

Dr. Richard Cordero

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September 6, 2005

[also sent to Circuit Justice Ginsburg and the other 2nd circuit judges]

Circuit Judge Dennis Jacobs
Member of the Judicial Council of the 2nd Circuit
U.S. Court of Appeals for the Second Circuit
40 Foley Square
New York, NY 10007

Dear Judge Jacobs,

Re: 2nd supplement to comments against
reappointing J. John C. Ninfo, II, WBNY

Last March I responded to the Appeals Court's request for comments on the reappointment of Judge Ninfo. I indicated that the Court and the Judicial Council could 'hear' him express his bias and disregard for the law, the rules, and the facts by obtaining the transcript of the evidentiary hearing held on March 1, 2005, of the motion raised by the debtors in *David and Mary Ann DeLano* (04-20280) to disallow my claim. Revealingly enough, that is the transcript that Bankruptcy Court Reporter Mary Dianetti has refused to certify as complete, accurate, and untampered-with. (E:9-11) The evidence thereof is what I submitted to the Court and the Council in the supplement of last August 3.

New evidence discussed in the supplement below shows that the Reporter's refusal is part of a bankruptcy fraud scheme: Judge Ninfo has confirmed the DeLanos' debt repayment plan upon the pretense that the trustee investigated and cleared them of fraud in his "Report" (E:271-273; §I) although the Judge knew that there was no investigation (§IIA) because he had refused to order them to produce even checking and savings account statements and because the trustee, who before asking for any documents from the DeLanos vouched for the good faith of their bankruptcy petition, had a conflict of interests in conducting an investigation that could prove him wrong (§IIB; E:309-323). Through his confirmation without investigation (§IIC), Judge Ninfo allowed the whereabouts of \$291,470 earned by the DeLanos in just 2001-03 to remain unknown and the astonishing string of mortgages (§53, E:284-298) to go unexplained through which the DeLanos took in \$382,187 since 1975 only to end up 30 years later with equity in the very same home of a meager \$21,415 and a mortgage debt of \$77,084! Over \$670,000 unaccounted for! Not enough, for Judge Ninfo spared them repayment of over \$140,000. Thereby Judge Ninfo protected a scheme and Mr. DeLano, who has spent his 32-year career in banking, is currently in charge of bankruptcies of clients of his bank (§36), and has learned so much about bankruptcy abuses that the Judge could not risk letting an investigation indict Mr. DeLano for playing the system, lest he disclose his incriminating knowledge in a plea bargain.

Hence, Judge Ninfo cannot let the transcript be produced and the Reporter be investigated or the Trustee be removed. I moved for that on July 18 and 13, respectively; but neither the Reporter nor the Trustee has bothered to file even a stick-it with the scribble "I oppose it". But wait! I raised those motions in my appeal before Judge David Larimer (05cv6190, WDNY). How did they know that he would not grant them by default and cause them to lose their jobs? Yet, they must know that Judge Larimer's protection of Judge Ninfo and the others by not ruling on my motions -four, the earliest filed in *June*- can lead me to petition for a writ of mandamus again (cf. 03-3088, CA2). Do they know that the Court will deny it and leave me with a frozen appeal or no option but to file my brief without the transcript? (E:333-343) The scheme! How high does it reach? (cf. 03-8547 and 04-8510, CA2)

Circumstantial and documentary evidence warrants that Judge Ninfo not be appointed. Instead, let your duty to safeguard the integrity of judicial officers and process cause him to be investigated for participating in a bankruptcy fraud scheme; and let your duty under 18 U.S.C. 3057(a) cause you to report this matter to A.G. Alberto Gonzales for investigation. Looking forward to hearing from you,

sincerely,

Dr. Richard Cordero

Blank

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March 17, 2005

Ms. Karen Greve Milton
Circuit Executive
U.S. Courts for the Second Circuit
40 Foley Square, Rm. 2904
New York, NY 10007

Re: public comments on the reappointment of Judge John C. Ninfo, II

Dear Ms. Milton,

I hereby bring to the attention of the Second Circuit Court of Appeals and Judicial Council facts on the basis of which they should decide not to reappoint Bankruptcy Judge John C. Ninfo, II, WBNY, to a new term of office because of his participation in a pattern of wrongdoing and bias.

Those facts are found in the 15 orders of Judge Ninfo (235 et seq., *infra*) and other documents and statements entered in the dockets of two cases which I, as a party, know first-hand, i.e., *Pfuntner v. Gordon et al*, no. 02-2230 (401), and *In re DeLano*, no. 04-20280 (425). These writings are supplemented by the stenographic recordings of the 15 hearings in those cases (56). These materials produced by or in connection with Judge Ninfo describe action taken by him since 2002 that so repeatedly and consistently disregards the law, the rules, and the facts (cf. 7§2) to the benefit of local parties (15C), including debtors (471 et seq.) that the evidence indicates have concealed assets (18§1;24§3), and to my detriment, I being the only non-local and pro se party, as to establish his participation in a pattern of non-coincidental, intentional, and coordinated (89F; 168§II) wrongful acts (66§I) supporting a bankruptcy fraud scheme (216§V).

In a judicial misconduct complaint (111) and in motions filed in this Court (125; 201) in *In re Premier*, dkt. no. 03-5023 (451), I informed of these facts Chief Judge John M. Walker, Jr., (cf. 151; 219) and members of this Court and of the Judicial Council, who dismissed them without any investigation. So routinely this is the way that judges dispose of complaints about their peers that last June Justice Rehnquist appointed Justice Breyer to head a committee to study the judges' misapplication of the Misconduct Act of 1980. Indeed, judges have turned the self-disciplining mechanism of judicial complaints into a sham, a term used advisedly upon the foundation of facts. Do judges also disregard systematically comments from the public before reappointing a bankruptcy judge, thereby turning the request for such comments into a public relations sham (cf 23§2)? The term is justified given that under 28 U.S.C. §152 the appointment does not even require such request, let alone the holding of public hearings, cf. §44(a).

If the judges of the Court or the Council are serious about judicial integrity, they can review the exhibits (51) and ask themselves whether Judge Ninfo abides by his oath of office at §453 or knows the law (41D;131B-C). But if they cannot imagine one of their own being biased unless they witness him being unashamedly so, they can listen to him in his own words by ordering a transcript of the March 1 hearing in the *DeLano* case (31). Then they can ascertain what drives his conduct and the scheme through a DoJ and FBI investigation (44F). If the appearance, not the reality, of bias is enough under §455 to require the recusal of a judge, as was reaffirmed in *Microsoft v. U.S.*, 530 U. S. 1301, 1302 (2000) (*Rehnquist, C. J.*), how can the evidence of judicial wrongdoing linked to a bankruptcy fraud scheme not be enough for a judge to discharge his or her duty to investigate a complaint about it or report it for investigation under 18 U.S.C. §3057? How much must Judge Ninfo abuse a litigant or how public must his wrongdoing be before his peers care?

sincerely, 

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August 4, 2005

Ms. Karen Greve Milton
Circuit Executive
U.S. Court of Appeals for the Second Circuit
40 Foley Square, Rm 2904
New York, NY 10007

Re: supplementation of comments on the reappointment of J. John C. Ninfo, II

Dear Ms. Milton,

Last March 17, I made a submission to the Second Circuit Court of Appeals and Judicial Council in response to the request for public comments on the reappointment of Bankruptcy Judge J.C. Ninfo, WBNY. This is a supplement (cf. FRCivP 26(e)) that evidences the pertinence of the statement that I made there: "If the judges of the Court or the Council...cannot imagine one of their own being biased unless they witness him being unashamedly so, they can listen to him in his own words by ordering a transcript of the March 1 hearing in the DeLano case. Then they can ascertain what drives his conduct"

Indeed, on March 1, 2005, the evidentiary hearing took place of the motion to disallow my claim against Mr. DeLano in the bankruptcy case of David and Mary Ann DeLano. Judge Ninfo disallowed it. Oddly enough, Mr. DeLano is a 32-year veteran of the banking industry now specializing in bankruptcies at M&T Bank. He declared having only \$535 in cash and account when filing for bankruptcy in January 2004, but earned in the 2001-03 fiscal years \$291,470, whose whereabouts the Judge refused to request that he account for and, thus, are unknown to date.

At the end of the hearing, I asked Reporter Mary Dianetti to count and write down the numbers of stenographic packs and folds that she had used, which she did. For my appeal from the disallowance and as part of making arrangements for her transcript, I requested her to estimate its cost and state the numbers of packs and folds that she would use to produce it. As shown in the exhibits pgs. E:1-11, she provided the estimate but on three occasions expressly declined to state those numbers. Her repeated failure to state numbers that she necessarily had counted and used to calculate her estimate was quite suspicious. So I requested that she agree to certify that the transcript would be complete and accurate, distributed only to the clerk and me, and free of tampering influence. However, she asked me to prepay and explicitly rejected my request! If a reporter in this Circuit refuses to vouch for the reliability of her transcript, does this Court vouch in her stead to the Supreme Court? Would you want your rights and obligations decided on such a transcript?

There is evidence that Reporter Dianetti is not acting alone. Other clerks answerable to Judge Ninfo have also violated the rules to deprive me of that transcript and, worse still, did likewise concerning the transcript of a hearing before him in *Pfuntner v. Trustee Gordon et al.*, where Mr. DeLano, who handled the bankruptcy for M&T, and I are parties. In both cases, timely and reliable transcripts carried the risk of enabling the peers of Judge Ninfo to 'listen' to his bias and disregard for the law, the rules, and the facts at those hearings. Therefore, I respectfully request that you submit the accompanying supplement and exhibits to the Court and the Council so that they **1)** consider in the reappointment process the evidence showing that Judge Ninfo's conduct and that of others in his court form a pattern of non-coincidental, intentional, and coordinated wrongdoing that supports a bankruptcy fraud scheme and **2)** report it to U.S. Attorney General Alberto Gonzales under 18 U.S.C. 3057(a). Looking forward to hearing from you,

sincerely,

Dr. Richard Cordero

2nd SUPPLEMENT WITH NEW EVIDENCE
against the reappointment of
Bankruptcy Judge John C. Ninfo, II, WBNY
submitted to
the Second Circuit
Court of Appeals and Judicial Council
on September 5, 2005

Dr. Richard Cordero states under penalty of perjury the following:

1. On March 17, 2005, Dr. Richard Cordero timely submitted comments against the reappointment of Bankruptcy Judge John C. Ninfo, II, WBNY, based on evidence in two related cases, namely, *Pfuntner v. Trustee Gordon et al.*, docket no. 02-2230, and *David and Mary Ann DeLano*, docket no. 04-20280, of his participation in a series of acts of bias and disregard for the law, the rules, and the facts that form a pattern of non-coincidental, intentional, and coordinated wrongdoing in support of a bankruptcy fraud scheme. (Exhibits, page 12, below = E:12)
2. Last August 3, Dr. Cordero submitted a supplement that discussed the express refusal of Judge Ninfo's Court Reporter, Ms. Mary Dianetti, to agree to certify that her transcript of the stenographic record that she herself had taken of the evidentiary hearing before the Judge on March 1, 2005, would be complete and accurate, distributed only to the clerk and Dr. Cordero, and free of tampering influence. (E:9-11) That transcript is indispensable to Dr. Cordero's appeal to District Court (docket no. 05-cv-6190, WDNY) because it will confirm and reveal to the appellate judges Judge Ninfo's contempt for due process and his role as on-the-bench advocate for Mr. DeLano before and during the evidentiary hearing of the DeLanos' motion to disallow Dr. Cordero's claim as a creditor of them. A reliable transcript would also justify the Court of Appeals and the Judicial Council, as bodies with responsibility for ensuring the integrity of the courts in the Circuit, in investigating Judge Ninfo on the strength of the evidence of his participation in a bankruptcy fraud scheme.
3. That scheme and Judge Ninfo's participation in it are further revealed by the evidence presented

the pretense that the trustee, Chapter 13 Trustee George Reiber, had investigated the DeLanos and found no bankruptcy fraud on their part, yet Judge Ninfo knew that no such investigation of the DeLanos had ever been conducted (§II¶33 below). Indeed, he knew it because of his own acts in *DeLano* and those of the Trustee as well as the latter’s filed “Report” (§I¶5 below; E:271-273) and the type of documents that the Trustee and the DeLanos had refused and failed to produce (§A¶36 below) including those that Judge Ninfo ordered them to produce but allowed them not to produce with impunity. By predicating a confirmation of the plan upon the statement known to be false that an investigation had cleared the debtors of fraud, Judge Ninfo and others worked fraud on the court as an institution to the detriment of judicial process and of Dr. Cordero’s rights (§C¶61 below).

4. To engage in such fraud, Judge Ninfo and other participants in the scheme have had two motives: One is to avoid a harm in that the confirmation of the plan despite the evidence of bankruptcy fraud insures that the DeLanos will not be charged with fraud and, therefore, will have no incentive to enter into a plea bargain in which Mr. DeLano, who has spent his 32-year career in banking and is currently in charge of bankruptcies of clients of his bank, Manufacturers and Traders Trust Bank (M&T Bank), would disclose what he has during those many years learned about bankruptcy fraud committed by debtors, trustees, and judicial officers, which would result in the likely indictment of those people. The other very powerful and corruptive motive is to gain a benefit: MONEY!, for the plan’s confirmation allows the DeLanos to avoid 78¢ on the dollar owed for a saving of over \$140,000 plus all compounding delinquent interest at the annual rate of over 25% and in addition spares them having to account for more than \$670,000! (§B¶49 below)

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I. The “Trustee’s Findings of Fact and Summary of 341 Hearing” reveal that the same Trustee Reiber who filed as his “Report” shockingly unprofessional and perfunctory scraps of papers did not investigate the DeLanos for bankruptcy fraud, contrary to his statement and its acceptance by Judge Ninfo

5. The investigation of the confirmation of plan can take as its starting point the following entries in the *DeLano* docket no. 04-20280, which is available through PACER at <https://ecf.nywb.uscourts.gov/> (Exhibits to the August 3 Supplement, page 176=1stSupp.E:176)

Filing Date	#	Docket Text
06/23/2005		Clerk's Note: (TEXT ONLY EVENT) (RE: related document(s) 5 CONFIRMATION HEARING At the request of the Chapter 13 Trustee, the Confirmation Hearing in this case is being restored to the 7/25/05 Calendar at 3:30 p.m. (Parkhurst, L.) (Entered: 06/23/2005)
07/25/2005	134	Confirmation Hearing Held - Plan confirmed. The Court found that the

07/25/2005	134	Confirmation Hearing Held - Plan confirmed. The Court found that the Plan was proposed in good faith, it meets the best interest test, it is feasible and it meets the requirements of Sec. 1325. The Trustee completed his investigation of allegations of bankruptcy fraud and found there to be none. The Trustee read a statement into the record regarding his investigation. The plan payment were reduced to \$635.00 per month in July 2004 and will increase to \$960.00 per month when a pension loan is paid for an approximate dividend of five percent. The Trustee will confirm the date the loan will be paid off. The amount of \$6,700.00 from the sale of the trailer will be turned over to the Plan. All of the Trustee's objections were resolved and he has no objections to Mr. Werner's attorney fees. Mr. Werner is to attach time sheets to the confirmation order. Appearances: Debtors, Christopher Werner, attorney for debtors, George Reiber, Trustee. (Lampley, A.) (Entered: 08/03/2005)
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6. When one clicks on hyperlink [134](#) what downloads is a three-page document titled "Trustee's Findings of Fact and Summary of 341 Hearing". What shockingly unprofessional and perfunctory scraps of papers! (E:271-273) Their acceptance by Judge Ninfo as the Trustee's "Report" (§33 below) is so revealing that they warrant close analysis.

7. Even if Trustee Reiber has no idea of what a professional paper looks like, he has the standards of the Federal Rules as a guide to what he can file. One of those Rules provides thus:

FRBkrP 9004. General Requirements of Form

(a) Legibility; abbreviations

All petitions, pleadings, schedules **and other papers shall** be clearly legible. Abbreviations in common use in the English language may be used. (emphasis added)

8. The handwritten jottings on those scrap papers are certainly not "clearly legible". The standard for legibility can further be gleaned from the Local Bankruptcy Rules:

Local Bankruptcy Rule 9004. PAPERS

9004-1. FORM OF PAPERS [Former Rule 13 A]

All pleadings **and other papers shall** be plainly and **legibly written**, preferably **typewritten**, printed or reproduced; **shall** be **without erasures or interlineations materially defacing them**; shall be in ink or its equivalent on durable, white paper of good quality; and, except for exhibits, shall be on letter size paper, and **fastened** in durable covers. (emphasis added)

9004-2. CAPTION [Former Rule 13 B]

All pleadings **and other papers shall** be **captioned** with the name of the Court, the title of the case, the proper docket number or numbers, including the initial at the end of the number indicating the Judge to whom the matter has been assigned,

and a **description of their nature**. All pleadings **and other papers**, unless excepted under Rule 9011 Fed.R.Bankr.P., *shall* be **dated, signed** and have thereon the **name, address and telephone number of each attorney, or** if no attorney, then the **litigant** appearing. (emphasis added)

9004-3. Papers not conforming with this rule generally shall be received by the Bankruptcy Clerk, but the **effectiveness** of any such papers shall be **subject to** determination of the **Court**. [*Former Rule 13 D*] (emphasis added)

9. The interlineations and crossings-out and crisscrossing lines and circles and squares and uncommon abbreviations and the scattering of meaningless jottings deface these scrap papers. Moreover, they are not captioned with the name of any court.

10. What is more, the ‘description’ “Trustee’s Findings of Fact and Summary of 341 Hearing” is ambiguous and confusing. Indeed, there is no such thing as a “341 Hearing”. What is there is “§341 Meetings of creditors and equity security holders”. The distinction between meetings and hearings is a substantive one because §341 specifically provides as follows:

11 U.S.C. §341 (c) the court may not preside at, and may not attend, any meeting under this section including any final meeting of creditors.

11. Neither the court can attend a §341 meeting nor a trustee has any authority to conduct a hearing. The trustee does not listen passively at such a meeting either. This is how his role is described:

11 U.S.C. §343. Examination of the debtor

The debtor shall appear and submit to examination under oath at the meeting of creditors under section 341(a) of the title. Creditors, any indenture trustee, **any trustee** or examiner in the case, or the United States trustee may **examine the debtor**. The United States trustee may administer the oath required under this section. (emphasis added)

12. The trustee attends a §341 meeting to engage in the active role of an examiner of the debtor. Actually, his role is inquisitorial. So §1302(b) makes most of §704 applicable to a Chapter 13 case, such as *DeLano* is. In turn, the Legislative Report on §704 states that the trustee works “for the benefit of general unsecured creditors whom the trustee represents”. That representation requires the trustee to adopt the same inquisitorial, distrustful attitude that the creditors are legally entitled to adopt at their meeting when examining the debtor, which is unequivocally stated under §343 in its Statutory Note and made explicitly applicable to the trustee thus:

The purpose of the examination is to enable creditors and **the trustee** to determine if assets have improperly been disposed of or concealed or if there are grounds for objection to discharge. (emphasis added)

13. Hence, what is it that Trustee Reiber conducts if he does not even know how to refer to it in the title of his scrap papers: a §341 meeting of creditors or an impermissible “341 Hearing” before

Judge Ninfo? And in *DeLano*, when did that “341 Hearing” take place?, for not only is such “Hearing” not dated, but also none of those three scrap papers is dated, in disregard of the requirement under Local Bankruptcy Rule 9004-2 (§8 above) that they “**shall be dated**”. However, if the Trustee’s scrap papers refer to a meeting of creditors, to which one given that there were two, one on March 8, 2004, and the other on February 1, 2005? Moreover, on such occasion, what attitude did the Trustee adopt toward the DeLanos: an inquisitorial one in line with his duty to suspect them of bankruptcy fraud or a passive one dictated by the foregone conclusion that the DeLanos had to be protected and given debt relief by confirming their plan?

14. Nor do those scrap papers comply with the requirement that they “**shall be signed**”. Merely initializing page 2 (E:272) is no doubt another manifestation of the perfunctory nature of Trustee Reiber’s scrap papers, but it is no substitute for affixing his signature to it. Does so initializing it betray the Trustee’s shame about putting his full name on such unprofessional filing with a U.S. court?

A. The third scrap of paper “I/We filed Chapter 13 for one or more of the following reasons:” with its substandard English and lack of any authoritative source for the “reasons” cobbled together in such cursory form indicts the Trustee and Judge Ninfo who relied thereon for their pretense that a bankruptcy fraud investigation had been conducted

15. The third scrap paper (E:273) bears the typewritten statement “I/We filed Chapter 13 for one or more of the following reasons:” Which one of the DeLanos, or was it both, made the checkmarks and jottings on it? If the latter were made by Trustee Reiber at his very own “341 Hearing”, did he simply hear the DeLanos’ “reasons” for filing –assuming such attribution can be made to them– and uncritically accept them? Yet, those “reasons” raise a host of critical questions. Let’s examine those that have been checkmarked and have any *handwritten jottings* next to them:

√ Lost employment (*Wife*) Age 59

16. What is the relevance of the Wife losing her employment? Mr. DeLano lost his employment over 10 years ago and then found another one and is currently employed, earning an above-average income of \$67,118 in 2003, according to the Statement of Financial Affairs in their petition.

17. Likewise, what is the relevance of her losing her employment at age 59, or was that her age whenever that undated scrap paper was jotted? Given that the last jotting connects a “reason” for filing their petition on January 27, 2004, to a “*pre-1990*” event, it is fair to ask when she lost her employment and what impact it had on their filing now.

√ Hours or pay reduced (*Husband 62*) *To delay retirement to complete plan*

18. Does the inconsistency between writing “62” inside the parenthesis in this “reason” and writing “Age 59” outside the parenthesis in the “reason” above reflect different meanings or only stress the perfunctory nature of these jottings? Does it mean that he was 62 when his hours or pay were reduced and that before that age he was earning even more than the \$67,118 that he earned in 2003 or that when he turns 62 his hours or pay will be reduced and, if so, by how much, why, and with what impact on his ability to pay his debts? Or does it mean that he will “*delay retirement*” until he turns 62 so as “*to complete plan*”?
19. Otherwise, what conceivable logical relation is there between “Hours or pay reduced” and *To delay retirement to complete plan*? In what way does that kind of gibberish amount to a “reason” for debtors not having to pay their debts to their creditors?
20. Given that a PACER query about Trustee Reiber ran on April 2, 2004, returned the statement that he was trustee in 3,909 *open* cases! -3,907 before Judge Ninfo-, how can he be sure that he remembers correctly whatever it was that he meant when he made such jottings, that is, assuming that it was he and not the “I/We...” who made them?; but if the latter, then there is no way for the Trustee to know with certainty what the “I/We...” meant with those jottings. It is perfunctory per se for the Trustee to submit to a court a scrap paper that is intrinsically so ambiguous that the court cannot objectively ascertain its precise meaning among possible ones.

