Gary L. Ozenne
7351 Piute Creek Drive
Corona, CA 92881
951-496-7525
firesprinklers@gmail.com

UNITED STATES COURT OF APPEALS
FOR THE 9TH CIRCUIT

GARY L. OZENNE, Debtor Appellate, Petitioner vs. CHASE MANHATTAN BANK, OCWEN LOAN SERVICING, OCWEN FEDERAL BANK FSB. Appellees	Case No.: 11-60039 PETITION FOR REHEARING EN BANC

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Petition for rehearing en banc

Dated this 1st of June, 2016.

Gary L. Ozenne

SUMMARY OF CASE

From Appellant's Informal Opening Brief Submitted January 5th 2012
9th Cir. Case No. 11-60039

"The service agent violated bankruptcy law and that violation prevented me from obtaining a new loan after my case was dismissed.

While protected by a bankruptcy stay, the banks service agent violated 11 USC 362(a) by issuing a deed to O'Neal at a foreclosure sale. Sixteen months later this deed prevented me from obtaining a new loan after the bank successfully argued to have my bankruptcy case dismissed for bad faith. After the case was dismissed, instead of resolving the title issue, which prevented my approved refinance, the bank held another sale, and two days after that new buyer gained possession in state court, the bank recorded a rescission of the O'Neal deed with the Riverside County Recorder.

I have sought a hearing on this violation of law since the President's Day 2003 eviction from my home of twenty-six years. My home based business, Residential Fire Sprinklers, operated from my home since 1991, failed shortly after my eviction. At a February 24, 2003 hearing the bankruptcy court recognizes the violation of law, but continues the hearing for 10 days and then declines to accept jurisdiction and dismisses the case with prejudice! After almost a decade of attempting to to tell my story through the appeals process, the effort is now focused on the Bankruptcy Appellant Panel's denial of my request for mandamus relief, to enforce the law as determined by 9th Cir BAP published opinion In re Nathan Johnson 9th Cir BAP July 7, 2006which determined the bankruptcy court must hear violations of 11 USC 362, when asked to do so. Even after the dismissal of the main case".

END OF EXERT of Appellant's Opening Brief

I would ask that the court to incorporate my exhibits and Opening Brief as exhibits to this petition for rehearing en banc.

11-60039 Petition for rehearing

Gary Ozenne, an American citizen, has been denied his civil right to redress against those who have harmed him greatly. These grievances have never been judicially inspected or examined. Throughout the last 15 years, all I have asked for was a fair trial ! My day in court.

This case involves two giants of the mortgage refinance business, Chase-Manhattan and Ocwen Federal Bank F.S.B, and Gary Ozenne, a 66-year-old native of California. As of May 17, 2016, it will be fifteen years since the automatic stay violation occurred on May 17, 2001, that changed my life so profoundly and detrimentally, that I considered ending it.The law was violated and i couldn't get a hearing or trial. I recalled the legal maxim "Justice delayed, is justice denied".

I have broken no laws,yet have literally lost everything; my house of 26 years, my business, Residential Fire Sprinklers. my domestic partner, Lisa Muniz, my Aerobatic Aircraft (Starlet) built by Lou Stolp, N501S, Serial number 1, and the intangible enjoyment, of living in a home you watched being built 26 years earlier. my mental and emotional health have suffered as well, In 2009 I became suicidally depressed, and sought help and was treated by Riverside County mental health, where I remain a patient to this day, diagnosed with MDD (major depressive disorder) the doctors are treating me with anti-depressant drugs.

By contrast, the appellee's have violated the law, 11 USC 362(a) and have gone uninspected or even questioned about these serious unlawful actions.

ARROGANT APPELLEES

For this behavior, appellees has gotten away with their deceptions, in this case now for a decade and one half.

