

IT IS ORDERED as set forth below:



Date: July 29, 2008

Mary Grace Diehl

**Mary Grace Diehl
U.S. Bankruptcy Court Judge**

United States Bankruptcy Court
Northern District of Georgia
Atlanta Division

In re)	Case No. 03-64009-MGD
)	
Grace Johanna McCarthy,)	Chapter 7
)	
Debtor.)	Judge Diehl

ORDER DENYING MOTION TO DISQUALIFY JUDGE

Debtor Grace McCarthy (“Debtor”) seeks the disqualification of the undersigned from presiding over her Chapter 7 bankruptcy case. Debtor represents herself in this case and on July 10, 2008 filed a document with the Clerk of the Bankruptcy Court titled “Notice of Motion Recusal of Judge.” The document contains a variety of allegations about the conduct of her bankruptcy case, but the only relief apparently sought is contained in the second-to-last sentence: “I respectfully request that Judge Diehl be removed from this matter and that this whole case be dismissed from the Court. . .”

Section 455 of Title 28 governs the disqualification of federal judges, including bankruptcy judges, from acting in particular cases. Rule 5004 of the Federal Rules of

Bankruptcy Procedure provides that a “bankruptcy judge shall be governed by 28 U.S.C. § 455, and disqualified from presiding over the proceeding or contested matter in which the disqualifying circumstances arises or, if appropriate, shall be disqualified from presiding over the case.”

The basis for Debtor’s request relates to statements made by the Court during a hearing in this matter on June 21, 2007 concerning the duties of the Chapter 7 Trustee under Section 704 of the Bankruptcy Code. These duties include the collection and liquidation of property of the estate, including Debtor’s bank accounts and real property assets. Debtor did not claim an exemption in any property and the property at issue is therefore property of the estate, subject to administration by the Chapter 7 Trustee. Indeed, Debtor entered into a Stipulation with the Chapter 7 Trustee providing that the Chapter 7 Trustee should administer the condominium.

In *Liteky v. United States*, 510 U.S. 540, 555 (1994), the United States Supreme Court explained:

[O]pinions formed by the judge on the basis of facts introduced or events occurring in the course of the current proceedings, or of prior proceedings, do not constitute a basis for a bias or partiality motion unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible. Thus, judicial remarks during the course of a trial that are critical or disapproving of, or even hostile to, counsel, the parties, or their cases, ordinarily do not support a bias or partiality challenge.

Debtor has not set forth with particularity any facts or circumstances evidencing bias by this court. *Blizard v. Frechette*, 601 F.2d 1217, 1221 (1st Cir. 1979) (“trial judge must hear cases unless some reasonable factual basis to doubt the impartiality or fairness of the tribunal is shown by some kind of probative evidence”); *United States v. Corr*, 434 F. Supp. 408, 412-13

(S.D.N.Y. 1977) (the test for disqualification under 28 U.S.C. § 455 “is not the subjective belief of the defendant or that of the judge, but whether facts have been presented that, assuming their truth, would lead a reasonable person reasonably to infer that bias or prejudice existed, thereby foreclosing impartiality of judgment.”). Debtor’s motion appears to be based on statements by the Court with respect to the legal standard which governs the matter and not on and particular bias against her. If Debtor believes that the Court is using an incorrect legal standard, her remedy is an appeal. “Judicial rulings are grounds of appeal, not recusal.” *Grove Fresh Distributors, Inc. v. John Labatt, Ltd.*, 299 F.3d 635, 641 (7th Cir. 2002) (citing *Liteky*, 510 U.S. at 555).

Debtor has offered no evidence of favoritism or antagonism and none exists. As such, the Court finds no basis for recusal in this case. The Court further notes that Debtor has received an Order of Discharge in this case.

The Clerk is directed to serve copies of this Order on Debtor, Chapter 7 Trustee and United States Trustee.

END OF DOCUMENT