NOT FOR COMMERCIAL PUBLICATION

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re:	)	Case No. 05-19361
	)	
ARTHUR BOYD, JR.,	)	Chapter 7
	)	
Debtor.	)	Judge Pat E. Morgenstern-Clarren
	)	
	)	**MEMORANDUM OF OPINION**

This two year old chapter 7 case is scheduled for a final meeting on January 24, 2008.[1] On December 11, 2007, the debtor Arthur Boyd filed three motions on his own behalf:

(1) a motion to remove attorney Mary Ann Rabin as the chapter 7 trustee, the third such motion he has filed;[2]

(2) a motion to "require [Steven] Davis to produce name, address, and phone number of alleged creditor, Beverage Management or, in the alternative, dismiss case", the fourth motion to dismiss that he has filed;[3] and

(3) a motion to recuse the undersigned.[4]

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[1] Docket 197. This fact may well make the motions moot, but the court will decide them in the event that there is further activity in the case.

[2] Docket 191. The trustee's response is at docket 209. The earlier motions are at docket 31 and 52.

[3] Docket 199. Attorney Davis's response is at docket 202. The earlier motions to dismiss are at docket 28, 32, and 140.

[4] Docket 189.

According to the docket, the debtor is represented by attorney Donald Murphy. The court, therefore, directed Mr. Murphy to file a brief in support of the motions stating a legal basis for each.[5] The debtor responded individually that he is no longer represented by Mr. Murphy and does not wish to file a brief.[6]

The court held a hearing on January 4, 2008, at which time the debtor appeared *pro se*. Mary Ann Rabin and Steven Davis also appeared. For the reasons stated below, the motions are denied.[7]

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).

BACKGROUND

This case began with an involuntary chapter 7 petition filed by five alleged creditors of Dr. Boyd.[8] On June 28, 2005, Beverage Management Systems, Inc., Chester Wilson, Lamar Frost, Larry Jones, and Deborah Calloway filed an involuntary chapter 7 petition against alleged debtor Arthur Boyd. The bankruptcy code then in effect provided that such a petition could be filed

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[5] Docket 194.

[6] Docket 200.

[7] In the court's view, the value of this opinion is solely to decide the issues presented and not as an addition to the general jurisprudence. For that reason, the opinion is not intended for commercial publication.

[8] The court will refer to the debtor as Dr. Boyd based on his statement that he is a medical school graduate.

against an alleged debtor by three or more creditors whose claims aggregated at least $12,300.00 and whose claims were not contingent as to liability or subject to a bona fide dispute. *See* 11 U.S.C. § 303(b)(1). The creditors also were required to prove that the alleged debtor was not paying his debts as they became due. *See* 11 U.S.C. § 303(h)(1). Dr. Boyd disputed the allegations and so the court held an evidentiary hearing on notice to all parties, at which time Dr. Boyd and the four individual creditors testified.

On August 4, 2005, the court issued a memorandum of opinion and order finding that the petitioning creditors proved that Messrs. Jones, Frost, and Wilson, together with Ms. Calloway, had claims against Dr. Boyd of at least $12,300.00 that were not contingent or the subject of a bona fide dispute, and that Dr. Boyd was generally not paying his debts as they became due.[9] The court also found that the petitioning creditors did not prove that Beverage Management Systems was eligible to be a petitioning creditor. As the statute only required that three creditors prove their eligibility, the court entered an order for relief based on the claims of the four individual creditors, only. The debtor, who was represented by attorney Donald Murphy, did not appeal from that decision. The four individual creditors and Dr. Boyd are all African-American, the relevance of which fact is discussed below.

At the time the order for relief was entered, Dr. Boyd had a lawsuit pending in the Lorain County Court of Common Pleas against FirstMerit Bank and others, including Jones. On December 27, 2005, the trustee filed a motion to compromise the claim against FirstMerit for $150,000.00 to be paid to the estate, with the estate releasing any claims it had against FirstMerit.

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[9] Docket 14, 15. In the memorandum of opinion, the court made factual findings and analyzed the legal issues. The reader is referred to that opinion for further information.