√ To pay back creditors as much as possible *in 3yrs prior to retirement*

21. If the DeLanos were really interested in paying back all they could, then they would have provided for the plan to last, not the minimum duration of three years under §1325(b)(1)(A), but rather the longer period of five years...or they would not retire until they paid back what they borrowed on the explicit or implicit promise that they would repay it. And they would have planned to pay more than just \$635.

\$4,886.50	projected monthly income (Schedule I of the DeLanos’ bankruptcy petition)
<u>-1,129.00</u>	presumably after Mrs. DeLano’s unemployment benefits ran out in 6/04 (Sch. I)
\$3,757.50	net monthly income
<u>-2,946.50</u>	for the very comfortable current expenditures (Sch. J) of a couple with no dependents
\$811.00	actual disposable income

22. Yet, the DeLanos plan to pay creditors only \$635.00 per month for 25 months, the great bulk of the 36 months of the repayment period. By keeping the balance of \$176 per month = \$811 – 635, they withhold from creditors an extra \$4,400 = \$176 x 25. No explanation is given for this

...although these objections were raised by Dr. Cordero in his written objections of March 4, 2004, ¶¶7-8. Did Trustee Reiber consider those objections as anything more than an insignificant nuisance and, if so, how could he be so sure that Judge Ninfo would consider them likewise?

√ To cram down secured liens

23. What is the total of those secured liens and in what way do they provide a “reason” for filing a bankruptcy petition?

√ Children’s college expenses *pre-1990 when wages reduced \$50,000 → 19-000*

24. The DeLanos’ children, Jennifer and Michael, went for two years each to obtain associate degrees from the in-state low-tuition Monroe Community College, a local institution relative to the DeLanos’ residence, which means that their children most likely resided and ate at home while studying there and did not incur the expense of long distance traveling between home and college. The fact is that whoever wrote that third scrap paper did not check “Student loans”. So, what “college expenses” are being considered here? Moreover, according to that jotting, whatever those “college expenses” are, they were incurred *“pre-1990”*. Given that such listed “reasons” as, “Medical problems”, “To stop creditor harassment”, “Overspending” and “Protect debtor’s property” were not checked, how can those “college expenses” have caused the DeLanos to go bankrupt *15 years later*? This is one of the most untenable and ridiculous “reasons” for explaining a bankruptcy...

25. ...until one reaches the bottom of that scrap paper and, just as at the top, there is no reference to any Official Bankruptcy Form; no citation to any provision of the Bankruptcy Code or the FRBkrP from which this list of “reasons” was extracted; no reference to any document where the “reasons” checked were quantified in dollar terms and their impact on the DeLanos’ income was calculated so that the numerical result would lead to the conclusion that they were entitled under law to avoid paying their creditors 78¢ on the dollar and interest at the delinquent rate of over 25% per year. So, on the basis of what calculations in this scrap paper or why in spite of their absence did Judge Ninfo conclude that the DeLanos’ plan “meets the best interest test”? (¶5 above)

26. Nor is there any reference to a document explaining in what imaginable way, for example, “Matrimonial” is a “reason” for anything, let alone for filing for bankruptcy; or how “Reconstruct credit rating” is such an intuitive “reason” for filing for bankruptcy because then your credit rating in credit bureau reports will go up. There is no reference either to a rule describing the mechanism whereby “Student loans” are such a “reason” despite the fact that 11 U.S.C. provides thus:

§523. Exceptions to discharge

(a) A discharge under section...1328(b) of this title does not discharge

an individual debtor from any debt...(8) for an education benefit overpayment or loan made...

27. The lack of grammatical parallelism among the entries on that list is most striking. So the first “reason” appears to be the subordinate clause of the subordinating clause that will be used as an implicit refrain to introduce every “reason” and thereby give the list semantic as well as syntactic consistency: “I/We filed...” because: (I/We omitted but implicit) “Lost employment”. However, the second “reason” does not fit this pattern: “I/We filed...” because: “Hours or pay reduced”. The next reason is expressed by an adjective, “Matrimonial”, while the following one is a noun “Garnishments”. A “reason” is set forth with a gerund, “Overspending”, but others are stated with the bare infinitive, “Protect debtor’s property”, whereas others use *to*-infinitive, “To receive a Chapter 13 discharge” (which by the way, is a particularly *enlightening* “reason”, for is that not the result aimed at when invoking any other “reason”?). What a mishmash of grammatical constructions! They not only render the list inelegant, but also jar its reading and make its comprehension more difficult. Who bungled that form? Was it approved by any of the U.S. trustees? How many plans has Judge Ninfo confirmed based on it? It was not made specifically for the DeLanos, was it? Is there a financial motive for confirming plans no matter what?
28. The grammar of the “reasons” is not the only bungled feature in this form. In addition, it lacks a caption. Then the sentence that introduces the “reasons” is written in broken English: “I/We filed Chapter 13 for one or more of the following reasons:” What substandard command of the English language must one have not just to say, but also to write in a form presumably to be used time and again and even be submitted formally to a court: ‘You filed Chapter 13....’
29. If you were sure, positive, dead certain that your decision was going to be circulated to, and read by, all your peers and hierarchical superiors and even be made publicly available for close scrutiny, would you fill out an order form thus?: “The respondents filed Chapter 13 and win ‘cause they *ain’t have no money but in the truth they don wanna pluck from their stash and they linked up with their buddies that they are buddies with’em after cookin’ a tons of cases to stiff the creditor dupe that his and they keep all dough in all respects denied for the other yo.*” (Completing the order form in handwriting would give it a touch of flair...in pencil, for that would show...no, no! better still, in crayon, shocking pink! It is bound not only to catch the attention of all the peers, so jaded by run-of-the-mill judicial misconduct, but also illustrate to the FBI and DoJ attorneys how sloppiness can be so incriminating by betraying overconfidence grown out of routine participation in a pattern of unchecked wrongdoing and by laying bare utter contempt for the

law, the rules, and the facts while showing no concern for even the appearance of impartiality.)

30. Still worse, the third scrap paper is neither initialized nor signed; of course, it bears no address or telephone number. So who on earth is responsible for its contents? (cf. E:263) And as of what date, for it is not dated either. For such scrap paper, this is what the rules provide:

FRBkrP 9011. Signing of Papers; Representations to the Court; Sanctions;
Verification and Copies of Papers

(a) Signing of papers

Every petition, pleading, written motion, **and other paper**, except a list, schedule or statement, or amendments thereto, shall be signed by at least one attorney of record in the attorney's individual name. A party who is not represented by an attorney shall sign all papers. Each paper shall state the **signer's address and telephone number**, if any. An **unsigned paper shall be stricken** unless omission of the signature is corrected promptly after being called to the attention of the attorney or party. (emphasis added)

31. To the extent that this third scrap of paper is a list that need not be signed by an attorney, the Advisory Committee Notes to Rule 9011, Subdivision (a) states that "Rule 1008 requires that these documents be verified by the debtor." Rule 1008 includes "All...lists" and Rule 9011(e) explains how the debtor verifies them: "an unsworn declaration as provided in 28 U.S.C. §1746 satisfies the requirement of verification". What §1746 provides is that "the declarant must "in writing" subscribe the matter with a declaration in substantially the form "I declare under penalty of perjury that the foregoing is true and correct. Executed on (date)".

32. The shockingly unprofessional and perfunctory nature of Trustee Reiber's three-piece scrap papers can also be established under Local Rule 10 of the District Court, WDNY, requiring that "All text...in...memoranda and other papers shall be plainly and legibly...typewritten...without erasures or interlineations materially defacing them,...signed...and the name, address and telephone number of each attorney or litigant ...shall be...thereon. All papers shall be dated."

II. Judge Ninfo confirmed the DeLanos' plan by stating that the Trustee had completed the investigation of the allegations of their fraud and cleared them; yet, he had the evidence showing that the Trustee had conducted no such investigation

33. Judge Ninfo confirmed the DeLanos' plan in his Order of August 9, 2005 (E:275). Therein he stated that he "has considered...the Trustee's Report", which is a reference to Trustee Reiber's three scrap papers since it is the only document that the Trustee filed aside from what the Judge himself referred to as the Trustee's "statement". Indeed, the docket entry (¶2 above) states:

The Court found that the...Trustee completed his investigation of

allegations of bankruptcy fraud and found there to be none. The Trustee read a statement into the record regarding his investigation.

34. However, what page 2 of Trustee Reiber's scrap papers (E:272) states is this:

7. Objections to Confirmation: **Trustee - disposable income**

- 1) **I.R.A. available;**
- 2) **loan payment available;**
- 3) **pension loan ends 10/05.**

35. There is nothing about Dr. Cordero's objections to the DeLanos' bankruptcy fraud! No mention of his charge that they have concealed assets. Nothing anywhere else in the Trustee's scrap papers concerning any investigation of anything. Nevertheless, in "9. Other comments:", there is, apart from another very unprofessional double strikethrough "~~1) Best Interest \$1255,~~" "**Attorney fees**". At the bottom of the page is written: "ATTORNEY'S FEES" \$ 1350 and, below that, "Additional fees Yes" **\$16,655**. The itemized invoice for legal fees billed by Att. Werner shows that those fees have been incurred almost exclusively in connection with Dr. Cordero's request for documents and the DeLanos' efforts to avoid producing them, beginning with the entry on April 8, 2004 "Call with client; Correspondence re Cordero objection" (E:279) and ending with that on June 23, 2005 "(Estimated) Cordero appeal" (E:282).

A. Judge Ninfo knew since learning it in open court on March 8, 2004, that Trustee Reiber had approved the DeLanos' petition without minding its suspicious declarations or asking for supporting documents and opposed every effort by Dr. Cordero to investigate or examine the DeLanos

36. Although Trustee Reiber was ready to submit the DeLanos' debt repayment plan to Judge Ninfo for confirmation on March 8, 2004, he could not do so precisely because of Dr. Cordero's objections of March 4, 2004 and his invocation of the Trustee's duty under 11 U.S.C. §704(4) and (7) to investigate the debtor. Since then and only at Dr. Cordero's instigation, the Trustee, who is supposed to represent unsecured creditors (§12 above), such as Dr. Cordero, has pretended to have been investigating the DeLanos on the basis of those objections.

37. Yet, any competent and genuine representative of adversarial interests, as are those of creditors and debtors, would have found it inherently suspicious that Mr. DeLano, a banker for 32 years currently handling the bankruptcies of clients of M&T Bank, had gone himself bankrupt: He would be deemed to have learned how to manage his own money as well as how to play the

bankruptcy system. Suspicion about the DeLanos' bankruptcy would have been provided the solid foundation of documentary evidence in their petition's Schedule B, where they declared having only \$535 in cash and account despite having earned \$291,470 in just the immediately preceding three years yet declaring nothing but \$2,910 in household goods, while stating in Schedule F a whopping credit card debt of \$98,092! Where did the money go or is?

38. That common sense question would not pop up before Trustee Reiber. He accepted the DeLanos' petition, filed on January 27, 2004, without asking for a single supporting document. He only pretended to be investigating the DeLanos but without showing anything for it. Only after being confronted point blank with that pretension by Dr. Cordero, did the Trustee for the first time request documents from the DeLanos on April 20, 2004...in a pro forma request, for he would not ask them for the key documents that would have shown their in- and outflow of money, namely, the statements of their checking and savings accounts. Moreover, he showed no interest in obtaining even the documents concerned by his pro forma request upon the DeLanos failing to produce them. When at Dr. Cordero's insistence the Trustee wrote to them again, it was on May 18, 2004, just to ask for a "progress" report.

39. So incapable and ineffective did Trustee Reiber prove to be in his alleged investigation of the DeLanos that on July 9, 2004, Dr. Cordero moved Judge Ninfo in writing to remove the Trustee. Dr. Cordero pointed out the conflict of interests that the Trustee faced due to the request that he:

investigate the DeLanos by requesting, obtaining, and analyzing such documents, which can show that the petition that he so approved and readied [for confirmation by Judge Ninfo on March 8, 2004] is in fact a vehicle of fraud to avoid payment of claims. If Trustee Reiber made such a negative showing, he would indict his own and his agent-attorney [Weidman]'s working methods, good judgment, and motives. That could have devastating consequences [under 11 U.S.C. §324(b)]. To begin with, if a case not only meritless, but also as patently suspicious as the DeLanos' passed muster with both Trustee Reiber and his attorney, what about the Trustee's [3,908] other cases? Answering this question would trigger a check of at least randomly chosen cases, which could lead to his and his agent-attorney's suspension and removal. It is reasonable to assume that the Trustee would prefer to avoid such consequences. To that end, he would steer his investigation to the foregone conclusion that the petition was filed in good faith. Thereby he would have turned the "investigation" from its inception into a sham!

40. So it turned out to be: a sham. At Dr. Cordero's insistence, the DeLanos produced documents, including Equifax credit bureau reports for each of them, but only to the Trustee. The latter sent Dr. Cordero a copy on June 16, 2004. However, he took no issue with the DeLanos when Dr. Cordero showed that those were token documents and were even missing pages! Indeed, the

Trustee had requested pro forma on April 20, the production of the credit card statements for the last 36 months of each of only 8 accounts, even though the DeLanos had listed in their petition's Schedule F 18 credit card accounts on which they had piled up that staggering debt of \$98,092. As a result, they were supposed to produce 288 statements (36 x 8). Nevertheless, the Trustee satisfied himself with the mere 8 statements that they produced, a single one for each of the 8 accounts!

41. Moreover, the DeLanos had claimed **15 times** in Schedule F of their petition that their financial troubles had begun with "1990 and prior credit card purchases". That opened the door for the Trustee to request them to produce monthly credit card statements since at least 1989, that is, for 15 years. But in his pro forma request he asked for those of only the last 3 years. Even so, the 8 token statements that the DeLanos produced were between 8 and 11 months old!...insufficient to determine their earnings outflow or to identify their assets, but enough to show that they keep monthly statements for a long time and thus, that they had current ones but were concealing them.
42. Instead of becoming suspicious, the Trustee accepted the DeLanos' implausible excuse that they did not possess those statements and had to request them from the credit card issuers. His reply was that he was just "unhappy to learn that the credit card companies are not cooperating with your clients in producing the statements requested", as he put it in his letter of June 16, 2004, to Att. Werner...but not unhappy enough to ask them to produce statements that they indisputably had, namely, those of their checking and savings accounts. Far from it, the Trustee again refused to request them, and what is more, expressly refused in his letter of June 15, 2004, to Dr. Cordero the latter's request that he use subpoenas to obtain documents from them.
43. Yet, the DeLanos had the obligation under §521(3) and (4) "to surrender to the trustee...any recorded information...", an obligation so strong that it remains in force "whether or not immunity is granted under section 344 of this title". Instead, the Trustee allowed them to violate that obligation then and since then given that to date they have not produced all the documents covered by even his pro forma request of April 20, 2004. The DeLanos had no more interest in producing incriminating documents that could lead to their concealed assets than the Trustee had in obtaining those that could lead to his being investigated. They were part of the same sham!
44. But not just any sham, rather one carried out in all confidence, for by now Trustee Reiber has worked with Judge Ninfo on well over 3,907 cases (§20 above). Presumably many are within the scope of the bankruptcy fraud scheme given that it is all but certain that *DeLano* is not the first case that they, had they always been conscientious officers, all of a sudden decided to deal

with by coordinating their actions to intentionally disregard the law, the rules, and the facts for the sake of the DeLanos, who in that case would have something so powerful on them as to cause them to violate the law. In any event, one violation is one too many. Actually, what they have on each other is knowledge of their long series of unlawful acts forming a pattern of wrongdoing. Now, nobody can turn against the other for fear that he or she will be treated in kind. Either they stick together or they fall one after the other.

45. Consequently, Trustee Reiber did not have to consider for a second that upon Dr. Cordero's motions of July 9 and August 14, 2004, Judge Ninfo would remove him from *DeLano* under §324(a). That would have entailed his automatic removal as trustee from all other cases under §324(b), and thereby his termination as trustee. Since that would and will not happen, the Trustee did not file even a scrap paper to state pro forma that he opposed the motions. Revealingly enough, he is not concerned either that District Judge David Larimer may remove him upon Dr. Cordero's motion of July 13, 2005. Hence he has not wasted time scribbling anything in opposition.
46. Not only he, but also Reporter Dianetti has not considered it necessary to waste any effort in the formality of opposing Dr. Cordero' motion of July 18 requesting that Judge Larimer designate another individual to prepare the transcript of her recording of the March 1 evidentiary hearing. Yet, all they needed to do was as cursory a gesture as Att. Werner's two conclusory sentences (E:332) to oppose Dr. Cordero's July 13 motion to stay the confirmation hearing...and a cover letter addressed directly to Judge Larimer to show him ingratiating deference (E:331).
47. Can you imagine either the Trustee or the Reporter reacting with such assured indifference to motions that can cost them their livelihood or Att. Werner skipping any legal argument and slipping in a mere courtesy note had this case been transferred to another court, such as that in Albany, NDNY, where they did not know the judge and could not tell on him? Of course not, they could lose the motions by default! But they have nothing to worry about, for Judge Larimer has not decided any of the four motions of Dr. Cordero pending before him, even one as far back as June 20 to link to this case *Pfuntner v. Gordon et al.*, docket no. 02-2230, WBNY, which gave rise to Dr. Cordero's claim against Mr. DeLano. (1stSupp.E:43; 1stSupp.¶33)
48. What a contrast with the celerity with which Judge Larimer reacted when the Bankruptcy Clerk, disregarding FRBkrP 8007, forwarded to him upon receipt on April 21 (E:333-34), Dr. Cordero's designation of items on appeal and a copy of his first letter of April 18 to Reporter Dianetti to make arrangements for the transcript. Though the record was legally incomplete, lacking the transcript and the appellee's designation of additional items and any issues on cross appeal, the

following day, April 22, Judge Larimer issued a scheduling order requiring Dr. Cordero to file his appellate brief 20 days hence (E:335), knowing full well that the date of the Reporter's completion of the transcript was nowhere in sight so that his order would effectively prevent Dr. Cordero from using it when writing his brief. (E:337-343; 1stSupp.§III). Could it not be in Judge Larimer's interest to decide any of those motions, thereby exposing not only this case and the sham investigation, but also the bankruptcy fraud scheme itself to scrutiny by circuit judges and justices?

B. The sham character of Trustee Reiber's pro forma request for documents and the DeLanos' token production is confirmed by the charade of a §341 meeting through which the Trustee has allowed the DeLanos not to account for hundreds of thousands of dollars obtained through a string of mortgages

49. Trustee Reiber has allowed the DeLanos to produce token documents in connection with one of the most incriminating elements of their petition: their concealment of mortgage proceeds. Indeed, they declared in Schedule A that their home at 1262 Shoecraft Road in Webster, NY, was appraised at \$98,500. However, they still owe on it \$77,084.49. One need not be a trustee, let alone a competent one, to realize how suspicious it is that two debtors approaching retirement have gone through their working lives and have nothing to show for it but equity of \$21,415 in the very same home that they bought 30 years ago! Yet, they earned \$291,470 in just the 2001-03 fiscal years. Have the DeLanos stashed away their money in a golden pot at the end of their working life rainbow? Is the Trustee afraid of scooping gold out of the pot lest he may so rattle Mr. DeLano's rainbow, which arches his 32-year career as a banker, as to cause Mr. DeLano to paint in the open for everybody to see all sorts of colored abuses of bankruptcy law that he has seen committed by colluding debtors, trustees, and judicial officers?
50. The fact is that despite Dr. Cordero's protest, both Trustee Reiber ratified and Judge Ninfo condoned the unlawful termination by Att. Weidman of the §341 meeting of creditors on March 8, 2004, where the DeLanos would have had to answer under oath the questions of Dr. Cordero, who was the only creditor present but was thus cut off after asking only two questions. Then it was for the Trustee to engage in his reluctant pro forma request for documents. When Dr. Cordero moved for his removal on July 9, 2004 (¶39 above), he also submitted to Judge Ninfo his analysis of the token documents produced by the DeLanos and showed on the basis of such documentary evidence how they had engaged in bankruptcy fraud, particularly concealment of assets. Thereupon an artifice was concocted to eliminate him from the case altogether: The DeLanos moved to disallow his claim, knowing that Judge Ninfo would disregard the fact, among others,

that such a motion was barred by laches and untimely. Not only did the Judge permit the motion to proceed, but he also barred any other proceeding unrelated to its consideration.

51. From then on, Trustee Reiber pretended that he too was barred from holding a §341 meeting of creditors in order to deny Dr. Cordero's request that such meeting be held so that he could examine the DeLanos under oath. Dr. Cordero confronted not only the Trustee, but also his supervisors, Assistant U.S. Trustee Kathleen Dunivin Schmitt and U.S. Trustee for Region 2 Dierdre A. Martini, with the independent duty under §§341 and 343 as well as FRBkrP 2004(b) for members of the Executive Branch to hold that meeting regardless of any action taken by a member of the Judicial Branch. Neither supervisor replied. Eventually Trustee Reiber relented, but refused to assure him that the meeting would not be limited to one hour. Dr. Cordero had to argue again that neither Trustee Reiber nor his supervisors had any basis in law to impose such arbitrary time limit given that §341 provides for an indefinite number of meetings. In his letter of December 30, 2004 (E:283), he backed down from that limit.
52. Finally, the meeting was held on February 1, 2005, at Trustee Reiber's office. It was recorded by a contract stenographer. The DeLanos were accompanied by Att. Werner. The Trustee allowed the Attorney, despite Dr. Cordero's protest, unlawfully to micromanage the meeting, intervening at will constantly and even threatening to walk out with the DeLanos if Dr. Cordero did not ask questions at the pace and in the format that he, Att. Werner, dictated.
53. Nevertheless, Dr. Cordero managed to point out the incongruities in the DeLanos' statements about their mortgages and credit card use. He requested a title search and a financial examination by an accounting firm that would produce a chronologically unbroken report on the DeLanos' title to real estate and use of credit cards. However, the Trustee refused to do so and again requested pro forma only some mortgage papers. Although the DeLanos admitted that they had them at home, the Trustee allowed them two weeks for their production...and still they failed to produce them by the end of that period.
54. Dr. Cordero had to ask Trustee Reiber to compel the DeLanos to comply with the Trustee's own pro forma request. They produced incomplete documents (E:285-297) once more (¶40 above) because Att. Werner made available only what he self-servingly considered "the relevant portion" of those documents (E:284). Dr. Cordero analyzed them in his letter of February 22, 2005, to the Trustee (E:29) with copy to his supervisors, Trustees Schmitt and Martini, who never replied. But even incomplete, those documents raise more and graver questions than they answer, for they show an even longer series of mortgages relating to the same home at 1262 Shoecraft Road:

Mortgage referred to in the incomplete documents produced by the DeLanos to Trustee Reiber	Exhibit page #	Amounts of the mortgages
1) took out a mortgage for \$26,000 in 1975;	E:285	\$26,000
2) another for \$7,467 in 1977;	E:286	7,467
3) still another for \$59,000 in 1988; as well as	E:289	59,000
4) an overdraft from ONONDAGA Bank for \$59,000 and	E:298	59,000
5) owed \$59,000 to M&T in 1988;	E:298	59,000
6) another mortgage for \$29,800 in 1990,	E:291	29,800
7) even another one for \$46,920 in 1993, and	E:292	46,920
8) yet another for \$95,000 in 1999.	E:293	95,000
	Total	\$382,187.00

55. The whereabouts of that \$382,187 are unknown. On the contrary, Att. Werner's letter of February 16, 2005 (E:284), accompanying those incomplete documents adds more unknowns:

It appears that the 1999 refinance paid off the existing M&T first mortgage and home equity mortgage and provided cash proceeds of \$18,746.69 to Mr. and Mrs. DeLano. Of this cash, \$11,000.00 was used for the purchase of an automobile, as indicated. Mr. DeLano indicates that the balance of the cash proceeds was used for payment of outstanding debts, debt service and miscellaneous personal expenses. He does not believe that he has any details in this regard, as this transaction occurred almost six (6) years ago.

