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NOT FOR PUBLICATION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

5	In re:)	BAP No. CC-16-1049-McTaF
6	JACK C. PRYOR,)	Bk. No. 6:15-bk-19998-MH
7	Debtor.)	
8	_____)	
9	JACK C. PRYOR,)	
10	Appellant,)	
11	v.)	MEMORANDUM ¹
12	UNITED STATES TRUSTEE,)	
13	Appellee.)	
	_____)	

Argued and Submitted on October 21, 2016
at Pasadena, California

Filed - November 18, 2016

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

Honorable Mark Houle, Bankruptcy Judge, Presiding.

Appearances: Stephen R. Wade argued for Appellant Jack C. Pryor; Russell Clementson argued for Appellee U.S. Trustee.

Before: MCKITTRICK,² TAYLOR and FARIS, Bankruptcy Judges.

¹ 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.

² The Honorable Peter C. McKittrick, United States Bankruptcy Judge for the District of Oregon, sitting by designation.

1 Debtor Jack Pryor ("debtor") appeals the bankruptcy court's
2 order converting his individual chapter 11³ case to a case under
3 chapter 7. He argues that he did not have adequate notice and
4 an opportunity to be heard before the court converted his case.

5 We AFFIRM.

6 FACTS

7 Debtor filed an individual chapter 11 case in October 2015.
8 He had two earlier cases filed and dismissed in the previous
9 year.

10 Debtor's schedules show that he owned 1,000 shares of stock
11 in Diversified Products Industries ("DPI") and 1,000 shares of
12 stock in Access Solar, Inc., which is 100 percent ownership of
13 both businesses. The Statement of Financial Affairs described
14 the businesses and indicated "Present" for the ending date for
15 each business. Debtor valued his interest in DPI at \$1,100,000,
16 based on accounts receivable. Debtor's Schedule I listed DPI as
17 the employer for both debtor and his non-filing spouse and
18 stated that his spouse received a monthly salary of \$2,975 from
19 DPI. Debtor also disclosed that he owned various parcels of
20 real property, including some parcels of bare land.

21 The Bankruptcy Auditor for the United States Trustee
22 ("UST"), Herman Au, conducted an initial debtor interview on
23 October 27, 2015, at which both debtor and his counsel appeared.
24 At the interview, Au gave debtor the UST's Notice of
25

26 ³ Unless otherwise indicated, all chapter, section, and
27 rule references are to the Bankruptcy Code, 11 U.S.C.
28 §§ 101-1532, and to the Federal Rules of Bankruptcy Procedure,
Rules 1001-9037.

1 Requirements and Guidelines for Chapter 11 Debtors in
2 Possession. The guidelines detailed the information that was
3 required to be filed with the UST within seven days of the
4 petition date, including proof of insurance ("the 7-Day
5 Package"). Au discussed DPI and Access Solar with debtor.
6 Debtor did not indicate that either business had ceased
7 operating. Au informed debtor that he was required to provide
8 proof of liability insurance for DPI and Access Solar. Debtor
9 did not challenge that requirement.

10 Debtor failed to submit to the UST any of the 7-Day Package
11 documents. As a result, on November 4, 2015, the UST filed a
12 Motion to Dismiss or Convert debtor's case, which listed the
13 following missing documents:

- 14 a. Real property questionnaire;
- 15 b. Copy of the recorded petition;
- 16 c. Proof of closing of pre-petition bank accounts;
- 17 d. Proof of opening of Debtor-in-Possession accounts;
- 18 e. Proof of insurance;
- 19 f. Proof of required certificates and licenses (if any);
- 20 g. Statement of Major Issues and Timetable Report; and
- 21 h. A copy of the most recently filed tax returns.

