

NOV 03 2015

NOT FOR PUBLICATION

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

UNITED STATES BANKRUPTCY APPELLATE PANEL  
OF THE NINTH CIRCUIT

In re:	)	BAP No. NC-15-1029-JuTaD
	)	BAP No. NC-15-1036-JuTaD
DEBORAH MYNETTE MCINTOSH,	)	(cross appeals)
	)	
Debtor.	)	Bk. No. 13-11774
_____	)	
	)	
DAVID N. CHANDLER, p.c.,	)	
	)	
Appellant/ Cross Appellee,	)	
v.	)	<b>MEMORANDUM*</b>
	)	
DEBORAH MYNETTE MCINTOSH;	)	
Appellee/ Cross Appellant,	)	
	)	
CALHFA MORTGAGE ASSISTANCE PROGRAM,**	)	
	)	
Appellee.	)	
_____	)	

Argued and Submitted on October 23, 2015  
at San Francisco, California

Filed - November 3, 2015

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

Honorable Thomas E. Carlson, Bankruptcy Judge, Presiding\*\*\*

\* 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 8024-1.

\*\* Appellee CalHFA Mortgage Assistance Program (CalHFA) has not participated in this appeal.

\*\*\* The post-confirmation proceedings that culminated in the orders on appeal were assigned to Judge Carlson by Judge  
(continued...)



1 No. 15-1036). For the reasons set forth below, we AFFIRM the  
2 three orders on appeal.

3 **I. FACTS<sup>2</sup>**

4 Debtor owned real property in Rutherford, California. The  
5 property was encumbered by a first deed of trust in favor of  
6 Bayview Loan Servicing, a second deed of trust in favor of  
7 PNC Bank, and a fourth deed of trust in favor of CalFHA. Debtor  
8 owed \$450,000 in attorneys' fees to Carr, McClellan, Ingersol,  
9 Thompson & Horn (CMITH) for contesting a will on her behalf. Of  
10 this amount, \$230,000 was secured by a third priority deed of  
11 trust on the property. CMITH sued Debtor in the California  
12 Superior Court, seeking to foreclose on its security interest  
13 and obtain a money judgment for the outstanding fees and costs.  
14 After she was served with CMITH's complaint, Debtor hired  
15 Chandler to file a chapter 13<sup>3</sup> bankruptcy case for her and to  
16 represent her in that case.

17 On September 18, 2013, Chandler filed Debtor's petition.  
18 Chandler later filed a Rule 2016(b) Statement disclosing that he  
19 had received \$3,500 from Debtor and that \$3,000 was still owed.  
20 The statement showed that Chandler's services included an  
21 analysis of Debtor's financial situation, preparation and filing  
22

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23 <sup>2</sup> We borrow from the bankruptcy court's recitation of the  
24 facts in its Memorandum Decision.

25 <sup>3</sup> Unless otherwise indicated, all chapter and section  
26 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532.  
27 "Rule" references are to the Federal Rules of Bankruptcy  
28 Procedure, "Civil Rule" references are to the Federal Rules of  
Civil Procedure, and "Cal. RPC" references are to the California  
Rules of Professional Conduct.

1 of the petition, schedules, and other documents, and  
2 representation of Debtor at the meeting of creditors.<sup>4</sup>

3 To deal with the CMITH deed of trust, Chandler took a  
4 number of steps. Chandler filed Debtor's initial plan which  
5 provided for the sale of her residence free and clear of CMITH's  
6 lien and stated that she "shall commence proceedings" against  
7 CMITH to enforce her homestead exemption. The plan also said  
8 that if Debtor prevailed in the proceeding, after payment of the  
9 lien of CalHFA, Debtor "shall be entitled to funds representing  
10 her allowed homestead."

11 Chandler then filed an adversary complaint against CMITH on  
12 Debtor's behalf, seeking declaratory and injunctive relief.  
13 The complaint alleged that the deed of trust was procured in  
14 violation of Cal. RPC 3-300 because CMITH had not advised Debtor  
15 to seek advice from separate counsel before engaging in the  
16 transaction with her attorneys.<sup>5</sup> The complaint did not mention

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17  
18 <sup>4</sup> The disclosure talks about a fixed fee, and there is no  
19 disclosure of any fee agreement for billing at an hourly rate for  
20 services beyond those listed.

21 <sup>5</sup> Cal. RPC 3-300, entitled "Avoiding Interests Adverse to a  
22 Client," provides:

23 A member shall not enter into a business transaction  
24 with a client; or knowingly acquire an ownership,  
25 possessory, security, or other pecuniary interest  
26 adverse to a client, unless each of the following  
27 requirements has been satisfied:

28 (A) The transaction or acquisition and its terms are  
fair and reasonable to the client and are fully  
disclosed and transmitted in writing to the client in a  
manner which should reasonably have been understood by  
the client; and

(continued...)

1 or seek relief under any Bankruptcy Code provision. In seeking  
2 the injunction, the complaint alleged that Debtor would suffer  
3 irreparable harm because CMITH's foreclosure would deprive her  
4 of her homestead exemption.

5 Chandler filed a motion for summary judgment (MSJ) in the  
6 adversary proceeding which was scheduled for hearing on  
7 February 7, 2014. The MSJ mentioned only Cal. RPC 3-300.

8 In Schedule C, Debtor claimed a homestead exemption in her  
9 property. The exemption was deemed allowed because no party  
10 filed a timely objection.

11 Chandler also filed a motion to sell Debtor's residence  
12 free and clear of CMITH's lien, alleging that the validity of  
13 the lien was in bona fide dispute. In describing the dispute,  
14 the motion cited only Cal. RPC 3-300.

15 On December 11, 2013, the bankruptcy court held a  
16 preliminary hearing on the confirmation of Debtor's chapter 13  
17 plan.<sup>6</sup> Judge Jaroslovsky asked Chandler whether the CMITH lien

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18  
19  
20 <sup>5</sup>(...continued)

21 (B) The client is advised in writing that the client  
22 may seek the advice of an independent lawyer of the  
23 client's choice and is given a reasonable opportunity  
24 to seek that advice; and

25 (C) The client thereafter consents in writing to the  
26 terms of the transaction or the terms of the  
27 acquisition.

