

FEB 01 2012

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

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

5	In re:)	BAP No.	CC-10-1499-MkLaPa
)		
6	STEPHEN LAW,)	Bk. No.	LA 04-10052-TD
)		
7	Debtor.)		
	_____)		
8)		
9	STEPHEN LAW,)		
)		
10	Appellant,)		
)		
11	v.)	MEMORANDUM*	
)		
12	ALFRED H. SIEGEL, Chapter 7)		
	Trustee,)		
)		
13	Appellee.)		
	_____)		

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

Filed - February 1, 2012

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

Honorable Thomas B. Donovan, Bankruptcy Judge, Presiding

Appearances: Daniel Gill of Ezra Brutzkus Gubner LLP argued on
behalf of Appellee Alfred Siegel, Chapter 7
Trustee; Stephen Law, in propria persona, did not
appear for oral argument.

Before: MARKELL, LAFFERTY** and PAPPAS, 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.

**Hon. William J. Lafferty, III, U.S. Bankruptcy Judge for
the Northern District of California, sitting by designation.

1 Debtor Stephen Law ("Law") appeals the bankruptcy court's
2 approval of the Final Report ("Final Report") of chapter 7¹
3 trustee Alfred H. Siegel ("Trustee") and its award of final fees
4 to the Trustee and his professionals. We AFFIRM IN PART, AND
5 VACATE AND REMAND IN PART.

6 **FACTS**

7 Law filed his chapter 7 bankruptcy case over eight years
8 ago, on January 5, 2004. He is no stranger to our court or to
9 the Court of Appeals, as he has appealed many of the bankruptcy
10 court's rulings.² The history we glean from these prior appeals
11

12
13 ¹All chapter and section references are to the Bankruptcy
14 Code, 11 U.S.C. §§ 101-1330, as enacted and promulgated prior to
15 October 17, 2005, the effective date of most of the provisions of
16 the Bankruptcy Abuse Prevention and Consumer Protection Act of
17 2005, Pub. L. 109-8, April 20, 2005, 119 Stat. 23 ("BAPCPA").
18 All "Rule" references are to the Federal Rules of Bankruptcy
19 Procedure.

20 ²As we stated in one of our prior decisions:

21 The many disputes involving [Law] arising in his
22 bankruptcy case have resulted in over a dozen appeals
23 to the Panel and several to the Court of Appeals. In
24 its many decisions issued over the years, the Panel has
25 provided in great detail the facts surrounding [Law's]
26 bankruptcy filings, and his numerous contests with the
chapter 7 trustee concerning the administration of the
bankruptcy estate. See, e.g., Law v. Siegel (In re
Law), BAP nos. CC-05-1303/1344 (9th Cir. BAP December
29, 2006), aff'd 308 F. App'x 161 (9th Cir. 2009); Lin
v. Siegel (In re Law), BAP nos. CC-06-1427/1379 (9th
Cir. BAP July 10, 2007), aff'd 308 F. App'x 152 (9th
Cir. 2009); Law v. Siegel (In re Law), BAP no.
CC-07-1127 (9th Cir. BAP October 5, 2007).

27 Law v. Siegel (In re Law), 2009 WL 7751415 at *1 n.4 (9th Cir.
28 BAP Oct. 22, 2009), aff'd, 435 F. App'x 697 (9th Cir. Jun. 6,
2011).

1 reflects that Law has opposed the Trustee's administration of the
2 bankruptcy estate at every step. For our purposes, a detailed
3 account of the entire case history is unnecessary. An overview
4 will suffice.

5 **1. Overview**

6 The disputes between Law and the Trustee have centered on
7 Law's former residence in Hacienda Heights, California
8 ("Property") and the proceeds from its sale. The Property was
9 Law's only significant asset. He claimed a \$75,000 homestead
10 exemption in the Property, to which the Trustee did not object.
11 In addition to the exemption claim, Law asserted in his schedules
12 that the Property was encumbered by a first deed of trust in
13 favor of Washington Mutual Bank and a second deed of trust in
14 favor of "Lin's Mortgage & Associates" (the "Lin Deed of Trust").
15 According to Law, the Property was only worth about \$363,000 at
16 the time of his bankruptcy filing.

17 Based on his exemption claim and the scheduled liens against
18 the Property, Law argued that the Property had no value to the
19 estate, and he vigorously opposed turnover of the Property to the
20 Trustee and the Trustee's efforts to sell the Property. But the
21 bankruptcy court ordered turnover of the Property and approved
22 its sale. The Trustee ultimately was successful in selling the
23 Property for a sale price of approximately \$680,000.

24 Only one creditor, Cau-Min Li ("Li"), timely filed a proof
25 of claim. The Trustee reached a compromise/settlement with Li
26 concerning that claim, which was based on a prepetition judgment
27 in the principal amount of \$131,821.74. The court approved the
28 settlement, pursuant to which the Trustee paid Li \$120,000.00 out

1 of the proceeds from the sale of the Property. As with every
2 other Trustee action referenced herein, Law vigorously opposed
3 the settlement and the settlement payment.

