

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF RHODE ISLAND

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In re: :

CUMBERLAND INVESTMENT CORPORATION : BK No. 89-11051
Debtor Chapter 7

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TITLE: *In re Cumberland Investment Corp.*

CITATION:

ORDER DENYING MOTION FOR RECUSAL

On July 7, 2000, Harold F. Chorney filed a "Motion to Recuse Judge Votolato," alleging essentially as reasons, the court's alleged hindrance of his efforts to obtain a record of accounting from the Trustee regarding assets seized during the pendency of the case. See Chorney's Memorandum in Support of Motion To Recuse Judge Votolato, Docket # 674 at 2. In considering a motion for recusal,

The proper test, it has been held, is whether the charge of lack of impartiality is grounded on facts that would create a reasonable doubt concerning the judge's impartiality, not in the mind of the judge himself or even necessarily in the mind of the litigant filing the motion under 28 U.S.C. s 455, but rather in the mind of the reasonable man.

United States v. Cowden, 545 F.2d 257, 265 (1st Cir. 1976), cert. denied, 430 U.S. 909 (1977); see also *Liteky v. United States*, 510 U.S. 540, 553 (1994); *In re Petit*, 204 B.R. 271, 273-74 (Bankr. D. Me. 1997).

"Disqualification for lack of impartiality must have a reasonable basis. Nothing in this proposed legislation should be read to warrant the transformation of a litigant's fear that a judge may decide a question against him into a "reasonable fear" that the judge will not

be impartial.'" *Cowden*, 545 F.2d at 265 (quoting H. Rep. No.1453, 93d Cong., 2d Sess., 1974 U.S. Code Cong. & Admin. News p. 6355). Furthermore, the law is well settled "that one seeking the disqualification of the judge must do so at the earliest moment after knowledge of the facts demonstrating the basis for such disqualification." See *United States v. Kelly*, 519 F.Supp. 1029, 1050 (D. Mass. 1981).

Upon consideration of the motion and the context in which it is made in this eleven year old bankruptcy case, I find that the Movant has failed to set forth a prima facie case for the relief sought. Accordingly, the motion for recusal is DENIED.

In addition, the hearing on the Trustee's Application for Supplementary Proceedings was recently adjourned to allow Mr. Chorney additional time to provide documentary evidence regarding his physical and financial condition. However, upon consideration of the information received to date, I find: (1) that further hearings at this time are unnecessary; (2) that Mr. Chorney does not have the *present* ability to satisfy the \$200,000.00 Judgment entered on July 2, 1992; and (3) the Trustee's application is DENIED, WITHOUT PREJUDICE. The Trustee is, however, ordered to monitor Chorney's physical and mental condition, as well as his financial circumstances, in light of his egregious behavior both prior to and during the pendency of this case, as evidenced by his criminal convictions. In addition, Chorney is ORDERED to file with the

Trustee sworn semi-annual financial statements, as well as reports of any other significant changes from his present alleged financial and/or mental condition.

Finally, while this matter was under advisement, Mr. Chorney also filed the following motions: (1) Motion for Enlargement of Time (Docket #677); (2) Motion to Clarify (Docket #678); and (3) Request to Provide Accountability and Produce Documents (Docket #669). The Trustee has filed a Motion to Strike (Docket No. 672) in response to Chorney's Request to Provide Accountability and Produce Documents. Based on the above rulings regarding the Application for Supplementary Proceedings, and because no other substantive matters are presently pending before this Court, the Motion for Enlargement (#677) and the Motion to Clarify (#678) are DENIED, as moot. For the reasons argued by the Trustee in his Motion to Strike (Docket No. 672) which we adopt and incorporate herein by reference, the Request to Provide Accountability and Produce Documents is DENIED. The Trustee's Motion to Strike is also DENIED.

Enter judgment consistent with this order.

Dated at Providence, Rhode Island, this 8th day of September, 2000.

/s/ Arthur N. Votolato
Arthur N. Votolato
U.S. Bankruptcy Judge