

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-18-90011

BEFORE

Lynch and Kayatta, Circuit Judges
Laplante, Hillman, and Levy, District Judges

ORDER

ENTERED: SEPTEMBER 19, 2019

Petitioner, a pro se debtor, has filed a petition for review of Chief Judge Howard's order dismissing petitioner's complaint, under 28 U.S.C. § 351(a), against a bankruptcy judge in the First Circuit. Petitioner alleged judicial misconduct in connection with petitioner's bankruptcy case over which the judge presided. Chief Judge Howard dismissed the complaint as baseless and as not cognizable.

In the complaint, petitioner lodged numerous diffuse allegations against the bankruptcy judge who presided over petitioner and his spouse's voluntary chapter 7 case. Petitioner primarily alleged that, in exchange for money, the judge conspired with a municipal creditor in petitioner's bankruptcy case, its attorneys, and a local police department against petitioner. Petitioner alleged that, in furtherance of this conspiracy, the judge engaged in wrongdoing, including, but not limited to: knowingly allowing the creditor to violate the automatic stay; providing legal advice to and engaging in ex parte communications with the creditor's attorney;

denying petitioner access to discovery; and repeatedly and wrongfully ruling in favor of the creditor without reading pleadings. Petitioner further alleged that the judge conspired with the creditor and the police department to harass and to file false charges against petitioner. Petitioner asserted that, in light of this conspiracy, the judge should have recused from the case. Petitioner also alleged that the judge treated petitioner improperly during hearings.

Petitioner requested various relief, including, but not limited to: an order that the municipal creditor withdraw criminal charges against petitioner; the removal of the judge from the court; the assignment of a new judge to petitioner's case; and a criminal investigation of the judge and the creditor's attorney.

In dismissing the complaint, Chief Judge Howard first explained that the judicial misconduct procedure does not provide an avenue for obtaining any of petitioner's requested relief. See 28 U.S.C. § 351, *et seq.*, and Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rules 11, 19, and 20.

Chief Judge Howard then explained that the reviewed record -- including the misconduct complaint, the docket of the proceeding, the transcripts of the relevant hearings, and the court's orders -- provided no support for petitioner's allegations of collusion, bias, or other misconduct. Chief Judge Howard's review of the record indicated that, after petitioner and petitioner's spouse filed a pro se voluntary chapter 7 petition, the municipal creditor filed a motion for an order exempting or relieving it from the automatic stay (Automatic Stay Motion) in order to continue state court proceedings against petitioner. The bankruptcy judge held two hearings, at which the court heard extensively from petitioner, on the Automatic Stay Motion and on petitioner's motion seeking to hold the creditor in contempt for violating the automatic stay (Contempt Motion). When petitioner became agitated during the second hearing, the judge warned petitioner that the court may need to conclude the hearing and took a recess.

Over the next several months, petitioner filed numerous motions for extensions of time and to continue hearings, many of which the court granted. Petitioner filed motions alleging that the judge engaged in ex parte communication with the creditor's attorney, a claim which the judge denied during an emergency telephone conference.

The creditor subsequently withdrew its state court claims against petitioner and filed a motion for sanctions, alleging that petitioner threatened the creditor's attorney, and the judge ordered petitioner to show cause why petitioner should not be sanctioned (Show Cause Order). Petitioner filed a motion for the judge's recusal, which the judge denied.

When the creditor filed a motion for default and dismissal of the Contempt Motion because petitioner failed to cooperate in the discovery process, the judge issued a several-page order noting that petitioner failed to appear at a scheduled deposition, denying the creditor's motion to dismiss, ordering petitioner to reimburse the creditor for reasonable costs and fees and to appear at a rescheduled deposition, and scheduling a case management conference. Petitioner failed to appear at the conference, despite the court's granting petitioner's request to participate by phone. Over the next month, petitioner filed numerous additional motions for the judge's recusal, all of which the court denied. The judge ultimately issued a lengthy memorandum and order granting the creditor's motion to dismiss because of petitioner's repeated failure to cooperate and releasing the Show Cause Order against petitioner without ordering sanctions.

Chief Judge Howard determined that petitioner's allegations of judicial wrongdoing lacked any basis in fact. The Chief Judge found that petitioner provided, and the record revealed, no evidence to support the allegations that the judge was biased or colluded with, had ex parte communication with, or provided legal advice to the creditor. To the contrary, Chief Judge Howard determined that the judge consistently gave petitioner ample opportunity to present and supplement his claims, issued lengthy and detailed orders that showed careful attention to petitioner's arguments, and made numerous rulings in petitioner's favor.

