

AUG 14 2012

SUSAN M SPRAUL, CLERK  
U.S. BKCY. APP. PANEL  
OF THE NINTH CIRCUIT

ORDERED PUBLISHED

UNITED STATES BANKRUPTCY APPELLATE PANEL  
OF THE NINTH CIRCUIT

In re: ) BAP No. CC-11-1595-DMkKi  
MAN SOO YUN, )  
Debtor. ) Bk. No. SV 10-18057 AA

PEOPLE OF THE STATE OF )  
CALIFORNIA, by and through the )  
California Corporations )  
Commissioner, )  
Appellant, )

v. ) MEMORANDUM<sup>1</sup>

MAN SOO YUN; DAVID SEROR, )  
Chapter 7 Trustee; UNITED )  
STATES TRUSTEE, )  
Appellees. )

Argued and Submitted on July 20, 2012  
at Pasadena, California

Filed - August 14, 2012

Appeal from the United States Bankruptcy Court  
for the Central District of California

Honorable Alan M. Ahart, Bankruptcy Judge, Presiding

Appearances: Erik Richard Brunkal, Esq. argued for Appellant,  
People of the State of California, by and through  
the California Corporations Commissioner; David  
Brian Lally, Esq. argued for Appellee, Man Soo Yun.

<sup>1</sup> This disposition is not appropriate for publication.  
Although it may be cited for whatever persuasive value it may have  
(see Fed. R. App. P. 32.1), it has no precedential value. See 9th  
Cir. BAP Rule 8013-1.

1 Before: DUNN, MARKELL, and KIRSCHER, Bankruptcy Judges.

2 The California Corporations Commissioner ("Commissioner")  
3 moved for relief from the § 362(a)<sup>2</sup> automatic stay to continue  
4 enforcement proceedings in the California Superior Court ("State  
5 Court Proceeding") against an individual chapter 7 debtor under  
6 the California Franchise Investment Law ("FIL"), Cal. Corp. Code  
7 § 31000 et seq. The bankruptcy court's limited order granting  
8 relief ("Order") authorized the Commissioner to seek only  
9 injunctive relief in the State Court Proceeding. Asserting that  
10 § 362(b)(4) excepted from the automatic stay claims under the FIL  
11 for administrative penalties and restitution, the Commissioner  
12 appealed the Order. We AFFIRM.

13 I. FACTS

14 Man Soo Yun was the president, chief operating officer, and  
15 owner of Green on Blue, Inc. ("GOBI"), incorporated on September  
16 12, 2006. Mr. Yun and GOBI, as the master franchisor in the  
17 United States for WHOSTYLE Company, Ltd., a Korean Corporation,  
18 were in the business of franchising "Yogurberry" frozen yogurt  
19 outlets. GOBI did business as Yogurberry U.S.A. and as Yogurberry  
20 Franchising Company.

21 The California Corporations Commission ("Commission")  
22 approved GOBI's registration to sell Yogurberry franchises in  
23 California for the periods December 21, 2006 through April 20,  
24 2007, and April 24, 2007 through April 21, 2008. Prior to that

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26 <sup>2</sup> Unless otherwise indicated, all chapter and section  
27 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and  
28 all rule references are to the Federal Rules of Bankruptcy  
Procedure, Rules 1001-9037. The Federal Rules of Civil Procedure  
are referred to as Civil Rules.

1 approval, the Commission reviewed GOBI's proposed Uniform  
2 Franchise Offering Circular ("UFOC"), after it had been revised  
3 several times by the Commission's Securities Regulations Division.  
4 The UFOC provides potential franchisees with information to make  
5 an informed decision whether to invest in a franchise opportunity.  
6 The FIL requires that a prospective franchisee is to receive a  
7 copy of the UFOC fourteen days prior to signing a binding  
8 agreement or providing any consideration to the franchisor.

