UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

06-4780-bk

Dr. Richard Cordero
Appellant and creditor

v.

PETITION

for panel rehearing and hearing en banc
to determine the question of exceptional importance:
To what extent is the Court's integrity compromised by supporting or tolerating a bankruptcy fraud scheme?

David DeLano and Mary Ann DeLano
Respondents and debtors in bankruptcy

from *Cordero v. DeLano*, 05-6190L, WDNY

Creditor-Appellant Dr. Richard Cordero affirms as follows under penalty of perjury:

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I. Question presented: To what extent is the Court covering up the involvement of its bankruptcy court appointee and its district court peer in a bankruptcy fraud scheme? If determining the integrity of the Court does not "involve a question of exceptional importance", what does?

1. This case concerns a bankruptcy fraud scheme. It involves Appellee DeLano, a 39-year veteran of the banking and financial industries, who at the time of filing his bankruptcy petition with his wife, a specialist in business Xerox machines, was and continued to be employed precisely in

the bankruptcy department of a major bank, namely, Manufacturers & Traders Trust Bank (M&T). As an insider of the bankruptcy system, he knew more than enough about the bankruptcy fraud scheme to be sure that in preparation of his and his wife's debt-free retirement to their golden pot, they could file a bankruptcy petition with the most self-serving, implausible, and suspiciously incongruous statements about their financial affairs because the co-scheming trustees and judges would not examine it, let alone expose the petition's fraudulent nature at the risk of implicating themselves in the scheme.

2. On the contrary, the judges and the trustees would protect the DeLanos not just by allowing them to file a bankruptcy petition with no document supporting it, but also by denying to any creditor his due process right to discovery of any such document. So after the DeLanos denied discovery of *every single document* (D:313-315, 325) that Creditor Dr. Richard Cordero requested, the judges covered for them by also denying him *every single document* for which he sought an order of production, even documents as obviously necessary for the judges themselves to determine the good faith of any bankruptcy petition as the bankrupts' bank account statements: Bankruptcy Judge John C. Ninfo, II, WBNY, (D:278¶1, 327; Tr:189/11-22); District Judge David G. Larimer (Add:1022; SApp:1504); Bankruptcy Trustee George Reiber (D:193§I); his supervisor, Assistant U.S. Kathleen Dunivin Schmitt (Pst:1263¶¶19-21); U.S. Trustee for Region 2 Deirdre A. Martini (Pst:1261¶¶12-14) and this Court (on 1/24/7, SApp: 1623; on 2/1/7 SApp:1634; on 3/5/7 SApp:1678; on 2/8/8 CA:2081and 2082). Nevertheless, the judges had evidence in the petition itself pointing to fraud, such as this: (SApp:1654 infra)

    a) The DeLanos declared having only $535 in cash and on account (D:31); yet after deduction of their generous living expenses from their monthly earnings, they declared that every month they had disposable income of $1,940 (D:45/Sch.J). The judges avoided exposing through document production where the DeLanos were stashing that money.

b) The DeLanos declared to have earned $291,470 in the three years 2001-03 preceding the filing of their petition. (D:47, 186-188) But the judges protected them by not asking that they account for that money, whose whereabouts are as a result still unknown.

c) They declared a debt of $98,092 on 18 credit cards (D:38/Sch.F), while they valued their household goods at only $2,810 (D:31/Sch.B), less than their $3,880 disposable income in only two months and less than even 1% of the $291,470 that they had earned in the previous three years! Yet the judges protected the DeLanos from having to reveal the assets and services that they acquired through that huge credit card debt;

d) The DeLanos declared their home as their only piece of real property. (D:30). They bought it in 1975, when they took out on it a $26,000 mortgage. (D:342) However, in their petition they claimed that their equity in it was only $21,416 and their outstanding mortgage balance $77,084…after making mortgage payments for 30 years! *Mind-boggling!* (Add:1058¶54) During that period, they engaged in a string of mortgages through which they received a total of $382,187! (D:341-354) Then barely three years after their bankruptcy filing, they sold that home on April 23, 2007, for the declared amount of $135,000, an increase of 37% in value in a down real estate market. (CA:2086). Despite all those suspiciously incongruous declarations and facts, the judges kept protecting the DeLanos by refusing to ask that they provide any documents to show where that mortgage money paid to and by them went.

e) To avoid producing any documents, the DeLanos incurred attorneys' fees worth at last count $27,953 (Add:938, Pst:1174), and Judge Ninfo approved their payment (Add:942). Moreover, according to their appellate attorney, Devin Lawton Palmer, Esq., the DeLanos "continue to incur unnecessary attorneys' fees" (SApp:1628¶¶4, 9, 10) to defend against Dr. Cordero's document requests. But the judges did not want to find out from where the

DeLanos, who had only $535 in cash and on account and had to commit the $1,940 monthly disposable income to their creditors, came up with well over $28,000 to pay their attorneys, who were willing to "continue to" render legal services because they knew that the DeLanos, far from being bankrupt, did have money to pay their legal fees.

3. In all, there is at least $673,657 that the DeLanos have not accounted for (SApp:1654 infra)…in just one of Trustee Reiber' cases listed by PACER as of April 2, 2004: 3,909 *open* cases! Why did Trustees Schmitt and Martini allow one trustee to amass such an unmanageable number of cases that under 11 U.S.C. §704(4) and (7) and C.F.R. 58.6(a)(10) he must investigate and handle personally? This bankruptcy fraud scheme can net some serious money!
4. No wonder it paid the judges to engage in willful ignorance of the facts by not ordering the DeLanos to produce documents that would have revealed that all of them have supported or tolerated the scheme. By so doing, the judges of this Court, just as those below, have denied Dr. Cordero due process of law. They denied him in general his right to discovery and in particular his right to specific documents that they had reason to believe would prove his contentions and establish his right to property as a creditor of the DeLano Bankrupts.
5. In addition, this Court decided a case in which it has a disqualifying conflict of interests: If the DeLanos were proved to have filed a fraudulent bankruptcy petition that contained false statements intended to work their concealment of assets, they would face up to 20 years imprisonment and devastating fines of up to $500,000 each for violating, inter alia, 18 U.S.C. §§152-157, 1519, 1957(a), and 3571. Therefore, they would have an incentive to enter into a plea bargain whereby in exchange for a reduction of the criminal charges against them, Mr. DeLano, drawing from his by now longer than 39 year long career as a banker and bankruptcy officer, would provide testimony incriminating Trustee Reiber and Trustee Schmitt as well as Judges Ninfo and Larimer and other court officers. In turn, those judges would enter into their

own plea bargains where they would agree to disclose their evidence that CA2 judges have known about the bankruptcy fraud scheme for years (CA:1978), since before the reappointment of Bankruptcy Judge Ninfo to a second term in office, and have likewise supported or tolerated it. Consequently, the CA2 judges decided this case in their own and their collegial self-interest and with disregard for the rule of law and for their oath of office "to administer justice without respect to persons, and do equal right to the poor [in influence pro se litigant] and to the rich [in incriminating stories peers]". (28 U.S.C. §453)

A. The Court disregarded the question presented on appeal, which in each of its four constituent issues dealt explicitly with fraud in the context of a bankruptcy fraud scheme and in the abuse of WDNY Local Rule 5.1(h) and 28 U.S.C. §158(b) as subterfuges to operate such scheme

6. .The question presented in this appeal explicitly stated that its four constituent issues were unified by one issue, namely, a bankruptcy fraud scheme's existence and means of operation. (CA:1719) They are briefly summarized (cf. SApp:1508¶1(a)) as follows:

   a) District Judge Larimer's bias toward the schemers rendered his decisions a nullity;

   b) the DeLanos' motion to disallow the claim of Dr. Cordero against them and the judges' granting and upholding it were an artifice to deprive him of standing as creditor so that he could not keep requesting documents that would prove their fraud and scheme;

   c) WDNY Local Rule 5.1(h) (Add:633 infra) requires excessive details before discovery for filing a RICO claim, which is unlawful as contrary to notice pleading and the rule-issuing enabling provision, and as a means to prevent RICO claims from being filed against the schemers;

   d) 28 U.S.C. §158(b) (Add:630 infra) gives the judges discretion to create bankruptcy

appellate panels (BAPs), which subjects people to unconstitutionally unequal protection of the law and to abuse by schemers keeping appeals under their control to better operate their scheme.

