U.S. Department of Justice - Office of the United States Trustee
Peter C. Anderson, U.S. Trustee - Region 16

THE WATCHDOG

Inside this issue:

The United States Trustee is charged with the oversight responsibility for supervising the administration of bankruptcy cases filed in the U.S. Bankruptcy Court for the Central District of California, as well as monitoring the performance of the individual trustees appointed in these cases.

Coming this Fall: We're Moving!

After eleven years at our current address, the Office of the U.S. Trustee is getting ready to move our offices and meeting rooms to a new location one block away at 915 Wilshire Boulevard. Sharing the new space with the Los Angeles office will be the staff of the Woodland Hills office which is being closed. Santa Barbara and Woodland Hills will continue to maintain satellite locations for First Meetings of Creditors.

The move is currently scheduled to occur sometime in the Fall. Final details of our moving schedule will be forthcoming.

David Lewin Ray

June 17, 1929 to June 16, 2013

The Office of the United States Trustee joins the bankruptcy community in offering our heartfelt condolences to the family of David Ray, our longtime colleague who was appointed to the Chapter 7 Panel in the Central District of California on November 11, 1987.

U.S. Trustee Mission Statement

The USTP Mission is to promote integrity and efficiency in the nation's bankruptcy system by enforcing bankruptcy laws, providing oversight of private trustees, and maintaining operational excellence.

The Watchdog Staff

Assistant U.S. Trustee L. Charmayne Mills
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Why U.S. Trustee Enforcement Should Not Yield to Debtor and Creditor Preferences

By Clifford J. White III
Director, Executive Office for U.S. Trustees

Introduction

This year marks the 25th anniversary of the nationwide expansion of the United States Trustee Program (USTP or Program). From its inception as a pilot project established in the Bankruptcy Reform Act of 1978 through numerous Congressional amendments that expanded the role of the USTP, the Program has served, in the words of our legislative history, as the "watchdog" of the bankruptcy system. Although USTP duties have expanded over the years, our essential mission has remained constant: to promote the integrity and efficiency of the bankruptcy system by enforcing the law as Congress has written it—and to do so with prudence, discretion and sound judgment.

Stakeholders in the bankruptcy system often have differing views on when and how the U.S. Trustees should assert their broad authorities in a particular case. Indeed, U.S. Trustees exercise civil prosecutorial discretion every day. These decisions are designed to achieve our legislative purpose by reflecting both national Program priorities and district-by-district needs of the bankruptcy system. This article describes some of the basic principles and objectives that guide our prosecutorial discretion.1

Legislative Background

The statutory basis for the USTP's role in bankruptcy cases starts, but does not end, with the Bankruptcy Reform Act of 1978. The USTP was initially established as a pilot program in 18 judicial districts. Many of the U.S. Trustees' current duties and authorities were expressly added in later amendments. Importantly, 11 U.S.C. § 307, which allows the U.S. Trustee to appear and be heard on nearly any issue in any case or proceeding under Title 11, was enacted in 1986. In the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, the USTP was given new substantive authorities such as supervising the means test and approving pre-bankruptcy credit counseling agencies. Congress also directed U.S. Trustees to seek the appointment of chapter 11 trustees in cases where there are reasonable grounds to believe that certain types of misconduct has occurred. These additional duties and authorities reflect Congress's desire for the U.S. Trustee to play an increasingly active role in policing the bankruptcy system.

Prosecutorial Discretion

The U.S. Trustees recognize the importance of exercising prosecutorial discretion, and they do so every day. Not every variation from strict legal requirements mandates an enforcement action or a remedy. An enforcement agency must look both at the facts and circumstances of each case, as well as the broader system-wide impact of the conduct or violation. USTP enforcement decisions are driven by the fact that Congress designed the bankruptcy system to operate for the benefit of all stakeholders—the debtor, its employees, large creditors, small creditors and the general public. For instance, U.S. Trustees

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generally should not participate in true two-party disputes. In deciding whether to object to a motion or to take an enforcement action, U.S. Trustees ask many questions, including: Will the resolution of the matter implicate rights of other parties or of any institutional interest of the bankruptcy system? If the parties propose a settlement, does the statute allow the court to approve the agreed-upon relief? Might the court's adjudication set a troubling precedent?

In determining when to become involved in an issue or a dispute, U.S. Trustees bear in mind their essential mission to promote compliance with the law. The bankruptcy laws are more than a default set of rules that parties can choose whether to follow. In so many areas Congress has made public policy choices that may not be contravened by agreement. The public interest is served by consistent application of the Bankruptcy Code as written, rather than by a system where anything goes as long as the biggest economic interests in the case agree and no one else notices or can afford to complain.

The U.S. Trustees will not seek to substitute their business judgment for that of the debtor and creditors. But corporate debtors and large creditors do not have a license to rewrite the laws passed by Congress and signed by the President. A U.S. Trustee's prudential decision not to contest an apparent violation of the Bankruptcy Code or Rules in a particular case does not mean that this violation is immune from objection in future cases.

Prudential considerations are part and parcel of the decision-making process of every enforcement agency. Once an enforcement agency decides to exercise its discretion to bring an action or to take a position on a legal or factual issue, the court should promptly adjudicate the issue regardless of whether the court disagrees with the agency's decision to act. The court's responsibility is to decide the dispute before it on the facts and the law, without regard to the identity or economic stake of the parties to the dispute.

Protecting All Stakeholders

Enforcing the law and advancing economic interests in a case are not inconsistent unless the efforts to advance the economic interests contravene the law. This false dichotomy is most frequently suggested when strict application of the law would upset an agreement between powerful constituencies in the case, such as the debtor's entrenched management and major institutional creditors. But unlike many other areas of the law, bankruptcy implicates a multiplicity of interests. The interests of management of the debtor company and its largest creditors are often aligned against the interests of other parties in the case—sometimes against employees, sometimes against small creditors and sometimes against other major parties such as privately managed investment funds. The public also has an interest in compliance with the law.

The multiplicity of interests in bankruptcy is one of the major reasons Congress established the U.S. Trustee as a neutral party to protect all interests—including less powerful economic interests and the public interest. The USTP's independence is at the core of its existence and justifies its unique role in the system. The USTP is the only party in a case that acts as a disinterested party to protect the integrity of the bankruptcy system. We recognize that other parties have interests they understandably want to vindicate. But, when the solutions crafted by those parties are outside the law or require

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the court to enter an order beyond its powers, it is the USTP's responsibility to object.

If the USTP were to limit its involvement to issues that had been joined by economic stakeholders, it would not police a wide variety of important areas. The following are examples of the types of enforcement actions that the USTP may undertake, even in the absence of economic stakeholder involvement.2

Venue

U.S. Trustees may seek the transfer of venue when appropriate under the statutory scheme. In one fact pattern, the debtor manufactures venue by creating a non-operating affiliate with few, if any, assets on the eve of bankruptcy. No creditor objects. But to ensure that the court has an opportunity to exercise its statutory discretion under the "interests of justice" test, the U.S. Trustee does object. If the USTP were powerless to act in this case, debtors would be able to forum shop and to ignore the venue parameters set by Congress.3 Congress did not write venue laws with an exception permitting debtors to file anywhere as long as the economic interests agree. And Congress did not create a watchdog that cannot act independently to enforce the law as written. There is no better standard for the USTP to uphold than the "interests of justice"—and we will continue to do that even if it means we must act alone.

