

JUN 08 2017

NOT FOR PUBLICATION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. EC-16-1254-JuTaB
)
 ANTHONY VINCENT LEONIS,) Bk. No. 1:12-bk-15487
)
 Debtor.)
)
 _____)
 JAMES CIECIORKA; MARY JEAN)
 CIECIORKA,)
)
 Appellants,)
 v.) **MEMORANDUM***
)
 RANDELL PARKER, Chapter 7)
 Trustee; ANTHONY VINCENT)
 LEONIS; UNITED STATES TRUSTEE,)
)
 Appellees.)
 _____)

Argued on March 23, 2017
at Sacramento, California

Submitted on June 1, 2017

Filed - June 8, 2017

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

Honorable Rene Lastreto, II, Bankruptcy Judge, Presiding

Appearances: _____ James L. Pagano of Pagano & Kass, APC argued for
appellants James Ciecioraka and Mary Jean
Ciecioraka; Trudi G. Manfredo argued for appellee
Randell Parker, Chapter 7 Trustee.

Before: JURY, TAYLOR, and BRAND, Bankruptcy Judges.

* This disposition is not appropriate for publication.
Although it may be cited for whatever persuasive value it may
have (see Fed. R. App. P. 32.1), it has no precedential value.
See 9th Cir. BAP Rule 8024-1.

1 Judgment creditors, James Cieciorca and Mary Jean Cieciorca
2 (collectively, the Cieciorcas), appeal from the bankruptcy
3 court's order overruling their objection to the "Chapter 7
4 Trustee's Final Account and Distribution Report Certification
5 That the Estate Has Been Fully Administered and Application to
6 Be Discharged" (Final Account) filed by Randell Parker, the
7 chapter 7 trustee.¹ For the reasons explained below, we AFFIRM.

8 I. FACTS

9 Anthony Vincent Leonis (Debtor) filed a chapter 7 petition
10 on June 20, 2012. On the same date, Mr. Parker was appointed
11 the trustee (Trustee).

12 In schedule A, Debtor listed his interest in four
13 properties, including his undivided one-half interest in a
14 parcel located in Livermore, California (Livermore Parcel)² with
15 a value of \$32,000. In schedule C, Debtor claimed an exemption
16 in the Livermore Parcel under Cal. Civ. Proc. Code (CCP)
17 § 703.140(b)(5) (the wildcard exemption) in the amount of
18 \$12,860.43. In schedule D, Debtor listed the Cieciorcas³ as
19 judgment lien creditors owed \$433,000. The Cieciorcas' lien
20

21 ¹ Unless otherwise indicated, all chapter and section
22 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532,
23 "Rule" references are to the Federal Rules of Bankruptcy
24 Procedure, and "Civil Rule" references are to the Federal Rules
of Civil Procedure.

25 ² This property is also referred to as the "Newman" property
26 by Trustee and his counsel. In its Memorandum Decision regarding
27 the award of Trustee's counsel's fees, the court refers to the
property as the Livermore Parcel. The Newman property is the
same as the Livermore Parcel.

28 ³ The Cieciorcas are Debtor's relatives.

1 encumbered the Livermore Parcel.

2 Trustee filed a motion to sell the Livermore Parcel. To
3 effectuate the sale, Trustee entered into an agreement with the
4 co-owners of the property who originally demanded that the
5 property be partitioned. Trustee also entered into a
6 stipulation with the Cieciorkas who agreed to release their
7 judicial lien against the property in the event of a sale.
8 Ultimately, there were four bidders at the sale, including the
9 Cieciorkas. They were declared the highest bidder and purchased
10 Debtor's interest in the Livermore Parcel for \$215,000 in March
11 2015.

12 Meanwhile, Trustee continued his investigation of other
13 possible nonexempt assets. Trustee learned that Debtor had made
14 a \$15,000 withdrawal from his Bank of America (BoFA) account
15 prepetition and requested an accounting. Debtor failed to
16 provide documentation or an accounting regarding the funds.
17 Accordingly, on May 21, 2015, Trustee filed an Application for
18 2004 Examination, seeking to examine Debtor and for production
19 of documents relating to the funds. The bankruptcy court
20 granted the application on May 22, 2015.

