

Beyond Identifying the Problem: Debtor ID Initiatives Move Ahead

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Confirming Debtors' Identities

On September 30, 2002, the United States District Court for the Central District of California reversed a decision in which the bankruptcy court had held that—although the debtor omitted her true Social Security number from the bankruptcy petition knowingly and with intent to deceive—it was not a material misrepresentation for purposes of 11 U.S.C. § 727(a)(4) nor did it show that the debtor had obtained her discharge through fraud. The district court remanded the case with instructions for the bankruptcy court to enter an order denying the debtor's discharge. *United States Trustee v. Valencia (In re Guadarrama)*, 284 B.R. 463 (C.D. Cal. 2002). While the district court decision seems hardly surprising in terms of its correctness, the troubling fact remains that the bankruptcy court would have issued a discharge to a debtor who used two false SSNs and concealed her own identity.

There are many among us who still take the question of identity for granted in bankruptcy cases, despite the increased incidents of identity theft. That ought not be the case. First and foremost, accurate identity is important to ensure the debtor is even entitled to relief. In addition, every bankruptcy case that involves a mistaken identity can affect an innocent person. Finally, those who try to conceal their identities or use multiple identities in the bankruptcy context are often seeking to defraud the process.

In 2001, the Program conducted a pilot project that required all debtors to produce documents at the Section 341 first meeting of creditors to confirm their names and Social Security numbers. In January 2002, the Program started rolling out the debtor identity requirement nationwide. Statistics for Fiscal Year 2002, which included a period before the national rollout was completed, bear out the findings of the Program's 2001 pilot project that detected errors in approximately one percent of filed cases. In FY 2002, approximately 8,000 problems relating to debtor name or SSN were found through the debtor identification requirement. As a result, more than 6,200 debtors filed amended petitions to correct problems with debtor identification. In addition, U.S. Trustees filed over 1,300 formal actions relating to debtor identification problems, including motions to dismiss, complaints objecting to discharge, and objections to confirmation of Chapter 13 plans.

In addition to requiring confirmation of debtors' identities at Section 341 meetings, the

^{1/}The views expressed in this article are those of the authors and do not necessarily reflect the views of the Executive Office for U.S. Trustees, the U.S. Trustee Program, or the Department of Justice.

Program is working to address a number of related debtor identity issues such as dealers that issue false identification or sites that offer advice on how to evade detection in bankruptcy. For example, several U.S. Trustee offices have obtained injunctive and monetary relief under 11 U.S.C. § 110 against an Internet site² that counsels debtors on how to file bankruptcy without disclosing their SSNs so the filings cannot be reported by the credit bureaus. See *In re Pillot*, 286 B.R. 157, 161 (Bankr. C.D. Cal. 2002) (“The Ziinet.com website provided advice to conceal social security number information and manipulate the bankruptcy process.”).

Civil and Criminal Cases

In Congressional testimony submitted March 4, 2003, Lawrence Friedman, Director of the Executive Office for U.S. Trustees, listed bankruptcy-related identity theft as one of the “patterns of conduct that appear widespread and deserving of continued intensive pursuit” by the Program.³ A sampling of civil and criminal cases illustrates the wide variety of identification problems that have arisen.

Civil Cases

The Sacramento office of the U.S. Trustee on September 17, 2002, obtained an injunction barring debtor Mary Kay Emerson from filing bankruptcy for the next 10 years absent prior court approval. The Bankruptcy Court for the Eastern District of California issued the injunction based on the U.S. Trustee’s showing that, over a 25-year period, the debtor filed at least 15 prior bankruptcy cases in the Eastern and Northern Districts of California, using four names and two SSNs.

On August 19, 2002, the Bankruptcy Court for the Northern District of Georgia denied the discharge of Chapter 7 debtor Afredia Pruitt based on the Atlanta office of the U.S. Trustee’s complaint under 11 U.S.C. § 727(a). The complaint alleged that Pruitt used at least eight different SSNs that did not belong to her and nine different names, and that she gave false, incomplete, and misleading information in her petition, schedules, and statement of financial affairs, and at her Section 341 meeting. Since 1992, Pruitt had filed at least six bankruptcy cases in the Northern District of Georgia.

