

JUL 15 2016

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

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

In re:) BAP No. CC-15-1284-FKiKu
)
 6 MARSHALL SAMUEL SANDERS,) Bk. No. 8:15-bk-13011-ES
)
 7 Debtor.)
)
 8 _____)
)
 9 MARSHALL SAMUEL SANDERS,)
)
 10 Appellant,)
)
 11 v.) **MEMORANDUM***
)
 12 AMRANE COHEN, Trustee;)
 13 UNITED STATES TRUSTEE;)
 14 SELECT PORTFOLIO SERVICING,)
 15 INC.; WELLS FARGO BANK, N.A.,)
 16 as Trustee, on Behalf of the)
 17 Holders of Harborview Mortgage)
 Loan Trust Mortgage Loan Pass-)
 18 Through Certificates, Series)
 2007-1,**)
)
 Appellees.)

Argued and Submitted on June 23, 2016
at Pasadena, California***

Filed - July 15, 2016

* 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.

** The Trustee and United States Trustee did not file answering briefs or otherwise participate in this appeal.

*** Oral argument in this matter was consolidated with the appeal in Sanders v. UST - United States Trustee, Santa Ana (In re Sanders), BAP No. CC-15-1344-FKiKu.

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

3 Honorable Erithe A. Smith, Bankruptcy Judge, Presiding

4 Appearances: Richard Lawrence Antognini argued on behalf of
5 Appellant Marshall Samuel Sanders; Conrad V. Sison
6 argued on behalf of Appellees Select Portfolio
7 Servicing, Inc. and Wells Fargo Bank, N.A., as
8 Trustee, on Behalf of the Holders of Harborview
9 Mortgage Loan Trust Mortgage Loan Pass-Through
10 Certificates, Series 2007-1.

11 Before: FARIS, KIRSCHER, and KURTZ, Bankruptcy Judges.

12 **INTRODUCTION**

13 Appellant/chapter 13¹ debtor Marshall Samuel Sanders claims
14 that the bankruptcy court's dismissal of his bankruptcy case
15 violated his due process rights. We hold that the court afforded
16 Mr. Sanders adequate notice and an opportunity to be heard.
17 Accordingly, we AFFIRM.

18 **FACTUAL BACKGROUND²**

19 Mr. Sanders, proceeding pro se, filed his chapter 13
20 petition on June 15, 2015. The subject petition was his fifth
21 bankruptcy filing in approximately five years. Prior to his
22 current petition, he had filed a chapter 13 case in April 2010,
23 which was converted to chapter 7 and discharged in February 2011;

24 ¹ Unless specified otherwise, all chapter and section
25 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, all
26 "Rule" references are to the Federal Rules of Bankruptcy
27 Procedure, Rules 1001-9037, and "LBR" references refer to the
28 Local Bankruptcy Rules for the Central District of California.

² Ms. Sanders presents us with a limited record. We have
exercised our discretion to review the bankruptcy court's docket,
as appropriate. See Woods & Erickson, LLP v. Leonard (In re AVI,
Inc.), 389 B.R. 721, 725 n.2 (9th Cir. BAP 2008).

1 a chapter 11 case in October 2011, which was dismissed and
2 appealed unsuccessfully to the BAP; another chapter 11 case in
3 May 2013, which was dismissed; and a third chapter 11 case in
4 March 2014, which was also dismissed.

5 Mr. Sanders' wife, Lydia Ong Sanders, has also filed
6 numerous bankruptcy petitions. Mrs. Sanders filed a chapter 7
7 case in June 2010 and received a discharge in September 2010; a
8 chapter 13 case in December 2013, which was dismissed; and a
9 chapter 11 case in October 2014, which was also dismissed. Most
10 recently, she filed an unsuccessful chapter 11 petition on
11 September 22, 2015, which is the subject of a separate appeal.

