

appointment of receiver and denial of motion to dismiss amended complaint). Similarly, Herskowitz now moves for this court's removal from this case, on the heels of this court's decisions granting plaintiff's motion for a default judgment against Herskowitz and denying Herskowitz's motion to vacate that default judgment.²

Judiciary Law § 14 prohibits a judge from presiding over a case "to which he is a party, or in which he has been attorney or counsel, or in which he is interested, or if he related by consanguinity or affinity to any party to the controversy within the sixth degree." Herskowitz, however, has set forth no such grounds in her motion; accordingly, this motion is directed solely to this court's discretion. Ogust v. 451 Broome St. Corp., 4 A.D.3d 109 (1st Dept. 2004); Herald v. Herald, 305 A.D.2d 1080 (4th Dept. 2003); Ficarola v. Town Bd. Gov't., 276 A.D.2d 666 (2nd Dept. 2000).

To justify recusal under these circumstances, Herskowitz must demonstrate actual bias against her, rather than a mere speculative possibility of bias. See Rumsey v. Niebel, 286 A.D.2d 564, 565 (4th Dept. 2001). "A judge has an obligation *not* to recuse himself or herself, even if sued in connection with his or her duties, unless he or she is satisfied that he or she is unable to serve with complete impartiality, in fact or appearance." Robert Marini Builder Inc. v. Rao, 263 A.D.2d 846, 848 (3rd Dept. 1999) (internal citation omitted) (emphasis supplied). Thus, mere "dissatisfaction" with the prior rulings of the court, absent more, is insufficient to meet that burden. See supra, Ficarola v. Town Bd. Gov't., 276 A.D.2d at 666.

² By decision dated April 13, 2004, this court granted plaintiff's motion for an order directing the distribution of sums presently held by the appointed Receiver of the property of North Jersey Trading Corporation. By decision dated October 12, 2004, this court denied Herskowitz's motion to vacate that default.

The record in this case reveals that, prior to the court's ruling in favor of plaintiff on the motion to disburse funds in the hands of the Receiver, Herskowitz appeared to be satisfied that the court was in no way biased against her. As discussed more fully in the court's decision dated April 13, 2004, this court excused Herskowitz's failure to appear on that motion on two occasions, and temporarily lifted a New York arrest warrant which was outstanding against her in order to facilitate her appearance in this court for argument of this motion.¹ The court made clear to Herskowitz that this would be the final adjournment of this motion, and Herskowitz thanked the court for accommodating her travel preferences and for arranging to lift the arrest warrant, stating, "You're the first honorable judge that has done this." Transcript of Proceedings (dated Oct. 22, 2003) at p. 17

Nevertheless, Herskowitz declined to appear, and this court finally deemed Herskowitz to be in default. By decision dated October 12, 2004, this court denied Herskowitz's subsequent motion to vacate that default because, as noted in the decision, Herskowitz had failed to establish that she had made any effort to avoid the default. Therefore, the court found that Herskowitz's default was both "willful and contumacious" and did not warrant the court's exercise of discretion to vacate the judgment. See Massey v. City of New York, 249 A.D.2d 245, 245-26 (1st Dept 1998).

On January 5, 2005, Herskowitz appeared in this court to argue the instant motion. At that time, Herskowitz indicated that the basis for her motion for recusal was this court's decisions holding her in default and denying her subsequent motion to vacate that default.

¹ The outstanding arrest warrant was based upon her failure to comply with court orders. See Charney v. North Jersey Trading Corp., Index No. 24517/88 (S.Ct. N.Y. Co. Feb. 19, 1993) (Tompkins, J.).

Despite the court having repeatedly rearranged its schedule to accommodate Herskowitz's appearance on the motion to disburse funds, Herskowitz contended that the court had *always* intended to hold Herskowitz in default:

HERSKOWITZ: So that shows, your Honor, your prejudice, that you were going to grant this fee application whether I appealed, didn't appeal, I didn't come or I came; it didn't matter. Your Honor has already decided to grant it regardless of what the facts were.

Transcript of Proceedings (dated Jan. 5, 2005) at p. 10. Additionally, Herskowitz voiced her contempt for the appellate process in general:

HERSKOWITZ: Your Honor, the appeal process is another sham today. All they do is PCA, and they don't hear you; and they can't hear me.

Id. at p. 23.

Rather than establishing this court's bias, it is the opinion of this court that Herskowitz's oral presentation on this motion, as noted above, and her multiple failures to appear before this court for scheduled conferences, demonstrates her contempt for the legal process, rather than any bias or prejudice against her. Where, as here, the movant has failed to demonstrate that any ruling of this court exhibits bias against her, see Solow v. Wellner, 157 A.D.2d 459, 459 (1st Dept. 1990), or any remarks the court has made indicate bias against her, see People v. Grier, 273 A.D.2d 403, 405-06 (2nd Dept. 2000), recusal is unwarranted.

Accordingly, it is hereby

ORDERED that defendant Judith Herskowitz's motion for recusal is denied.

This shall constitute the decision and order of the court.

DATED: February 16, 2005


SHERRY KLEIN HEITLER
J/S.C.