Appointment of a Trustee

Another USTP enforcement action that is often held up for scrutiny is the motion to appoint a chapter 11 trustee. Debtors sometimes claim that the appointment of a trustee will destroy the business or that any change in control will interfere with a sale or otherwise result in catastrophe. These arguments should be closely examined. The trustee's appointment might be catastrophic for top management, but not for the creditors, the employees and the public.

Examine this fact pattern: The debtor and the largest creditor file a motion to authorize a quick sale even though management of the company is guilty of prepetition wrongdoing. Then, to defeat the U.S. Trustee's motion for a trustee, the company board and largest lender install a chief restructuring officer (CRO) to manage the quick sale. The U.S. Trustee opposes the CRO because the board is tainted by prepetition conduct and the CRO cannot be independent of the board. The only cure is the appointment of an independent chapter 11 trustee to look out for the interests of all stakeholders.

Consider one more fact pattern: The debtor successfully installs a CRO to defeat a motion for a trustee. Ultimately, the debtor's business cannot be sold as a going concern, and all employees are laid off. In such a case, it is difficult to see how deference to incumbent management benefited stakeholders.

Executive Bonuses

U.S. Trustees frequently object to executive bonuses that do not comply with 11 U.S.C. § 503(c). Examine this common fact pattern: The debtor proposes to pay bonuses to keep executives and insiders on board during the sale or reorganization of the company. Only the U.S. Trustee objects. In response, the debtor recharacterizes the retention bonus as an easy-to-reach incentive bonus, and the U.S. Trustee objects to enforce the bonus restrictions in § 503(c).

Congress made the policy choice to strictly limit retention bonuses, and that choice should not be contravened by private interests. As case law

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holds, an incentive plan cannot be a “lay-up” but must be a “stretch” to qualify under § 503(c). The statute is a clear statement of Congressional intent to rein in abusive bonus programs in bankruptcy, yet parties treat it as an inconvenient obstacle to overcome.

In one recent case, the court heard an executive bonus motion and objections. While the matter was under advisement, the press reported that the debtor sent notices to employees under the Worker Adjustment and Retraining Notification (WARN) Act. Simple arithmetic showed that the total executive bonus amount sought by the debtor was the equivalent of more than $31,000 for each employee reportedly facing layoff. Even though the press report was not part of the court record or a basis for the court’s decision, it was troublesome.4

Professional Compensation

In yet another major area, review and approval of compensation requested by bankruptcy professionals, the U.S. Trustee often is the only party to object. Assume that the U.S. Trustee discovers that the debtor’s law firm routinely discounted its fees billed to the debtor before the bankruptcy filing, but the law firm neither discounted its fees for the bankruptcy engagement nor disclosed the pre-petition discount. Under 11 U.S.C. § 330, Congress requires that compensation be reasonable “based on the customary compensation charged by comparably skilled practitioners in cases other than cases under [Title 11].” If the U.S. Trustee does not raise this important issue, it is likely that no party will.

Consider one more fact pattern relating to professional compensation: To break an impasse and settle all contested issues, the debtor proposes that, if certain creditors will withdraw their objections to the reorganization plan, the debtor will amend the plan to pay the attorneys’ fees of these creditors. The U.S. Trustee objects to enforce § 503’s requirements that limit when creditors can have their attorneys’ fees paid by the estate. That section binds creditors and debtors alike; neither the court nor the parties by agreement have the authority to alter that statutory scheme.

Consumer Bankruptcy

The previous examples were drawn from chapter 11 fact patterns. The USTP intervenes to protect the integrity of the bankruptcy system in consumer cases as well. For instance, in seeking to retain their homes, individual debtor homeowners are most often outmatched by large banks and their big law firms, even in situations where the banks and/or their attorneys have engaged in questionable lending, collection or foreclosure practices. In many of these cases, the banks will quickly settle with the homeowners and then combat U.S. Trustee efforts to remedy systemic problems by arguing that there is nothing left for the U.S. Trustee to investigate or remedy. The USTP has rejected this “no harm no foul” defense against the investigation of potentially systemic violations and has actively participated in the negotiation of several major nationwide settlements designed to remedy collection abuses. Needless to say, the USTP had no economic interest, but the USTP has investigated or taken court action in thousands of such cases.

Conclusion

The USTP will act in cases when parties seek to funda-

Why U.S. Trustee Enforcement Should Not Yield to Debtor and Creditor Preferences (continued)

fundamentally contravene the law. In those cases, the USTP is obliged to police the system and to act as a "watchdog" over the integrity of the bankruptcy system. The Bankruptcy Code is not a set of suggestions to be followed when adherence is convenient. We are all well-advised to respect the Code and thereby enhance public confidence in the system that we serve.

Footnotes:

1 In November 2012, I participated in the American Bankruptcy Institute's Winter Leadership Conference "Great Debates" session on the topic of "Should the U.S. Trustee's enforcement role in chapter 11 cases yield to creditor preferences?" This article is an adaptation of the remarks I prepared for that Debate. I extend my deepest appreciation to my colleague, Walter Theus, for his work on this article.

2 Unless otherwise noted, the following are composite examples and do not necessarily mirror the facts of any particular case.

3 Some commentators have highlighted the court's dictum in *In re Patriot Coal Cor*., 428 B.R. 718, 744 (Bankr. S.D.N.Y. 2012), that the decision to grant the U.S. Trustee's motion might have been different had no party with an economic interest also challenged venue. Such a result, however, would clearly have been inconsistent with the ruling itself which stated that the debtor's steps to manufacture venue were an "affront to . . . the integrity of the bankruptcy system"—as well as with the decision in *In re Winn-Dixie Stores, Inc.*, Case No. 05-11063 (RDD) (Bankr. S.D.N.Y. Apr. 12, 2005), that the "interests of justice" trump the "convenience of the parties."

4 *In re Hawker Beechcraft, Inc.*, 479 B.R. 308 (Bankr. S.D.N.Y. 2012)(order denying the executive motion bonus).

The United States Trustee Program's Report of Significant Accomplishments for Fiscal Year 2012 has been published. Interested readers can find it at:

http://www.justice.gov/ust/eo/public_affairs/annualreport/.

Important Links:

http://www.justice.gov/ust/r16/index.htm provides a wealth of information on Region 16. There's a page devoted to each of the field offices; Los Angeles, Riverside, Santa Ana, Woodland Hills and its Santa Barbara satellite office. You can find maps to the office and meeting rooms, parking information, and a staff directory with phone numbers.

http://www.cacb.uscourts.gov/ connects you to the United States Bankruptcy Court for the Central District of California.

http://www.calbar.ca.gov/ will get you to the State Bar of California's website where you can search attorney names.

A Continuing Conflict: Charitable Donations And Chapter 7

By Everett L. Green, Trial Attorney

Riverside Office

Every holiday season, millions of Americans participate in a long-standing tradition of donating to charity. According to some measures, Americans contributed $95.88 billion to religious organizations in 2011. [1] While charitable donations to religious institutions are viewed as altruistic endeavors, the practice is problematic when a donor seeks to liquidate his or her debts in Chapter 7.