21 Debtor's 2004 exam was held on August 12, 2015. After
22 conducting the exam, Trustee concluded that Debtor had provided
23 sufficient documentation and testimony accounting for the
24 \$15,000 and was satisfied that the money had been spent for
25 proper prepetition purposes. However, during the exam Trustee
26 discovered an undisclosed asset in the form of accounts
27 receivable (A/R). Trustee made a demand for turnover of the
28 A/R.

1 At that time, Trustee was holding Debtor's exempt funds
2 from the sale of the Livermore Parcel in the amount of
3 \$12,860.43. Debtor and Trustee agreed that Debtor would "trade"
4 his exemption in the Livermore Parcel for an exemption in the
5 A/R which he had already received. On September 15, 2015,
6 Debtor amended schedule B to list the A/R in the amount of
7 \$12,860.43, and amended schedule C to claim an exemption under
8 CCP § 703.140(b)(5) for the same amount. In schedule C, Debtor
9 deleted his exemption in the Livermore Parcel for \$12,860.43.

10 Trustee and his counsel, Trudi G. Manfredo, filed final fee
11 applications. The Cieciorikas objected to about 10% of the fees
12 requested by Ms. Manfredo as unnecessary or not adequately
13 explained, including fees incurred for Debtor's 2004 exam.
14 They also objected to Trustee's compensation, contending that
15 the itemization of his expenses was inadequate and that he
16 overstated his commission.

17 On January 7, 2016, the bankruptcy court heard the matters.
18 The court allowed Trustee's fees and expenses with the exception
19 of a clerical error about postage. In response to the
20 Cieciorikas' objection to her fees for conducting the 2004 exam,
21 Ms. Manfredo explained how she discovered the A/R due to
22 Debtor's testimony and production of documents during that exam.
23 She told the court about Trustee's demand for turnover of the
24 A/R and explained that Debtor and Trustee reached an agreement
25 whereby Debtor would amend his schedule C to protect the A/R and
26 release his other exemption in the Livermore Parcel. The
27 bankruptcy court took Ms. Manfredo's application for
28 compensation under submission.

1 In a January 28, 2016 Memorandum Decision, the bankruptcy
2 court found that the fees incurred by Ms. Manfredo for the 2004
3 exam were necessary and compensable. The bankruptcy court noted
4 that after document production and testimony from Debtor,
5 Trustee discovered the A/R and reached an agreement with Debtor
6 whereby approximately \$13,000 was added to the chapter 7 estate.
7 The bankruptcy court allowed her compensation as requested with
8 the exception of one duplicate entry for \$442.50. The court
9 entered an order awarding her \$30,334.50 in fees and \$682.83 in
10 expenses.

11 In preparation for closing the case, pursuant to 28 C.F.R.
12 § 58.7(a), Trustee submitted his final report (TFR) to the
13 United States Trustee (U.S. Trustee).

14 After the TFR was certified by the U.S. Trustee, in
15 compliance with 28 C.F.R. § 58.7(b), the TFR was filed in the
16 bankruptcy court on February 5, 2016. The court served Notice
17 of Trustee's Final Report And Applications For Compensation And
18 Deadline To Object (NFR). The TFR included an outline of
19 intended, rather than completed, distributions of estate assets.
20 It showed the A/R as item 23, noting that it was unscheduled and
21 had a net value of \$10,627.07. In describing the asset, Trustee
22 showed that Debtor provided proof that he received payment on
23 the invoices postpetition and that Debtor had exempted the
24 funds. Trustee indicated that \$0.00 was received by the estate
25 and that the asset was fully administered.

26 Although there is much discussion regarding item 23 in the
27 record, this asset is not at issue in this appeal. Instead, it
28 is item 24 which shows that Debtor withdrew \$15,000 from his

1 "BoFA account" prepetition. The nonexempt asset was listed as
2 unscheduled, Trustee showed that \$0.00 was received by the
3 estate and indicated that the asset was fully administered.

4 Finally, the TFR showed the Cieciorikas with an allowed
5 unsecured claim of \$543,523.44 and indicated that distribution
6 on the claim was \$159,578.57.

