

GLD-089

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 11-4284

IN RE: MICHAEL R. SHEMONSKY,
Appellant

On Appeal from the United States District Court
for the Middle District of Pennsylvania
(D.C. Civil No. 3-11-cv-01085)
District Judge: Honorable Christopher C. Conner

Submitted for Possible Dismissal Pursuant to 28 U.S.C. § 1915(e)(2)(B)
or Summary Action Pursuant to Third Circuit LAR 27.4 and I.O.P. 10.6
January 12, 2012

Before: FUENTES, GREENAWAY, JR., AND STAPLETON, Circuit Judges

(Opinion filed: January 31, 2012)

OPINION

PER CURIAM

Michael Shemonsky appeals the District Court's order affirming the Bankruptcy Court's order closing his bankruptcy case. We will dismiss the appeal as frivolous.

In 1994, Shemonsky filed a bankruptcy petition. The Bankruptcy Court closed the case in February 1995. In January 2010, Shemonsky filed a motion to reopen the case. He sought to list assets he had not originally listed in his petition. Shemonsky contended

that he was entitled to a salary and bonds from Atlantic Financial. The Bankruptcy Court reopened the case. On April 14, 2011, after further pleadings and hearings, the Bankruptcy Court closed the case. Shemonsky filed a notice of appeal to the District Court from the Bankruptcy Court's April 14, 2011, order. After the District Court affirmed the Bankruptcy Court's order, Shemonsky filed a motion for reconsideration. The District Court denied the motion for reconsideration, and Shemonsky filed a notice of appeal.

Because Shemonsky is proceeding in forma pauperis on this appeal, we must analyze his appeal for possible dismissal pursuant to 28 U.S.C. § 1915(e)(2)(B). Under § 1915(e)(2)(B), we must dismiss an appeal if the action (i) is frivolous or malicious, (ii) fails to state a claim upon which relief may be granted, or (iii) seeks monetary damages from a defendant with immunity. An action or appeal can be frivolous for either legal or factual reasons. Neitzke v. Williams, 490 U.S. 319, 325 (1989).

Shemonsky has been claiming to be owed money related to Atlantic Financial for over twenty years. His efforts have been unsuccessful. Shemonsky's claims relating to Atlantic Financial were dismissed by the District Court for the Middle District of Pennsylvania in 1990 in Shemonsky v. Office of Thrift Supervision, 733 F. Supp. 892 (M.D. Pa.), aff'd 922 F. 2d 833 (3d Cir. 1990). On September 10, 1991, the District Court for the Eastern District of Pennsylvania enjoined Shemonsky from representing that he was an agent of Atlantic Financial, from entering the property, and from communicating any threat to any agent of Atlantic Financial. On February 18, 2003, the District Court for the Middle District of Pennsylvania enjoined Shemonsky from filing

any further pleadings related to his claims concerning Atlantic Financial. In affirming that order, we noted:

Since [1990], Shemonsky has filed at least ten lawsuits in the Middle District, and has also filed suits in the United States District Court for the Eastern District of Pennsylvania, related to the Atlantic Financial claims, and/or his 1994 arrest. Shemonsky has also initiated more than thirty proceedings in this Court. There is no doubt that the series of meritless lawsuits filed by Shemonsky shows an abuse of the court system that, because it is likely to continue, warrants some restriction on his litigating opportunities.

See Shemonsky v. United States, C.A. No. 03-1848.

The Bankruptcy Court concluded that Atlantic Financial, as a savings and loan institution, could not receive bankruptcy relief. We need not reach the issue of whether Atlantic Financial may be a bankruptcy debtor. It has already been determined that Shemonsky may not represent himself as an agent of Atlantic Financial. Thus he may not file pleadings on its behalf. To the extent that Shemonsky is claiming that he or his bankruptcy estate is entitled to funds from Atlantic Financial, these claims are without merit as we have previously held.

Shemonsky has wasted the resources of the courts of this Circuit with frivolous litigation over Atlantic Financial for over twenty years. We warn him that initiating or continuing litigation in the courts of this Circuit, including the Bankruptcy Court, regarding Atlantic Financial may result in monetary sanctions and additional filing injunctions.

For the above reasons, we dismiss the appeal as frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B)(i). Shemonsky's request that we transfer the appeal to the United States Court of Appeals for the Fourth Circuit is denied.