A. The Purpose Of Chapter Is To Repay Creditors

Chapter 7 is the liquidating chapter of the Bankruptcy Code. It allows the complete discharge of most debt. One of Chapter 7's primary goals is to maximize the recovery of money and assets for the benefit of creditors. In 2005, as part of comprehensive bankruptcy reform legislation, Congress introduced a means test – a mathematical formula that deducts certain allowed expenses from a debtor's income – to ensure that a debtor repays his or her creditors as much as possible. [2] If, after deduction of these expenses, a debtor's income surpasses a statutory limit, the debtor is not eligible for Chapter 7. In tandem with the means test, bankruptcy courts scrutinize the totality of a debtor's financial circumstances to decide whether a debtor should reduce their actual expenses to repay creditors. [3] To further ensure that creditors are paid, a trustee is appointed in every Chapter 7 bankruptcy case to investigate a debtor's assets and recapture any funds paid on the eve of filing bankruptcy including situations where a debtor does not receive anything of equal value.[4]

B. Chapter 7's Goal Of Creditor Repayment Conflicts With The Idea Of Donations To Serve The Public Good

Bankruptcy's goal of maximizing creditor recovery conflicts with the concept of an individual making charitable donations. Tithing, for example, involves a voluntary contribution of a percentage of income to a religious institution. From a societal point of view, the support of charity is undeniably perceived to be in the public interest. From a bankruptcy perspective, tithing is problematic. It is voluntary – a debtor controls when he or she will tithe – thus a debtor can start tithing right after they file bankruptcy, and stop after they wipe out all of their debts.[5] Tithing can be unrestricted in amount – a debtor controls how much to tithe. Tithing often is not a requirement of church membership or a mandatory condition of receiving religious instruction – after all, most church services are free to the public. [6] But, in making a charitable donation, a bankruptcy debtor in essence is asking his creditors to make the donation at the expense of being repaid.

C. Responding To The Unfairness Of Charitable Donations To Creditors, Bankruptcy Courts Permitted The Avoidance Of Charitable Contributions

These issues reflect a more fundamental concern involving fairness. Is it fair to allow debtors to make gifts to charity instead of repaying their debts? Should a debtor, who has not been a good steward of his or her own financial affairs, be able to make gifts to a church at the expense of creditors. And is it fair that creditors, who may have loaned money or extended credit in good faith, may be denied repayment while a debtor gifts property. In recognition of this unfairness to creditors, bankruptcy courts developed or applied a body of case law allowing Chapter 7 trustees to avoid or nullify charitable donations and recover the money for the benefit of creditors. [7]

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D. Congress Passes Legislation Reaffirming The Special Value of Gift Giving

In reaction to efforts by trustees to repay creditors by recovering church donations, Congress weighed in. Congress, adopting a policy position that charitable donations have spiritual rather than actual value, elevated the principle of gift-giving over the interests of repaying creditors. By enacting the Religious Liberty and Charitable Donation Protection Act of 1998 ("Act"), Congress intended to protect the rights of debtors to continue to make religious and charitable contributions after they file for bankruptcy relief.[8] The Act amended Chapter 7 to prevent a court from considering whether "a debtor has made, or continues to make, charitable contributions" in determining whether a debtor can repay creditors.[9] The Act also amended the Bankruptcy Code so that a trustee may not recapture or avoid as a fraudulent transfer most charitable contributions. The Act's protections of charitable contributions appear to be quite broad. While a debtor must disclose how much he or she donated prior to the filing and intends to donate after the filing, the Court cannot consider the donations as evidence in assessing a debtor's ability to repay creditors.[10]

E. One Bankruptcy Court Denies Special Treatment To Charitable Donations

At least one bankruptcy court, however, concluded that the Act's protections are not as broad as they appear.[11] In *Bender*, the debtors contributed $260 a month to their church in the three years before they filed Chapter 7.[12] After their filing, they proposed to increase their contributions to $360.13 The Court correctly held that the Act excluded the debtors' past and future $260 contribution as evidence of their ability to repay creditors.[13] But the debtors' proposal to increase their contributions troubled the court.[14]

In interpreting the Act's provisions, the court held that the Act's specifically excludes donations that a debtor "has made, or continues to make."[15] These *are past and continuing donations.*[16] According to the court, the Act does not permit a debtor to suddenly become more charitable after filing bankruptcy.[17] The Act only protects debtors who have an established pattern of giving of a specific amount.[18] The court denied the debtors request to increase their donations to their church.[19]

The court was motivated by the same concerns of fairness to creditors as bankruptcy courts prior to the Act's passage. Still, the court's statutory interpretation and analysis appear to be supported by legislative history.[20] On the other hand, the Act's supporters would find nothing wrong with a debtor increasing his or her financial commitment to the church in a time of financial distress. At present, it is not clear if the bankruptcy court's decision will be followed and adopted by other bankruptcy courts. If the decision starts a trend, Congress may again intervene.

1.The Center on Philanthropy at Indiana University, available at www.philanthropy.iupui.edu/news/article/has-americas-charitable-giving-climbed-out-of-its-great-recession-fueled-trough (last visited October 18, 2012).

2. *Egebjerg v. Peter C. Anderson, United States Trustee (In re Egebjerg)*, 574 F.3d 1045, 1048 (9th Cir. 2009).

3. *See* 11 U.S.C. § 707(b)(3).

4. The Bankruptcy Code and state law may allow a trustee to reclaim any funds paid as fraudulent transfers. *See* 11 U.S.C. §§ 548-550.

5. *See In re Lee*, 162 B.R. 31, 42 (Bankr. N.D. Ga. 1993) ("Because debtors have not tithed consistently and because their church does not require tithing as a condition for full membership privileges, the monthly expense for tithing is unreasonable.").
the monthly expense for tithing is unreasonable.").

6. The bankruptcy court in *Faulker*, 165 B.R. 644, 648-49 (Bankr. W.D. Mo. 1994) expressed these concerns.

7. *See, e.g., Weinman v. The Word of Life Christian Center (In re Bloch), 207 B.R. 944, 948-51 (D. Colo. 1997); Morris v. Midway S. Baptist Church (In re Newman), 203 B.R. 468, 472-478 (D. Kan. 1996); Fitzgerald v. Magic Valley Evangelical Free Church (In re Hodge*), 200 B.R. 884 (Bankr. D. Idaho 1996).

8. H.R. Rep. No. 105-556, at 2 (1998).

9. The Act modified 11 U.S.C. § 707(b)(1) in relevant part: "In making a determination whether to dismiss a case under this section, the court may not take into consideration whether a debtor has made, or continues to make, charitable contributions . . . to any qualified religious or charitable entity or organization."

A Continuing Conflict:

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10. *See* 11 U.S.C. § 707(b)(1). A debtor must disclose continued charitable contributions on the means test form, and in his or her bankruptcy schedules.

11. *In re Bender*, 373 B.R. 25, 29-30 (Bankr. E.D. Mich. 2007).

12. *Id.* at 27 n 4.

13. *Id.* at 29.

14. *Id.*

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.*

19. *Id.* (the Act does not protect "new" contributions or increases in contributions).

20. *Id.* at 30.

21. The House Report urging passage of the Act cites the following subcommittee testimony regarding the Act's effect on a trustee's ability to recapture charitable donations as fraudulent transfers:

> "If I have been going along for years putting $5 a week in the collection plate and all of a sudden, before I file bankruptcy, I clean out my last account and give 15% percent of my last year's income to my church, the trustee and the bankruptcy judge will look at the timing, the amount, the circumstances, the change in pattern, and they will say those are all badges of fraud. They will say I had the actual intent to hinder or defraud my creditors"
>
> H.R. H.R. Rep. No. 105-556, at 3 (1998).

