

JUL 22 2013

SUSAN M SPRAUL, 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NOT FOR PUBLICATION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.	AZ-12-1544-TaAhJu
)		
BRETT GORDON PEKRUL,)	Bk. No.	11-22774-GBN
)		
Debtor.)		
_____)		
WEIMAR INVESTMENTS, INC.,)		
)		
Appellant,)		
)		
v.)	MEMORANDUM*	
)		
FIRST FINANCIAL BANK, N.A.,)		
)		
Appellee.)		
_____)		

Argued and Submitted on June 21, 2013
at Phoenix, Arizona

Filed - July 22, 2013

Appeal from the United States Bankruptcy Court
for the District of Arizona

Honorable George B. Nielsen, Jr., Bankruptcy Judge, Presiding

Appearances: Robert P. Bettinger argued for appellant Weimar Investments, Inc.; Andrew V. Hardenbrook of Snell & Wilmer LLP argued for appellee First Financial Bank, N.A.

Before: TAYLOR, AHART,** and JURY, Bankruptcy Judges.

* 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.

** The Honorable Alan M. Ahart, Bankruptcy Judge for the Central District of California, sitting by designation.

1 the transfer and Hammer's bankruptcy, and requested cancellation
2 of the foreclosure sale. First Financial immediately sought and
3 obtained relief from the automatic stay in Hammer's bankruptcy
4 case. A trustee's sale was re-scheduled for the following month.

5 ***Debtor's Chapter 13 Bankruptcy***

6 On August 9, 2011, Brett Gordon Pekrul ("Debtor") filed a
7 skeletal chapter 13 petition. On October 18, 2011, Weimar
8 recorded a Grant Deed transferring a 1% interest in the Property
9 to Debtor,² who thereafter added the "1/100th" interest in the
10 Property to his Schedule A. Once again, Weimar contacted the
11 trustee under the Deed of Trust and requested cancellation of the
12 trustee's sale. And, once again, First Financial sought and
13 obtained emergency stay relief.

14 ***Rule 2004 Orders and Subpoena***

15 As a result of Weimar's involvement in the Debtor's
16 bankruptcy case, First Financial sought and obtained an order
17 allowing a Rule 2004 examination of Weimar and requiring the
18 production of documents pursuant to Rule 2004 from Weimar
19 ("Rule 2004 Order"). The Rule 2004 Order established
20 December 23, 2011, as the deadline for Weimar to produce the
21 requested documents. First Financial's attorney subsequently
22 served Weimar with a subpoena based on the Rule 2004 Order
23 ("Subpoena").

24 At Weimar's request, First Financial informally extended the
25

26 ² Over the next five months, the Debtor amended his
27 Schedule A approximately 12 times. Each time, he added
28 additional real property based on an "undivided 1/100th" interest
therein.

1 deadline to produce the requested documents to January 6, 2012
2 and then to January 13, 2012. On January 23, 2012, ten days
3 after the second extension date, Weimar finally produced more
4 than 600 pages of documents to First Financial. After review,
5 however, First Financial deemed the production incomplete and so
6 advised Weimar. Weimar then requested a further extension of the
7 production deadline; First Financial agreed.

8 In connection with this extension, the parties formally
9 stipulated to an extension of the deadline and obtained a
10 bankruptcy court order approving their agreements ("Stipulation
11 Order" and, jointly with the Rule 2004 Order, "Orders"). The
12 Stipulation Order extended the deadline for production to
13 February 2, 2012. It further approved Weimar's agreed submission
14 to bankruptcy court jurisdiction and waiver of any objection to
15 the Rule 2004 Order or Subpoena. Once again, however, Weimar
16 failed to produce documents as required by the Stipulation Order.

17 At the subsequent Rule 2004 examination, First Financial
18 agreed yet again to extend the document production deadline. But
19 again, Weimar did not produce any additional documents.

20 In the background of these production issues, Weimar and
21 its President, Michael Kaplan ("Kaplan"), were the subjects of a
22 search and seizure warrant for premises in Tempe, Arizona. While
23 this was a distraction, the issues arose only after Weimar's
24 initial non-compliance.

