

§ 727(a)(4)(A)
Denial of discharge
False oaths

United States Trustee v. Killian and Lesser, Adversary No. 07-3315

In re Killian and Lesser, Case No. 07-33641-elp7

11/17/08 ELP

Unpublished

Memorandum opinion ruling on a trial on the UST's complaint to deny debtors a discharge for false oaths under § 727(a)(4)(A). Debtors failed to disclose information about their financial situation on their original bankruptcy schedules and Statement of Financial Affairs, including omitting information about income, substantial assets (including jewelry), Killian's partnership interest in 25 partnerships, and numerous prepetition transfers of property. They testified falsely at their meeting of creditors that they had read the bankruptcy documents before they signed them and that the information contained in them was true and correct, when in fact they had not reviewed them before they signed and filed them and the information was not true and correct. They filed amended schedules and an amended Statement of Financial Affairs that continued the omission of material financial information.

The court found that the false oaths debtors made by signing the bankruptcy documents and amended documents under penalty of perjury, as well as their testimony at the § 341(a) meeting, were knowingly and fraudulently made. The court denied debtors a discharge.

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8 **NOT FOR PUBLICATION**

9 UNITED STATES BANKRUPTCY COURT
10 FOR THE DISTRICT OF OREGON

11 In Re:)
12 JEREMY PAUL KILLIAN and) Bankruptcy Case No.
13 MIKKEL JENE LESSER,) 07-33641-elp7
14 Debtors.)
15 UNITED STATES TRUSTEE,) Adversary No. 07-3315
16 Plaintiff,)
17 v.) MEMORANDUM OPINION
18 JEREMY PAUL KILLIAN and)
19 MIKKEL JENE LESSER,)
20 Defendants.)

21 The United States Trustee (UST) filed a complaint to deny chapter 7¹
22 debtors Jeremy Killian and Mikkel Lesser (debtors) a discharge and a
23 motion to dismiss their case for abuse. The facts underlying both the
24 adversary complaint and the motion are largely the same, so were

25 _____
26 ¹ All chapter and section references in this opinion are to the
Bankruptcy Code, 11 U.S.C. § 101 et seq.

1 consolidated for trial, which occurred on October 9, 10, 14, 15, and 22,
2 2008. For the reasons set out below, I find that debtors knowingly and
3 fraudulently made false oaths in or in connection with the case, and
4 therefore will deny them a discharge pursuant to § 727(a)(4)(A). I will
5 not decide the motion to dismiss, because the UST indicated during
6 closing argument that he did not want to pursue that motion if the court
7 denied debtors a discharge.

8 FACTS

9 The parties presented an extensive stipulation of facts, as well as
10 four days of testimony and numerous exhibits. I find the following
11 relevant facts.

12 Debtor Jeremy Killian is 25 years old. His wife, Mikkell Lesser, is
13 24 years old. They met in high school. Jeremy moved in with Mikkell and
14 her mother Myrna Lesser in 1999 when debtors were teenagers. Both
15 dropped out of high school to help support the family after Mikkell's
16 father died. Mikkell received her GED; Jeremy received his high school
17 diploma after attending night school.

18 Both debtors ended up working in the banking business. Mikkell
19 worked at US Bank in the mailroom for a year and a half, then worked in
20 the loan department for another year. She then left the bank and started
21 beauty school, which she did not finish. After Jeremy started his own
22 business, Mikkell provided unpaid clerical help for the business.

23 Jeremy began working at US Bank in 2001 as a note processor. He
24 worked in various capacities in the bank including as a teller, in
25 collections, and as a universal banker. In 2003 he began working as a
26 broker/loan officer with Diamond Financial. Over the course of the next

1 two years, he worked in two other companies as a loan broker.

