

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re Application of]
]]
ANTHONY] File No. BALDTA-20140805ACM
]]
MURRAY] Fac.ID Nos. 30129, 15758, 125624,
] 125650
For Involuntary Assignment of License]
]]
Held by James J. Chladek for WPMF-CD,]
Miami, FL; WSCF-LP, Melbourne, FL.
W05CJ, Key West, FL; WIOCQ, Key West,
FL

APPLICANT'S OPPOSITION STATEMENT
TO OBJECTION TO APPLICATION FOR
INVOLUNTARY ASSIGNMENT OF LICENSES

ANTHONY MURRAY, ESQ, the Applicant in the above-captioned matter,
respectfully submits this Opposition Statement to the Objection of James J. Chladek
dated September 5, 2014, and respectfully states the following:

1. I am an attorney-at-law duly admitted to practice in the State of New York.
I conduct my law practice through the law firm of MURRAY LLP of which I am
a member, at 305 Broadway, 7th Floor, New York, NY 10007.

2. All of the facts which are set forth in this Opposition Statement can be found
in public records that are on file in the Supreme Court of the State of New York, New
York County, including the following EXHIBITS which are submitted with this
Statement:

- EXHIBIT 1 A true and complete copy of the Order of New York State Supreme Court Justice Debra A. James dated July 11, 2014, appointing Anthony Murray, Esq. as Receiver to enforce a Judgment against James J. Chladek, entered on October 9, 2008 in the amount of \$2,543,659.35, including prejudgment interest in the sum of \$361,249.85 and costs and disbursements totaling \$727.50, in action entitled *Juan Carlos Molina, Plaintiff v. James Chladek, Defendant*, in the Supreme Court of the State of New York, New York County, Index No. 603763/2006.
- EXHIBIT 2 A true and complete copy of the Order to Show Cause issued on April 24, 2014 (with supporting Petition, affirmations and exhibits) by Justice Debra A. James, seeking the appointment of a Receiver to enforce the Judgment against James J. Chladek.
- EXHIBIT 3 A true and complete copy of the Order to Show Cause filed in the Supreme Court, State of New York on August 19, 2014 by James J. Chladek seeking to "Stop, Hold, Vacate the Order [Appointing Receiver] and/or Judgment."
- EXHIBIT 4 Affirmation in Opposition to EXHIBIT 3 filed by counsel for Carlos Molina, Judgment Creditor.
- EXHIBIT 5 FCC letter dated September 2, 2014, denying Petition to assign sixty-nine land mobile and microwave licenses to receiver appointed by Nevada District Court of Clark County to enforce monetary judgment against the licensee.

3. Pursuant to EXHIBITS 1 and 2, I was duly appointed Receiver by the New York State Supreme Court on July 11, 2014, to enforce and collect a Judgment of October 9, 2009 in the total sum of \$2,543,659.35 (the "Judgment") that was entered against James J. Chladek as Judgment Debtor, and in favor of Juan Carlos Molina as Judgment Creditor. I was granted specific authority to obtain and transfer for value the FCC broadcast licenses held by Mr. Chladek as licensee.

4. As shown by Exhibit B in EXHIBIT 2, James J. Chladek's attempt to vacate the Judgment over five (5) years ago was denied by Order dated July 9, 2009 by New York State Supreme Court Justice Shirley Werner Kornreich.

5. Exhibit B in EXHIBIT 2 also shows that Justice Kornreich's Order was served upon Mr. Chladek with Notice of Entry, by the Judgment Creditor's former attorney by mail on July 10, 2009. Mr. Chladek then had thirty-five (35) days from July 10, 2009 to appeal that Order, which he did not do, and any such appeal has now been time-barred for over five (5) years.

6. New York State law provides for interest on unpaid Judgments at the rate of nine percent (9%) per year. Therefore at the present time, the amount of principal and interest that is owed on the Judgment exceeds THREE MILLION, EIGHT HUNDRED AND FIFTY THOUSAND DOLLARS (\$3,850,000.00)

7. EXHIBIT 2 includes the uncontroverted sworn statement in the Verified Petition of Juan Carlos Molina -which is substantiated by a letter and check from his former attorney (Exhibit D in EXHIBIT 2) - that less than \$25,000.00 of the Judgment has been recovered through the seizure of funds in 2012, that were on deposit in a bank account of the Judgment Debtor.

8. In order to collect the balance of the Judgment -which now exceeds \$3.8 million -Mr. Molina's attorney sought the appointment of a Receiver under section 5228 of the New York Civil Practice Law and Rules (CPLR). The Court granted that application and appointed me as Receiver. I filed the required oath and bond with the

court and then proceeded to fulfill the court's mandate that I obtain and sell the broadcast licenses held by Mr. Chladek and apply the proceeds to satisfy the Judgment and pay expenses.

9. To that end I obtained FCC Registration Number FRN 0023807332 and filed Form 316 on August 5, 2014, which apparently precipitated the filing of the Order to Show Cause by Mr. Chladek on August 19, 2014 (EXHIBIT 3). That application sought to stay the enforcement of the Judgment -including suspension of my activities as Receiver -but the requested stay was crossed out and denied by New York State Supreme Court Justice Carol Edmead.

10. The Objection which Mr. Chladek has filed before the Commission in essence seeks the same relief which the New York State Supreme Court denied on August 19, 2014.

11. Mr. Chladek claims that he did not receive notice of the Petition for appointment of a Receiver to enforce the six year old multi-million dollar Judgment against him. The Supreme Court directed service of the Petition to be made by Express Mail, Overnight Delivery to two addresses, one of them being an address for Mr. Chladek which appears on a broadcast license issued by the FCC on January 3, 2014 (Exhibit C in EXHIBIT 2). He offers no explanation why that address is improper for service of the Petition and the resulting Order.

