

SEP 05 2013

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

NOT FOR PUBLICATION

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES BANKRUPTCY APPELLATE PANEL  
OF THE NINTH CIRCUIT

In re:	)	BAP Nos.	NV-12-1643-KiCoD
	)		NV-13-1049-KiCoD
SUSAN GOODMAN,	)		(Consolidated)
	)		
Debtor.	)	Bk. No.	08-19036-MN
_____	)		
	)		
RANDOLPH H. GOLDBERG,	)		
	)		
Appellant,	)		
	)		
v.	)	<b>M E M O R A N D U M</b> <sup>1</sup>	
	)		
SUSAN GOODMAN,	)		
	)		
Appellee.	)		
_____	)		

Argued and Submitted on July 19, 2013,  
at Las Vegas, Nevada

Filed - September 5, 2013

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

Honorable Mike K. Nakagawa, Bankruptcy Judge, Presiding

Appearances: Christopher Burke argued for appellant Randolph H. Goldberg; Jeffrey P. Aylward argued for appellee Susan Goodman.

Before: KIRSCHER, COLLINS<sup>2</sup> and DUNN, Bankruptcy Judges.

<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.

<sup>2</sup> Hon. Daniel P. Collins, Bankruptcy Judge for the District of Arizona, sitting by designation.

1 Appellant, Randolph Goldberg, Esq. ("Goldberg"), appeals the  
2 bankruptcy court's order imposing sanctions with respect to his  
3 representation of debtor, Susan Goodman ("Debtor"). Goldberg also  
4 appeals the related order awarding Debtor her attorney's fees. We  
5 AFFIRM.

## 6 I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

### 7 A. Events leading to the motion for sanctions

8 Goldberg runs a high-volume consumer bankruptcy practice in  
9 Las Vegas, Nevada, conducting approximately 250 consultations each  
10 week. After seeing a TV ad for Goldberg's bankruptcy services,  
11 Debtor met with Goldberg in May 2008, returning to his office in  
12 August 2008 to retain him. Goldberg filed Debtor's chapter 13<sup>3</sup>  
13 petition on August 12, 2008, and the matter was assigned to  
14 chapter 13 trustee, Rick Yarnall ("Trustee").

15 Debtor's petition did not include the required certificate  
16 showing her completion of credit counseling, resulting in a notice  
17 of Incomplete and/or Deficient Filing sent to both Goldberg and  
18 Debtor on August 13, 2008. On August 19, 2008, Goldberg filed the  
19 required certificate on behalf of Debtor ("CC Certificate"),  
20 indicating that she had completed credit counseling on August 11,  
21 2008, at 5:29 p.m. EST.

22 Significant disagreement exists between the parties regarding  
23 what was discussed, what actions were taken, and what documents  
24 were signed at their initial meeting in May ("Meeting 1") and at  
25 their subsequent meeting (the "Retaining Meeting") in August. At  
26

---

27 <sup>3</sup> Unless specified otherwise, all chapter, code and rule  
28 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and  
the Federal Rules of Bankruptcy Procedure, Rules 1001-9037.

1 Meeting 1, Debtor, accompanied by her former husband, Lonnie  
2 Goodman ("Lonnie"), appeared at Goldberg's office with various  
3 bills and receipts. Debtor testified that after she arrived, she  
4 went into a room and completed a small packet given to her by a  
5 woman at the front desk, requesting detailed information about her  
6 debts and creditors. After she completed the packet, Debtor  
7 testified that she and Lonnie met briefly with Goldberg. Goldberg  
8 discussed her debts, told her not to pay anyone for three months,  
9 and that the charge for representing her would be \$700 – a reduced  
10 amount from the initial quote, because she had referred some  
11 clients to him. Debtor testified that she did not pay any money  
12 to Goldberg or sign a retainer agreement or any other documents at  
13 Meeting 1.

14 Debtor testified her second meeting with Goldberg, the  
15 Retaining Meeting, was in early or mid-August. She walked into  
16 Goldberg's office, paid the woman and asked to speak to Goldberg  
17 about a "loan remodification" – something she had just learned  
18 about. Debtor testified she was unable to sign any documents at  
19 this meeting because Goldberg was in a foul mood and threw her  
20 out. Although at some points in her testimony Debtor stated she  
21 had not signed any documents, Debtor also testified she signed a  
22 couple of pages when she was given the packet at Meeting 1.  
23 Additionally, Debtor could not describe precisely what was in the  
24 packet, but testified she was certain it did not contain an IRS  
25 Power of Attorney Form 2848 ("2848 POA").<sup>4</sup> Debtor was also

26

---

27 <sup>4</sup> IRS Form 2848, Power of Attorney and Declaration of  
28 Representative, is used to authorize another individual to  
(continued...)

1 certain she had not completed a credit counseling class either  
2 online or by telephone. Further, Debtor testified the Retaining  
3 Meeting was the last time she had contact with Goldberg; all  
4 dealings thereafter were with his staff.<sup>5</sup>

5  
6 \_\_\_\_\_  
7 <sup>4</sup>(...continued)

8 represent you before the IRS. The 2848 POA (Rev. December 1997)  
9 admitted by the bankruptcy court states, in relevant part:

10 **Acts authorized.** The representatives are authorized to  
11 receive and inspect confidential tax information and to  
12 perform any and all acts that I(we) can perform with respect  
13 to the tax matters described on line 3, for example, the  
14 authority to sign any agreements, consents, or other  
15 documents. The authority does not include the power to  
16 receive refund checks (see line 6 below), the power to  
17 substitute another representative unless specifically added  
18 below, or the power to sign certain returns.

19 The instructions for IRS Form 2848 (Rev. June 2008) admitted  
20 by the bankruptcy court provide:

21 **Authorizing your representative.**

22 Write a statement on line 5 that you are authorizing your  
23 representative to sign your income tax pursuant to  
24 Regulations section 1.6012-1(a)(5) by reason of [enter the  
25 specific reason listed under (a), (b), or (c) under Authority  
26 to Sign your Return].

27 **Authority to sign your return.**

28 Regulations section 1.6012-1(a)(5) permits another person to  
sign a return for you only in the following circumstances:

- 29 (a) Disease or injury,
- 30 (b) Continuous absence from the United States (including  
31 Puerto Rico), for a period of at least 60 days prior to the  
32 date required by law for filing the return, or
- 33 (c) Specific permission is requested of and granted by the  
34 IRS for other good cause.

35 Authority to sign your income tax return may be granted to  
36 (1) your representative or (2) an agent (a person other than  
37 your representative).

38 <sup>5</sup> Debtor testified that after Goldberg yelled at her at the  
Retaining Meeting, she refused to go back to his office because  
she was too embarrassed. Instead, she sent Lonnie. Lonnie  
testified that he visited Goldberg's office between ten and  
fifteen times. Lonnie testified that he never signed Debtor's  
name on any documents, nor did he authorize Goldberg or anyone in  
Goldberg's office to do anything on behalf of Debtor.

1           Because Lonnie accompanied Debtor each time she went to  
2 Goldberg's office, he was present at both Meeting 1 and the  
3 Retaining Meeting. Lonnie testified that the first meeting was in  
4 May, and that he reviewed each page of the questionnaire filled  
5 out by Debtor. Lonnie further stated that the packet did not  
6 contain a 2848 POA form, or a form authorizing any request for a  
7 credit report, or any document allowing another party to sign  
8 documents on Debtor's behalf. Lonnie stated that the  
9 questionnaire was the only thing Debtor signed.

10           At a later hearing, Lonnie testified he was "absolutely  
11 positive" the first meeting occurred on August 11th, not May or  
12 June, and the second meeting was in October when Goldberg informed  
13 Debtor it would cost an additional \$1,000 for a loan modification.  
14 Lonnie testified the packet was given to Debtor at the Retaining  
15 Meeting, not Meeting 1, and that he and Debtor were alone in a  
16 conference room when Debtor completed it. Lonnie also testified  
17 that no one asked them questions while working on a computer, nor  
18 were they ever in front of a computer.

19           When asked about his meetings with Debtor, Goldberg could not  
20 remember any specifics due to his 250 consultations a week, and he  
21 admitted that he had no personal knowledge of Debtor signing the  
22 disputed documents. Nonetheless, Goldberg thought Meeting 1  
23 occurred in May or June 2008, and that Debtor would have filled  
24 out a consultation sheet with general information at that time.  
25 Goldberg stated that the Retaining Meeting was on August 11,  
26 although again, he stated it was impossible for him to remember  
27 his meeting with Debtor, because he "meet[s] with so many of  
28 them." Hr'g Tr. (Aug. 24, 2009) 149:6-7.

1           Despite his inability to remember specifics of the meetings,  
2 Goldberg testified he was certain of a few things based on his  
3 standard office procedures. Goldberg was confident that he only  
4 discussed the retainer agreement with Debtor at Meeting 1.  
5 Goldberg explained that his \$5,000 fee is disclosed in the packet,  
6 but that he tells clients to bring in only the retainer portion.  
7 If he told them to bring in the entire \$5,000 fee, "they would go  
8 somewhere else." Id. at 177:25-178:1. Goldberg also testified  
9 that Debtor would not have received the packet until after she had  
10 retained him; thus, not at Meeting 1. According to Goldberg, the  
11 only time a client got a packet was after payment of the retainer  
12 and after they have brought in the requested documents. "Until  
13 they get the appropriate documents and money, no one gets a packet  
14 ever." Id. at 179:12-13. Goldberg testified that on the same day  
15 a client retains and pays his fee, the client sits in a conference  
16 room and fills out all documents, signing where appropriate. This  
17 was the standard operating procedure for his office and it never  
18 deviated. Goldberg also stated that usually one or two people at  
19 the front desk oversaw the client to make sure all documents were  
20 signed, and, unless he expressly authorized differently, clients  
21 were required to sign all forms.