12 Mr. Sanders filed a motion to extend the automatic stay
13 ("Motion to Extend Stay") because, under § 362(c)(3), the
14 automatic stay was going to expire thirty days after his filing.
15 Appellees Select Portfolio Servicing, Inc. and Wells Fargo Bank,
16 N.A. opposed the Motion to Extend Stay, arguing that the
17 bankruptcy petition was filed in bad faith. After a hearing, the
18 court denied the Motion to Extend Stay, holding that the case was
19 not filed in good faith and that an extension of the automatic
20 stay beyond thirty days was not warranted. Mr. Sanders appealed
21 that order to the BAP, which dismissed the appeal without
22 prejudice.

23 The court scheduled a plan confirmation hearing ("Hearing")
24 on August 25, 2015. On June 22, chapter 13 trustee Amrane Cohen
25 ("Trustee") filed a one-page Notice that Trustee May Make an Oral
26 Motion to Dismiss or Convert this Case for Cause ("Notice"),
27 wherein he stated:

28 NOTICE IS HEREBY GIVEN that on the date, time and

1 in the Courtroom above referenced, the Court will
2 consider confirmation of the Debtor(s)' Chapter 13
3 Plan. In the event the Debtor(s)' Plan is not
4 confirmed by the Court at that hearing, the Court will
5 also consider the Chapter 13 Trustee's motion to
6 dismiss the case, including dismissal with a 180-day
7 bar against refileing under 11 U.S.C. Section 109(g), or
8 to convert the Chapter 13 Case to Chapter 7, should the
9 Debtor(s) fail to: (1) comply with 11 U.S.C.
10 Section 1307; (2) comply with 11 U.S.C. Section 1322;
11 (3) comply with 11 U.S.C. Section 1325; (4) comply with
12 Local Bankruptcy Rule 3015-1; and/or, (5) comply with
13 orders of the Court.

14 NOTICE IS FURTHER GIVEN that opposition, if any,
15 to such oral motion by the Trustee may be presented at
16 that hearing.

17 Mr. Sanders thereafter filed his chapter 13 plan ("Plan").
18 He identified only one secured creditor, Chrysler Capital, and
19 his Plan only contemplated trustee fees and payments to Chrysler
20 Capital. His schedules disclosed assets totaling \$1,267,331.18
21 and liabilities totaling \$187,608.05. He stated that his monthly
22 net income was negative \$4,123.07.

23 Wells Fargo objected to Plan confirmation, arguing that
24 Mr. Sanders was ineligible for chapter 13 relief because of his
25 negative income, material misrepresentations in his petition, and
26 abuse of the bankruptcy process.

27 Creditor Bank of America³ also objected to the Plan. In
28 summary, Bank of America argued that Mr. Sanders' Plan did not
address its claim; he had filed four previous bankruptcy
petitions with no positive change in his finances; he lacked
adequate income to fund the Plan; and the Plan failed to provide

³ Bank of America is the holder of a promissory note in the
original principal amount of \$365,5000 and secured by a deed of
trust on Mr. Sanders' real property located in Tustin,
California. It alleged that it held a secured claim in the
amount of \$482,046.74.

1 for ongoing postpetition payments. It requested that the court
2 deny confirmation "and dismiss the Debtor's case, or
3 alternatively, convert the Debtor's case to one under Chapter 7
4"

5 The United States also objected to Plan confirmation. Among
6 other things, it argued that the Internal Revenue Service had
7 asserted a claim in the amount of \$245,913.36, to which
8 Mr. Sanders had not objected. It contended that the Plan did not
9 provide for payment of the IRS's lien, was not filed in good
10 faith, and was not feasible due to Mr. Sanders' negative income.

11 The day before the Hearing, Mr. Sanders filed a motion to
12 convert the case to chapter 7 or 11 ("Motion to Convert"). He
13 argued that, although his previous three chapter 11 cases were
14 unsuccessful, he should be allowed to convert his case, because
15 "this time is different." He claimed that he had positive
16 income, because he would eliminate \$3,000 in monthly attorneys'
17 fees; he would increase the monthly rent on two rental properties
18 by \$900 and \$1,400 per month, respectively; and he would attempt
19 to reduce his utilities and insurance costs.