7. Neither in denying Dr. Cordero's substantive motions nor in dismissing his appeal has the Court shown to be cognizant of the fact that the question presented concerned bankruptcy fraud and its support or toleration by judges. It did not even use the word fraud, not even to acknowledge that an allegation of judicial involvement in fraud even in one case, let alone as part of a scheme, calls into question the essence of judicial process, its integrity, without which there is no justice.
8. Nor did the Court acknowledge that the issues of the judges turning WDNY Local Rule 5.1(h) and 28 U.S.C. §158(b) into subterfuges to run their bankruptcy fraud scheme in general could not possibly be affected by whatever mootness the Court resorted to as an excuse to dismiss Dr. Cordero's claims against the DeLanos in this particular case.
9. The Court did not order the production of any requested document even if only to ascertain whether when a 39-year veteran banker and bankruptcy officer made self-serving, implausible, and suspiciously incongruous statements unsupported by any document Appointee Ninfo, Peer Larimer, and the trustees looked the other way as part of operating a bankruptcy fraud scheme. Since a person is deemed to intend the reasonable consequences of his acts, the Court intentionally and in self-interest left the scheme undisturbed for them to continue operating it. (Cf. SApp:1509 ¶after e.). Thereby the Court supports and tolerates a bankruptcy fraud scheme. In so doing, it shows dereliction of its supervisory duty to safeguard the integrity of judicial process, leaving the conditions in place for due process to be denied, not only to Dr. Cordero, but also to the public at large. On both it inflicts the concrete harm of losing property as victims of fraud and paying higher prices due to the fraud premium added to everything to compensate for the fraud of a few. The Court has become an enabler of fraud and a source of injustice.

II. The Court pretends that the Trustee's motion to dismiss only has "minor deficiencies" and that in any event its summary order dismissed the appeal on grounds of equitable mootness, whereby it objectively disregards the facts and the law concerning both the motion and the order so as to reach the necessary result of self-protecting from having its support and toleration of the bankruptcy fraud scheme exposed

10. The whole text of the Court's decision is the following (CA:2180 infra):

> George M. Reiber, as Bankruptcy Trustee, moves to dismiss the appeal as moot. Although Appellant's argument that the Trustee's motion is deficient may be correct, any such deficiencies are minor and, in any event, the appeal is subject to dismissal under this Court's sua sponte authority. Upon due consideration, it is hereby ORDERED that the appeal is DISMISSED as equitably moot. See In re Metromedia Fiber Network, Inc., 416 F.3d 136, 144 (2d Cir. 2005); In re Chateaugay Corp., 988 F.2d 322, 326 (2d Cir. 1993). See *In re Metromedia Fiber Network, Inc.*, 416 F.3d 136, 144 (2d Cir. 2005) ; *In re Chateaugay Corp.*, 988 F.2d 322, 326 (2d Cir. 1993).

A. The Court disingenuously pretends that the Trustee's motion only has 'minor deficiencies' although it 1) failed to state any duty to object to a trustee's final report; 2) failed even to notice that the bankruptcy judge had deprived Dr. Cordero of standing in *DeLano*, thus relieving him of any alleged duty to object; 3) failed to show why the judge would serve notice of his approval of the report on a person without standing; 4) failed to assert that the alleged service of "a summary of the account" was timely; 5) failed to explain how service of such "summary" would impose any duty to object; and 6) failed to cite any authority for pretending that by not objecting to the report the appeal had become moot and dismissible

11. To determine whether the Court was justified by legal considerations or motivated by self-interest in characterizing Trustee Reiber's motion to dismiss the appeal (CA:2102 infra) as having only 'minor deficiencies' it suffices to analyze its operative part:

> 14. The trustee filed his final report accounting for the plan funds with the bankruptcy court on June 7, 2007. Cordero was subsequently served with a summary of the account.
>
> 15. The bankruptcy court signed an order approving the trustee's final report on June 29, 2007. Cordero has never filed an objection to said report, and his time to do so has passed.
>
> 16. Since all plan distributions have been made pursuant to the court's confirmation order and the final order has been signed without timely objection, the bankruptcy estate no longer exists. Therefore this appeal has been rendered moot and should be dismissed.

12. The first 'minor deficiency' to notice: *There is no authority cited or even legal principle argued!* (CA:2123§V) What is more, or rather less, there is not even a logical basis for the implied proposition that a bankruptcy appeal, regardless of its ground -which as to the instant appeal was nowhere discussed by the Trustee- should be dismissed just because the judges refused to grant the creditor's motions to stay the disallowance of his claim and the confirmation of the Chapter 13 debtors' debt repayment plan, thus letting enough time to go by for the debtors to make all payments, regardless of whether the debtor had any right under the Code to file his petition and make payments on a plan in the first place because, for example, "the plan was [not] proposed in good faith, [but] by means forbidden by law". 11 U.S.C. §1325(a)(3)
13. Who ever said that a fraudulent bankruptcy becomes lawful just because the debtors are given time to complete their fraud on the creditors? Never mind that, contrary to the Trustee's assertion, Dr. Cordero did move for a stay of the disallowance of his claim and of the confirmation of the DeLanos' debt repayment plan and was denied his motions by Judge Ninfo (D:21) and Judge Larimer (Add:881, 974¶7, 1021). (See also ¶20 infra)
14. Another 'minor deficiency' is that precisely because Judges Ninfo and Larimer had stripped Dr. Cordero of standing in the DeLanos' case, he had by their own view neither the right nor the obligation to object to any report filed by the Trustee or order by Judge Ninfo approving it.

Therefore, Dr. Cordero cannot be penalized for not doing what the judges themselves had decided he could not do anymore, that is, intervene in the case…assuming, of course, that there is any such obligation at all provided by some law known to the Court, for the Trustee did not cite any. Would a Court of law respectful of the rule of law deem the absence of legal authority for dismissing a case, thus denying a person his day in court, a 'minor deficiency'?

15. Another 'minor deficiency' is that because Judge Ninfo deprived Dr. Cordero of standing in *DeLano*, there was no reason for either the Judge or the Trustee himself to give notice to Dr. Cordero of either the Trustee's report or the Judge's approval of it. As a matter of fact, the Trustee could not even affirm that the he had given Dr. Cordero timely notice of his report, but only that "Cordero was subsequently served with a summary of the account", whatever that "account" is relative to the report and to any duty to object to it and whether that alleged service took place before or after an unknown deadline for filing any objection. What could motivate this Court to pretend that lack of notice and certainty of duty are 'minor deficiencies'?

16. Analysis in greater detail of the Trustee's motion to dismiss is provided in Dr. Cordero's opposition papers. (CA:2111 & 2135, cf. CA:2178 infra) It shows the perfunctoriness of a motion cobbled together by a trustee who, though calling himself "an attorney admitted to practice before this Court" (CA:2102 infra), does not even know its name, so that he captioned his original motion "UNITED STATES DISTRICT COURT OF APPEALS SECOND CIRCUIT" (id.), and even after Dr. Cordero brought this gross mistake and its legal consequence to his attention (CA: 2124¶¶39-40), he still misnamed it in his 'amended' motion as "UNITED STATES COURT OF APPEALS SECOND CIRCUIT" (CA:2130 infra; CA: 2135§I). The major deficiencies that impair his motion are the reflection of his arrogant confidence that he did not have to bother researching the law or checking the record in order to write a professional legal paper, for he knew that this Court cannot dare order production of the documents

requested by Dr. Cordero and thereby risk being incriminated in supporting or tolerating a bankruptcy fraud scheme. Thus, all he had to do was provide the Court with an excuse to dismiss a threatening appeal. The Court took it and tried to rehabilitate it by pretending that its "deficiencies are minor". It was disingenuous for the Court to do so…just as when it propped up those deficiencies with "equitable mootness" as an alternative ground for dismissal.

