

JUL 10 2008

HAROLD S. MARENUS, CLERK
U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

In re:)	BAP No.	CC-07-1470-SnPAMk
)		
EUGENE H. PERRINE, JR.,)	Bk. No.	RS 05-13979-PC
)		
Debtors.)	Adv. No.	RS 05-01473-PC
)		
_____)		
EUGENE H. PERRINE, JR.,)		
)		
Appellant,)		
)		
v.)	MEMORANDUM¹	
)		
STEVEN M. SPEIER, Chapter 7)		
Trustee,)		
)		
Appellee.)		
_____)		

Argued and Submitted on
June 19, 2008 at Pasadena, California

Filed - July 10, 2008

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

Honorable Peter H. Carroll, Bankruptcy Judge, Presiding

Before: SNYDER,² PAPPAS, and MARKELL, Bankruptcy Judges.

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

²Honorable Paul B. Snyder, Bankruptcy Judge for the Western District of Washington, sitting by designation.

1 Eugene H. Perrine, Jr. ("Perrine") appeals the bankruptcy
2 court's judgment denying his discharge pursuant to 11 U.S.C.
3 §§ 727(a)(2)(A) and (4)(A).³ We AFFIRM.

4 I

5 FACTS

6 The following facts are uncontroverted. Prepetition,
7 Perrine owned as his separate property a 30.32-acre tract of land
8 located in Klamath Falls, Oregon ("Oregon Property"). On August
9 8, 2003, Perrine transferred the Oregon Property to the Eugene H.
10 Perrine and Vicki L. Perrine Family Trust ("Perrine Trust"), by a
11 Trust Transfer Grant Deed recorded on August 22, 2003.

12 Prior to August 22, 2003, Perrine also separately owned real
13 property located at 285 W. Skyline Drive, La Habra Heights,
14 California ("La Habra Property").

15 On August 8, 2003, Perrine signed and delivered two
16 promissory notes to his wife, Vicki L. Perrine, in the principal
17 sums of \$143,500 and \$150,000. Perrine also executed a Short
18 Form Deed of Trust and Assignment of Rents for both notes, which
19 encumbered the La Habra Property, apparently to secure payment of
20 the notes. Neither was recorded. Perrine testified that the
21 notes were executed to document cash advances or loans made from
22 Vicki Perrine's separate funds for improvements to the La Habra
23 Property and for loans used for expenses of Perrine Electric

24
25 ³Unless otherwise indicated, all "Code," chapter and section
26 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1330, prior
27 to its amendment by the Bankruptcy Abuse Prevention and Consumer
28 Protection Act of 2005, Pub. L. 119-8, 119 Stat. 23, as the case
from which the adversary proceeding and these appeals arise was
filed before its effective date (generally October 17, 2005). All
"Rule" references are to the Federal Rules of Bankruptcy Procedure.

1 Company, Inc. ("Perrine Electric").

2 Perrine transferred his entire interest in the La Habra
3 Property to the Perrine Trust by Trust Transfer Grant Deed
4 recorded on September 26, 2003.

5 The Perrine Trust is an inter vivos revocable trust.
6 Perrine is the trustor, cotrustee and beneficiary of the Perrine
7 Trust. At its inception, the Perrine Trust included the
8 following assets:

9 Community Property: "All items of tangible personal
10 property, including, but not limited to, furniture and
11 furnishings, silverware, clothing, books, collections
12 of tangible personal property, and other tangible
13 personal property usually kept at the Trustor's
14 residence."

13 Perrine's Separate Property: (a) La Habra Property; (b)
14 Oregon Property; (c) 50 shares of stock in Perrine
15 Electric; and (d) a pension at Schwab & Company, Inc.⁴

15 Section 1.02 of the Perrine Trust states: "All property now
16 or hereafter conveyed or transferred to the [Trust]... shall
17 remain, respectively, community property, quasi-community
18 property, or the separate property of the Trustor transferring
19 such property to the Trustee."