On August 7, 2002, the Bankruptcy Court for the District of Oregon entered a default judgment under 11 U.S.C. § 727(a)(4) and (8) in the case of Cheryl V. Mouton, in response to a complaint to deny discharge filed by the Portland office of the U.S. Trustee. Mouton obtained a Chapter 7 discharge under another name within six years before filing her current case, failed to disclose the previous case on her petition, and falsely testified about the previous case at her

²Frankfort Digital Services Inc., d/b/a Ziinet.com and 700law.com.

³Testimony before the House Judiciary Committee’s Subcommittee on Commercial and Administrative Law.

Section 341 meetings.

Based on an action brought by the Philadelphia office of the U.S. Trustee, the Bankruptcy Court for the Eastern District of Pennsylvania on August 21, 2002, issued a bar order preventing anyone from refiling a bankruptcy case involving a particular piece of real property, after Paulette Carter, a/k/a Paulette Love, placed her eight-year-old daughter into bankruptcy to delay foreclosure on the property. The child had received the property from Carter, who then filed bankruptcy in the child's name, using a false SSN, after the Bankruptcy Court for the District of Columbia entered a bar order against Carter in September 2001. In the current bar order, the court also ordered Carter to amend the petition to correct the false SSN and to notify the three credit reporting agencies.

In July 2002, the Bankruptcy Court for the Central District of California granted the U.S. Trustee's motion to reopen a case fraudulently filed in the name of a debtor whose name and SSN were used by another person. The fraudulent filing caused the victim substantial difficulties with credit reporting agencies, and the perpetrator was arrested. To assist the victim, the U.S. Trustee filed the motion to reopen in order to revoke the discharge, have the case dismissed, and expunge all references to the case from the court docket and the court's electronic systems. To protect the victim's credit record and preserve the evidence for potential criminal prosecution of the perpetrator, the motion also sought to seal the hard copy of the case file other than for the purpose of investigating bankruptcy crimes.

The Newark office of the U.S. Trustee helped an identity theft victim remove a false bankruptcy filing from his credit report. In June 2002, the victim, a resident of North Carolina, contacted the Bankruptcy Court for the District of New Jersey to report that a Chapter 13 petition had been filed under his name and SSN in that district. After the bankruptcy court referred the matter to the Newark office, an investigation revealed that the victim's father stole his identity to file the petition without his knowledge or consent. Because the victim was awaiting approval of a mortgage, the Newark office assisted him by obtaining court records and speaking with the various reporting agencies and his lender to rehabilitate his credit report.

In May 2002 the U.S. Trustee's Detroit office assisted an identity theft victim whose name was falsely used on a Chapter 13 bankruptcy petition. The U.S. Trustee informed the Bankruptcy Court for the Eastern District of Michigan that the bankruptcy case was filed fraudulently, and successfully argued that it should be declared a nullity. The U.S. Trustee then provided the victim with a verified copy of the court order to send to the credit reporting services to clear the bankruptcy from his credit record.

On August 28, 2002, based on the U.S. Trustee's objection, the Bankruptcy Court for the District of Minnesota dismissed the Chapter 13 case of Yesenia Villela Perez and barred her from refiling in any bankruptcy court until she obtained a legal SSN and disclosed all false SSNs she had used. At the Section 341 meeting, the debtor presented her W-2 form showing an SSN, but the Internal Revenue Service had determined that the number belonged to an unrelated minor

living in another state.

The Bankruptcy Court for the Northern District of Texas granted the U.S. Trustee's motion to deny discharge in the Chapter 7 case of Hong Phuoc and Loi My Ly on April 4, 2002. The complaint was premised on the use of a false SSN by Loi My Ly on the debtors' joint petition, a fact that surfaced when the Chapter 7 trustee attempted to verify the number at the Section 341 meeting. Denial of discharge in the case prevented the debtors from discharging some \$79,000 of unsecured credit card debt.