B. The Court disregarded the law and the facts by invoking for its dismissal "equitable mootness" and two cases although they 1) neither deal with bankruptcy fraud nor can excuse it; 2) do not concern a simple Chapter 13 payment by an individual of cents on the dollar and the continued payment to his creditors but rather complex Chapter 11 company reorganizations involving special debt-release arrangements with non-parties and their unraveling by recoupment from innocent parties; and 3) did not have to do with a party that sought a stay of the plan confirmation, but with companies that failed to challenge the arrangements until after their completion

17. Neither of the two cases cited by the Court, i.e. *Metromedia* and *Chateaugay* (¶10 supra) even hinted that the doctrine of equitable mootness is available to cure bankruptcy fraud, much less a bankruptcy fraud scheme. In fact, neither deals with fraud at all. Nor do they deal with bankruptcies under 11 U.S.C. Chapter 13 and its simple "adjustment of debts of an individual with regular income" to creditors under a repayment plan providing merely for the debts owed them to be reduced by payment of the same number of cents on the dollar.
18. Rather, those two cases deal with Chapter 11 bankruptcies and the complex reorganization of bankrupt companies. Actually, they are even more complex, for they involve arrangements, not only between the bankrupt companies and their creditor companies, but also third companies and individuals that were not even parties to the bankruptcy cases at all! Indeed, those cases

dealt with the release of debt owed by non-party companies to the reorganizing debtor company in exchange for a substantial contribution to its reorganization plan and a challenge after the completion of the arrangement by a creditor, to whom giving relief would have required "unraveling the Plan". *Metromedia §III* To avoid the dire consequences of such "unraveling", the doctrine of equitable mootness was applied, which provides as follows:

> Equitable mootness is a prudential doctrine that is invoked to avoid disturbing a reorganization plan once implemented. [E]quitable mootness is a pragmatic principle, grounded in the notion that, with the passage of time after a judgment in equity and implementation of that judgment, effective relief on appeal becomes impractical, imprudent, and therefore inequitable. The doctrine [is] merely an application of the age-old principle that in formulating equitable relief a court must consider the effects of the relief on innocent third parties. *Metromedia, §III*, internal quotations omitted.

19. Deciding the case at bar on its merits and even finding that the DeLanos committed fraud through concealment of assets identified by ordering production of the requested documents would not disturb their completed debt repayment plan in any way whatsoever. It would only mean that, instead of evading their debts by paying only 22¢ on the dollar (D:59), the DeLanos would have to reduce their fraudulently-gotten enjoyment of their golden retirement in order to keep paying the rest of what they owe to their creditors Consequently, there would be absolutely no "recoupment of these funds 'already paid from non-parties, and the continued payment to creditors would be neither impracticable nor' "impose an unfair hardship on fault-less beneficiaries who are not parties to this appeal", *Chateaugay, §II*. There would only be completion of payment to the only innocent parties here, those who in good faith became the DeLanos' creditors and to whom it would be inequitable to deprive of what is owed them in order to allow the DeLanos to benefit from their participation in the bankruptcy fraud scheme.
20. This is all the more so because the Court's own members "presume that it will [not] be inequitable or impractical to grant relief after substantial consummation, [if], among other

things, the entity seeking relief has diligently pursued a stay of execution of the plan throughout the proceedings" *In re Chateaugay Corp.*, 94 F.3d 772, 776 (2d Cir.1996), internal quotations omitted. Dr. Cordero did precisely that: He diligently sought not only a stay of the confirmation of DeLanos' debt repayment plan (¶12 supra), but also revocation of the order of confirmation, both in Bankruptcy Court (Add:1038, 1066, 1094, 1095, 1125) and in District Court (Add:1064, 1070, 1121¶61, 1126, 1155; Pst:1306¶123, 1313¶21)

21. This shows that the Court proceeded as perfunctorily to dismiss this appeal as the Trustee did in filing his dismissal motion: It simply fetched the name of equitable mootness and two citations and slapped them on an order form without ascertaining whether any of them were applicable to this appeal to begin with. In so doing, the Court not only committed an inequity by depriving Dr. Cordero, an innocent party, of his claim against the DeLanos, the fraudsters, but it denied him due process by dispensing with the rule of law in order to cover for Appointee Ninfo and Peer Larimer and protect its own interest in not giving them occasion to incriminate it for supporting or tolerating their bankruptcy fraud scheme. Faced with a conflict of interests between its duty to apply the law to determine impartially controversies before it and its interest in preserving its good name and protecting its very survival, the Court compromised its integrity: It looked after itself and its own as it acted as a Worker of Injustice.

III. Relief sought

22. One can only hope that not all the workers at the Court are similarly compromised by wrong-doing, whether it is fraud, conflict of interests, bias, or some other wrong. Some may have supported or tolerated it to a lesser degree than others. Some may even still have a measure of the idealism with which they arrived at the Court, where they expected to participate in the noble mission of dispensing to all men and women alike the one thing that the Court was

supposed to give them: “Equal Justice Under Law”. Perhaps some are judges who are inspired by the feats of the person after whom the Court’s building was named, Thurgood Marshall, the one who in cases such as *Brown v. Board of Education* defended the highest principle of our Constitution: That under government by the rule of law, it is the impartial and equal application of the law that guarantees to everybody a fair chance to enjoy their rights to property, liberty, and life, and limits to a fair burden the common obligation to secure them for all.

23. If judges, they know that such principled performance eventually earned Thurgood Marshall a nomination and confirmation as a justice of the Supreme Court. They may consider the evidence in *DeLano* of a bankruptcy fraud scheme supported and tolerated by coordinated wrongdoing among judges and muster the courage to stand up and denounce it in what can become known as Judge X’s ***I Accuse***, the equivalent of Emile Zola’s denunciation of abuse of power by government officials in the Dreyfus Affair. That judge will suffer at the hands of his or her wrongdoing colleagues, though not as much as the litigants that they have victimized, but he or she may have shown the moral fiber necessary to be chosen to fill the place that will soon be left open by either Justice Stevens, 88, J. Ginsburg, 75, or JJ. Scalia and Kennedy, 72.

24. However, it is more likely that such Court worker be a staff attorney or a clerk, like the one reading this petition, one who was once an idealist and now is a disillusioned observer in disgust of how the judges routinely disregard the law and the facts to protect their personal or class interests, or treat with perfunctory contempt pro se and small law firm litigants while they strive to associate their names to pedigree cases, or ignore their duty under the law and to their fellow men and women for the worst reason possible: Because they can do so and get away with it. That staff attorney or clerk has the opportunity, as an insider, to become not only a whistleblower, but also a reluctant hero that helps restore integrity to judicial process and the Court itself. For him or her there is the reward of 15 minutes of fame, a Pulitzer Prize, a movie

deal, or the even more enduring and historically meaningful one of exposing corruption in the judiciary, as once Carl Bernstein or Bob Woodward did, who after bringing down President Nixon and his corrupt White House aides involved in the Watergate Scandal opened the way for historic reforms in the functioning of our government. That attorney or clerk can become known as the *Champion for Justice!* If you have the necessary commitment to Justice and want to find out how to do what is right, contact Dr. Cordero in all confidence.