20 The Perrine Trust sold the La Habra Property in March, 2004,
21 for approximately \$875,000 and received about \$450,000 in net
22 proceeds. At the time of the sale, Vicki Perrine was in the
23 process of purchasing the real property located at 4025 Prairie
24 Dunes Drive, Corona, California ("Corona Property"). When the La
25 Habra Property was sold, Perrine and Vicki Perrine, as Co-
26 Trustees of the Perrine Trust, transferred approximately \$293,500

27
28 ⁴The pension plan was apparently never transferred to the
Perrine Trust.

1 of the net proceeds into Vicki Perrine's pending escrow for the
2 purchase of the Corona Property. By Grant Deed recorded on March
3 26, 2004, the Corona Property was purchased in the name of Vicki
4 Meyers, a married woman, as her sole and separate property.
5 Meyers was Vicki Perrine's maiden name. Perrine and Vicki L.
6 Meyers were married in September, 2002.

7 Perrine testified that they used the remaining \$153,294.94
8 in net sales proceeds from the La Habra Property to pay personal
9 expenses, including installing a pool, adding a patio, and making
10 other improvements at the Corona Property.

11 On March 26, 2004, an Interspousal Deed was recorded in
12 which Perrine transferred any interest he had in the Corona
13 Property to his wife Vicki Perrine also known as Vicki Meyers.
14 Perrine and Vicki Perrine resided in the Corona Property from
15 March, 2004, to the petition date, April 21, 2005.

16 Perrine is the president of Perrine Electric. On April 29,
17 2004, Perrine was sued by AAA Electrical Supply, Inc. ("AAA") in
18 the Superior Court of Los Angeles County ("State Lawsuit"), for
19 \$71,167.05, plus attorney fees and costs, based upon his personal
20 guaranty of Perrine Electric's debts.

21 Catanzarite Law Corporation ("Catanzarite") represented
22 Perrine and Perrine Electric in the State Lawsuit. On January
23 10, 2005, Perrine, individually and on behalf of Perrine
24 Electric, signed a Stipulation for Entry of Judgment in the State
25 Lawsuit in favor of AAA for \$75,000. The next day, on January
26 11, 2005, Perrine and Vicki Perrine, individually and as Co-
27 Trustees of the Perrine Trust, executed a Retainer Agreement and
28 Application of In Kind Payment ("Retainer Agreement") in which

1 they agreed to transfer the Oregon Property to Catanzarite for
2 accrued attorney's fees and costs and as "a non-refundable
3 deposit to be applied to going forward attorneys fees and costs."
4 Perrine and Vicki Perrine both testified that they knew at the
5 time they signed the Retainer Agreement that AAA could collect
6 its judgment against the Oregon Property.

7 In the Retainer Agreement, the parties stipulated that the
8 value of the Oregon Property was \$30,000. Perrine testified that
9 the \$30,000 value was based on an opinion given to him by a real
10 estate agent in Oregon. According to his deposition, the real
11 estate agent suggested a listing price of \$50,000.

12 At the time of the transfer, Catanzarite was owed \$12,000
13 for accrued attorney's fees. The Retainer Agreement states that
14 it is "for the purpose of securing the continued representation
15 of the Trust and the individuals in future litigation including
16 without limitation, with creditors and to protect the home equity
17 of Vicki and pension of Eugene."

18 On January 13, 2005, Perrine and Vicki Perrine, as Co-
19 Trustees of the Perrine Trust, executed a Statutory Bargain and
20 Sale Deed conveying the Oregon Property to Catanzarite for a
21 credit of \$30,000. The deed was recorded on January 14, 2005.
22 Ten days later, the Stipulation for Entry of Judgment was entered
23 in the State Lawsuit.

24 Perrine filed a voluntary chapter 7 bankruptcy petition on
25 April 21, 2005. According to Schedule A, Perrine did not own an
26 interest in real property on the petition date. On Schedule B,
27 Perrine listed assets valued at \$415,740, consisting of cash,
28 clothing, two vehicles and an interest in a profit-sharing plan

1 with an estimated value of \$400,000. On Schedule B, Perrine
2 indicated that he did not own any stock or interest in a business
3 or hold any interest in a trust as of the petition date. In
4 Schedule F, Perrine listed nine creditors holding unsecured
5 nonpriority claims of approximately \$174,073.

