

1/29/97

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1/29/97

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
In re:

SANT S. CHATWAL, :

Debtor. :

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FEDERAL DEPOSIT INSURANCE :
CORPORATION, as Receiver of FIRST :
NEW YORK BANK FOR BUSINESS, :

Plaintiff, :

-against- :

SANT S. CHATWAL, :

Defendant. :
-----X

Chapter 7

Case No. 95B 43003 (CB)

Adversary Proceeding No.:

ADVERSARY COMPLAINT

4579/005

D+D
Other (Bankruptcy)

Plaintiff, Federal Deposit Insurance Corporation, as Receiver of First New York Bank for Business ("FDIC"), by its attorneys, Reid & Priest LLP, as and for its adversary complaint against the defendant alleges as follows:

1. This is an adversary proceeding wherein the FDIC objects to the discharge of its claims pursuant to 11 U.S.C. § 523(a)(4) and Bankruptcy Rule 4004 and/or the discharge of the debtor pursuant to 11 U.S.C. §§ 727(a)(3), (4) and (5) and Bankruptcy Rule 4007.

2. This is a core proceeding.

3. The FDIC is a creditor of the defendant herein.

4. The FDIC is a corporation and instrumentality of the United States of America existing under 12 U.S.C. §§ 1811, et. seq., is authorized to sue by act of Congress under 12 U.S.C. § 1819 and is authorized to bring this action as receiver under 12 U.S.C. § 1821(d).

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5. The FDIC appears as the plaintiff in this action in its capacity as the receiver of First New York Bank for Business ("First New York" or the "Bank"). On or about November 13, 1992, First New York was closed by the Superintendent of Banking of the State of New York (the "Superintendent"). Subsequently, the FDIC was appointed receiver of the Bank and thereby acquired both legal and equitable title to all of the assets, rights, claims and property of the Bank. The FDIC thereby succeeded, without limitation, under New York State Banking Law § 634, to all rights, powers and privileges provided by the laws of New York to the Superintendent in his or her capacity as receiver or liquidator. Further, without limitation, pursuant to 12 U.S.C. §§ 1821(c) and (d), the FDIC has succeeded to all rights, titles, claims, powers and privileges of the Bank, account holders, depositors and creditors with respect to the Bank and its assets.

6. Upon information and belief, debtor-defendant Sant S. Chatwal (the "Debtor") is an individual who resides at 300 East 93rd Street, Apartment 45-A, New York, New York 10128.

7. On or about November 8, 1995, the FDIC filed a lawsuit in the United States District Court for the Southern District of New York (95 Civ. 9529 (JSM)) against former directors of First New York. The lawsuit seeks to recover damages jointly and severally from the former directors for (1) breach of fiduciary duty, (2) gross negligence (3) negligence, (4) negligence per se, and (5) other wrongful and improper

conduct, all of which resulted in significant losses in excess of \$25,000,000 to First New York.

8. The Debtor was a director of First New York from in or about July, 1987 through in or about April, 1991 but is not a defendant in the lawsuit filed by the FDIC by virtue of this Chapter 7 case.

9. In its lawsuit against the former directors of First New York, the FDIC alleges that the directors, including, but not limited to, the Debtor, breached their fiduciary duties and obligations to the Bank by, among other things, abdicating their responsibility to ensure that loans to Bank directors and their related entities were approved in accordance with applicable state and federal laws and regulations including, but not limited to, 12 U.S.C. § 375(b), 12 CFR § 215, New York State Banking Law § 103(8) and Part 321 of the Superintendent's Regulations; the Bank's internal lending policy; and principles of safe and sound banking.

10. In addition, the former Bank directors, including the Debtor, participated and knowingly engaged in the practice of, among other things, extending poorly underwritten loans to Bank directors and their related entities which involved more than the normal risk of repayment, resulted in unsafe concentrations of credit for the Bank and violated the Bank's internal lending policies.

11. The Debtor, personally, and entities under his control and in which he was the principal shareholder, director

and/or officer borrowed in excess of \$14,000,000 from First New York. The Debtor and his related entities defaulted on a majority of the loans received from First New York resulting in losses to the Bank in excess of \$12,000,000. Many of the loans received by the entities under the Debtor's control from the First New York were personally guaranteed by the Debtor.