4 In addition, the bankruptcy court twice entered orders
5 granting the Trustee's motions to surcharge Law's homestead
6 exemption. On appeal from the first surcharge order, the Panel
7 reversed because the bankruptcy court had based that order not on
8 proof of Law's misconduct but rather merely on his litigiousness.
9 However, on appeal from the second surcharge order, the Panel
10 affirmed. Unlike the first surcharge order, the second order was
11 based on the bankruptcy court's findings: (1) that the Lin Deed
12 of Trust was a fiction perpetuated by Law in an attempt to
13 preserve for himself the equity in the Property and to defraud
14 his creditors and the court, and (2) that the harm to the estate
15 resulting from Law's misconduct far exceeded the amount of Law's
16 \$75,000 homestead exemption. In re Law, 2009 WL 7751415 at *4.
17 Among other things, the Panel held that the bankruptcy court's
18 findings were not clearly erroneous and that the bankruptcy court
19 did not abuse its discretion when it granted the second surcharge
20 motion based on these findings. Id. at *8. The Court of Appeals
21 affirmed both of our surcharge decisions. 308 F. App'x at 161;
22 435 F. App'x at 697.

23 **2. Trustee's Final Report and the Professional Fee Applications**

24 On October 20, 2009, pursuant to Rule 2016-1(c)(4)(a) of the
25 Local Rules for the United States Bankruptcy Court for the
26 Central District of California ("Local Rules"), the Trustee filed
27 and served notice of his intent to file his Final Report. In
28 response to this notice, Trustee's counsel filed their second and

1 final fee application on November 11, 2009, and Trustee's
2 accountants filed their first and final fee application on March
3 22, 2010.³

4 On September 14, 2010, the Trustee filed his Final Report.
5 As part of his Final Report, the Trustee requested fees in the
6 amount of \$25,298,45 pursuant to §§ 326(a) and 330(a) as
7 compensation for his services as Trustee. As stated in the Final
8 Report, the Trustee was eligible under § 326(a) for a maximum
9 compensation award of up to \$54,395.00, based on gross receipts
10 he obtained and disbursed on behalf of the estate of
11 \$1,018,169.15. The Trustee's counsel and his accountants filed
12 separate applications for compensation pursuant to Rule 2016,
13 but, importantly, the Trustee did not.

14 At the same time he filed his Final Report, the Trustee
15 filed his Notice of Trustee's Final Report and Applications for
16 Compensation and Deadline to Object ("Notice"), which was served
17 on Law. The Notice included a summary ("Summary") of the Final
18 Report and of the fee applications filed by the Trustee's
19 professionals. The Summary identified the name of each
20 professional applying for fees and the amount of fees and
21 expenses applied for as follows:
22
23
24

25 ³The Panel obtained copies of these documents by accessing
26 the bankruptcy court's electronic docket. The Panel can take
27 judicial notice of their filing and contents. See O'Rourke v.
28 Seaboard Sur. Co. (In re E.R. Fegert, Inc.), 887 F.2d 955, 957-58
(9th Cir. 1989); Atwood v. Chase Manhattan Mortg. Co. (In re
Atwood), 293 B.R. 227, 233 n.9 (9th Cir. BAP 2003).

<i>Reason/Applicant</i>	<i>Fees</i>	<i>Expenses</i>
Trustee: ALFRED H. SIEGEL, TRUSTEE	\$25,298.45	\$0
Attorney for trustee: EZRA, BRUTZKUS, GUBNER ⁴	\$106,462.00	\$0
Accountant: GROBSTEIN, HORWATH & COMPANY	\$3,985.33	\$0

On October 20, 2010, Law filed an opposition to the Final Report and the fee applications ("Opposition"). According to Law, the Trustee's proposed fee of \$25,298.45 was unreasonable because, according to Law, the Trustee only appeared in court "two or three times." In addition, Law argued that the proposed fee exceeded the statutory maximum allowed under § 326(a). By Law's reckoning, the Trustee only garnered on behalf of the estate roughly \$500,000, rather than the \$1,018,169.15 in gross receipts and disbursements the Trustee reported. Law also argued that the amounts already awarded and paid to the Trustee's counsel, and the additional amount applied for, were unreasonable

⁴Neither the Notice nor the Summary refers to Trustee's counsel's first interim fee application or the amounts awarded and paid to Trustee's counsel pursuant to that application. More specifically, Trustee's counsel filed in 2008 a first interim fee application seeking approval of over \$600,000 in fees and \$38,532.19 in expenses. The court granted the interim fee application and overruled Law's opposition thereto. The order on the interim fee application expressly allowed and authorized immediate payment of the full amount of expenses requested, plus \$211,467.81 in fees, for a total interim payment of \$250,000. The Final Report reflects that the Trustee paid the \$250,000 to his counsel.