6 In his Statement of Financial Affairs, Perrine indicated
7 that he had not made any payments to creditors within 90 days of
8 filing the case or transferred any property (other than in the
9 ordinary course of business or financial affairs of the debtor)
10 within one year of filing.

11 In response to Question #9 of the Statement of Financial
12 Affairs, Perrine disclosed that he had paid Catanzarite \$3,000 on
13 January 14, 2005, for debt counseling or bankruptcy. Perrine did
14 not disclose the Corona Property in his schedules.

15 Perrine admits that he did not disclose the Perrine Trust in
16 his schedules, but claims that the Perrine Trust did not hold any
17 property when the petition was filed and that his interest in the
18 Perrine Trust was nominal. In response to the Chapter 7
19 Trustee's ("Trustee") requests for admissions, Perrine admitted
20 that he was required by question #19 on Schedule B to disclose
21 all contingent and noncontingent interests in a trust and that he
22 owned a contingent or noncontingent interest in the Perrine Trust
23 on the petition date. Perrine also admitted that the Perrine
24 Trust had never been revoked. Perrine signed his schedules and
25 Statement of Financial Affairs under penalty of perjury on May 6,
26 2005.

27 The first meeting of creditors was held on May 23, 2005. At
28 this meeting, Perrine testified that both he and Vicki Perrine

1 were on title to the La Habra Property and that the proceeds from
2 the sale of the La Habra Property were used to purchase the
3 Corona Property in Vicki's name alone.

4 At a continued meeting of creditors on June 20, 2005,
5 Perrine testified that he and Vicki Perrine formed the Perrine
6 Trust shortly after their marriage and that the only asset of the
7 trust at the time was the La Habra Property. The Trustee
8 continued the meeting of creditors and requested further
9 documentation. Perrine did not appear at the next continued
10 meeting of creditors on July 12, 2005, but the Trustee noted that
11 some, but not all of the requested documents had been provided.
12 Perrine did not appear at any further continued meeting of
13 creditors, and he never filed an amended Schedule B. An Amended
14 Statement of Financial Affairs was filed on June 20, 2005, to
15 disclose payments to Perrine's wife, listed as Vicki L. Meyers,
16 for wages. Perrine never amended his response to Questions #9
17 and #10 to disclose the transfer of the Oregon Property to
18 Catanzarite.

19 The Trustee filed a complaint objecting to Perrine's
20 discharge under § 727(a) (2) (A), (a) (3), (a) (4) (A) and (a) (5) on
21 December 16, 2005. On September 17, 2007, the bankruptcy court
22 granted partial summary judgment. In ruling on the parties'
23 cross motions for summary judgment, the bankruptcy court issued a
24 lengthy written opinion containing findings of fact and
25 conclusions of law. The Trustee's claim for relief under
26 § 727(a) (3) was dismissed in response to a motion for summary
27 judgment brought by Perrine, and the Trustee's claim for relief
28 under § 727(a) (5) was abandoned at the time of entry of the joint

1 pretrial order presented by the parties.

2 In granting partial summary judgment in favor of the Trustee
3 on the § 727(a)(2)(A) claim, the bankruptcy court concluded that
4 Perrine's interest in the Oregon Property was property of the
5 debtor, which he had transferred within one year of filing the
6 petition; that Perrine's interest in the Perrine Trust was
7 property of the debtor, which he had concealed within one year of
8 filing; and that Perrine's shares of stock in Perrine Electric
9 were property of the debtor, which he had concealed within one
10 year of filing. The bankruptcy court reserved for trial the
11 issue of whether, in transferring or concealing these properties,
12 Perrine had the subjective intent to hinder, delay or defraud a
13 creditor or officer of the estate.

14 In granting partial summary judgment in favor of the trustee
15 on the § 727(a)(4)(A) claim, the bankruptcy court concluded that
16 Perrine declared under penalty of perjury on Schedule B that he
17 did not own stock or an interest in a business or in a trust at
18 the time of filing and that he declared under penalty of perjury
19 on the Statement of Financial Affairs that he had not made any
20 payments to creditors within 90 days of filing or transferred any
21 property (other than in the ordinary course of business or
22 financial affairs of the debtor) within one year of filing. The
23 bankruptcy court further found that each of these statements was
24 false and material. The bankruptcy court reserved for trial the
25 issue of whether one or more of these statements were made
26 knowingly and fraudulently.

