Case no. _04-8371_

In The

Supreme Court of the United States

Richard Cordero, Petitioner

v.

Premier Van Lines, Inc., et al., Respondents

On Petition for A Writ of Certiorari to

The United States Court of Appeals
for the Second Circuit

Petition for Writ of Certiorari

by

Dr. Richard Cordero

(full brief at http://Judicial-Discipline-Reform.org/docs/DrCordero_petition_to_SCt_20jan5.pdf)
…

IV. STATEMENT OF THE CASE

A. In the Premier bankruptcy case Judge Ninfo together with other court officers has prevented discovery and tried to wear Dr. Cordero down to keep him from disturbing the Judge's modus operandi developed in *thousands* of cases with Trustee Gordon

1. The bankruptcy case of a moving and storage company, Premier Van Lines, Inc., spawned an adversary proceeding in bankruptcy court, Judge John C. Ninfo, II, presiding. In it Dr. Richard Cordero, who was a client of the company, and Standing Chapter 7 Trustee Kenneth W. Gordon, Esq., as well as others, were named defendant.

2. Trustee Gordon had been appointed in December 2001 to liquidate Premier after Owner David Palmer failed to comply with his bankruptcy obligations and the case was converted to one under Chapter 7. He performed so negligently and recklessly that he failed both to examine Premier's business records, to which he had access (A-45,46; A-109, ftnts-5-8; 352)[1], and to realize from the docket that Owner Palmer had stored his clients' property, such as Dr. Cordero's (A-433:entry 17; 434:19, 21, 23; 437:52), in a warehouse owned by Mr. James Pfuntner. As a result, the Trustee failed to discover the income-producing storage contracts that belonged to the estate and to act timely (A-442:94,95); just as he failed to notify Dr. Cordero of his liquidation of Premier. Hence, Dr. Cordero cross-claimed the Trustee (A-70, 83, 88) [SCtA.124§B2]
3. Trustee Gordon countered with a motion to dismiss under FRBkrP Rule 7012 (A-135, 143). It was argued on December 18, 2002. That was almost three months after the adversary proceeding had commenced. Nevertheless, Judge Ninfo had disregarded FRBkrP Rules 7016 and 7026, and FRCivP Rules 16 and 26, so that there had been no meeting of the parties or disclosure –except by Dr. Cordero, who disclosed numerous documents (A-11,13,15,34,45,63,68,90)- let alone any discovery. Despite the record's lack of factual development, Judge Ninfo dismissed the cross-claims summarily, thereby disregarding the legal standards applicable to genuine issues of material fact [SCtA.113§B] that Dr. Cordero had raised concerning the Trustee's negligence and recklessness in liquidating Premier (A-148) [SCtA.121§B]. Actually, the Judge even excused the Trustee's defamatory and false statements as merely "part of the Trustee just trying to resolve these issues", (A-275) thus condoning his use of falsehood, astonishingly acknowledging in open court and for the record his acceptance of unethical behavior, and showing gross indifference to its injurious effect on Dr. Cordero. [SCtA.122§B1]
4. Some official facts shed light on the Judge's motives for so shielding Trustee Gordon from discovery on the cross-claims. A query on PACER (**P**ublic **A**ccess to **C**ourt **E**lectronic **R**ecords) run on November 3, 2003, at https://ecf.nywb.uscourts.gov/cgi-bin/login.pl>PACER>Query about Kenneth W. Gordon, showed that since April 12, 2000, he was the trustee in 3,092 cases!

[1] References with the format (A-#) are to the 578-page Appendix supporting Dr. Cordero's Opening Brief, as supplemented for the Petition for a Writ of Mandamus of September 12, 2003, and submitted by him to the Court of Appeals and the parties; that volume is available from him on demand by this Court. References with the format [SCtA.#] are to the pages of the separate volume accompanying this petition and titled in the Supreme Court of the United States **APPENDICES**. The (A-#) references can be looked up in their Table of Contents, which is reproduced as Part II of the Index of that **APPENDICES** volume so that the reader may track through the #=page number the title of the document referred to and in some instances also its own table of contents.