20 The court held the Hearing on August 25, 2015. At the start
21 of the Hearing, the Trustee said, "Your Honor, in this case, the
22 Debtor has not made any plan payments. The schedules that I have
23 show that the Debtor has negative disposable income of minus
24 \$4,123 a month. I would request that the case be dismissed." In
25 response, Mr. Sanders stated that he would not object to the
26 dismissal if the court were to convert the case to chapter 11.

27 However, the court stated that it would not convert the
28 case, but would instead dismiss the case. It discussed its

1 reasons for doing so: (1) the many unsuccessful bankruptcy
2 filings by Mr. Sanders and his wife in the past five years;
3 (2) his failure to list many of his creditors and debts in his
4 current filings, including \$800,000 in student loan debt; (3) his
5 failure to make Plan payments; (4) his negative income and
6 inability to fund his Plan; (5) the infeasibility of increasing
7 his monthly rental income; (6) the futility of decreasing his
8 monthly legal expenses (which he admitted he was not then
9 paying); (7) his failure to include in his calculations his
10 mortgage payments, property taxes, and insurance; and (8) the
11 Plan's failure to address the IRS's \$50,000 secured claim and
12 \$194,000 unsecured claim. Mr. Sanders responded to each of the
13 court's reasons.

14 Ultimately, the court denied Mr. Sanders' Motion to Convert
15 and dismissed the case with a 180-day bar against refiling.
16 Mr. Sanders timely appealed.

17 **JURISDICTION**

18 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.
19 §§ 1334 and 157(b)(1). We have jurisdiction under 28 U.S.C.
20 § 158.

21 **ISSUE**

22 Whether the bankruptcy court violated due process by
23 dismissing Mr. Sanders' bankruptcy case without adequate notice
24 and hearing.

25 **STANDARD OF REVIEW**

26 The parties disagree about the appropriate standard of
27 review that we should apply to this case. Mr. Sanders urges us
28 to employ de novo review, while Appellees argue for an abuse of

1 discretion standard. Insofar as Mr. Sanders only raises an
2 alleged due process violation - as opposed to an error in the
3 court's finding of cause to dismiss the petition - we review the
4 issues de novo.

5 "Whether an appellant's due process rights were violated is
6 a question of law we review de novo." DeLuca v. Seare
7 (In re Seare), 515 B.R. 599, 615 (9th Cir. BAP 2014) (citing
8 Miller v. Cardinale (In re DeVille), 280 B.R. 483, 492 (9th Cir.
9 BAP 2002), aff'd, 361 F.3d 539 (9th Cir. 2004)); see also HSBC
10 Bank USA, Nat'l Ass'n v. Blendheim (In re Blendheim), 803 F.3d
11 477, 497 (9th Cir. 2015) ("Whether adequate notice has been given
12 for the purposes of due process is a mixed question of law and
13 fact that we review de novo."). "De novo review requires that we
14 consider a matter anew, as if no decision had been made
15 previously." Francis v. Wallace (In re Francis), 505 B.R. 914,
16 917 (9th Cir. BAP 2014) (citations omitted).

17 We may affirm on any ground supported by the record. Diener
18 v. McBeth (In re Diener), 483 B.R. 196, 202 (9th Cir. BAP 2012).

19 DISCUSSION

20 **A. The Panel will not sanction Mr. Sanders for his untimely** 21 **opening brief.**

22 Appellees request that we sanction Mr. Sanders under BAP
23 Rule 8018(a)-1(c), because he filed his opening brief
24 approximately three weeks late.