27 Trial was held on November 26, 2007. On December 10, 2007,
28 the bankruptcy court issued a Memorandum Decision and Judgment

1 denying Perrine's discharge under § 727(a)(2)(A) and (a)(4)(A).
2 Perrine timely appealed.

3 II

4 JURISDICTION

5 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.
6 § 1334 and § 157(b)(1) and (b)(2)(J). The Panel has jurisdiction
7 to hear this appeal pursuant to 28 U.S.C. § 158.

8 III

9 ISSUES

10 A. Whether the bankruptcy court erred in denying Perrine's
11 discharge under § 727(a)(2)(A).

12 B. Whether the bankruptcy court erred in denying Perrine's
13 discharge under § 727(a)(4)(A).

14 IV

15 STANDARD OF REVIEW

16 The Ninth Circuit standard of review of a judgment barring
17 discharge is that: "(1) the court's determinations of the
18 historical facts are reviewed for clear error; (2) the selection
19 of the applicable legal rules under § 727 is reviewed de novo;
20 and (3) the application of the facts to those rules requiring the
21 exercise of judgments about values animating the rules is
22 reviewed de novo." Riley v. Searles (In re Searles), 317 B.R.
23 368, 373 (9th Cir. BAP 2004), aff'd, 212 Fed. Appx. 589 (9th Cir.
24 2006).

25 "When there are two permissible views of the evidence, the
26 trial judge's choice between them cannot be clearly erroneous."
27 Developers Sur. & Indem. Co. v. Khalil (In re Khalil), 379 B.R.
28 163, 171 (9th Cir. BAP 2007) (quoting In re Baldwin Builders, 232

1 B.R. 406, 410 (9th Cir. BAP 1999)).

2 V

3 DISCUSSION

4 **A. Section 727(a)(2)(A)**

5 Section 727(a)(2) provides in relevant part:

6 (a) The court shall grant the debtor a discharge,
7 unless-

8 (2) the debtor, with intent to hinder, delay,
9 or defraud a creditor or an officer of the
10 estate charged with custody of property under
11 this title, has transferred, removed,
12 destroyed, mutilated, or concealed, or has
permitted to be transferred, removed,
destroyed, mutilated, or concealed-

(A) property of the debtor, within one
year before the date of the filing of
the petition[.]

13 An objection to discharge under this section requires,
14 within one year of filing the petition, (1) a transfer or
15 concealment, and (2) a subjective intent on the debtor's part to
16 hinder, delay or defraud a creditor through the transfer or
17 concealment. There must be a finding of actual intent to hinder,
18 delay or defraud creditors, as constructive intent is not
19 sufficient. However, intent "'may be established by
20 circumstantial evidence, or by inferences drawn from a course of
21 conduct.'" Consumers Oil Co. v. Adeeb (In re Adeeb), 787 F.2d
22 1339, 1343 (9th Cir. 1986) (quoting Bank of Sheridan, Mont. v.
23 Devers (In re Devers), 759 F.2d 751, 753-54 (9th Cir. 1985)).
24 Section 727 is to be construed liberally in favor of debtors and
25 strictly against the creditor. Adeeb, 787 F.2d at 1342. The
26 burden is on the party opposing discharge to prove by a
27 preponderance of the evidence that discharge should be denied.
28 Grogan v. Garner, 498 U.S. 279, 289 (1991). The bankruptcy court

1 denied Perrine's discharge under § 727(a)(2)(A) for failure to
2 disclose the transfer of the Oregon Property, his interest in the
3 Perrine Trust or the Perrine Electric stock.

4 Perrine's interest in the Oregon Property had been
5 transferred within one year of his filing the petition and was
6 admittedly not disclosed in his Statement of Financial Affairs.
7 Thus, the only issue before the court was whether the transfer
8 was concealed with the intent to hinder or delay his creditors.

9 Perrine's contention is that the bankruptcy court erred in
10 finding the requisite intent as to the Oregon Property because
11 the property was transferred for reasonable consideration.