22 Motion to Dismiss or Convert at 4:19-23. The UST's memorandum
23 in support of the motion described "cause" for dismissal or
24 conversion under § 1112(b)(4)(C), (F), and (H): failure to
25 maintain insurance; failure to provide information requested by
26 the UST; and failure to satisfy timely reporting requirements.
27 The UST's argument in the memorandum focused on the need for
28 proof of insurance on debtor's real property, arguing that
without insurance there could be significant liability if a
person were injured on debtor's premises. The motion was
supported by Au's declaration.

1 The court held the initial hearing on the motion on
2 December 8, 2015. Debtor appeared pro se; his counsel had
3 withdrawn due to medical issues. By the time of that hearing,
4 debtor had provided proof of insurance for his real properties
5 and his automobiles. The court granted the UST's request for a
6 continuance to allow debtor time to retain new counsel. It
7 directed debtor to file a status report regarding engagement of
8 counsel by January 27 and directed the UST to supplement its
9 motion if there were any remaining or new deficiencies. All
10 parties waived notice of the continued hearing.

11 Later in December, debtor retained new counsel, who
12 appeared with debtor at the February 2 continued hearing on the
13 motion to dismiss or convert. Debtor did not file a status
14 report and the UST did not supplement his motion before the
15 February 2 hearing.

16 At the February 2 hearing, the UST reported that there were
17 still several outstanding items of compliance as of the hearing
18 date, including that debtor had failed to provide proof that he
19 had liability insurance coverage for some of the real properties
20 and that he had recorded the petition for some of his real
21 properties, and that debtor had failed to submit real property
22 questionnaires for some of the properties, a final bank
23 statement for debtor's prepetition bank account, and the major
24 issues and timetable report. The UST also reported that debtor
25 had not paid the quarterly UST fees. The parties agreed to a
26 continuance of the hearing for a short time to allow debtor's
27 counsel to address the UST's position that there were still
28 compliance items missing.

1 The court set the hearing over for one week. It stated
2 that, but for the UST's agreement to the continuance, the court
3 would have dismissed or converted the case that day. It said
4 that it intended to dismiss or convert because, despite the fact
5 that debtor had retained counsel more than a month before, the
6 case was four months old and the UST was still missing
7 significant requested items. The court then directed counsel
8 for the UST to review the UST files and to file a statement of
9 any items still missing by February 8. It set the continued
10 hearing for February 9. The court indicated that this would be
11 debtor's "last shot." All parties waived notice of the
12 February 9 hearing.

13 Late in the day of the February 2 hearing, counsel for the
14 UST sent email correspondence to debtor's counsel listing
15 10 compliance items debtor still had not provided:

- 16 1) Real Property Questionnaire for 2 lots in Twenty Nine
Palms, California;
- 17 2) Real Property Questionnaire for 35 acres in Rice,
California;
- 18 3) Property/Liability Insurance for commercial property
located at 19024 Ruppert Street, N. Palm Springs, CA;
- 19 4) Liability insurance for single family home located at
49965 Fuller Ave., Cabazon, CA;
- 20 5) Liability insurance for debtor's two business
entities: Diversified Product Industries LTD and
21 Access Solar Inc.;
- 22 6) Copy of final bank statement for pre-petition bank
account (Wells Fargo #0182);
- 23 7) Proof of recorded petition in county (Los Angeles, San
Bernardino, & Riverside);
- 24 8) Major Issues & Timetable Report;
- 24 9) File and serve monthly operating reports for October,
November and December 2015; and
- 25 10) Proof of payment of quarterly fees of \$325 for the 4th
26 quarter of 2015.

27 UST Supplemental Statement in Support of Motion to Dismiss or
28 Convert, Exh. 1 to Declaration of Everett Green. Debtor's

1 counsel responded with an email sent at 3:50 p.m. on February 8
2 that provided many of the items requested. With regard to proof
3 of liability insurance for the businesses, counsel indicated
4 that he was "waiting on client to provide us with proof of
5 documents." Id. at Exh. 2. He also said that he was "waiting
6 on client to provide proof of payment" of the UST quarterly
7 fees. Id.