Furthermore, Chief Judge Howard found that the hearing transcripts established that the judge consistently treated the parties with respect, and did not use any disparaging, hostile, or otherwise inappropriate language, let alone convey "the sort of deep-seated unequivocal antagonism' that may constitute misconduct." Lynch, C.C.J., Order, In Re Judicial Misconduct Complaint No. 01-12-90015, July 11, 2012, at 6 (quoting In Re: Jane Doe, 640 F.3d 861, 863 (Judicial Council of the Eighth Circuit, February 4, 2011)). Chief Judge Howard further concluded that in advising petitioner that he could be removed from the courtroom after petitioner disrupted the proceeding, the judge "exercise[d] reasonable discretion over . . . [the] courtroom environment," and did not "act[] for any inappropriate reason or improperly exercise[] his judgment." Howard, C.C.J., Order, In Re Complaint No. 01-15-90012, October 7, 2015, at 4 (quoting Boudin, C.C.J., Order, In Re Complaint No. 429, June 12, 2006, at 4). Accordingly, Chief Judge Howard dismissed the complaint as baseless, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(D).

As there was no evidence of bias or judicial animus, Chief Judge Howard dismissed petitioner's objections to the judge's orders -- including, but not limited to, the orders allowing in part the Automatic Stay Motion, denying petitioner's motions for recusal, and dismissing the Contempt Motion and the proceeding -- as not cognizable, pursuant to 28 U.S.C. § 352(b)(1)(A)(ii). See Rules of Judicial-Conduct, Rule 11(c)(1)(B) and Rule 3(h)(3)(A) ("Cognizable misconduct . . . does not include . . . an allegation that is directly related to the merits of a decision or procedural ruling. An allegation that calls into question the correctness of a judge's ruling, including a failure to recuse, without more, is merits-related.").¹ Accordingly, Chief Judge Howard dismissed the complaint pursuant to 28 U.S.C. § 352(b)(1)(A)(ii).

¹ The Judicial Conference of the United States amended the Rules of Judicial-Conduct after the dismissal of this misconduct complaint. The same language is now codified in Rule 4(b)(1).

In the petition for review, petitioner repeats the allegations that the judge was biased, conspired with the creditor and the creditor's attorneys against petitioner, and engaged in various other wrongdoing, including, but not limited to, repeatedly ruling in favor of the creditor. Petitioner also repeats the assertions that the judge should have recused from his case and treated petitioner improperly during hearings. Petitioner adds that, in order to protect the creditor, the judge wrongfully dismissed several of petitioner's motions for summary judgment and failed to rule on others.

Petitioner also alleges that Chief Judge Howard failed to review the misconduct complaint adequately, misconstrued the record of petitioner's underlying case in the order of dismissal, and erroneously dismissed the misconduct complaint.

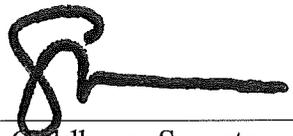
The petition for review is meritless. Petitioner offers no information that undermines Chief Judge Howard's disposition of the misconduct complaint. The record demonstrates that, despite petitioner's assertion to the contrary, Chief Judge Howard thoroughly reviewed both the misconduct complaint and the underlying record of petitioner's litigation, including the docket, relevant pleadings, orders, and hearing transcripts. In doing so, Chief Judge Howard appropriately determined that neither the complaint nor the record provided any facts indicating that the bankruptcy judge was biased or improperly motivated. Likewise, petitioner asserts no facts and offers no evidence - in the original complaint, record of the proceeding, or the petition for review - to substantiate his claim that the judge accepted a bribe of any kind or engaged in other wrongdoing. Therefore, Chief Judge Howard correctly dismissed the misconduct complaint as baseless, and, as it otherwise derived exclusively from petitioner's disagreement with the court's orders, as not cognizable. The same is true for petitioner's new allegations that the judge wrongfully dismissed petitioner's motions for summary judgment. Accordingly, Chief Judge Howard appropriately dismissed the complaint pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii) and 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rules 11(c)(1)(B) and 11(c)(1)(D);

and Commentary to Rules of Judicial-Conduct, Rule 4 ("Any allegation that calls into question the correctness of an official action of a judge -- without more -- is merits-related [A] complaint challenging the correctness of a chief judge's determination to dismiss a prior misconduct complaint would be properly dismiss as merits-related. . . .").

Finally, petitioner's new claim that the judge dismissed petitioner's case without ruling on some of petitioner's motions is not indicative of misconduct. See 28 U.S.C. § 352(b)(1)(A)(i); see also Rules of Judicial-Conduct, Rules 11(c)(1)(A).

For the reasons stated herein, the order of dismissal issued in Judicial Misconduct Complaint No. 01-18-90011 is affirmed. See Rules of Judicial-Conduct, Rule 19(b)(1).

September 19, 2019
Date



Susan Goldberg, Secretary