UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA

Case Number: 22−13009−EPK
Chapter: 7/11

In Re Bernstein Family Realty, LLC ,

Debtor.

CREDITOR AND INTERESTED PARTY ELIOT BERNSTEIN CREDITOR AND ACTING BFR MANAGER MOTION FOR RECONSIDERATION

1. I am Eliot I. Bernstein, a named likely Creditor in the original Chapter 11 Petition and now as a Creditor on the Creditor Matrix and make this motion for Reconsideration under Rule 9023 and applicable Rules for good cause and grounds.
2. Having announced myself on the Record as a Creditor and Interested Party at the last Hearing, this Court proceeded to act prejudicially and appearing to have "prejudged" this case which I understand is a "Cardinal sin" in the Judiciary by failing to act impartially and neutral when this Court converted the Case to Chapter 7 without addressing the frauds, conflicts of interest and specifically without allowing myself as an Interested Party Creditor to be fairly heard under due process standards "cutting me off" in 2 minutes or

less without even Hearing the evidence of frauds and misconduct and other relevant information yet this Court disregarded any of the alleged conflicts and misconduct of the other Creditor parties by counsel Shraiberg and Alan Rose and allowed Alan Rose who was named with Ted Bernstein as the central fraud and bad deed actor in the Petition to speak ad nauseum while I was given less than 2 minutes.

3. This of course was on Zoom and in the public view for many to see such that my wife who is also a Creditor chose not to even try to be heard after viewing this Court's hostile and adverse actions to my rights while the Court gave great courtesy to Rose and Shraiberg without asking a single question about the frauds and misconduct.
4. I first ask this Court to Recuse and voluntarily withdraw on multiple grounds including this Court's failure to Disclose to us on the Record the Court's relationship and association with Counsel Robert Sweetapple's daughter where it was only Discovered after the fact of these proceedings and several hearings that this daughter Clerked for this very Court as an intern and where her father Counsel Sweetapple's misconduct and fraud was raised in and named in the original Petition and papers filed by my sons yet not even a remote, scant possible question ever posed to these lawyers was ever addressed by this Court.

5. This Court further failed to address the conflicts raised by the Petitioners with Counsel Shraiberg representing a deceased Walter Sahm as if alive and then misrepresented that his death was “recent” on the Record when it was over 17 months ago and where the fraud in the underlying State proceedings involved the same actions by Counsel Sweetapple who’s daughter was even in Chambers and mentioned during State Court proceedings ripe with fraud and misconduct yet still this Court, Judge Kimball, remained silent about his relationship with the Sweetapple family throughout these proceedings to date.
6. Counsel Shraiberg never disclosed any documents for the claim of “tenants by the entirety” and yet this Court has and had the actual Note and Mortgage and related underlying documents showing these as signed “individually” by Walter and Patricia Sahm while nowhere is there any indication this was signed or done as Tenants by the Entirety and in any event their interest was “sold” to Bernstein Family Realty, LLC but this Court still allowed these issues with Counsel Shraiberg and his clients to pass on as if nothing was presented while repeatedly raising questions in the proceedings against the Petition my sons were forced to file in Bankruptcy by the very misconduct and frauds of the Sweetapple - Alan Rose parties this Court has acted prejudicially in favor of.

7. Only in the middle of these proceedings was it Discovered that Judge Kastranakes himself who was allowing the frauds to rule unchecked in State Court has also “hidden” his conflicts like this Court has with his own son being a Partner or Associate attorney with the Alan Rose and Mrachek law firm at the center of the frauds ignored by both this Court and the Kastranakes state Court.
8. Specifically, had this Court acted impartially and neutral as required under due process of the US Constitution and the US Code of Judicial Conduct this Court would have learned that Ted Bernstein who is represented by Alan Rose can not even legally act as “Trustee” of the Simon Bernstein Amended Trust as he is not only “predeceased” under the Terms of the Trust (yet another “dead man acting in the case) but the Trust specifically prohibits a “related” party to my father Simon Bernstein to be a Successor Trustee.
9. Thus, not only has Ted Bernstein appeared before this Court falsely via his counsel Alan Rose, the fact that he is not a proper Trustee yet has been “holding” and “controlling” both Registry Funds and other assets and relevant records shows the very “massive” fraud that attorney Inger Garcia bravely announced on the Record at this last hearing.
10. While my family and I applaud Ms. Garcia for this bravery, we are confused by many other items that neither she nor her friend David Marshall Brown

