

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA

In re:

THE DISCIPLINARY PROCEEDING OF
ALON DARVISH.

State Bar Number 231257

Case No. 2:19-mp-00109-BB

MEMORANDUM OF DECISION ON
DISCIPLINARY PROCEEDING OF ALON
DARVISH

(No hearing held)

The matter before the Court is a disciplinary proceeding against attorney Alon Darvish ("Mr. Darvish") pursuant to the Sixth Amended General Order 96-05 of the United States Bankruptcy Court for the Central District of California (the "General Order").

Statement of Procedure and Notice of Hearing

The Honorable Erithe Smith initiated this disciplinary proceeding against Mr. Darvish pursuant to the General Order by filing with the Clerk of the United States Bankruptcy Court for the Central District of California (the "Clerk") a statement of cause, dated December 23, 2019, setting forth the basis for the referral and a suggestion of appropriate discipline (the "Statement of Cause") [2:19-mp-00109, Dk. #1]. The Statement of Cause was supported by Findings of Fact and Conclusions of Law entered December 23, 2019 in bankruptcy case no. 8:17-bk-14536-ES (the "Tanksley Case"), Dk. #65. In accordance with the procedures set forth in the General Order, the Clerk designated a panel of three bankruptcy judges from this district to

1 hear the matter. The members of the panel are the Honorable Sheri Bluebond, Presiding
2 Judge, the Honorable Wayne Johnson and the Honorable Martin R. Barash (collectively, the
3 "Panel").

4 The Clerk served a Notice of Assignment of Hearing Panel on Mr. Darvish and the U.S.
5 Trustee on February 26, 2020 [2:19-mp-00109, Dk. #8]. Pursuant to the General Order,
6 Mr. Darvish and the U.S. Trustee had until the expiration of a period of 14 days after service of
7 the Notice of Assignment to move to recuse one or more of the judges assigned to the Panel.
8 No motion to recuse was filed. The Clerk served Mr. Darvish and the U.S. Trustee with a
9 Notice of Continued Disciplinary Hearing on March 24, 2020, which set a disciplinary hearing
10 date of June 18, 2020 [2:19-mp-00109, Dk. #11]. On May 8, 2020, the Clerk served
11 Mr. Darvish and the U.S. Trustee with an Order Establishing Procedures for Preliminary
12 Hearing by Videoconference [2:19-mp-00109, Dk. #13], advising the parties that the court
13 would conduct a preliminary hearing in this matter by videoconference on June 18, 2020 at
14 11:00 a.m. (the "Preliminary Hearing").

15 On May 26, 2020, the U.S. Trustee filed a document entitled, "Proposed Resolution of
16 Disciplinary Proceedings; Consent to Discipline and to Proposed Terms of Reinstatement; No
17 Objection by United States Trustee" [2:19-mp-00109, Dk. #15] (the "Proposed Resolution"). In
18 the Proposed Resolution, Mr. Darvish, among other things, consented to the imposition of the
19 discipline recommended by Judge Smith in the Statement of Cause and agreed to make
20 certain payments and take certain other actions.

21 On June 2, 2020, the U.S. Trustee filed a timely Notice of Intent to Appear and
22 Memorandum of Points and Authorities and Declaration of Frank M. Cadigan in this
23 proceeding [2:19-mp-00109, Dk. #16] in which the U.S. Trustee advised the Panel of his intent
24 to appear and participate at the Preliminary Hearing for the purpose of supporting the
25 imposition of the discipline recommended in the Statement of Cause and to recommend
26 approval and adoption of the Proposed Resolution. The Panel conferred with regard to the
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1 Proposed Resolution, agreed to adopt the discipline recommended therein and advised the
2 parties that the Preliminary Hearing would be taken off calendar.