56. So after that 1999 refinancing, the DeLanos had clear title to their home and even money for a car and other expenses, presumably credit card purchases and debt service. But only 5 years later, they owed \$77,084.49 on their home, \$98,092.91 on credit cards, and \$10,285 on a 1998 Chevrolet Blazer (Schedule D), not to mention the \$291,470 earned in 2001-03 that is nowhere to be seen...and owing all that money just before retirement is only "details" that a career banker for 32 years "does not believe that he has". Mindboggling!

57. Although Dr. Cordero identified these incongruous elements (E:300-302) in the petition and documents, the Trustee had nothing more insightful to write to Att. Werner than "I note that the 1988 mortgage to Columbia, which later ended up with the government, is not discharged of record or mentioned in any way, shape, or form concerning a payoff. What ever happened to that mortgage?" (E:306)

58. To that pro forma question Att. Werner produced some documents to the Trustee on March 10, 2005 (E:307), but not to Dr. Cordero, who he could be sure would analyze them. Dr. Cordero protested to Att. Werner and the Trustee for not having been served (E:308). When Att. Werner

belatedly served him (E:309), it became apparent why he had tried to withhold the documents (E:310-323) from him: They were printouts of pages from the website of the Monroe County Clerk's Office that had neither beginning nor ending dates of a transaction, nor transaction amounts, nor property location, nor current status, nor reference to the involvement of the U.S. Department of Housing and Urban Development . What a pretense on the part of both Att. Werner and Trustee Reiber! No wonder Dr. Cordero's letter of March 29 analyzing those printouts and their implications (E:324) has gone unanswered by Trustees Reiber, Schmitt, and Martini (E:327-330).

59. As a result, hundreds of thousands of dollars received by the DeLanos during 30 years are unaccounted for, as are the \$291,470 earned in the 2001-03 period, over \$670,000!, because Trustee Reiber evaded his duty under §704(4) and (7) to investigate the debtors by requiring them to explain their suspicious declarations and provide supporting documents. Not coincidentally, when on February 16, 2005, Dr. Cordero asked Trustee Reiber for a copy of the transcript of the February 1 meeting, he alleged that Dr. Cordero would have to buy it from the stenographer because she had the rights to it! Yet she created nothing and simply produced work for hire.
60. The evidence indicates that since that meeting on February 1 till the confirmation hearing on July 25, 2005, Trustee Reiber never intended to obtain from the DeLanos any documents to answer his pro forma question about one undischarged mortgage; they did not serve on Dr. Cordero any such documents even though under §704(7) he is still a party in interest entitled to information; and the Trustee neither introduced them into evidence at that hearing nor made any reference to them in the scrap papers of his "Report". Do they fear that those documents will reveal conceal assets?

C. The affirmation by both Judge Ninfo and Trustee Reiber that the DeLanos were investigated for fraud is contrary to the evidence available and lacks the supporting evidence that would necessarily result from an investigation so that it was an affirmation made with reckless disregard for the truth

61. Judge Ninfo disregarded the evidence that Trustee Reiber never requested a single supporting document from the DeLanos before Dr. Cordero asked that they be investigated and thereafter always avoided investigating them, making pro forma requests and satisfying himself with token documents, if any was produced. The Judge disregarded the incriminating evidence in those documents and the Trustee's conflict of interests between dutifully investigating the DeLanos and ending up being investigated himself. Instead, he accepted the Trustee's "Report" although it neither lists Dr. Cordero's objections nor mentions any investigation, much less any findings. In so doing, he showed his unwillingness to recognize or incapacity to notice how suspicious it was that an investigation that

the Trustee had supposedly conducted over 16 months had not registered even a blip in that "Report". By contrast, the Judge was willing to notice the air exhaled by Trustee Reiber reading his statement into the record despite his failure to file any documents attesting to any investigation. He even allowed the Trustee's ruse of not filing even that statement so as to avoid making it available in the docket, thus requiring the expensive, time consuming, and tamper-susceptible alternative of asking for a transcript from Reporter Dianetti (E:9-11; 1stSupp.§II).

62. Nor did the Judge draw the obvious inference that the same person who produced such damning evidence of his unprofessional and perfunctory work in his scrap paper "Report" was the one who would have conducted the investigation and, thus, would have investigated to the same dismal substandard of performance. Therefore, common sense and good judgment required that the Trustee's investigation be reviewed as to its contents, method, and conclusions. No such review took place, which impugns Judge Ninfo's discretion in rushing to clear the DeLanos from, as he put it, any "allegations (the evidence notwithstanding) of bankruptcy fraud".
63. The documentary and circumstantial evidence justifies the conclusion that Trustee Reiber and Judge Ninfo have engaged with others in a pattern of non-coincidental, intentional, and coordinated acts of wrongdoing, including a sham bankruptcy fraud investigation, the process-abusive artifice of a motion to disallow Dr. Cordero's claim, and the charade of the meeting of creditors to appease Dr. Cordero and feign compliance with §341. In disregard of the law, the rules, and the facts, they began with the prejudgment and ended with the foregone conclusion that the DeLanos had filed a good faith petition and that their Chapter 13 plan should be confirmed. They confirmed the plan without investigating the DeLanos as the surest way of forestalling a finding of the DeLanos having filed a fraudulent petition, which would have led to their being criminally charged, which in turn would have induced Mr. DeLano to enter into a plea bargain whereby he would provide incriminating testimony of participation in a bankruptcy fraud scheme.
64. It follows that insofar as Trustee Reiber made the untrue statement that "The Trustee completed his investigation of allegations of bankruptcy fraud and found there to be none" in order to induce the Bankruptcy Court to confirm the DeLanos' plan and to escape his own conflict of interests (§39 above), the Trustee perjured himself and practiced, to secure a benefit for himself, fraud on the Court as an institution even if Judge Ninfo knew that his statement was not true; as well as fraud on Dr. Cordero, to whom he knowingly caused the loss of rights as a creditor of the DeLanos.
65. It also follows that insofar as Judge Ninfo knew or by carrying out his judicial functions with due diligence and impartiality would have known, that Trustee Reiber had conducted no

investigation or that the DeLanos had not filed or supported their petition in good faith, but nevertheless reported the Trustee's statement to the contrary and stated that "The Court found that the Plan was proposed in good faith" in order to confirm their plan, the Judge suborned perjury and practiced fraud on the Court as an institution and on Dr. Cordero, whom he thereby knowingly denied due process. In so doing, the Judge and the Trustee have caused Dr. Cordero the loss of an enormous amount of effort, time, and money and inflicted on him tremendous emotional distress.

III. Request for Relief

66. Therefore, Dr. Cordero respectfully requests that the Court of Appeals and the Judicial Council:
- a) do not reappoint Judge Ninfo to a new term of office as bankruptcy judge;
 - b) open an investigation into the participation of Judge Ninfo in a bankruptcy fraud scheme and determine how high the scheme reaches and whether it involves official corruption;
 - c) investigate why Trustee Reiber did not investigate the financial affairs of the DeLanos and whether his statement and Judge Ninfo's that he had conducted such investigation and it had cleared the DeLanos of fraud constituted perjury, subornation of perjury, and fraud on the court;
 - d) determine whether the DeLanos' petition was filed in bad faith and the plan was confirmed by means forbidden by law, in violation of 11 U.S.C. §1325(a)(3), and worked fraud on the court;
 - e) determine whether Judge Ninfo influenced Reporter Dianetti to refuse to certify the reliability of the transcript of the *DeLano* evidentiary hearing and designate another reporter to prepare it;
 - f) investigate whether the pattern of non-coincidental, intentional, and coordinated acts of bias and disregard for the law, the rules, and the facts engaged in by Judge Ninfo and others in *DeLano* and *Pfuntner* has become the modus operandi of the Bankruptcy and District Courts, WDNY; and
 - g) refer the *DeLano* and *Pfuntner* cases for investigation 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 Department of Justice and FBI offices in Washington, D.C., or Chicago, who are unfamiliar with either case, and unrelated and unacquainted with any of the parties or officers that may be investigated, and that no staff from such offices in either Rochester (where the DoJ office is literally the next-door neighbor of the Office of the U.S. Trustee) or Buffalo participate in any way in such investigation.

Dated: September 5, 2005
59 Crescent Street
Brooklyn, NY 11208

Dr. Richard Cordero
Dr. Richard Cordero
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Table of Exhibits
in support of
the 2nd Supplement with New Evidence
against the reappointment of
Bankruptcy Judge John C. Ninfo, II, WBNY
submitted to
the Second Circuit
Court of Appeals and Judicial Council
on September 5, 2005
by
Dr. Richard Cordero

I. Comments

E:#=exhibits page #

Dr. Cordero’s letter of **March 17, 2005, to Circuit Executive Karen Greve Milton** in response to the request of the Court of Appeals for the Second Circuit for public **comment** on the **reappointment** of Bankruptcy Judge John C. **Ninfo, II**, to a new term of officeE:12

[**Supplementation of August 3, 2005, of Comments** against the reappointment of Bankruptcy Judge John C. Ninfo, II, WBNY, submitted to the Court of Appeals for the Second Circuit and the Judicial Council of the Second Circuit.....previously submitted 1-20 ToE 21-23]

II. Exhibits

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Dr. Richard Cordero

Ph.D., University of Cambridge, England
M.B.A., University of Michigan Business School
D.E.A., La Sorbonne, Paris

59 Crescent Street
Brooklyn, NY 11208-1515
tel. (718) 827-9521; CorderoRic@yahoo.com

June 25, 2005

Ms. Mary Dianetti
612 South Lincoln Road
East Rochester, NY 14445

Re: transcript of the evidentiary hearing held on March 1, 2005, in the U.S. Bankruptcy Court in Rochester in the case of David and Mary Ann DeLano, docket no. 04-20280

Dear Ms. Dianetti,

Thank you for your letter of June 13, whose envelope was postmarked June 15 by the Federal Station in Rochester, the one situated in the Federal Building where the Bankruptcy Court is.

I appreciate your stating the number of stenographic packs and folds in the recording of the above-captioned DeLano evidentiary hearing. I note that you stated that:

Also, I am listing the number of stenographic packs and the number of folds in each pack and this is the same information that was give to you on the afternoon of the hearing as I had marked each pack with the number of folds within your view and am just giving you those exact numbers at this time.

I assume that this does not mean that you are merely copying the information that you gave me on March 1 at the end of the hearing. Instead, I made what I meant you to state quite clear in my latest letter to you of May 26:

[since] you necessarily had to count the number of stenographic packs and their folds to calculate the number of transcript pages and estimate the cost of the transcript...provide me with that count...Therefore...

2. state the number of stenographic packs and the number of folds in each that comprise the whole recording of the evidentiary hearing and that will be translated into the transcript.

I hope that you will realize that the way you have formulated your answer raises concerns, coming as it does after your refusal to provide the requested information in your letters to me of May 3 and 19 despite my express requests in my letters to you of April 18 and May 10 and 26. Yet, your answer makes providing that information appear as easy to do as simply copying it from your records, which conversely makes your refusal to provide it so difficult to understand.

Consequently, to eliminate any margin whatsoever for divergence between my request for information and your answer, I take the latter to mean the following:

1. Upon my initial and subsequent requests for you to state the cost of the transcript based on a count of the stenographic packs and folds of the whole recording of the DeLano evidentiary hearing,
2. you actually counted them a second time; found the number of such packs and folds to coincide exactly with the number of packs and folds that you stated in writing for me at the end of such hearing; and
3. based on that second count you calculated the cost of the transcript at the official and customarily charged rate of \$3.30 per page; arrived at an estimate of between \$600 and \$650; have agreed with me that the final cost will not exceed \$650; and will include in the transcript everything and only that which is contained in those packs and folds.

If my understanding of your answer diverges from either your intended answer or all the facts in any way that you consider to be significant or even insignificant, I formally request that you state such divergence. If you do not do so, I will assume your silence to confirm that my understanding as above stated coincides totally with both your intended answer and with all the facts. This statement of my understanding is as simple as the formulation that you have heard perhaps hundreds of times and that courts all over the nation assume every lay person understands and is in a position to affirm: your confirmation, whether in writing or by silence, is the truth, the whole truth, and nothing but the truth.

Hence, I hereby make your confirmation of my understanding part of the essence of this contract for service between you and me. Similarly, the following conditions are of the essence of this contract and constitute conditions precedent to my obligation to pay you:

1. You will provide a transcript that is an accurate and complete written representation, with neither additions, deletions, omissions, nor other modifications, of the oral exchanges among the litigants, the witness, the judicial officers, and any other third parties that spoke at the DeLano evidentiary hearing. At my discretion and for the purpose, inter alia, of ascertaining such accuracy and completeness, you will make available, upon my designation, to a government agency or a private entity, all the packs and folds that you used to record the hearing and, if different, also those that you used to prepare the transcript.
2. Upon completion of the transcript, you will simultaneously file one paper copy with the clerk of the bankruptcy court and mail to me by priority mail a paper copy together with an electronic copy on a floppy disk in PDF format and in Microsoft Word, or otherwise in Word Perfect; and you will not make available any copy in any format to any other party, whether a court officer –whether a judicial or clerical officer-, litigant, or any other person, but if you do make a copy available to any of them either before or after filing or mailing it to me, you will let me know immediately and will exempt me from payment and reimburse me any payment already made.
3. You will truthfully state in your certificate accompanying the transcript that up to the time of your receipt of this letter and from then until the moment that the copies of the transcript are filed and mailed to me, you have not discussed with any other party (aside from me), whether a court officer, litigant, or any other person, and none of them has attempted to discuss with you, the content that should form part or that did form part of your stenographic recording of the DeLano evidentiary hearing or of the transcript; but if you have discussed such content or any of them has attempted to discuss it with you, then you will state their names, the circumstances and content of such discussions or attempt at such discussions, and their impact on the preparation of the transcript.

In consideration for your promise to perform, and your actual performance of, your transcription service as described above and in accordance with applicable law and rules, I promise to pay you upon confirmation thereof up to \$650, by credit card if acceptable to you, and in any event by check.

I trust you realize that what we are trying to do here is exceedingly easy to understand and basic to any contractual agreement: **You give me a good transcript and I pay you good money.**

Sincerely,

Dr. Richard Cordero

612 South Lincoln Road
East Rochester, New York 14445
July 1, 2005

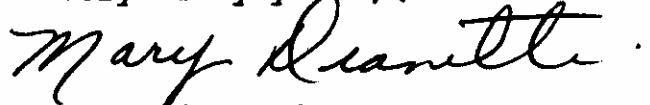
Dr. Richard Cordero
24 Crescent Street
Brooklyn, New York 11208-1515

Dear Dr. Cordero:

I am in receipt of your letter of June 25, 2005. Please be advised that I will provide you with (1) a paper copy of the transcript of the hearing held on March 1, 2005, and (2) a PDF copy of that transcript on a CD-ROM, to be sent to you by first-class mail, upon receipt of a money order or certified check in the amount of \$650.00 payable to "Mary Dianetti." The balance of your letter of June 25, 2005 is rejected.

I am providing a copy of this letter, together with yours of June 25, to the U.S. Bankruptcy Court and U.S. District Court so that their file may be complete.

Very truly yours, ,



Mary Dianetti
Bankruptcy Court Reporter

cc: Clerk, U.S. Bankruptcy Court
cc: U.S. District Court

Dr. Richard Cordero

Ph.D., University of Cambridge, England
M.B.A., University of Michigan Business School
D.E.A., La Sorbonne, Paris

59 Crescent Street
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March 17, 2005

Ms. Karen Greve Milton
Circuit Executive
U.S. Courts for the Second Circuit
40 Foley Square, Rm 2904
New York, NY 10007

Re: public comments on the reappointment of Judge John C. Ninfo, II

Dear Ms. Milton,

I hereby bring to the attention of the Second Circuit Court of Appeals and Judicial Council facts on the basis of which they should decide not to reappoint Bankruptcy Judge John C. Ninfo, II, WBNY, to a new term of office because of his participation in a pattern of wrongdoing and bias.

Those facts are found in the 15 orders of Judge Ninfo (235 et seq., *infra*) and other documents and statements entered in the dockets of two cases which I, as a party, know first-hand, i.e., *Pfuntner v. Gordon et al*, no. 02-2230 (401), and *In re DeLano*, no. 04-20280 (425). These writings are supplemented by the stenographic recordings of the 15 hearings in those cases (56). These materials produced by or in connection with Judge Ninfo describe action taken by him since 2002 that so repeatedly and consistently disregards the law, the rules, and the facts (cf. 7§2) to the benefit of local parties (15C), including debtors (471 et seq.) that the evidence indicates have concealed assets (18§1;24§3), and to my detriment, I being the only non-local and pro se party, as to establish his participation in a pattern of non-coincidental, intentional, and coordinated (89F; 168§II) wrongful acts (66§I) supporting a bankruptcy fraud scheme (216§V).

In a judicial misconduct complaint (111) and in motions filed in this Court (125; 201) in *In re Premier*, dkt. no. 03-5023 (451), I informed of these facts Chief Judge John M. Walker, Jr., (cf. 151; 219) and members of this Court and of the Judicial Council, who dismissed them without any investigation. So routinely this is the way that judges dispose of complaints about their peers that last June Justice Rehnquist appointed Justice Breyer to head a committee to study the judges' misapplication of the Misconduct Act of 1980. Indeed, judges have turned the self-disciplining mechanism of judicial complaints into a sham, a term used advisedly upon the foundation of facts. Do judges also disregard systematically comments from the public before reappointing a bankruptcy judge, thereby turning the request for such comments into a public relations sham (cf 23§2)? The term is justified given that under 28 U.S.C. §152 the appointment does not even require such request, let alone the holding of public hearings, cf. §44(a).

If the judges of the Court or the Council are serious about judicial integrity, they can review the exhibits (51) and ask themselves whether Judge Ninfo abides by his oath of office at §453 or knows the law (41D;131B-C). But if they cannot imagine one of their own being biased unless they witness him being unashamedly so, they can listen to him in his own words by ordering a transcript of the March 1 hearing in the *DeLano* case (31). Then they can ascertain what drives his conduct and the scheme through a DoJ and FBI investigation (44F). If the appearance, not the reality, of bias is enough under §455 to require the recusal of a judge, as was reaffirmed in *Microsoft v. U.S.*, 530 U. S. 1301, 1302 (2000) (*Rehnquist, C. J.*), how can the evidence of judicial wrongdoing linked to a bankruptcy fraud scheme not be enough for a judge to discharge his or her duty to investigate a complaint about it or report it for investigation under 18 U.S.C. §3057? How much must Judge Ninfo abuse a litigant or how public must his wrongdoing be before his peers care?

sincerely, 

**USEFUL ADDRESSES FOR THE INVESTIGATION
OF *DELANO* AND *PFUNTNER***

I. In re David and Mary Ann DeLano
docket no. 04-20280, WBNY

Ms. Mary Dianetti
Bankruptcy Court Reporter
612 South Lincoln Road
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Chapter 13 Trustee
South Winton Court
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Ms. Deirdre A. Martini
U.S. Trustee for Region 2
Office of the United States Trustee
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fax (212) 668-2255

II. Pfuntner v. Gordon et al.
docket no. 02-2230, WBNY

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Manufacturers & Traders Trust Bank [cf. E:274]
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TRUSTEE'S FINDINGS OF FACT AND SUMMARY OF 341 HEARING

1. Debtor(s) **DAVID G DELANO** Bk.# 04-20280
MARY ANN DELANO

2. Attorney **CHRISTOPHER K WERNER, ESQ** Filing Fees: \$ 185 Paid
 Plan:

A. Summary: \$ 1940 per month by wage order
 \$ 14145* annually **R**

Repayment to secured creditors \$ 6900
 Repayment to priority creditors \$ 16,655
 Repayment to unsecured creditors \$ 4646 ~5% specific estimated

Classification of unsecured creditors None
 Class _____ % \$ _____
 Class _____ % \$ _____

Rejection of executory contracts None

Other: * Payments decrease to \$635/month in July, 2004; then increase to \$1940/month in August, 2006. Plus proceeds of accounts receivable.

B. Feasibility: **Why then returned loan paid**
 Total Indebtedness \$ 185462 including mortgages
 Monthly Income (net) \$ 4886.50 ~~2946.50~~ (gross) \$ 7501.
 Less Estimated Expenses \$ 2946.50
 Excess for Wage Plan \$ 1940.
 Duration of Plan 3 years

92,920 TOTAL

Why End of Sec a Unemployment

Payments are not adequate to execute plan.

C. Valuation of secured claims and lease arrears:
 Interest rate unless otherwise stated: 8 1/4 %

Name of Creditor	Amount of Security	Security Claimed	Perfectured	341 Valuation	Disputed
Capital One Auto	\$ 10,285	198 Chevy Blazer	Yes	\$ 6900	STIP

3. Best interest of creditors test:

A. All assets were listed.

B. Total market value of assets: \$ 256,562

Less valid liens \$ 83,734

Less exempt property \$ 17,173.2

Available for judgment liens \$ 2,666

Less priority claims \$ 16,655

(Support \$ _____)

C. Total available for unsecured creditors in liquidation \$ 10,960

D. Amount to be distributed to unsecured creditors \$ 4,646

E. Nature of major non-exempt assets: _____

4. Debtor(s) states that the plan is proposed in good faith with intent to comply with the law.

5. Debtor(s) states that to the best of his/her/their knowledge there are no circumstances that would affect the ability to make the payments under the plan.

6. (If a business) The Trustee has investigated matters before him relative to the condition of debtor's business, and has not discovered any actionable causes concerning fraud, dishonesty, incompetence, misconduct, mismanagement or irregularities in managing said business.

7. Objections to Confirmation: Trustee - disposable income -
1) IRA available; 2) loan payment available;
3) pension loan ends 10/05.