28 <sup>6</sup> On April 16, 2015, Chandler filed a motion to augment the  
record on appeal to include the transcript of the initial plan  
confirmation hearing heard by the bankruptcy court on  
December 11, 2013. As the transcript is material to Chandler's  
arguments on appeal, we grant the motion.

1 would be preserved for the benefit of the estate under § 551<sup>7</sup>  
2 if it were invalidated. In response, Chandler argued that the  
3 lien was not being avoided under the Bankruptcy Code and thus  
4 would not be preserved for the benefit of the estate.

5 We're not avoiding [the CMITH deed of trust] under a  
6 rule that would require preservation for the benefit  
7 of the estate. It's a void [sic] for clear violation  
8 of rule 3300. . . .

8 Chandler also argued that the transfer was not truly voluntary  
9 so that Debtor could exempt the value created by setting aside  
10 the CMITH deed of trust.

11 Well, the idea is this: by virtue—3300 has to do with  
12 informed consent. When you make a voluntary transfer  
13 and you then avoid it, it would typically be for the  
14 benefit of the estate. But when you have a failure  
15 under 3300 then you don't have a consensual transfer  
16 because it wasn't voluntary by definition, you are not  
17 voiding it under the Bankruptcy Code, you are voiding  
18 it under the [California] Rules of Professional  
19 Conduct.

16 On January 21, 2014, Judge Jaroslovsky approved the sale of  
17 Debtor's residence free and clear of liens. The approved sale  
18 price was \$750,000. Taxes and two deeds of trust senior to the  
19 CMITH deed of trust would be paid upon closing and the remaining  
20 sale proceeds would be held in escrow pending resolution of the  
21 dispute regarding the CMITH deed of trust and "further order of  
22 the Court."

23 Three days later, on January 24, 2014, and prior to the

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24 <sup>7</sup> Section 551 provides:

25  
26 Any transfer avoided under section 522, 544, 545, 547,  
27 548, 549, or 724(a) of this title, or any lien void  
28 under section 506(d) of this title, is preserved for  
the benefit of the estate but only with respect to  
property of the estate.

1 scheduled MSJ hearing on February 7, 2014, CMITH unilaterally  
2 recorded a deed of reconveyance with the Napa County Recorder's  
3 office and formally released its deed of trust as a lien against  
4 Debtor's property. Upon the reconveyance, the sale provision to  
5 sell free and clear of its lien was effectively mooted.

6 CMITH had filed a proof of claim in Debtor's bankruptcy  
7 case and Debtor had potential additional claims against CMITH.  
8 In early February 2014, Debtor reached a settlement with CMITH.  
9 Under that settlement, CMITH agreed to withdraw its proof of  
10 claim, Debtor agreed to release any further claims she might  
11 have against CMITH, including claims for attorneys' fees that  
12 she incurred in pursuing the adversary proceeding, and CMITH  
13 agreed to pay \$10,000. Chandler's declaration accompanying the  
14 motion to approve the compromise stated that the terms of the  
15 settlement included, among other things, that "Carr McClellan  
16 will pay directly to the Debtor's Counsel the sum of \$10,000[]  
17 in full satisfaction of any claims for costs or attorneys fees  
18 by either Debtor's Counsel or Debtor arising out of the  
19 Adversary Proceeding."

20 Judge Jaroslovsky approved the settlement by an order  
21 entered on February 10, 2014. The order states that the terms  
22 of the settlement as set forth in ¶ 4 of Chandler's declaration,  
23 including the payment of \$10,000, were approved. As of that  
24 date, there was no written settlement. Later, the parties  
25 negotiated and executed an Agreement and Mutual General Release  
26 and filed a motion for an amended order authorizing the  
27 compromise. With respect to the settlement payment, the  
28 agreement stated:

1 Settlement Payment. Attorneys shall within two  
2 business days of the Effective Date of this Agreement  
3 as defined below pay to David N. Chandler, [p.c.] the  
4 sum of \$10,000.00 in full satisfaction of any and all  
5 known or unknown monetary claims by Former Clients  
6 against Attorneys,<sup>8</sup> including without limitation  
7 claims for attorneys' fees and costs Client McIntosh  
8 may assert arising out of the McIntosh Adversary  
9 Proceeding.

6 The bankruptcy court entered the amended order on March 31,  
7 2014. At that time, Chandler had not submitted a fee  
8 application in connection with fees incurred in litigating the  
9 adversary proceeding. See § 330(a)(4)(B). On April 11, 2014,  
10 Chandler filed a Disclosure of Compensation of Attorney pursuant  
11 to Rule 2016(b), stating that he had retained the \$10,000 for  
12 payment of fees owed to him by Debtor in connection with the  
13 adversary proceeding.

14 On February 12, 2014, Chandler filed a First Amended  
15 Chapter 13 Plan. Revised § 6.01 of the Amended Plan provided:

16 a. Real Property located at . . . Grape Lane,  
17 Rutherford, California 94573 shall be sold as soon as  
18 practicable pursuant to the Order Authorizing Sale of  
19 Real Property. Docket No. 71. Closing costs and the  
20 secured claims of Bayview Loan Servicing, PNC Bank,  
21 CalHFA Mortgage Assistance Corp. and any amount due  
22 the Napa County Tax Collector shall be paid by the  
23 Debtor directly from escrow with proceeds from the  
24 sale. **The Debtor shall receive net proceeds from the  
25 sale on account of her homestead exemption.** Should  
26 there be any non-exempt net sale proceeds, the same  
27 shall be payable to the Ch. 13 Trustee for  
28 distribution in accordance with the Code. (Emphasis  
added).

24 The sale of Debtor's property closed on March 10, 2014.  
25 After the two senior lenders were paid, the amount of \$57,712

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27 <sup>8</sup> A reasonable interpretation of this provision is that the  
28 \$10,000 amount was the total amount of fees Chandler would seek  
for work done in the adversary proceeding.

1 remained in escrow subject to the \$21,000 secured claim of  
2 CalHFA and Debtor's homestead exemption.

3 The amended plan was unopposed when it came before the  
4 court for approval. On April 3, 2014, the bankruptcy court  
5 entered the order approving the amended plan. No appeal was  
6 filed.

7 After the amended plan was approved, Debtor asked Chandler  
8 numerous times to arrange to have the funds held in escrow by  
9 the title company released to both her and CalHFA. Chandler did  
10 not comply, finally telling Debtor in an August 14, 2014 email:

11 . . . it is not totally clear that any of the money  
12 in escrow is yours. We certainly discussed the  
13 possibility of it being yours and you may continue to  
14 insist that it is, but the decision is neither yours  
15 nor mine. The decision rests with the Court and the  
16 issues are complicated. . . .