Enjoying the fruits of this chicanery, for now, 15 years, simply by staying out of court, and focusing on my supposed lack of character, and misuse of the court system. In fact, I was just getting my sea legs, as I tried to run my company, by myself, since my partner left to start his own company. The banks portrayed me as a low life type guy, using the bankruptcy code for my own selfish needs, they tried to portray me as a rogue, who did not want to make payments on his home, This citizen was making a mockery of the process, for his own advantage.

The banks remained silent on the undeniable fact that they had issued a deed to O'Neal, and failed to rescind that deed until two days after Vista won possession they had resold the home in 2002 to Vista. But kept portraying me as a debtor who preferred to file bankruptcy after bankruptcy, to avoid paying for his home, and someone who did not deserve the protection of the law.

Today we must end this nonsense,

I am a time limited human individual, just like everyone else. I am baby boomer, when my adversaries went to law school, I went to flight school, becoming a commercial multi engine flight instructor at 18. A flight student helped me get into a training program at Sperry Univac, which led to other responsible positions in the computer and software industry until 1991, when I resigned my position at Microsoft, to start a fire protection business.

The banks, however, have resisted an inspection of the facts It is a brilliant strategy of attrition for the corporate entities, vs a live human being. It has worked for now, 180 months, or 15 years of my life.

they have successfully avoided the law being applied to their actions. This strategy has worked, and served them well, to this very day.

Our courts have unknowingly assisted the defendants' tactics, by not ordering a trial or even a hearing to inspect my charges. By continuing this 'see no evil' treatment by the courts, the ruse has continued; the victim is the bad guy!

Facts:

October 13, 2000 I wired Ocwen, in Fort Lee New Jersey, $22,823.66 to fully reinstate my delinquent loan, and and paid current through October 31, 2000.

A few weeks later, filing paperwork, I came across their reinstatement quote of $22,823.66 and discovered an error in Ocwen's addition, I had overpaid $3,824.25.

I notified Ocwen, about their addition error, and was told they would 'look into it"

The very next month, on January 22, 2001, the trustee, recorded a notice of default with the Riverside County Recorder, asserting arrearages in the amount of $10,539.69, It was bizarre.

Realizing Ocwen was incompetent, or worse, I attempted to rescind the loan under 15 USC 1635 since I had not been given proper disclosures, unfortunately, I had mailed it to Ocwen, and not the loan originator, Ameriquest, Attorney Bruno had appealed that to the 4th Appellate State Court unsuccessfully.

In the second week of May, 2001 I called Ocwen to be certain they had received my letter of rescission, and spoke to Diane Reilly who affirmed that they had received it, but scolded me by saying *"you can't do that, otherwise everyone would do it*"! Indeed, in just the first 35 months, they had collected $49,805. on their 14.5 % $116,250.00 loan.

And this was the lowest possible rate, 14.5%. The rate could climb to 20.5% if rates increased. The libor being the index, However, according to California Law, *Cal Civ Code 1912-1916* , adjustable rate loans that can increase, must also decline, when rates go down. Diane Reilly also told me they would continue with the sale, scheduled on May 17, 2001 2 PM, in spite of my federal rescission, I called my Lawyer to find out, he was in England, on a golfing vacation and not expected to return until the first week of June 2001.

Frantically, I obtained blank petitions and copied carefully the minimum petitions, required to start a case 01-18618 which would delay proceeding until Attorney Presley returned from vacation, I filed the petitions, in the morning, and took them to the sale. I showed the auctioneer, then went home, and faxed the petitions to the trustee.

A week later I was served with an eviction notice from the attorney of Carol and Steven O'Neal. Finally, Attorney Presley returned from vacation, made some phone calls, then all the actions stopped.

On May 22, 2002 ,sixteen months later, at a bankruptcy hearing, Chase/Ocwen Attorney, and former trustee at Cameron and Dreyfuss, argued to have my cased dismissed, and the court applied the legal doctrine of Judicial Estoppel; In the submitted (copied) petition, i left the "Secured" checkbox, checked, believing it was still secured until a court ruled it was rescinded, but since I had rescinded the loan on April 24,2002 by sending the rescission letter. . the court, agreed with the perfidious attorney and former guilty trustee, Diane Weifenbach who urged the court after suggestions by Attorney Weifenbach the court decided that it was judicial estoppel, and that checking the wrong box as to weather it was secured or non secured, due to the recent TILA rescission led the court to believed this

was the opposite position element needed for a ruling of judicial estoppel and dismissed my case with prejudice.

