

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

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Dr. Richard Cordero  
Appellant and creditor

**APPELLANT’S REPLY**

v.

05-cv-6190L

David DeLano and Mary Ann DeLano  
Respondents and debtors in bankruptcy

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

Tables of Contents

A. Tables of Authorities Cited, References, and Headings.....	ii
1. Authorities Cited .....	iii
2. References to other Briefs and the Record .....	v
3. Headings of the Body of the Reply .....	x
B. Reply .....	1
Proposed Order .....	26
Certificate of Service.....	35
Table of Post-Addendum Items .....	Pst:xxviii
Post-Addendum .....	Pst:1171-

### 3. Headings of the Body of the Reply

I.	The Bankruptcy Abuse Prevention Act’s finding of “absence of effective oversight to eliminate abuse in the system” renders all the more understandable the presence in this case of the Act’s target: fraud and a bankruptcy fraud scheme.....	1
II.	The Appellees replaced with their own issues, which are barred as untimely raised, Appellant’s issues, which they did not even acknowledge, let alone discuss, whereby their answer is unresponsive .....	4
III.	The determining and unifying issue on appeal is fraud and the operation of a bankruptcy fraud scheme, which is unaffected by any decision on any motion to recuse.....	8
IV.	The Bankruptcy Code §101(10) and FRBkrP 3001 provide that a creditor is an entity holding a claim and a proof of claim is presumptively valid, thus making the filer a presumptive creditor, whereby Att. Palmer was wrong in pretending that Dr. Cordero had to prove first that he was a creditor in order to file a claim against Mr. DeLano.....	11
V.	A sample of Att. Palmer’s gross mistakes of fact reveals that he did not read even the brief, which detracts from his professional responsibility and the reliability of his cursory, superficial answer.....	15
VI.	The purpose of the Statement of Issues on Appeal is to afford the appellee the opportunity to determine whether appellant’s Designated Items in the Record is sufficient to prepare the appellee’s answer and, if not, to designate additional items; whereby the Statement, which is not even part of the record, does not limit the issues on appeal .....	20
A.	Since the issues of the voidness of District Local Rule 5.1.(h) dealing with RICO, and of the unconstitutionality of the BAP provisions of 28 U.S.C. §158(b) could not have been dealt with in bankruptcy court for lack of jurisdiction, there were no items in the record that Appellees could have additionally designated if these issues had been included in Appellant’s s R. 8006 statement so no harm has been caused by their inclusion in the Rule 8010 statement.....	22
VII.	The unaccounted-for money establishes fraud & warrants the relief sought .....	24

I. The Bankruptcy Abuse Prevention Act's finding of "**absence of effective oversight to eliminate abuse in the system**" renders all the more understandable the presence in this case of the Act's target: **fraud and a bankruptcy fraud scheme**

1. On April 20, 2005, Congress adopted the Bankruptcy Abuse Prevention and Consumer Protection Act, Pub. L. 109-8, 119 Stat. 23, "Representing the most comprehensive set of reforms in more than 25 years". So it was described in the accompanying HR Report 109-31, which also stated that:

"The purpose of the bill is to improve bankruptcy law and practice by restoring personal responsibility and integrity in the bankruptcy system...[to] respond to...the **absence of effective oversight to eliminate abuse in the system** [and] deter serial and abusive bankruptcy filings.". **(emphasis added)**

2. This is a case of such "absence of effective oversight". Actually, this case called not just for oversight, but rather close scrutiny. Indeed, the Debtors here are Mr. David DeLano and his wife, Mrs. Mary Ann DeLano. Of all people, Mr. DeLano is a most unlikely debtor in bankruptcy, for he has spent *39 years* managing debt professionally as an officer of financing and banking institutions. And he still works for the same major banking institution, Manufactures & Traders Trust Bank (M&T Bank) as he did in January 2004, when he and his wife filed for relief from their debts through a petition under Chapter 13 of the Bankruptcy Code (all §# references are to 11 U.S.C. unless the context requires otherwise). What is more, Mr. DeLano works precisely in the area of bankruptcies! There he learned about the weaknesses and the players of the bankruptcy system and how to use that knowledge to enter a debt-free retirement.

3. The likelihood that an insider to the financing and banking industries, such a Mr. DeLano, would abuse the bankruptcy system is only heightened by the fact that so many outsiders have done it. This follows from what Congress found after years of conducting extensive hearings on the Bankruptcy Abuse Prevention bill, which led it to conclude that:

[One] factor motivating comprehensive reform is that the present bankruptcy system has loopholes and incentives that allow and—sometimes—even encourage **opportunistic personal filings and abuse**. A civil enforcement initiative undertaken in 2002 by the United States Trustee Program (a component of the Justice Department charged with administrative oversight of bankruptcy

cases) has “consistently identified” such problems as “debtor misconduct and abuse, **misconduct by attorneys and other professionals**, problems associated with bankruptcy petition preparers, and instances where a debtor’s discharge should be challenged.” According to the United States Trustee Program, “**Abuse of the system is more widespread than many would have estimated.**” Such abuse ultimately hurts consumers as well as creditors. (emphasis added; footnotes omitted; HR Report 109-31)