8 The hearing was held the next day at 2:00 p.m. At
9 11:53 a.m. that day, debtor's counsel filed a declaration in
10 opposition to the UST's motion to dismiss or convert. In his
11 declaration, counsel stated that neither of debtor's businesses
12 maintains insurance because neither had conducted business since
13 before the petition date.

14 Debtor's counsel appeared at the continued hearing on the
15 motion to dismiss; debtor did not attend.⁴ The UST reported
16 that there were two outstanding items of non-compliance: proof
17 of insurance for debtor's two businesses, DPI and Access Solar,
18 and payment of the quarterly UST fees for the fourth quarter of
19 2015, which was due by the end of January 2016 and was
20 delinquent on February 1. The UST acknowledged that debtor's
21 counsel had tendered an untimely payment of the UST fees earlier
22 in the day of the hearing. He also pointed out that, although
23 many of the compliance items had been provided, they had not
24 been provided by the deadline set by the court.

25 In response to counsel's assertion that debtor's businesses

26
27 ⁴ Counsel represented to the court that debtor had left
28 because he was distraught at the prospect of losing 40 years of
work.

1 were not operating, the UST called its analyst, Mr. Au, to
2 testify. Au testified that, at the initial debtor interview, he
3 discussed the two businesses with debtor. With regard to DPI,
4 debtor had told him that the business sold steel construction
5 products, that it had been unprofitable, and that they were
6 trying to collect some accounts from a vendor. Debtor had not
7 indicated that the business had ceased operations. As to Access
8 Solar, debtor had told Au that the company installed and sold
9 solar panels and had an office operating out of one of debtor's
10 commercial properties. Au testified that neither debtor nor his
11 counsel at the initial debtor interview had objected when Au
12 indicated that the UST needed proof of liability insurance for
13 the two businesses.

14 Debtor's counsel then testified as a witness that he had
15 checked the status of Access Solar and that its license with the
16 California Contractors License Board had expired before the
17 chapter 11 petition was filed. He also stated that he had
18 visited the Access Solar offices and saw no employees or
19 product. He had reviewed the company records, which showed no
20 business activity since sometime before bankruptcy.

21 Counsel also testified that he had inspected the DPI
22 facility and saw no inventory of steel products or employees.
23 To his knowledge, DPI's only postpetition activity was its
24 prosecution of an appeal in a case in which it was seeking a
25 million-dollar recovery.

26 Counsel did not request a continuance to allow debtor to
27
28

1 testify about whether the businesses were active.⁵ He argued
2 that insurance should not be required because the businesses
3 were not active.

4 At the close of the hearing, the court concluded that the
5 case would be dismissed or converted. First, it found that
6 debtor failed "to maintain appropriate insurance that poses a
7 risk to the estate or to the public." Transcript of February 9,
8 2016 hearing at 97:7-8. It noted that debtor's schedules and
9 Statement of Financial Affairs indicated that the businesses
10 were continuing to operate, that Schedule B showed an account
11 receivable for DPI in the amount of \$1.1 million, and that
12 debtor had said at the initial debtor interview that the
13 businesses continued to operate.

14 Second, it found a failure timely to provide information
15 reasonably requested by the UST, including failure to provide
16 information about insurance until approximately four months into
17 the case.

18 Third, the court found that debtor had failed timely to pay
19 the quarterly UST fees, which were due nine days earlier.

20 The court then considered whether to dismiss or convert to
21 chapter 7 and concluded that conversion to chapter 7 was the
22 better alternative.

23 ISSUE

24 Whether the bankruptcy court abused its discretion in
25 converting the case from chapter 11 to chapter 7.

26
27 ⁵ He did ask to leave the record open to provide evidence
28 to challenge Au's credibility.

1 JURISDICTION

2 The bankruptcy court had jurisdiction over this matter
3 pursuant to 28 U.S.C. § 157(b) (2) and § 1334(a). This panel has
4 jurisdiction under 28 U.S.C. § 158(c).