7 On February 24, 2016, an amended TFR along with an amended
8 NFR were filed in the bankruptcy court. Apparently the
9 amendment was necessary to adjust distributions due to errors in
10 Trustee's application for compensation. Trustee had made a
11 clerical error for the requested postage which resulted in an
12 overcharge of \$123.48, and another error overstated Trustee's
13 commission by \$975. Due to the corrections, the amended TFR
14 showed that the Cieciorikas would receive a distribution of
15 \$160,880.70 on their allowed unsecured claim.

16 On February 29, 2016, the bankruptcy court entered an order
17 awarding Trustee compensation of \$16,633.89 and expenses of
18 \$595.40.

19 On May 27, 2016, Trustee's Final Account was filed and the
20 bankruptcy court served a notice giving parties in interest
21 thirty days to object. In the Final Account, Trustee certified
22 that administration of the estate was complete as the
23 distributions outlined in the amended TFR had been made. On
24 June 23, 2016, the Cieciorikas objected to the Final Account.
25 They argued, among other things, that the Final Account did not
26 show that Trustee had fully administered the nonexempt \$15,000
27 cash withdrawal from the BoFA account because the estate had
28 received no value. The Cieciorikas complained that there was no

1 explanation why the \$15,000 asset was not administered when it
2 was included in the estate and apparently would be abandoned.

3 On August 4, 2016, the bankruptcy court held a hearing on
4 the matter. The Cieciorikas withdrew most of their objections at
5 the hearing except as to Trustee's listing of the \$15,000 cash
6 withdrawal. They expressed confusion over Trustee's inclusion
7 of the \$15,000 withdrawal as an "asset" of the estate when the
8 estate received no value. The bankruptcy court overruled their
9 objection, adopting its tentative ruling set forth in Civil
10 Minutes as its final ruling.

11 On August 18, 2016, the Cieciorikas filed a notice of appeal
12 from the bankruptcy court's ruling.

13 On October 7, 2016, the Clerk's office sent out a notice
14 notifying the Cieciorikas that the order appealed was never
15 entered on the bankruptcy court's docket and therefore the
16 appeal was subject to dismissal for lack of jurisdiction.

17 On October 13, 2016, the bankruptcy court entered a civil
18 minute order overruling the Cieciorikas objection to the Final
19 Account. This order resolved the jurisdictional issue.

20 **II. JURISDICTION**

21 The bankruptcy court had jurisdiction over this proceeding
22 under 28 U.S.C. §§ 1334 and 157(b)(2)(A). We have jurisdiction
23 under 28 U.S.C. § 158.

24 **III. ISSUE**

25 Did the bankruptcy court abuse its discretion by overruling
26 the Cieciorikas' objection to Trustee's Final Account?

27 **IV. STANDARDS OF REVIEW**

28 We review the bankruptcy court's overruling an objection to

1 a trustee's final report and account for abuse of discretion.
2 See, e.g., Flores v. Salven (In re DDJ, Inc.), 2015 WL 3451555
3 (9th Cir. BAP May 29, 2015); Corbett v. Salven (In re Corbett),
4 2014 WL 1647393 (9th Cir. BAP April 24, 2014).

5 Under the abuse of discretion standard, we first "determine
6 de novo whether the [bankruptcy] court identified the correct
7 legal rule to apply to the relief requested." United States v.
8 Hinkson, 585 F.3d 1247, 1261-62 & n. 21 (9th Cir. 2009) (en
9 banc). If the bankruptcy court identified the correct legal
10 rule, we then determine under the clearly erroneous standard
11 whether its factual findings and its application of the facts to
12 the relevant law were: "(1) illogical, (2) implausible, or
13 (3) without support in inferences that may be drawn from the
14 facts in the record." Id.

15 We may affirm the bankruptcy court's orders on any basis
16 supported by the record. See ASARCO, LLC v. Union Pac. R. Co.,
17 765 F.3d 999, 1004 (9th Cir. 2014).

18 **V. DISCUSSION**

19 The gravamen of this appeal is based on the Cieciorikas'
20 belief that Trustee incorrectly described his disposition of the
21 \$15,000 BofA withdrawal or erred by listing it as an asset of
22 the estate which was fully administered. They contend the asset
23 was not fully administered as shown in the final reports or
24 Final Account because the estate received no part of the
25 nonexempt funds. According to the Cieciorikas, there is no
26 evidence of what Trustee's investigation of the \$15,000
27 withdrawal consisted of, what he found, and why he concluded, as
28 he claims to have, that Debtor spent the money appropriately

1 pre-petition and thus the \$15,000 never came into the estate.
2 As discussed below, these arguments have no merit.

