

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re:

THE DISCIPLINARY PROCEEDING
OF BENJAMIN S. NACHIMSON

State Bar Number 166690

Disciplinary Proceeding No. 2:23-MP-00101-VK

Bankruptcy Case No. 2:22-bk-16626-BR

**MEMORANDUM OF DECISION IN
DISCIPLINARY PROCEEDING AGAINST
BENJAMIN S. NACHIMSON**

The matter before the court is a disciplinary proceeding ("Disciplinary Proceeding" or "Proceeding") commenced against attorney Benjamin S. Nachimson ("Mr. Nachimson" or "Nachimson") 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

On March 29, 2023, the Honorable Barry Russell initiated this disciplinary proceeding against Mr. Nachimson pursuant to the General Order and by filing with the Clerk of the United States Bankruptcy Court for the Central District of California (the "Clerk") a Statement of Cause, dated March 28, 2023, setting forth the basis for the referral and a suggestion of

1 appropriate discipline (“Statement of Cause”).¹ The Statement of Cause attached Findings of
2 Fact and Conclusions of Law (“Findings”) as Exhibit A, and attached Notice of Application and
3 Order to Show Cause (“OSC Application”) as Exhibit B.²

4 In accordance with the procedures set forth in the General Order, the Clerk designated a
5 panel of three bankruptcy judges from this district to hear the matter. The members of the panel
6 are the Honorable Victoria S. Kaufman, Presiding Judge, the Honorable Julia W. Brand, and the
7 Honorable Magdalena Reyes Bordeaux (collectively, the “Panel”).

8 On April 27, 2023, a Notice of Assignment of Hearing Panel, the General Order, and
9 Statement of Cause were served on Mr. Nachimson.³ Pursuant to the General Order, Mr.
10 Nachimson had until 14 days after service of the Notice of Assignment to move to recuse one or
11 more of the judges assigned to the Panel. No motion to recuse was filed.

12 On May 22, 2023, the Clerk served Mr. Nachimson and the Office of the United States
13 Trustee (“USTO”) with Notice of Disciplinary Hearing to be held before the Panel on July 24,
14 2023, at 10:30 a.m. (the “Disciplinary Hearing”).⁴

15 On July 7, 2023, the USTO filed a Notice of Intent to Appear and advised the Panel of
16 the intent to appear and participate at the disciplinary hearings to support the imposition of
17 discipline recommended in the Statement of Cause, to address the Panel, and to participate in any
18 Panel directed settlement conference occurring at the same time as or prior to the disciplinary
19 hearing.⁵ On July 12, 2023, the USTO then filed a Request for Judicial Notice in support of the
20 Statement of Cause.⁶

21 On July 21, 2023, Mr. Nachimson filed a Statement in Response to the Notice of
22 Disciplinary Hearing titled “Statement of Benjamin Nachimson” (“Nachimson Response”).⁷
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25 ¹ ECF Dkt. No. 1. [ECF Dkt. No. abbreviation will refer to docket numbers in the instant action 2:23-mp-00101-
26 VK].

27 ² ECF Dkt. No. 1.

28 ³ ECF Dkt. No. 9.

⁴ ECF Dkt. No. 10.

⁵ ECF Dkt. No. 12.

⁶ ECF Dkt. No. 14.

⁷ ECF Dkt. No. 15.

On July 24, 2023 Mr. Nachimson and USTO trial attorney Ron Maroko appeared at the Disciplinary Hearing.

Referral to the Panel Pursuant to General Order No. 96-05

The conduct that gave rise to the referral to the Panel is set forth in the Statement of Cause, which contains a thorough discussion of Mr. Nachimson's actions at issue. In summary, Judge Russell found that Mr. Nachimson, a licensed attorney in the State of California, engaged in "a persistent pattern of abusive filings" for an improper purpose of hindering or delaying creditors' enforcement actions relating to his personal residence located at 9017 Cresta Drive, Los Angeles, CA 90035 (the "Cresta Property").