1 in relation to the benefit to the estate.⁵

2 Law further asserted that the court should not make any
3 determination on the Final Report and the fee applications until
4 his appeals of certain orders were fully resolved. More
5 specifically, Law had taken appeals to our court from the
6 bankruptcy court's second surcharge order and from its order
7 directing the Trustee to pay the \$120,000 owed to Li on account
8 of the Trustee's prior settlement with her. When the Panel ruled
9 against Law in both of these appeals, he took further appeals to
10 the Court of Appeals. While the appeals to the Court of Appeals
11 were pending when Law filed his opposition, the Court of Appeals
12 has since then decided both of these appeals against Law. See
13 In re Law, 435 F. App'x at 697; Law v. Li (In re Law), 430 F.
14 App'x 620 (9th Cir. May 3, 2011).

15 Finally, Law complained that the Trustee gave inadequate
16 notice of the Final Report and the fee applications. Law
17 admitted that he had received the Notice, but Law argued that the
18 entire Final Report and all fee applications should have been
19 served on all creditors and interested parties, including Law
20 himself.

21 On November 3, 2010, the bankruptcy court held the hearing
22 on the Final Report and on the fee applications. The court
23 rejected Law's assertion that the Trustee only had collected
24 roughly \$500,000 on behalf of the estate. As the court pointed

25
26 ⁵Law has not argued on appeal that the Trustee's counsel's
27 fees were unreasonable, so he has waived that argument. See
28 Golden v. Chicago Title Ins. Co. (In re Choo), 273 B.R. 608, 613
45, 55 (9th Cir. BAP 1998), aff'd, 205 F.3d 1350 (9th Cir. 1999).

1 out, the Trustee in his Final Report certified under penalty of
2 perjury that he had received and disbursed over \$1,000,000 in
3 receipts, and Law offered no evidence to counter the Trustee's
4 figures. The court also rejected Law's argument that the court
5 should not render its ruling on the Final Report and the fee
6 applications until all of his appeals had been fully resolved.
7 According to the Court, there was no need or requirement to wait
8 for all of Law's appeals to run their course because Law had not
9 obtained any stay pending appeal. In addition, the court
10 rejected Mr. Law's complaint regarding his not receiving copies
11 of the Final Report or the fee applications. In so ruling, the
12 court apparently relied on Law's admission that he had received
13 the Notice and further noted that Law was aware that the Final
14 Report and the fee applications were available upon request from
15 either the Trustee or the court's website.

16 Accordingly, the court approved the Final Report and granted
17 the fee applications. The court did not make any express
18 findings regarding the Trustee's fee request, but the court did
19 make several comments regarding the fees sought by the Trustee's
20 counsel. The gist of these statements was that the value of the
21 services provided by Trustee's counsel far exceed the amount that
22 they were going to receive in compensation for the services they
23 rendered. As the court explained, the lack of sufficient
24 compensation simply reflected that there were insufficient funds
25 in the bankruptcy estate to cover the Trustee's counsel's time
26 and expenses incurred in dealing with Law's allegations,
27 arguments and objections: "whatever money they receive in this
28 case would seem to be grossly inadequate for all of the work that

1 [Trustee's counsel] have gone through." Hr'g Tr. (Nov. 3, 2010)
2 at 14:11-13. The court also pointed out that Trustee's counsel
3 had not sought any fees in their second and final fee application
4 beyond the half million dollars or so they had sought in their
5 first interim fee application, which the court had approved in
6 full and determined to be reasonable. In short, according to the
7 court, the limitation on compensation to Trustee's counsel was a
8 function of the limited amount of estate assets available and not
9 a reflection of the reasonableness of the fees requested.

10 The court entered an order on November 19, 2010 ("Fee
11 Order") awarding fees to the Trustee and his professionals. Even
12 though the Notice only had referenced those amounts that the
13 Trustee anticipated actually distributing to the professionals,
14 and even though there were insufficient funds in the estate to
15 pay any more to the professionals beyond the amounts noticed,⁶
16 the Fee Order allowed fees and expenses in amounts greater than
17 that set forth in the Notice, as follows:

22 ⁶Indeed, on June 30, 2011, after Law commenced this appeal,
23 the Trustee filed his final account and distribution report,
24 which reflected that the Trustee ultimately received \$25,300.81
25 in total compensation; his counsel received, in aggregate,
26 \$317,959.56 in fees (\$106,491.75, plus the \$211,467.81 previously
27 paid on account of the first interim fee application) and
28 \$38,532.19 in expenses; and, Trustee's accountants received
\$3,985.70 in fees. These amounts generally are consistent with
the amounts set forth in the Notice. The Panel can take judicial
notice of the filing and contents of the Trustee's final account
and distribution report. In re E.R. Fegert, Inc., 887 F.2d at
957-58; In re Atwood, 293 B.R. at 233 n.9.