17 A disagreement arose between Debtor and Chandler regarding  
18 his fees. Debtor allegedly was never informed about the amount  
19 of fees claimed by Chandler and did not know that Chandler  
20 wanted some of the money held in escrow for his fees.

21 Prior to the dispute, Chandler had received a pre-petition  
22 retainer of \$3,500 and the \$10,000 settlement amount paid by  
23 CMITH. The confirmed plan approved additional fees in the  
24 amount of \$3,000 to be paid at the rate of \$273 per month for  
25 60 months. Chandler received \$2,093 through these plan  
26 payments. Combined, Chandler received the sum of \$15,593.

27 On August 19, 2014, Debtor discharged Chandler and  
28 substituted Paul M. Jamond as her counsel. On the same day,  
Debtor filed a motion to dismiss her chapter 13 case.  
Chandler opposed the dismissal arguing that Debtor's request for

1 dismissal was not in good faith since she was attempting to  
2 obtain the proceeds from the sale of her property for herself to  
3 the detriment of the estate.

4 Chandler also filed his final fee application seeking  
5 \$88,816 in fees and \$3,384.82 in costs (\$92,200.82) for work  
6 done in the bankruptcy case and the adversary proceeding. After  
7 application of the prepetition retainer, amounts paid through  
8 the chapter 13 plan, and the \$10,000 received through the  
9 settlement with CMITH, Chandler sought payment of the remaining  
10 balance of \$75,670.82. Chandler's time records show that  
11 approximately \$19,620 in fees and \$1,598.59 in costs were  
12 incurred for services relating to the adversary proceeding.  
13 After deducting the \$10,000 settlement payment from CMITH,  
14 Chandler showed \$11,218.59 due in connection with the adversary  
15 proceeding with the balance of the requested fees for services  
16 performed in the bankruptcy case.

17 On September 5, 2014, Chandler filed the Motion for Order  
18 Directing Escrow Company to Pay Net Sales Proceeds to Chapter 13  
19 Trustee (Distribution Motion). In the motion, Chandler states:

20 The [CMITH] deed of trust was avoided under the  
21 authority of section 544 of the [Bankruptcy] Code.  
22 11 U.S.C. 544. The avoided [CMITH] Deed of Trust was  
automatically preserved for the benefit of the  
Bankruptcy Estate. 11 U.S.C. 551.

23 In his accompanying declaration, Chandler states:

24 I argued that, upon avoidance of the [CMITH] Deed of  
25 Trust, the subordinate CalHFA Deed of Trust would  
improve its position and the Debtor would have an  
26 exemption in the remaining equity.

27 Following confirmation and after conducting legal  
28 research in the months of June and July 2014, I  
reached the conclusion that the Court was correct and  
that preservation of the avoided [CMITH] lien for the

1 estate occurred automatically. However, in so  
2 concluding, I was mindful that my office's interest in  
3 the case had become adverse to that of the Debtor on  
4 the issue of disposition of sale proceeds.

5 . . .

6 I tried to explain [to Debtor's new counsel] the  
7 complexity of the situation and the legal issues  
8 involved, including § 522(g) and § 551.

9 On September 15, 2014, Debtor opposed Chandler's fee  
10 application on the grounds that he had breached his duty of  
11 loyalty to her by switching his position on the preservation of  
12 CMITH's lien – arguing no preservation when he represented her  
13 and then arguing for preservation after the fee dispute arose.  
14 Due to this ethical violation, Debtor requested the bankruptcy  
15 court to deny him all fees and order the disgorgement of fees  
16 previously received. Chandler replied, stating that: (1) his  
17 Distribution Motion which required the net sales proceeds to be  
18 paid to the chapter 13 trustee was fully "consistent with the  
19 Plan and implements its terms;" (2) Debtor avoided the CMITH  
20 lien under §§ 544(a)(1) and (b)(1); and (3) the avoided CMITH  
21 lien was preserved for the bankruptcy estate and not Debtor  
22 under § 551.

23 The inability of a debtor to exempt voluntarily  
24 transferred property that is recovered under Section  
25 551 is, likewise, a strictly legal issue, and the  
26 result that the estate benefit from avoidance of a  
27 voluntary transfer is mandated by law. 11 U.S.C.  
28 Section 522(g); see also Russel v. Kuhnel  
(In re Kuhnel) (10th Cir. 2007) 495 F.3d 1177.

Chandler further argued:

Because David N. Chandler, p.c. only took action to  
obtain approval of disputed fees and address funds  
held in escrow after the Debtor terminated the  
attorney-client relationship and subsequently retained  
substitute counsel, the common law duty of loyalty was

1 not infringed upon as a matter of law because there  
2 was no compromised representation. Santa Clara County  
3 Counsel Attnys. Assn. vs. Woodside, supra, 7 Cal.4th  
4 at 549-54. The concept is consistent with the  
5 principle that an attorney must withdraw from  
6 representation before suing a client for disputed  
7 fees. Id. at 548-49, citing Los Angeles County Bar  
8 Ethics Opns., opn. No. 212 (1953). The common law  
9 duty of loyalty did not require David N. Chandler,  
10 p.c. to abnegate its rights and duties in favor of  
11 advancing the wishes of its client, particularly when  
12 the client's wishes were contrary to the law.

13 In a separate reply in response to Debtor's opposition to  
14 the Distribution Motion, Chandler also asserted that the motion  
15 was "consistent with the chapter 13 Plan and implements its  
16 terms" and that:

17 Section 522(g) of the Code which prohibits a debtor  
18 from claiming property recovered by the estate under  
19 Section 551 as exempt if the recovered property was  
20 voluntarily transferred by the debtor. 11 U.S.C.  
21 § 522(g); see also Russel v. Kuhnel (In re Kuhnel)  
22 (10th Cir. 2007) 495 F.3d 1177.

23 On October 21, 2014, the bankruptcy court heard Debtor's  
24 motion to dismiss, the Distribution Motion, and Chandler's fee  
25 application and took the matters under submission.