2 In March 2005, Jeremy started brokering loan transactions on his
3 own. He developed a foreclosure rescue program under which he would find
4 homeowners who were about to lose their homes to foreclosure. He would
5 also find an investor who was willing to take out a loan to purchase the
6 property from the homeowner and lease the home back to the homeowner with
7 a two-year option to repurchase the home. The price the investor would
8 pay for the property, using funds obtained through a mortgage loan Jeremy
9 would arrange, would be high enough to pay off any existing encumbrances
10 plus substantial fees. The homeowner would pay rent, the amount of which
11 was determined by the amount the investor was paying on the new mortgage.
12 In exchange for Jeremy's finding the investor and brokering both the loan
13 and the deal, Jeremy (and later the partnership he formed) would receive
14 a fee of between \$30,000 and \$50,000, depending on the transaction. The
15 investor would also receive a fee for taking the risk of purchasing the
16 property.

17 Between the time Jeremy began brokering on his own and the end of
18 2006, less than two years, he brokered more than 60 foreclosure rescue
19 deals. He found numerous investors, and involved his wife's brother and
20 sister-in-law in the business. For approximately 25 of these deals,
21 Jeremy personally entered into partnership agreements with the investors
22 in which he and the investors agreed to share the gain or loss on the
23 property when it was eventually sold. In August 2005, he and Michael and
24 Tammie Delaney, who were previous investors, formed a partnership called
25 DK Investments to continue the foreclosure rescue business.

26 Over the course of the time Jeremy was brokering the foreclosure

1 deals, Jeremy received total payments from the close of the sale of
2 foreclosure properties of \$273,964 in 2005, \$474,950 in 2006, and \$55,945
3 between January and July 2007. Total deposits into debtors' joint bank
4 account during that time totaled \$507,340 for 2005, \$648,163 for 2006,
5 and \$319,565 from January 1, 2007 until debtors filed their chapter 7
6 bankruptcy petition on September 11, 2007. During this same period,
7 debtors spent \$112,838 on jewelry using funds withdrawn from the joint
8 account, and made apparel purchases of \$127,712 (including the purchase
9 of luxury apparel and handbags), household goods purchases of \$71,373,
10 and spent \$66,207 on travel.

11 Debtors filed a chapter 7 petition on September 11, 2007. They
12 consulted Neil Jorgenson, an attorney, who with his assistant Joe Dunne
13 prepared debtors' bankruptcy petition, schedules and statement of
14 financial affairs (SOFA).

15 The schedules and SOFA contained numerous significant errors and
16 omitted a breathtaking amount of significant financial information. For
17 example, the original SOFA indicates that debtors had zero income for the
18 two years preceding the petition. Debtors did not list any of the
19 partnerships for the various individual properties, although they did
20 list DK Investments. Debtors stated that they owned no jewelry. They
21 indicated on the SOFA that they had not made any transfers of property in
22 the previous two years.

23 At the first meeting of creditors on October 18, 2007, the trustee
24 advised debtors that their SOFA was "woefully inadequate," and that they
25 needed to read the SOFA and bankruptcy schedules. The trustee continued
26 the meeting until October 31, 2007.

1 At the October 31, 2007 meeting, debtors testified under oath that
2 they had read the petition and schedules before they signed them and that
3 they had recently read and reviewed the schedules and petition. They
4 further testified that the information contained in the petition,
5 schedules, SOFA, and related documents was true and correct and that they
6 had listed all of their assets and creditors as of the filing date.
7 However, their testimony at that October 31, 2007 meeting indicated that
8 there were numerous transfers and significant property that had not been
9 listed in the original bankruptcy filing.

10 The trustee again continued the meeting of creditors, this time to
11 November 28, 2007. By the time of the November 28, 2007 meeting, debtors
12 had not filed any amended schedules or SOFA, despite having been told by
13 the trustee that their original schedules and SOFA were woefully
14 inadequate.

15 Debtors filed amended schedules B and C and an amended SOFA on
16 December 7, 2007, shortly before the deadline for filing objections to
17 discharge. Amended schedule B disclosed for the first time five items of
18 jewelry with a total value of \$1,250, some counterclaims against
19 creditors who had previously sued debtors, and 10 dogs. The amended SOFA
20 disclosed income for Jeremy Killian of \$43,149 for 2007, -\$18,968 for
21 2006, and \$89,338 for 2005. It listed no income for Mikkel Lesser. The
22 amended SOFA also contained more complete information about pending
23 lawsuits. It continued to list as "none" transfers of property within
24 the previous two years, and still did not disclose Jeremy's 25
25 partnerships relating to individual properties.