	Total Final Request	Total Allowed	Paid To Date	Remaining Balance
1				
2				
3	<u>Trustee's counsel:</u>			
4	fees: \$683,592.00	\$683,592.00	\$211,467.81	\$472,124.19
5	exps.: \$68,623.47	\$68,623.47	\$38,532.19	\$30,091.00
6	<u>Trustee's accountant:</u>			
7				
8	fees: \$8,569.00	\$8,569.00	\$0.00	\$8,569.00
9	exps.: \$0.00	\$0.00	\$0.00	\$0.00
10	<u>Trustee:</u>			
11	fees: \$54,394.92	\$54,394.92	\$0.00	\$54,394.92
12	exps.: \$0.00	\$0.00	\$0.00	\$0.00
13				

14 Law timely appealed the Fee Order by filing a notice of
15 appeal on November 23, 2010.

16 **JURISDICTION**

17 The bankruptcy court had jurisdiction under 28 U.S.C.
18 §§ 1334 and 157, and the Panel has jurisdiction under 28 U.S.C.
19 § 158.

20 **ISSUES**

21 1. Did the bankruptcy court err when it determined that the
22 Trustee and his professionals met the service requirements
23 applicable to the Final Report and their fee applications by
24 serving on Law the Notice and the Summary?

25 2. Did the bankruptcy court err when it determined that the
26 Trustee's fee request met the requirements of §§ 326(a) and
27 330(a)?

28 3. Did the bankruptcy court err by approving the Final

1 Report and granting the fee applications even though Law had
2 appeals pending in the Court of Appeals from the bankruptcy
3 court's prior orders?

4 4. Should the bankruptcy court have denied all of the fee
5 applications because of false statements allegedly made by
6 Trustee's counsel at the hearing on the fee applications?

7 **STANDARDS OF REVIEW**

8 Issues regarding the sufficiency of service are reviewed de
9 novo. See Rubin v. Pringle (In re Focus Media, Inc.), 387 F.3d
10 1077, 1081 (9th Cir. 2004).

11 The court's determination of how much money the Trustee
12 disbursed for purposes of calculating the § 326(a) cap was a
13 finding of fact subject to the clearly erroneous standard of
14 review. Under the clearly erroneous standard, the Panel may not
15 reverse the bankruptcy court's findings of fact unless they were:
16 "[1] illogical, [2] implausible, or [3] without support in
17 inferences that may be drawn from the facts in the record."
18 Forest Grove School Dist. v. T.A., 638 F.3d 1234, 1239 (9th Cir.
19 2011) (quoting United States v. Hinkson, 585 F.3d 1247, 1263 (9th
20 Cir. 2009) (en banc)).

21 The Panel reviews a bankruptcy court's decision to grant
22 fees under § 330(a) for abuse of discretion. See Ferrette &
23 Slater v. U.S. Trustee (In re Garcia), 335 B.R. 717, 722 (9th
24 Cir. BAP 2005). Under the abuse of discretion standard of
25 review, we first "determine de novo whether the [bankruptcy]
26 court identified the correct legal rule to apply to the relief
27 requested." Hinkson, 585 F.3d at 1262. And if the bankruptcy
28 court identified the correct legal rule, we then determine under

1 the clearly erroneous standard whether its factual findings and
2 its application of the facts to the relevant law were:
3 "(1) illogical, (2) implausible, or (3) without support in
4 inferences that may be drawn from the facts in the record." Id.
5 (internal quotation marks omitted).

6 DISCUSSION

7 A. Standing

8 As a threshold matter, the Panel will consider Law's
9 standing to appeal. See Palmdale Hills Prop., LLC v. Lehman
10 Commercial Paper, Inc (In re Palmdale Hills Prop., LLC), 654 F.3d
11 868, 873-74 (9th Cir. 2011); Veal v. Am. Home Mortg. Servicing,
12 Inc. (In re Veal), 450 B.R. 897, 906 (9th Cir. BAP 2011). In
13 order to have standing to appeal, Law must be a "person
14 aggrieved" by the order appealed. In re Palmdale Hills Prop.,
15 654 F.3d at 874. The "'person aggrieved test' provides that
16 '[o]nly those persons who are directly and adversely affected
17 pecuniarily by an order of the bankruptcy court . . . have
18 standing to appeal that order.'" Id. (quoting Fondiller v.
19 Robertson (In re Fondiller), 707 F.2d 441, 442 (9th Cir.1983)).
20 An order affecting the size of the estate does not directly and
21 adversely affect pecuniarily a hopelessly insolvent debtor
22 because "[s]uch an order would not diminish the debtor's
23 property, increase his burdens, or detrimentally affect his
24 rights." In re Fondiller, 707 F.2d at 442.

25 In this instance, if the Fee Order were reversed and the
26 roughly \$400,000 in fees and expenses paid to the Trustee and his
27 counsel were disallowed, as Law seeks on appeal, Law's residual
28 interest in the estate apparently would have value. The record

1 reflects that the only timely-filed unsecured proof of claim,
2 Li's judgement claim, has been satisfied in full, and the only
3 other unsecured proofs of claims filed against the estate are
4 tardily-filed claims in the aggregate amount of roughly
5 \$10,000.00. Consequently, Law does have a pecuniary interest in
6 the outcome of this appeal and thus has standing to appeal.