8. Debtor requests no wage order because, (+) 2 concerns
(1)

9. Other comments: 1) ~~Best Interest \$1255~~
Attorney fees (OK) AF's
But court
Precedent
concerned
confirmation order

10. Converted from Chapter 7 because (2)

11. The Trustee recommends that this Plan not be confirmed.

ATTORNEY'S FEES: \$ 1350

Additional fees Anticipated? Yes \$ 16,655
no

GM
GEORGE M. REIBER
TRUSTEE

IN RE:

DeSousa David + MaryAnn

BK. #

04-20280

I/We filed Chapter 13 for one or more of the following reasons:

- Lost employment *(Wife) Age 59*
- Hours or pay reduced *(Husband 62) To delay retirement to complete plan*
- Matrimonial
- Garnishments
- Medical problems
- To receive a Chapter 13 discharge
- Filed a previous bankruptcy proceeding within six (6) years
- Owe priority (example: tax) claims
- Reconstruct credit rating
- To pay back creditors as much as possible *w/ 3 yrs prior to retirement*
- To stop creditor harassment
- To stop foreclosure or other legal proceedings
- To cram down secured liens
- To avoid contracts
- Overextension of credit
- Decline in income from business, commissions or business failure
- Overspending
- Student loans
- Children's college expenses *pre-1990 when wages reduced \$30,000 → 19,000*
- Avoid Chapter 7 substantial abuse charge
- Protect debtor's property
- Others: _____

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK**
IN RE:

**ORDER TO EMPLOYER
TO PAY TRUSTEE**

**DAVID G. & MARY ANN DELANO,
Debtor(s),**

BK# 04-20280

**EMPLOYEE: DAVID G. DELANO
S.S. #xxx-xx-3894**

Upon representation of the Trustee or other interested party, the Court finds that:

The above-named debtor has pending in this Court a proceeding for the adjustment of debts by an individual with regular income under Chapter 13 of the Bankruptcy Code (Title 11 U.S.C.) and pursuant to the provisions of said statute and the debtor's plan the debtor has submitted all future earnings and wages to the exclusive jurisdiction of this Court for the execution of debtor's plan; and

That under the provisions of 11 U.S.C. §1306 this Court has exclusive jurisdiction of the earnings from service performed by the debtor during the pendency of this case and may require the employer of the debtor, upon the order of this Court, to pay over such portion of the wages or earnings of the debtor as may be needed to effectuate said plan, and that such an order is necessary and proper, now therefore,

IT IS ORDERED, that until further order of this Court the employer of said debtor:

M&T BANK

deduct from the earnings of said debtor the sum of **\$293.08 bi-weekly** to begin on the next payday following the receipt of this order and deduct a similar amount for each pay period there-after, including any period for which the debtor receives periodic or lump sum payment for or on account of vacation, termination, or other benefits arising out of present or past employment of the debtor, and to forthwith remit the sum so deducted to: **GEORGE M. REIBER, TRUSTEE, Chapter 13 Trustee, PO Box 490, Memphis, TN 38101-0490; (585)427-7225; (PLEASE INCLUDE THE DEBTOR'S FULL NAME AND CASE NUMBER ON THE CHECK REMITTED)** and

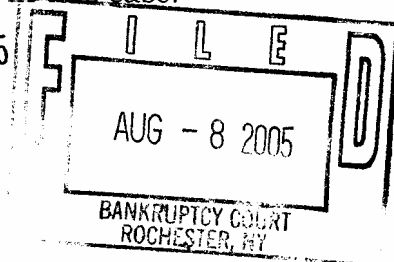
IT IS FURTHER ORDERED, that said employer notify said Trustee if the employment of said debtor be terminated and the reason for such termination; and

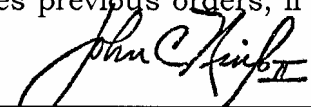
IT IS FURTHER ORDERED, that all earnings and wages of the debtor, except the amount required to be withheld by the provisions of any laws of the United States or laws of any State or political subdivision, or by an insurance, pension, pension loans, current maintenance or support payments or by the order of this Court, be paid to the aforesaid debtor in accordance with the employer's usual payroll procedures; and

IT IS FURTHER ORDERED, that no deductions for or on account of any garnishment, wage assignment, credit union or other purpose not specifically authorized by the Court be made from the earnings of said debtor; and

IT IS FURTHER ORDERED, that this order supersedes previous orders, if any, made to the debtor or employer in this case.

Dated: AUG - 8 2005




**HON. JOHN C. NINFO, II
BANKRUPTCY JUDGE**

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK**

IN RE:

**DAVID G. & MARY ANN DELANO,
Debtor(s),**

**ORDER CONFIRMING
CHAPTER 13**

BK #04-20280

**S.S. #xxx-xx-3894
#xxx-xx-0517**

A Petition was filed by Debtor(s) under Chapter 13 of the Bankruptcy Code, and a meeting of creditors conducted upon due notice pursuant to 11 U.S.C. §341 at which the Chapter 13 Trustee, Debtor(s), and attorney for Debtor(s) were present and creditors or representatives of creditors were afforded an opportunity to be heard.

A hearing on confirmation of the Plan has been held upon due notice pursuant to 11 U.S.C. §1324. The Court has heard and determined all objections to confirmation and to Debtor's Schedules and has considered the Plan as proposed or modified, the Trustee's Report and the testimony of Debtor.

THE COURT THEREFORE FINDS:

- (1) The Plan complies with the provisions of Chapter 13, Title 11, United States Code, and other applicable provisions of Title 11;
- (2) The contents of the plan comply with 11 U.S.C. Section 1322 where applicable;
- (3) The Plan represents the Debtor's reasonable effort and has been proposed in good faith and not by any means forbidden by law;
- (4) The Plan complies with the standards required by 11 U.S.C. Section 1325 for confirmation; and
- (5) Any objections to the plan have been disposed of, and there is presently pending no objection to confirmation of the instant Plan or Debtor's Schedules.

It is accordingly, ORDERED that

- (1) Debtor's Plan under Chapter 13 of the Bankruptcy Code, as proposed or modified, is confirmed.
- (2) Debtor is stayed and enjoined from incurring any new debts in excess of \$500.00 except such debts as may be necessary for emergency medical or hospital care without the prior approval of the Trustee or the Court unless such prior approval was impractical and therefore cannot be obtained.
- (3) Except as provided by specific order of this Court, all entities are and continue to be subject to the provisions of 11 U.S.C. §362 insofar as they are stayed or enjoined from commencing or continuing any proceeding or matter against Debtor, as the same is defined by §362, and subject to the provisions of 11 U.S.C. §1301 insofar as they are stayed or enjoined from commencing or continuing any proceeding or matter against a co-debtor, as the same is defined by §1301.

The provisions of the Plan bind the Debtor(s) and each creditor, whether or not such creditor has objected to, has accepted, or has rejected the plan.

The Debtor(s) shall forthwith and until further order of the Court pay to the Trustee in good funds the sum of **\$1940.00 per month by wage order. Payments decrease to \$635.00 monthly in July, 2004; then increase to \$960.00 monthly in August, 2006 when pension loan ends; plus proceeds of mother's annuity.**

(4) A fee of **\$18,005.00** is allowed the attorney for the debtor(s) herein for all services rendered in connection with this Plan, except as otherwise ordered and allowed by the Court.

(6) All of the Debtor(s) wages and property, of whatever nature and kind and wherever located, shall remain under the exclusive jurisdiction of this Court; and title to all of the debtor's property, of whatever nature and kind and wherever located is hereby vested in the debtor during pendency of these Chapter 13 proceedings pursuant to the provisions of 11 U.S.C. §1327.

(7) From the Debtor(s) funds the Trustee is directed to make payments in the following order:

- a. Filing fee to the Clerk of the Court, U.S. Bankruptcy Court (if unpaid);
- b. Retain at all times sufficient funds to pay all other accrued administrative expenses;
- c. The unpaid balance of the above described fee to the debtor's attorney;

d. Priority payments in full as allowed by the Court, except where priority claims are deferred until payment of the secured claims;

e. Secured claims shall retain their liens as hereinafter set forth:

<u>CREDITOR</u>	<u>SECURITY</u> <u>VALUE</u>	<u>SECURITY</u>	<u>RATE</u>
Capital One Auto	\$6,900.00	'98 Chevy	8.25%

Until the secured claim is paid in full, the secured creditor shall retain its lien. After the secured claim has been paid in full, the Debtor(s) will be entitled to an immediate lien release. Any timely and properly filed claim which alleges a security interest and is filed subsequent to the Confirmation Hearing shall be allowed as unsecured only for purposes of payment under the plan, except as may otherwise be agreed to by the Debtor(s) and the Court.

f. The balance of funds not retained for administrative expenses or used for payment of secured or priority claims shall be accumulated and distributed to unsecured creditors, as follows.

g. Classified unsecured claims as hereinafter set forth:

<u>CREDITOR</u>	<u>AMOUNT</u>	<u>CLASSIFICATION</u>	<u>DIVIDEND</u>
NONE			

h . General unsecured creditors shall be paid a **pro rata share** of their claims as are finally determined by the Court; notwithstanding the above, the plan will not be deemed completed until the debtor(s) pay(s) three years worth of plan payments, unless allowed unsecured claims are paid in full. No claims shall be allowed unless the creditor shall file a proof of claim within 90 days of the first date set for the First Meeting of Creditors; payment to unsecured creditors as allowed by the Court will be made in monthly installments of not less than \$15.00. **Plan to run 3 years.**

i. Any temporary reduction in, or suspension of installment payments under this plan, for a period not to exceed ten (10) weeks may be granted upon application of the debtor, without notice to creditors, as the Court or Trustee deems proper.

(8) The debtor has rejected as burdensome the following executory contract(s) of the debtor:

NONE

Any claim timely and properly filed by a creditor arising from rejection of such executory contract(s) shall be allowed as if such claim had arisen before the date of the filing of the petition, subject to the right of the debtor or the Trustee to object to the amount of the claim.

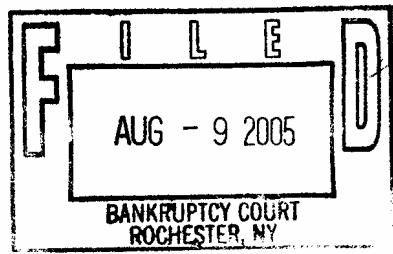
(9) The following secured creditors will be paid by the debtor directly. Said secured claims are either being paid pursuant to their original contract or pursuant to new agreements reached between the parties. To the extent that any such new agreements exist, the parties are hereby ordered to execute any and all documents necessary to reflect the new notes and obligations which exist between the parties. In the event of a dismissal of the plan, the secured creditors may reinstate the terms of the original obligations, subject to the further order of this court. All parties will promptly execute any and all documents necessary to be filed. To the extent that the new arrangements reflects an extension of the obligations secured by valid liens filed prior to the filing of the petition, said liens will continue in existence as of the date of the filing of the lien, and not as of the date of the new arrangement between the parties, unless this court orders otherwise or the parties so stipulate otherwise.

<u>CREDITOR</u>	<u>SECURED CLAIM</u>	<u>SECURITY</u>	<u>BASIC TERMS</u>
Genesee Regional	\$76,300.71	Mortgage	Original Contract

(10) Upon conversion of this case to a case under another chapter, the failure of the debtor to honor bad funds negotiated by the Chapter 13 Trustee shall be deemed a willful failure to obey an order of this Court.

Dated: *8/9/05*
Rochester, New York

[Signature]
HON. JOHN C. NINFO, II
BANKRUPTCY JUDGE





**BOYLAN, BROWN,
CODE, VIGDOR & WILSON, LLP**
ATTORNEYS AT LAW

July 7, 2005

George M. Reiber, Esq.
3136 South Winton Road
Rochester, New York 14623

Re: David G. and Mary Ann DeLano, Case No. 04-20280

Dear Mr. Reiber:

As per our prior correspondence, you have indicated that our application for payment of attorney's fees from the bankruptcy estate could be considered at the currently scheduled July 25, 2005 confirmation hearing at 3:30 p.m. at Bankruptcy Court. As you have suggested, we enclose herewith our statement for fees for the period of April 8, 2004 through the current date, with anticipated time for confirmation and continuation of the pending Cordero appeal. We have also forwarded a copy to Judge Ninfo so that the statement could be before him at the time of confirmation.

If you feel that a formal application for fees is in order, we would be happy to submit the same. However, you have indicated that it is common that such applications are considered by the Court simply as part of confirmation and have proceeded accordingly.

We look forward to the hearing on July 25th.

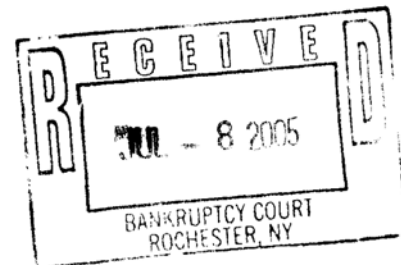
Very truly yours,

BOYLAN, BROWN,
CODE, VIGDOR & WILSON, LLP


Christopher K. Werner

CKW/trm
Enclosure

cc: Hon. John C. Ninfo, II ✓
David G. and Mary Ann DeLano



2400 Chase Square • Rochester, New York 14604 • 585-232-5300 • FAX: 585-232-3528
60-70 South Main Street, Suite 250 • Canandaigua, New York 14424 • 585-396-0400 • FAX: 585-232-3528
<http://www.boylanbrown.com>

E:278

Att. Werner's application of July 7, 2005, to Trustee Reiber for payment of legal fees re the DeLanos



**BOYLAN, BROWN,
CODE, VIGDOR & WILSON, LLP**

ATTORNEYS AT LAW

2400 Chase Square
Rochester, NY 14604

June 23, 2005

David G. & Mary Ann DeLano
1262 Shoecraft Road
Webster, NY 14580

Invoice# 54731
Client# 030633
Billing through 06/23/2005

030633-00001 Chapter 13

PROFESSIONAL SERVICES

04/08/2004	CKW	Call with client; Correspondence re Cordero objection	0.50 hrs.
04/14/2004	CKW	Receive and review George Reiber's letter re adjourned examination date with Cordero; Call to client; Review Cordero motion (31 pages) and prepare notes for response	1.30 hrs.
04/15/2004	CKW	Response to Corder objection	1.00 hrs.
04/16/2004	CKW	Receive and review additional motion and memo from Cordero; Revise statement in opposition; Call from Bankruptcy Court re application on submission	0.80 hrs.
04/19/2004	CKW	Receive and review Cordero fax to Reiber of 4/15/04	0.30 hrs.
04/22/2004	CKW	Call to client re document demands in response to 4/20 letter from George Reiber; Correspondence	0.40 hrs.
04/26/2004	CKW	Receive and review Cordero's letter of 4/23; Appear in Bankruptcy Court on adjournment; Review claims register	1.60 hrs.
04/28/2004	CKW	Receive and review Cordero reply to statement in opposition; Receive and review Cordero letter to U.S. Trustee Martini	0.50 hrs.
05/05/2004	CKW	Receive and review credit report and letters to credit card companies	0.40 hrs.
05/10/2004	CKW	Receive and review Cordero letter to D. Martini re list of creditors	0.20 hrs.
05/19/2004	CKW	Receive and review Cordero claim; Call from client re claim objection and status of creditor inquiry	0.40 hrs.
06/14/2004	CKW	Document analysis; Call to claimants; Revise trustee correspondence; Call with Dave DeLano re HSBC authorization	2.30 hrs.
06/15/2004	CKW	Call to Discover and fax document request; Call with client; Receive and response to Trustee motion to dismiss	0.30 hrs.
06/16/2004	CKW	Call re Trustee's Motion to Dismiss/Convert; Review fax to HSBC authorizing release of records	0.40 hrs.
06/18/2004	CKW	Correspondence to credit card companies for statements; Call with Mike Beyma re status of adversary proceeding	0.50 hrs.
07/02/2004	CKW	Calls to HSBC and emails to client and Trustee re copy costs; Call from Kim at HSBC	0.50 hrs.

	DeLano, David G. & Mary Ann	Invoice# 54731	Page 2
030633			
07/07/2004	CKW	Receive and review account statements from 2 MBNA accounts; Copy and forward to Trustee	0.50 hrs.
07/09/2004	CKW	Correspondence to Trustee and motion in opposition; Calls to creditors	1.70 hrs.
07/12/2004	CKW	Complete correspondence to Reiber; Opposition to Court; Receive and review Cordero opposition to Trustee's Motion	0.80 hrs.
07/19/2004	CKW	Prepare Subpoenas for Discover, HSBC, Chase and Bank One (3 accounts); Appear on Trustee's Motion; Prepare Objection to Claim; Email to client to produce credit reports and account statements; Correspondence to Cordero and to client	4.30 hrs.
07/20/2004	CKW	Receive and review Cordero Order; Revise and prepare correspondence to Cordero and Court; Assemble; Call to client; Complete Objection to Claim	1.80 hrs.
07/21/2004	CKW	Call with client re document demands; Call with Mike Beyma - leave message	0.30 hrs.
08/16/2004	CKW	Receive and review Cordero 8/15 fax - Motion for Removal and Referral	0.20 hrs.
08/19/2004	CKW	Receive and review Cordero Reply to claim objection; Review and organize file and account statements obtained; Dictate response to Reply	1.50 hrs.
08/20/2004	CKW	Emails with Trustee re need to appear for 1st Meeting; Review account records	0.20 hrs.
08/23/2004	CKW	Receive and review Cordero Motion for sanctions; Appear on Cordero Motion to remove George Reiber; Call to HSBC re status of Subpoena response	1.80 hrs.
08/24/2004	CKW	Call with client re results of 8/23 motion	0.20 hrs.
08/25/2004	CKW	Appear in Bankruptcy Court on Cordero Claim objection; Call to report to client	2.50 hrs.
09/02/2004	CKW	Receive and review Interlocutory Order	0.30 hrs.
09/09/2004	CKW	Receive and review Chase account statements and forward same to Trustee and Cordero	0.30 hrs.
09/16/2004	CKW	Receive and review Cordero Motion to Second Circuit	0.30 hrs.
09/23/2004	CKW	Receive and review Cordero correspondence to Trustee re examination dates	0.30 hrs.
09/27/2004	CKW	Correspondence to Trustee	0.30 hrs.
09/28/2004	CKW	Receive and review Cordero letter to Second Circuit re discovery; Letter re exam dates	0.20 hrs.
10/14/2004	CKW	Receive and review Cordero discovery demands and correspondence to Reiber	0.40 hrs.
10/20/2004	CKW	Receive and review Cordero letter to Reiber re letter to Second Circuit	0.30 hrs.
10/21/2004	CKW	Call with Dave DeLano re discovery demand and response to Premier Van Liens related questions	0.20 hrs.
10/22/2004	CKW	Call with Richard Cordero; Dictate response to discovery demand of 9/29; Review discovery demand re relevance with JEM	1.50 hrs.
10/25/2004	CKW	Receive and review Cordero letter to Trustee Schmitt re Trustee's refusal to hold meeting	0.20 hrs.

030633	DeLano, David G. & Mary Ann	Invoice# 54731	Page 3
10/27/2004	CKW	Receive and review DeLano fax; Complete discovery response	0.30 hrs.
10/28/2004	CKW	Complete and send discovery response; Receive and review 10/27/04 letter from Cordero	0.30 hrs.
11/03/2004	CKW	Receive and review Cordero letter to Reiber re 341 meeting	0.30 hrs.
11/08/2004	CKW	Receive and review Cordero discovery motion; Dictate response	1.10 hrs.
11/09/2004	CKW	Review and revise response to Cordero motion	0.40 hrs.
11/10/2004	CKW	Receive and review Court's Interlocutory Order	0.30 hrs.
11/12/2004	CKW	Receive and review Cordero Motion to 2nd Circuit	0.30 hrs.
11/18/2004	CKW	Receive and review Reiber correspondence re retirement account; Correspondence to Trustee	0.40 hrs.
11/19/2004	CKW	Call re retirement supplement per Trustee's letter; Discuss withdrawal of Chapter 13; Status of Cordero objection	0.40 hrs.
12/15/2004	CKW	Appear in bankruptcy callendar call; Email to client; Call to client	0.90 hrs.
12/20/2004	CKW	Call with Dave DeLano re March 1 trial date; Review transactions with Cordero	0.30 hrs.
12/28/2004	CKW	Email from Trustee re 2/1 or 2/2 meeting; Email to client	0.30 hrs.
12/31/2004	CKW	Receive and review letter from Chapter 13 Trustee re adjourned 341 Hearing	0.20 hrs.
01/21/2005	CKW	Call to client re receipt of son's mobile home proceeds; Correspondence to Trustee; Discuss anticipated 341 Hearing on 2/1/05 and 3/1/05 trial	0.60 hrs.
01/24/2005	CKW	Correspondence to Trustee re sale proceeds and best interest test; Receive and review Cordero Petition for Cert.	1.10 hrs.
02/01/2005	CKW	Prepare for adjourned 341; Attend adjourned 341 with Trustee Reiber	7.20 hrs.
02/10/2005	CKW	Initial review of abstract and mortgage closing documents	0.40 hrs.
02/15/2005	CKW	Email to client re use of cash proceeds of mortgage; Correspondence to Trustee	0.40 hrs.
02/22/2005	CKW	Receive and review Cordero motion for Judge Ninfo recusal	0.40 hrs.
02/28/2005	CKW	Call to client preliminary to hearing on objection to Cordero claim	0.50 hrs.
03/01/2005	CKW	Hearing on Cordero claim objection and preparation	6.50 hrs.
03/02/2005	CKW	Repeat review of Cordero docs and claim	0.30 hrs.
03/09/2005	CKW	Receive and review March 3, 4 & 5 letters from Cordero; Correspondence to clients and Cordero; Call with client	1.30 hrs.
04/04/2005	CKW	Receive and review Cordero decision; Call to client	0.50 hrs.
04/14/2005	CKW	Email to George Reiber re confirmation hearing and fee application; Call with client	0.40 hrs.
04/22/2005	CKW	Receive and review record on appeal; Conference with DLP; Receive and review Court notices on appeal	1.00 hrs.
04/22/2005	DLP	Extended work conference and personal review of record regarding Appeal filed by Dr. Cordero.	1.30 hrs.
05/02/2005	CKW	Review statement re record on appeal of DLP	0.40 hrs.
05/02/2005	DLP	Review of file, review of Dr. Cordero's record on Appeal,	3.90 hrs.

		dictated, revised and finalized our Record. Filed with Court.	
05/03/2005	CKW	Receive and review Cordero motion to reconsider and review order of denial	0.40 hrs.
05/05/2005	DLP	Finalized Record on Appeal	0.80 hrs.
05/09/2005	CKW	Receive and review civil cover sheet on appeal from Cordero	0.30 hrs.
05/10/2005	CKW	Call with client re: status	0.20 hrs.
05/12/2005	CKW	Receive and review Cordero letter	0.20 hrs.
05/16/2005	DLP	Review of filings of Dr. Cordero on appeal.	0.50 hrs.
05/19/2005	CKW	Receive and review Motion to Strike Order for brief within 20 days and Diannetti letter	0.40 hrs.
05/20/2005	DLP	Review of further filings by Dr. Cordero	0.40 hrs.
05/31/2005	CKW	Receive and review Cordero letter to Mary Dianetti, court reporter, re: estimated cost of transcript	0.20 hrs.
06/08/2005	CKW	Email from trustee re: confirmation dates and telephone call to client	0.30 hrs.
06/09/2005	CKW	Email to trustee re: 7/25 confirmation hearing and issue of payment of loan proceeds	0.40 hrs.
06/23/2005	CKW	(7/25/05 - anticipated) Confirmation hearing	1.50 hrs.
06/23/2005	CKW	(Estimated) Cordero appeal	5.00 hrs.