These are bankruptcy cases in each of which the trustee must "investigate the financial affairs of the debtor", 11 U.S.C. §704(4), by reviewing the bankruptcy petition and, among other things, seeking and cross-checking documents, assets, and persons; "furnish such information concerning the estate and the estate's administration as is requested by a party in interest", §704(7), which entails a lot of correspondence and face-to-face meetings with such parties as well as number crunching; "convene and preside at a meeting of creditors", §341(a), and do so personally, C.F.R. §58.6(a)(10); "ensure that the debtor shall perform his intentions as specified in…[his] schedule of assets and liabilities", §704(3) and §521(2)(B); "file…period reports and summaries of the operation of such business" "authorized to be operated", §704(8),…with respect to thousands of cases that may take years to liquidate!! And one trustee!!!? With such overwhelming workload, would you like Trustee Gordon to represent your interests as a creditor?

5. But there is more. By June 26, 2004, another PACER query about Trustee Gordon returned "This person is a party in 3383 cases". He had added 291 cases since November 3, 2003, at the rate of 1.23 per day, every day, including Saturdays, Sundays, holidays, sick days, and out-of-town days. But there is still more. To that number must be added, as PACER did, the 142 cases prosecuted or defended by the Trustee as attorney and 76 cases in which he appeared as a named party. By comparison, this Court has 9 members and while the average of case filings since 1998 has been 7,814, on average it has heard only 87, disposed of 83, and written 74 signed opinions, or fewer than 10 in each category by each member. [SCtA.289]
6. But there is still even more, for PACER indicated that out of those 3,383 cases in which the trustee was Trustee Gordon, the judge in 3,382 cases was none other than Judge Ninfo. Now one starts to understand why Judge Ninfo so protects Trustee Gordon: These two have worked together for years on thousands of cases and have developed a modus operandi. If Dr. Cordero had been allowed to engage in discovery, he could have established how the Judge failed to realize or knowingly tolerated Trustee Gordon's negligent and reckless liquidation of Premier. This assertion finds support in the Trustee's comment in his memorandum opposing Dr. Cordero's motion to extend time to appeal (A-238), that, "As the Court is aware, the sum total of compensation to be paid to the Trustee in this case is $60.00." That's it! Trustee Gordon had no financial incentive to do his job! Hence, it is reasonable to deduct therefrom that he cherry-picked from his 3,382 cases and growing to concentrate his attention on those that

were plump with financial juice, while chaff cases were piled up just for volume and because as standing chapter 7 trustee he had little choice, cf. 28 U.S.C. §586(b). Was the Judge "aware" of this? Of what else? It is quite suspicious that Trustee Gordon disclosed in writing his expectation that Judge Ninfo would excuse his hack job on Premier if only he reminded the Judge of how little money there was in it for him. What does that tell about Judge Ninfo and their relation?

7. Just $60, really?, for Trustee Gordon himself had qualified Premier as an asset case. This is significant in light of §2-2.1. of the Trustee Manual, which provides that "the trustee should consider whether sufficient funds will be generated to make a meaningful distribution to creditors, **prior to administering the case as an asset case,**" (emphasis added). In turn, 11 U.S.C. §326 provides that "the court may allow reasonable compensation…[as a percent] upon all moneys disbursed or turned over in the case by the trustee to parties in interest, excluding the debtor…". This furnishes the incentive for the trustee to find the most assets. Trustee Gordon did find them, which follows from his qualification of the case as well as from Warehouser Pfuntner's allegation in the complaint that:

   > 17. In August 2002, the Trustee, upon information and belief, caused his auctioneer to remove one of the trailers without notice to Plaintiff and during the nighttime for the purpose of selling the trailer at an auction to be held by the Trustee on September 26, 2002. (A-24)