25 ***Contempt Order***

26 Eventually, First Financial moved for an order: (1) holding
27 Weimar in contempt of court; (2) compelling the production of
28 documents; (3) imposing a per diem fine for its noncompliance;

1 and (4) awarding reasonable attorneys' fees and costs (the
2 "Contempt Motion").

3 At an initial hearing, Weimar's counsel insisted that
4 Kaplan, as Weimar's sole or principal shareholder, be allowed to
5 personally appear and defend and explained that Kaplan's recent
6 brain tumor diagnosis prevented an appearance at the current
7 hearing. He also discussed the ongoing criminal investigation
8 and asserted that Weimar/Kaplan had the right to assert their
9 respective Fifth Amendment rights. As a result of problems with
10 telephone reception for parties appearing telephonically, the
11 bankruptcy court continued the hearing.

12 At the continued hearing, Weimar raised a new argument,
13 alleging collusion between First Financial and law enforcement
14 agencies; it requested an evidentiary hearing. Weimar further
15 expanded on its Fifth Amendment privilege argument, asserting
16 that it applied because the information sought by First Financial
17 was personal in nature to Kaplan, rather than confined to
18 corporate documents. First Financial argued against these points
19 and, in particular, denied collusion with law enforcement
20 agencies.

21 At the conclusion of oral argument, the bankruptcy court
22 rejected Weimar's assertion of Fifth Amendment privilege based on
23 Weimar's waiver of any objections to the Rule 2004 Order pursuant
24 to the Stipulation Order and a determination that a corporate
25 entity was not entitled to assert that privilege. The bankruptcy
26 court also emphasized that the pending criminal investigation did
27 not automatically stay discovery proceedings in a bankruptcy
28 case. Thus, the bankruptcy court determined that Weimar

1 expressly violated the Rule 2004 Order, the Stipulation Order,
2 and the Subpoena. It also required Weimar to produce the
3 remaining requested documents by May 18, 2012, and continued the
4 hearing on the Contempt Motion for status. On May 11, 2012, the
5 bankruptcy court entered an order granting the Contempt Motion
6 ("Contempt Order").

7 During this time, the bankruptcy court also dismissed with
8 prejudice and closed the Debtor's bankruptcy case. But it
9 specifically retained jurisdiction over the Contempt Motion and
10 related matters.

11 ***Motion to Reconsider***

12 On the eve of a continued status hearing, Weimar filed a
13 motion for reconsideration ("Motion to Reconsider"), which it
14 supported with Kaplan's declaration. In these documents, Weimar
15 asserted for the first time that it timely produced approximately
16 600 pages to First Financial and that neither Weimar, Kaplan, nor
17 any employees possessed other documents responsive to the Orders.
18 It alleged that based on this compliance, contempt did not exist;
19 thus, it requested that the bankruptcy court reverse the Contempt
20 Order. Weimar also asserted that it was entitled to due process
21 rights, including a jury trial and a standard of proof beyond a
22 reasonable doubt. At the status hearing, the bankruptcy court
23 scheduled the matter for argument.

24 At the subsequent hearing, Weimar reasserted and expanded on
25 its new arguments. It attempted to explain its lapse in failing
26 to immediately advise of its alleged full compliance as a result
27 of a change in counsel. It further asserted that any delay was
28 inadvertent. When the bankruptcy court pointed out that Weimar,

1 as the client, was still responsible for informing First
2 Financial and the bankruptcy court of its compliance, Weimar
3 responded that Kaplan had a brain tumor and then a stroke, which
4 rendered him unavailable to counsel.

5 At the conclusion of arguments, the bankruptcy court orally
6 ruled and denied the Motion to Reconsider. Applying Civil
7 Rule 59(e), it held that grounds for reconsideration did not
8 exist. The bankruptcy court concluded that First Financial was
9 entitled to compensation. The bankruptcy court entered a minute
10 entry/order denying the Motion to Reconsider on July 17, 2012.

11 ***Fees Award***

12 First Financial next submitted an Application for Attorneys'
13 Fees and requested an award of \$24,135 for reasonable attorneys'
14 fees and costs incurred in seeking Weimar's compliance with the
15 Orders. Attached was an affidavit from First Financial's counsel
16 and an itemized report of legal services provided with respect to
17 the Rule 2004 Order and related proceedings. First Financial's
18 counsel stated that the itemized legal services were performed by
19 counsel and were actually, reasonably, and necessarily incurred
20 expenses.