12. The FDIC has a claim against the Debtor for an unliquidated amount.

13. The Summary of Schedules, Schedules A through J, Statement of Financial Affairs, Numbered Listing of Creditors and Mailing Index (collectively, the "Schedules") filed by the Debtor in connection with this Chapter 7 proceeding state total liabilities in excess of \$17,000,000, along with numerous debts for which the amount is listed as unknown. Thus, upon information and belief, the total amount of the Debtor's liabilities is well in excess of the \$17,000,000 listed by the Debtor in his Schedules. The creditors listed in the Schedules include First New York as well as numerous other banks, individuals and government agencies asserting, among other things, tax liens.

14. The Schedules further state that the Debtor has assets of \$2,600 and cash of \$100.

AS AND FOR A FIRST CAUSE OF ACTION
UNDER 11 U.S.C. § 727(a)(4)

15. On or about January 3, 1996, the Debtor testified under oath at the meeting of creditors held in this case pursuant to 11 U.S.C. § 341.

16. Subsequently, on or about February 12, 1996, the Debtor testified under oath at an oral examination conducted by the FDIC held pursuant to Bankruptcy Rule 2004.

17. Upon information and belief, the Debtor has made a false oath or account herein as demonstrated by the following.

THE DEBTOR AND HIS FAMILY'S
FINANCIAL ARRANGEMENTS CONCERNING
THE DEBTOR'S RESIDENCE

18. At his oral examination, the Debtor testified that he is employed as a "consultant" for the Best Western President Hotel located in New York, New York for a yearly gross salary of \$72,000. The Best Western President Hotel was formerly owned and operated by an entity controlled by the Debtor as the President Hotel. The Debtor testified that this salaried position is his sole source of income.

19. On or about May 2, 1996, an oral examination pursuant to Bankruptcy Rule 2004 of the Debtor's wife, Pardaman Chatwal, was held wherein she also testified under oath.

20. At her oral examination, Pardaman Chatwal testified that she is employed at a Bombay Palace restaurant located in New York, New York. Pardaman Chatwal further testified that she is in charge of "food control" and receives a

gross weekly salary of \$1,000, netting approximately \$700 after tax deductions.

21. The Bombay Palace restaurant where Pardaman Chatwal is currently employed is now owned and operated by an entity controlled by Iqbal Chatwal, one of the Debtor's younger brothers who previously worked for the Debtor in a restaurant located in Montreal, Canada.

22. Upon information and belief, from their alleged combined monthly income of, at most, \$6,700, the Debtor and Pardaman Chatwal pay a monthly rent of \$5,000 pursuant to an oral "sub-lease" to his brother Iqbal Chatwal for their apartment, a luxury penthouse located at 300 East 93rd Street, Apartment 45-A, New York, New York 10128 (the "Apartment"). The combined rent and maintenance charges on the apartment total at least \$16,000 (see paragraph "26" *infra*). According to testimony, of this amount, the Debtor pays \$3,500 and Pardaman Chatwal pays \$1,500.

23. The Apartment in which the Debtor resides was formerly owned by Pardaman Chatwal. Pre-petition, to purchase the Apartment, First New York made a \$1,800,000 first mortgage loan to Pardaman Chatwal, guaranteed by the Debtor. This loan eventually resulted in a loss to First New York in excess of \$1,000,000.

24. The Debtor testified at his Bankruptcy Rule 2004 examination that the Apartment was sold by him to Henry Luce, another former director of First New York, through a company called KGW Realty allegedly owned by Henry Luce. While the

Debtor served on the board of directors of First New York with Henry Luce, he testified that he did not know Mr. Luce.

25. On or about December 12, 1996, Iqbal Chatwal testified under oath at an oral examination pursuant to Bankruptcy Rule 2004.

26. According to his testimony, Iqbal Chatwal has a lease for the apartment with KGW Realty Corp., c/o Dahan & Nowick, and pays a monthly rent of \$12,500 plus the monthly maintenance payments for the Apartment, a condominium, which range between \$3,500 to \$4,000. Thus, Iqbal Chatwal's monthly payment obligations for the apartment amount to at least \$16,000. Yet, Iqbal Chatwal testified that his sole income is a yearly salary of approximately \$125,000.

27. Iqbal Chatwal further testified that he resides in Montreal, Canada but stays in the Apartment when he travels to New York.

28. While Iqbal Chatwal testified that he does not know who owns KGW Realty Corp., upon information and belief, Iqbal Chatwal is the president of KGW Realty Corp.

29. Iqbal Chatwal further testified that he negotiated the lease for the apartment with Marc Dahan. Upon information and belief, Marc Dahan is also associated with a hotel formerly owned and operated by the Debtor as the Kennedy Inn and has been involved financially with the Debtor.