8. While the Trustee denied this allegation, the fact is that he had the appointment of an auctioneer approved by a court order entered on August 29, 2002, only to end up issuing a No Distribution Report entered on December 18, 2002. (A-553 et seq., docket entries 70;71;95; 98;107) So, where did the assets go? Dr. Cordero could not find out because Judge Ninfo dismissed his cross-claims despite the genuine issues of material fact that he had raised. Such dismissal protected Trustee Gordon, for if he had been found to have handled Premier's assets in a way requiring his removal as its trustee, then under 11 U.S.C. §324 he could have been removed from all other cases. That would have been risky for the Judge too because partners in work are not supposed to turn on each other, and certainly not for a one-off litigant, much less for one pro se and non-local expected to be easily worn down. Of what else was Judge Ninfo "aware" that he did not want discovered, whether by Dr. Cordero or anybody else?

9. Thus, Dr. Cordero timely mailed under FRBkrP Rule 8002(a) his notice of appeal (A-153) from the dismissal (A-151) of his cross-claims against Trustee Gordon. But Judge Ninfo alleged that the notice was untimely filed, thereby disregarding the complete-upon-mailing provision of Rule

9006(e) and the three-additional-days provision of subsection (f). [SCtA.114§A] Thereupon Dr. Cordero moved under Rule 8002(c)(2) (A-214, 246) to extend time to file notice to appeal. Although Trustee Gordon himself had admitted in his brief in opposition that it had been timely *filed* on January 29, 2004 (A-235), Judge Ninfo likewise denied it by going as far as to allege that it had been untimely filed on January 30! (A-240, 259). At the hearing on February 18, 2003, when the Judge made that astonishing finding, he paid no attention to the discrepancy between those dates despite Dr. Cordero's objections.

B. Judge Ninfo disregarded the law applicable to default judgments and protected Mr. Palmer even after Dr. Cordero complied with the requirement to inspect his property to establish loss or damage

10. Mr. Palmer easily got away without his debts by just not fulfilling his obligations under his own voluntary bankruptcy petition under 11 U.S.C. Ch. 11 that he had filed just a few months earlier on March 5, 2001, for his company Premier. He even stopped coming to court, but Judge Ninfo would not compel him to appear. Far from it, despite the fact that he also abandoned Dr. Cordero's property; defrauded him of the storage and insurance fees; and failed to answer Dr. Cordero's summons and complaint of November 21, 2002 (A-70), so that Dr. Cordero applied for default judgment on December 26, 2002 [SCtA.15], Judge Ninfo protected Mr. Palmer by failing to take action for over a month. After Dr. Cordero inquired about it [SCtA.16], the Judge recommended to the District Court that the application be denied [SCtA.17 and 19] because 'Cordero has failed to demonstrate any loss and upon inspection it may be determined that his property is in the same condition as when delivered for storage in 1993.'
11. Dr. Cordero moved the district court to enter default judgment upon recognizing such statement as a prejudgment of the case contrary to the only evidence available, namely, that Dr. Cordero's property had been abandoned in a warehouse closed for over a year where nobody monitored proper storage conditions such as humidity, temperature, pests, and theft. Dr. Cordero also argued that to require to demonstrate damages although the application was for a sum certain (A-294) violated FRCivP Rule 55.However, once more Judge Larimer went along with his colleague's recommendation and not only did he fail to even acknowledge Dr. Cordero's legal arguments (A-314), but also provided no legal justification whatsoever for either his assertion that Dr. Cordero "must still establish his entitlement to damages since this matter does not involve a sum certain" or his requirement that an "inquest" be conducted to determine damages.