25 The Panel declines to strike Mr. Sanders' opening brief or
26 otherwise sanction him for the untimely brief. On December 18,
27 2015, the day the opening brief was due, Mr. Sanders requested
28 leave to consolidate the present appeal with his wife's appeal

1 and file a joint opening brief by January 8, when his wife's
2 opening brief was due. The motions panel did not immediately
3 issue an order on Mr. Sanders' motion, and Mr. Sanders chose not
4 to file his opening brief that day. Instead, he filed his
5 untimely joint opening brief without leave of court on January 8.

6 Appellees have failed to articulate any prejudice that they
7 have suffered as a result of the late brief. See Recinos De Leon
8 v. Gonzales, 400 F.3d 821, 822 (9th Cir. 2005) ("we may consider
9 the prejudice to this court as well as that to petitioner" when
10 determining whether to accept a late brief). Moreover, we are
11 reluctant to punish Mr. Sanders for his counsel's actions. See
12 Morrissey v. Stuteville (In re Morrissey), 349 F.3d 1187, 1190
13 (9th Cir. 2003) ("While recognizing that dismissal may be
14 appropriate in some cases, the court shows particular concern for
15 inappropriately punish[ing] the appellant for the neglect of his
16 counsel.").

17 Accordingly, Appellees' request for sanctions is DENIED.

18 **B. The court did not violate Mr. Sanders' due process rights**
19 **when it dismissed his petition for cause.**

20 Mr. Sanders does not challenge the substantive bases for the
21 court's dismissal of his case, i.e., dismissal for cause due to
22 his negative income, misrepresentations and discrepancies in his
23 schedules, his erroneous calculations, and exclusion of many
24 creditors and debts, all of which indicate an inability to
25 succeed in chapter 13 or chapter 11. Rather, he only contends
26 that the court denied him due process by failing to afford
27 reasonable notice and an opportunity to be heard. As such, we
28 only consider the due process arguments.

1 **1. Due process generally requires notice and an**
2 **opportunity to be heard.**

3 Generally speaking, a court must give sufficient notice of
4 its intention to dismiss a case and the opportunity for
5 interested parties to be heard. See Tennant v. Rojas
6 (In re Tennant), 318 B.R. 860, 870 (9th Cir. BAP 2004) (“the
7 concept of procedural due process requires a notice and an
8 opportunity to be heard” (citing Muessel v. Pappalardo
9 (In re Muessel), 292 B.R. 712, 717 (1st Cir. BAP 2003))).

10 According to the United States Supreme Court:

11 An elementary and fundamental requirement of due
12 process in any proceeding which is to be accorded
13 finality is notice reasonably calculated, under all the
14 circumstances, to apprise interested parties of the
15 pendency of the action and to afford them an
16 opportunity to present their objections. The notice
17 must be of such nature as reasonably to convey the
18 required information . . . and it must afford a
19 reasonable time for those interested to make their
20 appearance.

21 Mullane v. Cent. Hanover Bank & Tr. Co., 339 U.S. 306, 314 (1950)
22 (citations omitted).

23 Section 1307(c) provides that, “[o]n request of a party in
24 interest or the United States trustee and after notice and a
25 hearing, the court . . . may dismiss a case under this chapter
26” Section 102(1) defines the phrase “after notice and a
27 hearing”:

28 (1) “after notice and a hearing”, or a similar phrase -

 (A) means after such notice as is appropriate in
the particular circumstances, and such opportunity
for a hearing as is appropriate in the particular
circumstances; but

 (B) authorizes an act without an actual hearing if
such notice is given properly and if -

1 (i) such a hearing is not requested timely by
2 a party in interest; or

3 (ii) there is insufficient time for a hearing
4 to be commenced before such act must be done,
and the court authorizes such act[.]

5 "[T]he concept of notice and a hearing is flexible and
6 depends on what is appropriate in the particular circumstance."
7 In re Tennant, 318 B.R. at 870 (citing Great Pac. Money Markets,
8 Inc. v. Krueger (In re Krueger), 88 B.R. 238, 241 (9th Cir. BAP
9 1988)). A procedure may be "perfectly appropriate" if it
10 "notifies the debtor of the deficiencies of his petition and
11 dismisses the case sua sponte without further notice and a
12 hearing when the debtor fails to file the required forms within a
13 deadline." Id. at 870-71 (citing Minkes v. LaBarge
14 (In re Minkes), 237 B.R. 476, 478-79 (8th Cir. BAP 1999)).