A summary of the conduct that gave rise to the referral to the Panel is set forth in the attached Statement of Cause and, in particular, the Findings of Fact and Conclusions of Law attached thereto, which contain a thorough discussion of Mr. Nachimson's actions at issue. Mr. Nachimson was the attorney of record for the ten personal and corporate bankruptcies filed by Mr. Nachimson on behalf of himself, by Ms. Susan Rachel Nachimson (his wife), and by 9017 CR DR, LLC, a corporation Mr. Nachimson created. A chart summarizing key information of the ten bankruptcy cases filed by Mr. Nachimson as the attorney of record is below:

BK Filing Date	BK Case #	Ch.	Debtor	Attorney of Record	Date of Dismissal	Date of Closure
5/17/2019	2:19-bk-15743-WB	13	Benjamin S. Nachimson	Benjamin S. Nachimson	6/04/2019	6/11/2019
6/21/2019	2:19-bk-17227-NB	13	Benjamin S. Nachimson	Benjamin S. Nachimson	7/09/2019	9/03/2019
7/23/2019	2:19-bk-18524-SK	13	Susan Rachel Nachimson	Benjamin S. Nachimson	8/12/2019	8/15/2019
8/20/2019	2:19-bk-19739-SK	13	Susan Rachel Nachimson	Benjamin S. Nachimson	11/13/2019	11/19/2019
11/24/2019	2:19-bk-23822-ER	7	9017 CR DR, LLC	Benjamin S. Nachimson	12/19/2019	1/29/2020
12/23/2019	2:19-bk-24932-RK	7	9017 CR DR, LLC	Benjamin S. Nachimson	1/10/2020	1/14/2020
1/21/2020	2:20-bk-10619-RK	7	9017 CR DR, LLC	Benjamin S. Nachimson	2/06/2020	3/05/2020
9/03/2021	2:21-bk-17007-BR	7	9017 CR DR, LLC	Benjamin S. Nachimson	9/29/2021	10/13/2021
10/30/2022	2:22-bk-15944-BR	7	9017 CR DR, LLC	Benjamin S. Nachimson	11/21/2022	11/22/2022
12/05/2022	2:22-bk-16626-BR	7	9017 CR DR, LLC	Benjamin S. Nachimson	12/22/2022	4/27/2023

First Bankruptcy Case:

On May 17, 2019, Mr. Nachimson filed a voluntary chapter 13 case, case number 2:19-bk-15743-WB (“first bankruptcy”), and this case was dismissed on June 4, 2019 for failure to file the required petition documents and schedules.⁸

Second Bankruptcy Case:

On June 21, 2019, seventeen (17) days after the dismissal of the first bankruptcy case, Mr. Nachimson filed another chapter 13 case, case number 2:19-bk-17227-NB (“second bankruptcy”), and again this case was dismissed for failure to file the required petition documents and schedules on July 9, 2019.⁹ Mr. Nachimson also made a false statement in the petition by answering “no” to the question asking if he had filed for bankruptcy within the last eight years.¹⁰

Third Bankruptcy Case:

On July 23, 2019, two (2) weeks after the dismissal of the second bankruptcy, Ms. Susan Rachel Nachimson (“Ms. Nachimson” and “Ms. Susan Rachel Nachimson”) filed a chapter 13 case, case number 2:19-bk-18524-SK (“third bankruptcy”), and the case was dismissed for failure to file the required petition documents and schedules on August 12, 2019.¹¹ Mr. Nachimson also signed the petition as Ms. Nachimson’s attorney.¹²

Fourth Bankruptcy Case:

On August 20, 2019, eight (8) days after the dismissal of the third bankruptcy, Ms. Nachimson filed another chapter 13 case, case number 2:19-bk-19739-SK (“fourth bankruptcy”), and Mr. Nachimson signed the petition documents as Ms. Nachimson’s attorney.¹³ Although the petition date was August 20, 2019, the signature pages of the petition are dated July 23, 2019, the petition date of the third bankruptcy case.¹⁴

⁸ Findings, pg. 4, Lines 10-14.

⁹ Findings, pg. 4, Lines 15-19.

¹⁰ Findings, pg. 4, Lines 20-26.

¹¹ Findings, pg. 5, Lines 1-6.

¹² Findings, pg. 5, Lines 3-4.