\$16,294.50

EXPENSES

Federal Express	13.84
Copy Charges	346.32

\$360.16

BILLING SUMMARY

Total professional services	\$16,294.50
Total expenses incurred	\$360.16

TOTAL NEW CHARGES FOR THIS INVOICE \$16,654.66

TOTAL BALANCE NOW DUE \$16,654.66

Trust account beginning balance	\$6,706.66
Trust account remaining balance	\$6,706.66

GEORGE M. REIBER

CHAPTER 13 TRUSTEE
SOUTH WINTON COURT
3136 SOUTH WINTON ROAD
ROCHESTER, NEW YORK 14623

December 30, 2004

GEORGE M. REIBER
JAMES W. WEIDMAN

585-427-7225
FAX 585-427-7804

Dr. Richard Cordero
59 Crescent St.
Brooklyn, NY 11208

Christopher K. Werner, Esq.
2400 Chase Square
Rochester, NY 14604

To whom it may concern,

RE: David & Mary Ann DeLano; BK#04-20280

This will confirm that I will conduct a Section 341 Hearing on February 1, 2005. The meeting will commence at 9:30 a.m. at my offices at 3136 Winton Road South, Rochester, NY, Suite 206. At the request of Dr. Cordero, I will have court reporter available as well as having a tape recording made of the meeting. I have advised Dr. Cordero that he might appear by telephone; however he has indicated that he wishes to personally appear.

In a phone conversation which I had with Dr. Cordero, he indicated concern about time limits on the length of the 341 Hearing as well as its breadth in light of the fact that he is incurring cost to travel to Rochester for the Section 341 Hearing. In addition to having advised him that he could appear by telephone, I would add that I do not regard there being any time limits on the 341 Hearing. The Hearing will continue, subject to any physical limits, so long as I believe that there are relevant and meaningful questions being asked and answered which will assist the Court in determining whether or not to confirm the Plan. In this regard I would state that having reviewed the testimony by the Delano's at the previous Section 341 Hearings as well as the documents produced by them, I at this moment only have questions regarding the loan that was made to their son and its collectability. This is not to say that something may not develop during the questioning at the next Hearing that I may want to pursue; I am merely indicating where I am at this time.

Very truly yours,


GEORGE M. REIBER

GMR/mb

Xc: Kathleen Dunivin Schmitt, Esq., Assistant US Trustee
David & Mary Ann Delano
Clerk, US Bankruptcy Court

February 16, 2005

George M. Reiber, Esq.
3136 South Winton Road
Rochester, New York 14623

Re: David G. and Mary Ann DeLano, Case No. 04-20280

Dear Mr. Reiber:

Pursuant to your request at the adjourned 341 Hearing, enclosed please find a copy of the relevant portion of Mr. and Mrs. DeLano's Abstract of Title for the period of the purchase of their home at 1262 Shoecraft Road, Penfield, New York in 1975, through their Lyndon Guaranty refinance of April 23, 1999. We also enclose the HUD-1 Settlement Statement, together with their attorney's Closing Statement.

It appears that the 1999 refinance paid off the existing M&T first mortgage and home equity mortgage and provided cash proceeds of \$18,746.69 to Mr. and Mrs. DeLano. Of this cash, \$11,000.00 was used for the purchase of an automobile, as indicated. Mr. DeLano indicates that the balance of the cash proceeds was used for payment of outstanding debts, debt service and miscellaneous personal expenses. He does not believe that he has any details in this regard, as this transaction occurred almost six (6) years ago.

Please advise what, if anything, further you require.

Very truly yours,

**BOYLAN, BROWN,
CODE, VIGDOR & WILSON, LLP**


Christopher K. Werner

CKW/trm
Enclosures

cc: Richard Cordero (w/ enclosures)

4. Church of the Holy Spirit of Penfield New York

Warranty Deed

-To-

Dated July 16, 1975
Ack. same day
Rec. same day at 12:18 P.M.

David G. DeLano and
Mary Ann DeLano, his wife
(2nd parties not certified)

Liber ~~4865~~¹²² of Deeds, page ~~122~~

Conveys same as #1 with same interest in and to
Shoecraft Road and subject to same easements, covenants
and restrictions.

Being the same premises conveyed to first party by
Liber 3679 of Deeds, page 489.

This deed executes pursuant to a court order signed
by Hon. Joseph G. Fritsel, Justice of the Supreme Court on
July 15, 1975 and filed in Monroe County Clerk's Office
July 16, 1975.

Contains Lien Fund Clause.

Revenue Stamps for \$35.75 affixed.

Note: Order of the Supreme Court dated July 15,
1975 is recorded herewith.

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5. David G. DeLano and Mary Ann DeLano, his wife
Mortgage to secure \$26,000.00
Part Purchase Price

CORRECTLY DISCHARGED OF RECORD
6-13-88 1418 Dis 320

-To-

Dated July 16, 1975
Ack. same day
Rec. same day at 12:18 P.M.

Columbia Bank and Loan Association
COLONY ABSTRACT CORP

BY Wtzel
PER CAS Liber 4000 of Mortgages, page 196

Conveys same as #1 together with same interest
in Shoecraft Road and subject to same easements, covenants
and restrictions.

ma
3/10/88

6.

David G. DeLano

Mortgage to secure \$7,467.18

Mary Ann DeLano

CORRECTLY DISCHARGED OF RECORD

Dated November 30, 1977

-To- ~~6-14-88 1419 Dis 142~~

Ack. same day

BY *Mtzel*

Rec. December 1, 1977 at 10:39 AM

Columbia Banking, Saving
and Loan Association

COLONY ABSTRACT CORP

Liber ~~4488~~ of Mortgages, page 152

PER *CAB*

Conveys same premises as No. 1.

Subject to all covenants, easements and restrictions of record, if any, affecting said premises.

Being the same premises conveyed to the first parties by deed recorded in Monroe County Clerk's Office in Liber 4865 of Deeds, page 122.

*WKA
3/10/88*

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PUBLIC ABSTRACT CORPORATION

A corporation duly established under the Laws of the State of New York, in consideration of one or more dollars to it paid, hereby Certifies to the record owners of an interest in or specific lien upon the premises hereinafter referred to or described that it has examined the Grantor and Mortgagor Indexes to the Records in the office of the Clerk of the County of Monroe, in the State of New York, for Deeds of Conveyance, Wills, Powers of Attorney and Revocations thereof, Mortgages, Indexes for General Assignments, Affidavits of Foreclosure, assignments of Mortgages, Sheriff's Certificates of Sales, Homestead Exemptions, Lien Book of Welfare Commissioners, Miscellaneous Records, Orders Appointing Receivers, Mortgage Book of Loan Commissioners of the United States Deposit Fund, Leases, Contracts, Notices of Pendency of Action, State Criminal Surety Bond Liens, Individual Surety Bond Lien Docket and Index of Incompetencies, and also the indexes to estates in the office of the Surrogate of of said County, against the names of the parties appearing in the foregoing Abstract of Title as owning or having an interest in the premises hereinafter described, during the record period

of such ownership respectively from and including the date October 5, 1965.....
.....
to the date hereof.

And that it finds the items set forth in the foregoing Abstract of Title, and nothing more, and that said items are correctly set forth, and that there is nothing more in said indexes which appears to affect the premises or any part thereof, described in Liber 3679.....
of Deeds....., at page 489..... in said Clerk's Office, set forth in said Abstract of Title in No. 1..... on the margin hereof (except liens or incumbrances correctly discharged of record.)

3..... NUMBERS.

And **PUBLIC ABSTRACT CORPORATION** further Certifies that no judgment appears upon the docket books to have been docketed during the last 10 years, and no Collector's Bond filed and indexed during the last 20 years, and no Financing Statements affixed to Real Property indexed during the last 5 years, and no Federal Tax Lien filed and indexed during the last six years and one month, Lien or Lien Bond filed and indexed during the last year, in said Clerk's Office, against any of the persons who appear from the foregoing Abstract of Title to have held any title to said premises during said periods, which is a lien on said premises, except as correctly set forth in said Abstract of Title; that the items set forth in the foregoing Abstract of Title, including those taken from the records and files of the office of the Surrogate of Monroe County, are correctly abstracted.

and also Certified for
Mechanic's Liens indexed
during the past year.

In Witness Whereof, the Corporation has caused these presents to be signed by an Authorized Officer, this 10th day of June..... 19 75 at 8:59 o'clock A. M.

PUBLIC ABSTRACT CORPORATION

No. 13735.....

By Donald Nastasi..... Authorized Officer

Abstracted by D. Nastasi.....

Continued by B.J. Fischette..... for premises at
No. 1 with Nos. 4 and 5 added......

and redated July 16,..... 19 75 at 12:18P. M..... and re-issued.

Bernard J. Fischette..... Authorized Officer

(over)

ABSTRACT OF TITLE

-TO-

PART LOT #45

TOWNSHIP 13, RANGE 4

EAST SIDE SHOECRAFT ROAD

TOWN OF PENFIELD

MAPS:

Hopkins Atlas, Volume 5, Plate 13

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1. David G. DeLano and Mary Ann DeLano **CORRECTLY DISCHARGED OF RECORD** Mortgage to secure \$7,467.18
 -To- 6-14-88 1419 Dis 142 Dated November 30, 1977
 Ack. same day
 Rec. December 1, 1977
 BY Mitzel
 Columbia Banking and Loan Association **COLONY ABSTRACT CORP** Liber 4488 of Mortgages, page 152
 Conveys ~~PER 1 that tract or parcel~~ of land situate in the
 Town of Penfield, County of Monroe and State of New York, being
 a part of Lot No. 45, Township 13, Range 4, commencing at a point
 on the east street line of Shoecraft Road a distance of 1085.36
 feet northerly from a point where the north street line of State
 Road intersects the east street line of Shoecraft Road; thence
 in an easterly direction making an interior angle of 90° with the
 east street line of Shoecraft Road, a distance of 200 feet;
 thence in a southerly direction making an interior angle of 90°
 with the last described course, a distance of 100 feet; thence
 in a westerly direction making an interior angle of 90° with the
 last described course a distance of 200 feet to the east line of
 Shoecraft Road; thence in a northerly direction along the east
 street line of Shoecraft Road a distance of 100 feet to the
 point and place of beginning. X

Also hereby intending to mortgage any and all interest that the mortgagor may have in and to the bed of Shoecraft Road.

Subject to all covenants, easements and restrictions of record if any affecting said premises.

Being the same premises conveyed to the mortgagors herein by Deed dated July 16, 1975 and recorded in Monroe County Clerk's Office on July 16, 1975 in Liber 4865, page 122.

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3-30-99*

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David G. DeLano
Mary Ann DeLano, his wife

to

Columbia Banking Federal
Savings and Loan Association

Mortgage to secure \$59,000.00

Dated: March 29, 1988

Ack: same day

Rec: same day @ 4:14 PM

Liber 8682 of Mortgages, page
81

Conveys same premises as #1.

Subject to covenants, easements and restrictions of record.

Being same premises conveyed by deed recorded in Monroe County Clerk's Office in Liber 4865 of Deeds, page 122.

#33516

ABSTRACT OF TITLE

- TO -

LOT #9

ROMAN CREST SUBDIVISION

1262 SHOECRAFT ROAD

TOWN OF PENFIELD

MAPS: HOPKINS ATLAS, VOLUME 5, PLATE 13

FOUR CORNERS ABSTRACT CORPORATION

1.

David G. DeLano
Mary Ann DeLano,
husband and wife

- TO -

Columbia Banking Federal
Savings and Loan Association

Mortgage
To Secure: \$59,000.00
Dated: March 29, 1988
Ack: Same Date
Rec: March 29, 1988
Liber 8682 of Mortgages, page 81
Mortgage#: CE033444

Covers ^X ALL THAT TRACT OR PARCEL OF LAND, situate in the
Town of Penfield, _\ County of Monroe, and State of New York, being a part of
Lot No. 45, Township 13, Range 4, commencing at a point on the east street line
of Shoecraft Road a distance of 1085.36 feet northerly from a point where the
north street line of State Road intersects the east street line of Shoecraft Road;
thence in an easterly direction making an interior angle of 90° with the east street
line of Shoecraft Road, a distance of 200 feet; thence in a southerly direction
making an interior angle of 90° with the last described course, a distance of 100
feet; thence in a westerly direction making an interior angle of 90° with the last
described course a distance of 200 feet to the east line of Shoecraft Road; thence
in a northerly direction along the east street line of Shoecraft Road a distance of
100 feet to the point and place of beginning. X

Subject to all covenants, easements and restrictions of record, if any, affecting said premises.

Being the same premises conveyed to the Mortgagors herein by Deed dated July 16, 1975 and recorded in the Monroe County Clerk's Office in Liber 4865 of Deeds, page 122.

2.

David G. DeLano
Mary Ann DeLano

Mortgage
To Secure: \$29,800.00
Dated: September 13, 1990
Ack: Same Date
Rec: September 14, 1990
Liber 10363 of Mortgages, page 38
Mortgage#: CH016334

- TO -

CHARGED OF RECORD
BY *[Signature]*
Central Trust Company
FOUR CORNERS ABSTRACT
BY *[Signature]*
Covers same as #1.

FOUR CORNERS ABSTRACT CORPORATION

3.

Columbia Banking Federal
Savings and Loan Association

Assignment of Mortgage
Dated: November 26, 1991
Ack: Same Date
Rec: December 27, 1991
Liber 893 of Assignments of Mortgages,
page 402
Mortgage#: N/A

- TO -

Federal Home Loan Mortgage
Corporation

Assigns mortgage at #1.

4.

David G. DeLano
Mary Ann DeLano

- TO -

Manufacturers and Traders Trust
Company

Mortgage
To Secure: \$46,920.60
Dated: December 13, 1993
Ack: Same Date
Rec: December 27, 1993
Liber 12003 of Mortgages, page 507
Mortgage#: CK039604

Covers same as #1.

FOUR CORNERS ABSTRACT CORPORATION

5.

David G. Delano and
Mary Ann Delano

- TO -

Lyndon Guaranty Bank of New
York

Mortgage
To Secure: \$95,000.00
Dated: April 23, 1999
Ack: Same Date
Rec: April 28, 1999 @ 10:31 a.m.
Liber 14410 of Mortgages, page 132
Mortgage#: CQ002917

Covers same as #1.

FOUR CORNERS ABSTRACT CORPORATION

MORTGAGE CLOSING STATEMENT

Date: April 23, 1999

File No: LYN05-0125

Property: 1262 Shoecraft Road, Town of Penfield

Mortgagors: David G. Delano and Mary Ann Delano

Amount of Mortgage: \$95,000.00

Rate: 8.5%

LOAN CLOSING EXPENSES

To: Lyndon Guaranty Bank of New York

Interest for 4/28/99 - 4/30/99	\$ 67.29
Flood Certification Fee	22.50
Tax Service Fee	75.00
Tax and Insurance Escrow	1,527.24

\$1,692.03

To: Monroe County Clerk

Mortgage Tax	\$ 687.50*
Record Mortgage	55.00
Record Discharge of Mortgages (3)	49.50

\$ 792.00

To: Four Corners Abstract

Title Insurance	\$ 485.00
Redate Abstract	75.00

\$ 560.00

To: Gullace & Weld

Attorney fees	\$ 400.00
---------------	-----------

(2)

To: M&T Bank

Payoff Home Equity #23764242001 \$20,032.14

To: M&T Mortgage Corp.

Mortgage Payoff #920182-3 \$52,777.14

TOTAL \$76,253.31

We Acknowledge Receipt of the Proceeds of said Loan and direct that they be disbursed as follows:

As above \$76,253.31
David G. Delano and Mary Ann Delano 18,746.69

TOTAL \$95,000.00

David G. Delano

Mary Ann Delano

***Mortgagee Tax \$237.50**

**U.S. Department of Housing and Urban Development
Optional Form for Transactions without Sellers**

Name & Address of Borrower: DAVID G. DELANO MARY ANN DELANO 1262 SHOECRAFT ROAD WEBSTER, NY 14580	Name & Address of Lender: LYNDON GUARANTY BANK OF NEW YORK 3670 MT. READ BOULEVARD ROCHESTER NY 14616
Property Location: (if different from above) 1262 SHOECRAFT ROAD PENFIELD, NY 14580	Settlement Agent: GULLACE & WELD Place of Settlement: 1800 MAR MDLND PLZ ROCHESTER, NY 14604
Loan Number:	Settlement Date: APRIL 23, 1999

L. Settlement Charges	M. Disbursement to Others
800. Items Payable In Connection with Loan	
801. Loan Origination Fee 0.000%	1501. M&T BANK - PAYOFF MO 52,777.14
802. Loan Discount 0.000%	1502. M&T BANK - HOME EQUI 20,032.14
803. Appraisal Fee to \$ (POC)	
804. Credit Report to \$ (POC)	1503.
805. Lender's Inspection Fee to:	1504.
806. Mortgage Insurance Application Fee to:	
807. Assumption Fee	1505.
808. Tax Service Contract to: 75.00	
809. Underwriting Fee	1506.
810. Administration Fee	
811. Application Fee 0.00	1507.
812. Commitment Fee	
813. Warehouse Fee/Interest Differential	1508.
814. Yield Spread Premium \$ (POC)	
815. Service Release Premium \$ 0.00 (POC)	1509.
816. Origination Fee Due Broker 0.00	
817. FHA Upfront MIP/VA Funding Fee	1510.
818. FLOOD CERTIFICATION FEE 22.50	
819.	1511.
820.	
821.	1512.
822.	
823.	1513.
824.	
825.	
900. Items Required by Lender to be Paid in Advance	
901. Interest from 4/28/9 to 4/30/99 @ \$ 22.43 per day 67.29	1514.
902. Mortgage Ins. Premium for months to	1515.
903. Hazard Ins. Premium for year(s) to	
904. Flood Ins. Premium for year(s) to	
905.	1520. TOTAL DISBURSED (enter on line 1603) 72,809.28
1000. Reserves Deposited with Lender	
1001. Hazard Insurance 2 months @ \$ 29.92 per month 59.84	
1002. Mortgage Insurance months @ \$ per month	
1003. City Property Taxes months @ \$ per month	
1004. County Property Taxes 7 months @ \$ 77.88 per month 545.16	
1005. Annual Assessments months @ \$ per month	
1006. Flood Insurance months @ \$ 0.00 per month 0.00	
1007. SCHOOL 10 months @ \$ 138.38 per month 1,383.80	
1008. months @ \$ per month	
1009. Aggregate Analysis Adjustment -461.56	
1100. Title Charges	
1101. Settlement or Closing Fee to	
1102. Abstract or Title Search to FOUR CORNERS ABST 75.00	
1103. Title Examination to	
1104. Title Insurance Binder to	
1105. Document Preparation to	
1106. Notary Fees to	
1107. Attorney's Fees to GULLACE & WELD 400.00	
1108. Title Insurance to FOUR CORNERS ABSTRACT 485.00	
1109. Lender's Coverage \$	
1110. Owner's Coverage \$	
1111.	
1112.	
1200. Government Recording and Transfer Charges	
1201. Recording Fees; Deed \$;Mtg \$ 55.00 ;Rel \$ 49.50 104.50	
1202. City/County Tax/Stampa; Deed \$;Mtg \$	N. NET SETTLEMENT

818. FLOOD CERTIFICATION FEE	22.50	1510.	
819.		1511.	
820.		1512.	
821.		1513.	
822.		1514.	
823.		1515.	
824.		1520. TOTAL DISBURSED (enter on line 1603)	72,809.28
825.			
900. Items Required by Lender to be Paid in Advance			
901. Interest from 4/28/99 to 4/30/99 @ \$ 22.43 per day	67.29		
902. Mortgage Ins. Premium for months to			
903. Hazard Ins. Premium for year(s) to			
904. Flood Ins. Premium for year(s) to			
905.			
1000. Reserves Deposited with Lender			
1001. Hazard Insurance 2 months @ \$ 29.92 per month	59.84		
1002. Mortgage Insurance months @ \$ per month			
1003. City Property Taxes months @ \$ per month			
1004. County Property Taxes 7 months @ \$ 77.88 per month	545.16		
1005. Annual Assessments months @ \$ per month			
1006. Flood Insurance months @ \$ 0.00 per month	0.00		
1007. SCHOOL 10 months @ \$ 138.38 per month	1,383.80		
1008. months @ \$ per month			
1009. Aggregate Analysis Adjustment	-461.56		
1100. Title Charges			
1101. Settlement or Closing Fee to			
1102. Abstract or Title Search to FOUR CORNERS ABST	75.00		
1103. Title Examination to			
1104. Title Insurance Binder to			
1105. Document Preparation to			
1106. Notary Fees to			
1107. Attorney's Fees to GULLACE & WELD	400.00		
1108. Title Insurance to FOUR CORNERS ABSTRACT	485.00		
1109. Lender's Coverage \$			
1110. Owner's Coverage \$			
1111.			
1112.			
1200. Government Recording and Transfer Charges			
1201. Recording Fees: Deed \$;Mtg \$ 55.00;Rel\$ 49.50	104.50		
1202. City/County Tax/Stamps: Deed \$;Mtg \$			
1203. State Tax/Stamps: Deed \$;Mtg \$ 687.50	687.50		
1204.			
1300. Additional Settlement Charges			
1301. Survey to			
1302. Pest Inspection to			
1303. Architectural/engineering services to			
1304. Building Permit to			
1305.			
1306.	0.00		
1307.			
1308 WEBSTER	0.00		
1400. Total Settlement Charges (enter on line 1602)	3,444.03		

N. NET SETTLEMENT	
1600. Loan Amount	95,000.00
1601. Plus Cash/Check from Borrower	\$ 0.00
1602. Minus Total Settlement Charges (line 1400)	\$ 3,444.03
1603. Minus Total Disbursements to Others (line 1520)	72,809.28
1604. Equals Disbursements to Borrower (after expiration of any applicable rescission period required by law)	\$ 18,746.69

Borrower(s) Signature(s)
 x David P. DeLano

DM

x May Grun DeLano

CDS-213 (05/94)