9       Following the receipt of complaints from a number of  
10 franchisees, the Commissioner initiated an administrative  
11 investigation of Mr. Yun and GOBI in 2009. As part of the  
12 investigation, the Commissioner sent questionnaires to twenty-six  
13 "known victims;" only nine questionnaires were returned. The  
14 Commissioner ultimately determined that Mr. Yun and GOBI had  
15 violated the FIL by offering and/or selling franchises in  
16 California (1) prior to registering the offers as required by Cal.  
17 Corp. Code § 31110, (2) without providing prospective franchisees  
18 with UFOCs as required by Cal. Corp. Code § 31119, and (3) by  
19 means of written or oral communications containing untrue  
20 statements or omissions of material facts in violation of Cal.  
21 Corp. Code § 31201. Based on these findings, the Commissioner  
22 issued a "Citation & Desist and Refrain Order" ("Commissioner's  
23 Order") on January 7, 2010.

24       The Commissioner's Order, issued pursuant to Cal. Corp. Code  
25 § 31406, directed Mr. Yun and GOBI to desist from the offer or  
26 sale of any and all franchises in the state of California  
27 (1) unless and until the offers had been registered under the FIL  
28 or were exempt from registration, (2) without first providing

1 prospective franchisees with a UFOC, and (3) by means of written  
2 or oral communications containing untrue statements or omissions  
3 of material facts.

4 The Commissioner's Order contained two additional provisions  
5 that are at issue in this appeal. The first, titled  
6 "Administrative Penalty," states:

7 Pursuant to [Cal. Corp. Code § 31406], [Mr. Yun and  
8 GOBI] are hereby assessed and ordered to pay, jointly  
9 and severally, an administrative penalty of [\$42,500].  
10 If within [60] days from the receipt of this citation  
11 [Mr. Yun or GOBI fails] to notify the Commissioner that  
12 they intend to request a hearing as described in subd.  
13 (d) of [§ 31406], the citation shall be deemed final.  
14 Subdivision (d) of [§ 31406] provides that any hearing  
15 requested under [§ 31406] shall be conducted in  
16 accordance with Chapter 5 . . . of Part 1 of Division 3  
17 of Title 2 of the California Govt. Code.

18 The second, titled "Ancilliary [sic] Relief," states:

19 Pursuant to [Cal. Corp. Code § 31408], [Mr. Yun and  
20 GOBI] are hereby ordered to pay, jointly and severally,  
21 \$2,339,400.00 for both restitution of out-of-pocket  
22 expenses and for rescission of franchise fees, royalty  
23 fees and other fees assessed by and paid to [Mr. Yun and  
24 GOBI] by nine victims/franchisees.

25 The Commissioner asserts that because neither Mr. Yun nor  
26 GOBI requested a hearing on the Commissioner's Order within the  
27 sixty days allowed by Cal. Corp. Code § 31406, the Commissioner's  
28 Order became final on June 9, 2010.

29 Mr. Yun filed a chapter 7 bankruptcy petition on July 2,  
30 2010. The Notice of Commencement of the Bankruptcy Case  
31 ("Bankruptcy Case Notification") set a deadline of October 1, 2010  
32 for a creditor to object to the discharge of its debt. Although  
33 three franchisees filed nondischargeability complaints against Mr.

1 Yun,<sup>3</sup> the Commissioner did not.

2 In his Schedule F - Creditors Holding Unsecured Nonpriority  
3 Claims, Mr. Yun listed the California Department of Corporations  
4 ("Corporations Department") as a creditor with a claim in the  
5 amount of \$2,384,400.00 based upon his personal liability on a  
6 business judgment. The address Mr. Yun used for the Corporations  
7 Department was "Consumer Services Office, 1515 K Street, Suite  
8 200, Sacramento, CA 95814." This is the address to which the  
9 Bankruptcy Case Notification was mailed by the Bankruptcy Noticing  
10 Center. The Commissioner contends that the address was not  
11 correct. It appears that the Commissioner does not dispute the  
12 department, office, or physical address Mr. Yun used in Schedule  
13 F. However, he faults Mr. Yun and his counsel for not including  
14 in the address the name of the Senior Corporations Counsel, Erik  
15 Brunkal, assigned to enforce the Commissioner's Order. In his  
16 Declaration to the bankruptcy court, Mr. Brunkal averred:  
17 "[N]either I nor anyone else at the Department of Corporations had  
18 actual notice of this bankruptcy until June 27, 2011 - nearly a  
19 year after the case was filed."