I quickly was approved for a new loan, with Indy Mac Bank. I had a lot of equity, so my now tarnished credit, apparently did not matter as much. And this was five years earlier than the 2007-2008 financial crisis.

After an appraisal, Indy Mac Bank sent me an approval letter. But during closing, after a final title search was performed, it was discovered that title belonged to Carol and Steven O'Neal, they could not grant me a loan, and told me that I should retain a lawyer.

I already had Clay Presley (bankruptcy) and Louis Bruno, (enforcement of TILA).

On July 31, 2002, I watched my home being sold to a real estate investor, Vista Home,

On September 24,2002 in state court Vista Homes won possession in their summary eviction suit.

On September 26, the Trustee recorded a Rescission of the O'Neals deed.

This of course is what the banks could have done, the whole time I was in bankruptcy proceeding, or even when this deed was discovered by Indy Mac, until the time of the sale they could have recorded the O'Neal deed and begin acting lawfully, But someone made the decision, that instead of doing the right thing, the lawful thing, someone rolled the dice, deciding to wait until they sold it again, and the newer buyer gained possession in the summary state unlawful detainer case. , then, rescinded the O'Neal deed (two days later) giving the new investor / buyer, Vista Homes,a clear title. The bet paid off, it worked.

In November, 2002 I motioned the court to set aside my dismissal so that I could pursue the violations of 11 USC 362(a), but that was denied .

In December, 2002 I suffered a stroke that paralyzed my left side and put me in the hospital for 11 days. The eviction notice indicated I had to be out, February 17, 2003, Presidents day weekend.

Friends, and former workers helped me move into Dollar Storage. Three miles from the house.

Later Dollar storage violated the law when they sold everything that was in the two two storage units, which was all the contents of the house and business. I had served them personally to Dollar, however, the court believed that the state law, was not 'clear' and refused to sanction Dollar Storage. Now it was all gone, pictures, videos, the recollecting of your history. They took it all. , as if it were consumed by a fire.

I appealed to the BAP who ruled in my favor, See, In re Ozenne 9th cir BAP January 17, 2006., after oral arguments.

Back to the present case 11-60039

For over 16 months the case continued until May 22, 2002 and at the urging of Chase/Ocwen's former attorney, and Trustee at Cameron and Dreyfuss, Now a new partner at Dreyfuss, Ryan and Weifenbach. Diane Weifenbach, urged the court to dismiss my case, and suggested some doctrines,,the court concluded it was judicial estoppel in which the judge ruled that I was judicially Estopped because, in the hurried copy of petitions, I forgot to uncheck the box that said the property was secured, and since a month earlier I claimed that the loan was rescinded. This was the opposite position needed for a ruling for judicial estoppel, Attorney Presley asked for reconsideration at a June 5, 2002 hearing which was denied and a memorandum of decision was issued.

In May of 2003, in a hearing on Vista homes motion to lift the Lis Pendens, in state court, and I responded on a state law theory. See Exhibit 1.
Next, I appealed to the BAP, but it was removed to District Court and denied in eary August of 2003.

REHEARING EN BANC

I would ask the court for reasonable allowances, as a pro se litigant, as the Bankruptcy Appellate Panel afforded me in 2006 BAP Opinion Page 6, Line 9. 04-1456

If this case is not reheard, its sends an encouraging message to other defendants, possibly contemplating such unlawful action, and will see that it is possible to dodge federal law, and win! using smokescreens to focus on debtor, keeping focus off themselves for at least 15 years.!

If this case is not reheard, it rewards the banks for their violations of law, never litigated with a trial. The banks win! The strategy worked!