[SCtA.10] But it did involve a sum certain! Dr. Cordero moved Judge Larimer to correct such outcome-determinative mistake and apply the law (A-342). As in the Gordon case, Judge Larimer responded with a mere "in all respects denied" order form. [SCtA.9 and 5]

12. Dr. Cordero participated in the required inspection of the property, for which he had to travel at his expense and to his detriment from New York City to Rochester and then to the suburb of Avon. (A-365; 378) After his report to Judge Ninfo, the latter agreed that there had been loss or damage of his property. Nevertheless, he refused to enter default judgment, now alleging for the first time that he was not convinced that Mr. Palmer had been served properly! Yet, it was for Mr. Palmer to contest such judgment under FRCivP Rule 55(c) and 60(b)?, not for the Judge to become his advocate, particularly for a defendant with dirty hands since the Clerk of Court, although belatedly, had already defaulted Mr. Palmer on February 4, 2003. [SCtA.15] Was Judge Ninfo also "aware" of what Mr. Palmer could disclose if forced to come to court, let alone if made to face the financial consequences of a default judgment?

13. By that time Judge Ninfo had been joined by other officers of the court as well as court staff (hereinafter collectively referred to as court officers) in a series of acts of disregard of the law, the rules, and the facts so consistently to the detriment of Dr. Cordero, the only pro se and non-local party and to the benefit of the local parties, as to form a pattern of non-coincidental, intentional, and coordinated wrongdoing and bias with the effect of preventing discovery and wearing down Dr. Cordero. (A-500 and 510) [SCtA.105§C and 137] Judge Ninfo denied Dr. Cordero due process and made a mockery of the judicial system. Dr. Cordero appealed. What a fool for thinking that circuit judges would care! Do you?

C. The Court of Appeals showed indifference to judicial wrongdoing and its injury on a litigant as well as the public, thereby condoning denial of due process and denying it itself by remanding Dr. Cordero into the hands of Judge Ninfo

14. Dr. Cordero's appeal to the Court of Appeals from the two district court's orders of March 27, 2003 [SCtA.5&9], was founded on 28 U.S.C. §§158(d) and 1291 (SPA-84), both of which apply to bankruptcy appeals, *Connecticut National Bank v. Germain, 112 S.Ct. 1146, 503 U.S. 249, 117 L.Ed.2d 391 (1992)*. He also specifically included in his notice the underlying decisions of Judge Ninfo. [SCtA.429]

15. His appeal brief also specifically presented for review the issue of judicial wrongdoing and bias

[SCtA.102§C and 130§D] as well as [SCtA.102§A] the legal aspects of the dismissal of his notice of appeal [SCtA.114§A] and cross-claims [SCtA.121§B] and the denial of his application for default judgment [SCtA.102§B and 127§C]. Concurrently with the appeal, the case continued in Judge Ninfo's court with the remaining parties and so did the disregard for legality that caused Dr. Cordero an enormous waste of effort, time, and money as well as tremendous aggravation. He kept the Appeals Court informed of such wrongdoing and bias [SCtA.175]. He also filed a judicial misconduct complaint under 28 U.S.C. §§351 et seq. against Judge Ninfo [SCtA.251] and a petition for a writ of mandamus under FRAP Rule 21 to require him to recuse himself - which he refused to do when requested by Dr. Cordero [SCtA.137 and 31], never mind that under *28 U.S.C. § 455*(a) (1988), a judge **must** disqualify herself if her impartiality "might reasonably be questioned,"- remove the case to an impartial court in another district, and open an investigation into the wrongdoing and motives therefor of the Judge and the other court officers.

16. The mandamus petition was denied [SCtA.72] and the complaint was already in its six month without response when the appeal was denied [SCtA.1] by a panel including Chief Judge John M. Walker, Jr. Without addressing the issue of wrongdoing and bias at all, the appeal was dismissed on the claim that the orders appealed from were not final so that the court lacked jurisdiction. [cf. SCtA.191] Dr. Cordero raised a motion of panel rehearing and hearing en banc. [SCtA.207]

D. The DeLano bankruptcy petition provides insight into a judicial misconduct and bankruptcy fraud scheme that undermines the integrity of the judicial system to the detriment of the public

17. "Coincidentally", the denial of the appeal was entered on January 26, 2004, the same date as that of a most extraordinary event: Mr. DeLano, the M&T Bank officer that lent money to run Premier to Mr. Palmer, who then went bankrupt, filed himself a Chapter 13 bankruptcy petition together with his wife [SCtA.381]. How suspicious, for Mr. DeLano has been for 15 years and still is a loan bank officer and as such an expert in determining creditworthiness and insuring borrowers' ability to repay their loans. In the petition, the DeLanos listed Dr. Cordero as a creditor because of his claim against Mr. DeLano on grounds of his negligent handling of the storage containers in which the Bank had a security interest and Dr. Cordero had his property.

