

BANKRUPTCY APPELLATE PANEL SUMMARY

Prepared by: J. Michael Debbeler

February 19, 2019

McDermott vs. Perez (In re Perez), Case no. 18-8036, File Name: 19b0008n.06 (December 30, 2019)

Judges: Dales, Opperman and Buchanan (author)

Ruling: Bankruptcy Appellate Panel affirms denial of a discharge to a debtor under Section 727(a)(4)(A) who: (i) failed to list an entity or an interest in the entity on his schedules (which entity owned real estate); (ii) failed to list a bank account in his schedules; and (iii) failed to value an entity listed in the schedules. BAP determined that the debtor's failure to accurately fill out the schedules constituted a "false oath or account" under Section 727(a)(4)(A). Since BAP upheld the denial of a discharge under one part of Section 727 it did not need to address claims under another section.

Procedural context: Debtor was a police officer who also ran a private security company. Debtor had previously worked for another private security company founded by his best friend. Upon the death of his friend, the friend's mother and the prior company sued debtor claiming he "stole her son's business" and recovered a \$450,000 judgement against debtor and his company in state court. Debtor filed an individual Chapter 7 to stop collection efforts. The U.S. Trustee's office filed a complaint to deny discharge under Sections 727 (a)(4)(A) and (a)(2)(A). The Bankruptcy Court heard testimony from the debtor and an auditor for the UST. UST claimed debtor understated his income and commingled receipts and expenses from the private security company listed in the schedules. The UST discovered during an investigation that debtor had another entity although it was unclear whether he was the sole member or owned it through his other company. The non-listed entity owned real estate where debtor's company was located. Real estate was acquired for

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\$115,000 in the year of the bankruptcy. Bankruptcy Court denied debtor's discharge under both parts of Section 727.

Facts: Debtor provided inconsistent testimony at trial about the ownership of the non-listed company. He said he prepared the articles of incorporation but did not answer whether he was the controlling member. Debtor testified he did not list the entity or his interest therein since he filed a personal bankruptcy. Debtor listed his company and it had net deposits over \$1.1 million in two years but listed it as worth "0", despite having 30-35 employees. Debtor could not account for several deposits in bank account not listed. BAP considered failure to list the deposit account as evidence of his failure to account for all of his income.