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**UNITED STATES BANKRUPTCY COURT**
**DISTRICT OF VERMONT**

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In re:
**East Hill Manufacturing Corp.,**
**Debtor.**

**Chapter 11 Case**
**#97-11884**

#3471

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*Appearances:* *Paul S. Kulig, Esq.*
*Rutland, VT*
*Attorney for Bank One*

*Jesse T. Schwidde, Esq.*
*Glinka & Schwidde*
*Rutland, VT*
*Attorney for debtor*

*John Norton-Griffiths*
*Rutland, VT*
*Pro se Secured Creditor*

**MEMORANDUM OF DECISION**
**DENYING MOTION FOR RECUSAL**

The matter before the Court is the *Motion by Secured Creditor John Norton-Griffiths to Recuse Honorable Colleen A. Brown, Bankruptcy Judge* [Dkt. #342-1]. Mr. Norton-Griffiths seeks recusal pursuant to 28 U.S.C. §§455(a) and (b)(1), based upon contentions that this Court's impartiality might be reasonably questioned and that a personal bias or prejudice exists against the movant. This Court has jurisdiction pursuant to 28 U.S.C. §§455 and 1334. For the reasons set forth below, the recusal motion is denied.

The motion for recusal sets forth three alleged grounds for relief: (1) this Court's arbitrary and unexplained disallowance of attorneys fees; (2) the impolite manner in which the Court rejected Mr. Norton-Griffiths' admittedly flawed first request for Rule 9011 sanctions on procedural grounds; and (3) this Court's denial of Mr. Norton-Griffiths' second motion for Rule 9011 sanctions on substantive and procedural grounds.

The test for determining the merits of a motion to disqualify a federal judge under 28 U.S.C. §455 is an objective test. *See* Liteky v. U.S., 510 U.S. 540, 114 S. Ct. 1147, 127 L. Ed.2d 474 (1994); Tapia-Ortiz v. Winter, 185 F.3d 8 (2nd Cir. 1999). A federal judge is not required to disqualify herself where the motion contains unsubstantiated allegations of bias. *See* Tapia-Ortiz v. Winter, *supra*; Willner v. University of Kansas, 848 F.2d 1023 (10th Cir. 1988), *cert. den.* 109 S.Ct. 840 (1989); *see also* Bin-Wahad v. Coughlin, 853

F. Supp. 680, 683-84 (S.D.N.Y. 1994)(movant must show a true personal bias and allege specific facts as opposed to mere conclusions and generalizations). Moreover, adverse rulings and allegations of impoliteness alone do not provide a basis for disqualification. *See* Liteky v. U.S., *supra*; Tapia-Ortiz v. Winter, *supra*; *see also* U.S. v. Muyet, 994 F. Supp. 501 (S.D.N.Y. 1998); Holmes v. NBC/GE, 925 F. Supp. 198 (S.D.N.Y. 1996). Furthermore, judges are presumed to be impartial and the law imposes a substantial burden upon a movant to prove otherwise. *See* Bin-Wahad v. Coughlin, 853 F. Supp. at 683.

Based upon these authorities, it is not necessary for the Court to respond to each and every allegation interposed by the movant. This is particularly true here since this Court finds that the insufficiency of the two allegations of bias based upon denial of the 9011 motions is clearly evident from the record and written decisions. The movant's remaining ground for this Court's recusal, namely that the Court reduced a fee application in an arbitrary fashion, should be addressed because it raises the more complex issues of relevancy and judicial discretion. The fee in question was sought by Jess Schwidde, Esq., the attorney for the debtor herein, and the movant has failed to set forth any basis upon which the Court's ruling on Mr. Schwidde's fee application is relevant to the Court's alleged lack of impartiality toward the movant. Moreover, contrary to the movant's contention, the Court did recite its reasons for reducing this fee on the record at the hearing held on March 13, 2001, specifying the entries that the Court found to be beyond the reasonable and necessary standard of 11 U.S.C. §330. The movant's claim that the Court's reduction of fees was arbitrary is belied by the fact that under the circumstances presented and the relevant case law, this Court had the discretion to deny debtor's counsel's fee in its entirety based upon counsel's failure to obtain approval of the fee prior to its disbursement. *See* In re Anderson, 936 F.2d 199 (5th Cir. 1991); Lavender v. Wood Law Firm, 785 F.2d 247 (8th Cir. 1986). In fact, the Court allowed the vast majority of the fee sought, over the zealous objection of the Office of the U.S Trustee, on primarily equitable grounds, for the reasons set forth in the Memorandum of Decision dated January 25, 2001. Accordingly, this Court finds that none of the specific allegations set forth by the movant are supported by the record.

This Court has also examined the motion to determine if it raises allegations which would cause a reasonable person to find that this judge holds or evinces a bias or prejudice *vis a vis* the movant that creates a reasonable impression that the movant is being deprived of the impartiality to which he is entitled in this Court under federal law, i.e., to determine if an objective test is satisfied by the movant's allegations. *See* U.S. v. Thompson, 76 F.3d 442, 451 (2nd Cir. 1996); Yagman v. Republic Insurance, 136 F.R.D. 652, 656 (C.D.Cal. 1991), *aff'd.* 987 F.2d 622 (1993). Based upon a careful and objective review of the matters set forth in the motion to recuse, the Court finds that the movant has failed to set forth a legally sufficient basis for disqualification of a federal judge pursuant to 28 U.S.C. §§455(a) or (b)(1).

For the foregoing reasons, the *Motion by Secured Creditor John Norton-Griffiths to Recuse Honorable Colleen A. Brown, Bankruptcy Judge* is denied.

February 21, 2002
Rutland, Vermont

Colleen A. Brown
United States Bankruptcy Judge

NOTE:
Although the movant may have designated additional parties to receive this document, the court has served copies of this document only on the parties named below. If a designated party is not listed, they are not in the court's database as a party to this case.

Notice sent to:

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