¹³ Findings, pg. 5, Lines 7-9.

¹⁴ Findings, pg. 5, Lines 10-13.

Ms. Nachimson also falsely answered “no” to the question asking if she had filed bankruptcy within the last eight years, and Mr. Nachimson, as her attorney, ratified this false statement.¹⁵ The case was dismissed with 180-day bar on November 13, 2019.¹⁶

Formation of 9017 CR DR, LLC

On September 13, 2019, Mr. Nachimson formed and registered an entity named “9017 CR DR, LLC” (the “LLC”) and listed himself as the Manager.¹⁷ Mr. Nachimson created the LLC during the pendency of the fourth bankruptcy case.

On November 22, 2019, nine (9) days after the dismissal of the fourth bankruptcy, Mr. and Ms. Nachimson transferred their interest—through a quitclaim deed—in the Cresta Property to the LLC.¹⁸

Fifth Bankruptcy Case

On November 24, 2019, two (2) days after the transfer, Mr. Nachimson, as the representative of the LLC, caused the LLC to file a chapter 7 case, case number 2:19-bk-23822-ER (“fifth bankruptcy”).¹⁹ Mr. Nachimson also signed the petition as the LLC’s attorney.²⁰ The case was dismissed for failure to file required petition documents and schedules on December 19, 2019.²¹

Sixth Bankruptcy Case:

On December 23, 2019, four (4) days after the dismissal of the fifth bankruptcy, the LLC filed another chapter 7 case, case number 2:19-bk-24932-RK (“sixth bankruptcy”).²² Mr. Nachimson signed the petition as the LLC’s representative and attorney.²³ Again, the case was dismissed for failure to file the required petition documents and schedules on January 10, 2020.²⁴

¹⁵ Findings, pg. 5, Lines 16-21.

¹⁶ Findings, pg. 5, Lines 22-26.

¹⁷ Findings, pg. 2, Lines 16-18.

¹⁸ Findings, pg. 2, Lines 19-23.

¹⁹ Findings, pg. 6, Lines 2-3.

²⁰ Findings, pg. 6, Lines 3-5.

²¹ Findings, pg. 6, Lines 5-7.

²² Findings, pg. 6, Lines 8-10.

²³ Findings, pg. 6, Lines 10-12.

²⁴ Findings, pg. 6, Lines 14-16.

Seventh Bankruptcy Case:

On January 21, 2020, eleven (11) days after the dismissal of the sixth bankruptcy, the LLC filed another chapter 7 case, case number 2:20-bk-10619-RK (“seventh bankruptcy”) with Mr. Nachimson signing as the LLC’s representative and attorney.²⁵ Although the LLC had two prior bankruptcy cases, Mr. Nachimson only disclosed the fifth bankruptcy.²⁶ The case was dismissed on February 6, 2020 for failure to file the required petition documents and schedules.²⁷

In the seventh bankruptcy, Judge Kwan granted creditors’ request for in rem relief under 11 U.S.C. § 362(d)(4) and ordered that no further automatic stay shall arise as to the property, or any bankruptcy case commenced by or against the LLC for 180 days. Judge Kwan made the finding that the LLC was involved in a scheme to hinder, delay, or defraud creditors concerning the transfer of the Cresta Property to the LLC without the consent of the secured creditor or the court and the multiple bankruptcy filings affecting the property.²⁸

Eighth Bankruptcy Case:

On September 3, 2021, the LLC filed another chapter 7 case, case number 2:21-bk-17007-BR (“eighth bankruptcy”).²⁹ Mr. Nachimson signed the petition as the LLC’s representative and attorney. In the petition, Mr. Nachimson disclosed only one of the three prior bankruptcy filings.³⁰ For the second time, the Court granted creditor’s motion for relief from stay under 11 U.S.C. § 362(d)(4) and found that the LLC filed the petition as part of scheme to hinder, delay, or defraud creditors and ordered that no further automatic stay shall arise as to the property, or any bankruptcy case commenced by or against the LLC for 180 days.³¹

Ninth Bankruptcy Case:

On October 30, 2022, the LLC filed another chapter 7 case, case number 2:22-bk-15944-BR (“ninth bankruptcy”) with Mr. Nachimson signing as the LLC’s representative and

²⁵ Findings, pg. 6, Lines 17-19.