5 STANDARD OF REVIEW

6 The panel reviews a court's decision to convert a
7 chapter 11 case to chapter 7 for an abuse of discretion.
8 Pioneer Liquidating Corp. v. U.S. Tr. (In re Consol. Pioneer
9 Mortg. Entities), 264 F.3d 803, 806 (9th Cir. 2001). The court
10 abuses its discretion if it applies the wrong legal standard or
11 if its application of the correct legal standard is "illogical,
12 implausible, or without support in inferences that may be drawn
13 from the facts on the record." United States v. Hinkson,
14 585 F.3d 1247, 1263 (9th Cir. 2009) (en banc).

15 Whether the court's procedure complies with due process is
16 a legal question reviewed de novo. Beneficial Cal., Inc. v.
17 Villar (In re Villar), 317 B.R. 88, 92 (9th Cir. BAP 2004).
18 Debtor must show that he was prejudiced by any violation of due
19 process. See Rosson v. Fitzgerald (In re Rosson), 545 F.3d 764,
20 776 (9th Cir. 2008); Rule 9005 (incorporating Fed. R. Civ. P.
21 61) ("court must disregard all errors and defects that do not
22 affect any party's substantial rights").

23 DISCUSSION

24 1. The court did not abuse its discretion in finding cause
25 based on lack of insurance for the business entities

26 Debtor argues that the bankruptcy court abused its
27 discretion in converting his case to chapter 7, because he did
28 not have adequate notice of the basis for the motion or an

1 adequate opportunity to be heard on the motion, in violation of
2 both the Bankruptcy Code requirement of notice and a hearing and
3 his due process rights under the Fifth Amendment to the United
4 States Constitution. He does not argue that the court erred in
5 finding, based on the evidence, that debtor had failed to
6 provide proof of insurance for DPI and Access Solar, that lack
7 of proof of insurance provides cause under § 1112(b), or that,
8 having found cause, the court abused its discretion in
9 converting rather than dismissing the case.⁶

10 Section 1112(b)(1) provides that, with exceptions not
11 applicable here, "on request of a party in interest, and after
12 notice and a hearing, the court shall convert" a chapter 11 case
13 to one under chapter 7, or dismiss, "whichever is in the best
14 interests of creditors and the estate, for cause[.]" "Cause"
15 includes:

16 (C) failure to maintain insurance that poses a risk to the
17 estate or to the public;

18 . . .

19 (H) failure timely to provide information or attend

20 ⁶ After oral argument in this appeal, the UST submitted
21 supplemental authority pursuant to Rule 8014(f). He cites a
22 November 4, 2016, decision from the District of Massachusetts
23 that addressed whether there is cause for dismissal of a
24 chapter 11 case when the debtor fails to maintain insurance on
25 assets of a company wholly owned by the debtor. See Dickey v.
26 Harrington (In re Dickey), Case No. 16-10649-TSH, 2016 WL
27 6584905 (D. Mass. Nov. 4, 2016). We have reviewed the decision
28 in Dickey. Because the issue discussed in that case relates to
the merits of the court's finding in this case that liability
insurance on debtor's business entities was appropriate, and
debtor does not challenge the merits of the court's decision on
that point in this appeal, the Dickey decision does not affect
our conclusion in this case.

1 meetings reasonably requested by the United States trustee
2 . . . ;
3 . . .

4 (K) failure to pay any fees or charges required under
chapter 123 of title 28;

5 § 1112(b)(4). “[T]he bankruptcy court has wide discretion in
6 determining what constitutes cause adequate for conversion under
7 § 1112(b).” Khan v. Rund (In re Khan), BAP No. CC-11-1542-HPaD,
8 2012 WL 2043074, at *5 (9th Cir. BAP 2012).

