

MAR 17 2006

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NOT FOR PUBLICATION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

6	In re:	)	BAP No.	SC 05-1345-PaMaS
		)		
7	DAVID KIM and CALMA L. KIM,	)	Bk. No.	04-09892
		)		
8	Debtors.	)	Adv. No.	05-90027
		)		
9	_____	)		
		)		
10	DAVID KIM and CALMA L. KIM,	)		
		)		
11	Appellants,	)		
		)		
11	v.	)	<b>MEMORANDUM</b> <sup>1</sup>	
		)		
12	CARL MICHEL and SYDNE MICHEL,	)		
		)		
13	Appellees.	)		
		)		
14	_____	)		

Argued and Submitted on February 24, 2006  
at San Diego, California

Filed - March 17, 2006

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

Honorable John J. Hargrove, Bankruptcy Judge, Presiding.

\_\_\_\_\_  
Before: PAPPAS, MARLAR and SMITH, Bankruptcy Judges.

<sup>1</sup> This disposition is not appropriate for publication and may not be cited except when relevant under the doctrine of law of the case or the rules of res judicata, including issue and claim preclusion. See 9th Cir. BAP Rule 8013-1.

1 Debtors David Kim and Calma L. Kim ("Kims") appeal a final  
2 order of the bankruptcy court granting summary judgment in favor  
3 of creditors Carl Michel and Sydne Michel ("Michels") determining  
4 that a judgment debt is excepted from discharge in Kims'  
5 bankruptcy case under §§ 523(a)(2)(A) and (a)(6).<sup>2</sup> We AFFIRM.

6 **FACTS**

7 In July 2000, Kims sold their residence in Palos Verdes  
8 Peninsula, California, to Michels for \$895,000. As part of the  
9 transaction, Kims signed and delivered a Real Estate Transfer  
10 Disclosure Form ("RTDS") to Michels. In the RTDS, Kims  
11 represented that they had no knowledge of: improvements  
12 constructed on the property without permits; soil problems or  
13 easements on the property; a homeowners' association; or cracks  
14 to the interior or exterior of the home.<sup>3</sup>

15 After Michels took possession of the property, numerous  
16 cracks in the ceiling and walls of the home appeared. Upon  
17 further investigation, Michels discovered, among other things,  
18 that: the property was constructed on adobe soil which, from time  
19 to time, contracted or expanded based on the amount of moisture  
20 present in the soil; on at least two occasions, Kims had  
21 experienced cracks in the house which they had patched; Kims had

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22  
23 <sup>2</sup> Unless otherwise indicated, all chapter, section, and  
24 rule references are to the Bankruptcy Code, 11 U.S.C. §§ 101-  
25 1330 and to the Federal Rules of Bankruptcy Procedure, Rules  
26 1001-9036, prior to the effective date of the Bankruptcy Abuse  
Prevention and Consumer Protection Act of 2005 ("BAPCA"), Pub.  
L. 109-8, 119 Stat. 23 (Apr. 20, 2005)..

27 <sup>3</sup> While not an issue here, Kims did disclose there were  
28 cracks in the driveway and that a floor in one of the bedrooms  
was uneven.

1 replaced a balcony without obtaining a permit; the property was  
2 subject to a homeowners' association; there was an easement along  
3 the rear of the property that was used as a horse trail.

4 Moreover, Michels learned that before the sale of the property,  
5 Kims had consulted a real estate broker, Michael Fitzpatrick, who  
6 gave them a list of various problems, including the cracking,  
7 that must be disclosed if the property were to be sold. However,  
8 this list was not provided to the broker whom Kims ultimately  
9 retained to list the property.

10 In 2001, as provided in the parties' contract of sale,  
11 Michels demanded arbitration, before the American Arbitration  
12 Association ("AAA"), of the claims they asserted against Kims  
13 which arose out of the sale. An attorney was selected to serve  
14 as arbitrator. Michels alleged four separate claims against Kims  
15 in the arbitration action: (1) breach of contract; (2) violation  
16 of § 1102 of the California Civil Code;<sup>4</sup> (3) fraudulent  
17 concealment of defects; and (4) negligent non-disclosure of  
18 defects.