22           Elizabeth Allen ("Allen"), Goldberg's legal assistant for two  
23 years, testified that she handled all chapter 13 clients. Allen  
24 testified that she recalled Debtor signing all documents in the  
25 packet. On cross-examination, however, Allen admitted she did not  
26 have a master list for what documents were in the packet, that she  
27 did not know the exact number of pages in the packet as they were  
28 not numbered, and that no procedure or protocol existed for

1 confirming that every page was signed. Allen further testified  
2 that Adam Parmelee ("Parmelee"), Goldberg's paralegal/office  
3 administrator for ten years, was not present when Debtor signed  
4 the Tax Affidavit.<sup>6</sup>

5 When Parmelee testified, he shared Goldberg's difficulty  
6 remembering specific meetings with Debtor. "I can't recall. I  
7 mean, I met with her a couple of times . . . ." Hr'g Tr. (Oct. 5,  
8 2009) 16:11. "Maybe one or two . . . ." Id. at 16:17. Contrary  
9 to Allen's testimony that Parmelee did not witness Debtor sign the  
10 Tax Affidavit, Parmelee testified that it was his signature and  
11 notary stamp on the document.

12 Debtor's § 341(a) meeting of creditors, held in September  
13 2008, was attended by Debtor, an IRS agent and Parmelee. Debtor  
14 testified she was surprised Parmelee appeared instead of Goldberg,  
15 because Parmelee was not a lawyer and she had paid for a lawyer.  
16 Debtor also testified she did not see Goldberg on the day of her  
17 § 341(a) meeting, and when she inquired about Goldberg, Parmelee  
18 told her Goldberg had the day off.

19 Goldberg admitted that Parmelee was not an attorney, and that  
20 Parmelee attended Debtor's § 341(a) meeting. However, Goldberg  
21 indicated that it was common practice to hold several § 341(a)  
22 meetings concurrently in different rooms to help expedite the  
23 process when things were "backed up." Id. at 155:23. Both  
24 Goldberg and Parmelee testified that the trustees were aware of  
25 and approved this practice, and, because Goldberg's office

---

26  
27 <sup>6</sup> The "Tax Affidavit" is a form Goldberg has clients sign  
28 when they claim they are not required to file a federal income tax  
return for a certain year, because their income was insufficient  
to trigger the filing requirements of I.R.C. § 6012.

1 sometimes conducted over one hundred § 341(a) meetings in a day,  
2 this practice was necessary. Goldberg stated that on the day of  
3 Debtor's § 341(a) meeting, he was with Trustee in an adjacent  
4 room, but was available if needed. Goldberg testified that if he  
5 sent someone else from his office to a § 341(a) meeting, that  
6 person would only serve as a representative taking notes, not as  
7 counsel providing legal advice. Goldberg explained that Parmelee  
8 acted with Goldberg's express authority, and that Parmelee did not  
9 give legal advice.

10 Parmelee's testimony regarding Debtor's § 341(a) meeting was  
11 not so certain. Parmelee believed Goldberg was there, but he did  
12 not recall. "[T]o the best of my knowledge, he [Goldberg] could  
13 have been in another room doing other - other cases. I don't  
14 recall." Hr'g Tr. (Oct. 5, 2009) 25:6-7. In any event, Parmelee  
15 was certain no problems arose at Debtor's meeting requiring  
16 Goldberg's assistance. When Parmelee was asked if he was  
17 authorized by Goldberg to go to § 341(a) meetings in Goldberg's  
18 absence, Parmelee responded "No. We would try to find somebody  
19 else to cover them." Id. at 26:2.

20 Although the parties agreed on who attended the § 341(a)  
21 meeting, disagreement existed as to what was said and what  
22 happened during the meeting and thereafter. According to Debtor's  
23 testimony, following an injury she suffered several years before,  
24 the IRS had told her she was "purged" and no longer needed to file  
25 federal income tax returns. Consequently, she had not filed  
26 returns for several years. Because of her understanding, Debtor  
27 testified that she was confused when the IRS agent told her at the  
28 § 341(a) meeting that she may owe money based on some gambling

1 winnings and that she needed to file tax returns. Debtor  
2 testified she advised the IRS agent that she was "purged" and did  
3 not have to file, and that Parmelee told her not to worry because  
4 he would take care of it. Debtor testified that her tax return  
5 issue was left unresolved after the § 341(a) meeting. On cross-  
6 examination, Goldberg's attorney introduced Debtor's § 341(a)  
7 meeting transcript. Reading from the transcript, Debtor had  
8 responded "ok" after the IRS agent stated that returns from the  
9 priority tax years were required, and that the agent would give  
10 Parmelee Debtor's tax transcripts so that Goldberg's office could  
11 prepare and file the required returns.

12 Because of this exchange at the § 341(a) meeting, Goldberg  
13 contended Debtor had notice that tax returns for years 2004-2007  
14 would be required, and that Debtor had authorized the preparation  
15 of those returns. Goldberg also testified that tax returns were  
16 required if clients wanted their plans confirmed.

17 Following her § 341(a) meeting, Debtor testified that she  
18 tried to reach Parmelee in October 2008 regarding the status of  
19 her case, but claimed that she was not able to speak with him at  
20 that time because Goldberg's office "kept shoving [her] off to  
21 Elizabeth [Allen]." Hr'g Tr. (Aug. 24, 2009) 34:4. Consequently,  
22 since no one contacted her, Debtor sent Lonnie to Goldberg's  
23 office "to find out where we stood about modification, where we  
24 stood with the [IRS] . . . ." Id. at 34:13-14.

25 As for the loan modification, Debtor testified that she  
26 eventually discussed the issue with Allen, but she was worried  
27 because she was now three months behind on her mortgage. Debtor  
28 ultimately decided to contact the lender herself. A company

1 representative told Debtor that he could walk her through a  
2 modification. On November 4, 2008, Debtor attempted to file the  
3 modification documents with the court, but they were rejected  
4 because she had an attorney of record. About a week later, on  
5 November 10, 2008, Debtor's Plan #4 was confirmed.

6 Debtor testified that although she knew Plan #4 had been  
7 filed, she had not received a copy to review or approve  
8 beforehand. Debtor stated that when she eventually did receive a  
9 copy of her confirmed Plan #4, she discovered it included "bills  
10 on there that were from ten years ago." Id. at 39:17. Moreover,  
11 under Plan #4 she was to repay \$160,000, even though Debtor  
12 believed she owed only \$38,000 to \$40,000 according to her own  
13 paperwork and receipts. Debtor testified that she attempted to  
14 advise Goldberg's office that many of the claims listed were not  
15 valid, but Parmelee told her "you have the proof of burden. We  
16 don't handle that. You got to prove it yourself." Id. at  
17 39:20-21. Given Parmelee's response, Debtor testified that she  
18 contacted about three or four creditors. According to Debtor,  
19 those creditors advised her they had no knowledge of her because  
20 the debts were ten years old, and, they agreed to confirm, in  
21 writing, that she did not owe them anything. Debtor further  
22 testified that she stopped making payments under Plan #4 in either  
23 March or April 2009, because she "didn't want to contribute money  
24 to something I didn't understand. I felt it was being handled  
25 wrong. Money was going in the wrong places. I was being lied to.  
26 I didn't want to be a part of that." Id. at 42:15-18.

27 Meanwhile, Debtor was still trying to get the loan  
28 modification. Although she had completed the required paperwork

1 herself and had tried, unsuccessfully, to file it, Goldberg  
2 refused to file it for her until she paid him an additional \$500.  
3 According to Debtor, she felt forced to pay the \$500. After  
4 receiving the additional payment from Debtor, Goldberg filed a  
5 Motion to Refinance and the related Loan Modification Agreement  
6 documents, together with a notice of hearing for December 18,  
7 2008. This motion, as well as an amended proposed order filed on  
8 January 7, 2009, were both denied because the order referred to  
9 personal rather than real property, included an altered LR 9021  
10 certification, and was "too sloppily drafted." Debtor testified  
11 that she learned of Goldberg's incorrect filing "[b]ecause I got  
12 copies of the paperwork that it was rejected. My - the mortgage  
13 company, the one that was working with me, told me he couldn't  
14 believe it." Id. at 44:6-8.

15 On January 20, 2009, the bankruptcy court granted the Motion  
16 to Refinance, authorizing Debtor to proceed with the terms of the  
17 Loan Modification Agreement and vacating the prior order denying  
18 approval.

19 Referring to her multiple problems with Goldberg, Debtor sent  
20 Trustee a letter on January 22, 2009, notifying him she wanted to  
21 terminate Goldberg as her attorney. Debtor also sent Goldberg a  
22 letter notifying him she no longer wanted him to represent her,  
23 citing malpractice, unprofessionalism and forgery of federal  
24 documents. Debtor also requested a refund of all fees, and stated  
25 that she would pursue litigation if Goldberg did not return her  
26 money.

27 **B. The motion for sanctions**

28 On January 30, 2009, Debtor, proceeding pro se, moved for

1 sanctions against Goldberg ("Sanctions Motion"). Debtor asserted  
2 that Goldberg, or one of Goldberg's employees, forged her  
3 signature on the tax returns filed on her behalf with the IRS for  
4 the years 2004, 2005, 2006 and 2007 ("Tax Returns"). Debtor also  
5 alleged that Goldberg acted unprofessionally towards her. In  
6 particular, Debtor alleged that Goldberg embarrassed her in front  
7 of his staff, refused to communicate with her and misled her  
8 regarding the cost of her bankruptcy and related services.  
9 Further, Debtor asserted that Goldberg lied to her on more than  
10 one occasion and committed malpractice.

11 Goldberg opposed the Sanctions Motion, contending that he  
12 prepared, signed and filed the Tax Returns after the IRS agent  
13 reported at the § 341(a) meeting that Debtor had gambling winnings  
14 and was required to file. Goldberg also stated that Debtor had  
15 instructed his staff to sign the returns. Goldberg characterized  
16 Debtor's complaints as a result of his inability to "perform an  
17 impossible task" of allowing her to discharge her debts and still  
18 maintain her lifestyle. In a later affidavit filed by Goldberg on  
19 March 11, 2009, he stated that Debtor's signed 2848 POA authorized  
20 him to sign Debtor's name on the Tax Returns.