On motion of the Sioux Falls, S.D., office of the U.S. Trustee, on September 16, 2002, the Bankruptcy Court for the District of North Dakota denied discharge to debtor David M. Penrose, who filed for bankruptcy using the services of the Internet business 700law.com, a/k/a Ziinet.com, following its advice to omit his name and SSN from his bankruptcy petition. Penrose amended his petition to include this information, but the court held that he made a false oath when he signed the original petition, which he knew lacked complete information. The judge stated: "It matters not whether any specific monetary harm arose from the false oath. In sum, the debtor's falsity cannot be condoned, and his discharge will be denied."

Criminal Cases

On November 26, 2002, Edward Harry Senior was sentenced in the Northern District of Georgia to 24 months in prison, based on his guilty plea to seven counts of a nine-count indictment charging him with wire fraud, mail fraud, use of a false SSN, identity theft, and bankruptcy fraud. Senior worked for an Atlanta-area mortgage broker and originated and processed his own loans. He used the name, SSN, and credit history of another individual to obtain two loans to purchase real property, inducing a lender to wire transfer more than \$428,000 to the settlement agent. When Senior defaulted on the loans, he filed bankruptcy to stay the foreclosure sale. The matter was referred to the U.S. Attorney by the Atlanta office of the U.S. Trustee.

Laura Lee Bohnenkamp was sentenced on February 20, 2003, in the Northern District of Iowa to 24 months in prison based on her guilty plea to making a false statement in connection with a loan application, fraudulent use of SSNs, mail fraud, and bankruptcy fraud. Her husband, Kevin Joseph Bohnenkamp, was sentenced on February 21, 2003, to 12 months in prison after pleading guilty to giving a false statement in connection with a loan application, fraudulent use of SSNs, and bankruptcy fraud. When the Bohnenkamps filed Chapter 7 bankruptcy, they falsely used their minor children's SSNs on their petition instead of their own numbers. In addition, Laura Lee gave the bank a security interest in a two-carat diamond when she knew the ring pledged did not have a diamond; represented that her minor sons' SSNs were her own on an account opening document and a bank signature card; represented that a co-worker's SSN was her husband's on 18 business checks drawn on a local bank; engaged in mail fraud when she obtained and used a credit card; and made a false declaration under penalty of perjury in her bankruptcy case by stating that she had provided her true SSN. The Cedar Rapids office of the

U.S. Trustee referred the case for prosecution and obtained denial of the Bohnenkamps' bankruptcy discharge.

Jay S. Potter and Katherine A. Potter were sentenced in the Western District of New York on May 14 and May 16, 2002, following their guilty pleas to bankruptcy fraud. The defendants filed bankruptcy in 1988 using their real names. In 1994, they filed again, but Katherine used a false name and her daughter's SSN. At the Section 341 meeting in that case, the defendants falsely represented that Katherine was Jay's second wife, and was not the same person who had filed bankruptcy with Jay in 1988. In 2001, the defendants filed a third bankruptcy case, with Katherine using her real name and SSN. The defendants falsely represented that Katherine had not filed bankruptcy in 1994 and that the person who filed in 1994 was Jay's sister. The Rochester office of the U.S. Trustee referred the case to the U.S. Attorney after researching the prior filings and consulting with the Office of Investigations of the Social Security Administration. Jay was sentenced to four months in prison and two years supervised release, and Katherine to five years probation with six months home detention. In addition, in consultation with the U.S. Trustee, the private trustee obtained an order denying discharge in the third case.

On August 12, 2002, Louis Penna was sentenced in the District of New Jersey to four months of incarceration, four months of house arrest, and three years of probation, and ordered to pay \$10,000 in fines in a bankruptcy fraud case arising from the filing of a false petition. Penna had pleaded guilty to impersonating his brother in 1996 to obtain a mortgage and in 1998 by filing a false Chapter 13 petition. Penna used his brother's name, SSN, and employment data to obtain a mortgage and to purchase a home. After making mortgage payments for a year and a half, he defaulted on the loan, and foreclosure proceedings were initiated. On the eve of the sheriff's sale, Penna forged his brother's name on a Chapter 13 petition to stay the proceedings. Penna's true identity was discovered during the Chapter 13 case, the case was dismissed, and the Newark office of the U.S. Trustee made a criminal referral to the U.S. Attorney.