4. The DeLanos’ bankruptcy petition is one such instance of “opportunistic personal filings and abuse” that gave rise to “more than 1.6 million cases filed in fiscal year 2004”, *id.* The opportunity here was rendered all the more enticing and risk-free because Mr. DeLano has during his very long banking career come to know about the “absence of effective oversight” from the officers that were supposed to oversee the system. Instead, they failed to insure that a petition complied with the rules so that it was fair to creditors, such as Dr. Richard Cordero, Appellant. Among those officers are Bankruptcy Judge John C. Ninfo, II, WDNY, before whom the DeLanos’ Attorney, Christopher Werner, Esq., had brought 525 cases by February 28, 2005, according to PACER; Standing Chapter 13 Trustee George Reiber; Assistant U.S. Trustee Kathleen Dunivin Schmitt; U.S. Trustee for Region 2 Deirdre A. Martini, and District Judge David G. Larimer, WDNY.
5. These officers have refused to order the DeLanos to produce documents that Bank Officer DeLano himself must have learned decades ago are key to assessing any loan application, not to mention managing any default on a debt: the statements of the DeLanos’ bank and credit/debit card accounts. They have also refused to order production of other documents (Dr. Cordero’s brief of December 21, 2005, page 4, table in paragraph 11=Br:4¶11/Tbl) that were likewise obviously pertinent to try to explain the chain of incongruous declarations that the DeLanos made in the Schedules A-J (referred to hereinafter as Sch:Letter) and other parts of their petition. In addition, the officers refused to investigate the DeLanos in spite of being confronted with the suspicious facts that Dr. Cordero established on the basis of even the very few documents that the DeLanos chose to produce, only at Dr. Cordero’s instigation, to Trustee Reiber:

- a. The DeLanos earned \$291,470 in just the 2001-2003 fiscal years (Designated Items in the Record, page 27=D:27/Statement of Financial Affairs and D:186-188);
- b. but they declared having only \$535 in cash or in bank accounts (D:27/Sch:B); yet, they have been able to come up with an enormous amount of money to avoid producing the incriminating documents requested by Dr. Cordero (¶59 below);
- c. they spread a whopping debt of \$98,092 over 18 credit cards (D:27/Sch:F), although the average credit card debt of Americans is \$6,000;
- d. despite all that borrowing, they declared household goods worth only \$2,910 (D:27/Sch:B... that's all they pretend to have accumulated throughout their combined worklives!, although they earned over a 100 times that amount, \$291,470, in only the three fiscal years of 2001-03;
- e. moreover, they strung mortgages since 1975 to pay for the same home in which they still live:

Mortgages 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;	D:342	\$26,000
2) another for \$7,467 in 1977;	D:343	7,467
3) still another for \$59,000 in 1988; as well as	D:346	59,000
4) an overdraft from ONONDAGA Bank for \$59,000 and	D:346	59,000
5) owed \$59,000 to M&T in 1988;	D:176	59,000
6) another mortgage for \$29,800 in 1990;	D:348	29,800
7) even another one for \$46,920 in 1993; and	D:349	46,920
8) yet another for \$95,000 in 1999.	D:350-54	95,000
Total		\$382,187.00

6. Yet today, 30 years later, the DeLanos still owe \$77,084 and have equity of merely \$21,415 (D:27/Sch:A)...*Mindboggling!* (Add:1058¶54) So over \$670,000 (≈\$291K + \$382K) unaccounted for.
7. These are incontrovertible facts, for they are based on declarations made by the DeLanos themselves in documents such as their petition (D:23-60), their 1040 IRS forms (D:186-188),

and their mortgage instruments (D:341-354). Common sense should have prompted these officers to realize that these facts point to concealment of assets by the DeLanos. Their duty under §§1302(b)(1) and 704(4) & (7) and 1325(a)(3), as well as their training in how, to detect and prevent bankruptcy abuse should have prompted them to scrutinize the DeLanos' petition closely and require them to produce documents to track their in and out flow of money. (cf. D:63) Far from investigating the DeLanos, they confirmed their debt repayment plan (Add:937-943), approved it (Add:953§I, 1022), or failed even to respond when the evidence of fraud was brought to their attention (Br:5¶11/Tbl:rows 2&3). Thereby they opened the way for discharging the DeLanos from 78% of their debts (D:23&59)...or rather 87.39% (Post Addendum=Pst:1174).

8. This case shows the type of "misconduct by attorneys and other professionals" that led Congress to adopt the Bankruptcy Abuse Prevention Act. (¶3 above). When Dr. Cordero inquired about their petition and even pointed out their concealment of assets, judges, other officers of the court, and trustees engaged in a series of acts of disregard for the law, the rules, and the facts so consistently in favor of the DeLanos and to the detriment of Dr. Cordero, who resides in NY City (Br:23¶55; Add:603¶32), as to form a pattern of non-coincidental, intentional, and coordinated wrongdoing in support of a bankruptcy fraud scheme. (D:232§§I-IV; D:358§II; D:392§I; D:429§II; Add:1031 & 1081; Add:1066, 1094, 1095, & 1125; Br:5¶¶12-26)

II. The Appellees replaced with their own issues, which are barred as untimely raised, Appellant's issues, which they did not even acknowledge, let alone discuss, whereby their answer is unresponsive

9. In his brief, Dr. Cordero showed how the DeLanos had concealed assets with the support of judges, trustees, and other court officers in the context of a bankruptcy fraud scheme and how to impede his exposing them, the bankruptcy judge eliminated him from the case while denying him due process of law guaranteed under the 5<sup>th</sup> Amendment. This showing developed his first