20 Mr. Yun received his chapter 7 discharge on March 4, 2011.  
21 However, approximately two weeks later, the discharge order was  
22 vacated. We learned of this fact at oral argument, and were  
23 informed at that time that no discharge order subsequently has

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27 <sup>3</sup> After trial, the bankruptcy court entered judgment in  
28 favor of Mr. Yun on their exception to discharge complaint.  
Appellee's Opening Brief at 6:13-15.

1 been entered.<sup>4</sup> On April 8, 2011, the Commissioner filed in the  
2 Superior Court of California in and for the County of Los Angeles  
3 ("State Court") an application ("Application") for a judgment for  
4 administrative penalties and an order compelling compliance with  
5 the Commissioner's Order. Specifically, the Application stated  
6 that the Commissioner was applying

7 (1) for a judgment for administrative penalties in the  
8 amount of \$42,500.00, (2) for an order compelling  
9 compliance with the [Commissioner's Order], including  
10 but not limited to the order that [Mr. Yun and GOBI]  
11 jointly and severally pay restitution and rescission in  
12 the amount of \$2,339,400.00 to nine victim franchisees .  
13 . . . , and (3) for an award of attorney fees and costs in  
14 the amount of \$2,500.00.

15 The State Court set a hearing ("July 6 Hearing") on the  
16 Application for July 6, 2011.

17 On June 1, 2011, Mr. Yun's bankruptcy attorney filed a  
18 "Notice of Stay of Proceedings" ("State Court Notice") in the  
19 State Court based upon Mr. Yun's pending bankruptcy case, and  
20 served the State Court Notice on the Commissioner at the address  
21 included in Schedule F with the additional language "Senior  
22 Corporations Counsel." In his declaration, Mr. Brunkal states  
23 that this was not proper notice, since it was not addressed

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24 <sup>4</sup> Mr. Lally prepared Appellee's Brief in this case. At  
25 page 2, lines 24-25, it states: "The Debtor filed his Chapter 7  
26 Petition on July 2, 2010, and received his Discharge on March 4,  
27 2011." Because Mr. Lally did not inform us that this discharge  
28 subsequently was vacated, a matter relevant to our analysis of the  
issues in this appeal, we prepared for oral argument under a  
significant misapprehension of the facts. We since have checked  
the bankruptcy court docket and have confirmed that as of the date  
of this memorandum decision, Mr. Yun still has not received his  
discharge. See O'Rourke v. Seaboard Sur. Co. (In re E.R. Fegert,  
Inc.), 887 F.2d 955, 957-58 (9th Cir. 1989) (appellate court may  
take judicial notice of bankruptcy court records); Atwood v. Chase  
Manhattan Mortg. Co. (In re Atwood), 293 B.R. 227, 233 n.9 (9th  
Cir. BAP 2003) (same).

1 specifically to "Senior Corporations Counsel, Erik Brunkal." Mr.  
2 Brunkal further averred that the Corporations Department mailroom  
3 "has no record of receiving any such document."

4 Mr. Brunkal states that he learned of Mr. Yun's bankruptcy  
5 case on June 27, 2011. After he made his flight, hotel and rental  
6 car reservations for the July 6 Hearing, Mr. Brunkal checked the  
7 State Court docket, at which time he discovered (1) the Stay  
8 Notice had been filed, and (2) the State Court had taken the July  
9 6 Hearing off the calendar.

10 On July 20, 2011, Mr. Brunkal, acting on behalf of the  
11 Commissioner, filed in the bankruptcy court the "Motion of the  
12 People of the State of California for Determination That the Civil  
13 Enforcement Action Filed in State Court Is Exempt From the  
14 Automatic Stay, Or, In the Alternative, for Relief From the  
15 Automatic Stay" ("RFS Motion").<sup>5</sup> In the RFS Motion, the  
16 Commissioner asserted (1) "the State of California should be  
17 allowed to prevent this . . . debtor from profiting from fraud and  
18 discharging his obligations to the defrauded in bankruptcy," and  
19 (2) "[a]ny monetary judgment award against Debtor will be enforced  
20 in accordance with the Bankruptcy Code, although the Commissioner  
21 believes that his claim is non-dischargeable in any bankkrruptcy  
22 action pursuant to 11 U.S.C. § 523(a)."