26 On January 16, 2015, the bankruptcy court issued a  
27 Memorandum Decision. In discussing the Distribution Motion, the  
28 court noted that the CMITH lien was not preserved for the  
benefit of the estate under any of the relevant sections of the  
Bankruptcy Code because the adversary proceeding under which the  
CMITH deed of trust was invalidated was brought solely under  
Cal. RPC 3-300 and did not seek to avoid the lien under any of  
the Bankruptcy Code sections listed in § 551. The court also  
found that the confirmed chapter 13 plan provided that the CMITH  
deed of trust was not preserved for the benefit of the estate.

1 In the end, the court denied the Distribution Motion and ordered  
2 the escrow agent to distribute the \$57,713 in sale proceeds,  
3 with \$21,000 to CalFHA and the remainder to Debtor on account of  
4 her homestead exemption.

5 In ruling on Chandler's final fee application, the  
6 bankruptcy court found that Chandler had "blatantly" breached  
7 his duty of loyalty to Debtor and that he should be denied all  
8 fees as a result of his misconduct.

9 At the outset, it is important to note that Chandler's  
10 breach of loyalty is not in his attempt to collect  
11 fees from Debtor. An attorney must always be free to  
12 pursue his client for fees if he or she does so  
13 properly. Chandler's breach of duty arises from the  
14 fact that he is taking a position adverse to his  
15 former client on an issue on which he previously  
16 represented the client and that is separate from the  
17 fees he is seeking to collect. With respect to that  
18 separate issue, it does not matter whether the court  
19 has decided the issue, or whether the position  
20 Chandler is currently taking is legally correct. An  
21 attorney who advocates a position on behalf of a  
22 client cannot switch sides simply because the issue  
23 has not yet been decided and/or he now believes the  
24 position he previously asserted on behalf of the  
25 client is wrong.

26 The bankruptcy court noted that it had discretion under  
27 both state law and bankruptcy law to deny some or all fees to an  
28 attorney who has breached ethical requirements. The court  
determined that Chandler's breach of ethical duty was "so  
flagrant" that he should be denied all fees and required to  
refund fees he previously received.

First, the breach of loyalty was stark. Chandler  
specifically argued that the CMITH lien was not  
preserved, obtained that result through the confirmed  
plan, then specifically argued that the lien was  
preserved. Second, Chandler made a blatant  
misrepresentation to this court. In arguing that the  
CMITH lien was preserved, he stated that it had been  
avoided under section 544 of the Bankruptcy Code  
(which would result in preservation of the lien).

1 Docket No. 120, ¶¶ 7, 8. In fact, the adversary  
2 proceeding against CMITH, which Chandler drafted and  
3 filed, sought to invalidate the lien solely on the  
4 basis of Rule 3-300 of the California Rules of  
5 Professional Conduct (which resulted in the  
6 elimination of the lien). Docket No. 31, ¶¶ 13-16,  
7 25-31. Third, Chandler's reversal of course was for  
8 the purpose of collecting his fees, and sought to  
9 deprive his former client of her homestead  
10 exemption—one of the most important protections  
11 provided debtors under both state and Federal law.  
12 Fourth, Chandler understood all of this. Although the  
13 question whether the CMITH lien was preserved may  
14 appear technical and confusing to an attorney who does  
15 not regularly practice bankruptcy law, Chandler  
16 specializes in bankruptcy law and understood the  
17 meaning of everything he did. Any doubt about that is  
18 dispelled when one sees the technical virtuosity with  
19 which he first argued that the lien was not preserved  
20 and then argued that it was preserved.

21 On the same day, the bankruptcy court entered the Dismissal  
22 Order, Distribution Order and Fee Order. Chandler filed a  
23 timely appeal from those orders and Debtor filed a timely cross  
24 appeal on the Fee Order.

## 25 **II. JURISDICTION**

26 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.  
27 §§ 1334 and 157(b)(2)(A) and (L). We have jurisdiction under  
28 28 U.S.C. § 158.

## 29 **III. ISSUES**

### 30 **ISSUES ON APPEAL:**

31 Did the bankruptcy court err in finding that Chandler had  
32 breached the duty of loyalty?

33 Did the bankruptcy court abuse its discretion by denying  
34 Chandler's fee application in its entirety and requiring  
35 disgorgement of fees previously paid?

36 Did the bankruptcy court err in denying Chandler's  
37 Distribution Motion?

1 Did the bankruptcy court err in granting Debtor's motion to  
2 dismiss her case?

3 **ISSUES ON CROSS APPEAL**

4 Does the bankruptcy court's statement that its denial of  
5 Chandler's fees "fully compensated" Debtor for breach of  
6 Chandler's duty of loyalty preclude her from pursuing a  
7 malpractice action against him or seeking further fees?

8 Did the bankruptcy court deny Debtor procedural due process  
9 when it found that its denial of Chandler's fees "fully  
10 compensated" her for Chandler's breach of the duty of loyalty?

11 **IV. STANDARDS OF REVIEW**

12 We review the bankruptcy court's findings of fact for clear  
13 error and its conclusions of law de novo. Cont'l Ins. Co. v.  
14 Thorpe Insulation Co. (In re Thorpe Insulation Co.), 671 F.3d  
15 1011, 1030 (9th Cir. 2011).

16 We review the bankruptcy court's denial of attorneys' fees  
17 for abuse of discretion. Rodriguez v. Disner, 688 F.3d 645, 652  
18 (9th Cir. 2012); First Interstate Bank of Nev., N.A. v. CIC Inv.  
19 Corp. (In re CIC Inv. Corp.), 192 B.R. 549, 551 (9th Cir. BAP  
20 1996). "We generally give broad deference to the [bankruptcy]  
21 court's determinations on fee awards because of its 'superior  
22 understanding of the litigation and the desirability of avoiding  
23 frequent appellate review of what essentially are factual  
24 matters.'" Rodriguez, 688 F.3d at 652.

25 We also review an order dismissing a chapter 13 bankruptcy  
26 case for abuse of discretion. Brown v. Sobczak (In re Sobczak),  
27 369 B.R. 512, 516 (9th Cir. BAP 2007).

28 Under the abuse of discretion standard, we must affirm

1 unless the bankruptcy court applied the wrong legal standard or  
2 its findings of fact were illogical, implausible, or without  
3 support in the record. United States v. Hinkson, 585 F.3d 1247,  
4 1262 (9th Cir. 2009) (en banc).