7 **B. Compliance With Service Requirements**

8 Law has admitted that he received a copy of the Notice,
9 which contained the Summary of the Final Report.⁷ But Law claims
10 that the Trustee and his professionals also should have served
11 upon him the full Final Report and all final fee applications.
12 We disagree. None of the Local Rules that Law has cited require
13 a trustee to serve a full final report on the debtor, nor are we
14 aware of any such rule. In fact, the Federal Rules of Bankruptcy
15 Procedure, particularly Rule 2002(f)(8), indicate to the
16 contrary. That Rule merely requires service of "a summary of the
17 trustee's final report in a chapter 7 case" (Emphasis
18 added.)

19 Similarly, Law has not cited to any rule that would have
20 required the Trustee or his professionals to serve their final
21 fee applications on Law. Rule 2002(a)(6) merely provides for
22 service of notice of the hearing on any such fee applications.
23 And Local Rule 2016-1(c)(4)(C) provides:

24 All final fee applications by professional persons must
25 be set for hearing with the chapter 7 trustee's final

26
27 ⁷Law did not assert either in the bankruptcy court or on
28 appeal that the Notice or the Summary were misleading or
incomplete. Consequently, Law has waived any such issues. See
In re Choo, 273 B.R. at 613; In re Branam, 226 B.R. at 55.

1 application for allowance and payment of fees and
2 expenses. Notice of a final fee application must be
3 given by the chapter 7 trustee as part of the notice of
the hearing on the trustee's request for compensation.
A separate notice by the applicant is not required.

4 Simply put, the Panel is not aware of any rule requiring the
5 trustee or his professionals to serve their full final fee
6 applications on the debtor in a chapter 7 case. Therefore, Law's
7 argument regarding service lacks merit.⁸

8 **C. Compliance With §§ 326(a) and 330(a)**

9 Law asserts that the compensation awarded to the Trustee did
10 not comply with the statutes governing trustee compensation,
11 namely § 326(a) and § 330(a). The Panel will address each of
12 these statutes in turn.

13 **1. § 326(a)**

14 Section 326(a) sets a maximum amount, or cap, on fees that
15 may be awarded on account of a chapter 7 trustee's services in a
16 chapter 7 case. As provided in § 326(a):

17 In a case under chapter 7 or 11, the court may allow
18 reasonable compensation under section 330 of this title
19 of the trustee for the trustee's services, payable
20 after the trustee renders such services, not to exceed
21 25 percent on the first \$5,000 or less, 10 percent on
22 any amount in excess of \$5,000 but not in excess of
\$50,000, 5 percent on any amount in excess of \$50,000
but not in excess of \$1,000,000, and reasonable
compensation not to exceed 3 percent of such moneys in
excess of \$1,000,000, upon all moneys disbursed or
turned over in the case by the trustee to parties in

23
24 ⁸Law also claims that the Trustee and his professionals were
25 required to give 120 days advance notice of the hearing on their
26 fee applications. This argument appears to be based on Law's
27 misreading of Local Rule 2016-1(a)(2)(A), which provides in
28 relevant part: "Unless otherwise ordered by the court, hearings
on interim fee applications will not be scheduled less than 120
days apart." On its face, this statement only applies to interim
fee applications and only restricts how far apart interim fee
applications may be set.

1 interest, excluding the debtor, but including holders
2 of secured claims.

3 Law in essence contends that, for purposes of calculating
4 the cap on the Trustee's compensation under § 326(a), the court
5 should have used the amount of net sale proceeds received by the
6 estate after deducting the costs of sale. Law admits that the
7 Property sold for \$680,000, but he claims that only the net sale
8 proceeds (which he figures to be \$489,511.81) should have been
9 counted in calculating the § 326(a) cap on trustee compensation.
10 We disagree. The appropriate numbers for calculating the cap are
11 not net sale proceeds but rather are monies the Trustee disbursed
12 to parties in interest. See U.S. Trustee v. Tamm (In re Hokulani
13 Square, Inc.), 460 B.R. 763, 2011 WL 5924442 at **6-10 (9th Cir.
14 BAP 2011) (applying plain meaning and contextual definition of
15 "moneys disbursed" in holding that secured creditor's credit bid
16 in exchange for its purchase of estate property should not be
17 counted in calculating the cap on trustee compensation). Such
18 monies disbursed included monies paid at the Trustee's behest
19 from the sale escrow pursuant to the bankruptcy court's order
20 authorizing the sale of the Property. See In re Blair, 313 B.R.
21 865, 870 (Bankr. E.D. Cal. 2004), aff'd, 329 B.R. 358 (mem. dec.
22 9th Cir. BAP Jun. 20, 2005); see also 3 Collier on Bankruptcy
23 ¶ 326.02[1][f][i] (Alan N. Resnick and Henry J. Sommer, eds.,
24 16th ed. 2011) (stating that weight of authority holds cap
25 calculation should include monies paid by escrow agent, including
26 funds paid to secured creditors, and explaining why as a matter
27 of bankruptcy policy that is appropriate). Here, the Final
28 Report reflects that, with the exception of \$20,000 in deposit
funds paid directly to the Trustee, the full purchase price for