25. Therefore, Dr. Cordero respectfully moves the Court to:

a) grant panel rehearing and hearing en banc;

b) quash the dismissal order and all the orders in *DeLano* and the case from which it derives, *Pfuntner v. Trustee Gordon et al.*, and its progeny (Add:863§V; CA:1918 ¶¶37-39);

c) issue the proposed order for production of documents attached hereto;

d) cause the issue under 28 U.S.C. §294(d) of a certificate of necessity for the designation and assignment from the roster of senior judges of a retired judge from a circuit other than the Second Circuit (cf. 28 U.S.C. §152(b)), who is known for his or her integrity and independence and is unrelated to any of the members of this Court or to the officers and parties in either *Pfuntner* or *DeLano*, to conduct a trial by jury of both cases in the U.S. District Court in Albany, NY.;

e) decide the issues of the unlawfulness of WDNY Local Rule 5.1(h) and the unconstitutionality of 28 U.S.C. §158(b) and their abusive employment in support of the scheme;

f) provide Dr. Cordero with all other relief that is just and proper, including the relief requested in his principal brief and en banc production order motion. (CA:1771, 1972)

March 14, 2008

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Service & Virus Protection Certificate

***In re Dr. Richard Cordero v. David and Mary Ann DeLano*, dkt. no. 06-4780-bk, CA2**

I, Dr. Richard Cordero, certify that I mailed or e-mailed to the parties listed below a copy of my petition for panel rehearing and hearing en banc of the dismissal of the appeal. I further certify that the PDF version of this petition was scanned and no virus was detected.

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18 U.S.C. §3057(a)

Any judge, receiver, or trustee having reasonable grounds for believing that any violation under chapter 9 of this title [18 U.S.C. §§152-157 on bankruptcy crimes] or other laws of the United States relating to insolvent debtors, receiverships or reorganization plans [e.g. 18 U.S.C. §1519 on destruction of bankruptcy records; §3284 on concealment of bankrupt's assets] has been committed, or that an investigation should be had in connection therewith, ***shall*** report to the appropriate United States attorney all the facts and circumstances of the case, the names of the witnesses and the offense or offenses believed to have been committed.…[emphasis added]

28 USCS §158 (2005)

§ 158. Appeals

(a) The district courts of the United States shall have jurisdiction to hear appeals[--]

(1) from final judgments, orders, and decrees;

(2) from interlocutory orders and decrees issued under section 1121(d) of title 11 increasing or reducing the time periods referred to in section 1121 of such title; and

(3) with leave of the court, from other interlocutory orders and decrees;

of bankruptcy judges entered in cases and proceedings referred to the bankruptcy judges under section 157 of this title [28 USCS § 157]. An appeal under this subsection shall be taken only to the district court for the judicial district in which the bankruptcy judge is serving.

(b) (1) The judicial council of a circuit shall establish a bankruptcy appellate panel service com-posed of bankruptcy judges of the districts in the circuit who are appointed by the judicial council in accordance with paragraph (3), to hear and determine, with the consent of all the parties, appeals under subsection (a) unless the judicial council finds that--

(A) there are insufficient judicial resources available in the circuit; or

(B) establishment of such service would result in undue delay or increased cost to parties in cases under title 11.

Not later than 90 days after making the finding, the judicial council shall submit to the Judicial Conference of the United States a report containing the factual basis of such finding.

(2) (A) A judicial council may reconsider, at any time, the finding described in paragraph (1).

(B) On the request of a majority of the district judges in a circuit for which a bankruptcy appellate panel service is established under paragraph (1), made after the expiration of the 1-year period beginning on the date such service is established, the judicial council of the circuit shall determine whether a circumstance specified in subparagraph (A) or (B) of such paragraph exists.

(C) On its own motion, after the expiration of the 3-year period beginning on the date a bankruptcy appellate panel service is established under paragraph (1), the judicial council of the circuit may determine whether a circumstance specified in subparagraph (A) or (B) of such paragraph exists.

(D) If the judicial council finds that either of such circumstances exists, the judicial council may provide for the completion of the appeals then pending before such service and the orderly termination of such service.

(3) Bankruptcy judges appointed under paragraph (1) shall be appointed and may be reappointed under such paragraph.

(4) If authorized by the Judicial Conference of the United States, the judicial councils of 2 or more circuits may establish a joint bankruptcy appellate panel comprised of bankruptcy judges from the districts within the circuits for which such panel is established, to hear and determine, upon the con-sent of all the parties, appeals under subsection (a) of this section.

(5) An appeal to be heard under this subsection shall be heard by a panel of 3 members of the bankruptcy appellate panel service, except that a member of such service may not hear an appeal originating in the district for which such member is appointed or designated under section 152 of this title [28 USCS § 152].

(6) Appeals may not be heard under this subsection by a panel of the bankruptcy appellate panel service unless the district judges for the district in which the appeals occur, by majority vote, have authorized such service to hear and determine appeals originating in such district.

(c) (1) Subject to subsections (b) and (d)(2), each appeal under subsection (a) shall be heard by a 3-judge panel of the bankruptcy appellate panel service established under subsection (b)(1) unless--

(A) the appellant elects at the time of filing the appeal; or

(B) any other party elects, not later than 30 days after service of notice of the appeal, to have such appeal heard by the district court.

(2) An appeal under subsections (a) and (b) of this section shall be taken in the same manner as appeals in civil proceedings generally are taken to the courts of appeals from the district courts and in the time provided by Rule 8002 of the Bankruptcy Rules [USCS Court Rules, Bankruptcy Rules, Rule 8002].

(d) (1) The courts of appeals shall have jurisdiction of appeals from all final decisions, judgments, orders, and decrees entered under subsections (a) and (b) of this section.

(2) (A) The appropriate court of appeals shall have jurisdiction of appeals described in the first sentence of subsection (a) if the bankruptcy court, the district court, or the bankruptcy appellate panel involved, acting on its own motion or on the request of a party to the judgment, order, or decree described in such first sentence, or all the appellants and appellees (if any) acting jointly, certify that--

(i) the judgment, order, or decree involves a question of law as to which there is no controlling decision of the court of appeals for the circuit or of the Supreme Court of the United States, or involves a matter of public importance;

(ii) the judgment, order, or decree involves a question of law requiring resolution of conflicting decisions; or

(iii) an immediate appeal from the judgment, order, or decree may materially advance the progress of the case or proceeding in which the appeal is taken;

and if the court of appeals authorizes the direct appeal of the judgment, order, or decree.

(B) If the bankruptcy court, the district court, or the bankruptcy appellate panel--

(i) on its own motion or on the request of a party, determines that a circumstance specified in clause (i), (ii), or (iii) of subparagraph (A) exists; or

(ii) receives a request made by a majority of the appellants and a majority of appellees (if any) to make the certification described in subparagraph (A);

then the bankruptcy court, the district court, or the bankruptcy appellate panel shall make the certification described in subparagraph (A).

(C) The parties may supplement the certification with a short statement of the basis for the certification.

(D) An appeal under this paragraph does not stay any proceeding of the bankruptcy court, the district court, or the bankruptcy appellate panel from which the appeal is taken, unless the respective bankruptcy court, district court, or bankruptcy appellate panel, or the court of appeals in which the appeal in pending, issues a stay of such proceeding pending the appeal.

(E) Any request under subparagraph (B) for certification shall be made not later than 60 days after the entry of the judgment, order, or decree.

HISTORY:

(July 10, 1984, P.L. 98-353, Title I, § 104(a), 98 Stat. 341; Dec. 1, 1990, P.L. 101-650, Title III, § 305, 104 Stat. 5105; Oct. 22, 1994, P.L. 103-394, Title I, § § 102, 104(c), (d), 108 Stat. 4108-4110.)

(As amended April 20, 2005, P.L. 109-8, Title XII, § 1233(a), 119 Stat. 202.)

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

LOCAL RULES OF CIVIL PROCEDURE

RULE 5.1

FILING CASES

...

(h) Any party asserting a claim, cross-claim or counterclaim under the Racketeer Influenced & Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1961 et seq., shall file and serve a "RICO Case Statement" under separate cover as described below. This statement shall be filed contemporaneously with those papers first asserting the party's RICO claim, cross-claim or counterclaim, unless, for exigent circumstances, the Court grants an extension of time for filing the RICO Case Statement. A party's failure to file a statement may result in dismissal of the party's RICO claim, cross-claim or counterclaim. The RICO Case Statement must include those facts upon which the party is relying and which were obtained as a result of the reasonable inquiry required by Federal Rule of Civil Procedure 11. In particular, the statement shall be in a form which uses the numbers and letters as set forth below, and shall state in detail and with specificity the following information.