A rehearing or order remanding to Trial, will expose the obvious violations of law.
.

A rehearing is needed, to separate the jurisdiction issues from bankruptcy violations of law.

A rehearing is needed to allow debtor to exercise his constitutional right to have his grievances heard by the government.

A rehearing is required so that this strategy of attrition by the Corporations vs human beings will not be become an accepted strategy fighting human litigants.

A rehearing is required to disarm any challenge that the panel changed the rules, while the case was still being considered.

BAD DEBTOR

Over these 15 years, a slow subtle practice of blaming the victim began.

Character assassinations,and attacks on my integrity and character became standard tactics used, by the violating banks.

The arrogance of these defendants is breathtaking!. The responding brief by appellees was not filed by its due date. February 6, 2012, Ten months later, in October 2012, the court issued an order for Appellees to file within 14 days, their responding brief, with a motion to accept this late filing. The banks, again, ignored this order as well,, and went into hibernation for over 3 years, without response.

The smelling salts which brought them out of this time wasting slumber was a motion to the panel to change my requested relief to a remand of this case, to the US District court , for trial by jury !

That did it, Chase Ocwen came alive and responded electronically the next day asserting they knew nothing about this case. t. The court gave the banks 14 days to respond and file their response, which was 35 pages of all the possible ways the court could deny my appeal, never mentioning my charges against them. And never came close to addressing my charges.

What attorney Weifenbach failed to tell the court, was it was her firm, Cameron, and Dreyfuss, who committed this 11 USC 362(a) violation. Before she was she was made a partner, at Dreyfus, Ryan and Weifenbach. She worked at Cameron and Dreyfuss, trustee and attorneys for Chase and Ocwen, who was the trustee when these violations occurred in 2001. Again, See Transcript March 6, 2003 pages 83-84.

This began the cumulative recasting, and re imaging of Ozenne, first as a guy who uses the system to not have to pay for his house, whose integrity and character should questioned, and was certainly not the victim.

Each new appeal, and loss, seemed to add more credibility to their claims. They had created, a negative spiraling descent. and now that the bankruptcy court gave a very negative assessment at the March 6, 2003 continued hearing about a 11 USC 362(a) violation, the hearing turned into a 'grilling' of the debtor Ozenne, by the offending banks. The debtor looking for support from the bankruptcy court had been recast into a legal pariah.

With the number of bankruptcies and now, after this scathing rejection by the bankruptcy court, the banks wordsmiths went to work, on their defense strategy to delay. At each new appeal these tactics were used to 'poison the well', so that the bare facts remained hidden. This 'story' about me, seemed more plausible, as the losses continued to mount !

It's important to remember, that in June 2002, when my loan could not close, because title was still in the name of Carol and Steven O'Neal, issued May 17, 2001, and recorded on May 29, with the Riverside County Recorder, the banks (Chase and Ocwen) could have, remained lawful by rescinding this unlawfully issued O'Neal trustee's deed, and my new loan would have closed.

But even at this last opportunity to become legal, and do the right thing, the banks failed to do so. The banks, however, decided to roll the dice, with federal law and and sold the home, again, to investor , Vista Homes, then rescinding the O'Neal deed, within 48 hours of the favorable ruling in the summary eviction trial.

Only the beneficiary Chase, or Trustee, Ocwen are the only parties that can record such a rescission document California Civil Code 1058(5)(b).

The banks win, just by preventing me from getting a fair trial.

My case, at the judicial level, has morphed from an action to enforce the law, to a scholarly debate on bankruptcy jurisdiction by the panel. And that the bankruptcy appellate panel, BAP, lacked jurisdiction to hear this petition for a writ, to enforce the law!

Serious violations of federal law, raised in appellant's informal opening brief, were not addressed in the panel's decision.

The Bankruptcy Court believed and ruled that it, had no jurisdiction once the case was closed. This panel was split, on where the authority of the BAP emanated from,but all agreed that the United States District Court had original jurisdiction. where I asked the court to remand this 15-year dispute.