In the Western District of Oklahoma, Joyce Ann McKinney was sentenced June 3, 2002, to 27 months in prison and five years supervised release based on her guilty plea to engaging in bank fraud, using a false SSN, and making a false declaration in bankruptcy. McKinney was charged with obtaining numerous bank loans by pledging motor vehicles that were already pledged to other financial entities, and using false SSNs to obtain these loans. Ultimately, McKinney filed Chapter 13 bankruptcy and agreed in writing under penalty of perjury to return a pickup truck that the bank had already repossessed. The Oklahoma City office of the U.S. Trustee referred the case to the U.S. Attorney and assisted the FBI in developing evidence.

On February 25, 2002, debtor Lancelot Arthur Larue was sentenced in the Northern District of California to five years probation and six months home confinement, and ordered to pay \$120,719 in restitution, for making false statements in a bankruptcy case. Larue listed an acquaintance's address as his address; claimed he had no interest in any real property although he owned his residence; failed to disclose that he also went by the name Arturo Alanis Cantu and that he used a separate SSN under that name; and failed to disclose that, under the Cantu name,

he received a Chapter 7 discharge in 1998. The Oakland office of the U.S. Trustee referred the matter to the U.S. Attorney.

On June 12, 2002, in the Southern District of Ohio Lorrie Kiefer was sentenced to one year probation and fined \$250 based on her guilty plea to knowingly and fraudulently making a false declaration, verification, and statement under penalty of perjury in a bankruptcy case. Kiefer assisted and caused another person to forge her husband's signature on a Chapter 13 bankruptcy petition and related documents filed with the court. The U.S. Trustee's office in Cincinnati referred the matter to the U.S. Attorney.

On March 10, 2003, an attorney who authored books on bankruptcy and claimed to be a frequent speaker on the topic pleaded guilty in the Central District of California to two counts of making false statements in bankruptcy. Lloyd M. Segal of Marina Del Rey, Calif., filed bankruptcy in 1998 and 2000 using false SSNs and providing false information about previous filings. In his 2000 filing, he also used a false name. Segal is the author of *Stop Foreclosure Now in California* and *Everything You Wanted to Know About Chapter 11 Bankruptcy... But Were Afraid to Ask*.

In the Southern District of California, Felipe Puente was sentenced on October 25, 2002, to three years probation and ordered to pay a \$4,000 fine based on his guilty plea to bankruptcy fraud. Puente admitted to intentionally and falsely representing his SSN, and falsely representing that he had not filed any prior bankruptcy cases within the last six years although he filed bankruptcy in 1996, 1998, and twice in 1999.

On Other Fronts

In addition to pursuing civil and criminal remedies in bankruptcy, the Department of Justice is exploring new and creative ways to combat identity theft. For example, recently the Los Angeles offices of the U.S. Trustee and the U.S. Attorney joined forces to develop a free 23-minute videotape designed to educate consumers on how to recognize, avoid, and redress identity theft.

The project was initiated by Special Assistant U.S. Attorney Sandy Klein, who works closely with both offices prosecuting bankruptcy crimes. Klein first thought of the project as a means to educate senior citizens like her grandmother, who frequently received telephone calls and letters congratulating her on winning prizes, and seeking a small deposit and her name, SSN, and date of birth to confirm she was the "winner." Klein developed a presentation to give to consumer groups, but quickly saw demand for the presentation exceed her available time. Region 16 U.S. Trustee Maureen Tighe suggested she videotape it to be shown to organizations such as schools, seniors groups, business groups, and churches.

The videotape was completed in January 2003, and is now free for the asking from the Victim-Witness Unit of the U.S. Attorney's Los Angeles office at 1 (888) 228-0315. Tighe and Klein participated with U.S. Attorney Debra Yang in a press conference held February 26, 2003,

to announce the availability of the video. By early the next morning, the U.S. Attorney's office had received more than 250 requests for the video.

Conclusion

Whether perpetrated by a total stranger or a close family member, identity theft has been shown to be remarkably easy and lucrative. To ensure the bankruptcy system is not used to further these schemes or launder other fraudulent practices, the United States Trustee will continue to explore other safeguards to confirm the identity of those filing bankruptcy and receiving a discharge.