3 **A. The Final Report And Account And Rule 5009**

4 One of the trustee's duties under § 704(9) is to file a
5 final report and a final account of the administration of the
6 estate with the bankruptcy court. The purpose of the final
7 report and account, and the hearings in connection with an
8 objection from the U.S. Trustee or a party in interest, is to
9 determine whether a given estate has been fully administered and
10 whether fees and expenses should be allowed to the chapter 7
11 trustee. See § 704(9); Lopez-Stubbe v. Rodriguez-Estrada
12 (In re San Juan Hotel Corp.), 847 F.2d 931, 939 (1st Cir. 1988)
13 ("The very purpose of a final accounting is to insure that
14 trustees disclose and be held accountable for their handling of
15 the estate.").

16 The notice requirements for a chapter 7 trustee's final
17 report and final account are dictated by Rules 5009 and
18 2002(f)(8). Rule 5009(a) states:

19 If in a chapter 7 . . . case the trustee has filed a
20 final report and a final account and has certified
21 that the estate has been fully administered, and if
22 within 30 days no objection has been filed by the
United States trustee or a party in interest, there
shall be a presumption that the estate has been fully
administered.

23 Although Rule 5009 does not expressly require notice, the
24 requirement of notice has been inferred. In re Avery, 272 B.R.
25 718, 728 (Bankr. E.D. Cal. 2002) ("[I]f parties in interest have
26 the right to object to the final report, someone must serve them
27 with it."). Under Rule 2002(f)(8), a "summary" of the trustee's
28 final report in a chapter 7 case is required to be served on the

1 debtor and creditors "if the net proceeds realized exceed
2 \$1,500." Here, the net proceeds realized exceeded \$1,500. The
3 Cieciorikas were served with the TFR and Final Account.

4 Rule 5009 has been described as nothing more than a
5 procedural rule for case closing:

6 To see this Rule in context, one has to step back and
7 understand that one of the reforms under the
8 Bankruptcy Code, as enacted in 1978, was intended to
9 relieve bankruptcy judges of the heavy burden of case
10 administration in its most routine and tedious
11 bureaucratic aspects, including the actual issuance of
12 orders closing chapter 7 no-asset cases that comprise
13 over 90% of the chapter 7 cases filed by natural
14 persons. Most case administrative functions were
15 ultimately reallocated to an administrative agency in
16 the executive branch of the federal government, to
17 wit, the Executive Office of the United States
18 Trustees lodged in the U.S. Department of Justice and
19 reporting ultimately to the U.S. Attorney General.
20 One of the central functions of the Executive Office
21 of the United States Trustee is to appoint and
22 supervise the private panel of chapter 7 trustees. As
23 part of the process of supervising chapter 7 cases, it
24 became the primary administrative responsibility of
25 the United States trustee to make certain that the
26 panel trustees moved their assigned cases to an
27 expedited closing. The function, however, of actual
28 closing a case remained vested with the Clerk of the
Court. Since the filing of a final report in a
no-asset case still requires some sort of
administrative review by the United States trustee
this worked to ensure that trustees timely co-operated
in the closing of no-asset cases.

With this as the institutional background, it becomes
understandable that this Rule is intended to address
two governmental entities and not parties in interest,
namely, the Clerk of the Bankruptcy Court and the
United States trustee. This Rule sets up a 'default
rule' that authorizes the Clerk to close a case,
absent other unexpressed conditions, when a thirty-day
period has run after the trustee files a no-asset
report with the Clerk and the United States trustee
and the United States has not filed an objection that
would bring the case back to the attention of the
judge assigned to the case. If there were no such
default rule, the only way the Clerk's office could
ascertain whether the United States trustee was fully
satisfied with the chapter 7 trustee's administration
of the case would be to insist that the United States

1 trustee take the additional affirmative act of sending
2 in periodic reports advising the Clerk to close a
3 scheduled list of numbered chapter 7 cases. That
4 practice would impose an intolerable burden on the
5 United State trustee's severely limited support staff.
6 The default rule eliminates one round of paper.