9 The UST, as the moving party, has the burden to demonstrate
10 that cause exists to dismiss or convert; if the UST establishes
11 cause, the court must convert or dismiss, unless an exception
12 applies. ⁷ Collier on Bankruptcy ¶ 1112.04[4] (Alan N. Resnick
13 & Henry J. Sommer, eds., 16th ed. 2011) (“Collier”).⁷

14 Procedurally, § 1112(b) requires notice and a hearing. See
15 § 1112(b). Substantively, § 1112(b) establishes “a
16 two-step analysis for dealing with questions of conversion
17 and dismissal.” Nelson v. Meyer (In re Nelson), 343 B.R.
18 671, 675 (9th Cir. BAP 2006). The first step is a
determination whether cause exists for conversion or
19 dismissal. The second step requires the court to apply a
“balancing test” to choose between conversion and dismissal
based upon the “best interests of the creditors and the
estate.” Id.

20 Woods & Erickson, LLP v. Leonard (In re AVI, Inc.), 389 B.R.
21 721, 729 (9th Cir. BAP 2008) (footnote omitted).

22 Section 1112(b) requires “notice and a hearing.”

23 § 1112(b)(1). “After notice and a hearing” is construed to mean
24 _____

25 ⁷ Debtor argues that “the harshness of dismissal mandates
26 that it result only upon a strong evidentiary showing[,]” and
that the panel should closely scrutinize a dismissal.
27 Appellant’s Brief at 12-13. Any special scrutiny for dismissals
without prejudice is not applicable here, where the court did
28 not dismiss but instead converted the case to chapter 7.

1 "after such notice as is appropriate in the particular
2 circumstances, and such opportunity for a hearing as is
3 appropriate in the particular circumstances[.]" § 102(1)(A).

4 "[N]otice is not only a statutory requirement, but a
5 constitutional requirement as well." Great Pac. Money Markets,
6 Inc. v. Krueger (In re Krueger), 88 B.R. 238, 241 (9th Cir. BAP
7 1988).

8 An elementary and fundamental requirement of due process in
9 any proceeding which is to be accorded finality is notice
10 reasonably calculated, under all the circumstances, to
11 apprise interested parties of the pendency of the action
12 and afford them an opportunity to present their objections.

13 Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314
14 (1950). The purpose of notice under the Fifth Amendment "is to
15 apprise the affected party of, and permit adequate preparation
16 for, an impending hearing." GMAC Mortg. Corp. v. Salisbury
17 (In re Loloee), 241 B.R. 655, 661 (9th Cir. BAP 1999).

18 The statutory and constitutional notice and hearing
19 requirements are similar and, for purposes of this case, will
20 not be discussed separately.

21 Debtor's arguments distill to two major points: (1) he did
22 not have adequate notice that lack of proof of insurance on his
23 business entities was a basis for the UST's motion to dismiss or
24 convert and (2) the February 9 hearing procedure was flawed. As
25 a result, he argues, the only basis for the court's decision to
26 convert the case was his failure to pay the UST fees on time,
27 which is not sufficient alone to justify converting the case.

28 A. Notice was sufficient

The record supports the bankruptcy court's conclusion that
debtor had sufficient notice that he needed to provide proof of

1 insurance on his two businesses or face possible dismissal or
2 conversion. First, the UST's auditor conducted an initial
3 client interview in late October 2015, at which time he
4 discussed the two businesses with debtor and advised him that he
5 needed to provide proof of liability insurance on those
6 businesses. Neither debtor nor his then-counsel objected to
7 that requirement or told the auditor that the businesses were
8 not operating. The auditor gave debtor and his counsel a copy
9 of the UST Guidelines, which also notified debtor of the
10 requirement to provide proof of insurance coverage within seven
11 days of the petition date.

12 Second, the UST's motion to dismiss or convert, filed on
13 November 4, 2015, alleged that debtor had not provided specific
14 items that were required to be provided within seven days,
15 including proof of insurance. The motion was accompanied by
16 Au's declaration in which he says that, at the initial debtor
17 interview, he asked debtor whether he had liability insurance
18 and that debtor said he was unsure.