See FED. R. BANKR. P. 9019 (a). Dr. Boyd, represented by attorney Donald Nance, objected to the motion, as did creditors Edward Rhodes and Don Sowers. On February 1, 2006, after notice and a hearing, the court issued a memorandum of opinion and order granting the motion.[10] The debtor did not appeal from that order, it became final, and FirstMerit paid the settlement funds to the estate. The debtor did not agree with the court's decision then and he does not agree with it now, for the same reason: he believes that the lawsuit was worth millions of dollars.

I. THE MOTION TO REMOVE THE CHAPTER 7 TRUSTEE

A. The Positions of the Parties

The debtor states in his motion that the chapter 7 trustee "has threatened debtor, tried to intimidate Debtor, has tried to coerce and has denigrated Debtor, in her attempts to force the fraudulent bankruptcy through . . . has filed a false complaint with the U.S. Marshalls [sic] office to notify the Court whenever the Debtor is in the building . . . and has been untruthful to this Court." He further states that he is "the recipient of these actions because of the Court's attempt to hide the fraud of Larry D. Jones and First Merit Bank of Elyria, Ohio."[11]

At the hearing, the debtor amplified his complaint to include these allegations: the trustee is a "Jewish gangster" based on her attire and demeanor; the trustee committed fraud when she agreed to compromise the state court lawsuit with FirstMerit; Larry Jones recently pleaded guilty to federal charges relating to theft from National City Bank, which shows that he also defrauded the debtor; United States District Judge James Gwin sentenced Jones to 37 months imprisonment

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[10] Docket 94, 95. In the memorandum of opinion, the court set out in detail the claims made by and against the debtor in that lawsuit, together with the law applicable to a motion to compromise. The reader is referred to that opinion for further information.

[11] Docket 191.

on those charges, when he should have imposed a longer sentence; Larry Jones has been indicted in state court on various charges; Larry Jones should not receive any distribution as a creditor in this case; FirstMerit should be indicted for fraud, but will not be indicted because of the political ramifications; the United States trustee appointed chapter 7 trustee Rabin before the August 2, 2005 hearing on the involuntary petition, which shows fraud on the part of someone; and the trustee told the United States Marshal to have Court Security Officers attend certain hearings for no reason other than that the debtor is, in his words, a tall, large, black man.

The chapter 7 trustee responds that she was duly appointed by the United States trustee, she knows nothing about court security arrangements, and all of her actions have been in accordance with the bankruptcy code and rules as reflected in this court's orders.

B. Discussion

The bankruptcy code provides that the United States trustee shall promptly appoint an interim trustee after an order for relief is entered in a chapter 7 case. 11 U.S.C. § 701(a)(1). Absent other actions, the interim trustee becomes the case trustee. 11 U.S.C. § 702(d). The court may remove a trustee for cause. 11 U.S.C. § 324(a); *Joelson v. United States*, 86 F.3d 1413, 1419 (6th Cir. 1996).

The bankruptcy code does not define "for cause." In a related context, the Sixth Circuit cited with approval this definition:

> With respect to removal from office, 'for cause' means for reasons which law and public policy recognize as sufficient warrant for removal and such cause is 'legal cause'and not merely a cause which the appointing power in the exercise of discretion may deem sufficient . . . The cause must be one in which the law and sound public policy will recognize as a cause for official [sic] no longer occupying his office.

In re Brookover, 352 F.3d 1083, 1087 (6th Cir. 2003) (quoting Black's Law Dictionary 664 (6th ed. 1990) (alterations in original). According to a leading commentator, "[c]ause for removal of a trustee probably includes any malfeasance which would constitute a breach of the condition of the trustee's bond to faithfully perform the trustee's official duties." 2 William L. Norton, Jr., Norton Bankruptcy Law and Practice 3d § 28.13 (2008). Cause may also include incompetence, violation of fiduciary duties, misconduct or failure to perform required duties, and lack of disinterestedness or holding an interest adverse to the estate. *See Dye v. Brown (In re AFI Holding, Inc.)*, 355 B.R. 139, 148 (B.A.P. 9th Cir. 2006). Fraud, if proven, would constitute cause to remove a trustee.

