

MAR 17 2022

David J. Smith
Clerk

CONFIDENTIAL

Before the Chief Judge of the
Eleventh Judicial Circuit

Judicial Complaint No. 11-22-90019

IN THE MATTER OF A COMPLAINT FILED BY:

IN RE: The Complaint of _____ against United States Bankruptcy Judge _____ of the United States Bankruptcy Court for the _____ District of _____, under the Judicial Conduct and Disability Act of 1980, 28 U.S.C. §§ 351-364.

ORDER

_____ (“Complainant”) has filed this Complaint against United States Bankruptcy Judge _____ (“the Subject Judge”), under the Act, 28 U.S.C. § 351(a), and the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States (“Judicial-Conduct Rules”).

Background

The record shows that in March 2019 Complainant filed a voluntary petition for Chapter 11 bankruptcy, and a few months later, the case was reassigned to the Subject Judge. After that, the United States Trustee filed a motion to dismiss or convert the case to a Chapter 7 case, and in December 2019 the Subject Judge entered an order converting the case to a Chapter 7 case.

The next month, the trustee filed a notice of intention to sell Complainant's membership interest in two companies. Complainant filed an objection to the sale, arguing in part that the trustee had not properly valued the assets, and he attached an appraisal report. In April 2020 the trustee filed a motion to approve the sale of Complainant's membership interest in the two companies, stating that a certain company had offered to buy the assets at a cost higher than any other buyer would plausibly bid. Complainant filed a letter objecting to the motion. Following two hearings, in June 2020 the Subject Judge entered an order granting the motion to approve the sale.

Complainant filed a motion to reconsider, arguing in part that there was no analysis as to the fair market value of the membership interests and providing an appraisal report from March 2018. The Subject Judge denied the motion to reconsider. With respect to the appraisal, the Subject Judge stated that the appraisal: (1) was older than six months and therefore generally not probative of the current value of real property; (2) did not qualify as newly discovered evidence; and (3) was based on the value of the real

property if the business entities were operating as going concerns, when they were not operating and did not have enough cash to operate as going concerns.

Complainant filed notices of appeal. He also filed an expedited motion to stay the proceedings pending appeal, and after a hearing, the Subject Judge denied the motion to stay. In October 2020 a district judge dismissed Complainant's appeals as moot because the sale had been completed. In October 2021 the Subject Judge issued an order granting Complainant a discharge.

Complaint

Complainant states Subject Judge: (1) made a decision to sell his assets to buyer who made a "very low offer to purchase"; (2) "took the astronomical claims as factual without knowing the true debt"; (3) ignored valid offers to buy the assets; (4) "made her decision citing large debt (unverified) as the reason . . . ignoring accounting and legitimate contracts to generate money necessary to pay creditors"; and (5) ignored multiple requests for an evidentiary hearing. He also complains that the Subject Judge disregarded the appraisal he provided because it was more than six months old, and he states he would have obtained a new appraisal if he knew one was needed.

Discussion

Judicial-Conduct Rule 4(b)(1) provides in part that "[c]ognizable misconduct does not include an allegation that calls into question the correctness of a judge's ruling, including a failure to

recuse.” The Commentary on Rule 4 explains the rationale for this rule as follows:

Rule 4(b)(1) tracks the Act, 28 U.S.C. § 352(b)(1)(A)(ii), in excluding from the definition of misconduct allegations “[d]irectly related to the merits of a decision or procedural ruling.” This exclusion preserves the independence of judges in the exercise of judicial authority by ensuring that the complaint procedure is not used to collaterally call into question the substance of a judge’s decision or procedural ruling. Any allegation that calls into question the correctness of an official decision or procedural ruling of a judge — without more — is merits-related.

To the extent Complainant’s allegations concern the substance of the Subject Judge’s official actions, findings, rulings, and orders in the above-described bankruptcy case, the allegations are directly related to the merits of the Subject Judge’s decisions or procedural rulings. Complainant’s remaining claims are based on allegations lacking sufficient evidence to raise an inference that the Subject Judge otherwise engaged in misconduct.

The allegations of this Complaint are “directly related to the merits of a decision or procedural ruling,” under Judicial-Conduct Rule 11(c)(1)(B), and the Complaint “is based on allegations lacking sufficient evidence to raise an inference that misconduct has occurred or that a disability exists,” under Judicial-Conduct Rule 11(c)(1)(D). For those reasons, this Complaint is **DISMISSED**.

/s/ William H. Pryor Jr.
Chief Judge