3 **Background**

4 On April 12, 2018, the U.S. Trustee filed a motion in the Tanksley Case [Dkt. # 26] (the
5 "Previous Motion"), seeking to refer Mr. Darvish to this Court's disciplinary panel or, in the
6 alternative, to have discipline imposed upon him pursuant to the Court's inherent authority to
7 discipline attorneys appearing before it, based on Mr. Darvish's failure to comply with an order
8 of this Court requiring him to disgorge \$595 in attorneys' fees that he had received in
9 connection with the Tanksley Case.

10 In the reply that he filed to Mr. Darvish's response to the Previous Motion, the U.S.
11 Trustee asserted that, after the filing of the Previous Motion, he had uncovered systemic
12 problems in a number of additional cases filed by Mr. Darvish that raised concerns about
13 whether Mr. Darvish was adequately serving his clients and the public interest. Thereafter,
14 negotiations ensued between the U.S. Trustee and Mr. Darvish concerning the prospect of a
15 consensual resolution of the Previous Motion and the U.S. Trustee's concerns about
16 Mr. Darvish's practice generally. Those negotiations proved successful, and Judge Smith
17 entered an order in the Tanksley Case [Dkt. # 43] (the "November 1, 2018 Order") approving a
18 stipulation between the U.S. Trustee and Mr. Darvish (the "Tanksley Stipulation") resolving the
19 Previous Motion and the U.S. Trustee's additional concerns. In the Tanksley Stipulation,
20 Mr. Darvish agreed to do the following:

- 21 • Participate in a mentoring program for no less than 18 months and provide the name of
22 the mentor who was to review and advise Mr. Darvish on all aspects of potential chapter
23 13 filings and approve petitions in advance of filing;
 - 24 • Complete 6 hours of continuing legal education ("CLE") in Ethics and 6 hours of CLE in
25 law office management in courses approved by the State of California;
 - 26 • Join a professional association;
 - 27 • Personally meet with clients;
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- 1 • Timely comply with court orders;
- 2 • Establish a dual calendaring system to track deadlines and court appearances;
- 3 • Avoid conflicts of interest;
- 4 • Read the case of *In re: Israel Garcia*, Case no. 2:17-bk-10635-NB, which discusses the
- 5 requirement of good faith in chapter 13 cases and the reasonable expectations on the
- 6 part of debtors that he or she can successfully reorganize and must undertake efforts to
- 7 carry out the reorganization;
- 8 • Be familiar with the Central District's Local Rules pertaining to chapter 13 cases as well
- 9 as recent amendments to the Court's Local Bankruptcy Rules; and
- 10 • Read materials from an Orange County Bankruptcy Forum seminar presented
- 11 November 16, 2017 entitled, "How to Successfully Prosecute a Chapter 13 Bankruptcy
- 12 Using the New Forms (and Rules)."
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14 Before entering into the Tanksley Stipulation, Mr. Darvish had already encountered
15 problems in another case pending before this Court -- In re Solis, Case No. 6:17-bk-12442-SY
16 (the "Solis Case"). In the Solis Case, on May 22, 2017, Judge Scott Yun issued an order to
17 show cause [Solis Case, Dkt. # 18] why Mr. Darvish should not be compelled to disgorge fees
18 that he had been paid in that case based on his failure to prosecute or confirm a chapter 13
19 plan (the "Solis OSC"). Mr. Darvish did not appear at the hearing on the Solis OSC. As a
20 result, Judge Yun entered a June 22, 2017 order [Solis Case, Dkt. # 25] (the "First Solis
21 Order") ordering Mr. Darvish to pay monetary sanctions of \$5,000 to the court within 14 days
22 after entry of the order.