The writ of mandamus was filed to the BAP, in my belief that this was the proper way, to ask a superior court, to order an inferior court, to follow the law. to force the inferior court based on the 9th Circuit BAP's own ruling based on their decisions in *In re Nathan Johnson 9th Cir BAP July 7, 2006*

Consider this: In all of these scores of actions, where my charges remain unchanged Appellees, have never once denied my charges. The proof of my contentions are all county and bankruptcy courts official records. Taking a strategy of delay and attrition. I am human, they are a corporation.

Governor Schwarzenegger helped me in 2004 through the office of the Comptroller of Currency, who wrote Ocwen about my charges, Ocwen replied with a very confusing 4-page letter, inferring they had rescinded the loan, which was not true.

A fair and open trial is needed to flesh out the facts, from the hyperbole, but has not happened in my case, which is required under the First Amendment of our constitution, guaranteeing the right to bring grievances to the government.

A petition for Judicial Notice of the biggest settlements against Ocwen was denied, some in the billions of dollars, from reliable news sources, was denied improperly, as was an address of Massachusetts Senator Elizabeth Warren's speech on the Senate floor about some of the techniques used, by the big banks, like Citi-Bank who got favorable legislation passed by attaching it to must pass legislation before the congressional Christmas vacation, and everyone leaves town.

In my case, a negative image of me got started simply by the number of bankruptcy filings indicating that I possibly may be a serial filer who abuses the bankruptcy system. No charges of that, however, were ever presented. I was just a new contractor, adjusting to this very different (from computers and software) to the construction industry this growing new industry, protecting human life, from the horror of a residential fire.

After the dismissal with prejudice at the March 6, 2003, decision by the court, the wordsmiths at the appellees legal representation, combined now the number of bankruptcies, and a scathing reassessment by the court, had enough material to create a formidable offensive story. A strong offense being your best defense. It has worked for them, for 15 years!

Each of my following appeals only served to further deteriorate my credibility. as each new appeal for justice seemed to reinforce the bank's contentions.

It should be noted that in all these appeals, I have never once, except in case 04-1456, been able to orally testify. to a judge or appeals panel. The court can best appraise the truthfulness of litigants, when they see the litigant in the eyes, body language and other silent cues, which is not evident with panels reading just the briefs.

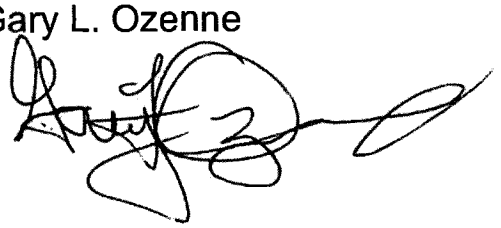
to the panel using words to present their points, respond to questions Not seeing the litigants, eyeballs, body language, attitude and other silent cues, that indicate the truthfulness of the litigating parties.

I would ask, as I did in my appellant's informal opening brief, to act as soon as possible.

I urge this court to order a rehearing or an order remanding this case back to the United States District Court, for trial by jury.

We Pray,

Gary L. Ozenne



U.S.C.A. CASE NO. 11-60039

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

In Re: GARY LAWRENCE OZENNE
Debtor

GARY LAWRENCE OZENNE
Debtor and Appellant

vs.

CHASE MANHATTAN BANK; OCWEN LOAN SERVICING; OCWEN FEDERAL BANK FSB
Appellees

Appeal from Order Denying Petition for Writ of Mandamus by the
U.S. Bankruptcy Appellate Panel of the Ninth Circuit
BAP No. CC-11-1208
BK No. RS 01-18618-CB
Prior Appeals: 03-56569; 08-56599; 09-70558

APPELLEES' RESPONSE TO COURT ORDER REQUESTING THE PARTIES' POSITIONS RE REHEARING EN BANC

Eric D. Houser (Cal. Bar No. 130079)
Jeffrey S. Allison (Cal. Bar No. 173620)
HOUSER & ALLISON
A Professional Corporation
9970 Research Drive
Irvine, CA 92618
Telephone: (949) 679-1111
Facsimile: (949) 679-1112

Attorneys for Appellees

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TABLE OF AUTHORITIES

No additional authorities cited.