1 the Property of \$681,294.63 was paid into escrow, and the escrow
2 agent in turn disbursed all of the funds on the Trustee's behalf
3 in accordance with the bankruptcy court's February 22, 2006 order
4 authorizing sale of the Property. Some of those escrow funds,
5 specifically \$469,591.08,⁹ were disbursed by the escrow agent to
6 the Trustee, who in turn disbursed them in accordance with the
7 terms of the Final Report.

8 Based on these facts, the Panel concludes that the
9 appropriate amount the court should have considered for purposes
10 of calculating the §326(a) cap was \$681,294.63.

11 The Trustee's Final Report claims receipts and disbursements
12 of \$1,018,169.15. But the Trustee has not explained how the
13 \$681,294.63 in gross proceeds from the sale of the sole asset of
14 the estate generated \$1,018,169.15 in disbursed funds.¹⁰

16 ⁹According to Exhibit B attached to the Final Report, the
17 Trustee received from escrow net sale proceeds of \$188,777.91,
18 plus \$280,813.17 on account of the avoidance and preservation for
19 the estate of Lili Lin's lien, for total net receipts of
20 \$469,591.08.

21 ¹⁰Looking at the numbers in Exhibit B to the Final Report,
22 we suspect that the difference between these two numbers consists
23 of the following:

24 Interest accrued:	\$19,591.35
25 Lili Lin lien avoidance/recovery:	\$280,813.17
26 Amount deposited by prospective purchasers in 27 conjunction with proposed sale of Property (ultimately refunded when prospective purchasers 28 were not the successful bidders at bankruptcy court auction):	\$16,470.00

(continued...)

1 In any event, assuming without deciding that the court erred
 2 when it accepted the Trustee's disbursal number of \$1,018,169.15
 3 rather than the lower number of \$681,294.63, any such error was
 4 harmless. The amount that the Trustee ultimately received in
 5 compensation (\$25,300.81) was well within the § 326(a) cap under
 6 either number. The Panel acknowledges that the Fee Order
 7 purported to award the Trustee \$54,394.92 in fees, but the award
 8 amount set forth in the Fee Order is largely irrelevant under the
 9 circumstances of this case. What mattered here was the amount
 10 actually paid to the Trustee; any other amount did not actually
 11 inure to anyone's benefit or detriment, and the Panel must ignore
 12 harmless error. See Litton Loan Serv'g, LP v. Garvida (In re
 13 Garvida), 347 B.R. 697, 704 (9th Cir. BAP 2006) (citing 28 U.S.C.
 14 § 2111, Rule 9005, Civil Rule 61, and Donald v. Curry (In re

15

16 ¹⁰(...continued)

17 Amount deposited by second-highest bidders at	
18 bankruptcy court auction accepted by trustee as	
19 backup offer (ultimately refunded when sale to	
20 highest bidder closed):	\$20,000.00
21 Sum of the above amounts:	\$336,874.52
22 Difference between Trustee's claimed	
23 disbursements and gross sale proceeds:	\$336,874.52

24 Other than the interest accrued, it is questionable whether any
 25 of these other amounts should have been counted in calculating
 26 the §326(a) cap. The counting of the \$280,813.17 lien recovery
 27 is particularly questionable as it does not appear to be "moneys
 28 disbursed or turned over" within the meaning of § 326(a). See In
re Hokulani Square, 460 B.R. at 763, 2011 WL 5924442 at *12.
 Moreover, the \$280,000 lien already was "counted" as part of the
 purchase price received and disbursed from the sale of the
 Property. Consequently, counting the lien recovery again
 separately appears to constitute double counting of the same
 funds already accounted as disbursed.

1 Donald), 328 B.R. 192, 203-04 (9th Cir. BAP 2005)).

2 Law also complains that the Trustee's request for fees in
3 his Final Report only sought \$25,298.45 in fees, whereas the
4 court's Fee Order awarded the Trustee \$54,394.92 in fees. Once,
5 again, assuming without deciding that the court erred in ordering
6 an award of more than \$25,298.45, any such error was harmless.
7 The Trustee actually received in fees essentially the same amount
8 that he requested in his Final Report. The Panel simply cannot
9 reverse on the basis that the court's fee award stated a higher
10 amount when the higher amount was not paid and never will be
11 paid. See id.

12 **2. § 330(a) and Rule 2016**

13 Liberally construing Law's pro se appeal brief as we must,
14 see Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th
15 Cir. 1990), Law challenges on appeal the reasonableness of the
16 Trustee's fee and asserts that the Trustee should have filed a
17 separate fee application satisfying the requirements of § 330(a)
18 and Rule 2016.¹¹ We agree with this assertion, as explained
19 below.