Dr. Boyd's grounds for removing the trustee can be grouped into these categories: (1) the compromise reached with FirstMerit; (2) alleged procedural irregularities in the trustee's appointment; (3) his belief that the trustee is a gangster; (4) issues relating to Larry Jones, and (5) court security issues. Each will be addressed.

The compromise with FirstMerit

The trustee has a number of obligations, including the duty to "collect and reduce to money the property of the estate [.]" 11 U.S.C. § 704(1) (renumbered as § 704(a)(1) under the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005). A lawsuit filed by the debtor prepetition is property of the estate. 11 U.S.C. § 541(a)(1). As part of the trustee's responsibilities, she reviewed the lawsuit and reached a decision that it would be in the best interest of the chapter 7 estate to compromise the FirstMerit claims. She filed the necessary motion seeking court authority to do so. All parties in interest had notice of the motion and an opportunity to be heard in opposition to it. The trustee's actions were in accordance with the bankruptcy code and rules and do not show cause to remove her.

The procedural argument

The docket shows that the order for relief was entered on August 4, 2005 and the United States trustee appointed attorney Rabin as the interim chapter 7 trustee on August 5, 2005, a procedurally correct sequence of events.[12] At the hearing, the court asked Dr. Boyd for evidence to support his theory to the contrary and he had none. He stated that he had a docket somewhere that showed the improper sequence, but he did not have it with him.

The Jewish gangster argument

The trustee stated at the hearing that she did not believe Dr. Boyd's characterization of her as a Jewish gangster was worthy of response, and the court agrees. The court gave Dr. Boyd the opportunity to support his claim that the trustee has a handout stating that she is friends with all of the bankruptcy judges, but he had no such material.

The Larry Jones issues

There was no evidence that the trustee played any role in Judge Gwin's decision to sentence Larry Jones. Similarly, there was no evidence that the trustee has behaved improperly with respect to Larry Jones in his capacity as a creditor of Dr. Boyd. Larry Jones holds a final, state court judgment against Dr. Boyd for $1.4 million.[13] On October 25, 2005, Larry Jones himself filed a chapter 7 case in this court, case no. 05-96842, and attorney Sheldon Stein serves as the chapter 7 trustee in that case. Mr. Stein filed a proof of claim in Dr. Boyd's case on behalf of the Jones estate, so that any money owed by Dr. Boyd to Larry Jones will be paid to the Jones

[12] Docket 15, 17.

[13] Docket 14 at 3.

bankruptcy estate, for distribution to Jones's creditors.[14] The bankruptcy code sets out in detail the manner in which estate funds are distributed and the trustee is required to follow that code. There was no evidence that the trustee has, or is going to, distribute the funds other than in accordance with the law.

Court Security Issues

Court security issues, including the assignment of Court Security Officers, are within the purview of the United States Marshal's office. It is the Marshal who ultimately decides how to staff courthouses and courtrooms in such a way as to protect the judges, court personnel, and the public. The chapter 7 trustee does not report to the Marshal nor does the Marshal take instruction from the trustee. The allegation here, that the trustee requested that the CSOs be present in court, even if proven (which it was not) does not state grounds to remove the trustee.

C. Conclusion

The debtor did not prove that the chapter 7 trustee should be removed from this case.

II. THE MOTION TO REQUIRE ATTORNEY DAVIS TO PRODUCE NAME, ADDRESS AND PHONE NUMBER OF BEVERAGE MANAGEMENT SYSTEMS OR, IN THE ALTERNATIVE, DISMISS CASE

A. The Positions of the Parties

When this involuntary case was filed in 2005, attorney Steven Davis represented the petitioning creditors, including Beverage Management Systems. The petition lists Beverage Management Systems's address as 5950 Sherry Lane, Dallas, Texas, 75225. The debtor states in his motion that "there is no Beverage Management Systems at 5950 Sherry Lane, Dallas, Texas

[14] Claims register, claim no. 3.