put on the Record that day of “conversion” under 11 USC 1112 and my entire family has read the section and can see 11 USC 1112 (b) (2) (b) which also calls into question the conduct of US Trustee Heidi Feinman who had multiple private “phone calls” with David Marshall Brown including the June 4, 2022 deadline day yet somehow it was never Disclosed to this Court that an Investor was on the line with David Marshall Brown who not only could pay his Fee but also “buy the Note” and property yet simply had questions that were not adequately answered by Mr. Brown who eventually told the Investor if he didn’t have a Wire in 20 minutes it was Friday and he was “going for a beer” and close the file.

11. Then for some odd reason Inger Garcia for my sons was unavailable to speak to the Investor even though she had said she would be available that day with the deadlines and then she was not available until the late morning shortly before Hearing and no one told the Court the Investor was again trying to call to make Payment for Counsel at the very least and in the Friday deadline call with David had even taken his “Wire Instructions” but simply had questions.
12. For some reason Mr. Marshall never told the Court he did not even provide a Retainer until around Noon the Friday of the deadlines and never provided a signed Affidavit about his conflicts and his non signed affidavit never

mentioned how “friendly” he was with “all the attorneys” in the case including Heidi who he repeatedly referred to by first name and that he knew Alan Rose and the “Rose brothers” and even Shraiberg back college I believe he mentioned.

13. Nor was it disclosed that the Creditor Matrix had been provided by BFR that date in the form acceptable to David Marshall and that BFR had requested his Retainer days before but not even a draft received until deadline day just a few hours before so virtually no time to review by any party that would Invest funds to BFR and simply wanted to do it according to Bankruptcy laws and rules.
14. So the only item that should or would have been missed by 4 pm was the Homeowners but neither Rose nor Shraiberg told the Court Rose’s associate in the State Court told Kastranakes some “unknown” other Trust “owned” the property and thus should have had the Insurance yet even if not this one items could have been “cured” under statute in a reasonable time.
15. This Court could and should have considered the fraud and improper State Court proceedings and case law will be provided.
16. On conflicts. However, this Georgia case seems applicable: In re Nilhan Developers, LLC CASE NO. 15-58443-WLH, at *30 (Bankr. N.D. Ga. Apr. 19, 2021), “Whether a professional is disinterested and may be employed under

section 327 is a separate question from whether the professional adequately disclosed all connections. See In re Condor Sys., 302 B.R. 55, 74 n.32 (Bankr. N.D. Cal. 2003) (quoting In re EWC, Inc., 138 B.R. 276, 281 (Bankr. W.D. Okla. 1992)). Rule 2014(a) "effectuates [section] 327 (a)'s disinterestedness requirement, and mandates that a[n . . .] application to employ the professional 'be accompanied by a verified statement of the person to be employed setting forth the person's connections with the debtor, creditors, any other party in interest , their respective attorneys and accountants, the United States Trustee, or any person employed in the office of the United States Trustee.'" Vascular Access, 613 B.R. at 625 (citing In re Jade Mgmt. Servs., 386 Fed.Appx. 145, 150 (3d Cir. 2010) (quoting Rule 2014(a)). . . . . **The professional seeking to be retained must make "[f]ull, complete, and timely disclosure" of all the professional's connections to the debtor, creditors and any other party in interest . In re Harris Agency, LLC, 451 B.R. 378, 390 (Bankr. E.D. Pa. 2011); see also In re B.E.S. Concrete Prods., Inc., 93 B.R. 228, 237 (Bankr. E.D. Cal. 1988)**. While the term "connections" is not defined in Rule 2014(a), the disclosure requirements of Rule 2014(a) are much broader than the rules governing disqualification, and **an applicant must disclose all connections regardless of whether they rise to the level of a disqualifying interest under section 327 (a). See Granite Partners, 219 B.R. at 35** (citations omitted) (emphasis added). **The disclosure requirements of Rule 2014 are strictly applied and impose an independent duty upon the professional applicant; thus, failure to comply with the disclosure rules is a sanctionable violation, even if proper disclosure would have shown that the professional had not actually violated any Bankruptcy Code provision or any Bankruptcy Rule. "[T]hese standards are 'strict' and . . . attorneys engaged in the conduct of a bankruptcy case 'should be free of the slightest personal interest ' ... [a]ccordingly, we are 'sensitive to preventing conflicts of interest ' and require a 'painstaking analysis of the facts and precise application of**