23 Mr. Yun responded ("Response") that he had listed the  
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25 <sup>5</sup> Mr. Brunkal states in his declaration in support of the  
26 RFS Motion that "[t]he Commissioner has worked diligently since  
27 receiving actual notice of debtor's bankruptcy filing to get this  
28 motion heard as soon as possible and, in fact, filed the motion  
within 10 days of actual notice." This is not true. It appears  
that Mr. Brunkal may have tendered his motion for filing within 10  
days of June 27, 2011, but the actual RFS Motion was not filed  
until July 20, 2011, 23 days after June 27.

1 Commissioner as a creditor in the case and that the Commissioner  
2 therefore had been served with the Bankruptcy Case Notification.  
3 Mr. Yun asserted that because the Commissioner did not file a  
4 timely nondischargeability complaint, he was precluded from  
5 asserting his claims against Mr. Yun that were based upon  
6 Mr. Yun's alleged fraud, because the deadline to file exception to  
7 discharge claims had passed. Mr. Yun also filed an opposition to  
8 the Commissioner's motion for a determination that the State of  
9 California was exempt from the automatic stay, in which he put  
10 directly in issue before the bankruptcy court the question of  
11 whether the Commissioner had constructive notice of the deadline  
12 for filing an exception to discharge complaint, notwithstanding  
13 the Commissioner's alleged lack of actual notice.

14 Following a hearing ("RFS Hearing"), the bankruptcy court  
15 entered an order ("RFS Order") which provided that the automatic  
16 stay was terminated as to Mr. Yun and his estate, "only to permit  
17 [the Commissioner] to obtain a judgment for nonmonetary relief and  
18 to enforce such nonmonetary judgment." The Commissioner filed a  
19 timely notice of appeal. The Commissioner filed his Designation  
20 of Record on Appeal and affirmatively elected not to designate the  
21 transcript of the RFS Hearing as part of his Record on Appeal.

## 22 II. JURISDICTION

23 The bankruptcy court had jurisdiction under 28 U.S.C. §§ 1334  
24 and 157(b)(2)(G). We have jurisdiction under 28 U.S.C. § 158.

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1 III. ISSUES<sup>6</sup>

2 Whether the bankruptcy court erred when it determined that  
3 the Commissioner's failure to file a dischargeability complaint by  
4 the deadline set forth in the Bankruptcy Case Notification  
5 precluded the Commissioner from pursuing a monetary judgment  
6 against Mr. Yun based on the Commissioner's Order.

7 Whether the bankruptcy court erred when it failed to  
8 determine that the State Court Proceeding to enforce the  
9 Commissioner's claims for monetary relief against Mr. Yun were  
10 excepted from the automatic stay pursuant to § 362(b)(4).

11 IV. STANDARDS OF REVIEW

12 We previously have stated that whether a particular action is  
13 exempt from the automatic stay is a question of law that we review  
14 de novo. Commonwealth of Mass. v. First Alliance Mortg. Co. (In  
15 re First Alliance Mortg. Co.), 263 B.R. 99, 106 (9th Cir. BAP  
16 2001). In the context of this appeal, however, it is more  
17 accurate to state that the issue is a mixed question of fact and  
18 law. "A mixed question of law and fact occurs when the historical  
19 facts are established; the rule of law is undisputed . . . and the  
20 issue is whether the facts satisfy the legal rule." Murray v.  
21 Bammer (In re Bammer), 131 F.3d 788, 792 (9th Cir. 1997). We  
22 review mixed questions of law and fact de novo. Carillo v. Su (In  
23 re Su), 290 F.3d 1140, 1142 (9th Cir. 2002); In re Bammer, 131  
24 F.3d at 792. De novo review requires that we view the case from

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26 <sup>6</sup> We do not resolve the following issue presented by the  
27 Commissioner in his Statement of Issues, because it seeks an  
28 advisory opinion from this Panel rather than review of the RFS  
Order: Whether the Commissioner will violate the discharge  
injunction if it continues the State Court Action to enforce the  
monetary provisions of the Commissioner's Order?