19 The arbitration was bifurcated into a liability phase and a  
20 damages phase. To address the issues raised in the liability  
21 phase hearing, the arbitrator issued an Interim Memorandum  
22 Decision. In his written decision, the arbitrator concluded  
23 that Kims were liable to Michels under both California Civil Code  
24 § 1102 and common law for damages to compensate for Kims' failure  
25 to disclose the history of cracks in the house, as well as for  
26 any damages attributable to Kims' failure to disclose that the

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27  
28 <sup>4</sup> CAL. CIV. CODE § 1102 prescribes the written disclosure  
requirements in connection with the sale of real estate.

1 property was subject to a homeowners' association. However, the  
2 arbitrator decided that there was no breach of contract and that  
3 Kims were not liable for failure to disclose the lack of a permit  
4 for the constructed deck or for the easement.

5 After another hearing, the results of the damage phase of  
6 the arbitration were outlined in the arbitrator's Memorandum of  
7 Decision in Support of the Award for Damages of June 14, 2004,  
8 and the Award of Arbitrator of July 8, 2004. In these documents,  
9 the arbitrator concluded Michels should recover a total of  
10 \$501,284.95 from Kims, plus accruing interest. The damage award  
11 was computed as follows: (1) \$150,000 compensatory damages; (2)  
12 \$8,746.14 consequential damages; (3) \$58,783.58 arbitration  
13 costs; (4) \$234,057.50 attorneys' fees; (5) \$10,000 exemplary  
14 [punitive] damages; (6) \$39,698.63 in interest from 9/1/2000 to  
15 6/13/2004, plus \$28.78 per day until the award was reduced to  
16 judgment; and (7) AAA administrative fees.

17 Michels then filed a Petition to Confirm Arbitration in the  
18 Superior Court of Los Angeles County on July 22, 2004. The  
19 following items were attached to, and referenced in, the  
20 Petition: (1) Residential Purchase Agreement; (2) Interim Award  
21 and Interim Memorandum Decision of Arbitrator of March 10, 2004;  
22 (3) Award of Arbitrator and Memorandum Decision in Support of the  
23 Award of Damages of Arbitrator of July 8, 2004; and (4) a  
24 Declaration of Serge Tomassian, Esq., attorney for Michels, with  
25 accompanying Memorandum of Points and Authorities in support of  
26 petition to confirm arbitration award.

27 Kims did not object to confirmation of the arbitration  
28 award. A confirmation hearing was conducted by the state court

1 on July 28, 2004. After the hearing, the Superior Court  
2 confirmed the Award of Arbitrator "in all respects" and entered a  
3 Judgment on Arbitration Award (the "Arbitration Judgment") in  
4 favor of Michels and against Kims on October 15, 2004. No  
5 transcript of the hearing before the state court was provided in  
6 our record, nor did the state court issue an explanatory  
7 memorandum or other written statement of its findings of fact.  
8 Indeed, the Arbitration Judgment entered by the court notes that  
9 "no statement of decision [has] been requested by any party."  
10 Kims did not appeal the Arbitration Judgment.

11 Kims filed a chapter 7 bankruptcy petition on November 17,  
12 2004. They listed Michels as creditors in their schedules.  
13 Michels timely commenced an adversary proceeding against Kims,  
14 alleging that the debt represented by the Arbitration Judgment  
15 should be excepted from discharge under § 523(a)(2)(A) & (a)(6).  
16 Thereafter, Michels filed a motion for summary judgment, arguing  
17 that all necessary findings to establish their right to relief  
18 had been made in the arbitration and state court proceedings and,  
19 thus, by application of collateral estoppel or issue preclusion,  
20 they were entitled to judgment as a matter of law. Michels  
21 supported their motion by submission, *inter alia*, of certified  
22 copies of the Arbitration Judgment, the Arbitrator's Interim  
23 Memorandum Decision, the Memorandum of Decision in Support of  
24 Award for Damages, and the Award of Arbitrator. Kims opposed  
25 this motion, arguing that collateral estoppel should not be  
26 applied in this case because the state court's Arbitration  
27 Judgment contained no findings of fact, and that the arbitrator's  
28 findings set forth in his memoranda and the Award of Arbitration

1 were inadmissible in the adversary proceeding.

2 In a detailed Memorandum Decision ("Memorandum Decision"),  
3 the bankruptcy court rejected Kims' argument that issue  
4 preclusion could not be applied to the Arbitration Judgment  
5 because it did not contain express findings that Kims had engaged  
6 in fraud or willful and malicious conduct. The court reasoned  
7 that, in applying issue preclusion, the court must look at the  
8 entire record of the proceedings and cannot be limited to a  
9 review of the Arbitration Judgment in isolation. According to  
10 the bankruptcy court, it was therefore appropriate that the court  
11 consider the two memoranda and Award of Arbitrator issued by the  
12 arbitrator.