75225." As a consequence, he asks that attorney Davis be ordered to give him Beverage Management Systems's name, address, and phone number, or that the case be dismissed.

At the hearing, Dr. Boyd supported his position by showing the court an envelope that he placed in the mail on November 10, 2007, addressed to Beverage Management Systems, apparently at 5950 Sherry Lane, Dallas, Texas. Across the envelope is a handwritten note stating: "Not our mail, return to sender, needs suite address."

Attorney Davis opposed the motion, stating that the debtor is attempting to re-litigate issues about the involuntary filing that were resolved by final order more than two years ago.

B. Discussion

Dr. Boyd contends that the returned envelope shows fraud. There is, however, no logical factual or legal connection between an envelope returned two years post-filing because it lacks a suite number and a claim that there was fraud in the filing of the involuntary petition. The court also notes that its 2005 order for relief against Dr. Boyd was entered based on the finding that Beverage Management Systems was not an eligible creditor and that there were four other eligible creditors, one more than the statute required. If the debtor wished to have that order reviewed by a higher court, it was entirely within his own power to file an appeal. He did not do so.

C. Conclusion

The debtor did not prove that he is entitled to the relief requested.

III. THE MOTION TO RECUSE

A. The Debtor's Position

In his motion, the debtor alleges that the undersigned (1) has been "biased, racist and dishonest in her dealings with the Debtor;" (2) "refused to hold hearings requested by the Debtor

and true creditors;" (3) "has always upheld her friend, U.S. Trustee [sic] Mary Ann Rabin . . . calling Debtors [sic] attorneys (i.e. Donald Murphy a liar) [sic];" and (4) "threatened creditors, Edward Rhodes and Donald Sowers if they filed any further actions on Debtors [sic] behalf." The debtor attached documents relating to Larry Jones's guilty plea in federal court. At the hearing, the debtor added that attorney Murphy is afraid to appear before the undersigned and that the undersigned has ordered Mr. Murphy to withdraw from all cases.

B. Discussion

As noted, the debtor declined to identify a legal basis for his motion. The court will, therefore, analyze the motion under 28 U.S.C. § 455(a) and (b)(1) and bankruptcy rule 5004, which are the most likely bases for such a motion.

Section 455 states in relevant part:

> (a) Any justice, judge, or magistrate judge of the United States shall disqualify [herself] in any proceeding in which [her] impartiality might reasonably be questioned.
>
> (b) [She] shall also disqualify [herself] in the following circumstances:
>
> > (1) Where she has a personal bias or prejudice concerning a party . . . .

28 U.S.C. § 455(a), (b)(1). Congress adopted § 455 to promote public confidence in the judicial system. *Roberts v. Bailar*, 625 F.2d 125, 129 (6th Cir. 1980). Bankruptcy rule 5004 provides that bankruptcy judges are governed by § 455. FED. R. BANKR. P. 5004(a).

Under § 455, a judge is required to recuse herself if her impartiality may reasonably be questioned, or if she is biased or prejudiced with respect to a party. Section 455(a) addresses the appearance of partiality and the standard is objective : a judge is required to recuse if a reasonable

person with knowledge of the relevant facts would question the judge's impartiality. *Reed v. Rhodes*, 179 F.3d 453, 467 (6th Cir. 1999); *United States v. Nelson*, 922 F.2d 311, 319 (6th Cir. 1990). Conversely, if a reasonable person would not reach that conclusion, a judge has an obligation not to recuse. *Easley v. Univ. of Mich. Bd. of Regents*, 853 F.2d 1351, 1356 (6th Cir. 1988). Section 455(b)(1), on the other hand, addresses actual bias or prejudice. A judge's unfavorable disposition towards a party or his case does not typically constitute such bias or prejudice. *Schilling v. Heavrin (In re Triple S Rests., Inc.)*, 422 F.3d 405, 417 (6th Cir. 2005) (citing *Liteky v. United States*, 510 U.S. 540, 550 (1994)). "Rather, '[t]he words [bias and prejudice] connote a favorable or unfavorable disposition or opinion that is somehow *wrongful* or *inappropriate*, either because it is undeserved, or because it rests upon knowledge that the subject ought not to possess . . . or because it is excessive in degree.'" *Id.* (quoting *Liteky*, 510 U.S. at 550) (emphasis in original).