1 the same position as the bankruptcy court. See Lawrence v. Dep't  
2 of Interior, 525 F.3d 916, 920 (9th Cir. 2008).

3 We review a bankruptcy court's order regarding relief from  
4 the automatic stay for abuse of discretion. Moldo v. Matsco, Inc.  
5 (In re Cybernetic Servs., Inc.), 252 F.3d 1039, 1045 (9th Cir.  
6 2001). We apply a two-part test to determine whether the  
7 bankruptcy court abused its discretion. United States v. Hinkson,  
8 585 F.3d 1247, 1261-62 (9th Cir. 2009) (en banc). First, we  
9 consider de novo whether the bankruptcy court applied the correct  
10 legal standard to the relief requested. Id. Then, we review the  
11 bankruptcy court's fact findings for clear error. Id. at 1262 &  
12 n.20. We must affirm the bankruptcy court's fact findings unless  
13 we conclude that they are "(1) 'illogical,' (2) 'implausible,' or  
14 (3) without 'support in inferences that may be drawn from the  
15 facts in the record.'" Id.

16 We may affirm the bankruptcy court's ruling on any basis  
17 supported by the record. See, e.g., Heilman v. Heilman (In re  
18 Heilman), 430 B.R. 213, 216 (9th Cir. BAP 2010); FDIC v. Kipperman  
19 (In re Commercial Money Center, Inc.), 392 B.R. 814, 826-27 (9th  
20 Cir. BAP 2008); see also McSherry v. City of Long Beach, 584 F.3d  
21 1129, 1135 (9th Cir. 2009).

## 22 V. DISCUSSION

### 23 A. The Panel Has Discretion to Dismiss or Summarily Affirm 24 in This Appeal Where the Commissioner Failed to Provide an Adequate Record for Review.

25 The lack of an adequate record in this appeal is problematic.  
26 Despite the fact that the bankruptcy court held a hearing on the  
27 RFS Motion, the Commissioner made an affirmative decision not to  
28 include a transcript of the RFS Hearing. The RFS Order contains

1 no factual findings or legal conclusions by the bankruptcy court.  
2 Consequently, we are hampered by the lack of a record in our  
3 review of the RFS Order.

4 The Commissioner's complete disregard of Rule 8009(b) in  
5 itself constitutes a basis to dismiss this appeal or summarily  
6 affirm the bankruptcy court's decision. Kyle v. Dye (In re Kyle),  
7 317 B.R. 390, 393 (9th Cir. BAP 2004), aff'd, 170 F. App'x 457  
8 (9th Cir. 2006). That said, we have reviewed the record, as  
9 submitted, for the purpose of our review of the issues presented.

10 B. The Panel's Review Is Limited in Scope.

11 Generally, an appellate court will not consider an issue  
12 unless it was raised and considered by the trial court. The  
13 purpose of this rule is to ensure that the parties present to the  
14 fact finder all the evidence they believe is relevant to the  
15 issues presented. Singleton v. Wulff, 428 U.S. 106, 120 (1976);  
16 Exxon Shipping Co. v. Baker, 554 U.S. 471, 487 (2008). This rule  
17 is collateral to the broader rule that an appellate court does not  
18 sit as a fact finding body:

19 The rationale for deference to the original finder of  
20 fact is not limited to the superiority of the trial  
21 judge's position to make determinations of credibility.  
22 The trial judge's major role is the determination of  
23 fact, and with experience in fulfilling that role comes  
24 expertise. Duplication of the trial judge's efforts in  
25 the court of appeals would very likely contribute only  
26 negligibly to the accuracy of fact determination at a  
27 huge cost in diversion of judicial resources. In  
28 addition, the parties to a case on appeal have already  
been forced to concentrate their energies and resources  
on persuading the trial judge that their account of the  
facts is the correct one; requiring them to persuade  
three more judges at the appellate level is requiring  
too much. As the Court has stated in a different  
context, the trial on the merits should be "the 'main  
event' . . . rather than a 'tryout on the road.'" Wainwright v. Sykes, 433 U.S. 72, 90 (1977). For these  
reasons, review of factual findings under the

1 clearly-erroneous standard—with its deference to the  
2 trier of fact—is the rule, not the exception.