23 On February 8, 2018, Mr. Darvish moved for reconsideration of the First Solis Order
24 [Solis Case, Dkt. #37], requesting that Judge Yun relieve him of the obligation to pay monetary
25 sanctions of \$5,000. By way of support for that request, Mr. Darvish claimed that he had
26 miscalendared the hearing on the Solis OSC, that he had been grappling with getting his
27 business practice in order and that, after meeting with the U.S. Trustee's office in Riverside in
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1 January of 2018, he had devised a plan in consultation with the U.S. Trustee to avoid further
2 problems. That plan was not to file any more incomplete petition packages ("Skeletal
3 Petitions"). By order entered March 20, 2018 [Solis Case, Dkt. # 40] (the "Solis Injunction"),
4 Judge Yun granted the motion for reconsideration, vacated the First Solis Order and prohibited
5 Mr. Darvish "from filing any future emergency bankruptcy petition in the Central District of
6 California." The Solis Injunction provides further that, if Mr. Darvish fails to adhere to this
7 voluntary bar, "the court will impose a \$10,000 sanction for each emergency petition filed after
8 entry of this order, as agreed to by Counsel at the hearing."

9 On December 27, 2018, a Skeletal Petition was filed in the Court's Riverside Division
10 commencing a chapter 13 case entitled, In re Adriano, Case No. 6:18-bk-20737-MH (the
11 "Adriano Case"). The Adriano Case was dismissed with a 180-day bar to refiling by order
12 entered March 14, 2019 [Adriano Case, Dkt. # 17]. On May 20, 2019, chapter 13 trustee Rod
13 Danielson filed a motion for sanctions/disgorgement against Mr. Darvish [Adriano Case, Dkt. #
14 35]. In this motion, Mr. Danielson represented that, although Adriano's chapter 13 petition was
15 purportedly filed without the assistance of counsel, the debtor had provided a declaration in
16 which he testified that he had paid Mr. Darvish \$900 to commence a bankruptcy case for him
17 and that Mr. Darvish had prepared a Skeletal Petition, planning to file the rest of the required
18 documents later. Mr. Darvish did not disclose his representation of the debtor on the petition in
19 the Adriano Case and failed to disclose that he had been paid \$900 for these services. Judge
20 Houle granted the motion for sanctions/disgorgement by order entered July 3, 2019 [Adriano
21 Case, Dkt. # 46], directing Mr. Darvish to disgorge \$900. But that did not resolve Judge
22 Houle's concerns with regard to the conduct of Mr. Darvish.

23 Shortly thereafter, on July 17, 2019, Judge Houle entered an "Order to Show Cause
24 Why Alon Darvish Should Not Be Sanctioned" [Adriano Case, Dkt. # 48] (the "Adriano OSC").
25 In the Adriano OSC, Judge Houle took judicial notice that, according to the Court's electronic
26 files, after the entry of the Solis Injunction, Mr. Darvish had filed petitions in 22 bankruptcy
27 cases in this district in which the initial filing package was classified as deficient and the case
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1 was subsequently dismissed.¹ Therefore, based on these 22 apparent violations of the Solis
2 Injunction, the Adriano OSC directs Mr. Darvish to show cause why he should not be
3 sanctioned \$10,000 for each Skeletal Petition filed, for a total fine of \$220,000. A hearing on
4 the Adriano OSC was originally scheduled for August 22, 2019, but thereafter continued
5 several times by stipulation between Mr. Darvish and the U.S. Trustee.

6 On May 29, 2020, the U.S. Trustee filed in the Adriano Case a stipulation between
7 Mr. Darvish and the U.S. Trustee [Adriano Case, Dkt # 70] in which Mr. Darvish agreed (1) to
8 refund the fees that he received in the 22 cases identified in the Adriano OSC in the manner
9 set forth in the Proposed Resolution and (2) once all such refunds have been paid, to pay
10 additional sanctions to the Court of \$5,000 at the rate of \$1,500 per month until paid in full. On
11 June 1, 2020, Judge Houle entered an order approving this stipulation, discharging the Adriano
12 OSC and taking the hearing on the Adriano OSC off calendar [Adriano Case, Dkt. # 71].