21 In Debtor's reply, she again denied authorizing Goldberg to  
22 prepare, file or sign the Tax Returns. Debtor also stated that  
23 she had now discovered the CC Certificate filed with the court,  
24 which she did not recognize. Debtor denied ever calling the  
25 service or completing the counseling online, and claimed that the  
26 CC Certificate was fraudulent.

27 In a later discovery motion, Debtor requested several items,  
28 including copies of all records pertaining to her bankruptcy case.

1 In her statement of facts, Debtor argued that none of the Tax  
2 Returns identified a 2848 POA, but bore only her name signed by  
3 Goldberg.

4 **C. The evidentiary hearings**

5 The bankruptcy court conducted four evidentiary hearings  
6 related to the Sanctions Motion on March 16, August 24, October 5,  
7 and December 15, 2009.

8 **1. Hearing #1**

9 The first evidentiary hearing was held on March 16, 2009.  
10 The bankruptcy court first addressed Goldberg's motion to withdraw  
11 as counsel of record. Finding no objection to the motion, the  
12 court granted it. After discussing Debtor's desire to hire new  
13 counsel and the difficulties it was presenting, the bankruptcy  
14 court proceeded to discuss the Sanctions Motion. The court  
15 decided to give both parties additional time for discovery and  
16 preparation after Goldberg attempted to introduce documents  
17 allegedly signed by Debtor to which Debtor objected, and Debtor  
18 attempted to introduce witnesses without giving notice to  
19 Goldberg.

20 Following the first hearing, Debtor filed another discovery  
21 motion, requesting the original, signed 2848 POA. According to  
22 Goldberg's response, all original documents were scanned and then  
23 destroyed for the protection and privacy of the debtor.

24 **2. Hearing #2**

25 The second evidentiary hearing was held on August 24, 2009.  
26 Because Debtor alleged her signature was forged on several  
27 documents, most evidence and testimony related to when, where and  
28 how documents were signed. Debtor first denied signing any

1 documents, claiming she had only completed a questionnaire when  
2 she went to Goldberg's office. Subsequent testimony by Debtor  
3 varied, however, as to whether she had signed a couple of  
4 documents or no documents.

5 When asked about the packet she completed, Debtor could not  
6 describe it with much detail, testifying only that it was a little  
7 package requesting information about creditors. "It was a little  
8 packet. It was more of a questionnaire, and I think you sign a  
9 couple of pages. I don't remember." Hr'g Tr. (Aug. 24, 2009)  
10 23:23-24.

11 Regarding the CC Certificate filed with the court, Debtor  
12 denied ever completing a credit counseling course, and testified  
13 that she did not personally contact, nor did she authorize anyone  
14 at Goldberg's office to contact, the Consumer Credit Counseling  
15 Service of Greater Atlanta.

16 As for the Tax Affidavit, Debtor testified the signature on  
17 it was not hers, and that she had not authorized Goldberg, or  
18 anyone in Goldberg's office, to complete or sign it. Debtor also  
19 testified that Parmelee never witnessed her sign the Tax Affidavit  
20 as he claimed. Although it bore Pamelee's notary stamp, Debtor  
21 testified that she had not signed a notary book, that Parmelee had  
22 never notarized her signature, that he never stamped or signed  
23 anything in her presence, and that he never asked for her  
24 identification.

25 With respect to the Tax Returns, Debtor testified that she  
26 did not know she had to prepare or file any tax returns, and that  
27 Goldberg had, without her consent, prepared and filed them,  
28 forging her name and marking the returns as "self-prepared."

1 Debtor also denied signing the 2848 POA. Debtor stated that she  
2 discovered Goldberg had prepared and filed the Tax Returns after  
3 the § 341(a) meeting only because she received a notice from the  
4 IRS informing her that she owed approximately \$800.

5 Although Debtor declared in her Sanctions Motion that she  
6 went to Goldberg's office after learning of the Tax Returns and  
7 that Allen had given her copies of the four returns, Debtor  
8 testified to a different series of events at the hearing. Debtor  
9 now stated that after finding out about the returns, she called  
10 Goldberg's office, spoke to Allen, but Allen would not give her  
11 copies or any information about them, telling Debtor she would get  
12 back to her. Debtor testified that although the Tax Returns  
13 prepared and filed by Goldberg showed a liability, she later  
14 prepared and resubmitted the returns and actually owed nothing.

15 Goldberg was questioned extensively on both direct and cross-  
16 examination. Goldberg testified that he was admitted to practice  
17 law in Pennsylvania, New Jersey, Nevada and before the Federal Tax  
18 Bar. Goldberg testified that since opening his practice in Nevada  
19 in December 1996, he has prepared thousands of tax returns.  
20 Goldberg testified that he held an LLM in taxation and agreed that  
21 he had a "superior knowledge of federal tax issues." Id. at  
22 100:4.

23 When Goldberg was asked if he had received complaints from  
24 other clients, he testified that fifteen or twenty complaints had  
25 been filed with the state bar since he started his practice. "You  
26 can't make every client happy when you have 20,000 clients." Id.  
27 at 164:9-10.

28 Several disputed documents were also discussed – the Tax

1 Affidavit, the 2848 POA and the Tax Returns. Goldberg stated that  
2 before a plan can be confirmed, a client must produce the past  
3 four years of tax returns, or a Tax Affidavit if the client claims  
4 they do not have to file returns. Goldberg stated that trustees  
5 will not approve a plan without either a debtor's tax returns or  
6 the Tax Affidavit. Additionally, Goldberg stated that a Tax  
7 Affidavit would be completed at the retainer meeting. Goldberg  
8 agreed that Debtor initially believed she did not have to file tax  
9 returns, which is why he had her sign the Tax Affidavit. Goldberg  
10 testified that he became aware of Debtor's need to file returns at  
11 the § 341(a) meeting.

12 Goldberg testified that he used the tax transcripts the IRS  
13 agent gave to Parmelee at the § 341(a) meeting to complete  
14 Debtor's Tax Returns. Therefore, he did not need or use Debtor's  
15 Tax Affidavit to get her financial information. However, on  
16 cross-examination, Goldberg changed his testimony, denying that he  
17 used the information shown in the tax transcripts, and denying  
18 that he ever stated this was the information he used to prepare  
19 Debtor's Tax Returns.

20 When questioned about the Tax Returns, Goldberg testified  
21 that he usually prepares and signs his client's returns with their  
22 name. Goldberg estimated he has completed anywhere from  
23 3,000-5,000 tax returns and personally signed his client's  
24 signature on 30-50% of them. Goldberg admitted that he does not  
25 identify himself as the tax preparer or do anything to indicate  
26 that someone other than the client had prepared and signed the tax  
27 return. Goldberg testified that he believed he could do so  
28 because "I've had no issues with the IRS or anybody ever saying

1 anything, and it's been going on for 13 years with the IRS  
2 directly. No one's ever said a word, and no clients ever  
3 complained . . . ." Id. at 104:7-10. Goldberg opined that his  
4 practice complied with federal law, and he did not know of any  
5 additional measures required by federal law for legally signing a  
6 client's return.

7 When asked why the Tax Returns he had prepared for Debtor  
8 read "self-prepared," Goldberg stated that it did not make sense  
9 to pay \$2,500 a year for professional taxation software, so he  
10 used Quicken, which automatically indicates "self-prepared" on  
11 each return because Quicken is meant to be used by individuals  
12 preparing their own tax returns. Goldberg testified that although  
13 he had tried many times to override this default, he had been  
14 unsuccessful. When questioned about how the IRS would know that a  
15 tax return marked self-prepared, and with a signature bearing the  
16 name of the person identified on the tax return, had actually been  
17 prepared and signed by someone else, Goldberg responded:

18 A. Only that I would have gave it to them [IRS] at a  
19 confirmation hearing which is what we would do in  
every one of these cases.

20 . . . .

21 Q. Have you ever told the IRS of this practice?

22 A. They know all about it.

23 . . . .

24 Q. And how is it that you believe that these IRS tax  
agents know that you are signing your name to other  
people's tax returns?

25 . . . .

26 A. I would tell them I signed the returns.

27 . . . .

28 Q. It's your testimony that each and every time, each  
of the thousands and thousands of times, you've  
signed someone else's 1040 form . . . and given it

1 to an IRS agent at a confirmation hearing . . . that  
2 you said to that IRS agent . . . here is a tax  
return for my client which I signed for them.

3 A. No.

4 . . . .

5 Q. Okay. Well, how do these agents find out?

6 A. If they ask, I say I signed them . . . .  
7 . . . .

8 Q. Well, how often does the IRS agent ask, hey, did  
they actually sign their own self-prepared tax  
document?

9 A. Over the years, they may have asked me. I don't  
10 know. I mean, I've signed them. They know I've  
signed them. I've never lied about signing them.  
11 . . . .

12 Q. So other than they should know, you can't offer us  
any other way that any of these IRS agents should  
13 know that it's your signature, not the person whose  
1040 it was?

14 A. No.

15 Id. at 110:19-20; 126:12-13; 126:24-127:1, 127:12; 128:12-24;  
16 128:25-129:1; 129:3-7; 130:4-7.

17 Goldberg testified that a signed 2848 POA provided the  
18 requisite authority for him to sign a tax return for a client, or  
19 the client could give him permission to sign. Goldberg revealed,  
20 however, that he never requested nor received such permission in  
21 writing. Contrary to Goldberg's claim in his opposition to the  
22 Sanctions Motion that the 2848 POA allegedly signed by Debtor  
23 authorized him to sign Debtor's name on her tax returns, Goldberg  
24 now testified the 2848 POA was not the basis of his authority to  
25 sign, but, rather, it was only used to obtain information about a  
26 client from the IRS.