ANNOUNCEMENTS

Go to: http://www.justice.gov/ust/

February 14, 2013:
U.S. Trustee Program's Settlement with Financial Adviser Includes Monetary Remedies, Independent Monitor

February 15, 2013
U.S. Trustee Program's Settlement with Law Firm Includes Monetary Remedies, Independent Review

March 15, 2013
Updated Census Bureau Data

March 19, 2013
U.S. Trustee Program Issues Public Report of Debtor Audits for FY 2012

March 20, 2013
Notice Regarding Debtor Audits

April 4, 2013
Notice Regarding Publication of Credit Counseling and Debtor Education Final Rules

June 11, 2013
DOJ Announces New Guidelines for Attorneys in Large Chapter 11 Cases—See Page 15

November 8, 2012
Clifford J. White, Director EOUST before the Annual Meeting of the National Bankruptcy Conference

Bar targets new breed of loan modification scams

By Amy Yarbrough, California Bar Journal staff writer

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A Southern California firm focused on foreclosures ran a scheme so aggressive that even the State Bar's managing director of investigations, mistaken for a homeowner in distress, received five different offers to rescue his home from foreclosure.

Set up in an office building in a nice part of Ontario, Calif., Realty Group & Consulting is accused of operating a sham law firm with the help of local attorney Gary David Tracy. Court documents allege that the firm pledged to help clients fight bank foreclosures. But instead of preventing them, the firm bilked clients out of thousands of dollars in dubious legal fees and they still lost their homes.

The case involving Realty Group was just one of the nearly 12,000 loan modification complaints the State Bar has received since it began logging them in early 2009.

Managing Director of Investigations John Noonen found himself in the crosshairs of a persistent Realty Group saleswoman named Natalie after calling a toll-free number given to him by one former client.

"Apparently, they unblocked my cell phone and read my number as a potential customer hang-up call," Noonen explained in a declaration filed in San Bernardino County Superior Court that helped shut down Realty Group in September.

Believed to have ensnared dozens of vulnerable homeowners, Realty Group used an increasingly popular scam, one of several that have been festering since the financial crisis began, authorities say. According to State Bar investigators, Tracy allowed non-lawyers to use his name and law license to file bogus bankruptcy petitions, stalling the inevitable loss of clients' homes. The State Bar has not yet filed formal disciplinary charges against him.

Joe Dunn, CEO/executive director of the State Bar, said this bankruptcy fraud tactic seems to be new, although similar scams have fleeced vulnerable homeowners at various stages of the foreclosure process.

"On that slide down they've been targeted every step of the way," Dunn said. "It's the same consumers tumbling down the economic ladder and the same core group of non-lawyers."

Often, non-lawyers find vulnerable attorneys to draw into their scheme, he added. "Some lawyers don't know they're being used."

To help combat the problem, the State Bar has participated in periodic foreclosure fraud summits with the U.S. Department of Justice, the state Attorney General's office, the Federal Trade Commission, Consumer Financial Protection Bureau and other agencies.

By discussing the latest fraud schemes and passing along new information, agencies aren't duplicating efforts and ultimately get a jump on the latest scam, according to Evan Davis, an assistant U.S. Attorney who has helped to organize them.

"Every time one organization gets shut down either legislatively or otherwise, [the scam] merely changes," he said.

Since February 2009, the State Bar's Office

Bar targets new breed of loan modification scams (continued)

of Chief Trial Counsel has received 11,751 complaints related to loan modification. Of them, the bar has filed disciplinary charges in 1,432 cases involving 179 licensed California attorneys. Of those cases, 1,028 resulted in discipline involving 121 attorneys, and 396 cases have resulted in the disbarment of 28 attorneys.

Another 390 cases involving 69 attorneys are still pending before the State Bar Court, and some 284 matters involving 129 attorneys are being actively investigated.

State Bar investigations have increasingly targeted lawyers working with organizations run by non-attorneys who claim they can file predatory lending lawsuits to rescue clients from foreclosure. After being convinced to stop making mortgage payments, the homeowners end up losing their property and thousands of dollars in the process.

In November, a State Bar Court hearing judge recommended disbarment for one such attorney, Sharon Lapin, 57, of Greenbrae. She was found culpable of multiple counts of professional misconduct, including moral turpitude, aiding the unauthorized practice of law, sharing fees with a non-lawyer and participating in a non-legal lawyer referral service. According to State Bar prosecutors, Lapin made $177,000 as a result of the scheme, while doing virtually no legal work.

Yet another type of scheme involves false promises to work with lenders to modify clients' loans.

In what may be the biggest such case handled by the Office of Chief Trial Counsel, attorney Vasa Allan Khoshbin admitted in May 2012 to misappropriating $1.1 million from 10 clients and agreed to be disbarred. Khoshbin had falsely claimed he could get clients' first mortgages modified and their second mortgages settled for pennies on the dollar.

As for Tracy, the attorney accused of participating in the bankruptcy filing scheme, his involvement with clients appears to have been minimal, if any, according to investigator Noonen's declaration. In it, Noonen notes that Tracy's Realty Group office appeared empty, other than a picture on the wall.

“Most of the clients I interviewed had never met him, the court records showed no appearances by him in any of the pending matters, and when he appeared before two bankruptcy judges to answer questions about the office, he didn't know his own phone number and could not detail the number of bankruptcy petitions they filed,” he wrote.

Realty Group is accused of filing at least 80 “bad faith” bankruptcy petitions on behalf of clients, many of whom had no idea those documents had been filed in their names.

Davis, the assistant U.S. attorney, said some scammers have even gone so far as to file bankruptcy petitions using fake names to stall foreclosure, or to piggyback onto someone else's bankruptcy, claiming that person had a stake in an unrelated client’s pending foreclosure. If the deception was uncovered, they moved on to another fake petitioner.

“It can last six months, but if lenders are not on the ball it can literally mean years,” he said.

Davis said foreclosure fraud will continue to be an unrelenting issue because “people are going to be underwater for years on these homes in California and elsewhere.”

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Bar targets new breed of loan modification scams

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"It's going to be a big problem for a long time," he said.

Update: As of February 10, 2013, the State Bar Court granted the State Bar's Motion for involuntary enrollment. Gary Tracy is now an inactive member of the Bar.

The Bar 's Board of Trustees has begun studying whether to issue a limited–practice license to expand legal services to the poor and increase consumer protection. The Limited License Working Group was created on March 3, 2013 as a subcommittee of the Board Committee on Regulation, Admissions and Disciple Oversight. According to the State Bar's website, the mission of the group is to "... explore, research and report back to the Regulation, Admissions and Discipline Oversight Committee regarding the feasibility of developing and implementing standards for creating a limited license to practice law and/or the licensing of legal technicians, for those not fully admitted to the State Bar as attorneys. Such a license, if the Board of Trustees wishes to pursue it, would enable certified individuals to provide limited, discrete legal services to consumers in defined legal subject matter areas."

For further information, check out the State Bar's website at http://www.calbar.ca.gov/.

Filings for Central District

January through April 2013

	Chapter 7	Chapter 11	Chapter 12	Chapter 13	Grand Total
Opened	21947	224	1	5187	27359
Reopened	1227	9	0	58	1294
Total	**23174**	**233**	**1**	**5245**	**28653**
Change from 2012	**-22.5%**	**35.6%**	**-80.00%**	**-40.3%**	**-26.6%**

Inland Counties Association of Paralegals—Membership Has It's Privileges

By Donna F. Dupree, Paralegal Specialist , Riverside Office

Introduction

In or about 1985, a group of paralegals from Riverside and San Bernardino Counties banded together to form the Inland Counties Association of Paralegals (ICAP.)[1] Over the years, ICAP has evolved into an organization of legal professionals striving to accomplish five primary goals: (1) to encourage greater utilization of paralegals within the legal communities of Riverside and San Bernardino Counties; (2) to promote continuing educational opportunities; (3) to maintain a resource system for practicing and student paralegals; (4) to build stronger relationships with local bar associations; and, (5) to maintain and promote the National Association of Legal Assistants' paralegal standards and Codes of Ethics.