(1) State whether the alleged unlawful conduct is in violation of 18 U.S.C. §§ 1962(a), (b), (c) and/or (d).

(2) List each defendant and state the alleged misconduct and basis of liability of each defendant.

(3) List the alleged wrongdoers, other than the defendants listed above, and state the alleged misconduct of each wrongdoer.

(4) List the alleged victims and state how each victim was allegedly injured.

(5) Describe in detail the pattern of racketeering activity or collection of unlawful debts alleged for each RICO claim. A description of the pattern of racketeering shall include the following information:

(A) List the alleged predicate acts and the specific statutes which were allegedly violated;

(B) Provide the dates of the predicate acts, the participants in the predicate acts, and a description of the facts surrounding the predicate acts;

(C) If the RICO claim is based on the predicate offenses of wire fraud, mail fraud, or fraud in the sale of securities the "circumstances constituting fraud or mistake shall be stated with particularity." Fed. R. Civ. P. 9(b). Identify the time, place and contents of the alleged misrepresentations, and the identity of persons to whom and by whom the alleged misrepresentations were made;

(D) State whether there has been a criminal conviction for violation of each predicate act;

(E) State whether civil litigation has resulted in a judgment in regard to each predicate act;

(F) Describe how the predicate acts form a "pattern of racketeering activity"; and

(G) State whether the alleged predicate acts relate to each other as part of a common plan. If so, describe in detail.

(6) Describe in detail the alleged enterprise for each RICO claim. A description of the enterprise shall include the following information:

(A) State the names of the individuals, partnerships, corporations, associations, or other legal entities, which allegedly constitute the enterprise;

(B) Describe the structure, purpose, function and course of conduct of the enterprise;

(C) State whether any defendants are employees, officers or directors of the alleged enterprise;

(D) State whether any defendants are associated with the alleged enterprise;

(E) State whether you are alleging that the defendants are individuals or entities separate from the alleged enterprise, or that the defendants are the enterprise itself, or members of the enterprise; and

(F) If any defendants are alleged to be the enterprise itself, or members of the enterprise, explain whether such defendants are perpetrators, passive instruments, or victims of the alleged racketeering activity.

(7) State and describe in detail whether you are alleging that the pattern of racketeering activity and the enterprise are separate or have merged into one entity.

(8) Describe the alleged relationship between the activities of the enterprise and the pattern of racketeering activity. Discuss how the racketeering activity differs from the usual and daily activities of the enterprise, if at all.

(9) Describe what benefits, if any the alleged enterprise receives from the alleged pattern of racketeering.

(10) Describe the effect of the activities of the enterprise on interstate or foreign commerce.

(11) If the complaint alleges a violation of 18 U.S.C. § 1962(a), provide the following information:

(A) State who received the income derived from the pattern of racketeering activity or through the collection of an unlawful debt; and

(B) Describe the use or investment of such income.

(12) If the complaint alleges a violation of 18 U.S.C. § 1962(b), describe in detail the acquisition or maintenance of any interest in or control of the alleged enterprise.

(13) If the complaint alleges a violation of 18 U.S.C. § 1962(c), provide the following information:

(A) State who is employed by or associated with the enterprise; and

(B) State whether the same entity is both the liable "person" and the "enterprise" under § 1962(c).

(14) If the complaint alleges a violation of 18 U.S.C. § 1962(d), describe in detail the alleged conspiracy.

(15) Describe the alleged injury to business or property.

(16) Describe the direct causal relationship between the alleged injury and the violation of the RICO statute.

(17) List the damages sustained for which each defendant is allegedly liable.

(18) List all other federal causes of action, if any, and provide the relevant statute numbers.

(19) List all pendent state claims, if any.

(20) Provide any additional information that you feel would be helpful to the Court in processing your RICO claim.

The DeLanos' income of $291,470,
mortgage receipts of $382,187,
plus credit card borrowing of $98,092

unaccounted for due to the judges' refusal to require production of documents supporting their declaration in Schedule B (D:31) that at the time of filing their bankruptcy petition they only had in hand and on account $535!

Exhibit page #	Mortgages referred to in the incomplete documents produced by the DeLanos to Chapter 13 Trustee George Reiber [a] (cf.Add:966§B)	Mortgages or loans	
		year	amount
D[b]:342	1) from Columbia Banking, S&L Association	16jul75	$26,000
D:343	2) another from Columbia Banking, S&L Asso.	30nov77	7,467
D:346	3) still another from Columbia Banking, S&L Asso.	29mar88	59,000
D:176/9	4) owed to Manufacturers &Traders Trust=M&T Bank	March 88	59,000
D:176/10	5) took an overdraft from ONONDAGA Bank	March 88	59,000
D:348	6) another mortgage from Central Trust Company	13sep90	29,800
D:349	7) even another one from M&T Bank	13dec93	46,920
D:350-54	8) yet another from Lyndon Guaranty Bank of NY	23dec99	95,000
	9) any other not yet disclosed? **Subtotal**		$382,187
The DeLanos' earnings in just the three years preceding their voluntary bankruptcy petition of January 27, 2004 (D:23)			
2001	1040 IRS form (D:186)	$91,229	$91,229
2002	1040 IRS form (D:187) Statement of Financial Affairs (D:47)	$91,859	91,655
2003	1040 IRS form (D:188) Statement of Financial Affairs (D:47)	+97,648	+108,586
to this must be added the receipts contained in the $98,092 owed on 18 credit cards, as declared in Schedule F (D:38)[c]		$280,736[d]	$291,470[d]
		TOTAL	**$673,657**

[a] The DeLanos claimed in their bankruptcy petition that their only real property is their home, valued on November 23, 2003, at $98,500, as to which their mortgage is still $77,084 and their equity is only $21,416 (D:30/Sch.A)…after making mortgage payments for 30 years! and having received during that same period at least $382,187 through the known elements of a string of mortgages! *Mind-boggling!*

[b] D=Designated items in the record of *Cordero v. DeLano*, 05-6190L, WDNY, of April 18, 2005.

[c] The DeLanos declared that their credit card debt on 18 cards totals $98,092 (D:38/Sch.F), while they set the value of their household goods at only $2,810! (D:31/Sch.B) *Implausible!* Couples in the Third World end up with household possessions of greater value after having accumulated them in their homes over their worklives of more than 30 years.

[d] Why do these numbers not match?

UNITED STATES DISTRICT COURT OF APPEALS SECOND CIRCUIT

DR. RICHARD CORDERO, Creditor - Appellant v. DAVID & MARY ANN DELANO, Debtors-Appellee.	)	MOTION TO DISMISS Case No. 06-4780

George M. Reiber, attorney for the bankruptcy trustee herein and an attorney admitted to practice before this Court, hereby respectfully alleges as follows:

1. On or about January 27, 2004, the above entitled debtors filed a petition in the United States Bankruptcy Court for the Western District of New York, Rochester Division, commencing a case under Chapter 13 of Title 11 of the United States Code, the Bankruptcy Code. (Herein all references will be to said Code or its Bankruptcy Rules).

2. George M. Reiber was appointed Chapter 13 bankruptcy trustee of said case.

3. Thereafter on or about March 8, 2004, said trustee conducted a meeting by his staff attorney pursuant to §341.

4. Dr. Richard Cordero, Appellant herein (hereinafter referred to as Cordero) appeared as a creditor at that time.

5. Since both the trustee and Cordero had concerns about the schedules and plan, the 341 meeting was adjourned; and thereafter was adjourned from time to time.

6. On or about March 8, 2004, Cordero filed an Objection to Confirmation.

7. Based upon the concerns mentioned above and the filed Objection, the confirmation hearing was adjourned; and thereafter was adjourned from time to time.

8. On or about May 19, 2004, Cordero filed a Proof of Claim with the bankruptcy court. Thereafter on or about July 22, 2004, Debtors filed a Motion Objecting to Cordero's Claim, returnable before said court on August 25, 2004. Cordero filed opposition to said motion. The hearing on said

motion was adjourned from time to time. A final hearing on said motion was conducted on March 1, 2005.