12 Contrary to Perrine's argument that the bankruptcy court
13 discounted or ignored the case of Hultman v. Tevis, 82 F.2d 940
14 (9th Cir. 1936), the bankruptcy court properly recognized that
15 the mere fact that a transfer is preferential is insufficient
16 grounds for denying a discharge. In Hultman, the debtor
17 transferred funds to his son within one year of filing to repay a
18 portion of a preexisting loan. The Ninth Circuit Court of
19 Appeals determined that the fact that the payment was a
20 preference did not necessitate a finding that it was made with an
21 intent to hinder or delay creditors. Hultman, 82 F.2d at 941.
22 Absent additional evidence of intent, the Ninth Circuit upheld
23 the district court finding that the funds were not transferred
24 with the intent to hinder, delay or defraud creditors.

25 Unlike Hultman, additional evidence of intent to defraud or
26 delay exists in this case. Although the transfer was for partial
27 consideration, there is insufficient evidence to conclude that
28 the consideration was adequate. When the Oregon Property was

1 transferred, Catanzarite was owed \$12,000 for legal services.
2 However, the Oregon Property was transferred for a "stipulated"
3 value of \$30,000. Perrine provided no evidence to support the
4 stipulated value, other than deposition testimony that a realtor
5 suggested a sale price of \$50,000. Although Catanzarite
6 continued to perform legal services for Perrine after the
7 transfer, it is undisputed that the fees incurred did not equal
8 the stipulated value at the time of the transfer.

9 The effect of the transfer was to remove Perrine's only
10 remaining nonexempt equity from the reach of creditors,
11 specifically AAA. The Stipulation for Entry of Judgment in favor
12 of AAA was entered in the State Lawsuit only ten days after
13 Perrine transferred the Oregon Property to Catanzarite, and
14 Perrine admits that he was concerned at the time of the transfer
15 that the Oregon Property would be seized by AAA to satisfy its
16 judgment. This course of conduct supports the bankruptcy court's
17 finding of intent to hinder, delay or defraud in violation of
18 § 727(a)(2)(A).

19 The bankruptcy court applied the correct legal standard, and
20 the evidence supports its conclusion that the Oregon Property was
21 transferred with the intent to hinder or delay creditors.

22 In regards to the Perrine Trust and stock interest in
23 Perrine Electric, Perrine admitted to not disclosing these
24 interests in his schedules. Perrine stated that he did not
25 disclose the Perrine Trust because it had no assets as of the
26 petition date and the stock had no value.

27 The bankruptcy court concluded that this nondisclosure,
28 coupled with Perrine's misrepresentations regarding the trust

1 assets at the meetings of creditors, supported a finding that he
2 "concealed" the Perrine Trust and stock interest with the intent
3 to hinder or delay the Trustee.

4 Perrine argues that the failure to disclose the Perrine
5 Trust cannot warrant denial of a discharge under § 727(a)(2)(A)
6 because there was no transfer of the Perrine Trust as a whole
7 within one year of filing. Perrine cites U.S. Trustee v.
8 Snodgrass (In re Snodgrass), 359 B.R. 278 (Bankr. D. Idaho 2007),
9 in which the bankruptcy court determined that a debtor's failure
10 to disclose the existence of disability payments and
11 corresponding bank accounts in his schedules was not a violation
12 of § 727(a)(2)(A). The bankruptcy court in Snodgrass stated:

13 While his post-petition conduct leaves no doubt as to
14 his intent to conceal assets, there is no evidence that
15 Defendant attempted or intended to conceal the assets
16 prior to filing, other than by his failure to disclose
17 them in the bankruptcy schedules. Without evidence of
a transfer coupled with an intent to defraud creditors
beyond his failure to disclose the assets, Defendant's
discharge cannot be denied on the basis of
§ 727(a)(2)(A).

18 Snodgrass, 359 B.R. at 287-88.

19 While the Debtor's argument suggests that § 727(a)(2)(B) may
20 be more descriptive of his conduct than § 727(a)(2)(A), see
21 Peterson v. Scott (In re Scott), 172 F.3d 959, 967-68 (7th Cir.
22 1999), the Panel need not reach this issue. We may affirm for
23 any reason supported by the record. 28 U.S.C. § 2111; Dittman v.
24 California, 191 F.3d 1020, 1027 n.3 (9th Cir. 1999). As
25 concluded in our analysis of the Oregon Property, the bankruptcy
26 court correctly denied the Debtor's discharge under
27 § 727(a)(2)(A).