18. The suspicion is strengthened by even a layman's reading of their petition. To begin with, Mr. DeLano and his wife owe an unsecured debt of $98,092, [id., Schedule F] smartly distributed

over 18 credit card issuers so that none has a stake high enough to make it cost-effective to participate in the bankruptcy proceedings. They took out simultaneously two loans of $59,000 each for a total of $118,000 that they repaid by 1999 as agreed without their Equifax credit reports noting a single payment late, although otherwise Equifax notes their having been late in their other repayments over 230 times! It must have been money that they invested in something so important that they dare not risk losing it through foreclosure. Interestingly, they declared in their petition a mortgage of $77,084 in a home in which, toward the end of their working lives, they claimed their equity is only $21,415. [id., Schedule A] Likewise, they declared that, after two lifetimes of work, they have only $2,910 worth of household goods! The rest of their tangible personal property is just two cars worth a total of $6,500. [id., Schedule B] That's it?!

19. More surprisingly, they made a $10,000 loan to their son, declared it uncollectible and stated it undated, which means that it could be a voidable preferential transfer, 11 U.S.C. §547(b)(4)(B) to a relative §101(31)(A)(i). Nonetheless, they declared only $535 in cash and on account [SCtA.381, Schedule B], but their IRS 1040 forms reveal that their household income for 2001-2003 was $291,471! Although those numbers are a series of red flags pointing in the direction of bankruptcy fraud through concealment of assets, neither Judge Ninfo nor Trustee Reiber would require the DeLanos to account for the whereabouts of that money. Yet, it could go a long way toward covering their declared liabilities of $185,462 [id., Summary of Schedules]. On the contrary, they have refused to require the DeLanos to produce their statements of bank and debit card accounts. [SCtA.301, 305, and 57]
20. Thus, Dr. Cordero attended the meeting of creditors [SCtA.375] required under 11 U.S.C. §341 and whose business includes "the examination of the debtor under oath…", FRBkrP Rule 2003(b)(1). Actually, none of the other 20 creditors attended, which is the normal occurrence, as Mr. DeLano must know and have counted on for an unobjected, smooth sailing of his petition.
21. The meeting was not conducted by Trustee Reiber because contrary to regulations, C.F.R. §58.6(a)(10), he had his attorney, James Weidman, Esq., do so. Dr. Cordero submitted his written objections [SCtA.291] to the DeLanos' debt repayment plan [SCtA.379]. But no sooner had he asked Mr. DeLano to state his occupation than Mr. Weidman asked Dr. Cordero in rapid succession some three times to state his evidence that the DeLanos had committed fraud. Dr. Cordero had to insist that Mr. Weidman take notice that he was not accusing them of fraud. To no avail because Mr. Weidman alleged that there was no time for such questions and put an end

to the examination without regard for Dr. Cordero's objection that he had a statutory right to examine the DeLanos and the fact that there was more than ample time to do so since Dr. Cordero was only at his second question! Why could Att. Weidman not risk exposing the DeLanos to have to answer under oath Dr. Cordero's question before finding out how much Dr. Cordero already knew about fraud committed by them?

22. Later on that day, March 8, 2004, at the confirmation hearing of debtors' repayment plans before Judge Ninfo, Dr. Cordero protested Att. Weidman's unlawful act, but Trustee Reiber ratified the actions of his attorney and vouched for the good faith of the petition. For his part, Judge Ninfo said in open court and for the record that he had read Dr. Cordero's objections; that Dr. Cordero interpreted the law very strictly, but had again missed the local practice; that he should have called to find out what that practice was and, if he had done so, he would have learned that the trustee would not allow a creditor to go on asking questions.