9. The bankruptcy court filed a decision on April 4, 2005, granting debtors' motion and disallowing Cordero's claim. Cordero filed a Notice of Appeal on April 11, 2005.

10. Cordero never filed a motion for a stay pending appeal pursuant to Bankruptcy Rule 2005. Upon information and belief Cordero did and continues to serve the trustee with all motions and treat him as a party.

11. On or about August 22, 2006, Hon. David Larimer of the district court rendered a decision affirming the decision of the bankruptcy court. Cordero filed a notice appealing said decision to this Court. Upon information and belief Cordero never made a motion for a stay pending appeal either before the district court or this Court, as permitted by Federal Rules of Appellate Procedure Rule 8.

12. There have been numerous proceedings in connection with this appeal before this Court. Upon information and belief Cordero has served the trustee with all process relative to this appeal. Indeed, upon Cordero's request the trustee agreed to allow Cordero to serve the trustee electronically. Upon information and belief, all motions and briefs in this appeal have been filed with this Court.

13. Meanwhile, on or about January 30, 2007, the debtors completed the payments under their confirmed plan. All funds were distributed to the allowed claims. The final distributions were made on or about February 23, 2007, and the last check cleared the trustee's bank account on or about March 20, 2007. The bankruptcy court issued its discharge order in favor of the debtors on February 7, 2007.

14. The trustee filed his final report accounting for the plan funds with the bankruptcy court on June 7, 2007. Cordero was subsequently served with a summary of the account.

15. The bankruptcy court signed an order approving the trustee's final report on June 29, 2007. Cordero has never filed an objection to said report, and his time to do so has passed.

16. Since all plan distributions have been made pursuant to the court's confirmation order and the final order has been signed without timely objection, the bankruptcy estate no longer exists. Therefore this appeal has been rendered moot and should be dismissed.

WHEREFORE movant requests an order of this Court:

a) a) dismissing this appeal on the grounds of mootness; and

b) b) for such other and further relief as is just and proper.

Dated: October 30, 2007

Respectfully Submitted,

/s/_____

GEORGE M. REIBER
Chapter 13 Trustee
3136 Winton Road South
Rochester, NY 14623
(585) 427-7225

To: Kathleen Dunivin Schmitt, Esq.
Devin Palmer, Esq.
Christopher Werner, Esq.
David & Mary Ann Delano
Richard Cordero

UNITED STATES COURT OF APPEALS SECOND CIRCUIT

DR. RICHARD CORDERO, Creditor - Appellant v. DAVID & MARY ANN DELANO, Debtors-Appellee.	AMENDED MOTION TO DISMISS Case No. 06-4780

George M. Reiber, attorney for the bankruptcy trustee herein and an attorney admitted to practice before this Court, hereby respectfully alleges as follows:

1. On or about January 27, 2004, the above entitled debtors filed a petition in the United States Bankruptcy Court for the Western District of New York, Rochester Division, commencing a case under Chapter 13 of Title 11 of the United States Code, the Bankruptcy Code. (Herein all references will be to said Code or its Bankruptcy Rules).

2. George M. Reiber was appointed Chapter 13 bankruptcy trustee of said case.

3. Thereafter on or about March 8, 2004, said trustee conducted a meeting by his staff attorney pursuant to §341.

4. Dr. Richard Cordero, Appellant herein (hereinafter referred to as Cordero) appeared as a creditor at that time.

5. Since both the trustee and Cordero had concerns about the schedules and plan, the 341 meeting was adjourned; and thereafter was adjourned from time to time.

6. On or about March 8, 2004, Cordero filed an Objection to Confirmation.

7. Based upon the concerns mentioned above and the filed Objection, the confirmation hearing was adjourned; and thereafter was adjourned from time to time.

8. On or about May 19, 2004, Cordero filed a Proof of Claim with the bankruptcy court. Thereafter on or about July 22, 2004, Debtors filed a Motion Objecting to Cordero's Claim, returnable before said court on August 25, 2004. Cordero filed opposition to said motion. The hearing on said

motion was adjourned from time to time. A final hearing on said motion was conducted on March 1, 2005.

9. The bankruptcy court filed a decision on April 4, 2005, granting debtors' motion and disallowing Cordero's claim. Cordero filed a Notice of Appeal on April 11, 2005.

10. Cordero never filed a motion for a stay pending appeal pursuant to Bankruptcy Rule 8005. Upon information and belief Cordero did and continues to serve the trustee with all motions and treat him as a party.

11. On or about August 22, 2006, Hon. David Larimer of the district court rendered a decision affirming the decision of the bankruptcy court. Cordero filed a notice appealing said decision to this Court. Upon information and belief Cordero never made a motion for a stay pending appeal either before the district court or this Court, as permitted by Federal Rules of Appellate Procedure Rule 8.

12. There have been numerous proceedings in connection with this appeal before this Court. Upon information and belief Cordero has served the trustee with all process relative to this appeal. Indeed, upon Cordero's request the trustee agreed to allow Cordero to serve the trustee electronically. Upon information and belief, all motions and briefs in this appeal have been filed with this Court.

13. Meanwhile, on or about January 30, 2007, the debtors completed the payments under their confirmed plan. All funds were distributed to the allowed claims. The final distributions were made on or about February 23, 2007, and the last check cleared the trustee's bank account on or about March 20, 2007. The bankruptcy court issued its discharge order in favor of the debtors on February 7, 2007.

14. The trustee filed his final report accounting for the plan funds with the bankruptcy court on June 7, 2007. Cordero was subsequently served with a summary of the account.

15. The bankruptcy court signed an order approving the trustee's final report on June 29, 2007. Cordero has never filed an objection to said report, and his time to do so has passed.

16. Since all plan distributions have been made pursuant to the court's confirmation order and the final order has been signed without timely objection, the bankruptcy estate no longer exists. Therefore this appeal has been rendered moot and should be dismissed.

WHEREFORE movant requests an order of this Court:

a) a) dismissing this appeal on the grounds of mootness; and

b) b) for such other and further relief as is just and proper.

Dated: November 16, 2007

Respectfully Submitted,

/s/_____

GEORGE M. REIBER
Chapter 13 Trustee
3136 Winton Road South
Rochester, NY 14623
(585) 427-7225

To: Kathleen Dunivin Schmitt, Esq.
Devin Palmer, Esq.
Christopher Werner, Esq.
David & Mary Ann Delano
Richard Cordero

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Outline of Dr. Richard Cordero

for oral argument on January 3, 2008

against the Trustee's motion to dismiss

in *Dr. Richard Cordero, Creditor v. David and Mary Ann DeLano, Debtors*, 06-4780-bk-CA2

appeal from *Cordero v. DeLano*, 05-6190L, WDNY

A. Original motion

B. Amended motion

I. The Trustee's arrogant perfunctoriness shown in his original motion is only confirmed in his amended motion and provides further grounds for his motion to be dismissed with prejudiced and for costs to be assessed against him **2135**

II. Recapitulation of relief requested with additions (in bold) **2139**

C. Placing the motion on the motions calendar

I. The Court's placement on the substantive motions calendar of the Trustee's motion to dismiss although the Court denied the same treatment to Dr. Cordero's 14 motions and indicated that all his motions will be referred to the panel is arbitrary and discriminatory treatment that constitutes a denial of equal protection under law and a subterfuge for the Court to rid itself of this appeal and thus evade the conflict of interests with which it confronts the Court **2152**

II. The Trustee's arrogantly perfunctory and conclusory motion to dismiss provides no argument, let alone authority, for the implied allegation that there is any duty to object to his final report, not to mention "a summary of the account", much less that failure to do so within a given period –not even hinted at- renders dismissable a pending appeal; and shows not even an awareness of the fact that an appellant deprived of standing in the case, such as Dr. Cordero, would have no duty to object in addition to prosecuting his appeal..... **2157**

III. Precedent gives rise to the expectation that the Court placed the Trustee's arrogantly perfunctory motion on the motions calendar and, disregarding its factual and legal baselessness, will use it as a pretext to dismiss the case, so that due process requires that it invoke 28 U.S.C. §294(d) to transfer this appeal to an impartial and unrelated retired judge **2162**

IV. Relief requested..... **2165**

Dated: January 3, 2008

Dr. Richard Cordero

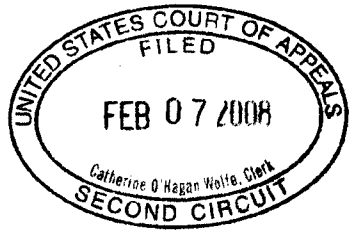
59 Crescent Street
Brooklyn, NY 11208

Dr. Richard Cordero
Appellant and Creditor
tel. (718) 827-9521

W.D.N.Y.
05-cv-6190
Larimer, J.

