

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION

In re

Case No. 6:00-bk-002888-KRM

ELIAS MORALES,  
Debtor.

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ELIAS MORALES,  
Plaintiff,

vs. Adversary No. 01-0001

EDUCATIONAL CREDIT  
MANAGEMENT CORP., et al.,  
Defendants.

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ORDER DENYING DEBTOR/PLAINTIFF'S  
MOTION TO DISQUALIFY JUDGE

On the eve of trial, the debtor has moved to disqualify the undersigned bankruptcy judge, based on alleged "personal bias or prejudice" (Document No. 253). The debtor's motion is without merit and, for the reasons stated below, the motion will be denied.

Background

This is an adversary proceeding brought by the debtor to obtain the discharge of three student loans. 11 U.S.C. § 523(a)(8). This proceeding was originally commenced in 2001 against only the New York State Higher Education Services Corporation ("NYSHESC"); this proceeding was reopened and enlarged in early 2004, to add two more defendants, the United States Department of Education and EdFinancial Services.<sup>1</sup> By order entered on July

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<sup>1</sup> The debtor's main bankruptcy case was originally filed in 2000, and closed in 2002. The adversary proceeding against NYSHESC was filed in 2001, but was dismissed on November 28, 2001, at

15, 2004, Educational Credit Management Corporation was substituted for NYSHESC.

A one-day trial was originally scheduled for November 5, 2004; that date was set to accommodate the debtor's planned knee surgery. The trial was later rescheduled, to March 11, 2005, without defendants' opposition, to accommodate other health issues raised by the debtor. When the Court later discovered that the scheduling order had not been properly served on the debtor, the trial was postponed, again, to May 27, 2005.

**A. Alleged Bias in Statements and Rulings**

Nearly a year after the event, the debtor now complains about a remark he says the undersigned bankruptcy judge made during a status conference held on "June 9, 2004." The debtor alleges that the undersigned bankruptcy judge said in open court: "I am not comfortable with Pro Se litigants either."<sup>2</sup>

No such remark was ever made in this case. The transcript from the first hearing conducted by the undersigned judge, on July 12, 2004, provides the entire context of statements made from the bench regarding the potential disadvantage a pro se litigant may have in communicating with opposing counsel and the court in a trial setting. What the undersigned judge actually said, in response to a comment from a defendant's counsel, was: "When I practiced law, I was always reluctant to talk to pro se debtors, not out of disrespect, but just out of caution." Transcript of July 12, 2004, hearing, page 16 at lines 17-19. No disparaging or critical comment was ever made about pro se litigants generally or about this debtor.

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the debtor's request. On October 14, 2003, the debtor moved to reopen his bankruptcy case and this adversary proceeding. On January 14, 2004, this adversary proceeding was reopened. On June 9, 2004, both the main bankruptcy case and this adversary proceeding were reassigned to the undersigned bankruptcy judge after Judge Briskman, on his own motion, recused himself.

<sup>2</sup> Court document number 90, cited by the debtor, is not a transcript, but is the notice of reassignment of the case to the undersigned judge. The hearing transcript is filed in this proceeding as document number 257.

The debtor also alleges that the undersigned judge has a degree of hostility towards him, evidenced by "Judge May ignor[ing] 100 percent of Morales [sic] statements, motions and other pertinent judicial process and disposition of motions."

In Liteky v. United States, 510 U.S. 540 (1994), the Supreme Court held that "judicial rulings alone almost never constitute valid basis for a bias or partiality motion."

510 U.S. at 555.

[O]pinions formed by the judge on the basis of facts introduced or events occurring in the course of the current proceedings, or of prior proceedings, do not constitute a basis for a bias or partiality motion unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible. Thus, judicial remarks during the course of a trial that are critical or disapproving of, or even hostile to, counsel, the parties, or their cases, ordinarily do not support a bias or partiality challenge.

Id. at 555.

A high threshold is required to satisfy the standard for bias and partiality disqualification motions. Henkel v. Lickman (In re Lickman), 284 B.R. 299, 307 (Bankr. M.D. Fla. 2002)(citing Liteky, 510 U.S. at 558). A judge should be disqualified "only if it appears that he or she harbors an aversion, hostility or disposition of a kind that a fair-minded person could not set aside when judging the dispute." Id.

The debtor cannot point to any event in this proceeding that would indicate any judicial aversion, antagonism or hostility against him or his cause. The debtor's motions and arguments have been fully vetted in more than seven pre-trial hearings and conferences, all on the record. In each instance, the reasons for the ruling were fully explained in writing or in open court.

## B. Scheduling

The debtor also alleges bias because the Court has scheduled this matter for trial on May 27, 2005, while his appeal of this Court's denial of his motion for summary judgment is pending.

This Court's order denying debtor's summary judgment did not dispose of the debtor's case. As a matter of law, the pending interlocutory appeal does not stay this proceeding. See Johnson v. Jones, 515 U.S. 304 (1995); Curtiss-Wright Corp. v. Gen. Elec. Co., 446 U.S. 1 (1980); Smith v. First Nat'l Bank of Albany (In re Smith), 735 F.2d 459, 461 (11th Cir. 1984).

This adversary proceeding was commenced in 2001. The trial in this proceeding has been scheduled and rescheduled three times, in each instance to ensure fairness to the debtor. The debtor offers no basis for his assertion that it is now unfair to bring his own cause of action to trial after four years. Accordingly, the trial will proceed as scheduled.

Accordingly, it is hereby

ORDERED that the motion to disqualify the undersigned bankruptcy judge is denied.

DONE and ORDERED in Tampa, Florida, this 27th day of May, 2005.



K. RODNEY MAY  
United States Bankruptcy Judge

Certificate of Service

I certify that a copy of this Order was served by United States Mail to the following persons:

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