"[J]udicial rulings alone almost never constitute a valid basis for a bias or partiality motion." *Liteky*, 510 U.S. at 555. "Bias on the part of a judge commonly stems from an 'extrajudicial' source, meaning knowledge that the judge has acquired that is not based on either the proceedings before [her] or on other legal proceedings involving the same parties." *In re Triple S Rests,* Inc., 422 F.3d at 417. However, an extrajudicial source is "neither necessary or sufficient to require recusal[ ]" under § 455(a) and 455(b)(1). *Bell v. Johnson*, 404 F.3d 997, 1005 (6th Cir. 2005) (citing *Liteky,* 510 U.S. at 554-56). "Instead, the presence of an extrajudicial source is merely a thumb on the scale in favor of finding either an appearance of partiality under § 455(a) or bias or prejudice under § 455(b)(1)." *Id.*

Dr. Boyd argues that the undersigned is biased against him because he is African-American. As an initial matter, the court notes that the four individual creditors who filed the involuntary petition against Dr. Boyd, and testified in support of it, are also African-American. When the court ruled that the creditors had proven their case and the case should go forward, the ruling was both *against* a party who is African-American and *in favor of* parties who are African-American. A reasonable person would not, therefore, think that the decision was based on race.

The other allegations made by the debtor are similarly unsupported. Although the debtor claims that the court refused to hold hearings, he did not identify any motion where the court was required to hold a hearing and failed to do so. Indeed, the record is replete with instances where the court held an evidentiary hearing or oral argument and other instances where the court appropriately took matters under submission on the papers filed. *See* 11 U.S.C. § 102(1).

Nor did the debtor provide any support for his statement that the court called attorney Murphy a "liar". The court did no such thing. The court can only speculate that the debtor is referring to the written decision granting the trustee's motion to compromise, where the court did not accept the debtor's position about the value of the state court lawsuit, as presented by Mr. Murphy.[15] Courts weigh evidence and arguments every day, and the decision to accept or reject a proffered position is not in and of itself equivalent to calling anyone a liar.

The debtor's next allegation is that the court threatened creditors Rhodes and Sowers. He does not identify any such threat because none was made. Again, the court can only conclude that this is a twisting of two written orders issued by the court in response to filings made by Messrs. Rhodes and Sowers. In the first instance, Mr. Rhodes, *pro se*, stating that he was acting through

[15] *See* memorandum of opinion, docket 94 at 8.

his firm, MPC Corporate Advisors, LLC, filed a motion to reconsider the court's order declining to dismiss the chapter 7 and to reconsider the order granting the trustee's motion to compromise. Because Mr. Rhodes did not have a factual or legal basis for his motion, the court denied the motion–without sanctions–and referred him to federal rule of bankruptcy procedure 9011 for future reference.[16] Undeterred, Messrs. Rhodes and Sowers later filed identical frivolous motions asking the court to set the statutorily mandated meeting of creditors[17] and to appoint a creditors committee, months after the meeting of creditors had already been held and despite the fact that the bankruptcy code does not provide for a committee in a chapter 7 case.[18] The court noted in its order denying the motions–again, without sanctions–that it had extended both movants additional latitude throughout the case because of their *pro se* status, referred them to Sixth Circuit authority, and warned them that all future filings were to state a basis in law and fact or they would face monetary sanctions.[19] Such an admonition is well within the court's inherent authority to administer the bankruptcy case, *see* 11 U.S.C. § 105(a), and is not evidence of bias.

As for the debtor's statements concerning Mr. Murphy, the court would have been glad to hear Mr. Murphy's views, but he did not appear at the hearing, leaving the court with only the debtor's unsubstantiated, vague statements of what he thinks Mr. Murphy believes. Again, the debtor's statements may be a contorted version of very different facts: on December 3, 2007, the court entered an order in three unrelated cases finding that Mr. Murphy had improperly permitted

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[16] Docket 148, 149.