5 We may affirm on any ground supported by the record.  
6 Vestar Dev. II, LLC v. Gen. Dynamics Corp., 249 F.3d 958, 960  
7 (9th Cir. 2001).

## 8 V. DISCUSSION

9 Chandler identifies seven issues on appeal in his opening  
10 brief. Each of his claims pertains to the bankruptcy court's  
11 errors in finding that he breached the duty of loyalty. In  
12 Chandler's view, the bankruptcy court did not apply the correct  
13 legal standards in making its determination and the evidence  
14 simply did not add up to a breach of the duty of loyalty. "For  
15 one reason or another, the Bankruptcy Court simply got it  
16 wrong." As discussed below, we are not persuaded by any of his  
17 arguments.

### 18 **A. The bankruptcy court did not err in concluding that 19 Chandler had breached the duty of loyalty to Debtor.**

#### 20 **1. Legal Standards**

21 "The federal courts in California do not have their own  
22 rules of professional conduct for lawyers." In re Muscle  
23 Improvement, Inc., 437 B.R. 389, 393 (Bankr. C.D. Cal. 2010).  
24 Northern California Bankruptcy Court Local Rule 1001-2(a)  
25 incorporates the Northern District Court Civil Local  
26 Rule 11-4(a)(1), which in turn provides that all attorneys must  
27 "comply with the standards of professional conduct required of  
28 members of the State Bar of California." Cal. RPC 1-100

1 provides that "the prohibition of certain conduct in these rules  
2 is not exclusive. Members are also bound by applicable law  
3 including . . . opinions of California courts." In addition to  
4 the California Rules of Professional Conduct, an attorney's duty  
5 of loyalty has been recognized in the common law.

6 The California Supreme Court explained the duty of loyalty  
7 over eight decades ago:

8 One of the principal obligations which bind[s] an  
9 attorney is that of fidelity, the maintaining  
10 inviolate the confidence reposed in him by those who  
11 employ him, and at every peril to himself to preserve  
12 the secrets of his client. This obligation is a very  
13 high and stringent one. It is also an attorney's duty  
14 to protect his client in every possible way, and it is  
15 a violation of that duty to assume a position adverse  
16 or antagonistic to his client without the latter's  
17 free and intelligent consent given after full  
18 knowledge of all the facts and circumstances. By  
19 virtue of this rule an attorney is precluded from  
20 assuming any relation which would prevent him from  
21 devoting his entire energies to his client's  
22 interests. Nor does it matter that the intention and  
23 motives of the attorney are honest. The rule is  
24 designed not alone to prevent the dishonest  
25 practitioner from fraudulent conduct, but as well to  
26 preclude the honest practitioner from putting himself  
27 in a position where he may be required to choose  
28 between conflicting duties, or be led to attempt to  
reconcile conflicting interests, rather than to  
enforce to their full extent the rights of the  
interest which he should alone represent.

21 Anderson v. Eaton, 211 Cal. 113, 116 (1930).

22 The duty of loyalty does not stop once the attorney-client  
23 relationship ends. Oasis W. Realty, LLC v. Goldman, 51 Cal.4th  
24 811, 821 (2011). An attorney "may not do anything which will  
25 injuriously affect [the] former client in any matter in which  
26 [the attorney] formerly represented him." Id.; see also  
27 Wutchumna Water Co. v. Bailey, 216 Cal. 564, 573-74 (1932).

28 This is so even if the action injurious to the former client

1 does not involve the use or disclosure of confidential  
2 information. People ex rel. Deukmajian v. Brown, 29 Cal.3d 150,  
3 156 (1981). An attorney breaches the duty of loyalty in taking  
4 action on his or her own behalf, if that action is injurious to  
5 a former client on a matter in which the attorney represented  
6 that client. Oasis, 51 Cal.4th at 822-24. Applying these  
7 standards, we consider whether the bankruptcy court's conclusion  
8 that Chandler breached his duty of loyalty to Debtor was  
9 correct.

## 10 **2. Analysis**

11 Although Chandler acknowledges the long standing rule that  
12 an attorney "may not do anything which will injuriously affect  
13 [the] former client in any matter in which [the attorney]  
14 formerly represented him," he insists the rule does not apply  
15 under these circumstances. Chandler argues that since he  
16 withdrew from representation as soon as the conflict arose, the  
17 common law duty of loyalty was not infringed upon as a matter of  
18 law because there was no compromised representation. Chandler  
19 cites Santa Clara County Counsel Attorneys Association v.  
20 Woodside, 7 Cal.4th 525, 549-54 (1994), in support of this  
21 argument. Relying again on Woodside, he argues that the "never  
22 injuriously affect the former client" prohibition set forth in  
23 Oasis is qualified by a client's "legitimate expectations" of  
24 the attorney's conduct and courts will not protect a client's  
25 illegitimate or unreasonable expectations of loyalty. In this  
26 regard, Chandler maintains that the bankruptcy court erred by  
27 not considering whether Debtor had a legitimate expectation that  
28 he would sit silently by the side lines and ignore the effect of

1 §§ 544 and 551 while she was trying to dismiss her case, obtain  
2 the proceeds from the sale of her property for herself with no  
3 judicial oversight, and evade paying him for beneficial services  
4 rendered. Chandler is wrong on both accounts.

5 The Woodside case is distinguishable and does not stand for  
6 the propositions Chandler asserts. There, the California  
7 Supreme Court held that attorneys employed by the County  
8 Counsel's office could maintain a suit against the County to  
9 enforce their statutory rights in a salary dispute without  
10 violating a duty of loyalty to their public agency employer.  
11 The court reasoned that the lawsuit did not represent a conflict  
12 with the County on matters in which the attorneys had  
13 represented or were representing the County. In contrast, the  
14 bankruptcy court here explicitly found that Chandler's position  
15 in the Distribution Motion where he argued for the preservation  
16 of CMITH's lien directly conflicted with his position on that  
17 issue when he was representing Debtor.

18 The Woodside case also does not purport to place a  
19 "legitimate expectation" qualification, or any qualification, on  
20 the rule that it is an attorney's duty to protect his client in  
21 every possible way, and that it is a violation of that duty to  
22 assume a position adverse or antagonistic to his client without  
23 the latter's free and intelligent consent given after full  
24 knowledge of all the facts and circumstances.