21 At the final hearing on October 10, 2012, Weimar argued that
22 the fees requested were excessive. In response, the bankruptcy
23 court remarked that while the fees tilted toward the higher
24 range, the matters were not necessarily routine, and, therefore,
25 the fees were reasonable. It, thus, allowed the requested fees.

26 On October 23, 2012, the bankruptcy court entered an order
27 granting the application ("Fees Award"). Weimar timely appealed.

1 **JURISDICTION**

2 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.
3 §§ 1334 and 157(b)(1) and (b)(2)(A). As discussed below, we have
4 jurisdiction under 28 U.S.C. § 158.

5 **ISSUES**

6 Did the bankruptcy court err in: (1) finding Weimar in civil
7 contempt; (2) denying the Motion to Reconsider; or (3) awarding
8 attorneys' fees to First Financial?

9 **STANDARD OF REVIEW**

10 We review the following decisions of the bankruptcy court
11 for abuse of discretion: imposition of civil contempt, denial of
12 a motion for reconsideration, and sanctions for civil contempt
13 under § 105(a). Knupfer v. Lindblade (In re Dyer), 322 F.3d
14 1178, 1191 (9th Cir. 2003) (imposing civil contempt); Fadel v.
15 DCB United LLC (In re Fadel), 492 B.R. 1, 9 (9th Cir. BAP 2013)
16 (denying motion for reconsideration); Rosales v. Wallace
17 (In re Wallace), 490 B.R. 898, 904-05 (9th Cir. BAP 2013)
18 (awarding sanctions for civil contempt). The underlying factual
19 findings are reviewed for clear error. In re Dyer, 322 F.3d at
20 1191.

21 An evaluation of abuse of discretion is a two-prong test;
22 first, we determine de novo whether the bankruptcy court
23 identified the correct legal rule for application. See United
24 States v. Hinkson, 585 F.3d 1247, 1261-62 (9th Cir. 2009)
25 (en banc). If so, we review whether the bankruptcy court's
26 application of the legal rule was clearly erroneous; we will
27 affirm unless its findings were illogical, implausible, or
28 without support in the record. See id. at 1262.

1 We may affirm on any basis on the record. Caviata Attached
2 Homes, LLC v. U.S. Bank, N.A. (In re Caviata Attached Homes,
3 LLC), 481 B.R. 34, 44 (9th Cir. BAP 2012).

4 DISCUSSION

5 **A. The scope of the appeal.**

6 Following Weimar's notice of appeal, First Financial moved
7 to dismiss the appeal as untimely to the extent Weimar sought
8 review of the Contempt Order or denial of the Motion to
9 Reconsider. A motions panel denied this motion, as it determined
10 that the Contempt Order was not final and appealable until entry
11 of an order awarding attorneys' fees as a sanction. See
12 Weyerhaeuser Co. v. Int'l Longshoremen's & Warehousemen's Union,
13 733 F.2d 645, 645 (9th Cir. 1984); Donovan v. Mazzola, 761 F.2d
14 1411, 1417 (9th Cir. 1985). It further determined that the
15 Contempt Order and denial of the Motion to Reconsider merged into
16 the final Fees Award and, thus, are subject to this appeal. See
17 Am. Ironworks & Erectors, Inc. v. N. Am. Const. Corp., 248 F.3d
18 892, 898-99 (9th Cir. 2001).

19 We agree with the motions panel and conclude that the scope
20 of this appeal includes the Contempt Order and the denial of the
21 Motion to Reconsider.

22 **B. The bankruptcy court did not err in finding Weimar in civil** 23 **contempt.**

24 The bankruptcy court found Weimar in contempt based on the
25 latter's failure to comply with the Orders and Subpoena. First
26 Financial's Contempt Motion requested relief pursuant to § 105(a)
27 which provides bankruptcy courts with civil contempt authority.
28 In re Dyer, 322 F.3d at 1192. We agree that the bankruptcy court

1 granted Financial First's requested relief pursuant to this
2 authority, rather than as a discovery sanction.