precedent.'" I.G. Petroleum, L.L.C. v. Fenasci (In re West Delta Oil Co.), 432 F.3d 347, 355 (5th Cir. 2005) (citations omitted). "There is no de minimus threshold excusing [a professional] from failing to disclose" information regarding his connections. Greater Blessed Assurance Apostolic Temple, 2021 WL 1117760, at *3. . . . .**It is incumbent upon the professional to disclose all its previous contacts and professional connections so that the bankruptcy court can determine if there are any conflicts or potential conflicts** . Miller Buckfire & Co., LLC v. Citation Corp. (In re Citation Corp.), 493 F.3d 1313, 1321-22 (11th Cir. 2007). The bankruptcy court, not the professionals, must determine which prior connections rise to the level of an actual conflict or pose the threat of a potential conflict . See Granite Partners, 219 B.R. at 35. "[I]t is the role of the court, and not the professional, to make the ultimate determination vis-à-vis the information disclosed and compliance with the Bankruptcy Code and Rules." In re GSC Grp., Inc., 502 B.R. 673, 729 (Bankr. S.D.N.Y. 2013). **"[B]y making the determination there was no connection worth disclosing, the firm broke the "cardinal principle of Rule 2014(a) . . . [, it] arrogated to [itself] a disclosure decision that the Court must make" and deprived the court of its function to make a section 327 (a) determination. Condor Sys., 302 B.R. at 71.** . . . . . **Professionals cannot pick and choose the connections they deem relevant or important. United States v. Gellene, 182 F.3d 578, 588 (7th Cir. 1999). As the bankruptcy court noted in In re Saturley, 131 B.R. 509 (Bankr. D. Me. 1991), carefully crafted, say-nothing disclosures are "coy" and insufficient because they require the court to "ferret out pertinent information from other sources." Id. at 517. The Court should not have to "rummage through files or conduct independent fact-finding investigations' to determine if the professional is disqualified.'" Granite Partners, 219 B.R. at 35 (citations omitted); see also Rome v. Braunstein (In re Chestnut Hill Mort., Corp.), 158 B.R. 547, 551 n.3 (D. Mass.**

1993) (observing that it is not the job of the bankruptcy judge to review all documents in the file to determine whether the professional's affidavit is truthful and comprehensive).”

17. Note that I am under serious medication and in urgent need for heart surgery put off by these frauds.
18. Recusal should happen the the Conversion reversed and Chapter 11 reinstated.

WHEREFORE, it is respectfully prayed for an Order Recusing Judge Kimball and Vacating the Order of Conversion and reinstating the Chapter 11 case before a new Judge or alternative relief as available.

WARNING -- Bankruptcy fraud is a serious crime. Making a false statement in connection with a bankruptcy case can result in fines up to $500,000 or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571. Petitioners request that an order for relief be entered against the debtor under the chapter of 11 U.S.C. specified in this petition. If a petitioning creditor is a corporation, attach the corporate ownership statement required by Bankruptcy Rule 1010(b). If any petitioner is a foreign representative appointed in a foreign proceeding, attach a certified copy of the order of the court granting recognition.

I have examined the information in this document and have a reasonable belief that the information is true and correct.

Petitioners or Petitioners' Representative Attorneys

Name and mailing address of petitioner

ELIOT BERNSTEIN

_____

Name

2753 NW 34TH STREET

_____

Number Street

BOCA RATON, FL 33434

_____ _____ _____

City State ZIP Code

Name and mailing address of petitioner's representative, if any

_____

Name

_____

Number Street

_____ _____ _____

City State ZIP Code

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 06/24/2022
MM / DD / YYYY
Eliot Bernstein_____
Signature of petitioner or representative, including representative's title
ELIOT BERNSTEIN, CREDITOR - INTERESTED PARTY