19 Motions "must state with particularity the grounds
20 therefor, and the relief or order sought." 10 Collier at
21 ¶ 9013.03 (2013) (footnote omitted); Rule 9013. This
22 requirement is flexible, and lack of specificity is allowed
23 "where the opposing party knew or had notice of the particular
24 grounds being relied upon." 10 Collier at ¶ 9013.03 (2013)
25 (footnote omitted). "Proof of insurance" was specific enough to
26 provide notice that debtor needed to provide proof of the
27 insurance discussed at the initial debtor interview, including
28 insurance on his business entities. Certainly by the time of

1 the final hearing on February 9, as discussed below, debtor knew
2 that the UST sought dismissal or conversion based in part on
3 lack of proof of insurance on those entities.

4 Third, after the court held an initial and then a continued
5 hearing, on February 2, 2016, the UST sent to debtor's
6 replacement counsel via email a list of items still out of
7 compliance, including both proof of liability insurance for
8 debtor's two business entities and proof of payment of the UST's
9 quarterly fees.

10 This email was sent after business hours on February 2; the
11 continued hearing was February 9, and debtor knew that the court
12 had required the UST to file a declaration detailing any
13 continuing compliance issues by the close of business on
14 February 8. Further, the court had told debtor at the
15 February 2 hearing that this continuance was his last shot at
16 compliance. The UST filed the February 8 declaration, which
17 advised the court that debtor had failed to provide proof of
18 insurance on the entities and had failed to pay the UST
19 quarterly fees.

20 Under the circumstances, any lack of specificity in the
21 motion did not deprive debtor of notice that he was required to
22 provide proof either that his two business entities were insured
23 or that insurance was not required. That specificity was
24 provided at the earliest in late October 2015 and the latest by
25 February 2, 2016, which was a week before the final hearing on
26 the motion. Under the circumstances, where the case was four
27 months old and debtor had failed timely to provide many items
28 required by the UST until shortly before the February 9 hearing,

1 a week's notice was sufficient to allow debtor to prepare and
2 respond to the UST's request.

3 Debtor points out that the bankruptcy court sustained an
4 objection to a question put to Au, asking his "understanding of
5 the nature of the insurance that's required" of a debtor in
6 possession. Transcript of February 9, 2016 hearing at 47:13-14.
7 If the question was too vague for testimony, debtor argues, how
8 could it be sufficient to give debtor notice of what insurance
9 was being required?

10 The question asked for the "nature" of the insurance that
11 was required; debtor had been told at the initial debtor
12 interview that he needed to provide proof of liability insurance
13 on the business entities, and failure to provide proof of
14 insurance was listed in the motion to dismiss or convert.
15 Debtor was again advised in the February 2 email of the need to
16 prove insurance on the business entities. Even if the question
17 to Au was vague, the notice to debtor was not.

18 Debtor argues that the notice was not sufficient because he
19 was misled by the UST, who changed his position regarding what
20 was required. At the December 8 hearing, counsel for the UST
21 advised the court that debtor had provided proof of liability
22 coverage for his real properties and automobiles, which counsel
23 said was "the bulk of our concerns in terms of our motion."
24 Transcript of December 8, 2015 hearing at 6:22-23. At the
25 February 2 continued hearing, after first reporting that debtor
26 had not provided proof of insurance, counsel said that they had
27 "seen a few of the compliance items, most critically, proof of
28 insurance coverage for the Rupert property." Transcript of

1 February 2, 2016 hearing at 18:4-7. Then, after the close of
2 business that same day, the UST sent the email to debtor's
3 counsel showing the need for proof of insurance on debtor's two
4 business entities.