15 **2. The court did not violate due process when it dismissed**
16 **Mr. Sanders' petition, because it gave him adequate**
notice and an opportunity to be heard.

17 Mr. Sanders argues that the bankruptcy court deprived him of
18 due process, because it did not comply with the applicable
19 federal and local rules and failed to provide him with adequate
20 notice of the alleged deficiencies in his Plan or allow him a
21 chance to contest those allegations.

22 First, Mr. Sanders contends that he did not receive adequate
23 notice of the issues raised by the Trustee's Notice. He argues
24 that the Notice did not comply with the local rules, because it
25 was not a formal, written motion and was served less than twenty-
26 one days before the Hearing. Mr. Sanders states that the Notice
27 did not inform him of the particular subsections that he
28 allegedly violated and did not provide supporting facts.

1 Additionally, he says that Bank of America's request for
2 dismissal in its opposition to Plan confirmation was untimely and
3 not a "formal, written motion to dismiss."

4 Second, Mr. Sanders argues that he did not have a reasonable
5 opportunity to be heard. He says that he was caught "flat-
6 footed" and that "he did not have the opportunity to present
7 complete arguments and fully-developed facts."

8 **a. Mr. Sanders failed to raise any due process**
9 **violation before the bankruptcy court.**

10 Mr. Sanders did not raise the due process issue before the
11 bankruptcy court or otherwise object to the notice or hearing
12 afforded by the court. As such, he has waived this issue. See
13 Yamada v. Nobel Biocare Holding AG, --- F.3d ----, 2016 WL
14 3207650, at *5 (9th Cir. Apr. 20, 2016) ("[g]enerally, an
15 appellate court will not hear an issue raised for the first time
16 on appeal"); Ezra v. Seror (In re Ezra), 537 B.R. 924, 932 (9th
17 Cir. BAP 2015) ("Ordinarily, federal appellate courts will not
18 consider issues not properly raised in the trial courts."). A
19 debtor's failure to raise due process challenges before the
20 bankruptcy court waives such claims on appeal. See Zamos v.
21 Zamos (In re Zamos), 300 F. App'x 451, 452 (9th Cir. 2008)
22 ("Jerome has waived his contention that his due process rights
23 were violated by Patricia's delay in bringing suit to collect
24 delinquent support payments, as he did not raise it below").

25 **b. The court afforded Mr. Sanders ample notice and**
26 **opportunity to be heard before dismissing his**
27 **bankruptcy case.**

28 Even assuming that Mr. Sanders properly raised a due process
violation before the bankruptcy court, the record shows that the

1 court afforded him adequate notice and an ample opportunity to be
2 heard prior to dismissing his case.

3 As for adequate notice, Mr. Sanders contends that the Notice
4 and Bank of America's opposition were insufficient to constitute
5 "formal written motions." This argument assumes that due process
6 requires a "formal, written motion." The assumption is false.
7 Due process does not require a motion. Even in the absence of a
8 motion to dismiss by a party, the court may sua sponte raise the
9 issue of dismissal. See In re Tennant, 318 B.R. at 869 (in
10 construing § 1307(c)(9), "[t]he court can dismiss a case sua
11 sponte under Section 105(a)," because that section "'makes
12 crystal clear' the court's power to act sua sponte where no party
13 in interest or the United States trustee has filed a motion to
14 dismiss a bankruptcy case" (citations omitted)).

15 Even more importantly, due process does not require that
16 notice be given in any particular form. Notice is sufficient for
17 due process purposes if it is "reasonably calculated, under all
18 the circumstances," to inform the recipient of the nature of the
19 case and the recipient's opportunity to respond. See Mullane,
20 339 U.S. at 314.