Form HUD-1A (2/95)
 ref. RESPA

8 M.B.N.A. Amer PO Box 15026 Wilmington DE 19850-0526 (610) 271-2110
 Account Number 431302299975*
 Date Reported 04/2004
 Date Opened 01/1994
 High Credit
 Credit Limit
 Terms Duration
 Terms Frequency
 Months Revd
 Activity Description
 Balloon Pay Start Date
 Balloon Pay Amount
 Balloon Pay Date Closed
 Creditor Classification

Account Number	Items As of Date Reported	Amount Past Due	Date of Last Payment	Actual Payment Amount	Scheduled Payment Amount	Date of Last Activity	Date of Del. 1st Pmt	Charge Off Amount	Deferred Pay Start Date	Balloon Pay Start Date	Date Closed	Creditor Classification							
431302299975*	04/2004		01/1994			10/2003	02/2004												
Current Status - Account Included in Bankruptcy ; Type of Loan - Credit Card ; Whose Account - Individual Account ;																			
Account History	03/2004	02/2004	01/2004	10/2003	05/2002	06/2002	03/2002	01/2002	11/2001	10/2001	07/2001	05/2001	04/2001	12/2000	11/2000	10/2000	08/2000	06/2000	02/2000
with Status Codes	3	2	1	1	1	2	1	1	1	1	1	1	1	3	2	1	1	1	1
	12/1999	09/1999	06/1999	02/1999	10/1998	08/1998	03/1998	09/1997											

9 Manufacturers & Traders Trust
 Account Number 738920*
 Items As of Date Reported 05/1999
 Amount Past Due \$0
 Date of Last Payment 03/1988
 High Credit \$59,000
 Credit Limit
 Terms Duration
 Terms Frequency
 Months Revd
 Activity Description
 Balloon Pay Start Date
 Balloon Pay Amount
 Balloon Pay Date Closed
 Creditor Classification

Account Number	Items As of Date Reported	Amount Past Due	Date of Last Payment	Actual Payment Amount	Scheduled Payment Amount	Date of Last Activity	Date of Del. 1st Pmt	Charge Off Amount	Deferred Pay Start Date	Balloon Pay Start Date	Date Closed	Creditor Classification
738920*	05/1999	\$0	03/1988	\$59,000	\$723	04/1999						
Current Status - Pays As Agreed ; Type of Account - Installment ; Whose Account - Joint Account ; ADDITIONAL INFORMATION - Account Paid/Zero Balance ;												

10 MONDAGA Bank/Overdraft
 Account Number 195882002*
 Items As of Date Reported 04/1998
 Amount Past Due \$0
 Date of Last Payment 03/1988
 High Credit \$59,000
 Credit Limit
 Terms Duration
 Terms Frequency
 Months Revd
 Activity Description
 Balloon Pay Start Date
 Balloon Pay Amount
 Balloon Pay Date Closed
 Creditor Classification

Account Number	Items As of Date Reported	Amount Past Due	Date of Last Payment	Actual Payment Amount	Scheduled Payment Amount	Date of Last Activity	Date of Del. 1st Pmt	Charge Off Amount	Deferred Pay Start Date	Balloon Pay Start Date	Date Closed	Creditor Classification
195882002*	04/1998	\$0	03/1988	\$59,000	\$733	02/1998						
Current Status - Pays As Agreed ; Type of Account - Installment ; Whose Account - Joint Account ; ADDITIONAL INFORMATION - Account Transferred or Sold ;												

11 Prime Automotive
 Account Number 626*
 Items As of Date Reported 05/1999
 Amount Past Due \$0
 Date of Last Payment 02/1997
 High Credit \$6,719
 Credit Limit
 Terms Duration
 Terms Frequency
 Months Revd
 Activity Description
 Balloon Pay Start Date
 Balloon Pay Amount
 Balloon Pay Date Closed
 Creditor Classification

Account Number	Items As of Date Reported	Amount Past Due	Date of Last Payment	Actual Payment Amount	Scheduled Payment Amount	Date of Last Activity	Date of Del. 1st Pmt	Charge Off Amount	Deferred Pay Start Date	Balloon Pay Start Date	Date Closed	Creditor Classification
626*	05/1999	\$0	02/1997	\$6,719	\$733	04/1999						
Current Status - Pays As Agreed ; Type of Account - Installment ; Whose Account - Individual Account ; ADDITIONAL INFORMATION - Account Paid/Zero Balance ; Auto ;												

12 The Bank Ton
 Account Number 8601*
 Items As of Date Reported 04/2004
 Amount Past Due \$0
 Date of Last Payment 12/1995
 High Credit \$280
 Actual Payment Amount \$500
 Credit Limit
 Terms Duration
 Terms Frequency
 Months Revd
 Activity Description
 Balloon Pay Start Date
 Balloon Pay Amount
 Balloon Pay Date Closed
 Creditor Classification

8601*
 04/2004
 \$0
 12/1995
 \$280
 \$500
 \$500
 99
 Whose Account - Joint Account ;
 Inquires that display to companies (may impact your credit score)
 This section lists companies that requested your credit file. Credit grantors may view this requests when evaluating your credit worthiness.
 Company Information
 Genesee Regional Bank
 The Credit Bureau:3301 ONTARIO NATIONAL
 09/2003 06/2003
 08/2002

Dr. Richard Cordero

Ph.D., University of Cambridge, England
M.B.A., University of Michigan Business School
D.E.A., La Sorbonne, Paris

59 Crescent Street
Brooklyn, NY 11208-1515
tel. (718) 827-9521; CorderoRic@yahoo.com

February 22, 2005

Mr. George M. Reiber
Chapter 13 Trustee
South Winton Court
3136 S. Winton Road, Suite 206
Rochester, NY 14623

Re: Documents produced by Att. Werner for DeLanos, dkt. no. 04-20280

Dear Trustee Reiber,

I received a copy of the cover letter of 16 instant that Att. Christopher Werner sent you together with some documents. The latter failed to answer the question that was asked at the adjourned 341 meeting on 1 February and that the DeLanos were supposed to answer through document production, namely:

If the DeLanos obtained a mortgage loan of \$32,000 from Monroe Bank in 1976; and another mortgage loan of \$59,000 from M&T Bank in 1988 as well as another mortgage loan of \$59,000 from ONONDAGA Bank in 1988; and yet another mortgage loan for \$95,000 from Genesee Regional Bank, and as stated by them, they made all their installment payments, how is it that they end up 29 years later having a home equity of only \$21,416 and still owe a mortgage debt of \$77,084, as they declared in Schedule A of their petition?

The table below presents the information discussed at the 341 meeting:

The DeLanos' Mortgages

	Source of data	Account holder	Lender	Account no.	Year loan		Amount borrowed
					taken	refinanced	
1.	DeLanos at 341 meeting on 1 Feb 05	D=David D Mary D=M	Monroe Bank	?	1976	1985	\$32,000
2.	Equifax 7/23/4; pg 6	M	M&T Bank	7389 20	03/1988	last activity April 99	\$59,000
3.	Equifax 7/23/4; pg 6	M	ONONDAGA Bank Overdraft:	1958 8200 02	03/1988	last activity Feb 98	\$59,000
4.	Equifax 7/23/4;pg 6	D	Genesee Regional Bank	7732 3892 0006 0002	April 1999	\$70K+ still outstanding	\$95,000

Where did all the money paid go or is?

Far from answering this question, the documents produced only raise many more questions. To begin with, those documents are incomplete, just as were the documents that Att. Werner produced on behalf of the DeLanos on June 14, 2004. In fact, Att. Werner admits their incompleteness when in his cover letter he states that he has produced only "a copy of the *relevant portion* of Mr. DeLano and Mrs. DeLano's Abstract of Title" (emphasis added). Since he is the one making the production and is presumed to know the best evidence rule of Rule 1002 of

the Federal Rules of Evidence, he should know better than to try to prove anything with writings that not only are not the originals, but are also not complete. Consider the following:

1. The first document in the stapled bundle is untitled and begins with “4. Church of the Holy Spirit of Penfield New York”. Thus, it is referred to here as the Church document. It bears the words “Public Abstract Corporation” printed vertically on its left margin. On a second page there is paragraph 6, after which there are no signatures or any other indication that that page is the last one of the document. One can reasonably expect that if the mortgagee wants to enforce this document against the mortgagors, the former would require the latter to sign it somewhere. What this document shows is that somebody wrote the names of the DeLanos on two sheets of paper. This document can hardly be complete. In addition, note that:
 - a) The relation of the Church of the Holy Spirit to the mortgages referred to in paragraphs 5 and 6 is not stated. This is particularly intriguing because paragraph 4 states that “This deed executes pursuant to a court order signed by Hon. Joseph G. Fritsel, Justice of the Supreme Court on July 15, 1975”. Why was a court involved in this transaction and what kind of transaction does this document bear witness to? Where is that court order and what are its terms?
 - b) In paragraph 4 it is printed “Dated July 16, 1975”, but in the left margins of this and the following page it is handwritten “ona 3/10/88”. To add more confusion, in paragraph 6 it is printed “Dated November 30, 1977”. When was this document first and last used and what was it used for?
 - c) Paragraph 5 states “Mortgage to secure \$26,000.00 Part Purchase Price Dated July 16, 1975”, and the other part?, that is, what is the whole of which this is a part? Was there a down payment and, if so, what was its amount and where did the money come from?
 - d) Moreover, paragraph 6 states “Mortgage to secure \$7,467.18 Dated November 30, 1977”. It is quite obvious that paragraphs 5 and 6 refer to two different transactions that took place more than two years apart. Hence, paragraph 5 refers to “Liber 4000 of Mortgages, page 196”, while paragraph 6 refers to “Liber 4488 of Mortgages, page 152”. In addition, how was a mortgage amount arrived at that includes 18¢?
 - e) While at the 341 meeting on February 1, Mr. DeLano stated that it was Monroe Bank that lent the \$32,000 of the mortgage taken in 1976, paragraphs 5 and 6 of this document refers to Columbia Bank, Saving, and Loan Association, yet another party that had never been mentioned previously. So what was the role of Monroe Bank in all these transactions and since when?
2. The document titled “Public Abstract Corporation” –PAC hereinafter- states at the bottom “over” but the back of that page is empty and its continuation is nowhere else. That document is incomplete too.
 - a. PAC refers to “Liber 3679 of Deeds, at page 489”. This is the reference found in paragraph 4 of the Church document, which concerns a “Warranty Deed” and involves the Church of the Holy Spirit. However, there is no express relationship between these two documents.
 - b. This lack of relationship becomes even more pronounced upon noting that PAC was signed on July 16, 1975, while there is written in the margins of the Church document “ona 3/10/88”.

- c. PAC states at the bottom of its single page “for premises at No. 1 with Nos. 4 and 5 added”. What are the premises at No. 1? Where are presumably paragraph “No. 1” and Nos. 2 and 3?
 - d. Moreover, since paragraph 6 of the Church document refers to a mortgage “Dated November 30, 1977” and PAC was signed on July 16, 1975, where are paragraph 6 and who knows what other paragraphs of the Church document as it stood all the way to its end on that date of 1975? What kind of mix and match of incomplete documents is this?!
3. There is another document whose first printed line is “U.S. Department of Housing and Urban Development”. It is referred to here as the HUD document and appropriately enough, for how did HUD the institution become involved in any of these mortgages at all? That cannot be fathomed from this document, whose first sequential section is “L. Settlement Charges” and its last is “N. Net Settlement”. This document most likely forms part of something else which was not produced. As a matter of fact, it is titled “Optional Form for Transactions without Sellers”. “Optional” in what kind of standard “Transactions”? Hence, this document is incomplete. It is nonetheless very interesting.
- a. Indeed, the HUD document introduces yet another party that was not mentioned at the 341 meeting, to wit, Lyndon Guaranty Bank of New York, as lender. So when and how did the present holder of the mortgage contract, Genesee Regional Bank, as stated in Schedule D of the DeLanos’ petition, come into the picture? If Genesee was formerly known as Lyndon, where is the document that attests to that change of name so as to exclude that there was a refinancing by Genesee of a mortgage loan originally made by Lyndon?
 - b. Something else comes in through the HUD document, for the box “Name & Address of Borrower:” is filled in thus:

David G. DeLano
 Mary Ann DeLano
 1262 Shoecraft Road
 Webster, NY 14580

However, the box “Property Location: (if different from above)” is filled in differently:

David G. DeLano
 Mary Ann DeLano
 1262 Shoecraft Road
Penfield, NY 14580 (emphasis added)

It is reasonable to ask how the DeLanos live in Webster but the property that is the subject of the mortgage is located in Penfield. This brings to mind the Church document, whose first line is “4. Church of the Holy Spirit of Penfield New York”.

- c. The HUD document also shows a quite strange 3.75” square of white space in the middle of the right column. What was that space left empty for? Was it always empty?
- d. The HUD document concerns a loan for \$95,000. Financial institutions, however, rarely make a mortgage loan for 100% of the value of the property that secures it; rather, they make it for less, and depending on the credit rating of the borrower and other debts, even for considerably less. Given the deplorable credit history of the DeLanos as portrayed by each of the credit bureau reports already produced, at what value was this property located in Penfield appraised for this “Settlement” dated “April 23, 1999”?

- e. In this vein, what was being 'settled' by this HUD document?
- f. Neither the HUD document nor the other documents make any reference to the loan of \$59,000 from ONONDAGA Bank.

The above analysis should suffice to show that the documents produced are incomplete. Why their production was made thus needs to be investigated and determined. Obviously, the DeLanos must produce the missing parts; but this time not just as photocopies of what Att. Werner considers "relevant". Rather, the whole **originals** of the documents bearing on mortgages on, and title to, any and all of their real property must be produced and then we make the copies.

The other two documents in the stapled bundle, one by Colony Abstract Corporation consisting of two pages and the other by Four Corners Abstract Corporation with four pages; and the single loose page document titled "Mortgage Closing Statement" raise many more questions. However, the evidence shows that you are neither willing nor able to find the answer to them.

The fact is that for weeks you pretended to be investigating the DeLanos while, as it turned out undisputedly, you were not and first asked for documents by your letter of April 20, 2004, sent at my instigation. You allowed the DeLanos not to produce any documents for months and then conveniently moved to dismiss on June 15, 2004. You have refused to subpoena any documents and have even claimed that you do not know whether you have power to subpoena. When the DeLanos untimely moved to disallow my claim in a transparent attempt to eliminate me from the case, you gave your tacit approval, for handling this case would be so much easier for you too if I were not around requesting that you investigate it, as you are required to do and I am entitled to request that you do under 11 U.S.C. §§704(4) and (7).

When Judge John C. Ninfo, II, suspended every other court proceeding in the case until the DeLanos' motion to disallow is determined and all its appeals are resolved, you pretended to have been thereby forbidden to conduct the adjourned 341 meeting. It took me a lot of effort, time, and money to appeal to all your superiors to get you to agree to hold it; yet you wanted to limit it to one hour, thus disregarding the series of meetings implied by §341. Nor did you object to Judge Ninfo's court proceedings suspension, although it not only lacks any basis in law, but also redounds to the detriment of each and all the other 20 creditors in this case, whose interests you are supposed to represent. Were you true to your duty to them, you would be advocating for me to remain on the case because through my efforts the other creditors stand the chance of being paid 100% of their claims if assets concealed by the DeLanos are found, while without me the creditors will at best get the meager 22¢ on the dollar that the DeLanos propose to pay under their debt repayment plan, with which you are satisfied, for a saving to them of \$144,660 plus all the interest that will not accrue and that they will not have to pay. On whose side are you?

That question is warranted by your attitude at the 341 meeting. There the DeLanos were supposed to be examined by answering the questions of the creditors. Instead, you allowed Att. Werner to force himself to be heard as much as both of the DeLanos, although neither he nor you could provide any basis in law for such conduct, let alone for his micromanaging the meeting under the threat of walking out of it together with the DeLanos if I did not limit myself to shooting questions at the pace he wanted. Nonetheless, you must know, as certainly as Att. Werner does, that a 341 meeting is neither a deposition nor a court proceeding subject to the Federal Rules applicable to an examination in court, nor is it a "341 Hearing", as he mistakenly but revealingly calls it in his February 16 letter.

In fact, creditors are mostly lay people that know little and are not required to know anything about the Federal Rules to attend and participate in such a meeting. They are there just to ask questions as they would in any other setting, except that they are legally entitled to distrust the debtors and treat them as if they had committed fraud. As for you, who are supposed to work “for the benefit of general unsecured creditors whom the trustee represents”, as stated under §704 and its Legislative Report, you were required to adopt that inquisitorial attitude toward the debtors, as is unequivocally provided under §343 in its Statutory Note thus:

The purpose of the examination is to enable creditors and **the trustee** to determine if assets have improperly been disposed of or concealed or if there are grounds for objection to discharge.
(emphasis added)

Far from adopting that legally required attitude, you once more allowed Att. Werner to refuse to produce any documents to account for the scores of thousands of dollars that the DeLanos have charged since “1990 and prior card purchases”, a phrase that they used 15 times in their Schedule F. Incidentally, the word “purchase” is normally used when one buys goods rather than when one pays for services. Since the DeLanos stated that they have not taken a vacation in two years and anyway do not go on expensive vacations or eat out expensively, it is all the more pertinent to ask what goods they bought and where they are. It sounds like a question that stands to reason. They can answer it by producing their credit card statements for the period that they themselves put in play. But you refused my request that they produce them.

Nor is your curiosity as a trustee that must look for ‘improperly disposed of or concealed assets’ any better. It is not piqued by even the fact that for over 15 years the DeLanos have made such credit card purchases without restraint and accumulated a credit card debt of a whopping \$98,092, but at the end of their two worklives, including Mr. DeLano’s 32 years as a bank officer and, as stated in Schedule I, currently as a *loan* officer at M&T Bank, who as such is an expert in managing borrowed money, they claimed in Schedule B that their household goods are worth just \$2,910! That claim defies common sense and should have intrigued you enough to investigate. It is even ludicrous given that the DeLanos earned more than 100 times that amount in just three years, that is, \$291,470 in the 2001-03 fiscal years, according to their petition and the 1040 IRS forms that they produced. Nonetheless, you would not ask them to produce checking and savings account statements of even those recent years to determine their earnings’ whereabouts. You refused my request although today many banks make account statements for the last few years available online and some even accompany them with the images of the cancelled checks, so that it would have been quite easy for the DeLanos to produce and for you to obtain them, not to mention that they have an obligation to keep the statements that they have received.

What is more, you allowed Att. Werner to say repeatedly at the meeting that if I want any such documents, I have to subpoena them myself. However, it is patently obvious that since the DeLanos are petitioning to be permitted to escape having to pay all their debts to the detriment of the creditors, it is their obligation, not the creditors’, to prove that they deserve that permission because their claims in the petition are true and supportive of bankruptcy relief. In addition, it is not my legal responsibility to conduct any investigation of the debtors. It is yours. And how could you have failed to take issue with Att. Werner’s admission that he destroyed documents that the DeLanos provided him for the preparation of their petition? That is a felony so serious that under 18 U.S.C. §1519 it carries a maximum sentence of 20 years in prison! Is it because he destroyed documents that he cannot produce them now?

Likewise, you accepted uncritically the testimony of the DeLanos at the 341 meeting that at present they have only one credit card, namely, the one issued by First Premier Bank that Mr. DeLano uses every three months to pay for his medication, whereas Mrs. DeLano has none at all. However, for more than 15 years they have had scores of credit cards and have used them in a skip and pay pattern so that they have failed to make their minimum payments a staggering 279 times at least. It is highly unlikely that people like them would all of a sudden give up their habit of using credit cards as means of payment, let alone that Mrs. DeLano now pays cash for all her expenses. The implausibility of those statements is corroborated by the facts: The last credit bureau reports requested on July 23 and 26, 2004, show that as of that very month the DeLanos made payments on more than one credit card.

Credit Cards on Which the DeLanos Made Payments Between Just January and July 2004

	Credit reporting agency	Date of report	Person reported on	Credit card issuer	Credit card account no.	Date of last payment & amount if stated in the report
1.	Equifax	July 23, 04	David D.=D	Capital One	4388 6413 4765*	January 2004
2.				Capital One Bank	4862 3621 5719*	February 2004
3.			D	Genesee Regional Bank		June 2004
4.	Equifax	July 23,04	Mary D.=M	Capital One	4862 3622 6671*	February 2004
5.	Experian	July 26, 04	D	Bank of Ohio	4266 8699 5018	May 2004: \$197
6.			D	Bk I TX	4712 0207 0151...	May 2004: \$205
7.			D	Fleet M/C	5487 8900 2018...	May 2004: \$172
8.			D	HSBC Bank USA	5215 3170 0105...	February 04: \$160
9.			D	MBGA/JC Penney	80246...	July 2004: \$57
10.			D	First Premier Bank	4610 0780 0310...	July 2004: \$48
11.	Experian	July 26, 04	M	Fleet M/C	5487 8900 2018...	May 2004: \$172
12.			M	MBGA/JC Penney	80246...	July 2004: \$57
13.	TransUnion	July 26, 04	M	JC Penney/MBGA	1069 9076 5	July 2004

Given that the stay that became effective upon the DeLanos filing their petition in January 2004, barred the credit card issuers from undertaking collection efforts, there would be no reason for the DeLanos to pay old charges. They must have made those payments to their credit cards to keep them current so that they can continue using them.

Now Att. Werner submits these documents, though **1)** incomplete due to his self-serving determination of their relevancy; **2)** incapable of explaining the flow of mortgages over the years and their sediment of equity in the DeLanos' home; and **3)** at odds with information provided by the DeLanos previously. He too should have known better than to submit them, for according to his own statement at the hearing on July 19, 2004, he 'has been in this business for 28 years'. By the same token, he should know that he is subject to the constraints of FRBkrP Rule 9011(b) and to the NY Code of Professional Responsibility: Canons and Disciplinary Rules, in particular DR 7-102, all the time.

So what could possibly have led Att. Werner to think that these documents would pass muster with you, Trustee Reiber? Did he know that you just humored me at the 341 meeting on February 1, but that in the end you would not make on him any requirement other than what could be met with this pretense of a document production? Is he aware that you have a conflict of interests, for on March 8, 2004, you vouched in open court for the good faith of the DeLanos' petition before you ever requested them any supporting document, and now you would incriminate yourself if you were to conduct a proper investigation that demonstrated that the DeLanos have committed fraud, particularly concealment of assets, and that you could have suspected that if only you had read critically their petition, let alone requested of them proof for their implausible and intriguing claims?