26 Debtors testified at trial that their failure to disclose income,

1 assets, partnerships, and transfers in their bankruptcy documents was the
2 fault of their attorney and his legal assistant. They testified that
3 they gave either Jorgenson or Dunne all of the information that was
4 requested, and that they signed the original petition, schedules and SOFA
5 and the amended schedules and SOFA without seeing the documents. Jeremy
6 testified, and Jorgenson confirmed, that Jeremy gave Jorgenson a
7 spreadsheet showing the names and properties involved in all of the 61
8 foreclosure property transactions and that Jorgenson knew about the 25
9 partnerships relating to some of those properties. Debtors further
10 testified that Jorgenson told them to testify that they had reviewed the
11 schedules when asked about it by the trustee.

12 DISCUSSION

13 1. False oaths

14 The UST seeks to deny debtors' discharge based on false oaths in
15 their original and amended bankruptcy documents as well as false
16 statements made under oath at the § 341(a) meeting of creditors.

17 To deny a debtor a discharge under § 727(a)(4)(A), the plaintiff
18 must show that "(1) the debtor made a false oath in connection with the
19 case; (2) the oath related to a material fact; (3) the oath was made
20 knowingly; and (4) the oath was made fraudulently." In re Roberts, 331
21 B.R. 876, 882 (9th Cir. BAP 2005). False oaths include false statements
22 or omissions in the debtor's schedules or SOFA. In re Khalil, 379 B.R.
23 163, 172 (9th Cir. BAP 2007); In re Beaubouef, 966 F.2d 174 (5th Cir.
24 1992); In re Wills, 243 B.R. 58, 62 (9th Cir. BAP 1999).

25 Intent must be actual, not constructive. In re Jones, 175 B.R. 994,
26 1002 (Bankr. E.D. Ark. 1994). Fraudulent intent may be inferred from the

1 actions of the debtor, In re Devers, 759 F.2d 751, 753-54 (9th Cir.
2 1985), or from the surrounding circumstances. See In re Woodfield, 978
3 F.2d 516, 518-19 (9th Cir. 1992). Reckless indifference to the truth is
4 not sufficient by itself to establish fraudulent intent, but a court may
5 find intent from reckless conduct, particularly "where there has been a
6 pattern of falsity or from a debtor's reckless indifference to or
7 disregard of the truth." Khalil, 379 B.R. at 173 (quoting Wills, 243
8 B.R. at 64). "For instance, multiple omissions of material assets or
9 information may well support an *inference of fraud* if the nature of the
10 assets or transactions suggests that the debtor was aware of them at the
11 time of preparing the schedules and that there was something about the
12 assets or transactions which, because of their size or nature, a debtor
13 might want to conceal." Id. at 175 (quoting with approval In re Coombs,
14 193 B.R. 557, 565-66 (Bankr. S.D. Cal. 1996)) (emphasis in original).
15 Intent may be established by "[t]he sheer number of material inaccuracies
16 contained in schedules" that a debtor has reviewed before filing. In re
17 Hansen, 368 B.R. 868, 878 (9th Cir. BAP 2007).

18 A statement is material if it relates to "the debtor's business
19 transactions or estate, or concerns the discovery of assets, business
20 dealings, or the existence and disposition of the debtor's property."
21 Wills, 243 B.R. at 62; In re Chalik, 748 F.2d 616, 618 (11th Cir. 1984).
22 "A false statement or omission may be material even if it does not cause
23 direct financial prejudice to creditors." Wills, 243 B.R. at 63. "[A]
24 discharge may be denied if the omission adversely affects the trustee's
25 or creditors' ability to discover other assets or to fully investigate
26 the debtor's pre-bankruptcy dealing and financial condition." Id.

1 (quoting from 6 Lawrence P. King, Collier on Bankruptcy ¶ 727.04[1][b]
2 (15th ed. Rev. 1998)).