Benefits of Membership

Regular voting membership is available only to paralegals who are currently working under the supervision of an attorney. (See California Business & Professions Code 6450 which defines and sets forth the terms of use of the professional title "paralegal" in the State of California.) The annual fee for voting membership is $60. However, non-voting associate membership and sustaining membership are also available to attorneys and other legal professionals for an annual fee of $60. Student membership (also non-voting) is available for an annual fee of $40 to individuals currently enrolled in a paralegal program. There are multiple benefits to becoming a member of ICAP, regardless of the type of membership you are qualified to hold.

One of the primary benefits of ICAP membership is the opportunity to earn MCLE credit at an extremely affordable price. ICAP is a California State Bar Approved MCLE Provider (#11452) offering its members the opportunity to earn a minimum of 10 hours of MCLE credits each year. As a State Bar MCLE provider, ICAP's education programs are directly relevant to current and active members of the State Bar as well as to paralegals and other legal professionals. If you are a member, the cost of attending a 1-hour MCLE meeting hosted by ICAP is $10. A meal is also provided at no additional cost. Many of ICAP's MCLE events take place at the Riverside County Bar Association located on Main Street in Riverside. Past presenters include Superior Court Judge Jackson Lucky and Riverside County's Deputy District Attorney, Ivy Fitzpatrick.

Another benefit of membership is electronic delivery of ICAP's quarterly newsletter ICAPtions. The newsletter contains articles and information on a variety of subjects of interest, including any recent changes in local court rules and procedures. Because ICAP is an affiliate of the National Association of Legal Assistants (NALA), ICAP members receive NALA's Affiliate's Brief, a publication which is

(continued on next page)

Inland Counties Association of Paralegals—Membership Has It's Privileges (Continued)

distributed electronically to affiliates across the country. Affiliation with NALA affords ICAP members additional opportunities for networking with other associations that are NALA affiliates. Additionally, because ICAP is an affiliate of NALA, ICAP members receive a monetary discount when applying for membership with NALA.

ICAP membership provides paralegals with a broad base of networking opportunities as well as opportunities to contribute to the local community. Each year in December, ICAP members are invited to attend ICAP's holiday party. (They may also invite a guest.) Attendance is complimentary and dinner is provided along with the opportunity to win door prizes donated to ICAP by many of its sponsors and local vendors. However, members are encouraged to make a modest donation at this event to a pre-selected charity. This year's event will be held at The Castaway Restaurant in San Bernardino with ICAP collecting donations from members for the benefit of Wounded Warriors. Additionally, each year in October, ICAP members are given the opportunity to run (or walk) with Team ICAP in the Susan B. Komen Race for the Cure.

Employment opportunities are sent electronically to all ICAP members. Law firms and attorneys are encouraged to contact ICAP's Employment Chair to request that an employment opportunity be sent out to membership via email or, if the timing is appropriate, potential employers may request that an employment opportunity be included in ICAPtions. Employment opportunities are posted and/or published at no charge to the prospective employer or employee.

If you would like more information about becoming involved with ICAP, additional information as well as membership and sponsorship applications are available online at ICAP's website: www.icaponline.org. If you have a specific question that is not answered by the information provided on ICAP's website, general contact information as well as email addresses and links for each of ICAP's Board Members and Committee Chairs are provided on the website.

1 During the same year, ICAP was incorporated with the State of California and became a 506(c)(3) organization with the goal of serving the Inland Empire paralegal community.

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From USTP Press Release dated June 11, 2103

JUSTICE DEPARTMENT ISSUES NEW GUIDELINES FOR PAYMENT OF ATTORNEYS' FEES, EXPENSES, IN LARGE CHAPTER 11 BANKRUPTCY CASES

New Guidelines Enhance Disclosure and Transparency in Bankruptcy Compensation Process and Ensure Attorneys' Fees are Based on Market Rates

For Full Press Release: www.justice.gov/ust/eo/public_affairs/press/docs/2013/pr20130611.htm

CRIMINAL

FORMER FEDERAL FUGITIVE PLEADS GUILTY IN CALIFORNIA TO MASSIVE FRAUD AND IDENTITY THEFT SCHEME IN CONNECTION WITH NATIONWIDE FORECLOSURE SCAM

Defendant Collected More Than $1.2 million From More Than 800 Distressed Homeowners

WASHINGTON – A former Los Angeles resident, who fled to Canada and was a federal fugitive for 12 years, pleaded guilty today to aggravated identity theft and bankruptcy fraud in connection with leading a nearly 15-year foreclosure-rescue scam that fraudulently postponed foreclosure sales for more than 800 distressed homeowners, announced Acting Assistant Attorney General Mythili Raman of the Justice Department's Criminal Division, U.S. Attorney for the Central District of California André Birotte Jr., U.S. Attorney for the Northern District of California Melinda Haag, Assistant Director in Charge Bill L. Lewis of the FBI's Los Angeles Field Office, Special Agent in Charge David J. Johnson of the FBI's San Francisco Field Office and Christy Romero, Special Inspector General for the Troubled Asset Relief Program (SIGTARP).

Glen Alan Ward, 48, pleaded guilty in connection with three separate sets of charges in the Central and Northern Districts of California, all stemming from Ward's 15-year fraud. In 2000, Ward became a federal fugitive when he failed to appear in court after signing a plea agreement, which arose out of federal charges in 2000 in the Central District of California related to Ward's early conduct in the scheme. In 2002, Ward was indicted on multiple counts of bankruptcy fraud in the Northern District of California for continuing the scheme in and around San Francisco. On Aug. 17, 2012, Ward was indicted on mail fraud, aggravated identity theft, and additional bankruptcy fraud counts in the Central District of California after fleeing to Canada and continuing his fraud from there. While in Canada, Ward recruited Frederic Alan Gladle, who was indicted in the Central District of California for bankruptcy fraud and identity theft in 2011, and was sentenced in 2012 to 61 months in custody for engaging in similar conduct. On April 5, 2012, Ward was arrested in Canada by the Royal Canadian Mounted Police and the Waterloo Regional Police Service based on a U.S. provisional arrest warrant. On Dec. 21, 2012, Ward was extradited to the United States to answer all three sets of charges.

"Glen Alan Ward spent years preying on distressed homeowners and stealing the identities of bankruptcy debtors, all to pad his own pockets," said Acting Assistant Attorney General Raman. "Now he faces years in prison for his crimes. This successful prosecution illustrates our commitment to tirelessly pursuing fraudsters and ensuring that sophisticated schemes that prey on vulnerable homeowners will not go unpunished."

"Mr. Ward fled the United States years ago in an attempt to keep his fraudulent foreclosure scheme running," said United States Attorney André Birotte Jr. "Today's conviction should serve as a reminder that criminals can run, but they can't hide. The reach of the federal law is long and scammers like Ward, who try to take advantage of distressed homeowners, will be tracked down and prosecuted regardless of their efforts to do otherwise."