23. MINDBOGGLING! Section 341 is titled "Meeting of creditors"; its purpose under §343 is for them "to examine the debtor"; and FRBkrP Rule 2004(b) includes no fewer than 12 areas appropriate for them to examine the debtor, even one worded in the catchall terms of "any other matter relevant to the case".

24. But all that is just the law and what really matters for Judge Ninfo is what he called "the local practice". That is precisely what Dr. Cordero has complained about! Judge Ninfo together with other court officers disregards the law, the rules, and the facts systematically and instead applies the law of the locals. [SCtA.181] It is based on personal relationships and the fear of the local parties that must appear before him frequently to antagonize him, for he distributes favorable and unfavorable decisions as he sees fit without regard for legal rights and factual evidence . Indeed, 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. As stated (¶6, supra), Trustee Gordon was the trustee before Judge Ninfo in 3,382 out of his 3,383 cases, as of June 26, 2004. Likewise, the statistics on Pacer as of November 3, 2003, showed that Warehouser Pfuntner's attorney, David D. MacKnight, Esq., had appeared before Judge Ninfo 427 times out of 479 times and the attorney for Premier Owner Palmer, Raymond C. Stilwell, Esq., had so appeared 132 times out 248 times. If they know what is good for them, they take what they are given by the Lords of the Fiefdom of Rochester [SCtA.181] and are thankful.

25. Lord Ninfo and Lord Larimer have carved their Fiefdom out of the land of the law of Congress

as interpreted by this Court, to whose decisions they make no reference, whether it be in written orders [SCtA.5-71] or from the bench (A-265). Judge Ninfo does not even discuss the law and rules that Dr. Cordero has painstakingly researched and argued in his briefs and motions and at hearings. Instead, they defend their Fiefdom by engaging in non-coincidental, intentional, and coordinated acts of disregard for legality and bias. (A-776.C, A-780.E; A-804.IV) Why should they bother with the law to provide due process when they can receive due respect by exercising uncontrolled judicial power? [§**Error! Reference source not found.**, infra] To one like Dr. Cordero, a 'citizen' of a diverse, far away city, who dared challenge Judge Ninfo's dismissal of his cross-claims against Trustee Gordon and his denial of the application for default judgment against Owner Palmer by appealing to Judge Larimer, these Lords dispense not justice, but rather punishment: deprivation of personal and property interests and imposition of unjustified, wearing down burdens.

26. The Lords' contempt for due process and the injury in fact that they have inflicted on Dr. Cordero should have so offended the Court of Appeals as to cause it to investigate the matter and take corrective action to restore to judicial process respect for the law and impartiality. Instead and though fully informed of the situation [SCtA.188], the Court reacted with indifference in a perfunctory decision [SCtA.1; cf 193] and the couldn't-care-less response of denial order forms. *Greenholtz v. Inmates of the Nebraska Penal & Correctional Complex, 442 U.S. 1, 40 (1979)* (Marshall, J., dissenting) ("[A]n inability to provide any reasons suggests that the decision is, in fact, arbitrary.") By dismissing the appeal and remanding Dr. Cordero to the abusive hands of Judge Ninfo, who at the hearing on June 25, 2003, warned him that any appeal from his decisions would go to Judge Larimer, the Court condoned the judges' past, current, and future wrongdoing [cf. SCtA.465; 467] and authorized their injuring him. Thereby, the Court shared in the judges' contempt for due process and itself denied Dr. Cordero due process.

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II. RETRIEVAL Bank of Hyperlinks

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Transcript of the evidentiary hearing in *DeLano* held in Bankruptcy Court, WBNY, on March 1, 2005: Tr

Downloadable Bank of Hyperlinks

http://judicial-discipline-reform.org/Bank%20of%20Links.htm#Table_of_Exhibits.htm