25 In addition, as noted above, the duty of loyalty does not  
26 stop once the attorney-client relationship ends. Oasis,  
27 51 Cal.4th at 821. Therefore, Chandler's actions after Debtor  
28 secured new counsel can be considered when determining whether

1 Chandler violated the duty of loyalty. The bankruptcy court  
2 recognized and correctly applied this rule.

3 Next, as Chandler sees it, he never took an adverse  
4 position to Debtor because at "no point and in no pleading or  
5 document filed with the court, did [he] contest or refute []  
6 Debtor's claim to an exemption either under § 522(a) or (g)."  
7 Chandler maintains there is no evidence in the record showing  
8 otherwise. Thus, argues Chandler, no duty of loyalty was  
9 breached. We cannot agree.

10 First, Chandler's making this argument on appeal is  
11 disingenuous. In his reply to Debtor's opposition to his fee  
12 application, he argued for the bankruptcy estate and not for  
13 Debtor. This argument was a clear contest to Debtor's right to  
14 her homestead exemption.

15 Second, the bankruptcy court's conclusion that Chandler  
16 breached his duty of loyalty to Debtor has nothing to do with  
17 whether he explicitly and specifically contested or refuted  
18 Debtor's homestead exemption claim. Rather, the record shows  
19 that after the fee dispute arose, Chandler changed his position  
20 on whether CMITH's lien was preserved for the benefit of the  
21 estate. While representing Debtor, Chandler argued that the  
22 CMITH lien was not preserved for the estate and that the equity  
23 created by removing the lien would be used to preserve Debtor's  
24 homestead. The bankruptcy court entered an order to that effect  
25 when it approved Debtor's first amended chapter 13 plan. Later  
26 on, if CMITH's lien was preserved under § 551 for the benefit of  
27 the estate as Chandler argued in the Distribution Motion, Debtor  
28 potentially would not receive any sale proceeds on account of

1 her homestead exemption and Chandler would receive at least some  
2 of his fees. On this record, a reasonable trier of fact could  
3 find that Chandler's change of position and personal interest in  
4 having his fees paid before any sales proceeds were distributed  
5 according to the terms of the approved plan had an injurious  
6 affect on Debtor's homestead exemption and resulted in a breach  
7 of the duty of loyalty.

8 Chandler also argues at length in his opening and reply  
9 briefs why his position in the Distribution Motion regarding the  
10 preservation of CMITH's lien under § 551 was correct. The point  
11 of these arguments is to show that he did not breach the duty of  
12 loyalty since he was simply following the law. Chandler's  
13 emphasis on the correctness of his position is misplaced. The  
14 duty of loyalty was implicated when Chandler changed his  
15 position on the lien preservation issue to protect his own  
16 economic interests and not because his first position was  
17 "wrong" and the second one "right." We note that Chandler did  
18 not arrive at the "right" conclusion until his fees were in  
19 jeopardy.

20 Chandler also contends that the bankruptcy court abused its  
21 discretion in denying his fee application because its conclusion  
22 was based on erroneous findings of fact. The arguments Chandler  
23 makes again relate to the bankruptcy court's conclusion that he  
24 breached the duty of loyalty. Chandler argues that the court's  
25 finding that he made a "blatant misrepresentation" was error  
26 because his statement regarding the reconveyance of the CMITH  
27 deed of trust being "avoided under the authority of § 544" was a  
28 legal position, not a statement of fact. Chandler insists,

1 again, that this was a correct statement of the law. Chandler  
2 also argues that the bankruptcy court misinterpreted the  
3 confirmed chapter 13 plan because the plan did not determine  
4 Debtor's exemption nor did it contain language that entitled  
5 CalHFA to sales proceeds.

6 On the record before us, there is no basis to question the  
7 bankruptcy court's factual findings, much less find them clearly  
8 erroneous. We do not second guess the bankruptcy court's  
9 characterization of Chandler's statement regarding CMITH's lien  
10 as being avoided under § 544 as a "blatant misrepresentation"  
11 considering the context in which it was made. Moreover, even if  
12 Chandler's statement could be construed as a legal position,  
13 the facts underlying the position were not true – the adversary  
14 proceeding Chandler filed against CMITH did not allege facts  
15 where § 544 might apply and did not mention any Bankruptcy Code  
16 section at all. Chandler's statement, whether construed as an  
17 argument or fact, was false.

18 We also give substantial deference to the bankruptcy  
19 court's interpretation of Debtor's first amended chapter 13  
20 plan. See In re Marciano, 459 B.R. 27, 35 (9th Cir. BAP 2011)  
21 ("We owe substantial deference to the bankruptcy court's  
22 interpretation of its own orders and will not overturn that  
23 interpretation unless we are convinced that it amounts to an  
24 abuse of discretion."), aff'd, 708 F.3d 1123 (9th Cir. 2013).  
25 We are not convinced by Chandler's contention that certain  
26 issues regarding Debtor's homestead exemption and payment to  
27 CalFHA were "preserved" through the following language in  
28 Debtor's plan: "No lien on real property shall be removed,

1 avoided or extinguished except by adversary proceeding pursuant  
2 to Rule 7001(2). . . ." To put it lightly, Chandler's  
3 interpretation depends upon a strained and improbable reading.

4 Due to Chandler's actions and change in position, we find  
5 that the bankruptcy court did not err when it concluded that  
6 Chandler had breached his duty of loyalty. The court set forth  
7 the correct legal standards for evaluating Chandler's ethical  
8 duty of loyalty and applied properly the law to the facts of the  
9 case. Moreover, its factual findings were plausible and  
10 supported by inferences that may be drawn from the facts in the  
11 record. Having found that Chandler breached his duty of  
12 loyalty, the bankruptcy court had discretion over whether to  
13 permit Chandler to receive any fees.

14 **B. The bankruptcy court did not abuse its discretion in  
15 concluding that Chandler was not entitled to any fees  
16 as a result of his ethical violation and disgorgement was  
17 proper.**

18 Chandler contends that the bankruptcy court abused its  
19 discretion in denying all his fees and ordering disgorgement.  
20 According to Chandler, compensation can only be disallowed after  
21 breach of the duty of loyalty, citing Jeffry v. Pounds,  
22 67 Cal.App.3d 6, 11-12 (1977). Chandler also complains that the  
23 bankruptcy court did not consider the standards under § 330  
24 regarding the reasonableness of his fees, the value of his  
25 services, and its own observation of the quality of his  
26 services.