3 Debtors' defense is primarily that they gave their counsel all of
4 the information necessary to complete the bankruptcy documents, and
5 relied on him to include the necessary information in the documents.
6 "Generally, a debtor who acts in reliance on the advice of his attorney
7 lacks the intent required to deny him a discharge of his debts." In re
8 Adeeb, 787 F.2d 1339, 1343 (9th Cir. 1986). Advice of counsel is no
9 defense, however, when reliance on the advice is not in good faith, id.,
10 or when it should be evident that the information should be included. In
11 re Mascolo, 505 F.2d 274, 277 (1st Cir. 1974); In re Leija, 270 B.R. 497,
12 503 (Bankr. E.D. Cal. 2001). The defense applies only when the debtors
13 have provided all relevant information to the attorney, and even
14 "attorney error does not absolve a debtor, who signs the petition and
15 schedules under penalty of perjury, from the duty to ensure the
16 information is accurate and complete to the best of his knowledge." In
17 re Downey, 242 B.R. 5, 15 (Bankr. D. Ida. 1999). "A debtor cannot,
18 merely by playing ostrich and burying his head in the sand, disclaim all
19 responsibility for statements which he has made under oath." In re
20 Tully, 818 F.2d 106, 111 (1st Cir. 1987).

21 The evidence in this case shows that debtors made numerous false
22 statements and omissions. Although the following specific findings of
23 falsehood are by no means comprehensive, they are illustrative of the
24 sweep of pervasive deficiencies in the documents, and are sufficient on
25 their own to support a finding of false oaths:

26 ////

1 A. Original schedules and SOFA

2 The evidence shows that debtors made the following false statements,
3 including omissions, in their original bankruptcy petition, schedules,
4 and SOFA:

5 i. Debtors signed the petition, schedules, and SOFA under
6 penalty of perjury, declaring that the information included in them was
7 true and correct. In fact, debtors had not reviewed the petition,
8 schedules, or SOFA, and the documents were neither true nor correct.

9 ii. The original SOFA failed to disclose any income for 2005,
10 2006, and 2007, when in fact debtors had hundreds of thousands of dollars
11 flowing through their joint bank account during that period, at least
12 \$100,000 of which was income from the foreclosure deals. Debtors did not
13 disclose their receipt of rental income from Jason and Michelle Lesser or
14 Melanie Noel, which they admitted they received within two years before
15 bankruptcy.

16 iii. Debtors' Schedule B showed that they did not own any
17 jewelry. However, at the time the petition was filed, they owned at
18 least a pair of 14 karat gold cluster diamond earrings purchased in 2005
19 for \$1,295, a diamond men's TAG watch purchased in 2006 for \$4,095, a
20 silver and 18 karat gold diamond bracelet purchased in 2006 for \$1,270, a
21 gold bracelet purchased in 2006 for \$315, several gold bracelets
22 purchased in 2007 for \$447, a pair of diamond solitaire earrings
23 purchased in 2007 for \$954, a silver "lava berry" ring purchased in 2007
24 for \$1,350, and three gold bracelets purchased in 2007 for \$657.

25 iv. Debtors' SOFA did not disclose Jeremy's partnership
26 interest in the 25 partnerships relating to individual foreclosure

1 property deals.

2 v. Debtors did not disclose any transfers of property
3 occurring within the two years before bankruptcy, instead stating "none"
4 to question 10 on the SOFA. In fact, debtors transferred an astounding
5 amount of property within the two years preceding bankruptcy. Those
6 transfers include, but are not limited to:

7 a. Real property. Jeremy transferred the following real
8 property within two years before the petition: the Mohawk property,²
9 transferred in June 2006; the 63rd Avenue property, transferred in July
10 2006; the Oneonta Drive property, transferred in February 2007; the 15th
11 Avenue property, transferred in September 2006; and the Apple Court
12 property, transferred in July 2006.