27 After reviewing the 2848 POA instructions on the stand,  
28 Goldberg agreed that it allows a person to designate a signing

1 representative under only a very narrow set of circumstances, and,  
2 then, only if specifically stated on the form. Goldberg testified  
3 that he had no personal knowledge of whether Debtor fell within  
4 the circumstances listed that would have allowed her to authorize  
5 him to sign her Tax Returns, nor had he requested permission from  
6 the IRS to sign them based on "other good cause." In any event,  
7 Goldberg maintained that a client's oral authorization gives him  
8 legal authority to sign the returns. "If I'm using my [2848 POA]  
9 as authority to sign the returns, I'm not using that authority.  
10 I'm using the client telling me to sign their returns . . . ."  
11 Id. at 142:15-17. Goldberg testified repeatedly that Debtor had  
12 requested he sign the returns and had given permission for him to  
13 sign the returns.

14 Goldberg was also unable to specify when someone in his  
15 office had last updated the 2848 POA used by his office. Goldberg  
16 admitted that he did not pay attention to the revision date on the  
17 forms, and that he had not heard of any update or revision to the  
18 2848 POA. He admitted that the 2848 POA allegedly signed by  
19 Debtor was the December 1997 version, but other evidence showed  
20 that the form had undergone revision many times between 1997 and  
21 2008, the time of Debtor's bankruptcy. Goldberg testified  
22 "[w]hether it was revised or not, it still works." Id. at 124:5.  
23 Goldberg speculated that changes in the form only enhanced his  
24 powers as a tax preparer and licensed agent with the IRS.

25 When asked why he had not produced the original document  
26 during discovery, Goldberg testified that he did not have the  
27 original copy of Debtor's 2848 POA because it had been scanned and  
28 shredded. Nonetheless, Goldberg admitted that he had not

1 personally shredded the document, nor had anyone in his office  
2 confirmed that the document had actually been shredded.

3 Unlike the 2848 POA, however, Goldberg testified that most  
4 client documents were not shredded. Usually a client's file held  
5 fifteen to twenty-five other wet-signed original documents.  
6 Goldberg described these files as "cover-your-butt" files,  
7 containing such documents as the retainer agreement, the tax  
8 affidavit, the bankruptcy questionnaire, the B-22, the notice of  
9 filing, assignment of interest, and other documents necessary to  
10 protect Goldberg in case the "clients don't give you all the  
11 information or mislead you or forget things . . . ." Id. at  
12 133:15-16.

13 When asked why the 2848 POA was shredded when other sensitive  
14 documents were not, Goldberg explained that his office had  
15 experienced break-ins, so destroying the original 2848 POAs  
16 prevented thieves from accessing a client's private tax  
17 information. Goldberg testified that unlike other documents that  
18 might contain a client's social security number, "a [2848 POA] is  
19 a different story, signatures, CAF numbers." Id. at 132:8-9.

20 After hearing extensive witness testimony and statements from  
21 counsel wishing to introduce more testimony, the bankruptcy court  
22 decided to continue the matter to October 5, 2009.

### 23 **3. Hearing #3**

24 The third evidentiary hearing on the Sanctions Motion was  
25 held on October 5, 2009. Goldberg and three of Goldberg's  
26 employees testified: Parmelee, Allen, and Jennifer Rigdon  
27 ("Rigdon"), an associate attorney in Goldberg's office. Ilene and  
28 Lawrence Pondel ("Pondels"), former clients of Goldberg's, also

1 testified. Narrah Newark ("Newark"), a local bankruptcy attorney  
2 of seven years, testified as to her opinion of Goldberg's handling  
3 of Debtor's case. Antonia Klekoda-Baker ("Klekoda-Baker"), a  
4 document examiner and expert witness for Goldberg, testified as to  
5 the authenticity of Debtor's signature on various documents.

6       Parmelee testified that he met with clients and gave advice,  
7 but not legal advice. Parmelee stated that he is the only notary  
8 in Goldberg's office, having notarized approximately 1,000  
9 signatures, but admitted that he did not keep a notary book.  
10 Although Parmelee knew that state law required him to keep a  
11 notary book, he felt he was exempt because he only notarized for  
12 Goldberg's clients.

13       In response to the disputed documents, Parmelee thought  
14 Debtor had completed her credit counseling at Goldberg's office  
15 because staff completed it for each client while he or she was  
16 present. Although Parmelee stated that office staff always  
17 completed the counseling requirement in the same way, he admitted  
18 Goldberg's office did not have a written procedure. Parmelee also  
19 testified that he witnessed Debtor sign the Tax Affidavit, and  
20 that it was his signature and notary stamp on the document. Yet,  
21 Parmelee later stated that "[t]o the best of my knowledge," Debtor  
22 signed and he notarized the Tax Affidavit. Hr'g Tr. (Oct. 5,  
23 2009) 27:22. Parmelee also testified that he did not maintain the  
24 originals of documents he notarized; they were either shredded or  
25 given to whomever needed them.

26       As for the credit counseling, Goldberg testified that while a  
27 client could do it at home, 99% of his clients completed the  
28 credit counseling at his office. Goldberg stated, "It's not a

1 class. It's not a credit counseling. It is just in - inputting  
2 information of a financial and personal matter . . . .; it usually  
3 take [sic] about eight to ten minutes . . . ." Id. at 195:10-11,  
4 195:25-196:1. Because his staff knew how to do it very quickly,  
5 Goldberg testified that to save time a staff member would input  
6 the information, stating that the client might not even realize  
7 they are taking a credit counseling course. Goldberg also  
8 testified it was his understanding that Allen did the credit  
9 counseling with Debtor. Although Goldberg had testified that  
10 clients would have to participate in the credit counseling because  
11 of the significant personal information required, he later, in his  
12 post-hearing brief, asserted that his office obtained sufficient  
13 personal information to complete the credit counseling without  
14 Debtor's presence based on her completed questionnaire included in  
15 the packet during the May 2008 visit.

16 Mrs. Pondel testified that she thought Parmelee was an  
17 attorney, and that her reference to him as her attorney was never  
18 corrected. Mrs. Pondel also testified that Parmelee gave her  
19 legal advice, and that she met with Goldberg only once, even  
20 though she repeatedly asked to see him. On cross-examination,  
21 Mrs. Pondel admitted Parmelee never gave her a business card  
22 identifying himself as an attorney. She further admitted that her  
23 bankruptcy was dismissed for failure to make payments, and that  
24 she did not file a complaint against Goldberg until after she  
25 spoke with Debtor, whom she had met outside the courthouse.

26 Mr. Pondel testified that he met with Goldberg three times  
27 and met with Parmelee fifteen to twenty times. He testified that  
28 Parmelee had never directed any questions to Goldberg, that

1 Parmelee had given him legal advice, and that his belief Parmelee  
2 was an attorney had also never been corrected. Mr. Pondel also  
3 testified that he did not attend a credit counseling course online  
4 or otherwise, and when he later asked Parmelee about his  
5 certificate, Parmelee did not give a specific answer, just telling  
6 the Pondels they needed it. On cross-examination, Mr. Pondel  
7 admitted he had never received any business card, letterhead,  
8 receipt, or legal document indicating Parmelee was an attorney.

9 Rigdon, Goldberg's associate, testified that she had met with  
10 the Pondels a couple of times and had represented them at their  
11 § 341(a) meeting. She had never heard the Pondels express  
12 dissatisfaction with Goldberg. Rigdon also testified that  
13 Parmelee did not expressly or impliedly hold himself out as an  
14 attorney, nor did Mr. Pondel ever refer to Parmelee as an  
15 attorney. On cross-examination, Rigdon admitted she did not know  
16 the number of times the Pondels had met with Parmelee without her  
17 being present.

18 Newark testified that from the documents she had reviewed,  
19 nothing appeared out of the ordinary, and Goldberg appeared to be  
20 following standard procedure for a bankruptcy attorney. On  
21 cross-examination, Newark stated that although her clients  
22 complete their credit counseling online in her office, it was done  
23 without assistance from her staff. She also testified that her  
24 office did not engage in any tax work.

25 Klekoda-Baker, Goldberg's expert witness, testified that she  
26 believed Debtor's signature on the copy of the 2848 POA was  
27 authentic because it matched the "known" signature that appeared  
28 on Debtor's Grant Bargain and Sale Deed she had obtained from the

1 Clark County Assessor's website. However, on cross-examination,  
2 Klekoda-Baker testified that although she examined originals with  
3 wet signatures for almost every document, she had no original 2848  
4 POA to examine. On re-direct, Klekoda-Baker testified that she  
5 found no signs of forgery or cut-and-paste on any of the documents  
6 she examined. Klekoda-Baker additionally testified that the  
7 signature on the 2007 Tax Return was not Debtor's. As to the Tax  
8 Affidavit, Klekoda-Baker testified that she did not have any known  
9 signatures to substantiate conclusively whether it was Debtor's  
10 signature.

11 **4. Hearing #4**

12 The final evidentiary hearing on the Sanctions Motion was  
13 held on December 15, 2009. William Leaver ("Leaver"), Debtor's  
14 expert document examiner, testified that the signature on the 2848  
15 POA was most likely manipulated either by computer or cut-and-  
16 paste, as several line-quality faults existed that indicated  
17 either simulation or tracing, as well as a gap in the signature  
18 line. Furthermore, Leaver testified that Debtor's signature on  
19 the Tax Affidavit may not have been authentic because of a  
20 variance between that signature and all of the known signatures  
21 Leaver examined.

22 After hearing testimony, the bankruptcy court took the matter  
23 under advisement, requesting post-hearing briefing from the  
24 parties.

25 **D. Memorandum Decision and Order on Sanctions Motions**

26 The bankruptcy court entered its Memorandum Decision on the  
27 Sanctions Motion ("Sanctions Decision") and related order  
28 ("Sanctions Order") on December 4, 2012. The court found that

1 none of Goldberg's witnesses could establish that Debtor completed  
2 the credit counseling in Goldberg's office. Further, although  
3 Goldberg and his staff asserted that a client's credit counseling  
4 could not be completed by his staff without the client's input,  
5 the court found that other evidence showed that his staff had  
6 sufficient client information to complete it and obtain the  
7 certificate without the client's involvement. Consequently, the  
8 court concluded that Goldberg or his staff impersonated Debtor,  
9 improperly obtained her CC Certificate, and filed it in bad faith.  
10 The court found that such conduct violated Rule 9011, several  
11 ethical rules, and possibly criminal statutes.