28

1 **B. Section 727(a)(4)(A)**

2 Section 727(a)(4)(A) provides that a court should grant a
3 discharge to a debtor, unless the debtor knowingly and
4 fraudulently, in or in connection with the case, made a false
5 oath or account. For purposes of this section, proof that the
6 debtor merely omitted information from bankruptcy schedules is
7 not sufficient to establish fraudulent intent on a debtor's part.
8 La Brioche, Inc. v. Ishkhanian (In re Ishkhanian), 210 B.R. 944,
9 956 (Bankr. E.D. Pa. 1997).

10 To deny a debtor a discharge under § 727(a)(4)(A), the
11 plaintiff must show that (1) the debtor knowingly and
12 fraudulently made a false oath, and (2) the false oath related to
13 a material fact. Thomas v. Aubrey (In re Aubrey), 111 B.R. 268,
14 274 (9th Cir. BAP 1990). As with § 727(a)(2)(A), intent may be
15 inferred from the actions of the debtor. A party objecting to a
16 debtor's discharge on false oath grounds must establish "that the
17 information was omitted for the specific purpose of perpetrating
18 a fraud and not simply because [a] debtor was careless or failed
19 to fully understand his attorney's instructions." Estate of
20 Perlbinder v. Dubrowsky (In re Dubrowsky), 244 B.R. 560, 571-72
21 (E.D.N.Y. 2000). "Recklessness by itself will not suffice, but
22 recklessness combined with other circumstances can support an
23 inference that he acted with knowing and fraudulent intent."
24 Khalil, 379 B.R. at 177. While some courts have found the
25 requisite intent where there has been a pattern of falsity or
26 from a reckless indifference to the truth, the ultimate question
27 is still whether fraud has been established. Khalil, 379 B.R. at
28 174.

1 "A false statement is material if it bears a relationship to
2 the debtor's business transactions or estate, or concerns the
3 discovery of assets, business dealings, or the existence and
4 disposition of the debtor's property." Fogal Legware of
5 Switzerland, Inc. v. Wills (In re Wills), 243 B.R. 58, 62 (9th
6 Cir. BAP 1999) (citing In re Chalik, 748 F.2d 616, 618 (11th Cir.
7 1984)).

8 The bankruptcy court concluded that Perrine made a false
9 oath in failing to disclose the transfer of the Oregon Property,
10 his interest in the Perrine Trust, and the Perrine Electric
11 stock. The bankruptcy court further determined that these oaths
12 related to a material fact. Perrine has not taken issue with
13 these conclusions on appeal.

14 Perrine's primary contention is that the bankruptcy court
15 erred in concluding that he could not rely on an advice-of-
16 counsel defense to the § 727(a)(4)(A) claim.

17 Generally, a debtor who acts in reliance on the advice of
18 counsel lacks the requisite intent necessary to deny a discharge
19 of his or her debts. Adeeb, 787 F.2d at 1343. Typically, if an
20 item is omitted on the honest advice of counsel, to whom the
21 debtor has disclosed all pertinent facts, the item will not be
22 deemed falsely omitted. Abbey v. Retz (In re Retz), 364 B.R.
23 742, 758 (Bankr. D. Mont. 2007). The debtor's reliance, however,
24 must be in good faith. Adeeb, 787 F.2d at 1343. In addition,
25 "the advice of counsel is not a defense when it is transparently
26 plain that the property should be scheduled." Rita Girl, Inc. v.
27 Mascolo (In re Mascolo), 505 F.2d 274, 277 n.4 (1st Cir. 1974).
28 "A debtor cannot, merely by playing ostrich and burying his head

1 deeply enough in the sand, disclaim all responsibility for
2 statements which he has made under oath." Boroff v. Tully (In re
3 Tully), 818 F.2d 106, 111 (1st Cir. 1987).

4 Perrine argues that this defense applies because any
5 omissions were made on the advice of Catanzarite, to whom he had
6 disclosed all of the pertinent facts regarding the Oregon
7 Property, Perrine Trust and Perrine Electric stock.

