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FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

FILED

03 JUL 17 PM 3:03

U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
CLEVELAND

In re:) Case No. 03-12593
)
BRIAN WARE and) Chapter 7
TYREE WARE,)
) Judge Pat E. Morgenstern-Clarren
Debtors.)
) **MEMORANDUM OF OPINION**
) **RE MOTION TO RECUSE**

Ronald Smedley prepared the debtors' bankruptcy petition in this case. On July 9, 2003, the Court held an evidentiary hearing on the United States Trustee's (UST) motion to disgorge fees from Mr. Smedley. Mr. Smedley participated in the hearing *pro se*. After the hearing started, Mr. Smedley filed a motion to recuse this judge from deciding the UST's motion. (Docket 29).

In his motion, Mr. Smedley argues that the Court held hearings in three other cases without notice to him and at a time when the Court knew he would not be available. He challenges the decisions reached in those other cases. He also complains that the Court denied his motion to consolidate this case with other cases. Mr. Smedley concludes that "this judge has shown some sort of bias against him and is not able to be a fair and impartial trier of fact in this matter against him, and moves this Court to reassign this matter to another judge."

JURISDICTION

Jurisdiction exists under 28 U.S.C. § 1334 and General Order No. 84 entered by the United States District Court for the Northern District of Ohio. This is a core proceeding under 28 U.S.C. § 157(b)(2)(A).

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LAW

Mr. Smedley does not identify the law he relies on. The request is likely made under 28 U.S.C. § 455(a), which states:

(a) Any . . . judge . . . of the United States shall disqualify [herself] in any proceeding in which [her] impartiality might reasonably be questioned.

See FED. R. BANKR. P. 5004(a) (providing that this statute applies to bankruptcy judges). A judge must recuse where “a reasonable person with knowledge of all the facts would conclude that the judge’s impartiality might reasonable be questioned.” *United States v. Dandy*, 998 F.2d 1344, 1349 (6th Cir. 1993) (citing *United States v. Nelson*, 922 F.2d 311, 319 (6th Cir. 1990)).
The judge is to review the situation using an objective standard. *Id.*

FACTS AND DISCUSSION

Mr. Smedley argues that the Court held hearings in three other cases without notice to him and at a time when he was not available. A docket review shows this information:

In re Vermail Crowell, Case No. 03-13821

The UST filed a motion to impose fines on Mr. Smedley and set it for hearing on July 24, 2003 at 8:30 a.m. The UST served notice on the debtor, the chapter 7 trustee, and Mr. Smedley. (Docket 11, 15). The hearing notice advised Mr. Smedley that any opposition to the motion should be filed within 10 days. Mr. Smedley timely filed an objection. (Docket 17). As we have not yet arrived at July 24, 2003, no hearing has been held and no decision has been made on the motion and objection.

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In re Rhonda Ruff, Case No. 03-14324

The UST filed a motion to disgorge fees from Mr. Smedley and set it for hearing on June 19, 2003 at 8:30 a.m. The UST served the motion and notice of hearing on the debtor, the chapter 7 trustee, and Mr. Smedley. The notice advised Mr. Smedley that he needed to file any opposition within 10 days. (Docket 12, 13). Mr. Smedley did not file anything in opposition. The UST and the debtor appeared at the hearing, but Mr. Smedley did not. The Court made a decision based on the evidence presented. (Docket 25, 26).

In re Andrea Washington, Case No. 03-14613

The UST filed a motion to disgorge fees from Mr. Smedley and set it for hearing on June 19, 2003 at 8:30 a.m. The UST served the motion and hearing notice on the debtor, the chapter 7 trustee, and Mr. Smedley. The notice informed Mr. Smedley that any opposition should be filed within 10 days. (Docket 10, 11). Mr. Smedley did not file anything in opposition. The hearing took place on June 19, 2003 with the debtor and the UST present. Mr. Smedley did not attend. The Court made a decision based on the evidence presented. (Docket 15, 16).

* * *

According to the dockets and files, Mr. Smedley had notice of the hearings in all three cases. In one of them, *In re Crowell*, the hearing has not yet taken place, so Mr. Smedley's argument that the Court heard that case without his being present is factually inaccurate. With respect to the other two cases, the docket shows that Mr. Smedley did not appear at the hearings despite having had notice. He counters this by stating that the Court knew he would not be

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available for the June 19th hearings in *Ruff* and *Washington* because he told the Court so.¹ There is nothing in the record or in Mr. Smedley's motion to show that Mr. Smedley gave this information to the Court.

Mr. Smedley seems to rely on events at the May 15, 2003 hearing in the *Ware* case. Mr. Smedley came to court and requested an evidentiary hearing.² The Court first proposed holding the evidentiary hearing on June 27th. Mr. Smedley agreed to that date, but Mr. Ware was not available. The Court then suggested July 7th. Mr. Smedley responded that was not a good date because he would be out of town over the July 4th holiday and requested something closer to the middle of July. All parties then agreed to July 9th.

There was no discussion in that hearing about any case other than the *Ware* case or about setting or rescheduling any hearing in any other case. No other case involving Mr. Smedley was heard at that time. Mr. Smedley did not file anything in either the *Washington* or *Ruff* case requesting a continuance. The Court concludes based on the record that Mr. Smedley's statement that this judge held the *Washington*, *Ruff*, and *Crowell* hearings without giving him notice and at a time when the Court knew he would not be able to attend is not factually accurate and would not lead a reasonable person to believe that this judge's impartiality might reasonably be questioned.

The other ground raised by Mr. Smedley is that the Court is biased because the Court ruled against him in other cases. This is not a sufficient ground for recusal. *See Liteky v. United*

¹ Mr. Smedley states that the UST also knew about his unavailability. The Court cannot speak to any private communications that may have taken place between Mr. Smedley and the UST.

² *See* hearing transcript. (Docket 26).

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States, 510 U.S. 540, 555 (1994) (noting that “judicial rulings alone almost never constitute a valid basis for a bias or partiality motion”). This Court has no bias or prejudice in this matter and is able to render a fair and impartial judgment.

CONCLUSION

For the reasons stated, the motion to recuse is denied. A separate order will be entered reflecting this decision.

Date: 17 July 2003



Pat E. Morgenstern-Clarren
United States Bankruptcy Judge

Served by mail on: Mr. Ronald Smedley
Dean Wyman, Esq.
Brian and Tyree Ware

By: Joyce L. Gordon, Secretary
Date: 7/17/03

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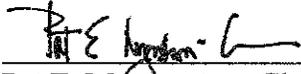
In re:) Case No. 03-12593
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BRIAN WARE and) Chapter 7
TYREE WARE,)
)
Debtors.) Judge Pat E. Morgenstern-Clarren
)
) **ORDER**

For the reasons stated in the Memorandum of Opinion filed this same date,

IT IS, THEREFORE, ORDERED that Ronald Smedley's motion to recuse is denied.

(Docket 29).

Date: 17 July 2003



Pat E. Morgenstern-Clarren
United States Bankruptcy Judge

Served by mail on: Mr. Ronald Smedley
Dean Wyman, Esq.
Brian and Tyree Ware

By: Joyce L. Gordon Secretary
Date: 7/17/03