Glen Alan Ward being escorted into courthouse in Kitchen, Ont., in 2012

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CRIMINAL ENFORCEMENT NEWS (CONTINUED)

According to the plea agreement filed today before U.S. District Judge Dale S. Fischer in the Central District of California, Ward admitted to engaging in a fraud scheme that took place from 1997 to April 5, 2012, the day he was arrested by Canadian authorities. According to the plea agreement, Ward led a scheme that solicited and recruited homeowners whose properties were in danger of imminent foreclosure. Ward promised to delay their foreclosures for as long as the homeowners could afford his $700 monthly fee. Once a homeowner paid the fee, Ward accessed a public bankruptcy database and retrieved the name of an individual debtor who recently filed bankruptcy. Ward admitted that he obtained copies of unsuspecting debtors' bankruptcy petitions and directed his clients to execute, notarize and record a grant deed transferring generally a 1/100th fractional interest in their distressed home into the name of the debtor that Ward provided. Then, after stealing the debtor's identity, Ward faxed a copy of the bankruptcy petition, the notarized grant deed and a cover letter to the homeowner's lender or the lender's representative, directing it to stop the impending foreclosure sale due to the bankruptcy.

Because bankruptcy filings give rise to automatic stays that protect debtors' properties, the receipt of the bankruptcy petitions and deeds in the debtors' names forced lenders to cancel foreclosure sales. The lenders, which included banks that received government funds under the Troubled Asset Relief Program (TARP), could not move forward to collect money that was owed to them until getting permission from the bankruptcy courts, thereby repeatedly delaying the lenders' recovery of their money for months and even years. In addition, if a distressed homeowner wanted to complete a loan modification or short sale, they were left to the mercy of Ward to send them forged deeds, supposedly signed by the debtors, to re-unify their title as required by most lenders.

As part of the scheme, Ward delayed the foreclosure sales of approximately 824 distressed properties by using at least 414 bankruptcies filed in 26 judicial districts across the country. During that same period, Ward admitted to collecting more than $1.2 million from his clients who paid for his illegal foreclosure-delay services, all of which he has agreed to forfeit.

"Today's announcement is the result of a collaborative international effort and the FBI is grateful to our partners with the Royal Canadian Mounted Police and the Waterloo Regional Police for their assistance in the fugitive investigation and apprehension," said Bill Lewis, the Assistant Director in Charge of the FBI's Los Angeles Field Office. "Mr. Ward's long-term scheme is an extreme example of calculated fraud based on greed, and I'm proud of the persistence shown by our federal partners at SIGTARP, the Office of United States Trustees, and the United States Attorney's Office, in pursuing this case to its successful end."

"We are committed to pursuing those who defraud the most vulnerable victims of the real estate market," said FBI San Francisco Special Agent in Charge David J. Johnson. "This is an excellent example of how closely we work with our law enforcement partners here and abroad to ensure that criminals are brought to justice."

"With today's plea, justice is served for the victims of Ward's long-running bankruptcy fraud scheme," said Christy Romero, Special Inspector General for TARP (SIGTARP). "While on the run for 12 years and having fled to Canada to avoid answering for earlier charges of bankruptcy fraud, Ward continued to victimize hundreds of struggling homeowners, steal the identities of unsuspecting U.S. taxpayers involved in bankruptcy proceedings, and exploit civil protections under bankruptcy law to defraud lenders, including numerous TARP recipients. SIGTARP and our law enforcement partners will continue to ensure that those responsible for fraud related to TARP are brought to justice and answer for their crimes."

Each count of bankruptcy fraud carries a maximum sentence of five years in prison. Aggravated identity theft carries a two-year mandatory sentence, to run consecutive to any other sentence. Ward will be sentenced on July 29, 2013 before United States District Judge Dale S. Fischer, and will continue to be held without bond.

This case is being prosecuted by Trial Attorney Paul Rosen of the Criminal Division's Fraud Section and Assistant U.S. Attorney Evan Davis of the U.S. Attorney's Office for the Central District of California. Assistant U.S. Attorney Jonathan Schmidt is prosecuting the charges in the Northern District of California, which were transferred to the Central District of California for entry of the guilty pleas. The investigation was conducted by SIGTARP and the FBI, which received substantial assistance from the U.S. Trustee's Office. In addition, the Canadian Waterloo Regional Police Service and Royal Canadian Mounted Police provided exceptional support and assistance in connection with Ward's arrest and extradition.

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Lenny Dykstra Sentenced for Bankruptcy Fraud

On December 3, 2012, in the Central District of California, former Major League Baseball outfielder Lenny K. Dykstra was sentenced to six and one half months in prison, three years of probation, 500 hours of community service, and payment of $200,000 in restitution to the bankruptcy trustee, after pleading guilty to bankruptcy fraud, concealment of bankruptcy estate property, and money laundering. He has already served seven months in federal prison after being sentenced for state crimes of grand theft auto, assault, and lewd conduct. Dykstra stole artwork, fixtures from his $18.5 million mansion, collectables, and baseball memorabilia from the bankruptcy estate, laundered the proceeds, and then lied under oath to conceal his actions. The U.S. Trustee's Woodland Hills office referred the criminal matter and assisted in the investigation, and obtained the appointment of a chapter 11 trustee in the bankruptcy case.

Debtor, Others, Indicted for Home Rescue Scheme

On September 6 in the Central District of California, David Singui, Aziz Meghji, Keit Truong, and Starr Smith were charged with conspiracy, false statements to a federally insured financial institution, wire fraud, mail fraud, aggravated identity theft, and money laundering. Singui, who had filed for bankruptcy, was the principal owner of Direct Money Source, Inc. (DMS), a company that held itself out as assisting distressed homeowners in avoiding foreclosure. According to the indictment, DMS was actually an equity skimming operation that took possession of homeowners' equity, defrauded mortgage lenders with fraudulent loan applications, and left "straw borrowers" with debt when the loans went into default because DMS did not make mortgage payments as promised. The U.S. Trustee's Los Angeles office assisted in the criminal matter.

Debtors Indicted in Connection with Investment Scheme.

On September 19, Jacob Gaeta and Norma Gaeta were indicted in the Central District of California and subsequently arrested for wire fraud, false oaths, and false statements in a bankruptcy proceeding. The Gaetas allegedly solicited funds from investors, based on Jacob Gaeta's representations that he was an experienced investment manager who had provided substantial returns to clients. Funds solicited from investors were used to pay the Gaetas' personal expenses. In their bankruptcy case, the Gaetas allegedly made false statements regarding their income and investment funds entrusted to them. The U.S. Trustee's Los Angeles office assisted in the investigation.

Foreclosure Rescue Operators Charged with Bankruptcy Fraud, Other Crimes

Michael Ybarra, Jeremy Lloyd, and Steven Benjamin have all entered guilty pleas in connection with a recently indicted criminal case in the Central District of California . The three defendants were accused of using Web sites and other means to solicit individuals seeking to delay or avoid foreclosure. After receiving fees from a client, the defendants caused false documents to be prepared to make it appear as if a tenant resided at the client's property. Lloyd and Ybarra obtained false

credit counseling certificates in the names of the fictitious tenants and, with Benjamin, caused bankruptcy petitions to be filed in those fictitious names, temporarily preventing foreclosure. The U.S. Trustee's Los Angeles office assisted the FBI in investigating the case.

Defendant Sentenced for Bankruptcy Fraud Connected with Foreclosure Rescue Scheme.