3 Anderson v. City of Bessemer City, N.C., 470 U.S. 564, 574-75  
4 (1985).

5 Mr. Yun defended the RFS Motion on the basis that any claim  
6 the State of California may have had based on Mr. Yun's alleged  
7 fraud was discharged when the Commissioner failed to seek a  
8 determination that the debt was excepted from his discharge under  
9 a subsection of § 523(a) within the time mandated by § 523(c)(1).  
10 The record before us does not reflect what, if anything, the  
11 Commissioner may have asserted before the bankruptcy court with  
12 respect to § 523. The Commissioner did not address any defense to  
13 application of the § 523(c)(1) deadline in the RFS Motion or in  
14 any of his supporting papers.

15 The Commissioner suggests on appeal that the bankruptcy court  
16 erred when it determined that the Commissioner had failed to file  
17 a dischargeability complaint within the time provided by  
18 § 523(c)(1). He asserts before us that § 523(b)(3)(B) excuses any  
19 failure to meet the § 523(c)(1) deadline, because Mr. Yun had not  
20 provided him with proper notice of the pendency of the bankruptcy  
21 case.<sup>7</sup> Although the timeliness of a dischargeability complaint  
22 under § 523(c)(1) appears to have been raised before the  
23 bankruptcy court by Mr. Yun, nothing in the record reflects what  
24 facts, if any, the bankruptcy court considered in connection with

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26 <sup>7</sup> In the record before the bankruptcy court, the  
27 Commissioner stated he never received notice of the bankruptcy  
28 case. In context, it is not apparent that this was anything other  
than a generalized complaint against the actions of Mr. Yun and  
his bankruptcy counsel. Nowhere does the Commissioner assert that  
any failure to be served implicated his rights under § 523.

1 the timeliness of pursuing a nondischargeability determination.  
2 We cannot say that the bankruptcy court's findings are clearly  
3 erroneous when we do not know what they were.

4 The Commissioner alternatively asserts on appeal that the  
5 § 523(c)(1) deadline does not apply, because the basis for  
6 nondischargeability of the State of California's claim is  
7 § 523(a)(7), which provides that a discharge under § 727 does not  
8 discharge an individual debtor from any debt "for a fine, penalty,  
9 or forfeiture payable to and for the benefit of a governmental  
10 unit, and is not compensation for actual pecuniary loss . . . ."

11 Nothing in the record reflects that the Commissioner  
12 presented to the bankruptcy court the issue of the applicability  
13 of § 523(a)(7), or any other provision of § 523(a), in arguing the  
14 RFS Motion. In the absence of a record establishing that the  
15 bankruptcy court considered these issues, we have nothing to  
16 review on appeal.

17 In the absence of an adequate record, we affirm the  
18 bankruptcy court's order to the extent it may be based on a  
19 determination that no timely exception to discharge complaint was  
20 filed within the purview of § 523(c)(1). We do not reach the  
21 issue of whether § 523(a)(7), or any other provision of § 523(a),  
22 applies to the alleged nondischargeability of the Commissioner's  
23 claim where that issue was not presented to the bankruptcy court  
24 in the first instance.

25  
26 C. The Record Is Insufficient for the Panel to Review the  
Commissioner's § 362(b)(4) Issue on Appeal.

27 Under § 362(a), the filing of a voluntary bankruptcy petition  
28 operates as a stay (1) of the commencement or continuation of

1 actions or proceedings against the debtor (§ 362(a)(1)), and  
2 (2) of any act to collect, assess or recover a claim against the  
3 debtor that arose before the commencement of the bankruptcy case  
4 (§ 362(a)(6)).

5 The scope of the automatic stay is intended to be "quite  
6 broad." Hills Motors, Inc. v. Haw. Auto. Dealers' Ass'n, 997 F.2d  
7 581, 585 (9th Cir. 1993). However, Congress specifically excepted  
8 the enforcement of a governmental unit's "police or regulatory  
9 powers" from the scope of the automatic stay. See § 362(b)(4).