3 In determining whether a party is in civil contempt, the
4 movant bears the burden of showing by clear and convincing
5 evidence that the contemnor violated a specific and definite
6 order of the bankruptcy court. Id. at 1190-91. If the movant
7 meets this showing, the burden shifts to the contemnor to explain
8 its inability to comply. In re Wallace, 490 B.R. at 905. A
9 party who fails to take reasonable steps within its power to
10 insure compliance with a bankruptcy court's order in turn fails
11 to act as ordered by the court. Id.

12 The record adequately supports the bankruptcy court's
13 findings. The bankruptcy court entered two orders: the Rule 2004
14 Order and the Stipulation Order. Both were specific and definite
15 orders of the bankruptcy court. First Financial's counsel served
16 the Subpoena based on the bankruptcy court's Rule 2004 Order.
17 Weimar received extensions - four times - of the deadline to
18 produce the requested documents. Weimar never denied that it
19 violated the bankruptcy court's specific orders by failing to
20 timely produce documents. Instead, it belatedly tried to defend
21 itself by asserting objections - objections explicitly waived in
22 the Stipulation Order.

23 Weimar's argument that a criminal investigation involving
24 Kaplan armed it with a good faith basis to essentially disregard
25 the Orders and the Subpoena and that the Contempt Motion
26 implicated various constitutional rights (including its right to
27 due process and the privilege against self-incrimination, even if
28 not waived) lack merit.

1 First, the criminal investigation came to light only after
2 Weimar's initial act of contempt.

3 Second, the Fifth Amendment privilege against self-
4 incrimination does not extend to corporate entities in civil
5 proceedings. See Braswell v. United States, 487 U.S. 99, 105
6 (1988) (privilege against self incrimination protects only
7 natural persons, not corporations). By its own terms, the
8 Rule 2004 Order compelled the production of documents by Weimar,
9 not Kaplan in his personal capacity.

10 Third, due process in a civil contempt proceeding solely
11 requires adequate notice and an opportunity to be heard. See
12 Lasar v. Ford Motor Co., 399 F.3d 1101, 1110 (9th Cir. 2005).
13 Contrary to Weimar's arguments, a party possibly subject to civil
14 contempt is "not entitled to the full panoply of procedural
15 protections that are normally reserved for defendants charged
16 with a criminal offense, such as an independent prosecutor, proof
17 beyond a reasonable doubt, and a jury trial." Id. It is beyond
18 dispute here both that Weimar had notice of the contempt hearing
19 and that the bankruptcy court provided it with several
20 opportunities to appear and be heard.

21 Fourth, a criminal investigation does not stay a civil
22 proceeding. See Fed. Sav. & Loan Ins. Corp. v. Molinaro,
23 889 F.2d 899, 902 (9th Cir. 1989) (no constitutional right to a
24 stay of civil proceedings pending the disposition of a parallel
25 criminal proceeding). To the extent a party desires such a stay,
26 it must affirmatively seek and obtain such relief. See id. But
27 a party may never unilaterally decide that it simply will not
28 comply with a court order.

1 Weimar also alleges that the bankruptcy court's
2 characterizations of the criminal investigation and its failure
3 to conduct an evidentiary hearing on the relationship between
4 First Financial and law enforcement agencies were in error. We
5 disagree. While Kaplan is Weimar's president, Kaplan and Weimar
6 are not synonymous entities. Similarly, Weimar's assertions as
7 to an alleged conspiracy between First Financial and law
8 enforcement agencies are irrelevant, as they do not justify
9 Weimar's complete disregard of a direct court order.

10 Finally, the record shows that Weimar's failure to timely
11 produce documents pursuant to the Orders preceded Kaplan's
12 illness by three or four months. Similarly, the criminal
13 investigation surfaced approximately three months after entry of
14 the Rule 2004 Order. Thus, these alleged excuses for delay are
15 not adequate to excuse Weimar's contempt.

16 In sum, Weimar was subject to the Rule 2004 Order, the
17 Stipulation Order, and the Subpoena. It sought and obtained two
18 informal extensions of the Rule 2004 Order, then belatedly
19 produced documents to First Financial. When First Financial
20 challenged the completeness of this production, Weimar requested
21 yet another extension and agreed to the Stipulation Order. At a
22 hearing, the bankruptcy court again ordered Weimar to produce
23 additional documents on or before May 18, 2012. Weimar again
24 ignored the deadline established by the bankruptcy court.