12 The court rejected Goldberg's assertion that Rule 9011(b) was  
13 not implicated by his conduct since he was given no "safe harbor."  
14 The court noted that Rule 9011(c)(1)(A) provides an exception to  
15 the 21-day safe-harbor rule if "the conduct alleged is the filing  
16 of a petition." The court determined that Goldberg was not  
17 entitled to the safe-harbor rule because he knew at the time of  
18 filing Debtor's petition that relief under chapter 13 would be  
19 impossible because Debtor had not personally completed credit  
20 counseling as required by § 109(h). The court also found that  
21 Goldberg filed Debtor's petition as-is in order to cut corners, to  
22 avoid delay, to begin collecting his fee, and to move on to the  
23 next paying client.

24 In addition to violating Rule 9011, the court found  
25 Goldberg's conduct violated several provisions of the Nevada Rules  
26 of Professional Conduct ("NRPC"). Goldberg had violated NRPC 3.3  
27 when he filed the CC Certificate that he, or someone in his  
28 office, obtained by impersonating Debtor and by using her personal

1 information. The court noted that although Debtor had informed  
2 Goldberg that she had not personally completed credit counseling,  
3 Goldberg failed to withdraw the CC Certificate. Goldberg's  
4 conduct had also violated NRPC 8.4, as well as several criminal  
5 statutes.<sup>7</sup> In particular, by impersonating Debtor to obtain the  
6 CC Certificate, and then filing and refusing to withdraw the  
7 fraudulent document with the court, Goldberg had likely violated,  
8 and continued to violate, 18 U.S.C. §§ 157, 1519 and 1028.  
9 Consequently, the court referred the matter to the United States  
10 Attorney for the District of Nevada.

11 Regarding the Tax Returns, the court found that Goldberg had  
12 signed them without authority to do so. The court concluded this  
13 after finding (1) Debtor's testimony more credible than that of  
14 Goldberg and Allen, (2) the original 2848 POA was never produced,  
15 and (3) substantial questions existed as to whether the signature  
16 on the scanned copy of the 2848 POA was actually Debtor's.  
17 Accordingly, the court determined that Goldberg's unauthorized  
18 signature on the Tax Returns and false representation to the IRS

19

20

21

---

22 <sup>7</sup> NRPC 3.3 provides that "[a] lawyer shall not knowingly make  
23 a false statement of fact or law to a tribunal or fail to correct  
a false statement of material fact or law previously made to the  
tribunal by the lawyer."

24

25 NRPC 8.4 provides, in relevant part: "It is professional  
26 misconduct for a lawyer to: (a) Violate or attempt to violate the  
Rules of Professional Conduct, knowingly assist or induce another  
27 to do so, or do so through the acts of another; (b) Commit a  
criminal act that reflects adversely on the lawyer's honesty,  
trustworthiness or fitness as a lawyer in other respects;  
28 (c) Engage in conduct involving dishonesty, fraud, deceit or  
misrepresentation; (d) Engage in conduct that is prejudicial to  
the administration of justice[.]"

1 that the Tax Returns were self-prepared violated NRPC 3.3, 4.1<sup>8</sup>  
2 and 8.4 and subjected Goldberg to possible discipline. Because  
3 Goldberg's conduct may have also violated 26 U.S.C. §§ 7206 and  
4 7207, the court referred Goldberg to the United States Attorney  
5 for the District of Nevada.

6 The court also found that Goldberg, or someone in his office,  
7 signed Debtor's Tax Affidavit rather than Debtor. Neither expert  
8 witness could confirm the authenticity of the signature. Further,  
9 testimony of Goldberg's witnesses, Parmelee and Allen, conflicted.  
10 Third, Debtor's purported signature on the document could not be  
11 corroborated by a properly logged entry in a notary book. As a  
12 result, the court concluded that Goldberg's conduct had violated  
13 NRPC 4.1, 8.4 and 5.3 and was subject to discipline.

14 Based on the above, the bankruptcy court imposed the  
15 following sanctions: Goldberg was suspended for a period of six  
16 months from filing any new bankruptcy cases in the district;  
17 Goldberg had to provide a copy of the court's decision to every  
18 prospective chapter 13 client for five years; Goldberg had to  
19 return to Debtor all funds paid in connection with her case; and  
20 Debtor was entitled to payment by Goldberg of all reasonable  
21 attorney's fees and costs incurred prosecuting the Sanctions  
22 Motion. Considering Goldberg's conduct and practices in  
23 connection with this case, the court also referred Goldberg for  
24 investigation to the United States Attorney for the District of

---

25  
26 <sup>8</sup> NRPC 4.1 provides: "In the course of representing a client  
27 a lawyer shall not knowingly: (a) Make a false statement of  
28 material fact or law to a third person; or (b) Fail to disclose a  
material fact to a third person when disclosure is necessary to  
avoid assisting a criminal or fraudulent act by a client, unless  
disclosure is prohibited by Rule 1.6."

1 Nevada, the Nevada Secretary of State, the Nevada Attorney  
2 General, the Clark County District Attorney, the State Bar of  
3 Nevada, and the Office of the United States Trustee.

4 Goldberg timely appealed the Sanctions Order.

5 After Debtor's attorneys submitted briefs and time records  
6 for their fees, to which Goldberg objected, the bankruptcy court  
7 entered an order awarding Debtor approximately \$45,000 in  
8 attorney's fees and costs ("Fee Order") on January 24, 2013.

9 Goldberg timely appealed the Fee Order.

10 The appeals were consolidated on February 20, 2013.

## 11 II. JURISDICTION

12 The bankruptcy court had jurisdiction under 28 U.S.C. §§ 1334  
13 and 157(b)(2)(A). We have jurisdiction under 28 U.S.C. § 158.

## 14 III. ISSUES

- 15 1. Did the bankruptcy court abuse its discretion when it entered  
16 the Sanctions Order?
- 17 2. Did the bankruptcy court abuse its discretion when it entered  
18 the Fee Order?

## 19 IV. STANDARDS OF REVIEW

20 We review all aspects of an award of sanctions for an abuse  
21 of discretion. Price v. Lehtinen (In re Lehtinen), 332 B.R. 404,  
22 411 (9th Cir. BAP 2005), aff'd, 564 F.3d 1052 (9th Cir. 2009);  
23 In re Nguyen, 447 B.R. 268, 276 (9th Cir. BAP 2011)(en banc). A  
24 bankruptcy court abuses its discretion if it applied the wrong  
25 legal standard or its findings were illogical, implausible or  
26 without support in the record. TrafficSchool.com, Inc. v. Edriver  
27 Inc., 653 F.3d 820, 832 (9th Cir. 2011).

28 The appellate court must give great deference to the trial

1 court's findings of fact under this standard. A reviewing court  
2 is not entitled to reverse a finding, even though convinced that  
3 had it been sitting as the trier of fact it would have weighed the  
4 evidence differently. Anderson v. City of Bessemer City, N.C.,  
5 470 U.S. 564, 573 (1985). Even greater deference must be afforded  
6 to the trial court's factual findings where credibility  
7 determinations are at issue, "for only the trial judge can be  
8 aware of the variations in demeanor and tone of voice that bear so  
9 heavily on the listener's understanding of and belief in what is  
10 said." Id. See also Rule 8013.

11 **V. DISCUSSION**

12 **A. The bankruptcy court did not abuse its discretion when it**  
13 **entered the Sanctions Order.**

14 **1. The bankruptcy court had proper jurisdiction over the**  
15 **case and Goldberg despite the faulty CC Certificate.**

16 Goldberg contends that, because the bankruptcy court had  
17 determined Debtor had not taken the credit counseling course,  
18 thereby requiring the dismissal of her case, the court lacked  
19 jurisdiction to impose sanctions. Goldberg asserts that § 109(h)<sup>9</sup>  
20 is jurisdictional, and a debtor's non-compliance with the statute  
21 strips the bankruptcy court of jurisdiction. We disagree.

22 Compliance with the credit counseling requirements of  
23 § 109(h) is a matter of eligibility rather than jurisdiction.  
24 Mendez v. Salven (In re Mendez), 367 B.R. 109, 117-18 (9th Cir.

---

25 <sup>9</sup> Section 109(h) provides that "an individual may not be a  
26 debtor . . . unless such individual has, during the 180-day period  
27 ending on the date of filing of the petition by such individual,  
28 received from an approved nonprofit budget and credit counseling  
agency . . . an individual or group briefing (including a briefing  
conducted by telephone or on the Internet) that outlined the  
opportunities for available credit counseling and assisted such  
individual in performing a related budget analysis."

1 BAP 2007)(compliance with § 109(h) is an eligibility requirement,  
2 not a jurisdictional requirement).<sup>10</sup> In Mendez, we held that a  
3 bankruptcy court has jurisdiction over a case commenced by a  
4 debtor who has not complied with the strict requirement of  
5 § 109(h). Id. at 118. See also In re Parker, 351 B.R. 790, 796  
6 (Bankr. N.D. Ga. 2006)(once a petition is filed, the bankruptcy  
7 court has authority to determine debtor's eligibility and retains  
8 jurisdiction even over cases commenced by an ineligible debtor).  
9 Accordingly, the bankruptcy court did not lack jurisdiction over  
10 Debtor or Goldberg, who filed Debtor's petition and related  
11 documents and subjected himself to the court's jurisdiction and  
12 authority.

13 Similarly, Goldberg contends the bankruptcy court should have  
14 struck Debtor's case for lack of jurisdiction based on the same  
15 rationale of her non-compliance with § 109(h). In other words,  
16 Goldberg asserts that because consumer credit counseling is a  
17 prerequisite to eligibility, Debtor's failure to comply with the  
18 requirement rendered her case "void ab initio," as if it never had  
19 been commenced. As we noted above, § 109(h) is not jurisdictional  
20 and the filing of a petition, even by an ineligible debtor,  
21 nevertheless commences a bankruptcy case and provides the court  
22 with jurisdiction. In addition, for Goldberg to assert that  
23 Debtor failed to comply with § 109(h), not only must he admit the  
24 fraudulent nature of the CC Certificate filed on Debtor's behalf,  
25 Goldberg must also admit he filed false papers with the court, in

---

26  
27 <sup>10</sup> Sections 109(h)(2) and 109(h)(3) provide debtors with some  
28 exceptions from the counseling requirement upon approval from the  
court. However, none of the exceptions are applicable to this  
case.