10 Still, "[n]ot every police or regulatory action is  
11 automatically exempt . . . ." Commonwealth of Mass. v. First  
12 Alliance Mortg. Co. (In re First Alliance Mortg. Co.), 263 B.R.  
13 99, 107 (9th Cir. BAP 2001). Under Ninth Circuit precedent, the  
14 bankruptcy court was required to apply two tests in its effort to  
15 determine whether the Commissioner's proposed actions fall within  
16 the scope of § 364(b)(4)'s exception to the automatic stay: the  
17 "pecuniary purpose" test and the "public policy" test. In re  
18 Universal Life Church, Inc., 128 F.3d 1294, 1297 (9th Cir. 1997).  
19 Satisfaction of either test is sufficient for the exemption to  
20 apply. Lockyer v. Mirant Corp., 398 F.3d 1098, 1108 (9th Cir.  
21 2005).

22 These tests are applied by analyzing the individual claims  
23 the Commissioner intended to assert against Mr. Yun. City and  
24 County of San Francisco v. PG & E Corp., 433 F.3d 1115, 1125 (9th  
25 Cir.), cert. denied, 549 U.S. 882 (2006) ("PG & E"). Further, in  
26 applying the tests, the bankruptcy court was governed by three  
27 underlying principles. First, exceptions to the automatic stay  
28 are interpreted narrowly. In re First Alliance Mortg. Co., 263

1 B.R. at 106 (citing In re Dunbar, 235 B.R. 465, 470 (9th Cir. BAP  
2 1999), aff'd, 245 F.3d 1058 (9th Cir. 2001)). Second, "[s]tate .  
3 . . . governmental units cannot, by an exercise of their police or  
4 regulatory powers, subvert the relief afforded by the federal  
5 bankruptcy laws." Thomassen v. Div. of Med. Quality Assurance,  
6 Dept. of Consumer Affairs, State of Cal. (In re Thomassen), 15  
7 B.R. 907 (9th Cir. BAP 1981). Third, a debtor's right to his  
8 discharge is protected by a broad injunction. See, e.g., Espinosa  
9 v. United Student Aid Funds, Inc., 553 F.3d 1193 (9th Cir. 2008),  
10 aff'd, 130 S. Ct. 1367 (2010).

11 As commonly stated in the case law, "[u]nder the 'pecuniary  
12 purpose' test, the bankruptcy court must determine 'whether the  
13 government action relates primarily to the protection of the  
14 government's pecuniary interest in the debtor's property or to  
15 matters of public safety and welfare.'" In re First Alliance  
16 Mortg. Co., 263 B.R. at 107 (quoting In re Universal Life Church,  
17 Inc., 128 F.3d at 1297). Under the "public purpose" test, the  
18 bankruptcy court must determine whether the Commissioner seeks to  
19 "effectuate public policy" or to adjudicate "private rights."  
20 Lockyer v. Mirant, 398 F.3d 1098, 1109 (9th Cir. 2005). These are  
21 both factual determinations to be made based on the presentation  
22 of evidence.

23 As we noted previously, the bankruptcy court made no written  
24 factual findings, and we have no transcript before us to determine  
25 what findings the court may have made at the Hearing. Because our  
26 role is to review the facts found by the bankruptcy court, we must  
27 have those facts before us on appeal when we are asked to decide  
28 that the bankruptcy court has committed error.

1           If the bankruptcy court failed to make factual findings, as  
2 suggested by the Commissioner at oral argument, we could remand  
3 for it to make findings. However, in the absence of the  
4 transcript, we cannot know that the bankruptcy court did not make  
5 the requisite findings upon which to base its order. Because the  
6 Commissioner did not provide a transcript of the Hearing for our  
7 review, we may presume that nothing that happened at the Hearing  
8 would aid his case on appeal. Gionis v. Wayne (In re Gionis), 170  
9 B.R. 675, 681 (9th Cir. BAP 1994), aff'd, 92 F.3d 1192 (9th Cir.  
10 1996).

#### 11                                   VI. CONCLUSION

12           Based on the foregoing analysis, and in light of the  
13 inadequate record provided by the Commissioner, we AFFIRM.