If you can assess the character and determination of a person, you must know that, if you do not, I will find evidence for my assertions. It will indict your competency and due diligence, to begin with. This is the moment for you to cut your losses; otherwise, you will dig yourself into a deeper hole from which you will be unable to come out. Therefore, I respectfully request that you:

1. recuse yourself from this case so that an independent trustee, unrelated to the parties, unfamiliar with the case, unhampered by any conflict of interest, and capable of conducting a zealous, competent, and expeditious investigation of the DeLanos be appointed; if you refuse to do so,
2. hire under 11 U.S.C. §327 a highly reputed title search, appraisal, and accounting firm(s) that are unrelated to the parties and with whom neither you nor your attorney, James Weidman, Esq., have ever worked, to investigate the DeLanos' mortgages and real and personal property in order to **a)** establish a chronologically unbroken title to any such property; **b)** determine the value of their equity and outstanding debts; and **c)** *follow the money!*, from the point of its being earned by each of the DeLanos since "1990 and prior credit card purchases" to date;
3. use your power of subpoena, cf. F.R.Bkr.P. Rules 9016 and 2004(a) and (c), and F.R.Civ.P. Rule 45, to subpoena from the respective institutions the following documents:
 - a. current reports from each of the three credit reporting bureaus, namely, Equifax, Experian, and TransUnion; and
 - b. the monthly statements of the DeLano's checking, savings, and debit card accounts, their current balances, and copies of their cancelled checks;
4. request that the DeLanos:
 - a. produce a list of their checking, savings, and debit card accounts since '1990 and prior years' to date, the period that they put in play in Schedule F;
 - b. state the name of the appraiser that appraised their home in November 2003, and his or her address and phone number;
 - c. attend a 341 meeting in the afternoon of Monday, February 28, or the morning of March 1, where they must produce the originals of all the title and mortgage documents that they have and answer questions about those that Att. Werner produced. Please note that the evidentiary hearing on the motion to disallow is scheduled for March 1, at 1:30 p.m.

I would appreciate it if you would call me as soon as possible to discuss this letter and let me know where you stand on the issues raised here and the requests that I have made.

Sincerely,

Dr. Richard Cordero

GEORGE M. REIBER
CHAPTER 13 TRUSTEE
SOUTH WINTON COURT
3138 SOUTH WINTON ROAD
ROCHESTER, NEW YORK 14623

GEORGE M. REIBER
JAMES W. WEIDMAN

February 24, 2005

585-427-7225
FAX 585-427-7804

Christopher K. Werner, Esq.
2400 Chase Square
Rochester, NY 14604

Dear Mr. Werner,

Re: David & Mary Ann Delano BK #04-20280

Thank you for sending me the Abstract information regarding the debtors' property. I note that the 1988 mortgage to Columbia, which later ended up with the government, is not discharged of record or mentioned in any way, shape or form concerning a payoff. What ever happened to that mortgage? According to the Schedules, the only mortgage in existence is the Lyndon mortgage.

Thank you for your cooperation and consideration.

Very truly yours,

GEORGE M. REIBER

GMR/mb
XC: Dr. Richard Cordero (FAX)

March 10, 2005

George M. Reiber, Esq.
3136 South Winton Road
Rochester, New York 14623

Re: David G. and Mary Ann DeLano, Case No. 04-20280

Dear Mr. Reiber:

In response to your letter dated February 24, 2005, we enclose herewith the County Clerk's records of discharge of Columbia Banking mortgages as filed June 13, 1988 and June 14, 1998, together with Discharges of Mortgage by M&T Bank filed April 28, 1999, September 1, 1999 and April 10, 2000, to the extent they may also be relevant.

I have not reviewed the actual documents themselves, but only the electronic records index with the County Clerk. If you think it's necessary, a complete title search will have to be obtained to establish the outstanding liens. Please advise.

Very truly yours,

BOYLAN, BROWN,
CODE, VIGDOR & WILSON, LLP


Christopher K. Werner

CKW/trm
Enclosures

cc: David G. and Mary Ann DeLano
Mr. Richard Cordero

Dr. Richard Cordero

Ph.D., University of Cambridge, England
M.B.A., University of Michigan Business School
D.E.A., La Sorbonne, Paris

59 Crescent Street
Brooklyn, NY 11208-1515
tel. (718) 827-9521; CorderoRic@yahoo.com

March 19, 2005

Christopher K. Werner, Esq.
Boylan, Brown, Code, Vigdor & Wilson, LLP
2400 Chase Square
Rochester, NY 14604

Re: David and Mary Ann DeLano, Bkr. dkt. no. 04-20280

Dear Mr. Werner,

I have received a copy of your letter to Trustee George Reiber of 10 instant. However, I did not receive the enclosures. I trust you remember what Trustee Reiber told you in his letter to you of June 16, 2004:

I notice that you did not copy Dr. Cordero in on your correspondence. I will be forwarding him copies of everything you have sent me. In the future, please make sure Dr. Cordero is copied on everything. I do not intend to be a conduit for information being passed between parties in interest.

It is appropriate to note that:

- 1) you refused for months to provide the Trustee and me any documents concerning the DeLanos, so much so that he moved to dismiss "for unreasonable delay";
- 2) subsequently, you failed to produce all the documents requested by Trustee Reiber, as I showed in Table 1 of my letter to you of September 29, 2004;
- 3) you also failed to produce the documents that I requested from you pursuant to his letter to both of us of March 12, 2004; and
- 4) you refused to provide me with even a single document that I requested to defend against your motion to disallow my claim against Mr. DeLano.

Do you think that an objective observer informed of all the facts may find it reasonable to be concerned that you may still be reluctant and even fail to provide me with a copy of all the documents that you or the DeLanos have or that you send to the Trustee?

In this vein, it is appropriate to ask you whether you think that an impartial trier of facts may deem your failure to copy me in on enclosures to the Trustee despite his express instruction for you to do so as evidence that you might not copy your clients on correspondence that I send you.

Therefore, I respectfully request that you send me a list of all the documents that you have sent to Trustee Reiber in connection with his request at the examination of the DeLanos on February 1, including those referred to in the above-mentioned letter to him of March 10, and that you also send me a copy of all such documents themselves.

Sincerely,

Dr. Richard Cordero

March 24, 2005

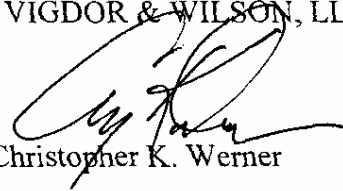
Dr. Richard Cordero
59 Crescent Street
Brooklyn, New York 11208

Re: David G. and Mary Ann DeLano, Case No. 04-20280

Dear Dr. Cordero:

Enclosed please find copies of the enclosures to our letter to Trustee Reiber of March 10, 2005, which were apparently omitted from your copy of the correspondence. These documents are also a matter of public record and are accessible to the public at the website indicated at the bottom of the documents.

BOYLAN, BROWN,
CODE, VIGDOR & WILSON, LLP


Christopher K. Werner

CKW/trm
cc: David G. and Mary Ann DeLano



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Parties		Property	Notations	Refers To	More Entries	View Image/Purcha	
Name	Party Desc	Party Type	RECORD DT			Reference #1	Reference #2
COLUMBIA BANKING FEDERAL SAVIN	DSCHARGOR	1	19880614	N	N		
Doc Description	Doc Type	Pages	Book/Page	VER?	CHG?		
DSCHG OF MTG	S04	1	S014190142	Y			

DeHano



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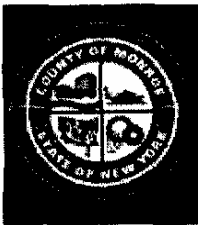
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Party Inquiry Detail Results

Name	Party Desc	Party Type
COLUMBIA BANKING FEDERAL SAVIN	DSCHARGOR	1
DELANO DAVID G	DSCHARGE	2
DELANO MARY ANN	DSCHARGE	2

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Prop Type	Description
4	* L4488 P152



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Name	Party Desc	Party Type	RECORD DT			Reference #1	Reference #2
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Doc Description	Doc Type	Pages	Book/Page	VER?	CHG?		
DSCHG OF MTG	S04	1	S014180320	Y			



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Name	Party Desc	Party Type
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DELANO DAVID G	DSCHARGEES	2
DELANO MARY ANN	DSCHARGEES	2

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4	* L 4000 P 196



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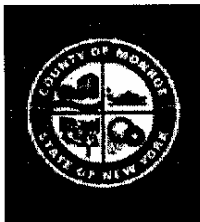
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		Parties	Property	Notations	Refers To	More Entries	View Image/Purcha
Name	Party Desc	Party Type	RECORD DT			Reference #1	Refe #
MANUFACTURERS AND TRADERS TRUS T COMPANY	DSCHARGOR	1	19990428	N	N	M#CH 016334	
Doc Description	Doc Type	Pages	Book/Page	VER?	CHG?		
DSCHG OF MTG	S04	2	S023420479	Y	N		



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Name	Party Desc	Party Type
DELANO DAVID G	DSCHARGE	2
DELANO MARY ANN	DSCHARGE	2
MANUFACTURERS AND TRADERS TRUS T COMPANY	DSCHARGOR	1

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Prop Type	Description
1	00WYC 19990428



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Name	Party Desc	Party Type	RECORD DT			Reference #1	Refe #
MANUFACTURERS AND TRADERS TRUS T COMPANY	DSCHARGOR	1	20000410	N	N	M#CK 039604	
Doc Description	Doc Type	Pages	Book/Page	VER?	CHG?		
DSCHG OF MTG	S04	2	S024240500	Y	N		



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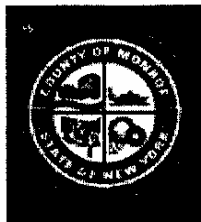
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Party Inquiry Detail Results

Name	Party Desc	Party Type
DELANO DAVID G	DSCHARGE	2
DELANO MARY ANN	DSCHARGE	2
MANUFACTURERS AND TRADERS TRUS T COMPANY	DSCHARGOR	1

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1	00LAC 20000410



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DSCHG OF MTG	S04	2	S023780187	Y	N		



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Property Information Results

Prop Type	Description
1	00WYC 19990901

Dr. Richard Cordero

Ph.D., University of Cambridge, England
M.B.A., University of Michigan Business School
D.E.A., La Sorbonne, Paris

59 Crescent Street
Brooklyn, NY 11208-1515
tel. (718) 827-9521; CorderoRic@yahoo.com

March 29, 2005

Trustee George M. Reiber
South Winton Court
3136 S. Winton Road, Suite 206
Rochester, NY 14623

faxed to 585-427-7804

Re: David and Mary Ann DeLano, Bkr. dkt. no. 04-20280

Dear Trustee Reiber,

I received a copy of the letter that Christopher Werner, Esq., sent you on 10 instant. However, he failed to send me the enclosures. So I wrote to him on March 19 and let him know that by not sending them to me, he had disregarded what you had told him in your letter to him of June 16, 2004:

I notice that you did not copy Dr. Cordero in on your correspondence. I will be forwarding him copies of everything you have sent me. In the future, please make sure Dr. Cordero is copied on everything. I do not intend to be a conduit for information being passed between parties in interest.

Now I have received a letter from him, dated March 24, containing 14 printouts of screenshots of index pages on the website of the Monroe County Clerk's Office, of which I am sending you a copy. I can only assume that they represent a copy of everything in the enclosures that he sent you. But even Att. Werner can realize that they have neither beginning nor ending dates of a transaction, nor transaction amounts, nor property location, nor current status, nor reference to the involvement in the mortgage of the U.S. Department of Housing and Urban Development (HUD), etc. They are useless to prove anything!

Mr. Werner may have realized it, which would explain why he wrote in his letter to you:

I have not reviewed the actual documents themselves, but only the electronic records index with the County Clerk.

That statement does not secure for Att. Werner plausible deniability. What he did send show that those documents are objectively incapable of providing the information that you requested from him. Indeed, in your letter of last February 24 you wrote to him thus:

Thank you for sending me the Abstract information regarding the debtors' property. I note that the 1988 mortgage to Columbia, which later ended up with the government, is not discharged of record or mentioned in any way, shape or form concerning a payoff. What ever happened to that mortgage? According to the Schedules, the only mortgage in existence is the Lyndon mortgage. Thank you for your cooperation and consideration.

In light of your concerns thus expressed, how could Att. Werner think that by not checking the documents and instead sending useless screenshots he was making a reasonably calculated effort to provide the necessary information to put your concerns to rest? Did he expect you to do his homework for him by going to the County Clerk's website to look for "the actual documents themselves" and determine whether they contained the information concerning the mortgage to Columbia and HUD's involvement?

Hence, it is most intriguing that you did not protest to Att. Werner for having sent you those useless screenshots. Did you even look at the documents that he sent you? Did you ever intend to look at them when you expressed your concerns about the DeLanos' mortgages? The foundation for these questions is that 1) only after I faxed to you my letter of February 22 where I pointed out the insufficiency of the documents that Att. Werner had produced with his letter of February 16 did you write to him to express those concerns on February 24; 2) only after I stated my objections of March 4, 2004, to the confirmation of the DeLanos' debt repayment plan and had to keep insisting on the basis of 11 U.S.C. §704(4) and (7) that you obtain supporting documents from them did you ask Att. Werner for any documents whatsoever in your letter of April 20, months after they had filed their petition of January 26, 2004; 3) only after I had to appeal all the way to the Trustees' Office in Washington, D.C; to exercise my right to examine the DeLanos did you give up your refusal to hold such examination; etc. There is a pattern here: Only if I keep pushing you to obtain information do you ask for it. Would it appear to a reasonable person informed of all the circumstances that you rubberstamped the DeLanos' petition and now are asking for documents just to humor me but with no intention to find out what their financial situation is? Are you wasting my effort, time, and money by dragging me through a charade?

These circumstances beg the question whether Att. Werner sent you but not me those documents on March 10 because he expected you not to look at them, let alone notice their uselessness, while he knew that I would. This is supported by the fact that it was I who raised the question about mortgages at the examination of the DeLanos on February 1, 2005, in your office. Then you asked for documents from them and Att. Werner. Mr. DeLano stated that he had those documents at home. You gave them two weeks to produce them. So why do they take two months not to produce them? Why did they send you useless screenshots when they could have sent you copies of the documents that Mr. DeLano admitted he had at home? The answer is that this is part of their pattern of refusal to produce documents and so much so that months after you requested, at my instigation, documents from them and received none, you moved for dismissal on June 15, 2004, for "unreasonable delay".

By now it should be obvious to you too that the delay is not just unreasonable, it is intentional. If the DeLanos were in real financial difficulty so as to justify their filing for bankruptcy and they could establish the good faith of their petition by producing documents that they even admit having at home, it would be irrational for them to be throwing away thousands of dollars in legal fees to have Att. Werner for more than a year withhold those documents and others that you have requested, not to mention all those that I have requested. Their conduct, however, is rational if those documents are so incriminating that out of self-preservation they feel they must conceal them. In so doing, they are only managing to violate time and again the provision at 18 U.S.C §152(8) on 'the concealment or destruction of documents in contemplation of or after filing a bankruptcy petition and relating to the financial affairs of the debtor'.

Just as the DeLanos have chosen to keep compounding their initial fraud in what they chose to state in their petition rather than cut their losses by admitting what they did and bargain for a plea, you, Trustee Reiber, must choose your stance toward the indisputable fact of their concealment of documents. Therefore, I ask once more the same question that I asked at the examination last February:

If the DeLanos obtained a mortgage loan of \$32,000 from Monroe Bank in 1976; and another mortgage loan of \$59,000 from M&T Bank in 1988 as well as another mortgage loan of \$59,000 from ONONDAGA Bank in 1988; and yet another mortgage

loan for \$95,000 from Genesee Regional Bank, and as stated by them, they made all their installment payments, how is it that they end up 29 years later having a home equity of only \$21,416 and still owe a mortgage debt of \$77,084, as they declared in Schedule A of their petition?

The answer is in the documents that they are so intent on not producing. However, the answering documents are not just those relating to mortgages, but also those that show the whereabouts of the money that the DeLanos have earned for so many years, including the \$291,470 in the 2001-03 fiscal years alone, and that today should be reflected in their all but 100% equity in their home at 1262 Shoecraft Road in Webster. If in the 29 years since their 1976 mortgage they have barely managed to acquire ownership of one fifth of their home appraised at \$98,500 in November 2003, what else have they instead managed to acquire?

Therefore, I respectfully request that you:

5. hire under 11 U.S.C. §327 a highly reputed title search, appraisal, and accounting firm(s) that is unrelated to the parties and with which neither you nor your attorney, James Weidman, Esq., have ever worked, to investigate the DeLanos' mortgages and real and personal property in order to a) establish a chronologically unbroken title to **any** such property; b) determine the value of their equity and outstanding debts; and c) follow the money!, from the point of its being earned by each of the DeLanos since "1990 and prior credit card purchases" -the period that they put in play 15 times in Schedule F- to date;
6. request that the DeLanos:
 - a. produce a list of their checking, savings, and debit card accounts since '1990 and prior years' to date; and
 - b. state the name of the appraiser that appraised their home in November 2003, and his or her address and phone number;
7. use your power of subpoena, cf. F.R.Bkr.P. Rules 9016 and 2004(a) and (c), and F.R.Civ.P. Rule 45, to subpoena from the respective institutions the following documents:
 - a. the monthly statements of the DeLano's checking, savings, and debit card accounts, their current balances, and copies of their cancelled checks; and
 - b. current reports from each of the three credit reporting bureaus, namely, Equifax, Experian, and TransUnion;
8. if you are not willing or able not just to ask for, but also obtain the necessary documents, including those already requested but still not produced, recuse yourself from this case so that an independent trustee, unrelated to the parties, unfamiliar with the case, unhampered by any conflict of interest, and capable of conducting a zealous, competent, and expeditious investigation of the DeLanos be appointed; and
9. send me copies of documents that Att. Werner may send you, without prejudice to his obligation to send them directly to me.

I look forward to receiving a written response from you at your earliest convenience.

Sincerely,

Dr. Richard Cordero

Dr. Richard Cordero

Ph.D., University of Cambridge, England
M.B.A., University of Michigan Business School
D.E.A., La Sorbonne, Paris

59 Crescent Street
Brooklyn, NY 11208-1515
tel. (718) 827-9521; CorderoRic@yahoo.com

April 19, 2005

Ms. Deirdre A. Martini
U.S. Trustee for Region 2
Office of the United States Trustee
55 Whitehall Street, 21st Floor
New York, NY 10004

faxed to (212) 668-2255

Re: David and Mary Ann DeLano, Bkr. dkt. no. 04-20280

Dear Trustee Martini,

Please find herewith a copy of my Designation of Items and a Statement of Issues relating to my appeal to the District Court from Judge Ninfo's decision of 4 instant in the DeLano case. Through the appellate process I will argue the suspicious circumstance that neither Judge Ninfo, Trustee Reiber, nor Trustee Schmitt wants to investigate Mr. David DeLano, a 32 year veteran of the banking industry and currently a loan officer who files for bankruptcy after earning together with his wife in just the 2001-03 fiscal years \$291,470, whose whereabouts nobody wants to find out. Must Mr. DeLano be protected lest he talk about compromising bankruptcy goings-on?

Now there is the issue of the DeLanos' mortgages, about which Trustee Reiber appears not to want to learn too much. Indeed, at the examination of the DeLanos, which took place only after overcoming the Trustee's opposition, I raised the following question:

If the DeLanos obtained a mortgage loan of \$32,000 from Monroe Bank in 1976; and another mortgage loan of \$59,000 from M&T Bank in 1988 as well as another mortgage loan of \$59,000 from ONONDAGA Bank in 1988; and yet another mortgage loan for \$95,000 from Genesee Regional Bank, and as stated by them, they made all their installment payments, how is it that they end up 29 years later having a home equity of only \$21,416 and still owe a mortgage debt of \$77,084, as they declared in Schedule A of their petition?

Only at my instigation did Trustee Reiber ask for clarification after the DeLanos' attorney provided incomplete mortgage information. His response was even more unsatisfactory: printouts of 14 screenshots of index pages on the website of the Monroe County Clerk's Office that have neither beginning nor ending dates of a transaction, nor transaction amounts, nor property location, nor current status, nor an explanation for HUD's involvement in the mortgage, etc.

Despite my request, the Trustee has not commented on such useless documents, which I faxed to you on March 29. I am still entitled to an answer from him for the same reasons that he held the examination of the DeLanos last February although I was the only one to ask for and attend it: because I am a party in interest. Whatever Judge Ninfo determined as to my status as a creditor, which I am contesting on appeal, and as to my future participation in court proceedings, it does not affect how he, or for that matter you, as an officer of the Executive, not the Judicial, Branch, should treat me. Moreover, if a member of the public submitted to you evidence of bankruptcy fraud in a case in which he was not even a party in interest, you would still have to investigate it or have it investigated under 18 U.S.C. §3057(a). Not to do so would aid and abet fraud.

Thus, I respectfully request that you replace Trustee Reiber by a trustee capable of investigating this matter or report it under §3057 to the DoJ in Washington, not Rochester or Buffalo. Please let me know what you intend to do.

Sincerely,

Dr. Richard Cordero

Dr. Richard Cordero

Ph.D., University of Cambridge, England
M.B.A., University of Michigan Business School
D.E.A., La Sorbonne, Paris

59 Crescent Street
Brooklyn, NY 11208-1515
tel. (718) 827-9521; CorderoRic@yahoo.com

April 21, 2005

Kathleen Dunivin Schmitt, Esq.
Assistant U.S. Trustee
Federal Office Building
100 State Street, Room 6090
Rochester, NY 14614

faxed to (585) 2635862

Re: §341 examination of the DeLanos, dkt. no. 04-20280

Dear Trustee Schmitt,

I have not received your answer to my request in my letters to you of March 1, 10, and 21 that you state your position on my letter to Trustee Reiber of February 22. It is quite suspicious that neither you, Trustee Reiber, nor Judge Ninfo want to investigate Mr. David DeLano, a 32 year veteran of the banking industry and currently a bank loan officer who files for bankruptcy after earning together with his wife in just the 2001-03 fiscal years \$291,470, whose whereabouts nobody wants to find out. Must Mr. DeLano be protected lest he talk about compromising bankruptcy goings-on?

Now there is the issue of the DeLanos' mortgages, about which Trustee Reiber appears not to want to learn too much. Indeed, at the examination of the DeLanos, which took place only after overcoming Trustee Reiber's opposition, I raised the following question:

If the DeLanos obtained a mortgage loan of \$32,000 from Monroe Bank in 1976; and another mortgage loan of \$59,000 from M&T Bank in 1988 as well as another mortgage loan of \$59,000 from ONONDAGA Bank in 1988; and yet another mortgage loan for \$95,000 from Genesee Regional Bank, and as stated by them, they made all their installment payments, how is it that they end up 29 years later having a home equity of only \$21,416 and still owe a mortgage debt of \$77,084, as they declared in Schedule A of their petition?

Only at my instigation did Trustee Reiber ask for clarification after the DeLanos' attorney provided incomplete mortgage information. His response was even more unsatisfactory: printouts of 14 screenshots of index pages on the website of the Monroe County Clerk's Office that have neither beginning nor ending dates of a transaction, nor transaction amounts, nor property location, nor current status, nor an explanation for HUD's involvement in the mortgage, etc.

