

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NEW YORK

In re

MARK A. VACANTI

Case No. 92-12960 K

Debtor

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MARK A. VACANTI

Plaintiff

-vs-

BOULEVARD FEDERAL CREDIT UNION,  
ALBERT J. MOGAVERO, TRUSTEE

Defendant  
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Boulevard Federal Credit Union argues that its late-filed claim should be allowed in this case because, it claims, it never received written notice of the bar date for claims. The matter has been submitted on affidavits.

The affidavit of Miriam Perez, Collections Clerk of the credit union stands for the proposition that she can presently find no evidence of having received written notice of bankruptcy, nor can she presently recall ever having received any written notice. Her affidavit does not claim that she did not know of the bankruptcy by any means. (In other words, she does not flatly deny knowledge of the bankruptcy.)

The affidavit of Jacques G. Pessier, Manager of the credit union is highly problematic. It says that he "is responsible to receive all mail" and that he "received no notice by mail or otherwise" relative to these proceedings, until July of

1993. The implication is that the credit union did not receive written notice, but the affidavit seems crafted to avoid saying as much. Thus it stands only for the proposition that Mr. Pessier received no written notice. It does not say that the credit union received no written notice, nor does it say that neither Mr. Pessier nor the credit union knew about the bankruptcy by means other than a written notice.

(Mr. Pessier's affidavit further states flatly that "All statements to members have contained our new correct address since June 1990," yet it is clear from Exhibit D to the affidavit of Debra Thomasulo that at least some documents sent to members displayed the old address.)

The Debtor's affiants, on the other hand, attest to facts which give rise to a presumption that the credit union did in fact receive notice; written notices were properly mailed and not returned. Even if it was the Debtor who caused the wage deduction to cease, it seems clear that the credit union knew about it and probably knew why it was ceased.

Each of the affidavits offered by the credit union seem carefully crafted to mislead, and to obfuscate rather than illuminate, the truth.<sup>1</sup>

The Court will not credit these affidavits, and will not

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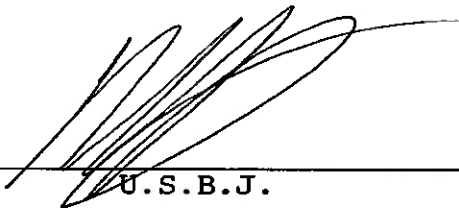
<sup>1</sup>Ms. Perez attests: "To my knowledge, there is no evidence that the Credit Union was aware that Mr. Vacanti had intended to terminate his payroll deduction." What does this mean?

entertain the credit union's "Due Process" arguments on the basis of such affidavits. The claim of the credit union is disallowed as late.

The Debtor is invited to move for sanctions under Rule 9011 if the Debtor believes that these seemingly-contrived affidavits were interposed for improper purpose (even if those affidavits were technically accurate.)

SO ORDERED.

Dated: Buffalo, New York  
October 18, 1993



U.S.B.J.