27 At the October 21, 2014 hearing, the bankruptcy court  
28 acknowledged the rule in Jeffry that an attorney cannot collect  
fees during the period in which he/she was breaching the duty of

1 loyalty. However, the bankruptcy court properly noted that  
2 under California law it had discretion to deny some or all of  
3 the fees of an attorney who has breached ethical requirements.  
4 See Pringle v. La Chapelle, 73 Cal.App. 4th 1000, 1006 (1999);  
5 Cal Pak Delivery, Inc. v. United Parcel Serv., Inc., 52 Cal.App.  
6 4th 1, 14-16 (1997); Jeffry, 67 Cal.App.3d at 11-12. The  
7 "egregiousness of the violation is often the critical factor."  
8 Rodriguez, 688 F.3d at 655 (referring to California law).

9 The bankruptcy court also correctly observed that under  
10 Ninth Circuit law, it had discretion to deny fees to an attorney  
11 who commits an ethical violation. Id. "In making such a  
12 ruling, the [bankruptcy] court may consider the extent of the  
13 misconduct, including its gravity, timing, willfulness, and  
14 effect on the various services performed by the lawyer, and  
15 other threatened or actual harm to the client." Id. In  
16 Rodriguez, the Ninth Circuit noted that "[t]he representation of  
17 clients with conflicting interests and without informed consent  
18 is a particularly egregious ethical violation that may be a  
19 proper basis for the complete denial of fees." Id.

20 Applying these authorities, the bankruptcy court found that  
21 Chandler's breach of the duty of loyalty was so "flagrant" that  
22 he should be denied all fees and refund fees previously  
23 received. The court then made additional findings of fact to  
24 support its decision - findings which establish that Chandler's  
25 breach of his ethical duty of loyalty was the equivalent of  
26 "egregious:" (1) the breach of loyalty was "stark;"  
27 (2) Chandler made a blatant misrepresentation to the court;  
28 (3) Chandler's reversal of course was for the purpose of

1 collecting his fees, and sought to deprive his former client of  
2 her homestead exemption; and (4) Chandler understood all this -  
3 he "understood the meaning of everything he did." These  
4 findings are plausible and supported by inferences that may be  
5 drawn from the facts in the record. Thus, they cannot be  
6 clearly erroneous.

7 Section 330 does not compel a different result. A  
8 bankruptcy court's authority to deny fees and order disgorgement  
9 is "grounded in [its] inherent authority over the debtor's  
10 attorney's compensation." Law Offices of Nicholas A. Franke v.  
11 Tiffany (In re Lewis), 113 F.3d 1040, 1045 (9th Cir. 1997). In  
12 a chapter 13 case, a bankruptcy court "may allow reasonable  
13 compensation to the debtor's attorney for representing the  
14 interests of the debtor in connection with the bankruptcy case  
15 based on a consideration of the benefit and necessity of such  
16 services to the debtor and the other factors set forth in this  
17 section." § 330(a)(4)(B). The allowance of reasonable  
18 compensation is discretionary. In re CIC Inv. Corp., 192 B.R.  
19 at 551.

20 Ethical violations are relevant to a fee determination  
21 under § 330. See Matter of Rancho Motor Inn, Inc., 527 F.2d  
22 1044, 1047 (9th Cir. 1975) ("Improper conduct on the part of  
23 officers or attorneys has frequently been penalized by  
24 withholding compensation or reimbursement or both.");  
25 In re Wilde Horse Enters., Inc., 136 B.R. 830, 844 (Bankr. C.D.  
26 Cal. 1991) ("[V]iolations of . . . professional ethics or  
27 breaches of fiduciary duties can give rise to the reduction,  
28 denial or forfeiture of compensation or other sanctions.").

1 Here, the bankruptcy court's discretionary decision to deny all  
2 fees and order disgorgement was based on its factual findings  
3 regarding the gravity of Chandler's ethical violations. Thus,  
4 there was no need for the court to inquire into the  
5 reasonableness of his fees or consider other factors under  
6 § 330(a)(3).<sup>9</sup>

7 Finally, Chandler makes no specific argument regarding the  
8 bankruptcy court's authority to require disgorgement of the  
9 \$10,000 payment made to him by CMITH under the court-approved  
10 compromise order. Although the compromise order was a final  
11 order as between Debtor and CMITH, there is no indication in the  
12 order or in the record on appeal that the compromise order was

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14 <sup>9</sup> Section 330(a)(3) states:

15 In determining the amount of reasonable compensation to  
16 be awarded to an examiner, trustee under chapter 11, or  
17 professional person, the court shall consider the  
18 nature, the extent, and the value of such services,  
taking into account all relevant factors, including--

- 19 (A) the time spent on such services;  
20 (B) the rates charged for such services;  
21 (C) whether the services were necessary to the  
administration of, or beneficial at the time at which  
22 the service was rendered toward the completion of, a  
case under this title;  
23 (D) whether the services were performed within a  
reasonable amount of time commensurate with the  
24 complexity, importance, and nature of the problem,  
issue, or task addressed;  
25 (E) with respect to a professional person, whether the  
person is board certified or otherwise has demonstrated  
26 skill and experience in the bankruptcy field; and  
27 (F) whether the compensation is reasonable based on the  
customary compensation charged by comparably skilled  
28 practitioners in cases other than cases under this  
title.

1 final as between Debtor and Chandler with respect to his fees.  
2 Actually, the record suggests that it was not. First, Chandler  
3 incurred fees beyond the \$10,000 in the adversary proceeding.  
4 Next, Chandler continued to represent Debtor in the underlying  
5 bankruptcy case. Thus, he could not have submitted a "final"  
6 fee application at the time of the compromise order. Last, by  
7 filing his final fee application and seeking court approval for  
8 amounts previously paid – including the \$10,000 – Chandler could  
9 not be relying on the compromise order as a final fee award with  
10 respect to that payment. By treating the \$10,000 payment as in  
11 the nature of an interim award in his final fee application,  
12 Chandler clearly anticipated that the bankruptcy court would  
13 revisit that award. It is well established that interim fees  
14 are always subject to disgorgement. See § 330(a)(5); see also  
15 § 329(b). On this record, Chandler can neither claim that  
16 disgorgement of the \$10,000 was an unexpected result nor can he  
17 complain that he did not have the opportunity to be heard with  
18 respect to that amount.