I.

INTRODUCTION

Appellees OCWEN LOAN SERVICING, LLC, successor to OCWEN FEDERAL BANK, FSB, erroneously named, and The Bank of New York Mellon, f/k/a the Bank of New York as successor to JP MORGAN CHASE BANK, N.A., as Trustee for Structured Asset Securities Corporation, Mortgage Pass-Through Certificates Series 1998-8, erroneously named, collectively "Appellees," submits the following Brief as invited pursuant to the Court's Order of May 12, 2016 requesting the parties to submit simultaneous briefing setting forth their positions as to whether the appeal should be reheard en banc.

II.

APPELLEES' POSITION RE REHEARING EN BANC

Appellees' Brief addressed the issues raised by Appellant in the instant appeal. Appellees argued the bases for the BAP's denial of Appellant's writ, following the refusal by the Bankruptcy Court below to exercise jurisdiction to reopen Appellant's prior bankruptcy upon his motion. (AB pp. 11-28). The Honorable Court's Decision of March 25, 2016 began with Section I at page 3 setting forth a summary of the proceedings and decisions below. The Court at page 9 of its Decision then stated in part as follows:

> …Here, Ozenne failed to file a timely notice of appeal pursuant to Rule 8003(a) of the Federal Rules of Bankruptcy Procedure. Ozenne's failure to

> appeal the bankruptcy court's decision meant that the election period was never triggered, and the defendant never had the opportunity to elect to have the district court hear the case. Thus, the BAP's decision to review the petition, even though it was ultimately denied…"

To the extent the Court's Decision was based in part, whether expressed or implied, on the particular issues raised on appeal and arguments by Appellees for the ultimate denial and/or dismissal of Appellant's writ by the BAP below, Appellees do not seek rehearing en banc.

Section II at pages 4 *et seq*. of the Court's Decision began as follows:

> Although the question of whether the BAP has jurisdiction to address a petition for writ of mandamus has not been raised on appeal, we are "bound to consider jurisdictional defects sua sponte." [citations omitted].

To the extent the Court's Decision was based on an analysis of the general powers, authority or jurisdiction of the BAP under the All Writs Act, Appellees take no position concerning rehearing en banc.

III.

CONCLUSION

The Honorable Court should affirm the BAP's denial or dismissal of Appellant's Petition for Writ of Mandamus based on the issues and grounds raised in the appeal. Appellees take no position regarding the power, authority or jurisdiction of BAP in general as addressed in the Court's Decision of March 25, 2016. Accordingly, Appellees do not request rehearing or oral argument at this time.

Dated: June 2, 2016

HOUSER & ALLISON, APC

/s/ Jeffrey S. Allison
Attorneys for Appellees OCWEN LOAN SERVICING, LLC, successor to OCWEN FEDERAL BANK, FSB, erroneously named; The Bank of New York Mellon, f/k/a the Bank of New York as successor to JP MORGAN CHASE BANK, N.A., as Trustee for Structured Asset Securities Corporation, Mortgage Pass-Through Certificates Series 1998-8, erroneously named

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on June 2, 2016.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system (see below service list).

I further certify that some of the participants in the case are not registered CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or have dispatched it to a third party commercial carrier for delivery within 3 calendar days to the participants listed below.

Gary Lawrence Ozenne
7351 Piute Creek Drive
Corona, CA 92881
Email: firesprinklers@gmail.com

VIA CM/ECF

Ch. 13 Trustee
Rod Danielson
3787 University Avenue
Riverside, CA 92501

VIA FIRST-CLASS MAIL

s/ Courtney Hershey
Courtney Hershey