²⁶ Findings, pg. 6, Lines 20-22.

²⁷ Findings, pg. 6, Lines 22-25.

²⁸ Findings, pg. 7, Lines 2-13.

²⁹ Findings, pg. 7, Lines 14-16.

³⁰ Findings, pg. 7, Lines 20-21.

³¹ Findings, pg. 7, Lines 25-28.

1 attorney.³² In the petition, Mr. Nachimson answered “yes” to whether the LLC had filed
2 bankruptcy in the last eight years but did not list any case numbers.³³ On November 21, 2022, the
3 case was dismissed for failure to file required petition documents and schedules.³⁴

4 **Tenth Bankruptcy Case:**

5 On December 5, 2022, two (2) weeks after the dismissal of the ninth bankruptcy, the LLC
6 filed the most recent chapter 7 case, case number 2:22-bk-16626-BR (“tenth bankruptcy”).³⁵
7 Again, Mr. Nachimson signed the petition as the LLC’s representative and attorney.³⁶ On
8 December 19, 2022, the USTO filed an Application for Issuance of an Order Directing Benjamin
9 S. Nachimson to personally appear and show cause why: (1) the case should not be dismissed as
10 an abusive filing; (2) Benjamin S. Nachimson should not be sanctioned under Rule 9011 for bad
11 faith filing; (3) Benjamin S. Nachimson should not be found in contempt; and (4) Benjamin S.
12 Nachimson should not be referred to the Bankruptcy Court’s Disciplinary Panel for his conduct
13 in filing Debtor’s cases.³⁷

14 In an *Ex Parte Application Re: Dismissal of Case*, Mr. Nachimson stated that the purpose
15 of filing this bankruptcy was to allow time to refinance the Cresta Property, and there was only
16 one creditor in the case.³⁸ On December 22, 2022, the case was dismissed, and the LLC was barred
17 permanently from filing any subsequent bankruptcies.³⁹

18 Based on the foregoing actions of Mr. Nachimson, by the Statement of Cause, Judge
19 Russell referred Mr. Nachimson to this Panel.

20 **Nachimson Response**

21 In the Nachimson Response, Mr. Nachimson stated that the alleged facts are correct and
22 that he initiated the multiple bankruptcies to avoid foreclosure on his personal residence, and for
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25 ³² Findings, pg. 8, Lines 5-9.

26 ³³ Findings, pg. 8, Lines 10-12.

27 ³⁴ Findings, pg. 8, Lines 13-15.

28 ³⁵ Findings, pg. 8, Lines 17-19.

³⁶ Findings, pg. 8, Lines 20-22.

³⁷ Findings, pg. 8, Lines 25-28 & pg. 9, Lines 1-5.

³⁸ Findings, pg. 9, Lines 6-10; *Ex Parte Application Re: Dismissal of Case*, page 1, paragraph 2, 2:22-bk-16626-BR, Dkt. 18.

³⁹ Findings, pg. 9, Lines 11-14.

1 the purpose of allowing him time to negotiate a new loan.⁴⁰ There are no assertions disputing the
2 alleged facts relating to the number of cases filed. Moreover, Mr. Nachimson does not address
3 why he repeatedly filed bankruptcy cases that were dismissed for failure to file outstanding
4 documents shortly thereafter, or why bankruptcy cases did not disclose information truthfully
5 and completely.

6 Instead, Mr. Nachimson asserts that the act of filing bankruptcy to avoid foreclosure is
7 not per se bad faith.⁴¹ Mr. Nachimson also requested this Court consider that he has practiced
8 before this Court for thirty years and that consideration be taken of the fact that Judge Russell
9 had already permanently prohibited any bankruptcy from being filed against his personal
10 residence.⁴²

11 **Disciplinary Hearing of Benjamin S. Nachimson**

12 The Disciplinary Hearing was held on July 24, 2023 at 10:30 a.m. at the United States
13 Bankruptcy Court for the Central District of California, Los Angeles Division.