21 Mr. Sanders had more than adequate notice of the arguments
22 against him.⁴ On the whole, the combination of the Notice⁵ filed
23

24 ⁴ Mr. Sanders seems to believe that violation of the rules,
25 in and of itself, amounts to a violation of due process. He is
26 mistaken. See Wade v. State Bar of Ariz. (In re Wade), 948 F.2d
27 1122, 1125 (9th Cir. 1991) (although "[t]here was a violation of
28 the local Bankruptcy Rules[,] insofar as the debtors had a
"meaningful opportunity" to be heard and the bankruptcy court
"thoroughly considered" the debtors' arguments, there was no
(continued...)

1 by the Trustee and the objections to Plan confirmation filed by
2 Wells Fargo, Bank of America, and the United States sufficiently
3 detailed the grounds for denying confirmation of the Plan or
4 dismissing Mr. Sanders' case. These included Mr. Sanders'
5 previous failed attempts in chapter 11; the inconsistencies
6 between the present petition and Plan and his prior bankruptcy
7 filings; the omission of many creditors and debts in his petition
8 and Plan; Mr. Sanders' negative income; and the falsity of his
9 Plan calculations. Mr. Sanders received adequate notice that his
10 Plan was deficient and that the Trustee would seek to dismiss the
11 petition.

12 Moreover, just over a month before the Hearing, the court
13 outlined the many problems with Mr. Sanders' bankruptcy filings
14 when it denied the Motion to Extend Stay. When the court denied
15 the motion for lack of good faith, it recounted his past failed
16 attempts in bankruptcy and his many state court filings; the
17 \$800,000 in student debt omitted from his current schedules; his
18 negative monthly income; the fact that his monthly income had
19 worsened from his previous case, indicating no regular income to
20 fund a chapter 13 plan; the fact that the Plan proposed to pay
21

22 ⁴(...continued)
23 violation of due process).

24 ⁵ We express no opinion on the question whether the Notice,
25 standing alone, would have satisfied the requirements of due
26 process. The Notice appears to be a standard form document that
27 contains no facts specific to Mr. Sanders' case and cites Code
28 sections without any indication of how they support the dismissal
of Mr. Sanders' case. The Notice did not stand alone, however;
considering all of the information provided to Mr. Sanders, he
had adequate notice.

1 only the claim of one automobile loan creditor, which "renders
2 the plan unconfirmable"; and his failure to list all of his
3 debts. Mr. Sanders cannot claim that he was "caught flat-footed"
4 and unaware of these deficiencies only a month later.

5 Tellingly, only a day before the Hearing, Mr. Sanders saw
6 the writing on the wall and filed his Motion to Convert.
7 Therein, he argued that, unlike his previous unsuccessful
8 bankruptcy petitions, "this time is different," because he would
9 cut expenses and increase income.

10 We hold that Mr. Sanders had adequate notice required by due
11 process.

12 As for an opportunity to be heard, Mr. Sanders claims that
13 he was deprived of the opportunity to present his position.
14 However, the Hearing transcript makes clear that the court not
15 only allowed him to present his arguments, but went through each
16 of the bases for dismissal and afforded him an opportunity to
17 address each issue. The majority of the Hearing was occupied by
18 dialogue between Mr. Sanders and the court, and he had more than
19 ample opportunity to present his arguments and provide any
20 evidence. The court even allowed him to continue arguing while
21 the court was making its ruling. Accordingly, prior to the
22 dismissal of his case, Mr. Sanders had an ample opportunity to be
23 heard.

