge Lynch