13 The Statement of Cause

14 On August 16, 2019, the U.S. Trustee filed a second motion in the Tanksley Case to
15 have Mr. Darvish referred to this Court's disciplinary panel or to have other discipline imposed
16 upon him under the Court's inherent authority to discipline attorneys appearing before it
17 [Tanksley Case, Dkt. # 48] (the "Renewed Motion"). In the Renewed Motion, the U.S. Trustee
18 contends that Mr. Darvish failed to comply with the provisions of the Tanksley Stipulation and
19 had engaged in other questionable practices in the Riverside Division of this Court after entry
20 of the order approving the Tanksley Stipulation. Judge Smith conducted a hearing on the
21 Renewed Motion on October 3, 2019.

22 After that hearing, Judge Smith entered findings of fact and conclusions of law
23 [Tanksley Case, Dkt. # 66] in which Judge Smith found, among other things, that, although
24 Mr. Darvish had complied with certain provisions of the Tanksley Stipulation,² he had "failed to
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26 ¹ Judge Houle noted that there were an additional 54 instances in which Mr. Darvish was counsel of record for the debtor and
27 a Skeletal Petition had been filed, but the debtor had nevertheless succeeded in obtaining a discharge or the bankruptcy case
28 remained pending as of entry of the Adriano OSC.

² Judge Smith found that Mr. Darvish had indeed read Judge Bason's ruling in In re: Israel Garcia, had joined the Central
District Consumer Bankruptcy Attorneys' Association (the "cdcbaa") and had established a dual calendaring system.

1 fulfill, in any manner, the other requirements that were agreed to in the Stipulation and
2 approved by the court, the most troubling deficiency being the lack of participating in a
3 mentoring program and failing to adequately explain why he did not take the required
4 Continuing Legal Education ("CLE") courses he agreed to take." As a result, Judge Smith
5 found that the deficiencies in Mr. Darvish's law practice are "systemic" and that his conduct
6 adversely affects the public interest and warrants referral to the disciplinary panel.

7 Based on the foregoing, Judge Smith issued the Statement of Cause, referring this
8 matter to the Panel. In the Statement of Cause, Judge Smith recommended that Mr. Darvish
9 "be suspended from practicing law before this Court for a period of not less than two years and
10 that reinstatement be conditioned upon providing evidence that Darvish has completed at least
11 six hours of continuing legal education in Ethics and at least six hours of continuing legal
12 education in law office management from an educational provider approved by the State Bar of
13 California" in addition to such other discipline or conditions as the Panel deems appropriate.
14 By way of aggravating circumstances, Judge Smith noted in the Statement of Cause that
15 (1) Mr. Darvish is currently facing charges filed by the State Bar alleging violations of the
16 California Rules of Professional Conduct and California Business and Professions Code
17 involving his representation of two bankruptcy clients in 2016 and (2) the Adriano OSC was
18 then pending.

19 **The Proposed Resolution**

20 As referenced above, Mr. Darvish and the U.S. Trustee have jointly submitted a
21 Proposed Resolution to this Disciplinary Proceeding. In the Proposed Resolution, Mr. Darvish
22 consents not only to the discipline proposed in the Statement of Cause and the additional
23 provisions approved by Judge Houle in his June 1, 2020 order, but also to having the order
24 issued in this disciplinary proceeding include the following additional terms:

- 25 1. By July 1, 2020, Mr. Darvish shall select a chapter 13 mentor consistent with
26 Judge Smith's November 1, 2018 Order in the Tanksley Case [Tanksley Case,
27 Dkt. # 43], who will do all of the following:
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1 a. file a statement with the Panel by July 15, 2020, attesting that he or she
2 has agreed to serve as Mr. Darvish's mentor and that he or she
3 understands his or her obligation to develop a mentoring plan with
4 Mr. Darvish (the "Mentor Certificate");

5 b. comply with the mentoring provisions of the November 1, 2018 Order; and

6 c. file quarterly reports with the Panel during the two-year period described
7 below;

8 2. By July 1, 2020, Mr. Darvish will join a bankruptcy education and networking
9 organization (e.g., cdcbaa, Inns of Court, Federal Bar Association, the local bar
10 association bankruptcy section, etc.) and attend the greater of three or more
11 than half of the meetings in a year starting October 1, 2020;

12 3. Mr. Darvish will no longer file emergency bankruptcy petitions and will be subject
13 to sanctions if he does so, and, toward that end, the Panel will impose a two-
14 year probation period following reinstatement during which Mr. Darvish will file
15 quarterly status reports with the Panel reflecting the case number of cases filed
16 by him during the quarter and attesting that he personally met with clients and
17 vetted all cases before filing, and that none were filed on an emergency basis.