19 There is an alternative reason why the bankruptcy court's  
20 order denying Chandler's fees and ordering disgorgement was  
21 appropriate. Under § 329(a) and Rule 2016(b), a debtor's  
22 attorney is required to execute and file a supplemental  
23 statement concerning any payment received or compensation  
24 agreement not previously disclosed within fifteen days after  
25 receiving such payment or making any new agreement. While  
26 Chandler did disclose that he had received the \$10,000 amount  
27 through CMITH and applied that to his fees, that disclosure was  
28 inadequate. After the initially disclosed flat fee agreement,

1 Chandler never supplemented his disclosure to show that he had  
2 entered into a new fee agreement with Debtor whereby he would  
3 bill at an hourly rate for services beyond those initially  
4 disclosed. As a sanction for failing to timely and adequately  
5 disclose the new fee agreement, the bankruptcy court has the  
6 inherent authority to order disgorgement and discretion to deny  
7 counsel all fees even if the violation was unintentional.

8 In re Lewis, 113 F.3d at 1045.

9 For all these reasons, we conclude that the bankruptcy  
10 court did not abuse its discretion by denying Chandler's fees  
11 and ordering disgorgement of amounts previously paid.

12 **C. Debtor's Cross Appeal of the Fee Order**

13 After denying Chandler's fees and requiring disgorgement,  
14 the bankruptcy court stated:

15 I determine that this remedy fully compensates Debtor  
16 for all harm caused by Chandler's breach of duty.  
17 Requiring Chandler to refund the \$15,593 he already  
18 received should be sufficient to cover the fees that  
19 Debtor incurred in responding to Chandler's fee  
20 application, Chandler's motion to distribute proceeds,  
21 and Chandler's opposition to Debtor's motion to  
22 dismiss her chapter 13 case.

23 Debtor argues on appeal that this determination prevents  
24 her from bringing a malpractice action against Chandler, as it  
25 leaves her with no claim for damages. Debtor complains that she  
26 has been further damaged by this appeal because (1) the title  
27 company holding the \$57,712 has not yet disbursed any of the  
28 funds to either CalFHA or Debtor; (2) CalFHA is an oversecured  
creditor and therefore interest continues to accrue on its deed  
of trust which is senior to Debtor's homestead; (3) there is an  
attorneys' fee clause in CalHFA's note and deed of trust; and

1 (4) Debtor is incurring her own additional attorneys' fees.  
2 Finally, Debtor asserts that the bankruptcy court made a  
3 procedural due process error when it made the "fully  
4 compensates" statement. Debtor claims she did not have notice  
5 that this issue was even being considered and thus never had the  
6 opportunity to present evidence on her damages.

7 Debtor's arguments are understandably misplaced. The  
8 court's statements in the Memorandum Decision were not findings  
9 because they were not made in support of any order issued by the  
10 court. Debtor never sought any affirmative relief against  
11 Chandler through the filing of a motion or otherwise. Thus, the  
12 issues Debtor now complains about were not at stake and were not  
13 "actually litigated" or "necessary" to the bankruptcy court's  
14 Fee Order. Further, the Fee Order itself does not mention the  
15 "fully compensated" language since only denial of further fees  
16 and disgorgement were at issue. Finally, it is not for this  
17 Panel to determine the preclusive effect of any order issued by  
18 the bankruptcy court. That decision is reserved for a court  
19 where the issue is presented for decision. Smith v. Bayer  
20 Corp., 131 S.Ct. 2368, 2375 (2011).

21 Debtor's procedural due process argument also is misguided.  
22 "The fundamental requisite of due process of law is the  
23 opportunity to be heard." Mullane v. Cent. Hanover Bank & Trust  
24 Co., 339 U.S. 306, 314 (1950). Here, Debtor received notice of  
25 the hearing on the fee application and the bankruptcy court held  
26 a hearing in which she participated. Since Debtor fully  
27 participated with respect to the only decisions ordered by the  
28 court, she received adequate due process. The cross appeal

1 addresses no error by the bankruptcy court.

2 **D. The bankruptcy court did not err in denying the**  
3 **Distribution Motion.**

4 The bankruptcy court denied the Distribution Motion and  
5 determined that the sales proceeds held in escrow were property  
6 of Debtor, subject only to the secured claim of CalFHA.

7 Chandler's challenges to the Distribution Order are  
8 intertwined with his arguments regarding the breach of duty of  
9 loyalty. For instance, he contends that the bankruptcy court  
10 erroneously held that §§ 544 and 551 were not triggered because  
11 the adversary complaint did not seek relief under those Code  
12 sections and it misinterpreted the plan by finding that it did  
13 not preserve CMITH's lien when preservation is automatic.  
14 According to Chandler, the amended plan entitled the parties to  
15 further proceedings and determinations, nothing more.

16 We addressed these arguments above and will not repeat our  
17 response. In the bankruptcy court's view, one which we do not  
18 find clearly erroneous, the terms of the plan provided for the  
19 payment of CalFHA's lien with the remaining sale proceeds going  
20 to Debtor on account of her homestead exemption. We discern no  
21 error of law or fact in the bankruptcy court's decision to deny  
22 the Distribution Motion on this record.

23 **E. The bankruptcy court did not abuse its discretion in**  
24 **granting Debtor's request to dismiss her case.**

25 The Debtor sought dismissal of her case so that she could  
26 obtain the release of funds in escrow on account of her  
27 homestead exemption. Chandler contends that her new counsel  
28 refused to communicate with him and that the motion to dismiss  
was filed to obtain the funds in escrow by default and without a

1 hearing. Furthermore, Chandler asserts that Debtor "made no  
2 secret that she was trying to deprive [him] the opportunity to  
3 seek court approval of fees and make it difficult for [him] to  
4 collect." Finally, Chandler contends that his preservation  
5 arguments had merit and thus dismissal of Debtor's case resulted  
6 in an injustice. We disagree with these contentions. Again,  
7 the terms of the approved first amended plan, as interpreted by  
8 the bankruptcy court, together with the other facts in the  
9 record show that the bankruptcy court did not abuse its  
10 discretion in granting Debtor's motion to dismiss. Moreover,  
11 because of the contested hearing on the motion to dismiss, no  
12 funds were obtained by Debtor "by default" or without a hearing.

#### 13 **VI. CONCLUSION**

14 For the reasons stated above, we AFFIRM the three orders on  
15 appeal in all respects.