14 Mr. Nachimson and trial attorney Ron Maroko from the USTO appeared at the
15 Disciplinary Hearing. Mr. Nachimson's testimony before the Panel did not contest the facts
16 alleged. Mr. Nachimson requested mercy from the Court for his actions, but also stated that he
17 also understood if the Court were to proceed with the discipline proscribed by Judge Russell.

18 The USTO supported the discipline proscribed by Judge Russell and submitted a request
19 for Judicial Notice for the Panel's consideration.

20 **Discussion**

21 **FEDERAL RULE OF BANKRUPTCY PROCEDURE RULE 9011** 22 **SANCTIONS AGAINST MR. NACHIMSON**

23 Federal Rule of Bankruptcy Procedure 9011 (b)(1) prohibits the filing of a pleading for
24 any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the
25 cost of litigation. Fed. R. Bankr. P. 9011(b)(1).
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28 ⁴⁰ Nachimson Response, pg. 1, Lines 22-24.

⁴¹ Nachimson Response, pg. 1, Line 27; pg. 2, Lines 1-2.

⁴² Nachimson Response, pg. 2, Lines 3-9.

1 In interpreting Rule 9011, it is appropriate for the courts to look to cases interpreting Rule
2 11 of Federal Rule of Civil Procedure, which is virtually identical. *In re Grantham Bros.*, 922
3 F.2d 1438, 1441 (9th Cir.1991). Rule 11 establishes an objective standard that looks to the
4 reasonableness of the conduct under the circumstances. *Business Guides, Inc. v. Chromatic*
5 *Communications Enterprises, Inc.*, 498 U.S. 533, 552 (1991). “If a court finds that a motion or
6 paper, other than a complaint, is filed in the context of a ***persistent pattern of clearly abusive***
7 ***litigation activity***, it will be deemed to have been filed for an improper purpose and sanctionable.
8 *Aetna Life Ins. Co. v. Alla Med. Servs., Inc.*, 855 F.2d 1470, 1476 (9th Cir. 1988). (emphasis
9 added)

10 Bankruptcy courts have the authority to sanction attorneys who present (sign, file, or later
11 advocate) a petition to a bankruptcy court for an improper purpose. *In re Blue Pine Group, Inc.*,
12 457 B.R. 64, 75 (9th Cir. BAP 2011) (aff’d and vacated on other grounds). An improper purpose
13 is generally found where the evidence shows that the party against whom sanctions are sought
14 has engaged in ***a pattern of abusive litigation for the purpose of delay or harassment.***”
15 *Robinson v. Lawrence (In re Lawrence)*, 494 B.R. 525, 533 (Bankr. E.D. Cal. 2013); *see, e.g., In*
16 *re Villa Madrid*, 110 B.R. 919, 923–24 (9th Cir. BAP 1990) (second bankruptcy petition was
17 filed in bad faith and to delay proceedings). (emphasis added)

18 The facts here make a strong showing that Mr. Nachimson engaged in a pattern of
19 abusive filings for the purpose of hindering and delaying creditors.

20 First, Mr. Nachimson was closely involved in all of the ten bankruptcy filings. He
21 personally filed two cases and was attorney of record in all of the other cases, and he was the
22 representative and counsel in the six bankruptcy cases filed by the LLC.

23 Second, nine of the ten bankruptcy cases were filed with only a skeletal petition, and Mr.
24 Nachimson failed to file the required petition documents and schedules resulting in the dismissal
25 of the cases. Moreover, Mr. Nachimson made false statements relating to the related case
26 disclosure in multiple petitions signed by him in a capacity as the debtor or in the capacity as the
27 debtor’s attorney either by answering “no” to this question or by not listing the case numbers of
28 the prior cases.

1 Third, seven out of the ten cases were filed immediately after the dismissal of the prior
2 case. Although the court had concluded that the LLC's bankruptcy filing involved a scheme to
3 hinder and delay creditors in violation of section 362(d)(4) in the seventh and eighth
4 bankruptcies, Mr. Nachimson—as the LLC's representative and counsel—still continued to
5 cause the LLC to file more bankruptcy cases.