7 In re Schoenewerk, 304 B.R. 59, 63-64 (Bankr. E.D.N.Y. 2003).

8 Given the purpose behind Rule 5009, the bankruptcy court's
9 scope of inquiry upon an objection to the trustee's final report
10 or account is limited "to the question of whether the chapter 7
11 estate has been 'fully administered.'" In re The Law Firm of
12 Frank R. Bayger, P.C., 2014 WL 3534084, at *1 (Bankr. W.D.N.Y.
13 July 16, 2014). With this background, we proceed to the merits.

14 **B. Analysis**

15 We are not persuaded by the Cieciorikas arguments on appeal
16 for several reasons. First, Trustee certified that the case had
17 been fully administered thereby raising the presumption in
18 Rule 5009 that it had indeed been fully administered. The
19 presumption is rebuttable. In re Schoenewerk, 304 B.R. at 64
20 ("Rule 5009 has to be read as creating a rebuttable
21 presumption."). The Cieciorikas complain about how the "asset"
22 was described in the TFR and that there was no evidence
23 regarding Trustee's investigation of the \$15,000 withdrawal;
24 i.e., what he found, and why he concluded, as he claims to have,
25 that Debtor spent the money appropriately pre-petition. These
26 are merely complaints and not evidence that controverts the
27 presumption that the estate was fully administered.

28 Next, the duty to supervise panel trustees is upon the
U.S. Trustee. See 28 U.S.C. § 586(a)(1), (3). Since it is the
U.S. Trustee's responsibility to supervise panel trustees, the

1 bankruptcy court was entitled to infer from the absence of an
2 objection by the U.S. Trustee that the agency was satisfied with
3 Trustee's level of detail and description of the assets
4 contained in his final report. In any event, since supervisory
5 duties lie with the U.S. Trustee, it is unlikely that a
6 bankruptcy court has authority to order a trustee to amend his
7 or her final report or final account to change the description
8 of an asset due to the lack of detail. See In re Kelco Metals,
9 Inc., 532 B.R. 912 (Bankr. N.D. Ill. 2015) ("There is no clear
10 case that the bankruptcy court has authority to enter an order
11 amending the Final Report, to impose an alternative final report
12 or to order the Trustee to make such an amendment.").

13 Finally, trustees routinely and informally identify assets,
14 make determinations as to value or benefit, and disregard assets
15 that promise no benefit to the estate. The record shows that
16 Trustee explained his entry on the final report regarding the
17 \$15,000 withdrawal; i.e., that Debtor provided documentation and
18 testimony at his 2004 exam which adequately accounted for the
19 funds. Thus, there was no basis for Trustee to pursue turnover
20 of the funds to the estate for purposes of distribution.

21 Without any controverting evidence from the Cieciorakas, the
22 bankruptcy court could properly presume that Trustee acted
23 prudently and on an informed basis in deciding whether to
24 administer the asset. See United States v. Aldrich
25 (In re Rigden), 795 F.2d 727, 730 (9th Cir. 1986) (under
26 business judgment rule "[a] bankruptcy or organization trustee
27 has a duty to exercise that measure of care and diligence that
28 an ordinary prudent person would exercise under similar

1 circumstances.”).

2 In sum, Trustee filed his Final Account certified under
3 penalty of perjury disclosing the \$15,000 withdrawal and its
4 disposition. The Cieciorikas provided no evidence to overcome
5 the presumption that the estate was fully administered or that
6 somehow Trustee had erred. As the bankruptcy court observed,
7 without evidence or analysis, a different description of the
8 \$15,000 withdrawal would not change the administration of the
9 case. Accordingly, the bankruptcy court did not abuse its
10 discretion in overruling the Cieciorikas’ objection to the Final
11 Account. See In re Schoenewerk, 304 B.R. at 64 (“[] Rule [5009]
12 impliedly leaves it to the discretion of the Court to determine
13 what kind of showing [the party in interest] has to make before
14 he can burst the bubble of presumption.”).

15 **VI. CONCLUSION**

16 For the reasons stated, we AFFIRM.

17
18
19
20
21
22
23
24
25
26
27
28