13 The bankruptcy court then determined that the arbitrator  
14 made extensive findings of fact in the Interim Memorandum  
15 Decision which showed that Kims' actions satisfied the elements  
16 of common law fraud:

17 The findings establish that [Kims] failed to  
18 disclose existing defects and failed to  
19 disclose that the property was subject to a  
20 [homeowners' association agreement]. The  
21 findings also establish that the concealment  
22 was done with the intent and knowledge of Mr.  
23 Kim. The findings further explain in great  
24 detail that [Michels'] reliance on Kim that  
25 there were no defects was justifiable.  
26 Finally, the arbitrator's findings establish  
27 that the damage to [Michels] was proximately  
28 caused by their reliance on Mr. Kim's  
statements.

24 The bankruptcy court concluded that the elements of proof  
25 required to except Michels' claim from discharge for fraud under  
26 § 523(a)(2)(A) are identical to those which the arbitrator found  
27 to exist in this case, that the issues raised in the adversary  
28 proceeding had been actually litigated and necessarily decided in

1 the arbitration proceedings, and that all remaining requirements  
2 for issue preclusion under California law had been satisfied.  
3 Therefore, the total amount awarded to Michels in the Arbitration  
4 Judgment was a nondischargeable debt.

5 The bankruptcy court also considered Michels' claim that the  
6 arbitration award was nondischargeable under § 523(a)(6). The  
7 court noted that the arbitrator had found the existence of a  
8 "sufficient pattern [of conduct] to conclude that the concealment  
9 of the prior cracks was done with the intent and knowledge of Mr.  
10 Kim . . . ." It also observed that the arbitrator had awarded  
11 Michels punitive damages because the "Kims intentionally failed  
12 to disclose the cracking problems to the buyers . . . ." The  
13 bankruptcy court concluded that these findings by the arbitrator  
14 were sufficient to establish that Kims had engaged in  
15 intentionally tortious conduct. As a result, the court  
16 concluded that all elements for issue preclusion were met and  
17 that Kims' debt from the Arbitration Judgment was also  
18 nondischargeable under § 523(a)(6).

19 The bankruptcy court granted Michels' motion for summary  
20 judgment in an Order dated August 8, 2005. Kims timely appealed  
21 on August 16, 2005.

#### 22 **JURISDICTION**

23 The bankruptcy court had jurisdiction via 28 U.S.C. §§ 1334  
24 and 157(b)(2)(I). We have jurisdiction under 28 U.S.C.  
25 § 158(a)(1).

#### 26 **ISSUE**

27 Whether the bankruptcy court erred in granting issue  
28 preclusive effect to a state court judgment confirming an

1 arbitration award when the findings of the arbitrator were not  
2 expressly incorporated in that judgment.

3 **STANDARD OF REVIEW**

4 A bankruptcy court's decision to grant summary judgment is  
5 reviewed de novo to assess whether there is a genuine issue of  
6 material fact and whether the moving party is entitled to judgment  
7 as a matter of law. Thrifty Oil Co. v. Bank of America Nat. Trust  
8 and Sav. Ass'n, 322 F.3d 1039, 1046 (9th Cir. 2003); Gertsch v.  
9 Johnson & Johnson (In re Gertsch), 237 B.R. 160, 165 (9th Cir. BAP  
10 1999).

11 We apply de novo review to the bankruptcy court's rulings  
12 regarding the application of res judicata, including claim and  
13 issue preclusion, as mixed questions of law and fact in which  
14 legal questions predominate. Robi v. Five Platters, Inc., 838 F.2d  
15 318, 321 (9th Cir. 1988); Khaligh v. Hadaegh (In Re Khaligh), BAP  
16 No. CC-05-1148, \_\_\_ B.R. \_\_\_\_ (9th Cir. BAP 2006); Alary Corp. v.  
17 Sims (In re Assoc. Vintage Group, Inc.), 283 B.R. 549, 554 (9th  
18 Cir. BAP 2002). Once it is determined that preclusion doctrines  
19 are applicable, the decision to apply them is left to the trial  
20 court's discretion. Robi, 838 F.2d at 321; George v. City of  
21 Morro Bay, Cal. (In re George), 318 B.R. 729, 732-33 (9th Cir. BAP  
22 2004), aff'd, 144 F. App'x 636 (9th Cir. 2005), cert. denied, 126  
23 S.Ct. 1068, 74 U.S.L.W. 3382 (2006). When state preclusion law  
24 controls, such discretion is exercised in accordance with state  
25 law. Gayden v. Nourbakhsh (In re Nourbakhsh), 67 F.3d 798, 800-01  
26 (9th Cir. 1995).