20 Section 330(a) requires the court to consider "the nature,
21 the extent and the value of such services" for which the trustee
22 seeks compensation. § 330(a)(3). These considerations in turn
23 require the court to take into account "all relevant factors"
24 including: (1) the time the trustee expended providing the
25 services; (2) the necessity of the services; (3) the rate the

26
27 ¹¹At oral argument, Trustee's counsel conceded that Law had
28 raised the issue of the reasonableness of the Trustee's fee
request.

1 trustee charged; and (4) the complexity, importance and nature of
2 the issues addressed or tasks undertaken. See § 330(a)(3)(A)-
3 (F); see also Gill v. von Wittenberg (In re Fin. Corp. of Am.),
4 114 B.R. 221, 223 (9th Cir. BAP 1990), aff'd, 945 F.2d 689 (9th
5 Cir. 1991).¹²

6 The trustee bears the burden of establishing that the fees
7 requested are reasonable. Roderick v. Levy (In re Roderick
8 Timber Co.), 185 B.R. 601, 606 (9th Cir. BAP 1995); Locke v.
9 Walsh (In re Travel Headquarters, Inc.), 140 B.R. 260, 261-62
10 (9th Cir. BAP 1992). As the Panel stated in Roderick Timber, "In
11 obedience to the statute, in every case, a bankruptcy court
12 should award only those fees that are proven to be actual,
13 necessary and reasonable. Any lesser requirement would make the
14 trustee's burden of proof a mere shell." In re Roderick Timber,
15 185 B.R. at 605-06. As part of his or her efforts to meet this
16 burden, the trustee must submit to the court a fee application
17 complying with the requirements of Rule 2016. Id.; In re Travel
18 Headquarters, Inc., 140 B.R. at 261-62. In relevant part, Rule
19 2016(a) provides "An entity seeking interim or final compensation
20 for services, or reimbursement of necessary expenses, from the
21 estate shall file an application setting forth a detailed
22 statement of (1) the services rendered, time expended and
23 expenses incurred, and (2) the amounts requested." (Emphasis

24
25 ¹²BAPCPA added a new provision to § 330(a), codified as
26 § 330(a)(7), which states: "In determining the amount of
27 reasonable compensation to be awarded to a trustee, the court
28 shall treat such compensation as a commission, based on section
326." This new provision is inapplicable to this case because
this case predates BAPCPA.

1 added.)¹³

2 Here, neither of the parties provided us with anything
3 suggesting that the Trustee prepared and filed a fee application
4 complying with the requirements of 2016, nor have we found
5 anything of that nature in our own search of the bankruptcy court
6 record. We note that the Final Report, which included the
7 Trustee's fee request, also included a narrative summary of the
8 entire case history. But this narrative summary does not
9 identify the services provided by the Trustee (as opposed to
10 those provided by his attorneys or his accountants), nor does the
11 narrative summary give us any indication whatsoever of the amount
12 of time the Trustee expended undertaking whatever services he
13 provided.

14 We do not need to decide in this appeal whether Rule 2016
15 always requires a chapter 7 trustee to submit a separate fee
16 application containing an itemized statement of the services
17 rendered and the time expended in rendering those services. For
18 our purposes, it suffices for us to say that none of the
19 Trustee's submissions in this case were sufficient to satisfy the
20 minimum requirements of Rule 2016.

22 ¹³Even before the 1978 enactment of the Bankruptcy Code and
23 the later enactment of Rule 2016, the time the Trustee expended
24 providing services was a critical factor in assessing the
25 reasonableness of the fees requested. As the Panel stated in
26 Roderick Timber, "[i]t has long been the rule in this circuit
27 that trustees have a duty to meticulously maintain accurate
28 records of time expended on behalf of the estate." Roderick
Timber, 185 B.R. at 605 (citing Matter of Beverly Crest
Convalescent Hospital, Inc., 548 F.2d 817, 820 (9th Cir. 1976),
and York Intern. Building, Inc. v. Chaney, 527 F.2d 1061, 1069
(9th Cir. 1975)).

1 The court made no finding that the Trustee's requested fees
2 were reasonable, nor is the record sufficient (in light of the
3 above-referenced deficiencies) for us to say that it affords us
4 with a complete understanding of the basis for the court's ruling
5 on the Trustee's fee request.

6 Under these circumstances, the Panel must vacate the portion
7 of the Court's Fee Order granting the Trustee's fee request.
8 When the bankruptcy court does not make sufficient findings to
9 support its ruling and when the record is not sufficient to
10 provide us with a complete understanding of the basis for the
11 court's ruling, the Panel must vacate and remand. See Alpha
12 Distrib. Co. of Cal., Inc. v. Jack Daniel Distillery, 454 F.2d
13 442, 452-53 (9th Cir. 1972); Canadian Comm'l Bank v. Hotel
14 Hollywood (In re Hotel Hollywood), 95 B.R. 130, 132-34 (9th Cir.
15 BAP 1988) (same).