18 **Discipline Imposed**

19 In light of the foregoing, the Panel concludes that the following actions against
20 Mr. Darvish are appropriate and will be the subject of a separate order entered concurrently
21 herewith (the "Discipline Order"):

22 A. Mr. Darvish's privilege to practice before the United States Bankruptcy Court for
23 the Central District of California will be revoked for a period of not less than two (2) years from
24 entry of the Discipline Order.³ The Discipline Order will specifically prohibit Mr. Darvish during
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26 ³ The Panel has reviewed and considered the Declaration of Alon Darvish filed June 16, 2020 [Dkt. # 17] in which
27 Mr. Darvish requests that any revocation of his privilege to practice before this Court not be effective for a period of
28 approximately 4 months and that he be permitted to file approximately 35 additional bankruptcy cases before this privilege is
revoked. The Panel has concluded that this request should be denied. Mr. Darvish needs to take all appropriate steps to

1 the period of revocation from (1) commencing any new bankruptcy cases or adversary
2 proceedings; (2) representing any parties in connection with any bankruptcy case or adversary
3 proceeding pending in our district; and (3) assisting any debtor in any manner in connection
4 with the preparation for, or filing of, a new bankruptcy case.

5 B. Mr. Darvish's user identification and password for the CM/ECF system will be
6 deactivated by the Clerk of the Court and not reactivated unless and until Mr. Darvish is
7 reinstated in the manner set forth below.

8 C. At the expiration of a period of two years after entry of the Discipline Order,
9 Mr. Darvish may apply to the Chief Judge of the United States Bankruptcy Court for the
10 Central District of California for reinstatement of his privilege to practice before this Court. Mr.
11 Darvish shall serve a copy of any application for reinstatement and all supporting
12 documentation on the U.S. Trustee.

13 D. Any application for reinstatement must include all of the following:

- 14 1. Evidence sufficient to demonstrate that, after entry of the Discipline Order,
15 Mr. Darvish completed at least six hours of continuing legal education in Ethics
16 and at least six hours of continuing legal education in law office management
17 from an educational provider approved by the State Bar of California;
- 18 2. A file-stamped copy of the Mentor Certificate;
- 19 3. A declaration under penalty of perjury from the person who has agreed to serve
20 as his mentor (the "Mentor") attesting to the fact that the Mentor and Mr. Darvish
21 have complied with the mentoring provisions of the November 1, 2018 Order;
- 22 4. Evidence sufficient to demonstrate that Mr. Darvish joined a bankruptcy
23 education and networking organization (e.g., cdcbaa, Inns of Court, Federal Bar
24 Association, the local bar association bankruptcy section, etc.) by July 1, 2020
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27 transition his bankruptcy practice in this district to another qualified bankruptcy attorney immediately and recommends that
28 he contact the leadership of the cdcbaa for assistance in accomplishing these transitions.

1 and attended the greater of three or more than half of the meetings conducted by
2 that organization in the year starting October 1, 2020;

3 5. A declaration under penalty of perjury from the Mentor attesting to the fact that, in
4 the opinion of the Mentor, Mr. Darvish is competent to engage in the practice of
5 chapter 13 law without continued supervision from a mentor;

6 6. A declaration under penalty of perjury from the Mentor in which he or she
7 undertakes to file quarterly reports with the Panel during a two-year probation
8 period that will commence when Mr. Darvish is reinstated;

9 7. Evidence sufficient to demonstrate that Mr. Darvish has paid:

10 i. all amounts that Mr. Darvish agreed to pay to the debtors identified on

11 Exhibit B to the Proposed Resolution;

12 ii. the \$5,000 in sanctions imposed in the Adriano Case; and

13 iii. any other outstanding sanctions or disgorgement awards issued by the
14 United States Bankruptcy Court for the Central District of California..