1 **DISCUSSION**

2 If a state court would give preclusive effect to a judgment  
3 rendered by another court of that state, then the Full Faith and  
4 Credit Act, 28 U.S.C. § 1738, imposes the same obligation on a  
5 federal court. McDonald v. City of W. Branch, 466 U.S. 284, 287  
6 (1984). Thus, Federal courts must afford a state court's  
7 judgment confirming an arbitration award the same preclusive  
8 effect as would occur in state court. Caldeira v. County of  
9 Kauai, 866 F.2d 1175, 1178 (9th Cir. 1989), cert. denied, 493 U.S.  
10 817 (1989).

11 This Panel recently engaged in a comprehensive review of the  
12 law applicable to affording preclusive effect to an arbitration  
13 award confirmed by a California state court in the context of a  
14 summary judgment entered by the bankruptcy court in a § 523(a)  
15 dischargability action. Khaligh, supra. There is no need to  
16 repeat that discussion here, other than to acknowledge that a  
17 bankruptcy court may properly apply issue preclusion to establish  
18 the grounds for an exception to discharge in bankruptcy based upon  
19 a California arbitration award, where the traditional elements for  
20 issue preclusion are satisfied,<sup>5</sup> and where the arbitration process

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21  
22 <sup>5</sup> As the California Supreme Court has summarized:

23 Traditionally, we have applied the [issue  
24 preclusion] doctrine only if several threshold  
25 requirements are fulfilled. First, the issue sought to  
26 be precluded from relitigation must be identical to  
27 that decided in a former proceeding. Second, this  
28 issue must have been actually litigated in the former  
proceeding. Third, it must have been necessarily  
decided in the former proceeding. Fourth, the decision  
in the former proceeding must be final and on the  
merits. Finally, the party against whom preclusion is

(continued...)

1 encompassed the "basic elements of adjudicatory procedure",  
2 including the opportunity for judicial review of adverse rulings.  
3 Khaligh, supra, slip opinion at 11-18. This arbitration  
4 proceeding appears to have afforded Kims the necessary  
5 adjudicatory procedures to justify binding them to the results of  
6 that process.<sup>6</sup>

7 We do not understand Kims to argue in this appeal that the

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9 <sup>5</sup>(...continued)  
10 sought must be the same as, or in privity with, the  
11 party in the former proceeding. ...

12 Even assuming all the threshold requirements are  
13 satisfied, however, our analysis is not at an end. We have  
14 repeatedly looked to the public policies underlying the  
15 doctrine before concluding that collateral estoppel should  
16 be applied in a particular setting. [Citations omitted.]  
17 Accordingly, the public policies underlying collateral  
18 estoppel - preservation of the integrity of the judicial  
19 system, promotion of judicial economy, and protection of  
20 litigants from harassment by vexatious litigation - strongly  
21 influence whether its application in a particular  
22 circumstance would be fair to the parties and constitutes  
23 sound judicial policy.

24 Lucido v. Superior Court, 51 Cal.3d 335, 338, 795 P.2d 1223, 1226  
25 (1990), cert. denied, 500 U.S. 920 (1990).

26 <sup>6</sup> As we noted in Khaligh:

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27 Parties to an arbitration, like parties to  
28 administrative hearings, are often afforded  
the opportunity for a hearing before an  
impartial and qualified officer, at which  
they may give formal recorded testimony under  
oath, cross-examine and compel the testimony  
of witnesses, and obtain a written statement  
of decision. When an arbitration has these  
attributes, it is not unjust to bind the  
parties to determinations made during the  
proceeding.

Khaligh, supra, slip opinion at 16, quoting Kelly v. Vons  
Companies, Inc., 67 Cal. App. 4th 1329, 1336-37 (Cal. Ct. App.  
1998).