[17] *See* 11 U.S.C. § 341(a).

[18] Docket 178, 180.

[19] Docket 182.

attorney Barbara Brown-Daniels to use his electronic filing log-in and password after all three bankruptcy judges sitting in Cleveland revoked Ms. Brown-Daniels's own electronic filing privileges. The court then instructed Mr. Murphy to:

> (1) change his electronic filing password immediately, as any further filings made using Mr. Murphy's electronic filing privileges will be deemed to have been made by him; and
>
> (2) file a motion to withdraw as counsel by December 10, 2007 in any case which was filed by others using his electronic filing privileges in which he does not intend to act as debtor's counsel going forward.

In re Morgan, case no. 07-17184, docket 27; *In re Deskins*, case no. 07-17805, docket 37; and *In re Daniels*, case no. 07-18557, docket 77. This is a far cry from the allegation that Mr. Murphy is not permitted to practice before this court.

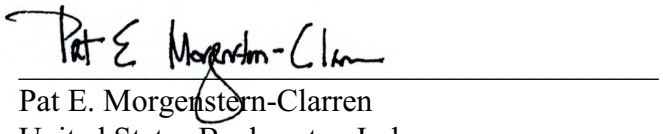
Overall, the debtor's allegations amount to this: the court has ruled against him; he disagrees with the rulings; he is African-American; therefore, the court must be biased against him because of his race. The court understands that Dr. Boyd had high hopes for his beverage company business plan and that he truly believed it would bring him good fortune. He is upset that the financing did not work out as he wished and he believes FirstMerit and Larry Jones did not treat him fairly. The involuntary chapter 7 case ended his lawsuit as against FirstMerit, and Larry Jones's chapter 7 filing stalled Dr. Boyd's claims against him. None of that, however, would lead a reasonable person to question the court's impartiality, and it does not show bias toward Dr. Boyd, much less bias on account of Dr. Boyd's race.

C. Conclusion

The debtor did not prove that he is entitled to the relief requested.

CONCLUSION

For the reasons stated, the motions are denied. The court will enter separate orders reflecting this decision.



Pat E. Morgenstern-Clarren
United States Bankruptcy Judge

In addition to electronic service, the clerk's office is to serve Donald Murphy by regular U.S. mail at 5333 Northfield Road, Suite 215, Bedford, OH 44146 and 12800 Shaker Blvd., Cleveland, OH 44120

The clerk's office is to serve Arthur Boyd by regular U.S. mail at 3277 Lee Road, Shaker Heights, OH 44120

And on all parties through the ECF system

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ARTHUR BOYD, JR.,	)	Chapter 7
	)	
Debtor.	)	Judge Pat E. Morgenstern-Clarren
	)	
	)	**ORDER**

For the reasons stated in the memorandum of opinion issued this same date, the debtor's motion to recuse the undersigned is denied. (Docket 189).

IT IS SO ORDERED.

Pat E. Morgenstern-Clarren
United States Bankruptcy Judge

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ARTHUR BOYD, JR.,	)	Chapter 7
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Debtor.	)	Judge Pat E. Morgenstern-Clarren
	)	
	)	**ORDER**

For the reasons stated in the memorandum of opinion issued this same date, the debtor's motion to remove attorney Mary Ann Rabin as the chapter 7 trustee is denied. (Docket 191).

IT IS SO ORDERED.

Pat E. Morgenstern-Clarren
United States Bankruptcy Judge

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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
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In re:	)	Case No. 05-19361
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ARTHUR BOYD, JR.,	)	Chapter 7
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Debtor.	)	Judge Pat E. Morgenstern-Clarren
	)	
	)	**ORDER**

For the reasons stated in the memorandum of opinion issued this same date, the debtor's motion to "require [Steven] Davis to produce name, address, and phone number of alleged creditor, Beverage Management or, in the alternative, dismiss case" is denied. (Docket 199).

IT IS SO ORDERED.

Pat E. Morgenstern-Clarren
United States Bankruptcy Judge