8 The bankruptcy court considered this defense and determined
9 that it did not apply to this case because any reliance by
10 Perrine was not in good faith. The bankruptcy court determined
11 that the "number and pervasiveness of the false statements and
12 omissions" in the schedules and Statement of Financial Affairs,
13 "coupled with" the false statements made at the meetings of
14 creditors, failure to provide requested documentation to the
15 Trustee, and failure to amend the schedules and statements,
16 "vitiate[] any element of good faith."

17 In rendering its decision, the bankruptcy court also
18 considered the fact that Perrine was an experienced businessman,
19 not a naive or unsophisticated debtor. Courts may consider the
20 debtor's education and business experience when evaluating the
21 debtor's knowledge of a false statement. See, e.g., Montey Corp.
22 v. Maletta (In re Maletta), 159 B.R. 108, 112 (Bankr. D. Conn.
23 1993). The bankruptcy court took these factors into
24 consideration and weighed the credibility of Perrine's testimony
25 in determining that any reliance by him on the advice of counsel
26 was not in good faith. The panel gives due regard to the
27 opportunity of the bankruptcy court to judge the credibility of
28 witnesses. Rule 8013; Price v. Lehtinen (In re Lehtinen), 332

1 B.R. 404, 411 (9th Cir. BAP 2005).

2 The bankruptcy court's determination of a lack of good faith
3 reliance is supported by the record. Perrine falsely represented
4 on Schedule B that he did not own an interest in a trust and that
5 he did not own stock in a corporation. Perrine later admitted
6 that he did own a contingent or noncontingent interest in the
7 Perrine Trust as of the bankruptcy petition date and that he was
8 required to disclose any interest on Schedule B. In his
9 Statement of Financial Affairs, Perrine falsely represented that
10 he had not transferred any property within one year of filing
11 (other than in the ordinary course of business). Perrine falsely
12 represented that he paid \$3,000 to Catanzarite on January 14,
13 2005, and failed to disclose that he had instead transferred the
14 Oregon Property to Catanzarite on that date for a stipulated
15 value of \$30,000.

16 Perrine never filed an amended Schedule B that disclosed the
17 transfer of the Oregon Property to Catanzarite. In Schedules I
18 and J, he represented that he had no income or expenses. On
19 Schedule J, he identified his wife as Vicki Martinez, even though
20 she had not used that name since her first marriage. No
21 explanation for this discrepancy was provided. He also disclosed
22 on Schedule I that she had no income, only to later file an
23 amended Schedule I after revealing at a meeting of creditors that
24 she was employed as Perrine Electric's business manager. The
25 bankruptcy court found that at the meetings of creditors, Perrine
26 inaccurately testified that the only asset of the Perrine Trust
27 was the La Habra Property when the trust's assets at its
28 inception also included the Oregon Property, 50 shares of stock

1 in Perrine Electric, and the pension at Schwab. The bankruptcy
2 court also found that Perrine inaccurately testified that Vicki
3 Perrine was on title to the La Habra Property, when it was
4 actually his separate property until sold by the Perrine Trust.

5 Perrine made several substantial omissions and misstatements
6 in his schedules and Statement of Financial Affairs and at the
7 meetings of creditors. Perrine's explanations were not
8 convincing to the bankruptcy court, and he failed to correct the
9 deficiencies when given the opportunity. Although counsel may
10 have been apprised of the facts surrounding these assets, based
11 on the extent and nature of the omissions and misstatements made,
12 Perrine cannot defer responsibility. Perrine signed the
13 statements under penalty of perjury and provided testimony at the
14 meetings of creditors under oath. The evidence establishes that
15 Perrine knowingly and fraudulently made material and false oaths.
16 Any reliance on the advice of counsel was not in good faith.
17 Perrine has not shown clear error, and the bankruptcy court
18 properly denied his discharge under § 727(a)(4)(A).

19 VI

20 CONCLUSION

21 The Panel AFFIRMS the bankruptcy court's judgment denying
22 Perrine's discharge under § 727(a)(2)(A) and under
23 § 727(a)(4)(A).
24
25
26
27
28