13 b. Jewelry. This includes the transfer of a 2.5 carat
14 loose diamond (traded in November 2005 toward the purchase of a 4.6 carat
15 Platinum White Diamond Ring), a 4.6 carat Platinum White Diamond Ring
16 (purchased for \$56,100 in November 2005 and traded for a 5.02 carat oval
17 cut Gold White Diamond Ring in October 2006), a 3.05 carat Yellow Diamond
18 Ring (purchased in October 2006 for \$44,000 and sold in May 2007 for
19 \$18,000), an 18 karat Rolex (purchased in 2006 for \$16,500 and sold in
20 June 2007 for \$7,000), and the 5.02 carat oval cut Gold White Diamond
21 Ring (given to Brent Near in June 2007 as collateral for a loan).

22 c. Household goods. Debtors purchased nearly \$200,000
23 of apparel and household goods in the two years before bankruptcy. Their
24

25 ² The shorthand descriptions of the property contained in this
26 opinion are those used by the parties during the trial. Complete
descriptions of the specific properties are contained in the relevant
exhibits.

1 only explanation for the absence of those items on their chapter 7
2 petition was that they had sold the items at a garage sale that they held
3 over two week-ends in the spring of 2007 and for which they received
4 between \$4,000 and \$5,000.

5 d. Mercedes. In May 2007, debtors sold a 2004 Mercedes
6 for \$64,000, which was less than they owed on the vehicle.

7 e. Creditors. Debtors failed to list as creditors
8 people to whom debtors owed money on the petition date, in particular
9 Mikkell's mother Myrna Lesser, Hiep Pham, Dawn Meaney, and Jeremy's father
10 John Killian. Debtors listed Brent Near as an unsecured creditor when in
11 fact he held security for the loan.

12 B. Meeting of creditors

13 Debtors' meeting of creditors began in mid-October 2007, but was
14 continued until October 31, 2007 and then again to November 28, 2007. At
15 the October 31, 2007 meeting, debtors testified under oath that they had
16 (1) read the bankruptcy documents, including the schedules and SOFA, and
17 that the information contained in those documents was true and correct,
18 and (2) that they had not transferred any property within two years
19 before bankruptcy. Both of those statements under oath were false.

20 C. Amended schedules and SOFA

21 At the meeting of creditors, the trustee warned debtors that their
22 schedules and SOFA were woefully inadequate. Despite the passage of
23 almost two months before debtors amended those documents, they failed to
24 disclose in the amended schedules and SOFA either Jeremy's partnership
25 interest in the 25 partnerships or any of the transfers of property
26 discussed above. The evidence shows that debtors were aware of the

1 transfers and must have known that disclosure of transfers of property
2 was required: before they amended the schedules and SOFA, they had been
3 asked specifically at the October 31 meeting of creditors whether they
4 had transferred anything of value in the last four years, and they had
5 testified at the continued meetings of creditors about some of the
6 transfers, including the transfer of the Mercedes and some of the
7 jewelry.

8 All of these false statements and omissions, either contained in the
9 bankruptcy documents signed under penalty of perjury or testified to at
10 the meeting of creditors, are false oaths in connection with the case.
11 There can be no question that the oaths related to material facts, as
12 they were related to debtors' assets and business affairs, and adversely
13 affected the ability to fully investigate debtors' pre-bankruptcy
14 dealings and financial condition.

15 The only remaining question is whether the false oaths were
16 knowingly and fraudulently made. Given the extent of the false
17 statements and omissions and debtors' willingness to lie at their meeting
18 of creditors, I conclude that both debtors knowingly and fraudulently
19 made false oaths.

20 Debtors testified that they did not read or review the bankruptcy
21 petition, schedules, or SOFA before they signed the documents.
22 Nonetheless, they signed those documents under penalty of perjury,
23 representing that the information contained in them was true and correct.
24 That was a lie. Debtors testified that they did not review the documents
25 before they signed the signature pages, because when they went to their
26 attorney's office to sign the documents, they were given only the

1 signature pages and not the bankruptcy documents themselves. Dunne
2 testified, however, that the original bankruptcy documents were
3 physically in the room with debtors when they came in to sign the
4 documents, and that debtors had the opportunity to review them before
5 signing. I do not believe debtors' testimony that counsel failed to give
6 them access to the documents before having them sign under penalty of
7 perjury.