Irving Cohen was recently sentenced in the Central District of California to one year and a day in prison, supervised release for three years, and restitution in the amount of $135,105 after pleading guilty to bankruptcy fraud relating to a foreclosure rescue scheme. Cohen and his associates collected approximately $546,000 as a result of the scheme, which involved filing fraudulent bankruptcy cases to delay foreclosure

CRIMINAL ENFORCEMENT NEWS (CONTINUED)

more than 1,400 properties. Cohen and his associates recruited homeowners whose properties were in danger of imminent foreclosure, promising to delay foreclosure. The homeowner paid a fee to the scheme operators and signed a deed granting a one-eighth interest in the home to a fictitious person. Cohen and his associates caused a bankruptcy petition in the name of the fictitious person to be filed without the homeowner's knowledge, and then sought to have the mortgage lender cease foreclosure proceedings due to the automatic bankruptcy stay. The U.S. Trustee's Los Angeles office assisted in investigating the criminal matter.

Los Angeles Woman Sentenced to Three Years Imprisonment for Federal Crimes

A Los Angeles woman was sentenced to 36 months imprisonment for her role in a scheme whereby she used the identities of others to defraud the federal bankruptcy and tax systems. Irina Topilina, 55, pleaded guilty in February of last year to one count each of tax evasion, bankruptcy fraud, and aggravated identity theft as part of a plea agreement which she agreed to the government's forfeiture of her residence. The charge of aggravated identity theft carries a mandatory two-year prison term. In sentencing Topilina to a 36-month term of imprisonment, Judge Morrow cited the seriousness of the criminal conduct at issue which included obtaining property and assets belonging to an elderly woman who was suffering from dementia and the use of the identity of foreign nationals to conceal her assets. The court also ordered the defendant and her family to vacate their residence, pursuant to the forfeiture agreement, by April 7, 2013. Restitution was order in the amount of $739,378.

According to documents filed with the court, Topilina's convictions for bankruptcy fraud, income tax evasion and aggravated identity theft were based on a course of conduct that began as early as 1999, when Topilina placed her residence in the name of a foreign national and used this person's identity to obtain loans secured by the residence, pay expenses for the residence, and ultimately file a homeowner's claim for damages to the residence. The bankruptcy fraud and tax evasion convictions are based on Topilina's actions beginning in 2004, in obtaining property and assets belonging to another individual--an elderly woman suffering from dementia--and the defendant's use and concealment of these assets to support her lifestyle and evade her tax reporting requirements. In October 2005, defendant and her husband, Eugene Pinchuk, filed a bankruptcy petition, claiming less than $12,000 in assets and $142,000 in liabilities. The petition failed to disclose several assets, including the defendant's residence, a condominium, annuities and a Volvo that the defendant had acquired through the use of nominees. The plea to tax evasion is further based upon Topilina's failure to report approximately $130,000 in funds that the defendant used for her benefit from the cashed annuities and additional payments of approximately $43,000 the defendant received for notary services and referral fees which were deposited into a nominee account.

CIVIL ENFORCEMENT NEWS.

Petition Preparers Sanctioned for Foreclosure Rescue Deception

Granting a motion by the U.S. Trustee's Woodland Hills office, on May 30 the Bankruptcy Court for the Central District of California ordered these bankruptcy petition preparers to pay $5,500 in fines, damages, and disgorgement of fees in one bankruptcy case. Facing foreclosure, the debtor paid $4,000 to these BPPs for purported short sale services. The BPPs stated that, to continue with the short sale, the debtor would need to "open" a bankruptcy case that would not be filed until he needed it. The BPPs charged the debtor $500 to "open" a case and then filed a bankruptcy petition for the debtor without authority, schedules, or disclosure of his identity as the petition preparer. The bankruptcy case was dismissed as deficient. There was no evidence that a short sale occurred. The U.S. Trustee showed that the BPPs engaged in fraudulent and deceptive conduct and the unlicensed practice of law, overcharged the debtor, and failed to disclose their identities and fees.

Waiver Prevents Chapter 7 Discharge of $1.5 Million in Unsecured Debt

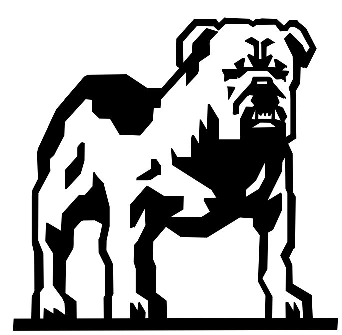
On April 18, the Bankruptcy Court for the Central District of California approved this debtor's waiver of the chapter 7 discharge of $1,549,637 in unsecured debt. An investigation by the U.S. Trustee's Riverside office revealed she failed to disclose transfers of cash and other personal assets to a wholly-owned undisclosed book publisher. The debtor argued her interest in the company was of inconsequential value, but the U.S. Trustee asserted she misled creditors in an attempt to conceal assets and retain the company for her own benefit.

Denial Prevents Chapter 7 Discharge of $708,906 in Unsecured Debt.

On September 12, 2012, the Bankruptcy Court for the Central District of California entered a default judgment denying this debtor's chapter 7 discharge of $708,906 in unsecured debt. The U.S. Trustee's Riverside office objected to his discharge after an investigation revealed the debtor filed a fraudulent pre-bankruptcy credit counseling certificate and concealed assets including an unencumbered residence in Venezuela. The debtor also failed to disclose his interest in an event planning business.

Revocation Prevents Chapter 7 Discharge of $525,945 in Unsecured Debt

On September 5, 2012, the Bankruptcy Court for the Central District of California revoked this debtor's chapter 7 discharge of $525,945 in unsecured debt. The U.S. Trustee's Riverside office sought revocation after an investigation revealed the debtor failed to make full disclosure of her 50 percent interest in a real estate business. The business owned real property valued at $200,000, in addition to other assets. The debtor stipulated to the revocation and waiver of her discharge rather than contest the complaint. The chapter 7 bankruptcy trustee is liquidating the business interest for the benefit of creditors.



CIVIL ENFORCEMENT NEWS (Continued)

Dismissal Prevents Chapter 7 Discharge of $353,601 in Unsecured Debt

Granting a motion filed by the U.S. Trustee's Woodland Hills office, the Bankruptcy Court ruled on February 5th that the case of these joint debtors must be dismissed for abuse or converted to chapter 13, preventing the chapter 7 discharge of $353,601 in unsecured debt. The debtors paid more than $1,800 per month on their adult children's student loan debts, but argued they could not afford to repay their unsecured creditors. The U.S. Trustee argued that the debtors could not give preferential treatment to student loan debt and that, when the student loan debt was treated like other unsecured debt, the debtors had disposable income with which to repay all unsecured creditors.

Payment Processor Remedies Disclosure of Customers' Personal Information in Proofs of Claim

Following the U.S. Trustee's inquiry, a popular online payment processor revised its policies and procedures to ensure protection of personal information in proofs of claim filed in the bankruptcy cases of former customers. An investigation by the U.S. Trustee's Los Angeles and Riverside offices determined that, when the online payment processor filed proofs of claim in the bankruptcy cases of former customers, it disclosed the customers' private email addresses and its internal tracking numbers for the customers' accounts. The U.S. Trustee contended the disclosure in publicly available court records was unwarranted and the information should have been redacted before the proofs of claim were filed. The payment processor confirmed by letter dated May 2 that it had revised its policies and procedures to ensure all future proofs of claim filed in bankruptcy cases will exclude email addresses and include only the last four digits of the debtors' customer internal tracking numbers.