1 arbitration award, and state court judgment confirming that award,  
2 fail in any respect to satisfy the elements for preclusive effect  
3 under the California cases. Instead, Kims contend that since the  
4 state court's Arbitration Judgment did not contain express  
5 findings of fact, or repeat those findings made by the arbitrator,  
6 that judgment cannot be relied upon by the bankruptcy court for  
7 issue preclusion purposes.

8         The bankruptcy court rejected Kims' narrow view that the  
9 bankruptcy court must look solely at the text of the Arbitration  
10 Judgment to determine whether to apply issue preclusion. Instead,  
11 the court determined that it should review the entire record of  
12 the prior proceeding, not just the judgment. We agree.

13         The bankruptcy court' decision to look to the entire record  
14 of the prior proceedings rather than just the Arbitration Judgment  
15 is consistent with case law in this circuit. For example, in In  
16 re Houton, the Ninth Circuit noted:

17                 This does not mean that the documents which  
18                 officially enshrine the state court  
19                 proceedings may not be considered by the  
20                 bankruptcy court as establishing the  
21                 dischargeability of a debt. What is required  
22                 is that the bankruptcy court consider all  
23                 relevant evidence, including the state court  
24                 proceedings, that is offered by the parties,  
25                 or requested by the court, and on the basis of  
26                 that evidence determine the  
27                 nondischargeability of judgment debts.

28 In re Houtman, 568 F.2d 651 (9th Cir. 1978). See also, In re  
Daley, 776 F.2d 834, 836-37 (9th Cir. 1985), cert. denied, 476  
U.S. 1159 (1986).

       Following Houtman, the courts of this and other circuits have  
insisted that bankruptcy courts review "the entire record, not  
just the judgment" in determining the issue preclusive effect of

1 prior state court judgments on nondischargeability in bankruptcy.  
2 In re Silva, 190 B.R. 889, 889 (9th Cir. BAP 1995) ("In order to  
3 properly apply the doctrine of collateral estoppel, a bankruptcy  
4 court must look at the entire record of the prior proceeding, not  
5 just the judgment."); Spillman v. Harley, 656 F.2d 224, 228 (6th  
6 Cir. 1981) ("entire record. . . not just the judgment"); In re  
7 Shuler, 722 F.2d 1253, 1257 (5th Cir. 1984), cert. denied, 469  
8 U.S. 817 (1984) (same); In re Latch, 820 F.2d 1163, 1167 (11th Cir.  
9 1987) (same). See also, 4 COLLIER ON BANKRUPTCY ¶ 523.12[5] (2005) ("The  
10 court called upon to determine whether the judgment is  
11 dischargeable should look to the entire record to determine the  
12 wrongful character of the act, for even the pleadings are not  
13 necessarily conclusive.").

14 Citing a decision of this Panel, the bankruptcy court  
15 correctly noted that

16 The party seeking to assert collateral  
17 estoppel has the burden of proving all the  
18 requisites for its application. To sustain  
19 this burden, the party must introduce a record  
sufficient to reveal the controlling facts and  
pinpoint the exact issues litigated in the  
prior action.

20 This statement is taken from In re Silva, 190 B.R. at 892  
21 (emphasis added). In the emphasized text, the Panel had in turn  
22 paraphrased the earlier ruling of the Ninth Circuit in United  
23 States v. Lasky: "It is not enough that the party introduce the  
24 decision of the prior court; rather, the party must introduce a  
25 sufficient record of the prior proceeding to enable the trial  
26 court to pinpoint the exact issues previously litigated." United  
27 States v. Lasky, 600 F.2d 765, 769 (9th Cir. 1978), cert. denied,  
28 444 U.S. 979 (1979).

1 As instructed by the case law, we conclude the bankruptcy  
2 court correctly reviewed the entire record submitted to the state  
3 court, including the memoranda and Award of Arbitrator, and not  
4 just the Arbitration Judgment, in determining whether the elements  
5 necessary to afford issue preclusive effect to the Arbitration  
6 Judgment were satisfied in the context of the dischargeability  
7 action.