Despite my request, the Trustee has not commented on such useless documents, which I faxed to you on March 29. I am still entitled to an answer from him for the same reasons that he held the examination of the DeLanos last February although I was the only one to ask for and attend it: because I am a party in interest. Whatever Judge Ninfo determined as to my status as a creditor, which I am contesting on appeal, and as to my future participation in court proceedings, it does not affect how he, or for that matter you, as an officer of the Executive, not the Judicial, Branch, should treat me. Moreover, if a member of the public submitted to you evidence of bankruptcy fraud in a case in which he was not even a party in interest, you would still have to investigate it or have it investigated under 18 U.S.C. §3057(a). Not to do so would aid and abet fraud.

Hence, I respectfully request that you replace Trustee Reiber by a trustee capable of investigating this matter or report it under §3057 to the DoJ in Washington. Please do reply to this letter.

Sincerely,

Dr. Richard Cordero

Dr. Richard Cordero

Ph.D., University of Cambridge, England
M.B.A., University of Michigan Business School
D.E.A., La Sorbonne, Paris

59 Crescent Street
Brooklyn, NY 11208-1515
tel. (718) 827-9521; CorderoRic@yahoo.com

April 21, 2005

Trustee George M. Reiber
South Winton Court
3136 S. Winton Road, Suite 206
Rochester, NY 14623

faxed to 585-427-7804

Re: David and Mary Ann DeLano, Bkr. dkt. no. 04-20280

Dear Trustee Reiber,

Please find herewith a copy of my Designation of Items and a Statement of Issues relating to my appeal to the District Court from Judge Ninfo's decision of 4 instant in the DeLano case.

By contrast, I have not received your response to my letter of March 29, where I requested that you comment on the submission to you at your request by Att. Werner of information about the DeLanos' mortgages. What he submitted with his letter of March 24 consisted of printouts of 14 screenshots of index pages on the website of the Monroe County Clerk's Office. If you are satisfied with his submission, I would like to know why, for those index pages, as I pointed out, have neither beginning nor ending dates of a transaction, nor transaction amounts, nor property location, nor current status, nor an explanation for HUD's involvement in the mortgage, etc. If, on the contrary, you are not satisfied, I would also like to know why and what you intend to do about securing the information that you requested when in your February 24 letter you asked him thus:

Thank you for sending me the Abstract information regarding the debtors' property. I note that the 1988 mortgage to Columbia, which later ended up with the government, is not discharged of record or mentioned in any way, shape or form concerning a payoff. What ever happened to that mortgage? According to the Schedules, the only mortgage in existence is the Lyndon mortgage. Thank you for your cooperation and consideration.

I am still entitled to an answer from you for the same reasons that you held the examination of the DeLanos last February although I was the only one to ask for and attend it: because I am a party in interest. Whatever Judge Ninfo determined as to my status as a creditor, which I am contesting on appeal, and as to my future participation in court proceedings, it does not affect how you, as an officer working on behalf of the Executive, not the Judicial, Branch, should treat me. Moreover, if a member of the public submitted to you evidence of bankruptcy fraud in a case in which he was not even a party in interest, you would still have to investigate it or have it investigated under 18 U.S.C. §3057. Not to do so would aid and abet fraud. In the DeLanos' case, there is evidence of their fraud, beginning with the \$291,470 that they earned in just the 2001-03 fiscal years and whose whereabouts nobody knows, particularly since you have refused to ask them for documents, such as bank account statements, that could show where that money is.

In addition, you have the question of their mortgages, which remains unanswered and as relevant to the issue of their concealment of assets, on which Judge Ninfo's decision has no bearing whatsoever, as it was when I asked it at the examination last February 1, to wit:

If the DeLanos obtained a mortgage loan of \$32,000 from Monroe Bank in 1976; and another mortgage loan of \$59,000 from M&T Bank in 1988 as well as another mortgage loan of \$59,000 from ONONDAGA Bank in 1988; and yet another mortgage loan for \$95,000 from Genesee Regional Bank, and as stated by them, they made all

their installment payments, how is it that they end up 29 years later having a home equity of only \$21,416 and still owe a mortgage debt of \$77,084, as they declared in Schedule A of their petition?

The facts contained in that question, which the DeLanos admitted at their February 1 examination or provided in their bankruptcy petition, and the fact that they have obstructed finding its answer by refusing to produce documents, so much so that you moved to dismiss their case, constitute credible evidence for the belief that they have committed bankruptcy fraud. That belief is strengthened by the fact that in the 29 years since their 1976 mortgage they have barely managed to acquire ownership of one fifth of their home appraised at \$98,500 in November 2003. So where have they put the hundreds of thousands of dollars that they have earned since?, a most pertinent question because at their examination they stated that they have lived a modest life, have not taken expensive vacations, eaten at fancy restaurants, or made luxury purchases.

Therefore, I respectfully request that you:

1. hire under 11 U.S.C. §327 a highly reputed title search, appraisal, and accounting firm(s) that is unrelated to the parties and with which neither you nor your attorney, James Weidman, Esq., have ever worked, to investigate the DeLanos' mortgages and real and personal property in order to **a)** establish a chronologically unbroken title to **any** such property; **b)** determine the value of their equity and outstanding debts; and **c)** *follow the money!*, from the point of its being earned by each of the DeLanos since "1990 and prior credit card purchases" -the period that they put in play 15 times in Schedule F- to date;
2. request that the DeLanos:
 - a. produce a list of their checking, savings, and debit card accounts since '1990 and prior years' to date; and
 - b. state the name of the appraiser that appraised their home in November 2003, and his or her address and phone number;
3. use your power of subpoena, cf. F.R.Bkr.P. Rules 9016 and 2004(a) and (c), and F.R.Civ.P. Rule 45, to subpoena from the respective institutions the following documents:
 - a. the monthly statements of the DeLano's checking, savings, and debit card accounts, their current balances, and copies of their cancelled checks; and
 - b. current reports from each of the three credit reporting bureaus, namely, Equifax, Experian, and TransUnion;
4. if you are not willing or able not just to ask for, but also obtain the necessary documents, including those already requested but still not produced, recuse yourself from this case so that an independent trustee, unrelated to the parties, unfamiliar with the case, unhampered by any conflict of interest, and capable of conducting a zealous, competent, and expeditious investigation of the DeLanos be appointed; and
5. send me copies of documents that Att. Werner may send you, without prejudice to his obligation to send them directly to me.

I look forward to receiving a written response from you at your earliest convenience.

Sincerely,

Dr. Richard Cordero



**BOYLAN, BROWN,
CODE, VIGDOR & WILSON, LLP**
ATTORNEYS AT LAW

July 19, 2005

VIA MESSENGER

Hon. David G. Larimer
United States District Court
100 State Street
Rochester, New York 14614

**Re: Dr. Richard Cordero vs. David G. and Mary Ann DeLano
Case No. 05-cv-6190L**

Dear Judge Larimer:

This law firm represents David G. and Mary Ann DeLano with respect to the above matter. Enclosed please find our Statement in Opposition to Cordero Motion to Stay Confirmation and Other Relief. Thank you for your courtesy.

Very truly yours,

**BOYLAN, BROWN,
CODE, VIGDOR & WILSON, LLP**


Christopher K. Werner

CKW/trm
Enclosure

cc: David G. and Mary Ann DeLano
Dr. Richard Cordero ✓
George M. Reiber, Esq.
David D. MacKnight, Esq.

2400 Chase Square • Rochester, New York 14604 • 585-232-5300 • FAX: 585-232-3528
60-70 South Main Street, Suite 250 • Canandaigua, New York 14424 • 585-396-0400 • FAX: 585-232-3528
<http://www.boylanbrown.com>

Att. Werner's letter of July 19, 2005, to Judge Larimer accompanying his statement in opposition

E:331

UNITED STATES DISTRICT COURT
COUNTY OF MONROE STATE OF NEW YORK

Dr. Richard Cordero,
Appellant/Creditor,

-vs-

David G. Delano and Mary Ann Delano,
Respondents/Debtors.

**STATEMENT IN OPPOSITION
TO CORDERO MOTION TO
STAY CONFIRMATION AND
OTHER RELIEF**

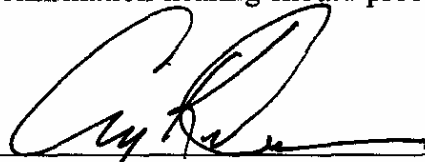
Case No. 05-cv-6190L

DAVID G. DELANO and **MARY ANN DELANO**, by their attorneys, Christopher K. Werner, Esq., of counsel to Boylan, Brown, Code, Vigdor & Wilson, LLP, state in response and opposition to Richard Cordero's pending Motion before this Court, as follows:

1. Richard Cordero sets forth no substantive basis for any of the relief requested in his current Motion, nor does he have any interest in the DeLano matter whatsoever, as determined by Judge Ninfo on his Order on the Debtors' objection to his claim.

2. Mr. and Mrs. DeLano have been delayed for approximately one (1) year in the confirmation of their Chapter 13 Plan and the confirmation hearing should proceed as currently scheduled.

Dated: July 19, 2005



Christopher K. Werner, Esq.
Boylan, Brown, Code, Vigdor & Wilson, LLP
Attorneys for Debtors
2400 Chase Square
Rochester, New York 14604
Telephone: (585) 232-5300

UNITED STATES BANKRUPTCY COURT
Western District of New York
100 State Street
Rochester, NY 14614
www.nywb.uscourts.gov

In Re:

David G. DeLano
Mary Ann DeLano

SSN/Tax ID: xxx-xx-3894
xxx-xx-0517

Debtor(s)

Case No.: 2-04-20280-JCN
Chapter: 13

**NOTICE REGARDING PERFECTING THE
RECORD ON APPEAL [Bankruptcy Rule 8006]**

PLEASE TAKE NOTICE that, pursuant to Rule 8006 of the Federal Rules of Bankruptcy Procedure ("Bankruptcy Rule(s)"), on or before April 21, 2005, the Appellant, Richard Cordero ("Appellant"), must serve on the Appellee, David G. and Mary Ann DeLano ("Appellee"), and file with the Clerk of Court for the Bankruptcy Court a "Designation of Record on Appeal and Statement of Issues" ("Designation"), together with proof of service in the form of an Affidavit of Service. Appellant must serve on Appellee and file with the Clerk of Court a copy of any document listed in the Designation that is not available electronically through the Court's Docket, together with proof of service in the form of an Affidavit of Service.

PLEASE TAKE FURTHER NOTICE that, pursuant to Bankruptcy Rule 8006, within ten (10) days after service of Appellant's Designation, the Appellee may serve on Appellant and file with the Clerk of Court a "Designation of Additional Items," together with proof of service in the form of an Affidavit of Service. If the Appellee has filed a cross-appeal, the Appellee must serve and file those items specified in Bankruptcy Rule 8006 within the time specified.

PLEASE TAKE FURTHER NOTICE that, any party designating a transcript as part of the Record on Appeal must deliver to the Court Reporter, and file with the Clerk of Court, a written request for the transcript(s) and make satisfactory arrangements for payment of the cost of the transcript(s) with the Court Reporter, except where the transcript has previously been filed with the Court.

PLEASE TAKE FURTHER NOTICE that, in the event that the Appellant fails to serve and file the Designation of Record within the ten (10) day time period specified in Bankruptcy Rule 8006, the Clerk of the Bankruptcy Court will transmit to the Clerk of the District Court an "Incomplete Record" consisting of a copy of the Notice of Appeal, the Order or Judgment that is the subject of the appeal, and an index of the relevant Docket entries. Appellant is advised that the appeal may be subject to dismissal by District Court, in the event of Appellant's failure to serve and file the Designation within the time required by Bankruptcy Rule 8006, upon a motion by the Appellee or on the Court's own motion.

Dated: April 11, 2005

Paul R. Warren
Clerk, U.S. Bankruptcy Court

By: K. Tacy
Deputy Clerk

¹ This date has been determined by the Clerk's Office to be ten (10) days after the date on which Appellant filed of the "Notice of Appeal," as specified by Bankruptcy Rule 8006.

Form ap1ntc
Doc 104

**OFFICE OF THE CLERK
UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK**
1220 U.S. Courthouse, 100 State Street
Rochester, NY 14614 (585) 613-4200
www.nywb.uscourts.gov

Paul R. Warren
Clerk of Court

Todd M. Stickle
Deputy Clerk in Charge

April 22, 2005

Dr. Richard Cordero
59 Crescent Street
Brooklyn, NY 11208

Re: Notice of Appeal
Richard Cordero, Appellant vs. David and Mary Ann DeLano, Appellee
BK Number: 04-20280

Dear Dr. Cordero:

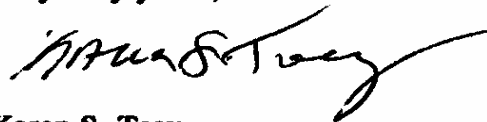
Enclosed please find the following items:

- 1) Transmittal letter to the U.S. District Court dated 4/21/05.
- 2) Transmittal letter to the U.S. District Court dated 4/22/05.
- 3) Civil Cover Sheet. This document is required for the Notice of Appeal and has not to date been received by the Court. Please fill out the Civil Cover Sheet and file with the U.S. Bankruptcy Court.

The U.S. District Court Civil Case Number for the Appeal is: ~~05-cv-6190L(O)~~. Please ensure that this number is on all the documents that you submit to the U.S. District Court.

Thank you for your attention to this matter.

Very truly yours,



Karen S. Tacy
Case Administrator

KST
enclosures

05 APR 22 PM 2:43

RICHARD CORDERO,

Appellant(s),

vs.

DAVID DeLANO and MARY ANN DeLANO,

Appellee(s).

U.S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

APPEAL FROM
BANKRUPTCY COURT
05-CV-6190L

An appeal from the Bankruptcy Court has been docketed in the district court pursuant to Bankruptcy Rule 8007 on APRIL 22, 2005. The case is assigned to District Judge David G. Larimer.

Until further order of the district court, the following schedule shall control the filing of briefs and argument of the appeal:

1. Appellant(s) shall file and serve its brief within twenty (20) days after entry of this order on the docket;

2. Appellee(s) shall serve and file its brief within twenty (20) days after service of appellant's brief;

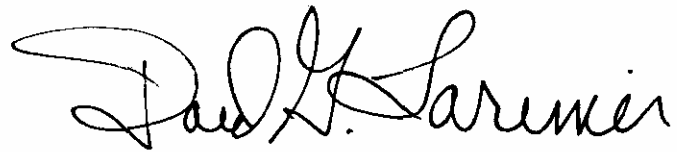
3. Bankruptcy Rule 8009 and 8010 shall control concerning cross-appeals and reply briefs as well as the form of all briefs;

4. It shall be the responsibility of appellant to

notify Judge Larimer, in writing, when the record is complete and all briefs have been filed, that the case is ready for oral argument, or if no argument is requested, that the case is ready for submission;

5. The Court will schedule argument in accordance with Bankruptcy Rule 8012.

IT SO ORDERED.



DAVID G. LARIMER
United States District Judge

Dated:

April 22, 2005

Rochester, New York

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

Dr. Richard Cordero
Appellant and creditor

**OBJECTION TO SCHEDULING ORDER
And REQUEST FOR ITS URGENT RESCISSION**

v.

case no. 05-cv-6190L

David DeLano and Mary Ann DeLano
Respondents and debtors in bankruptcy

Dr. Richard Cordero, appellant and creditor, states under penalty of perjury the following:

1. Dr. Cordero sent under FRBkrP 8006 his Designation of Items in the Record and Statement of Issues on Appeal to the Bankruptcy Court. The latter filed it last April 21 and on that very same day it transmitted the record to the District Court.
2. However, FRBkrP 8007(b) provides that "When the record is complete for purposes of appeal, the clerk shall transmit a copy thereof forthwith to the clerk of the district court or the clerk of the bankruptcy appellate panel." It is quite obvious that the record could not possibly have been complete on the very day that it was filed since the 10 days for "the appellee [to file and serve] a designation of additional items to be included in the record on appeal", as provided under FRBkrP 8006, had not even started to run. Likewise, contact with the court reporter for preparation of the transcript had only been initiated so that the transcript has not been even started, let alone delivered for the appellant to take into consideration when writing his brief on appeal.
3. Nevertheless, U.S. District Court Judge David Larimer issued a scheduling order on the following day, April 22, requiring "Appellant to file and serve its brief within 20 days after entry of this order on the docket". Therefore, that order is as premature as was the transmittal of the record.

4. These court acts have forced Dr. Cordero to devote time and effort to research and writing to comply with the deadline for submitting his brief while waiting on the Bankruptcy Court to acknowledge its mistake and withdraw the record.
5. Hence, to reduce further harm, Dr. Cordero respectfully requests that Judge Larimer's scheduling order of April 22, 2005, in the above entitled case be rescinded. Such rescission should be undertaken and communicated to Dr. Cordero immediately. It is only reasonable that if the Designation was transmitted from the Bankruptcy to the District Court the very same day of its receipt in the mail and the scheduling order was written and mailed the following day, then to correct their mistake, which causes Dr. Cordero irreparable waste of time and effort, not to mention considerable aggravation, all officers involved should proceed with the same promptness. To that end and on this occasion only, the order of rescission should be faxed to Dr. Cordero at (718)827-9521.
6. This request has been faxed to the District Court at (585)613-4035 upon agreement between Dr. Cordero and District Court Clerk Peggy Ghysel in consideration of the urgency of the matter.

Dated: May 2, 2005
59 Crescent Street
Brooklyn, NY 11208

Dr. Richard Cordero
Dr. Richard Cordero
tel. & fax (718) 827-9521

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DR. RICHARD CORDERO,

Appellant,

ORDER

05-MC-6008L

05-CV-6190L

v.

DAVID DE LANO and MARY ANN DE LANO,

Respondents.

Dr. Richard Cordero's motion for reconsideration of this Court's denial of his motion to proceed *in forma pauperis* (Dkt. #3 in 05-MC-6008L) is denied.

The motion filed by Dr. Cordero, styled as "Objection to Scheduling Order and Request For Its Urgent Rescission" (Dkt. # 3 in 05-CV-6190L) is granted in part. Appellant may have until June 13, 2005, within which to file and serve his brief. In all other respects, the motion is denied.

IT IS SO ORDERED.



DAVID G. LARIMER
United States District Judge

Dated: Rochester, New York
May 3, 2005.

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

Dr. Richard Cordero

Appellant and creditor

**MOTION
FOR COMPLIANCE WITH FRBkrP 8007
IN THE SCHEDULING OF APPELLANT'S BRIEF**

v.

case no. 05-cv-6190L

David DeLano and Mary Ann DeLano

Respondents and debtors in bankruptcy

Dr. Richard Cordero, appellant and creditor, states under penalty of perjury the following:

1. Dr. Cordero sent under FRBkrP 8006 his Designation of Items in the Record and Statement of Issues on Appeal to the Bankruptcy Court. The latter filed it last April 21 and on that same day it transmitted the record to the District Court. That transmittal was not in keeping with FRBkrP 8007(b) providing that "When the record is complete for purposes of appeal, the clerk shall transmit a copy thereof forthwith to the clerk of the district court or the clerk of the bankruptcy appellate panel."
2. It is quite obvious that the record could not possibly have been complete on the very day that it was filed since the 10 days for "the appellee [to file and serve] a designation of additional items to be included in the record on appeal", as provided under FRBkrP 8006, had not even started to run.
3. Likewise, contact with the court reporter for preparation of the transcript had only been initiated so that the transcript had not been even started, let alone delivered for the appellant to take into consideration when writing his brief on appeal. What is more, FRBkrP 8007(a) provides that:

If the transcript cannot be completed within 30 days of receipt of the request the reporter shall seek an extension of time from the clerk or the clerk of the bankruptcy appellate panel and the action of the clerk shall be entered in the docket and the parties notified. If the reporter does not file the transcript within the time allowed, the clerk or the clerk of the bankruptcy appellate panel shall notify the bankruptcy judge.

4. Consequently, there is no telling when the transcript will be ready and delivered to the clerk, let alone to Appellant for him to take it into consideration in writing his brief. Hence, the clerk of the bankruptcy clerk erred in transmitting an incomplete record to the district court. By the same token, the district court did not receive a “record [that] is complete for purposes of appeal”, as required under FRBkrP 8007(b). As a result, it did not obtain and still does not have jurisdiction over the case to issue a scheduling order because it received an incomplete record in contravention of the rules of procedure.
5. Hence, even after Appellant requested on May 2 that the scheduling order of April 22 be rescinded, the District Court still as a matter of fact did not have a complete record and as a matter of law lacked jurisdiction to require that Appellant file his appeal brief by June 13.
6. There is no justification for all the waste of time and effort as well as enormous aggravation that is being caused Appellant by requiring that he research, write, and file his brief by June 13 although not only he has not received the transcript, but also nobody knows when the reporter will complete and file her transcript and deliver a copy to Appellant. This means that if the transcript were delivered before the date now set for him to file his brief, he would have to scramble to read the transcript’s hundreds of pages and then rework his whole brief to take them into consideration. Worse yet, if the transcript were delivered after that filing date and before the District Court’s decision, he would have to move for leave to amend his brief and, if granted, write another brief, not to mention the legal research that he may have to undertake in either case. But if the transcript were not filed and the clerk had to notify the bankruptcy judge thereof under FRBkrP 8007(a), the outcome cannot possibly be known in advance, not to mention that the circumstances of such transcript non-filing could give rise to a host of new issues. And what happens if the transcript is delivered after the District Court issues its decision?! No legal basis

exits for putting on Appellant the onus of coping with all this uncertainty.

7. Therefore, Dr. Cordero respectfully requests that the District Court:

a. Rescind its scheduling order requiring that he file his brief by June 13 and reissue no such order until in compliance with FRBkrP 8007(b) it has received a complete record from the clerk of the bankruptcy court;

b. Undertake such rescission and notify Dr. Cordero of it on an urgency basis so as not to allow any more irreparable harm to him.

8. This request has been faxed to the District Court at (585)613-4035 upon agreement between Dr. Cordero and District Court Clerk Peggy Ghysel in consideration of the urgency of the matter.

Dated: May 16, 2005
59 Crescent Street
Brooklyn, NY 11208

Dr. Richard Cordero
Dr. Richard Cordero
tel. (718) 827-9521

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DR. RICHARD CORDERO,

Appellant,

ORDER

05-CV-6190L

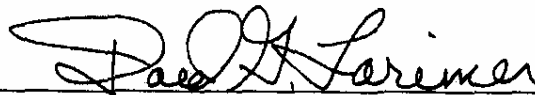
v.

DAVID DE LANO and MARY ANN DE LANO,

Respondents.

Appellant requested additional time within which to file and serve his brief. That request is granted, in part. Appellant shall file and serve his brief within twenty (20) days of the date that the transcript of the bankruptcy court proceedings is filed with the Clerk of the Bankruptcy Court.

IT IS SO ORDERED.



DAVID G. LARIMER

United States District Judge

Dated: Rochester, New York
May 17, 2005.

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