Credit Union Takes Actions to Remedy PII Disclosure in Proofs of Claim

An investigation by the U.S. Trustee's Los Angeles office determined that, in bankruptcy cases in at least 10 jurisdictions, a credit union filed approximately 100 proofs of claim containing personally identifiable information (PII) including full Social Security numbers, dates of birth, and complete financial account numbers. Upon the U.S. Trustee's initiation of enforcement measures, the credit union revised its policies and procedures to ensure that all future proofs of claim filed in bankruptcy proceedings will not violate Federal Rule of Bankruptcy Procedure 9037, which provides privacy protections in bankruptcy court filings. In addition, by letter dated January 16, the credit union agreed to file motions for protective orders and restrict access on all claims containing PII and to provide one year of free credit monitoring service to all affected debtors.

Petition Preparers Who Offered Loan Modification Services are Sanctioned $51,840

Granting a motion filed by the U.S. Trustee's Riverside office, on January 18, the Bankruptcy Court for the Central District of California ordered these bankruptcy petition preparers to pay statutory damages of $23,190, pay fines of $19,500 to the U.S. Trustee, and disgorge $9,150 in fees to the debtors. The BPPs misled the debtors into believing an attorney would obtain a loan modification for them and later falsely told the debtors an attorney would prepare their bankruptcy documents. Instead, they prepared the documents and concealed their role as a bankruptcy petition preparer. One of the BPPs is currently incarcerated for loan modification fraud.

Bankruptcy Attorney Suspended for Five Years for Foreclosure Delay Scheme

A three judge panel of the Bankruptcy Court

CIVIL ENFORCEMENT NEWS (Continued)

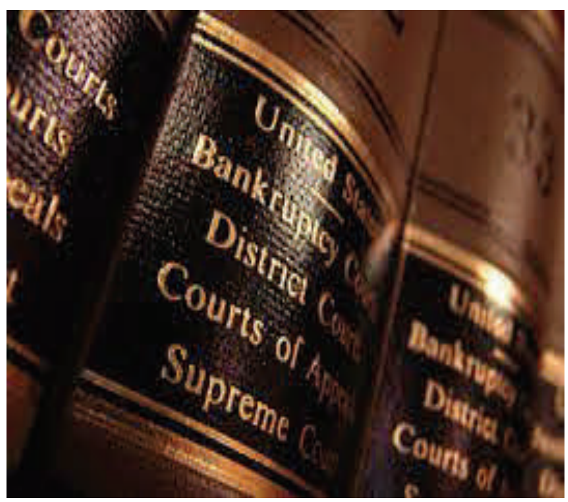
on February 13, 2013, ordered this attorney suspended from all bankruptcy practice in the district for five years, absent his readmission by the court. The U.S. Trustee's Woodland Hills office showed that: he was counsel of record in more than 128 bankruptcy cases apparently filed solely to delay foreclosures; no repayment plans were approved in any of the 108 chapter 13 cases he filed; and he filed chapter 7 petitions in the names of purported trusts that had received property interests transferred from individual debtors whom he represented. The court ordered the attorney's suspension based on these facts and his violation of prior court orders that he disgorge fees, pay sanctions, and appear personally before the court.

Attorney Barred from Collecting Post-Petition Fees in Over 200 Cases

On March 5, the Bankruptcy Court for the Central District of California approved a settlement between the U.S. Trustee's Riverside office and this attorney, prohibiting him from collecting post-petition fees in more than 200 cases and engaging in deceptive advertising practices. The attorney's web site stated he operated the only law firm in California that allowed attorneys' fees to be paid after a debtor filed bankruptcy. Clients could pay $899 within 30 days after filing bankruptcy or $1,299 within 60 days after filing bankruptcy. Although he disclosed that the post-petition payments were voluntary, his clients continued to receive bills for unpaid fees and believed they were required to pay the attorney even after receiving a bankruptcy discharge. The settlement required him to cease advertising and collection efforts, account for and refund fees, and notify clients that they have no further obligation to pay him.

Chapter 11 Debtor's Counsel Denied Employment Due to Continued Deficiencies

Ruling for the U.S. Trustee's Woodland Hills office, on November 1, the Bankruptcy Court for the Central District of California denied the this attorney's application for employment as chapter 11 bankruptcy counsel for a chapter 11 debtor. The U.S. Trustee demonstrated that of the 21 chapter 11 cases he had filed, many for real estate holding entities, none resulted in confirmed plans and 16 were dismissed, including seven that were dismissed with bars to refiling. In addition, the attorney never obtained approval of his fees in any of the cases and was employed properly in only five of them. In 2002, the bankruptcy court sanctioned the attorney after the U.S. Trustee showed that he abused the bankruptcy process by filing a second chapter 11 case for a real estate company he knew was a suspended corporation. In the current matter, the court found his employment not in the best interest of the chapter 11 estate.



CIVIL ENFORCEMENT NEWS (Continued)

Fees Reduced by $470,000–Nearly 60 Percent–for Chapter 11 Debtor's Lawyers

On April 23, the Bankruptcy Court for the Central District of California approved a stipulation that reduced by nearly 60 percent the compensation requested by three law firms that represented a debtor in chapter 11. The U.S. Trustee's Los Angeles office objected to fee applications filed by the three law firms, based upon the debtor's failure to confirm a chapter 11 plan and the resulting administrative insolvency of the estate. The case was converted to chapter 7 and the debtor's lawyers' sought total compensation of almost $820,000. The U.S. Trustee negotiated to obtain a fee reduction of $470,000, which left estate assets sufficient to pay all priority claims in full.

Chapter 11 Plan Confirmation Precluded for Medical Marijuana Business.

On February 19, the Bankruptcy Court for the Central District of California dismissed the chapter 11 case of a corporation, which manages facilities engaged in the cultivation and sale of medical marijuana. The U.S. Trustee's Riverside office moved to dismiss the case on the ground that the debtor could not confirm a reorganization plan as a matter of law given its violations of federal narcotics laws and, specifically, the Controlled Substances Act. The debtor argued it was operating lawfully under California law and state law should control. The court found the debtor derived its primary source of income from an activity that violated federal law, precluding confirmation of a chapter 11 plan.

Debtor Audit Report for FY 2012 Issued; Audits Suspended

On March 19, the Executive Office for U.S. Trustees issued its "Public Report: Debtor Audits by the United States Trustee Program, Fiscal Year 2012." The USTP is authorized by law to contract with independent firms to perform audits of consumer chapter 7 and chapter 13 cases. The audits are designed to provide baseline data to gauge the magnitude of fraud, abuse, and error in the bankruptcy system; assist the USTP in identifying cases of fraud, abuse, and error; and enhance deterrence. A public report of the audit results, including the number of material misstatements in each judicial district, is required to be issued annually. Also on March 19, due to budgetary constraints, the USTP indefinitely suspended the further assignment of debtor audits. The independent accounting firms will complete the audits that were assigned by March 19.

OUST Staff News

The Riverside Division Office recently welcomed three new employees: Trial Attorney Jason Schrader, Bankruptcy Analyst Dimple Mehra, and Legal Assistant Mary Avalos.

The Woodland Hills Division Office said goodbye to Bankruptcy Analyst Carolyn Feinstein.

Trial Attorney Bradley Jones transferred from the Woodland Hills office to the Program's Alexandria, VA office.

Los Angeles Trial Attorney Russ Clementson transferred to the Woodland Hills office.

Los Angeles saw Jimi Na, IT Specialist, leave the USTP Program for the U.S. Government Accountability Office. Denise Tucker also recently left the Program.

The Santa Ana Office's Dinah Grosch retired in January after being with the Program since 1991.

OUST Staff News

Los Angeles Legal Assistant Deloris Owens Porter retired with 24 years of government service, including 16 years with the USTP.