6 Finally, the timing of the formation of the LLC and the transfer of the title by Mr.
7 Nachimson and Ms. Nachimson of the Cresta Property to the LLC strongly indicates that the
8 LLC was established for the sole purpose of filing the forementioned bankruptcy cases. There do
9 not appear to be any facts demonstrating that the LLC was or has been involved in any business
10 operations. At the hearing, Mr. Nachimson did not provide any testimony indicating the LLC had
11 been involved in any business operations. Moreover, Mr. Nachimson admitted that the tenth
12 bankruptcy was filed to allow time to refinance the Cresta Property.

13 Mr. Nachimson's pattern of abusive behavior supports the inference that the bankruptcy
14 petitions, when filed, were filed with an improper purpose, that is solely for purposes of delay
15 and harassment, rather than any genuine intent to utilize the substantive protections of the
16 Bankruptcy Code. Moreover, no fact indicates that there was an objectively reasonable basis for
17 Mr. Nachimson's pattern of behavior. Therefore, Mr. Nachimson's abusive filings violate Rule
18 9011 (b)(1).

19 **USTO'S REQUEST FOR JUDICIAL NOTICE UNDER**
20 **FEDERAL RULE OF EVIDENCE 201**

21 Federal Rule of Evidence 201 allows a court to take judicial notice of facts that are not
22 subject to reasonable dispute in that they are either:

- 23 (1) generally known within the territorial jurisdiction of the trial court; or
24 (2) capable of accurate and ready determination by resort to sources whose accuracy
25 cannot reasonable be questioned.

26 Fed. R. Evid. 201.
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28

Judicial notice of the filing of a document is appropriate to establish that a filing occurred and on what date—should that limited information be relevant to the matters at hand. *Wisdom v. Gugino (In re Wisdom)*, 2016 Bankr. LEXIS 800, 2016 WL 1039694, at *3 n.7 (Bankr. D. Idaho March 15, 2016).

Here, the U.S. Trustee requests the Panel take judicial notice of the case docket and certain documents filed and rulings made in the prior bankruptcy proceedings. That request is granted.

Discipline

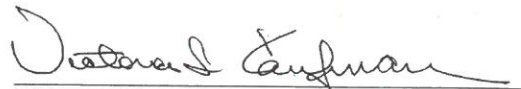
Based on the foregoing, the Panel concludes that Mr. Nachimson's privilege to practice in the United States Bankruptcy Court for the Central District of California should be revoked effective as of the entry date of the Order on Disciplinary Proceeding of Benjamin S. Nachimson ("Discipline Order") entered concurrently herewith, for a period of two (2) years.

In addition, Mr. Nachimson is ordered to complete ten (10) hours of continuing legal education in ethics from an educational provider approved by the State Bar of California, and submit written proof of completion thereof, before he may be reinstated to practice before the United States Bankruptcy Court for the Central District of California.


Mr. Nachimson may, after completion of the suspension term, apply for reinstatement to practice before the bankruptcy court in accordance with the provisions of the General Order, as it may be amended hereafter provided he has completed the required continuing legal education. Any application for reinstatement must include evidence sufficient to demonstrate that, after entry of the Discipline Order, Mr. Nachimson completed the above continuing legal education requirements. The application for reinstatement shall also demonstrate that he is in good standing with the State Bar of California and demonstrate that he has met all additional Reinstatement requirements set forth in detail in The Sixth Amended General Order 96-05.

Copies of this Memorandum of Decision and the order issued concurrently herewith shall be served by the Clerk of this Court on each Bankruptcy Judge sitting in the Central District of California, on the Clerk of the United States District Court for the Central District of California, and on the State Bar of California.

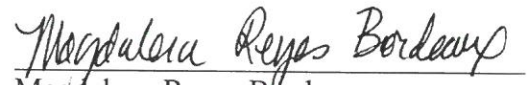
1 Dated: September 05, 2023


Victoria S. Kaufman
United States Bankruptcy Judge

2
3
4
5 Dated: September 05, 2023


Julia W. Brand
United States Bankruptcy Judge

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8
9 Dated: September 05, 2023


Magdalena Reyes Bordeaux
United States Bankruptcy Judge