5 There is no doubt that the motion and the UST's comments to
6 the court could have been more specific as to what insurance
7 coverage debtor needed to show. However, there is no dispute
8 that by the end of the day on February 2, a week before the
9 continued hearing, debtor was reminded of the need to prove that
10 his business entities had liability insurance, a requirement of
11 which he had been advised at the initial debtor interview in
12 October. Debtor did not argue to the bankruptcy court that
13 additional time would solve the problem; in fact, counsel told
14 the court that more time would not matter.

15 Debtor had sufficient notice of what was required under the
16 circumstances to apprise him of the basis for the UST's motion
17 to dismiss or convert and to allow him an adequate opportunity
18 to respond.

19 B. Debtor had an adequate opportunity to be heard

20 Although he did not raise the issue in his brief, at oral
21 argument debtor argued that he was denied an adequate
22 opportunity to be heard with regard to the insurance on the
23 business entities. He mentioned two bankruptcy court actions at
24 the February 9 hearing that he claims denied him due process:
25 (1) the court's denial of a continuance to allow debtor to
26 appear and testify; and (2) the court's denial of debtor's
27 attempts to question Au regarding the nature of insurance that
28 was appropriate for the two business entities.

1 We have carefully reviewed the transcript of the February 9
2 hearing and do not find that debtor's counsel made a request to
3 continue the hearing so debtor could testify as to the level of
4 business activity of the two business entities. Early in the
5 hearing, after the court said that it would take testimony from
6 Au as to whether or not debtor had represented to Au at the
7 initial debtor interview that the businesses were still
8 operating, counsel said that "Mr. Pryor should have an
9 opportunity to attend" the hearing. Transcript of February 9,
10 2016 hearing at 25:8-9. Our review of the transcript does not
11 show any time when debtor's counsel told the court that the
12 hearing should be continued so debtor could testify. Without
13 such a request, the court did not deny debtor due process by
14 concluding the hearing. In fact, debtor's counsel told the
15 court that he was fine with the court's decision to allow Au to
16 testify and with the court's comment that it would have taken
17 testimony from debtor if debtor had been there.

18 Debtor had appeared at the first and second hearings on the
19 motion to dismiss. He did not attend the final hearing, even
20 though the court had made it clear at the February 2 hearing
21 that, but for the agreement of the UST to a short continuance,
22 the court would have dismissed or converted at the February 2
23 hearing.

24 Debtor's counsel was surprised by the court's decision to
25 take live testimony at the February 9 hearing. In fact, the
26 court's local rules provide that the court may allow live
27 testimony at a hearing on a motion, but that, "[w]hen the court
28 intends to take such testimony, it will give the parties 2 days

1 notice of its intention, if possible, or may grant such a
2 continuance as it may deem appropriate.” LBR 9013-1(i)(1). The
3 record does not show that notice was given.

4 However, when the hearing was continued to February 9, the
5 parties waived notice of the hearing. Further, advance notice
6 of the evidentiary hearing was not possible in this case. The
7 court explained that it was taking testimony as a result of
8 debtor’s assertion for the first time the morning of the hearing
9 that his businesses were not operating and therefore did not
10 need to be insured. Thus, the court allowed Au to testify as to
11 debtor’s representations at the initial debtor interview
12 regarding the activity of the businesses and would have allowed
13 debtor to testify about the businesses had he been there.
14 Because debtor did not raise the factual issue of whether the
15 businesses were operational until the morning of the hearing,
16 the bankruptcy court did not err in taking evidence on the issue
17 without two days’ notice.

18 Debtor also argues that the court erroneously cut off his
19 questioning of Au, thereby denying him due process. Au
20 testified that he had advised debtor at the initial debtor
21 interview of the need for liability insurance on the businesses,
22 but he was not certain whether he had sent a follow-up email to
23 debtor listing that requirement. Although debtor’s argument is
24 not clear, it appears that debtor wanted to question Au about
25 the necessity of liability insurance for these two business
26 entities as opposed to casualty or other types of insurance.