16 **D. Waiting for Court of Appeals Decisions**

17 Law argues that the bankruptcy court erred in approving the
18 Final Report and granting the fee applications before all of his
19 pending appeals before the Court of Appeals had been resolved.
20 Law's contentions in support of this argument are exceedingly
21 difficult to follow. For instance, his contentions seem to
22 implicitly assume that the Panel never upheld the bankruptcy
23 court's second surcharge order and never upheld its determination
24 that the Lin Deed of Trust was a fiction created by Law in an
25 attempt to defraud his creditors. But Law's assumptions are
26 simply wrong; the Panel did uphold these bankruptcy court
27 rulings. See In re Law, 2009 WL 7751415 at **7-8. Furthermore,
28 the Court of Appeals has ruled against Law on both of his pending

1 appeals, thereby rendering moot Law's argument that the
2 bankruptcy court should have waited to see if Law would prevail
3 on these pending appeals.

4 Put another way, there is no meaningful relief the Panel can
5 afford to Law given that the position he has taken on appeal
6 hinges on his prevailing in two prior appeals that the Court of
7 Appeals has now decided against him. See Lowenschuss v. Selnick
8 (In re Lowenschuss), 170 F.3d 923, 933 (9th Cir.1999) (stating
9 that mootness of an appeal turns on whether appellate court can
10 fashion some form of effective relief); United States v. Gould
11 (In re Gould), 401 B.R. 415, 422-23 (9th Cir. BAP 2009) (same).
12 Consequently, this argument of Law's is moot.¹⁴

13 **E. False Statements Supposedly Leading to Entry of Fee Order**

14 Finally, Law claims that, at the November 3, 2010 hearing on
15 the Final Report and the fee applications, Trustee's counsel made
16 false statements regarding the amount of fees allowed on account
17 of their first interim fee application. According to Law, based
18 on these false statements, all of the fees requested by the
19 Trustee and his professionals should have been disallowed. First
20 of all, as a preliminary matter, based on the record provided to
21 us, it is far from clear that there was anything false or
22 misleading about the statements of Trustee's counsel made at the
23 November 3 hearing. Law asserts Trustee's counsel represented

24
25 ¹⁴Even if this argument were not moot, we agree with the
26 bankruptcy court's stated reason for rejecting this argument.
27 The bankruptcy court's prior final orders, unless stayed, were
28 immediately effective, and Law could not treat the court's prior
orders as ineffective while he was appealing them absent a stay
pending appeal. See Gemmill v. Robison (In re Combined Metals
Reduction Co.), 557 F.2d 179, 190 (9th Cir. 1977).

1 that \$683,592.00 in fees were allowed on account of their first
2 interim fee application. Actually, the hearing transcript does
3 not reflect that Trustee's counsel said what Law claims that he
4 said. Rather, counsel said that the court "approved the entire
5 [first interim] application for well in excess of what is being
6 requested but only allowed \$200,000.00 to be paid." Hr'g Tr.
7 (Nov. 3, 2010) at 4:9-11. Rather, it was the court that said, to
8 the best of its recollection, the first interim fee application
9 sought fees of "well over half a million dollars" and that it
10 allowed "all the fees because I found them to be reasonable and
11 appropriate" but only authorized the firm to be paid at that time
12 \$250,000.00 in fees and expenses because of the amount of funds
13 available to the estate. Id. at 5:3-9.

14 Thus, Law's argument really challenges the court's
15 recollection rather than the statements of counsel. More
16 importantly, even if we were to credit Law's argument and
17 conclude that the court's recollection was somehow erroneous, Law
18 has once again pointed us to what is, at most, harmless error.
19 Without relying on its prior ruling on the first interim fee
20 application, the court found reasonable the total amount of
21 compensation to be paid to Trustee's counsel on account of their
22 services rendered during the entire case. Indeed, the court's
23 finding on this issue went much further. The court stated:
24 "whatever money they receive in this case would seem to be
25 grossly inadequate for all of the work that [counsel] have gone
26 through." Id. at 14:11-13 (emphasis added).

27 Law has not argued on appeal that the court erred when it
28 determined that trustee's counsel's fees were reasonable, so he

1 has waived that argument. See In re Choo, 273 B.R. at 613; In re
2 Branam, 226 B.R. at 55. Furthermore, on the record presented, we
3 could not conclude that the court's reasonableness determination
4 was illogical, implausible or without support in inferences that
5 could be drawn from the facts in the record.

6 Accordingly, we reject as meritless Law's argument regarding
7 the so-called false statements made by Trustee's counsel.

8 **CONCLUSION**

9 For the reasons set forth above, we VACATE the portion of
10 the Fee Order granting the Trustee's fee request, and we REMAND
11 for further proceedings on that issue. The remainder of the Fee
12 Order is AFFIRMED.