30. Iqbal Chatwal further testified that the Debtor and Pardaman Chatwal reside in the apartment with a co-tenant,

Sarbjit Sathya, who pays a monthly rent of \$2,200. Neither the Debtor nor Pardaman Chatwal testified that Mr. Sathya resides with them in the apartment.

31. The Debtor and his wife are allegedly able to pay \$5,000 in monthly rent on an alleged maximum monthly income of \$6,700. The Debtor further testified that he pays approximately \$1,000 a month in monthly expenses to support his two (2) sons who reside with the Debtor and his wife. The Debtor further testified that, at times, his wife pays tuition for their younger son.

32. In sum, the Debtor has managed to continue living in luxurious style in the same penthouse apartment he resided in at a time he claimed a net worth in the tens of millions of dollars without adequate explanation of how his family's limited income is able to support such a lifestyle.

FINANCIAL TRANSACTIONS WITHIN THE
CHATWAL FAMILY

33. With respect to the Bombay Palace restaurant in New York City, while the Debtor testified that he did not know how his younger brother, who had previously worked for him as a waiter and restaurant manager, came to own the restaurant, Iqbal Chatwal testified that after the Debtor advised him it was for sale, he purchased the stock for the restaurant from First New York.

34. According to testimony from Iqbal Chatwal, he purchased the Bombay Palace restaurant located in New York City in October, 1992 for \$210,000 in cash from First New York and the

restaurant is now owned by an entity called "West 52nd" in which he is the one hundred percent owner.

35. Iqbal Chatwal purchased the New York Bombay Palace restaurant for \$210,000 in cash despite an apparent lack of financial means to do so. Even today, Iqbal Chatwal's present salary appears barely adequate to pay his alleged portion of rent for the Debtor's Apartment, let alone other living expenses.

36. Four (4) years earlier, Iqbal Chatwal had purchased two (2) other restaurants from the Debtor. Iqbal Chatwal testified that in 1988, he worked as a restaurant manager at the Bique Assiet restaurant in Montreal, Canada operated by the Debtor. According to testimony, the Bique Assiet restaurant was owned by Ekamkar Restaurant Corporation of Canada, Limited ("Ekamkar"). Iqbal Chatwal testified that Ekamkar was a subsidiary of Bombay Palace Restaurant, Inc., a corporation under the control of the Debtor.

37. Iqbal Chatwal further testified that in 1988, he purchased the stock for Ekamkar, which included two restaurants, from Bombay Palace Restaurants, Inc. and began to operate the restaurants. Iqbal Chatwal was directed by his counsel to not disclose the amount that he paid for the Ekamkar stock.

38. Iqbal Chatwal testified that he is currently operating two (2) restaurants in Montreal, Canada, called Bique Assiet and Bombay Palace; two (2) Bombay Palace restaurants in Toronto, Canada; one (1) Bombay Palace restaurant in New York, New York; and (1) Bombay Palace restaurant in Washington, D.C.

39. Iqbal Chatwal further testified that in April, 1993, he acquired the trademark for the name Bombay Palace from the Sheh family for \$50,000.

40. Upon information and belief, while Bombay Palace restaurants are in operation throughout the world including, but not limited to, London, New York, Washington, D.C., Houston, Beverly Hills, Atlanta, Mexico City, Hong Kong, Toronto, Montreal and Kuala Lumpur, as part of a worldwide chain, neither the Debtor nor Iqbal Chatwal testified that they have any relationship to these restaurants, with the exception of New York, Washington, D.C., Toronto and Montreal.

41. In sum, while both the Debtor and his wife testified that they are employed by entities formerly owned and operated by the Debtor for yearly alleged combined gross salaries of approximately \$130,000, upon information and belief, they frequently travel out of the country and continue to lead lavish lifestyles which could not reasonably be supported on a monthly income of at most \$1,700 after their rent is paid. Their living arrangement is explained only in part by the support of a younger brother, Iqbal Chatwal, whose purchase of several of the Debtor's former restaurants itself appears to be incompatible with his own financial means. Upon information and belief, the Debtor cannot support such a lifestyle on his alleged yearly income and, in any event, lacks the financial records to demonstrate how he affords such a lifestyle.