8 The testimony with regard to the amended schedules and SOFA strongly
9 supports a finding that the false oaths were knowingly and fraudulently
10 made. Debtors had been warned by the trustee at the meeting of creditors
11 that the schedules and SOFA were woefully inadequate. Counsel sent a
12 draft of the amended documents to debtors via email, so debtors had ample
13 opportunity to review those documents at their leisure and assure that
14 they were complete. Jorgenson advised debtors to review the documents
15 carefully. Jeremy testified that he called Dunne after he received the
16 draft to tell him about inaccuracies. But Jeremy could not say what
17 those inaccuracies were and he nonetheless signed the amended schedules
18 and SOFA, which continued to contain numerous significant inaccuracies
19 and omissions. Debtors' continued failure to include anywhere near
20 complete information in the amended documents supports a finding that
21 their oaths attesting to the accuracy of the documents were willfully and
22 knowingly false.

23 Jeremy provided excuses in his testimony for almost all of the
24 problems with the bankruptcy documents. He testified that he told either
25 Jorgenson or Dunne about the partnerships and some of the jewelry, but
26 that he overlooked the transfer of the Mercedes. He testified that he

1 relied on counsel to complete the documents correctly with the
2 information he and his wife had provided.

3 A simple review of both the original and the amended documents would
4 have revealed their woeful inadequacy. No transfers of property were
5 listed, nor were any of the partnerships. The documents indicated that
6 debtors had no jewelry, when debtors knew they had a number of pieces of
7 jewelry in their possession. They knew they had a garage sale and that
8 they had disposed of household goods, clothing and designer handbags that
9 had been purchased in the past two years for nearly \$200,000. Yet none
10 of that was disclosed. They knew that they owed debts to Mikkel's mother
11 and Jeremy's father, but those creditors were not listed. They knew that
12 they had income, but the original SOFA listed their income as zero.

13 Although debtors may have told their counsel about some of the
14 financial matters that were omitted from the bankruptcy documents, their
15 abdication to counsel of their responsibility to include correct and
16 complete information on the forms was unreasonable and shows a shocking
17 level of disregard for the obligation to assure accuracy in the
18 information provided in a bankruptcy case. Although a debtor who acts in
19 reliance on the advice of counsel can lack the intent required to deny a
20 discharge, reliance on advice of counsel is not a defense when it should
21 be evident that the information should be included. Had debtors intended
22 to disclose their entire financial situation on the bankruptcy documents,
23 they would have reviewed those documents and asked questions about why
24 numerous items were not included, including their income. The evidence
25 does not support a finding that debtors questioned counsel about the
26 numerous omissions and received assurances that those omissions were

1 acceptable. Instead, the evidence shows that debtors failed to disclose
2 to their counsel their complete financial affairs, and then failed to
3 assure that the bankruptcy documents accurately reflected even the
4 information that they had provided to counsel.

5 Jeremy testified that Dunne assured him that changes could be made
6 later if there were inaccuracies in the original documents, and that
7 Jeremy should not worry about whether the information included in the
8 filed documents was true. I do not believe that testimony. But even if
9 Dunne did make such statements, debtors had a responsibility to make sure
10 the information was correct and complete before signing the documents
11 under penalty of perjury. Furthermore, many of the inaccuracies
12 continued in the amended documents.

13 I also find that debtors' testimony under oath at the meeting of
14 creditors that they had read the schedules and SOFA and that they were
15 true and correct was a knowing, fraudulent lie. I do not believe their
16 testimony that their lawyer told them to lie under oath. They knew when
17 they testified that they were under oath and that the testimony they were
18 giving was false. They also had to know that it would mislead the
19 trustee and the creditors who were in attendance. Even if it is true
20 that Jorgenson told debtors to testify that they had read the schedules
21 and SOFA before they signed them, there is no evidence that Jorgenson
22 knew that debtors had not done that. It was debtors, not Jorgenson, who
23 were under oath at the meeting of creditors. It was debtors' obligation
24 to tell the truth, regardless of what their counsel may have said. Even
25 "attorney error does not absolve a debtor, who signs a petition and
26 schedules under penalty of perjury, from the duty to ensure the

1 information is accurate and complete to the best of his knowledge." In
2 re Downey, 242 B.R. 5, 15 (Bankr. D. Ida. 1999).