8 Two flawed themes dominate Kims' attack on the bankruptcy  
9 court's decision to review the memoranda and Award of Arbitrator  
10 in its determination that issue preclusion applied and that the  
11 Arbitration Judgment is nondischargeable. First, Kims argue that  
12 the arbitrator's memoranda and the Award of Arbitrator, which  
13 contain the findings of fact and reasons for his decision, were  
14 not part of the record submitted to the Superior Court during the  
15 confirmation proceedings.<sup>7</sup> However, as shown by our record, this  
16 assertion is plainly incorrect. The Interim Memorandum Decision,  
17 the Award of Arbitrator and the Memorandum of Decision in Support  
18 of Award of Damages were attached, and explicitly incorporated by  
19 reference, as exhibits to the Petition to Confirm Arbitration,  
20 filed with the Los Angeles Superior Court on July 22, 2004.<sup>8</sup>  
21 Therefore, these documents were obviously before the state court  
22 as part of its record in the confirmation action.

23 \_\_\_\_\_

24 <sup>7</sup> This argument was presented in four different locations  
25 in Appellant's Opening Brief.

26 <sup>8</sup> In their Reply Brief, and at oral argument, Kims  
27 acknowledged their error and conceded that the Arbitrator's  
28 memoranda were attached to the Petition to Confirm Arbitration.  
Indeed, Kims' Reply Brief weakens their case because it seems to  
ignore their own arguments in their Opening Brief that the  
memoranda were not part of the record.

1 Kims' second contention is that the memoranda and Award of  
2 Arbitrator constitute inadmissible hearsay in the bankruptcy court  
3 adversary proceeding. At no point do Kims explain why these  
4 documents are inadmissible or hearsay. We also reject this  
5 argument.

6 The California Code of Civil Procedure requires that a  
7 petition to confirm an arbitration award "[s]et forth or have  
8 attached a copy of the award and the written opinion of the  
9 arbitrators, if any." CAL. CODE CIV. PROC. § 1285.4. Far from being  
10 inadmissible, by statute the memoranda and Award of Arbitrator in  
11 this case were required components of the record of the  
12 confirmation proceedings.

13 The Petition to Confirm Arbitration expressly incorporated  
14 the Interim Award and Interim Memorandum Decision attached as  
15 Exhibit 2, and the Award of Arbitrator and Memorandum of Decision  
16 attached as Exhibit 3 to the Petition. The copy of the petition,  
17 with its exhibits, which was submitted to the bankruptcy court on  
18 June 28, 2005, was certified by the Clerk of the Superior Court as  
19 full, true and correct copies of the originals on file in the  
20 Superior Court. As such, they are self-authenticating public  
21 records, and are admissible. FED. R. EVID. 902(4); 803(8). See  
22 also FED. R. EVID. 201 and Mullis v. U.S. Bankruptcy Court for Dist.  
23 of Nevada, 828 F.2d 1385, 1388, n. 9 (9th Cir. 1987) (allowing  
24 courts to take notice of the contents of documents in underlying  
25 court files).

26 Finally, Kims' argument that the state court did not make  
27 express findings of fact overlooks an important recitation in the  
28 arbitration Judgment. As noted, the Arbitration Judgment confirms

1 the Arbitrator's decisions and the Award of Arbitrator "in all  
2 respects." While we conclude the Arbitration Judgment can be  
3 preclusively applied in the dischargeability action even if it did  
4 not include "express" findings, one fair reading of this provision  
5 is that it indeed serves to incorporate the findings made in the  
6 decisions and Award in the state court's judgment.

7 In short, we think that the bankruptcy court acted properly  
8 in reviewing the entire record before the California Superior  
9 Court in exercising its discretion to apply the doctrine of issue  
10 preclusion in this action. That record included the arbitrator's  
11 memoranda and the Award of Arbitrator. When those documents are  
12 consulted, the bankruptcy court had an ample basis to conclude  
13 that sufficient findings were made during the arbitration to show  
14 the debt evidenced by the Arbitration Judgment was based upon an  
15 intentional fraud committed by Kims in the real estate  
16 transactions with Michels, and that the debt should be excepted  
17 from discharge under §§ 523(a)(2)(A) and (a)(6). See Cohen v. de  
18 la Cruz, 523 U.S. 213, 218 (1998) ("[O]nce it is established that  
19 specific money or property has been obtained by fraud, . . . 'any  
20 debt' arising therefrom is excepted from discharge."), cited in  
21 Roussos v. Michaelides (In re Roussos), 251 B.R. 86 (9th Cir. BAP  
22 2000).

23 **CONCLUSION**

24 The decision of the bankruptcy court is AFFIRMED.  
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28