1 willful violation of a variety of court rules and rules of  
2 professional conduct. Goldberg would thus admit to violations  
3 against the bankruptcy court, while asserting that the bankruptcy  
4 court had no duty or authority to regulate such conduct. We  
5 reject such a notion.

6 Goldberg next argues confirmation of Debtor's Plan #4 made  
7 the credit counseling issue moot. Here, Goldberg appears to argue  
8 that his conduct with respect to Debtor's CC Certificate could not  
9 provide the basis for sanctions against him, assuming the issue  
10 became moot upon confirmation. We too reject this argument. The  
11 status of Debtor's plan cannot provide an excuse or shield for  
12 Goldberg's conduct and ethical violations.

13 Goldberg also contends that Debtor waived and ratified any  
14 failure to take the credit counseling class. His argument is  
15 misguided. Goldberg's conduct with respect to the CC Certificate  
16 is not the only basis upon which the bankruptcy court imposed  
17 sanctions. Even if it were, we note Goldberg's ironically polar  
18 opposite positions as they relate to § 109(h) compliance, arguing  
19 on one hand that it is mandatory and jurisdictional, while also  
20 arguing judicial discretion to waive the credit counseling  
21 requirement is appropriate in certain circumstances.

22 Goldberg next argues that the bankruptcy court erred in even  
23 deciding the credit counseling issue because it was not part of  
24 Debtor's Sanctions Motion. We disagree. According to Debtor, who  
25 was appearing pro se, she was not aware of the CC Certificate at  
26 the time she filed her Sanctions Motion, and, thus, could not have  
27 raised the issue. When Debtor became aware of the document, she  
28 promptly brought it to both the court's and Goldberg's attention

1 in her response to Goldberg's opposition to the Sanctions Motion.  
2 Thus, Goldberg had sufficient notice and time to prepare a  
3 defense, which he did. During the four evidentiary hearings  
4 conducted over the course of six months, each party called, or had  
5 the opportunity to call, witnesses to testify about the  
6 CC Certificate. Additionally, both parties offered post-hearing  
7 briefing wherein Goldberg was provided an opportunity to respond  
8 to Debtor's allegations. Goldberg was therefore given sufficient  
9 notice, and the inclusion of the issue of the CC Certificate was  
10 appropriate and not unfairly prejudicial.<sup>11</sup> Further, as we noted  
11 above, Goldberg's conduct surrounding the CC Certificate is not  
12 the only basis upon which the bankruptcy court issued sanctions.

13 Finally, Goldberg argues that Debtor's voluntary actions  
14 judicially and equitably estopped her from seeking sanctions  
15 against him. We fail to see where Goldberg raised this argument  
16 before the bankruptcy court. By failing to demonstrate that he  
17 properly presented this argument to the bankruptcy court, he has  
18 waived the argument, and we need not address the merits here. See  
19 Ellsworth v. Lifescape Med. Assocs., P.C. (In re Ellsworth),  
20 455 B.R. 904, 919 (9th Cir. BAP 2011)(citing Golden v. Chi. Title  
21 Ins. Co. (In re Choo), 273 B.R. 608, 613 (9th Cir. BAP 2002);  
22 Branam v. Crowder (In re Branam), 226 B.R. 45, 55 (9th Cir. BAP  
23 1998), aff'd, 205 F.3d 1350 (9th Cir. 1999)(unpublished table  
24

---

25 <sup>11</sup> Goldberg also argues that even if the bankruptcy court had  
26 jurisdiction, it erred in entering a final judgment, because  
27 bankruptcy judges are prohibited from entering a final judgment in  
28 core proceedings, citing Stern v. Marshall, 131 S.Ct. 2594 (2011).  
Stern is not applicable to this case because the issues on appeal  
do not involve a state law matter unrelated to the bankruptcy case  
asserted as a compulsory counterclaim.

1 decision)). In any event, we reject any inference by Goldberg  
2 that Debtor's actions precluded the bankruptcy court from taking  
3 disciplinary action against him.

4 **2. The bankruptcy court was authorized to sanction Goldberg.**

5 **a. The bankruptcy court did not err when determining**  
6 **its authority to sanction Goldberg.**

7 **i. Rule 9011**

8 Goldberg argues the bankruptcy court erred in determining  
9 that he had violated Rule 9011, because the rule does not apply to  
10 a client against her own attorney. To the contrary, Rule 9011 is  
11 appropriately used to protect other parties, as well as debtors,  
12 from the misconduct of a debtor's attorney. Cohn v. U.S. Trustee  
13 (In re Ostas), 158 B.R. 312, 319-20 (N.D.N.Y. 1993)(rejecting the  
14 argument of debtors' counsel that Rule 9011 was only intended to  
15 protect opposing parties, not the attorney's own clients).

16 Generally, Rule 9011 is directed at papers signed by  
17 litigants and/or attorneys and filed with the court.  
18 Rule 9011(b)(3) provides that "by presenting to the court . . . a  
19 paper . . . an attorney . . . is certifying that to the best of  
20 the person's knowledge, information, and belief, formed after a  
21 reasonable inquiry . . . the allegations or factual contentions  
22 have evidentiary support." Rule 9011(b) "provides for the  
23 imposition of sanctions when a filing is frivolous, legally  
24 unreasonable, or without factual foundation, or is brought for an  
25 improper purpose." Simpson v. Lear Astronics Corp., 77 F.3d 1170,  
26 1177 (9th Cir. 1996)(citing Warren v. Guelker, 29 F.3d 1386, 1388  
27 (9th Cir. 1994)). The Rule 9011 "safe harbor" exception does not  
28 apply when, as in this case, the violation involves the petition,

1 since the filing of the petition has immediate serious  
2 consequences to creditors, including the imposition of the  
3 automatic stay.

4 The bankruptcy court found Goldberg violated Rule 9011 and  
5 was subject to sanctions for filing the fraudulent CC Certificate.  
6 Specifically, the court found that either Goldberg, or one of his  
7 staff, impersonated Debtor and improperly obtained her  
8 CC Certificate. Despite knowing that Debtor had not obtained it  
9 as required under § 109(h), Goldberg nevertheless filed the  
10 document. Accordingly, such filing had been done in bad faith.

11 We conclude that it was not an abuse of discretion for the  
12 bankruptcy court to determine that Goldberg's actions were  
13 frivolous, satisfying one of the alternate elements necessary  
14 under Rule 9011 for the imposition of sanctions. The word  
15 "frivolous," when used in connection with sanctions, denotes a  
16 filing that is both baseless – lacks factual foundation – and made  
17 without a reasonable and competent inquiry. Townsend v. Holman  
18 Consulting Corp., 929 F.2d 1358, 1362 (9th Cir. 1990). An  
19 attorney has a duty to conduct a reasonable factual investigation  
20 as well as to perform adequate legal research that confirms his  
21 position is warranted by existing law (or by a good faith argument  
22 for a modification or extension of existing law). Christian v.  
23 Mattel, Inc., 286 F.3d 1118, 1127 (9th Cir. 2002). "An attorney's  
24 signature on a complaint is tantamount to a warranty that the  
25 complaint is well grounded in fact and 'existing law' (or proposes  
26 a good faith extension of the existing law) . . . ." Id. Thus,  
27 a finding that no reasonable inquiry was made into either the  
28 facts or the law is tantamount to a finding of frivolousness.

1 Townsend, 929 F.2d at 1362.

2 Goldberg's filing of the CC Certificate was frivolous because  
3 he failed to show that he made any reasonable inquiry into either  
4 the facts or the law. Even when Debtor notified him about the  
5 questionable CC Certificate, nothing in the record suggests that  
6 Goldberg made any attempt to inquire about, or address, the issue.  
7 He did not contact Debtor, he did not conduct an audit of his  
8 records and he did not inquire with his staff or implement any  
9 changes to his office procedures. Additionally, Goldberg did not  
10 attempt to withdraw the CC Certificate or have Debtor complete the  
11 counseling and obtain a new certificate. Under no circumstances  
12 would Goldberg's lack of inquiry and action be deemed reasonable.

13 The Ninth Circuit has held that an attorney's inquiry as to  
14 facts contained in signed documents submitted to a court must be  
15 measured "objectively against a reasonableness standard, which  
16 consists of a competent attorney admitted to practice before the  
17 involved court." Valley Nat'l Bank of Ariz. v. Needler  
18 (In re Grantham Bros.), 922 F.2d 1438, 1441 (9th Cir. 1991).

19 Goldberg's filing of the CC Certificate was frivolous because his  
20 inquiry as to facts contained in it and submitted to the court was  
21 not reasonable as objectively compared to a competent attorney  
22 admitted to practice before the same court. Although Goldberg  
23 argued that Debtor either signed the disputed document or, in the  
24 alternative, knew about and ratified his conduct, Goldberg  
25 provided no evidence to support his assertions. His witnesses  
26 gave conflicting, evasive and continually changing testimony.  
27 Goldberg also failed to show a reasonable inquiry as to the  
28 authenticity of the documents he filed or that his conduct was

1 reasonable when compared to other bankruptcy attorneys. Although  
2 Goldberg called Newark, another bankruptcy lawyer, as a witness,  
3 she did not opine on the reasonableness of Goldberg's conduct.  
4 Rather, she testified that her office protocol and procedures were  
5 different than Goldberg's regarding credit counseling and tax  
6 returns. Newark stated that although debtors complete their  
7 credit counseling requirement at her office, debtors complete it  
8 alone, without assistance from her staff.

9 The bankruptcy court's determination that Goldberg violated  
10 Rule 9011, and that it had authority under Rule 9011 to impose  
11 sanctions, was not erroneous. Nonetheless, even if the court  
12 could not sanction Goldberg under Rule 9011, it had ample other  
13 authority upon which it could rely to impose sanctions.