United States Court of Appeals
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 7th day of February, two thousand eight.



Present:

Hon. Sonia Sotomayor,
Hon. Debra Ann Livingston,
Circuit Judges,
Hon. Gregory W. Carman,*
Judge, U.S. Court of International Trade.

Dr. Richard Cordero,

Creditor-Appellant,

v. 06-4780-bk

David DeLano, Mary Ann DeLano,

Debtors-Appellees.

George M. Reiber, as Bankruptcy Trustee, moves to dismiss the appeal as moot. Although Appellant's argument that the Trustee's motion is deficient may be correct, any such deficiencies are minor and, in any event, the appeal is subject to dismissal under this Court's *sua sponte* authority. Upon due consideration, it is hereby ORDERED that the appeal is DISMISSED as equitably moot. *See In re Metromedia Fiber Network, Inc.*, 416 F.3d 136, 144 (2d Cir. 2005); *In re Chateaugay Corp.*, 988 F.2d 322, 326 (2d Cir. 1993).

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk

By: _____

---

*The Honorable Gregory W. Carman, of the United States Court of International Trade, sitting by designation.

SAO-LB

United States Court of Appeals
for the Second Circuit

06-4780-bk

Dr. Richard Cordero,
Appellant and creditor

v.

ORDER

David and Mary Ann DeLano
Appellees and debtors in bankruptcy

Having considered the briefs filed in his appeal, IT IS HEREBY ORDERED AS FOLLOWS:

A. Persons and entities concerned by this Order

1. David DeLano and Mary Ann DeLano (hereinafter the DeLanos), Debtors and Appellees in the above-captioned case, hereinafter *DeLano*, which shall be understood to include the cases below, namely, *In re David and Mary Ann DeLano*, 04-20280, WBNY, and *Cordero v. DeLano*, 05-6190, WDNY;
2. Chapter 13 Trustee George Reiber, South Winton Court, 3136 S. Winton Road, Rochester, NY 14623, tel. (585) 427-7225, and any and all members of his staff, including but not limited to, James Weidman, Esq., attorney for Trustee Reiber;
3. Devin L. Palmer, Esq. and Christopher K. Werner, Esq., attorneys for the DeLanos, Boylan, Brown, Code, Vigdor & Wilson, LLP, 2400 Chase Square, Rochester, NY 14604, tel. (585) 232-5300; and any and all members of their firm;

4. Mary Dianetti, Bankruptcy Court Reporter, 612 South Lincoln Road, East Rochester, NY 14445, tel. (585) 586-6392;
5. Kathleen Dunivin Schmitt, Esq., Assistant U.S. Trustee for Rochester, Office of the U.S. Trustee, U.S. Courthouse, 100 State Street, Rochester, NY, 14614, tel. (585) 263-5812, and any and all members of her staff, including but not limited to, Ms. Christine Kyler, Ms. Jill Wood, and Ms. Stephanie Becker;
6. Ms. Diana G. Adams, Acting U.S. Trustee for Region 2, and Deirdre A. Martini, former U.S. Trustee for Region 2, and Office of the United States Trustee, 33 Whitehall Street, 21st Floor, New York, New York 10004, tel. (212) 510-0500;
7. Manufacturers & Traders Trust Bank (M&T Bank), 255 East Avenue, Rochester, NY, tel. (800) 724-8472;
8. U.S. Bankruptcy Judge John C. Ninfo, II, and Paul R. Warren, Esq., Clerk of Court, United States Bankruptcy Court, 1400 U.S. Courthouse, 100 State Street, Rochester, NY 14614, tel. (585) 613-4200, and any and all members of their staff;
9. U.S. District Judge David G. Larimer and Rodney C. Early, Clerk of Court, United States District Court, 2120 U.S. Courthouse, 100 State Street, Rochester, N.Y. 14614, tel. (585)613-4000, fax (585)613-4035, and any and all members of their staff; and
10. Any and all persons or entities that are in possession or know the whereabouts of, or control, the documents or items requested hereinafter.

B. Procedural provisions applicable to all persons and entities concerned by this Order, who shall:

11. Understand a reference to a named person or entity to include any and all members of such person's or entity's staff or firm;
12. Comply with the instructions stated below and complete such compliance within seven days

of the issue of this Order unless a different deadline for compliance is stated below;

13. Be held responsible for any non-compliance and subject to the continuing duty to comply with this Order within the day each day after the applicable deadline is missed;
14. Produce of each document within the scope of this Order those parts stating as to each transaction covered by such document:
    a. the source or recipient of funds or who made any charge or claim for funds;
    b. the time and amount of each such transaction;
    c. the description of the goods or service concerned by the transaction;
    d. the document closing date;
    e. the payment due date;
    f. the applicable rates;
    g. the opening date and the good or delinquent standing of the account, agreement, or contract concerned by the document;
    h. the beneficiary of any payment;
    i. the surety, codebtor, or collateral; and
    j. any other matter relevant to this Order or to the formulation of the terms and conditions of such document;
15. Certify individually as such person, or if an entity, by its representative, in an affidavit or an unsworn declaration subscribed as provided for under 28 U.S.C. §1746 (hereinafter collectively referred to as a certificate), with respect to each document produced that such document has not been the subject of any addition, omission, modification, or correction of any type whatsoever and that it is the whole of the document without regard to the degree of relevance or lack thereof of any part of such document other than any part requiring its production; or certify why such certification cannot be made with respect to any part or the

whole of such document and attach such document;

16. Produce any document within the scope of this Order by producing a true and correct copy of such document;
17. Produce a document and/or a certificate concerning it whenever a reasonable person acting in good faith would:
    a. believe that at least one part of such document comes within the scope of this Order;
    b. be in doubt as to whether any or no part of a document comes within that scope; or
    c. think that another person with an adversarial interest would want such production or certificate made or find it of interest in the context of ascertaining whether, in particular, the DeLanos have committed bankruptcy fraud, or, in general, there is a bankruptcy fraud scheme involving the DeLanos and/or any other individual; and
18. File with the Court and serve on Appellant Dr. Richard Cordero at 59 Crescent Street, Brooklyn, NY 11028, tel. (718) 827-9521), and the trustee succeeding Trustee George Reiber when appointed (hereinafter the successor trustee) any document produced or certificate made pursuant to this Order.