12. The sole issue on Mr. Chladek's pending application in the New York State Supreme Court is whether Justice James abused her judicial discretion by appointing a

Receiver to enforce the unpaid multi-million dollar Judgment. According to a 2010 ruling by New York State's highest court, the Court of Appeals, no such abuse of judicial discretion exists. See, *Hotel 71 Mezz Lender, LLC v. Falor*, 14 N.Y.3d 303, 900 N.Y.S.2d 698, 926 N.E.2d 1202 (2010) where the Court of Appeals held that the,

Supreme Court did not abuse its discretion in appointing a post judgment receiver to administer defendants' intangible personal property for purposes of satisfying plaintiff's outstanding \$52 million judgment.

* * *

The appointment of a receiver pursuant to CPLR section 5228(a) is a matter within the court's discretion *[citations omitted]*. A motion to appoint a receiver should be "granted . . . when a special reason appears to justify one. *[citation omitted]*. In deciding whether the appointment of a receiver is justified courts have considered the "(1) alternative remedies available to the creditor . . . ; (2) the degree to which the receivership will increase the likelihood of satisfaction . . . ; and (3) the risk of fraud or insolvency if a receiver is not appointed" *[citations omitted]*. **"A receivership has been held especially appropriate where the property interest involved is intangible, lacks a ready market, and presents nothing that a sheriff can work with at auction,** such as the interest of a psychiatrist/judgment debtor in a professional corporation of which he is a member *[citations omitted]*.

[emphasis supplied]

13. Furthermore, as shown by EXHIBIT 5, on September 3, 2014 the Commission refused a similar application by a licensee to deny transfer of 69 licenses to a receiver appointed by the Nevada District Court of Clark County to enforce a monetary judgment against the licensee. The Commission noted its

... policy "is to accommodate state and local court decrees adjudicating disputes over contract and property rights, unless a public interest determination under the Communications Act . . . compels a different result." In particular, we will not substitute our judgment for that of the state court regarding the legitimacy of a receivership appointment.

14. Page 3 of Mr. Chladek's Objection states that the attorney whom he has retained to represent him in New York State Supreme Court "will seek to vacate Molina's judgment that formed the basis for Murray's appointment as receiver because Molina obtained that judgment by fraud." The nature of the alleged "fraud" is not explained, and as demonstrated in the next paragraph, an application to vacate the Judgment on the ground of fraud (assuming there is any validity to such a claim), made some six (6) years after entry of judgment, will not succeed.

15 The Judgment against Mr. Chladek was entered in 2008, and his application to vacate it was denied in July of 2009. New York law permits a motion to vacate a judgment,

. . . pursuant to CPLR 5015(a)(3), which provides that "[t]he court which rendered a judgment or order may relieve a party from it upon such terms as may be just . . . upon the ground of fraud, misrepresentation, or other misconduct of an adverse party." Although there is no express time limit for seeking relief from a judgment pursuant to CPLR 5015(a)(3), a party is required to make the motion within a reasonable time [*citations omitted*]. Here appellant's delay of more than five years after the entry of the judgment of foreclosure and sale in moving to vacate the judgment was unreasonable.

Aames Capital Corp. v. John Davidsohn, 24 A.D.3d 474, 808 N.Y.S.2d 229 (Appellate Division 2d Dept. 2005).

16. Furthermore, Mr. Chladek did not appeal the Judgment or the denial of his 2009 motion to vacate it, and his time to do so expired in August of 2009. "The rule is that a party who fails to appeal from a judgment is deemed to have acquiesced in it . . ." *Matter of Arbitration between Amica Mut. Ins. Co. and Theodore-Jones*, 85 A.D.2d 727,

445 N.Y.S.2d 820 (Appellate Division 2d Dept. 1981), [citations omitted].

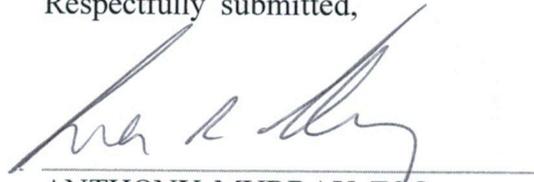
17. Consequently, the applicable facts and law demonstrate that the relief sought by Chladek in the Order to Show Cause which he filed in the New York State Supreme Court on August 19, 2014, is virtually certain to be denied, and the mere fact that he has an application pending before that court does not constitute a valid basis for any Objection to the Involuntary Assignment of his licenses to satisfy the multi-million dollar Judgment against him.

18. Therefore, it is respectfully submitted that the Commission should deny the Objection dated September 5, 2014.

I hereby declare under penalty of perjury, that the foregoing statements are true and correct.

Dated: New York, NY
September 11, 2014

Respectfully submitted,



ANTHONY MURRAY, ESQ.

Court-Appointed Receiver

By The New York State Supreme Court.

305 Broadway – 7th Floor
New York, NY 10007
(212) 729-3045

CERTIFICATE OF SERVICE

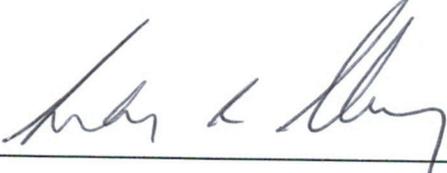
I, Anthony Murray, hereby certify that a copy of the foregoing "Objection" was served on September 11, 2014, by First-Class U.S. Mail to:

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Anthony Murray