14 **ii. Inherent authority and § 105**

15 Bankruptcy courts have broad authority to run their  
16 courtrooms and to supervise the attorneys appearing before them.  
17 See Smyth v. Oakland (In re Brooks-Hamilton), 400 B.R. 238, 246  
18 (9th Cir. BAP 2009)(citing Chambers v. NASCO, Inc., 501 U.S. 32,  
19 43, 47 (1991)). Section 105(a) empowers bankruptcy courts to take  
20 any action or make any determination necessary or appropriate to  
21 enforce or implement court orders or rules, or to prevent an abuse  
22 of process. Section 105(a) also authorizes a bankruptcy court to  
23 impose penalties, including suspension of an attorney.  
24 In re Brooks-Hamilton, 400 B.R. at 248. In Peugeot v. U.S.  
25 Trustee (In re Crayton), 192 B.R. 970, 976 n.6 (9th Cir. BAP  
26 1996), the Panel states that § 105(a) "arguably empowers a  
27 bankruptcy court to discipline attorneys who appear before it,  
28 given that incompetent attorneys frustrate the [Bankruptcy Code's]

1 purpose of prompt administration of the estate and equitable  
2 distribution of assets."

3 To satisfy due process, a bankruptcy court must determine  
4 that the party to be sanctioned was provided sufficient notice of  
5 the potential sanctions before imposing sanctions under § 105(a).  
6 Miller v. Cardinale (In re Deville), 280 B.R. 483, 496-97 (9th  
7 Cir. BAP 2004). "Generally, the notice regarding sanctions must  
8 specify the authority for the sanction, as well as the  
9 sanctionable conduct." Id. at 496. Although Debtor's Sanctions  
10 Motion did not specifically mention § 105(a), it satisfied the due  
11 process standard under § 105(a) because it informed Goldberg that  
12 sanctions were pursued for actions indicating that he acted in  
13 "bad faith, vexatiously, wantonly, for oppressive reasons, or for  
14 other improper purposes." Schwartz-Tallard v. Am. Serv. Co.  
15 (In re Schwartz-Tallard), 473 B.R. 340, 351 (9th Cir. BAP 2012).

16 Alternatively, the bankruptcy court could have imposed  
17 sanctions under its inherent authority. "A bankruptcy court's  
18 inherent power allows it to sanction 'bad faith' or 'willful  
19 misconduct,' even in the absence of express statutory authority to  
20 do so." Price v. Lehtinen (In re Lehtinen), 564 F.3d 1052, 1058  
21 (9th Cir. 2009). This inherent authority extends even to allow a  
22 bankruptcy court to suspend or disbar an attorney. Id. at 1059.  
23 Here, however, statutory authority existed under § 105(a) as well  
24 as the Local Rules for the District of Nevada. The NRPC applies  
25 to all attorneys admitted to practice before a court within the  
26 district. Local Rule IA 10-7. Local Rule IA 4-1 provides that  
27 "[t]he court may, after notice and opportunity to be heard, impose  
28 any and all sanctions on an attorney . . . who, without just

1 cause: . . . (C) Fails to comply with these rules." Clearly, the  
2 bankruptcy court had authority under the Local Rules to sanction  
3 Goldberg for his conduct which violated the NRPC.

4 Given Goldberg's conduct in this case, we conclude that the  
5 bankruptcy court had authority under any of the above sources to  
6 issue its Sanctions Order against him.

7 **b. The bankruptcy court did not err when determining**  
8 **the types of sanctions it imposed.**

9 Goldberg argues the six-months suspension was too severe of a  
10 sanction. Goldberg also argues the bankruptcy court abused its  
11 discretion by ordering him to give prospective clients its opinion  
12 for five years into the future. We conclude that the sanctions  
13 imposed by the bankruptcy court were fair, supported by the  
14 evidence and reasonable. See In re Nguyen, 447 B.R. at 276.

15 Rule 9011(c)(2) provides that a "sanction imposed for  
16 violation of this rule shall be limited to what is sufficient to  
17 deter repetition of such conduct or comparable conduct by others  
18 similarly situated," and that such sanctions may include "some or  
19 all of the reasonable attorneys' fees and other expenses incurred  
20 as a direct result of the violation." Dressler v. Seeley Co.  
21 (In re Silberkraus), 336 F.3d 864, 871 (9th Cir. BAP 2003).

22 The American Bar Association Standards include a  
23 non-exhaustive list of potential disciplinary sanctions along with  
24 a list of relevant factors to be used when determining the  
25 reasonableness of such sanctions. In In re Crayton, we adopted  
26 the ABA Standards, determining that they "promote[d] the thorough,  
27 rational consideration of relevant factors, and help[ed] to  
28 achieve consistency when imposing attorney discipline." 192 B.R.

1 at 980. We modified our position in In re Nguyen, noting that  
2 requiring explicit consideration of each ABA Standard in  
3 determining the reasonableness of sanctions was too restrictive.  
4 447 B.R. at 277. While a lack of findings by the bankruptcy court  
5 as to each of the factors is not reversible error, in reviewing  
6 attorney disciplinary sanctions on appeal, we must determine  
7 whether (1) the proceeding was fair, (2) the evidence supports the  
8 findings, and (3) the penalty imposed was reasonable.

9 **i. Fairness of the disciplinary proceeding**

10 Goldberg had sufficient notice and time to prepare a defense.  
11 As discussed above, both parties were given ample time to prepare,  
12 present testimony and introduce evidence. In addition, each party  
13 provided post-hearing briefing wherein Goldberg was provided an  
14 opportunity to respond to Debtor's allegations. Accordingly, we  
15 conclude the disciplinary proceeding was fair.

16 **ii. Evidentiary Support**

17 The bankruptcy court articulated extensive evidentiary  
18 findings justifying its Sanctions Order. As for the Tax Returns,  
19 Goldberg readily admitted to a variety of ethical and rule  
20 violations. Goldberg admitted signing his clients' names to filed  
21 tax returns. Although he believed his practices complied with  
22 federal law, he was unable to cite any specific authority allowing  
23 him to sign. Rather, Goldberg rationalized his conduct on the  
24 basis that he had done it so often and had received no complaints  
25 from either clients or the IRS. Contrary to Goldberg's  
26 assertions, the instructions for the 2848 POA clearly show that  
27 his practices violate federal law. Consequently, the bankruptcy  
28 court determined Goldberg's unauthorized signature on the Tax

1 Returns and false representations to the IRS that the Tax Returns  
2 were self-prepared violated Rule 9011 and NRPC §§ 3.3 and 8.4 and  
3 subjected him to possible discipline. The record supports this  
4 determination.

5 With respect to the 2848 POA, the bankruptcy court found  
6 Debtor's testimony to be more credible than that of Goldberg and  
7 Allen. Further, the record showed that Goldberg had failed to  
8 produce the original 2848 POA, and the authenticity of Debtor's  
9 signature on the scanned copy was in question.

10 Regarding the CC Certificate, the court found that no witness  
11 could establish Debtor had completed the credit counseling in  
12 Goldberg's office. The court noted the inconsistent witness  
13 testimonies, Goldberg's admission that his staff routinely and  
14 quickly completed the counseling with Debtors, and Goldberg's  
15 admission that information Debtor provided in her initial packet  
16 gave him sufficient information to complete her credit counseling  
17 without her present. As such, the record supports the bankruptcy  
18 court's finding that Goldberg, or his staff, impersonated Debtor,  
19 improperly obtained Debtor's CC Certificate and then filed it with  
20 the court in bad faith. The record also supports the bankruptcy  
21 court's finding that Goldberg, or someone in his office, signed  
22 the Tax Affidavit rather than Debtor.

23 **iii. Reasonableness**

24 The bankruptcy court has broad authority when issuing and  
25 determining sanctions. Within the express limitations of Rule  
26 9011(c), the bankruptcy court has considerable discretion in  
27 determining the amount of the award. Miller v. Cardinale  
28 (In re DeVille), 361 F.3d 539, 553 (9th Cir. 2004). See also

1 Orton v. Hoffman (In re Kayne), 453 B.R. 372, 386 (9th Cir. BAP  
2 2011)(a bankruptcy court has wide discretion in determining the  
3 amount of a sanctions award). Although Rule 9011(c) states that  
4 sanctions should be limited to what is sufficient to deter  
5 repetition of such conduct, it also states that payment of some or  
6 all of the reasonable attorneys' fees and expenses incurred as a  
7 direct result of the violation may be appropriate. Rule  
8 9011(c)(2). An appropriate deterrence penalty may be greater than  
9 the amount of compensatory damages. Fjeldsted v. Lien  
10 (In re Fjeldsted), 293 B.R. 12, 28 (9th Cir. BAP 2003).

11 The Local Rules also grant considerable leeway in fashioning  
12 sanctions for violations of the NRPC. Local Rule IA 10-7(a)  
13 provides that "[a]ny attorney who violates these standards of  
14 conduct may be disbarred, suspended from practice before this  
15 court for a definite time, reprimanded or subjected to such other  
16 discipline as the court deems proper."

17 Additionally, the court may consider aggravating and  
18 mitigating circumstances in deciding the type and severity of the  
19 sanction imposed. Aggravating factors justifying an increase in  
20 the degree of discipline imposed include: (1) dishonest or selfish  
21 motive; (2) a pattern of misconduct; (3) multiple offenses;  
22 (4) refusal to acknowledge wrongful nature of conduct; and  
23 (5) substantial experience in the practice of law. In re Nguyen,  
24 447 B.R. at 277. See also In re Seare, 2013 WL 2321664, at \*54  
25 (Bankr. D. Nev. 2013).