25 On this record, the bankruptcy court's findings were not
26 illogical, implausible, or without support from the record.
27 Therefore, based on the evidence before it, the bankruptcy court
28 did not abuse its discretion in finding Weimar in civil contempt.

1 **C. The bankruptcy court did not err in denying the Motion to**
2 **Reconsider.**

3 Weimar also asserts that the bankruptcy court erred in
4 denying its Motion to Reconsider. A court treats a "motion for
5 reconsideration" as a motion to alter or amend a judgment or
6 order under Civil Rule 59(e) (incorporated into bankruptcy cases
7 by Rule 9023), if filed within 14³ days of entry of the order.
8 See Am. Ironworks & Erectors, Inc., 248 F.3d at 898-99.

9 Otherwise, the bankruptcy court treats the motion as one for
10 relief from a judgment or order under Civil Rule 60(b)
11 (incorporated into bankruptcy cases by Rule 9024). Id.

12 Here, Weimar moved for reconsideration exactly one month
13 after the bankruptcy court entered the Contempt Order. Thus, the
14 Motion to Reconsider was subject to Civil Rule 60(b). The
15 bankruptcy court, however, referred to Civil Rule 59(e) as the
16 basis for denial. Consequently, the bankruptcy court did not
17 apply the correct legal standard. We conclude, however, that
18 this error was harmless; there was no basis for reconsideration
19 under either of Civil Rules 59(e) or 60(b). See, e.g., Fed. R.
20 Civ. P. 61 (incorporated into bankruptcy proceedings by
21 Rule 9005).

22 A court correctly denies a motion for reconsideration where
23 the movant merely rehashes arguments already presented or asserts
24 additional theories that could have been argued in connection
25 with the initial determination. See In re Fadel, 492 B.R. at 18.

27 ³ Although Civil Rule 59(e) provides for 28 days, Rule 9023
28 expressly limits the timing to 14 days in bankruptcy cases.

1 The grounds for reconsideration under Civil Rule 60(b) are
2 limited to six identified grounds for relief, including mistake.
3 See Fed. R. Civ. P. 60(b)(1)-(6). For the purposes of Civil
4 Rule 60(b)(1), mistake generally entails "circumstance[s] where
5 there is some reason for confusion or misunderstanding by the
6 parties." In re Walker, 332 B.R. 820, 829 (Bankr. D. Nev. 2005);
7 see also Latshaw v. Trainer Wortham & Co., Inc., 452 F.3d 1097,
8 1101 (9th Cir. 2006) (party is not "released from a poor
9 litigation decision made because of inaccurate information or
10 advice").

11 Weimar predominantly based its request for reconsideration
12 on its alleged mistake in failing to understand and communicate
13 that the initial (untimely) production was complete. The
14 bankruptcy court found that Weimar bore responsibility for
15 informing its counsel that it provided all the documents
16 responsive to the Orders and Subpoena. The bankruptcy court
17 could not comprehend, based on the evidence before it, how Weimar
18 only belatedly discovered that it had produced all of the
19 responsive documents. It expressly stated that Weimar's own
20 actions (or inaction) resulted in the finding of contempt and,
21 thus, that Weimar failed to establish that reconsideration was
22 warranted.

23 The substance of the bankruptcy court's ruling supports
24 denial of reconsideration based on "mistake" under Civil
25 Rule 60(b)(1). Implicit in its ruling is its disbelief that
26 Weimar's belated assertion resulted from legitimate confusion or
27 misunderstanding prior to the initial hearing. The bankruptcy
28 court did not err in denying reconsideration where Weimar had the

1 ability to raise the issue in its initial opposition. See
2 In re Fadel, 492 B.R. at 18.

3 Further, Weimar's alleged mistake is an inadequate basis for
4 reconsideration even if newly discovered. This mistake never
5 explains why the initial document production was late (and
6 consequently, in clear violation of the Orders).

7 Finally, the bankruptcy court did not err in disregarding
8 this basis for reconsideration where the record is replete with
9 instances of Weimar's delay and actions that are inconsistent
10 with its subsequent position. Weimar failed to respond to the
11 first scheduled deadline under the Rule 2004 Order and Subpoena;
12 it was ten days late in responding to the second informally
13 established deadline; it never responded to the third scheduled
14 deadline under the Stipulation Order or the fourth informally
15 established deadline; and it failed to respond by the May 18,
16 2012 deadline, notwithstanding the bankruptcy court's express
17 instruction at the May 4, 2012 hearing.