24 **c. Mr. Sanders did not suffer any prejudice.**

25 Even if Mr. Sanders' due process rights were violated, he
26 has not suffered any prejudice.

27 Even in cases where a bankruptcy court errs by failing to
28 provide adequate notice and hearing, the debtor must show

1 prejudice from the procedural deficiencies. See Rosson v.
2 Fitzgerald (In re Rosson), 545 F.3d 764, 776-77 (9th Cir. 2008)
3 ("Because there is no reason to think that, given appropriate
4 notice and a hearing, Rosson would have said anything that could
5 have made a difference, Rosson was not prejudiced by any
6 procedural deficiency."). In Rosson, the Ninth Circuit held that
7 the debtor was deprived of a meaningful opportunity to be heard;
8 nevertheless, because he could "show no prejudice arising from
9 the defective process afforded him[,] " the bankruptcy court
10 properly converted the case to chapter 7. Id. (citations
11 omitted); City Equities Anaheim, Ltd. v. Lincoln Plaza Dev. Co.
12 (In re City Equities Anaheim, Ltd.), 22 F.3d 954, 959 (9th Cir.
13 1994) (rejecting due process claim for lack of prejudice where
14 debtor could not show that any different or additional arguments
15 would have been presented if bankruptcy court had timely approved
16 petition for new counsel).⁶

17
18 ⁶ Mr. Sanders cites In re Blendheim, 803 F.3d at 497,
19 supposedly for the proposition that "a denial of due process
20 should carry with it a presumption of prejudicial error."
21 Blendheim does not stand for that proposition and makes no
22 mention of a presumption of prejudice. If anything, Blendheim
23 actually supports our conclusion. In Blendheim, a creditor
24 appealed from an order voiding the creditor's lien. The creditor
25 argued (among other things) that it did not receive adequate
26 notice. The Ninth Circuit rejected this argument, holding that
27 the creditor received notice that its lien might be affected when
28 the debtors filed the objection to proof of claim. The court
cited United Student Aid Funds, Inc. v. Espinosa, 559 U.S. 260
(2010) ("[b]ecause United received actual notice of the filing
and contents of Espinosa's plan, which United acknowledged by
filing a proof of claim, . . . '[t]his more than satisfied
United's due process rights'"). In re Blendheim, 803 F.3d at
498. Although Espinosa and Blendheim were decided in different
contexts from the present case, they demonstrate that due process
(continued...)

1 Here, Mr. Sanders has not articulated any prejudice that he
2 suffered as a result of the court's procedure concerning the
3 Hearing. At oral argument before the Panel, Mr. Sanders' counsel
4 argued that we cannot know what arguments Mr. Sanders would have
5 made if he had gotten more notice, and therefore we cannot rule
6 out the possibility that the alleged lack of notice prejudiced
7 him. But Mr. Sanders did not argue before this Panel that the
8 bankruptcy court erred on the merits; in other words, apart from
9 his procedural argument, he did not give the Panel any reason to
10 think that his case should not have been dismissed. His
11 inability to give us any persuasive substantive arguments against
12 dismissal proves that he could not have made any such arguments
13 before the bankruptcy court even if he had been given more
14 notice. We fail to see how Mr. Sanders "would have said anything
15 that could have made a difference." See In re Rosson, 545 F.3d
16 at 777.

17 Accordingly, even if the court had violated Mr. Sanders' due
18 process rights (and it did not), Mr. Sanders was not prejudiced
19 in any way.⁷

21 ⁶(...continued)
22 notice is "flexible" and does not require any specific or formal
23 procedure.

24 ⁷ Our decision to affirm the dismissal in Mr. Sanders' case
25 is distinguishable from our decision to vacate the dismissal of
26 Mrs. Sanders' chapter 11 petition in a separate appeal also
27 before us (BAP No. CC-15-1344-FKiKu). Mr. Sanders had notice of
28 the possible dismissal of his case and the grounds therefor, and
the court heard him at length. In Mrs. Sanders' case, the court
summarily dismissed the petition at the filing desk by way of a
short, handwritten note with no notice or opportunity to be

(continued...)

CONCLUSION

For the reasons set forth above, we AFFIRM the bankruptcy court's dismissal of Mr. Sanders' bankruptcy petition.

⁷(...continued)
heard.