27 There is no prejudice shown from the court’s failure to
28 allow the additional testimony. Debtor must show prejudice from

1 any procedural deficiencies. See Rosson, 545 F.3d at 776-77;
2 Rule 9005. The court found that liability insurance was
3 appropriate; debtor did not have liability insurance or any
4 other insurance on the businesses. The court did not deprive
5 debtor of due process in failing to allow additional questioning
6 on this issue.

7 2. The panel may affirm on any basis supported by the record

8 Even if there were error in the court's finding that debtor
9 failed to maintain appropriate insurance on his businesses,
10 which constituted cause for dismissal or conversion under
11 § 1112(b)(4)(C), the panel can affirm on any basis supported by
12 the record. See Brown v. State Bar of Ariz. (In re Bankruptcy
13 Petition Preparers), 307 B.R. 134, 140 (9th Cir. BAP 2004) (a
14 reviewing court may affirm on any basis supported by the
15 record); Khan, 2012 WL 2043074, at *7.

16 The UST presented ample evidence to support a finding of
17 cause for dismissal or conversion. First, there is no dispute
18 that debtor failed timely to make his UST quarterly fees
19 payment; in fact, he did not tender payment until the day of the
20 hearing. Debtor had been advised on January 6, 2016, that the
21 fees were due; he was advised at the February 2, 2016, hearing
22 that the fees were not paid; he was advised again in an email on
23 February 2, 2016, that the fees needed to be paid. By late in
24 the day on February 8, 2016, debtor's counsel advised the UST
25 that he was still "waiting on client to provide proof of
26 payment." UST's Supplemental Statement in Support of Motion to
27 Dismiss or Convert, Exh. 2 to Declaration of Everett L. Green.

28 Even if, as debtor argues, the court had granted an

1 extension of time for payment, debtor still did not get the
2 payment to the UST by that deadline, instead waiting to deliver
3 the check to the UST at the February 9 hearing.

4 That failure timely to pay the UST fees alone is cause for
5 dismissal or conversion under § 1112(b)(4)(K) and supports the
6 decision to convert. The court could have raised failure to pay
7 the quarterly fees sua sponte. Leeward Subdivision Partners,
8 LLC v. GDR Lending, LLC (In re Leeward Subdivision Partners,
9 LLC), BAP No. WW-10-1060-HRuJu, 2010 WL 6259983 (9th Cir. BAP
10 2010); § 105(a) (court may, sua sponte, take any action
11 "necessary or appropriate to enforce or implement court orders
12 or rules"). The court did not err in finding cause for
13 conversion based on the failure timely to pay the UST quarterly
14 fees.

15 In addition, the court was concerned that debtor had two
16 failed bankruptcy cases in the year before he filed this
17 chapter 11 case. It was concerned that, despite the UST's
18 motion to dismiss filed on November 4, 2015, debtor still had
19 not provided a number of items requested by the UST by the time
20 of the second hearing on the motion on February 2, 2016. This
21 included his monthly operating reports for October 2015,
22 November 2015, and December 2015, each of which was due by the
23 15th of the month following the month that was the subject of
24 the report. LBR 2015-2(b). Debtor did not provide a number of
25 the items, including the operating reports, until the eve of the
26 February 9 hearing, long after they were due.

27 That failure timely to provide information reasonably
28 requested by the UST, coupled with debtor's history of failed

1 cases, provided cause for dismissal or conversion under
2 § 1112(b)(4)(H); failure to timely file the operating reports
3 provided cause for dismissal or conversion under
4 § 1112(b)(4)(F). The fact that debtor finally, four months into
5 the case and on the eve of the final hearing, provided much of
6 the information does not mean that the information was timely
7 provided.

8 There were multiple grounds supporting the bankruptcy
9 court's decision to convert this case for cause.

10 CONCLUSION

11 The bankruptcy court did not abuse its discretion in
12 converting debtor's chapter 11 case to a case under chapter 7.
13 Debtor was given adequate notice of the basis for and an
14 opportunity to be heard on the UST's motion.

15 Therefore, we AFFIRM.