18 Weimar continuously violated the Orders. Its inaction
19 remains unexplained, and its "mistake" as to the scope of the
20 initial production, even if legitimate, was not objectively
21 reasonable and resulted in litigation decisions that wasted
22 judicial resources, harmed First Financial, and compounded the
23 existing contempt. The bankruptcy court's reasoning, even if
24 erroneously based on Civil Rule 59, supports the conclusion that
25 Weimar's "mistake" does not justify relief from the Contempt
26 Order under Civil Rule 60(b)(1).

27 In argument in connection with reconsideration, Weimar also
28 raised for the first time the assertion that its retention of new

1 counsel caused or contributed to its failure to timely explain
2 that the initial production was complete. The bankruptcy court
3 did not err in rejecting this excuse. Weimar obtained new
4 counsel approximately two months after entry of the Rule 2004
5 Order.⁴ In other words, these events all followed the Rule 2004
6 Order production date by several months and, thus, fail to
7 adequately explain Weimar's initial untimely production, its
8 subsequent failures to produce documents, or its initial
9 admissions that additional documents existed.

10 On appeal, it also now argues that a prior counsel's inept
11 representation constituted excusable neglect under Civil
12 Rule 60(b)(1). This argument was not raised below, and, thus, we
13 will not consider it on appeal. See Samson v. W. Capital
14 Partners, LLC (In re Blixseth), 684 F.3d 865, 872 n.12 (9th Cir.
15 2012) (appellate court may decline to address argument not raised
16 before bankruptcy court) (citation omitted). Similarly, we
17 reject its other arguments raised only on appeal in connection
18 with reconsideration. Finally, we also reject its arguments to
19 the extent they merely regurgitate arguments already made in
20 connection with the Contempt Motion. See In re Fadel, 492 B.R.

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23 ⁴ Moreover, to the extent Weimar argues that its counsel's
24 "mistakes" are to blame, its argument is similarly unavailing.
25 In Latshaw, the Ninth Circuit stated that, "[f]or purposes of
26 [Civil Rule 60](b)(1), parties [are] bound by and accountable for
27 the deliberate actions of themselves and their chosen counsel.
28 This includes not only an innocent, albeit careless or negligent,
attorney mistake, but also intentional attorney misconduct. Such
mistakes are more appropriately addressed through malpractice
claims." 452 F.3d at 1101. Thus, Weimar cannot now contend that
its counsel's acts somehow constituted "mistake."

1 at 18.

2 We conclude that the substance of the bankruptcy court's
3 ruling supports denial of reconsideration under Civil
4 Rule 60(b)(1). Thus, the bankruptcy court did not abuse its
5 discretion in denying Weimar's Motion to Reconsider.

6 **D. The bankruptcy court did not err in awarding attorneys' fees
7 based on Weimar's contempt.**

8 Finally, Weimar argues that the bankruptcy court erred in
9 awarding attorneys' fees pursuant to the Contempt Order.

10 Sanctions for civil contempt may be imposed based on one or
11 both of the following: (1) to compel or coerce obedience with
12 respect to a court order; or (2) to compensate the opposing party
13 for damages resulting from the contemnor's noncompliance.

14 Shuffler v. Heritage Bank, 720 F.2d 1141, 1147 (9th Cir. 1983);
15 see also In re Dyer, 322 F.3d at 1195 ("[A]ttorneys' fees are an
16 appropriate component of a civil contempt award.").

17 Here, the bankruptcy court awarded First Financial
18 attorneys' fees in the amount of \$24,135. Based on the evidence
19 before it, the bankruptcy court found that the fees requested
20 were reasonable. In doing so, it considered the amount of the
21 fees requested and the scope of work as reflected in counsel's
22 timesheets. It also noted that Weimar filed an untimely
23 opposition and failed to present a specific, cognizable objection
24 to the fee application. On this record, the bankruptcy court's
25 findings were not illogical, implausible, or without support from
26 the record. Thus, it did not abuse its discretion in awarding
27 the fees as compensatory damages.

CONCLUSION

Based on the foregoing, we AFFIRM.

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