26 The bankruptcy court was mindful this was not the first time  
27 Goldberg had violated, or had been sanctioned for violating,  
28 various rules, which included the same conduct of forging

1 signatures on credit counseling certificates and filing them with  
2 the bankruptcy court. Goldberg was previously sanctioned in the  
3 same judicial district by Bankruptcy Judge Bruce A. Markell in  
4 In re Sanford, 403 B.R. 831 (Bankr. D. Nev. 2009), and  
5 In re Pagaduan, 429 B.R. 752, 760 (Bankr. D. Nev. 2010), aff'd in  
6 part, vacated in part, 447 B.R. 614 (D. Nev. 2011). In Pagaduan,  
7 Judge Markell found that Goldberg, or someone in his office,  
8 generated a credit counseling certificate by impersonating the  
9 debtors. Id. at 760. The debtors had proof of being out of the  
10 country on the day they allegedly completed the counseling. Id.  
11 at 758. Goldberg unsuccessfully asserted, as he did in this case,  
12 the debtors completed the counseling requirement without even  
13 realizing it.

14       Although Goldberg has been reported and sanctioned for  
15 previous violations, his unprofessional and, in some instances,  
16 possibly criminal conduct apparently continued. Disciplinary  
17 sanctions should, of course, be progressive. Notwithstanding  
18 prior sanctions, Goldberg appeared to continue to engage in a  
19 willful pattern of careless and unprofessional conduct. The  
20 bankruptcy court found Goldberg refuses to accept responsibility  
21 for his actions and that prior sanctions have not resulted in  
22 deterring Goldberg's disregard for judicial rules and procedures.  
23 Additionally, the court noted that Goldberg admitted to having  
24 received fifteen to twenty prior bar complaints during the years  
25 he had practiced in Nevada. Goldberg further testified that he  
26 had been sued by a couple of clients since 1996 and had two or  
27 three fee disputes. Consequently, and with "reluctan[ce]," the  
28 bankruptcy court imposed the sanctions it did against Goldberg "in

1 an effort to deter future similar violations[.]” Mem. (Dec. 4,  
2 2012) 40:25-41:1.

3 We conclude that the sanctions imposed in this case were  
4 reasonable and consistent with the progressive nature of  
5 discipline that was required in this case.<sup>12</sup>

6 **c. The bankruptcy court did not clearly err in its**  
7 **finding of facts.**

8 Goldberg argues that the bankruptcy court erred in finding  
9 that Debtor did not sign her Tax Affidavit and did not permit  
10 Goldberg to sign her Tax Returns. Goldberg similarly argues the  
11 bankruptcy court erred in believing Debtor’s version of events.  
12 We reject Goldberg’s assertion.

13 The bankruptcy court expended considerable time with this  
14 case. It conducted four evidentiary hearings resulting in eleven  
15 witnesses testifying and forty-four exhibits admitted into  
16 evidence. It also accepted and reviewed further briefing by both  
17 parties prior to taking the matter under submission.

18 In its Sanctions Decision, the bankruptcy court thoughtfully  
19 and thoroughly laid out the basis of its reasoning. Overall, the  
20 court found Debtor’s and Lonnie’s testimony to be generally

---

21 <sup>12</sup> Goldberg also argues that the bankruptcy court’s three-year  
22 delay in deciding these issues and use of outside sources has  
23 prejudiced him. The only support Goldberg asserts here is that if  
24 he were a menace to society, the court would have ruled earlier.  
25 We conclude that the delay was not prejudicial, but merely gave  
Goldberg additional time before having to pay the Fee Order, and  
it allowed him to continue to conduct his profitable business.

26 Goldberg additionally argues that Parmelee’s not keeping a  
27 Notary log book was not part of Debtor’s original motion, so  
28 therefore he should not be sanctioned for Parmelee’s acts or  
omissions. Contrary to Goldberg’s assertion, the Sanctions  
Decision stated the lack of a notary log was “not a separate basis  
for the Sanctions Motion.”

1 consistent and credible, while it found Goldberg and his staff's  
2 explanations and rationalizations to be conclusory, contradictory,  
3 frequently evolving throughout the hearing and without evidentiary  
4 support.

5       As for the 2848 POA, the court found that Goldberg's reason  
6 for destroying it, the one document that expressly authorized him  
7 to obtain tax information or to possibly file tax returns, while  
8 keeping originals of other private documents in his "cover-your-  
9 butt" folder "bizarre at best." Id. at 18 n.13. The court also  
10 noted Goldberg's inconsistent references to the 2848 POA.  
11 Initially, Goldberg asserted the 2848 POA was the basis of his  
12 authority to sign the returns. Later, however, Goldberg indicated  
13 that destruction of the original 2848 POA did not matter, because  
14 the basis of his authority to sign returns was a client's oral  
15 authorization, not the 2848. Goldberg also testified that he  
16 never requested the client's written permission to sign tax  
17 returns, which contradicted his assertion that he had a signed  
18 2848 POA from the Debtor. The court also noted that Leaver,  
19 Debtor's expert witness, testified that the copy of the 2848 POA  
20 Goldberg provided was most likely manipulated either by computer  
21 or cut-and-paste because there were line-quality faults that  
22 indicated either simulation or tracing as well as a visible gap in  
23 the signature line. Between the two expert document examiners,  
24 the court found Leaver's testimony more persuasive and his  
25 document examination more extensive than Goldberg's expert,  
26 Klekoda-Baker.

27       In regards to the Tax Affidavit, the court noted the  
28 conflicting testimony of Goldberg's employees. Parmelee testified

1 that he witnessed Debtor sign the Tax Affidavit. However, Allen  
2 testified that Parmelee was not in the room when the Debtor signed  
3 it. The court also noted that Goldberg's expert witness,  
4 Klekoda-Baker, could not conclusively substantiate Debtor's  
5 signature on the Tax Affidavit because she did not have any  
6 "known" signatures with which to compare, although this did not  
7 prevent her from forming the opinion that every other purported  
8 signature of Debtor's was authentic, except for the signature on  
9 her Tax Returns, which Goldberg admitted he signed. Similarly,  
10 Parmelee testified he observed Debtor sign the Tax Affidavit and  
11 notarized the document, yet he was unable to produce a notary  
12 journal supporting his assertion because he does not maintain one.  
13 The court also found that Parmelee had failed to ask Debtor for  
14 her identification or to ask a witness to verify her identity.

15 We conclude that the bankruptcy court's findings are not  
16 illogical, implausible or without support in the record. If the  
17 bankruptcy court's "account of the evidence is plausible in light  
18 of the record viewed in its entirety," we may not reverse, even if  
19 we are convinced that, had we been in the position of fact finder,  
20 we would have weighed the evidence differently. Anderson,  
21 470 U.S. at 573-74. "Where there are two permissible views of the  
22 evidence, the factfinder's choice between them cannot be clearly  
23 erroneous." Id.

24 Accordingly, we AFFIRM the Sanctions Order.

25 **B. The bankruptcy court did not abuse its discretion when it**  
26 **entered the Fee Order.**

27 Goldberg argues that the bankruptcy court erroneously awarded  
28 Debtor her attorney fees. We disagree. Bankruptcy courts have

1 broad discretion when determining sanctions, and sanctions  
2 involving the award of attorney fees are appropriate and  
3 reasonable. The First Circuit Bankruptcy Appellate Panel affirmed  
4 a bankruptcy court's order of sanctions in the amount of three  
5 times the lawyer's fee, where the lawyer blamed the client for  
6 inconsistent and inaccurate information on the schedules and  
7 petitions. Lafayette v. Collins (In re Withrow), 405 B.R. 505,  
8 514 (1st Cir. BAP 2009). Likewise, this Panel affirmed a \$20,000  
9 sanction for the trustee's costs and fees in bringing a motion  
10 under § 707(b)(4) and Rule 9011 after finding an "egregious"  
11 failure to list a promissory note payable to the debtor on the  
12 petition. In re Kayne, 453 B.R. at 385.

13 Goldberg objected to the attorney's fees requested by  
14 Debtor's counsel on the grounds that the \$300 hourly rate charged  
15 by both attorneys was unreasonable, and that the number of hours  
16 billed by each attorney was excessive.<sup>13</sup> In support, Goldberg  
17 provided an affidavit of an experienced local bankruptcy attorney  
18 who charges \$250 per hour. Goldberg argued that Debtor's  
19 attorneys had less bankruptcy experience, and therefore should not  
20 have charged \$300 per hour.

21 The bankruptcy court rejected Goldberg's assertion that  
22 Debtor's counsel's hourly rate was excessive. First, the court  
23 determined that lawyers have great discretion when determining an  
24 hourly rate. Secondly, the court found that Goldberg's hourly  
25  
26  
27

---

28 <sup>13</sup> Goldberg did not object to the award of costs.

1 rate was \$307.50 per hour,<sup>14</sup> which was approximately the same  
2 billable rate that Debtor's attorneys were charging. We also note  
3 Goldberg testified that this is the same rate he charges his  
4 clients for tax work.<sup>15</sup> The court further found that Debtor's  
5 counsel demonstrated the skill and ability required to properly  
6 present the Sanctions Motion, and substantially achieved the  
7 result sought by Debtor. Based on its findings, the court found  
8 the rate charged by Debtor's counsel to be reasonable.

9 As to the number of hours charged, the bankruptcy court  
10 carefully reviewed the statements provided by Debtor's counsel and  
11 analyzed the reasonableness of the hours and costs requested by  
12 each attorney. As shown in the Fee Order, the court rejected fees  
13 for entries it found were duplicative, or lacked contemporaneity,  
14 specificity or reliability. Consequently, the court reduced  
15 counsels' fees accordingly: one attorney's fees were reduced by  
16 \$26,190, the other's by \$2,050.

17 On this record, we conclude that the bankruptcy court's award  
18 of attorney's fees was not illogical, implausible or without  
19 support in the record, and we AFFIRM the Fee Order.

## 20 VI. CONCLUSION

21 For the foregoing reasons, we AFFIRM.  
22  
23

---

24  
25 <sup>14</sup> The court divided Goldberg's customary charge by sixteen  
26 hours – the number of hours Goldberg stated he spent on a typical  
27 bankruptcy – arriving at an hourly fee of \$307.50 per hour.

28 <sup>15</sup> Given Goldberg's admitted lack of research and compliance  
with tax issues, while still charging \$300 per hour, his assertion  
that the same rate charged by Debtor's counsel was unreasonable  
appears unfounded and without merit.