3 Although Mikkel did not have the level of involvement in the
4 preparation and discussion of the bankruptcy documents as did Jeremy, I
5 find that her signatures under penalty of perjury and her testimony under
6 oath at the meeting of creditors were knowing and fraudulent oaths. If
7 Mikkel had not reviewed the documents before she signed them, then she
8 knew that her signature under penalty of perjury was false. If she had
9 reviewed the documents before she signed them, she would have seen that
10 they were false at least in indicating that debtors did not have any
11 jewelry, in failing to list Mikkel's mother as a creditor, in failing
12 disclose any income, and in failing to disclose the transfer of much of
13 their personal property, which had occurred only months before. She also
14 testified under oath that she had reviewed the documents and that they
15 were true, and that debtors had not made any transfers within the two
16 years before bankruptcy. As she testified at trial, Mikkel knew she had
17 not reviewed the schedules before she signed them, and she knew about
18 transfers of jewelry and other personal property within months of the
19 filing. I do not believe that Mikkel was an innocent bystander, but
20 instead find that she knew she was giving false, fraudulent testimony.

21 In this case, debtors were more than reckless about filing their
22 schedules, the SOFA, the amended schedules, and the amended SOFA that
23 contained falsehoods and omissions, and about giving false testimony at
24 the meeting of creditors. This is evidence of more than a cavalier
25 attitude toward truth-telling. These debtors, although not formally
26 educated beyond a high school level, had worked in the banking industry

1 and mortgage loan industry for a number of years. They understood their
2 financial situation, but failed to make any effort at all to assure that
3 the depth and scope of their financial situation was disclosed in their
4 bankruptcy documents. They utterly disregarded their obligation to tell
5 the truth, which is fundamental to the administration of the bankruptcy
6 system. These debtors were not merely reckless; they had no concern for
7 assuring that full and complete information was provided and were willing
8 to testify falsely under oath that they had reviewed their bankruptcy
9 documents and that the information provided was true and correct.

10 Debtors' failure to be forthcoming in their financial affairs has
11 required the trustee, the UST, and creditors to expend substantial
12 efforts to seek out accurate information about debtors' financial
13 affairs. Such effort would not have been required, or would have been
14 reduced, if debtors had not completely disregarded their obligation to
15 provide complete, accurate information. Debtors' behavior is the type
16 that results in denial of discharge under § 727(a)(4)(A).

17 2. § 727(a)(3), 727(a)(5), 727(a)(2)(B)

18 Because I have concluded that debtors should be denied a discharge
19 based on the false oaths, I will not consider or rule on the alternative
20 bases for denying a discharge.

21 3. Motion to dismiss

22 I will not consider or rule on the UST's alternative motion to
23 dismiss for abuse, based on the UST's indication that he does not want to
24 pursue dismissal if discharge is denied.

25 CONCLUSION

26 Debtors filed their bankruptcy documents, signed under penalty of

1 perjury, which contained numerous errors and omissions, either knowing
2 that they were incorrect or without reviewing them to assure their
3 accuracy. They testified falsely at their October 31, 2007 meeting of
4 creditors. After they were warned of the need to amend their documents
5 to assure accuracy, they filed amended documents, signed under penalty of
6 perjury, that still contained significant errors and omissions. I
7 conclude that debtors made knowing, fraudulent false oaths in and in
8 connection with this bankruptcy case, and that they should be denied a
9 discharge under § 727(a)(4)(A).

10 Ms. McClurg should submit the judgment within ten (10) days after
11 entry of this Memorandum Opinion.

12 ###

13 cc: Carla McClurg
14 Paul Bocci
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