C. Substantive provisions

19. Any person or entity concerned by this Order who with respect to any of the following documents **i)** holds such document (hereinafter holder) shall produce a true and correct copy thereof and a certificate; **ii)** controls or knows the whereabouts or likely whereabouts of any such document (hereinafter identifier) shall certify what document the identifier controls or knows the whereabouts or likely whereabouts of, and state such whereabouts and the name and address of the known or likely holder of such document:
    a. The audio tape of the meeting of creditors of the DeLanos held on March 8, 2004, at the

Office of the U.S. Trustee in Rochester, room 6080, and conducted by Att. Weidman, shall be produced by Trustee Schmitt, who shall within 10 days of this Order arrange for, and produce, its transcription on paper and on a floppy disc or CD; and produce also the video tape shown at the beginning of such meeting and in which Trustee Reiber was seen providing the introduction to it;

b. The transcript of the meeting of creditors of the DeLanos held on February 1, 2005, at Trustee Reiber's office, which transcript has already been prepared and is in possession of Trustee Reiber, who shall produce it on paper and on a floppy disc or CD;

c. The original stenographic packs and folds on which Reporter Dianetti recorded the evidentiary hearing of the DeLanos' motion to disallow Dr. Cordero's claim, held on March 1, 2005, in the Bankruptcy Court, shall be kept in the custody of the Bankruptcy Clerk of Court and made available to this Court or the Judicial Conference of the United States upon the request of either of them;

d. The documents that Trustee Reiber obtained from any source prior to the confirmation hearing for the DeLanos' plan on July 25, 2005, in the Bankruptcy Court, whether such documents relate generally to the DeLanos' bankruptcy petition or particularly to the investigation of whether they have committed fraud, regardless of whether such documents point to their joint or several commission of fraud or do not point to such commission but were obtained in the context of such investigation;

e. The statement reported in *DeLano,* WBNY docket 04-20280, entry 134, to have been read by Trustee Reiber into the record at the July 25 confirmation hearing before Judge Ninfo of the DeLanos' plan, of which there shall be produced a copy of the written version, if any, of such statement as well as a transcription of such statement exactly as read;

f. The financial documents in either or both of the DeLanos' names, or otherwise concerning a financial matter under the total or partial control of either or both of them, regardless of whether either or both exercise such control directly or indirectly through a third person or entity, and whether for their benefit or somebody else's, since January 1, 1975, to date,

1) Such as:

(a) the ordinary, whether the interval of issue is a month or a longer or shorter interval, and extraordinary statements of account of each and all checking, savings, investment, retirement, pension, credit card, and debit card accounts at or issued by M&T Bank and/or any other entity in the world;

(b) the unbroken series of documents relating to the DeLanos' purchase, sale, or rental of any property or share thereof or right to its use, wherever in the world such property may have been, is, or may be located, including but not limited to:

(i) real estate, including but not limited to the home and surrounding lot at 1262 Shoecraft Road, Webster (and Penfield, if different), NY; and

(ii) personal property, including any vehicle, mobile home, or water vessel;

(c) mortgage documents;

(d) loan documents;

(e) title documents and other documents reviewing title, such as abstracts of title;

(f) prize documents, such as lottery and gambling documents;

(g) service documents, wherever in the world such service was, is being, or may be received or given; and

(h) documents concerning the college expenses of each of the DeLanos' children,

including but not limited to tuition, books, transportation, room and board, and any loan extended by a government or a private entity for the purpose of such education, regardless of whose name appears as the borrower on the loan documents;

2) the production of such documents shall be made pursuant to the following timeframes:

(a) within two weeks of the date of this Order, such documents dated since January 1, 2000, to date;

(b) within 30 days from the date of this Order, such documents dated since January 1, 1975, to December 31, 1999.

20. The holder of the original of any of the documents within the scope of this Order shall certify that he or she holds such original and acknowledges the duty under this Order to hold it in a secure place, ensure its chain of custody, and produce it only upon order of this Court, the court to which *DeLano* may be transferred, the Supreme Court of the United States, or the Judicial Conference of the United States.

21. *DeLano* and *Pfuntner v. Gordon et al.*, docket no. 02-2230, WBNY, (hereinafter *Pfuntner*), are withdrawn from the District and Bankruptcy Courts to this Court pursuant to 28 U.S.C. §157(d).and the inherent power of this Court over lower courts in the Second Circuit.

22. The orders of Judge Ninfo, II, of August 9, 2005, confirming the DeLanos' Chapter 13 plan and of February 7, 2007, discharging the DeLanos after completion of their plan are hereby revoked; his order of August 8, 2005, to M&T Bank shall continue in force and the Bank shall continue making payments to Trustee Reiber until the appointment of a trustee to succeed him and from then on to the successor trustee, to the custody of whom all funds held by Trustee Reiber in connection with *DeLano* shall be transferred.

23. The notice signed by Clerk Warren, dated January 24, 2007, releasing employer from making further payments to Trustee Reiber is hereby withdrawn and the situation preceding it is reinstated as if the notice had never been given or acted upon.

24. Trustee George Reiber is removed pursuant to 11 U.S.C. §324(a) as trustee in *DeLano*, but shall continue subject to the jurisdiction of this Court and this Order, and such jurisdiction shall continue after appointment of a successor trustee or transfer of *DeLano* to any other court;

25. The Court recommends that:

    a. the successor trustee be an experienced trustee from a district other than WDNY, such as a trustee based in Albany, NY, who shall:

    b. certify that he or she:

        1) is unfamiliar with any aspect of *DeLano*,

        2) is unrelated and unknown to any party or officer in WDNY and WBNY;

        3) will faithfully represent pursuant to law the DeLanos' unsecured creditors;

    c. exhaustively investigate the DeLanos' financial affairs on the basis of the documents described herein and similar documents, such as those already produced by the DeLanos to both Trustee Reiber and Dr. Cordero, to determine whether they have committed bankruptcy fraud, particularly concealment of assets,

    d. produce a report of the inflow, outflow, and current whereabouts of the DeLanos' assets - whether such assets be earnings, real or personal property, rights, or otherwise, or be held jointly or severally by them directly or indirectly under their control anywhere in the world- since January 1, 1975, to date; and

    e. file in the court under whose jurisdiction this case shall be at the time, and serve upon the DeLanos and Dr. Cordero a copy of, such report together with a copy of its related

documents, which shall include all documents obtained during the course of such investigation and any previous investigation conducted while the case was in the Bankruptcy Court or the District Court.

26. The Court recommends that the successor trustee employ under 11 U.S.C. §327 a reputable, independent, and certified accounting and title firm, such as one based in Albany, to conduct the investigation and produce the report referred to in ¶25 above; and such firm shall produce a certificate equivalent to that required therein.

27. Court Reporter Mary Dianetti, who shall have no part in the transcription of any document within the scope of this Order, is referred to the Judicial Conference of the United States for investigation of her refusal to certify that the transcript of her recording of the evidentiary hearing held in the Bankruptcy Court, WBNY, on March 1, 2005, of the DeLanos' motion to disallow Dr. Cordero's claim would be complete, accurate, and tamper-free; Dr. Cordero's motion of July 18, 2005, for the District Court, WDNY, to make such referral under 28 U.S.C. §753 and all its exhibits are referred to the Judicial Conference as his statement on the matter; and the Conference is hereby requested to designate an individual other than Reporter Dianetti to make such transcript and produce it for review and evaluation to the Conference, this Court, and Dr. Cordero.

28. Notwithstanding the above and without detriment to any party's duty to it carry out, *DeLano* and *Pfuntner* are reported under 18 U.S.C. §3057(a) to U.S. Attorney General Alberto Gonzales, with the recommendation that they be investigated by U.S. attorneys and FBI agents, such as those from the U.S. Department of Justice and FBI offices in Washington, D.C., or Chicago, who are unfamiliar with either of those cases and unacquainted with any of the parties to either of them, or court officers, whether judicial or administrative, or trustees, directly or indirectly involved in, concerned with, or affected by either of those cases or that

may be investigated, and that no staff from the offices of the Department or the FBI in either Rochester or Buffalo participate in any way in such investigation.

29. *DeLano* and *Pfuntner* are transferred in the interest of justice and judicial economy under 28 U.S.C. §1412 to the U.S. District Court for the Northern District in Albany, NY, for a trial by jury before a visiting judge from a circuit other than the Second Circuit who is unfamiliar with either of those cases and unrelated and unacquainted with any of the parties to either of those case, or any court officers, whether judicial or administrative, or trustees, directly or indirectly involved in, concerned with, or affected by either of those cases or that may be investigated in connection therewith.

30. All proceedings concerning this matter shall be recorded by the Court using, in addition to stenographic means, electronic sound recording, and any party shall be allowed to make its own electronic sound or video recording of any and all such proceedings.

FOR THE COURT:

_____ _____

Date