42. Accordingly, discharge should be denied under 11 U.S.C. § 727(a)(4).

AS AND FOR A SECOND CAUSE OF ACTION
UNDER 11 U.S.C. § 727 (a) (3)

43. The FDIC repeats and realleges each of the allegations set forth in paragraphs 1 through 42 of this complaint as if fully set forth herein.

44. On or about January 3, 1996, the Chapter 7 trustee of the Debtor conducted an examination of the Debtor under oath pursuant to 11 U.S.C. §§ 341 and 343. During the section 341 meeting of creditors as well as his examination under oath conducted thereat, the Debtor failed to present adequate financial records or other documents to justify the financial information set forth in his Schedules and to this date, has failed to provide any information regarding his current financial condition.

45. In addition, at his oral examination conducted by the FDIC pursuant to Bankruptcy Rule 2004 held on February 12, 1996, the Debtor testified, under oath, that he had limited financial records that documented the dissolution of his various business entities as well as his personal finances and only possessed bank account records for scattered dates and transactions. The Debtor testified that he did not have any other records than the limited records provided and believed that some records may have been previously provided to the bankruptcy court. Despite requests, the Debtor's counsel has also failed to

provide records relating to the bankruptcies of the corporations controlled by the Debtor.

46. Due to the Debtor's failure to maintain adequate business and personal financial records, it is impossible to determine how the Debtor utilized the millions of dollars in funds loaned to the Debtor and his related entities including, but not limited to, the over \$14,000,000 he and his related entities borrowed from First New York.

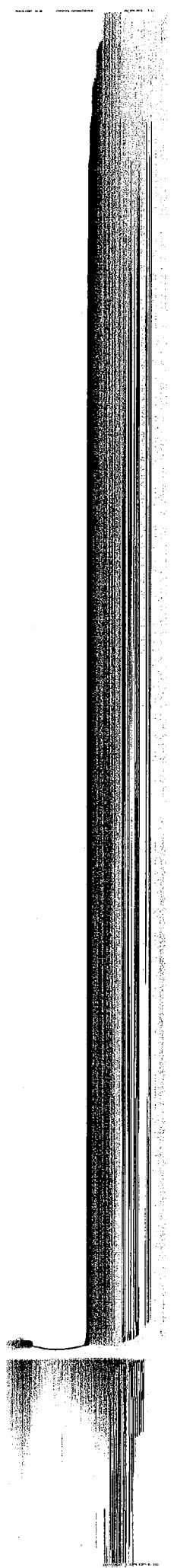
47. Accordingly, under 11 U.S.C. § 727(a)(3), the Debtor has failed to keep or preserve any recorded information including books, documents and records, from which his financial condition or business transactions might be ascertained. Therefore, the discharge of the Debtor should be denied under 11 U.S.C. § 727(a)(3).

AS AND FOR A THIRD CAUSE OF ACTION
UNDER 11 U.S.C. § 727(a)(5)

48. The FDIC repeats and realleges each of the allegations set forth in paragraphs 1 through 47 of this complaint as if fully set forth herein.

49. The Debtor and his related entities were loaned in excess of \$14,000,000 by First New York.

50. Upon information and belief, in a 1989 personal financial statement, the Debtor reported a net worth in excess of \$40,000,000. Upon information and belief, in a 1991 personal financial statement the Debtor reported an increase in his net worth to over \$46,000,000.



~~51. As stated above, the Debtor's Schedules reported~~
assets \$2,600 and cash of \$100. The Debtor has inadequate records to explain what became of the \$46,000,000 in assets lost between 1991 and 1996.

52. The Debtor has failed to explain satisfactorily the disposition of the funds loaned to him and his related interests and has failed to provide financial records and other documents regarding the same.

53. Discharge should be denied under 11 U.S.C. § 727(a)(5).

AS AND FOR A FOURTH CAUSE OF ACTION
UNDER 11 U.S.C. § 523(a)(4)

54. The FDIC repeats and realleges each of the allegations set forth in paragraphs 1 through 53 of this complaint as if fully set forth herein.

55. The Debtor is a former director of First New York.

56. As a director of First New York, the Debtor owed to the Bank and its depositors various fiduciary duties, including the duties of loyalty, due care and good faith, in the management, supervision and direction of First New York.

57. The Debtor's actions as resulted in fraud and defalcation as the Debtor breached his fiduciary duties to First New York by negligently, carelessly, imprudently, recklessly, knowingly, or otherwise failing to exercise good faith, due care and diligence in the making, managing, monitoring, administering, supervising, accounting and/or auditing of loans to Bank