15 E. Mr. Darvish must personally appear, either in person or by telephone or video, at
16 any hearing that may be scheduled on his application for reinstatement

17 F. Should Mr. Darvish apply for reinstatement of his privilege to practice before this
18 Court, the Panel recommends that the Chief Judge schedule a hearing on any such application
19 for reinstatement and that the U.S. Trustee be permitted to appear and be heard in response
20 to the application.

21 G. Once Mr. Darvish has been reinstated, he will (1) remain subject to the Solis
22 Injunction and liable for sanctions in the amounts contemplated thereby in the event he
23 violates that injunction and (2) remain on probation for a period of two years after entry of an
24 order of reinstatement (the "Probation Period").

25 H. During the Probation Period:


26 1. Mr. Darvish shall file with the Court and serve on the U.S. Trustee quarterly
27 status reports reflecting the case numbers of all cases filed by him and all cases
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1 in which he assisted the debtor in preparing the documents necessary to
2 commence a bankruptcy case during the quarter and attesting that (a) he
3 personally met with clients and vetted all cases before filing and (b) none of
4 these cases were filed as Skeletal Petitions. The first such report shall be due on
5 the first day of the calendar quarter immediately following the quarter in which an
6 order of reinstatement is entered. Subsequent reports shall be due on the first
7 day of each calendar quarter thereafter throughout the duration of the Probation
8 Period.


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- 10 2. Mr. Darvish must continue to meet periodically with the Mentor and provide such
11 information and documentation concerning his cases and practice as the Mentor
12 may request so that the Mentor will have the information necessary to prepare in
13 a timely manner quarterly reports (the "Mentor Reports") attesting to the fact that,
14 in the opinion of the Mentor, Mr. Darvish is competent to practice before this
15 Court in a manner that no longer presents a significant risk to the interests of his
16 clients or the public.
- 17 3. The Mentor shall file with the Court and serve on the U.S. Trustee the Mentor
18 Reports not later than the first day of each calendar quarter during the Probation
19 Period. The first such report shall be due on the first day of the calendar quarter
20 immediately following the quarter in which an order of reinstatement is entered.
- 21 4. In the event that Mr. Darvish fails to file and serve any of the required reports in a
22 timely manner, the U.S. Trustee shall file with the Court and serve on
23 Mr. Darvish, the Mentor and the Panel a declaration to this effect and a request
24 that Mr. Darvish's privilege to practice before this Court again be revoked for a
25 period of not less than 2 additional years.
- 26 5. In the event that the Mentor fails to file and serve any of the Mentor Reports in a
27 timely manner, the U.S. Trustee shall file with the Court and serve on Mr. Darvish
28 and the Panel a declaration attesting to this fact.

1 This memorandum of decision constitutes the Panel's findings of fact and conclusions of
2 law. A separate Discipline Order setting forth the Panel's rulings will follow. A copy of this
3 Memorandum of Decision and the entered Discipline Order shall be delivered to each sitting
4 judge of the United States Bankruptcy Court for the Central District of California, to the Clerk of
5 Court for the United States Bankruptcy Court for the Central District of California, to the Clerk
6 of Court for the United States District Court for the Central District of California and to the State
7 Bar of California.

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9 Dated: June 18, 2020


SHERT BLUEBOND
United States Bankruptcy Judge

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13 Dated: June 18, 2020


WAYNE JOHNSON
United States Bankruptcy Judge

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17 Dated: June 18, 2020


MARTIN R. BARASH
United States Bankruptcy Judge