IN THE UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

IN RE: MASOUD POURMEHDI and
AMBER L. POURMEHDI, Debtors **No. 5:12-bk-71595**
Chapter 7

UNITED STATES TRUSTEE **PLAINTIFF**

v. **5:12-ap-7119**

MASOUD POURMEHDI and
AMBER L. POURMEHDI **DEFENDANTS**

ORDER DENYING THE DISCHARGE OF MASOUD POURMEHDI AND GRANTING THE DISCHARGE OF AMBER L. POURMEHDI

On October 1, 2012, the United States Trustee filed this adversary proceeding seeking a denial of the debtors' discharge pursuant to 11 U.S. C. § 727(a)(2)(B) and (a)(4)(A).[1] The debtors filed an answer on October 30, 2012. The Court held a trial on January 13, 2015. David G. Nixon appeared on behalf of the debtors; Patricia J. Stanley and Joseph DiPietro appeared on behalf of the United States Trustee. At the conclusion of the trial, the Court took the matter under advisement. For the reasons stated below, the Court finds that the United States Trustee failed to carry his burden of proof under § 727(a) as to Amber Pourmehdi and, therefore, the Court grants Amber Pourmehdi [Amber] her discharge. The Court further finds that the United States Trustee proved by a preponderance of the evidence that Masoud Pourmehdi [Masoud] is not entitled to a discharge under § 727(a)(2)(B) and (a)(4)(A). As a result, the Court denies his discharge.

Jurisdiction

The Court has jurisdiction over this matter under 28 U.S.C. § 1334 and 28 U.S.C. § 157, and this is a core proceeding under 28 U.S.C. § 157(b)(2)(J). This order contains

[1] The United States Trustee's adversary complaint contained an additional count under § 727(a)(4)(D), but she verbally dismissed that count prior to trial.

findings of fact and conclusions of law pursuant to Federal Rule of Bankruptcy Procedure 7052.

Background

In January 2009, Masoud and Amber separated and began maintaining separate households.[2] On October 13, 2010, Masoud met with attorney Stanley Bond and paid him $2000.00 for a bankruptcy consultation. On November 29, 2010, Masoud and Amber returned to Bond's office for a bankruptcy "intake meeting." During the intake meeting, Bond questioned the Pourmehdis about their finances and made recommendations relating to their potential bankruptcy case based upon their answers. Bond's notes from the intake meeting reflect that the Pourmehdis disclosed some of their assets and liabilities (including an estimated tax debt of $312,000.00), discussed their ownership interest in A & M Contracting, Inc. [A & M], and, in response to Bond's standard intake question about pending or planned legal actions, told Bond that they had filed no lawsuits nor knew of a reason to do so. At the conclusion of the intake meeting, Bond gave the Pourmehdis a list of items that he needed from them in order to prepare their bankruptcy schedules, including copies of bills, debt instruments, lawsuits, vehicle registrations, assessments, tax returns, bank statements, pay stubs, and other documents relating to their assets and liabilities.

On May 13, 2011, Masoud's certified public accountant and occasional business associate, Timothy Bunch, loaned Masoud $90,000.00. Bunch and Masoud intended for the loan to be secured by Masoud's shares of preferred stock in Highline Technical Innovations, Inc. [HTI]. On the same day that Bunch loaned Masoud $90,000.00, Masoud made a loan of the same amount to HTI's president–and a longtime business client of Bond's–Charles Foster, in an attempt to insinuate himself into HTI's business affairs. To that end, the loan agreement between Masoud and Foster provided that if

[2] The Pourmehdis were divorced as of the January 13, 2015 trial of this adversary proceeding.

Foster defaulted on the loan, Masoud would be granted the right to participate in the management of HTI. Beginning on August 10, 2011, Masoud returned to Bond's office sporadically–sometimes alone and sometimes with Bunch–to ask questions about the ramifications of filing bankruptcy and to obtain advice about various business matters.[3] During one of the meetings, Masoud and Bunch discussed, in general terms, a proposed loan from Bunch to Masoud and sought Bond's advice regarding how to secure the loan with shares of stock. Although Bond advised Masoud and Bunch that a security interest in stock must be perfected by physical possession of the stock certificates, he was not aware that the loan from Bunch to Masoud had already occurred, and Bond reviewed no documents in relation to the loan or to the proposed stock transfer that was meant to secure it. The note from Foster to Masoud became due on November 13, 2011. Foster defaulted, and on December 15, 2011, Masoud–through attorney Chris Reed–filed suit against Foster in state court. During the same two months in which Foster defaulted and Masoud sued him, the IRS filed two tax liens against Masoud–the first on November 21, 2011, in the amount of $25,216.19, and the second on December 27, 2011, in the amount of $40,733.89. On March 27, 2012, the IRS levied Masoud's bank accounts at four different banks. On March 29, 2012, Liberty Bank filed a lawsuit against the Pourmehdis, Bunch, a construction company owned by Masoud named P & B Builders, Inc. [P & B], and other defendants to foreclose on promissory notes for which Masoud's office building was partial collateral. Masoud was served with the Liberty Bank lawsuit on April 7, 2012.

On April 20, 2012, Bond filed a "skeleton petition" on behalf of the Pourmehdis that consisted of documents that Masoud and Amber had signed in Bond's office on March 14, 2012–a chapter 7 voluntary petition, exhibits stating their compliance with credit counseling requirements, a Notice to Consumer Debtor(s) under § 342(b) of the

[3] Bond's records reflect that he met with Masoud on August 10, 2011; December 29, 2011; February 29, 2012; April 2, 2012; April 13, 2012; June 25, 2012; July 25, 2012; and September 20, 2012.

Bankruptcy Code, a Certification of Notice to Consumer Debtor(s) under § 342(b) of the Bankruptcy Code, and a list of creditors.[4] Also on April 20, 2012, the Court issued an Order of Deficiency that gave the Pourmehdis until May 4, 2012, to file their schedules, statement of financial affairs, means test, and other deficient documents.

Because the Pourmehdis had failed to provide Bond with all of the information necessary to complete their schedules and statement of financial affairs accurately prior to the expiration of the May 4 deadline set by the Court, Bond filed incomplete and incorrect schedules without the Pourmehdis' review on May 7, 2012.[5] On May 23, 2012, HTI intervened in Masoud's state court lawsuit against Foster out of concern that Masoud would gain management control over HTI because of Foster's default on his agreement with Masoud. Approximately one week after HTI intervened, HTI, Foster, and Masoud agreed to a settlement. After the settlement was reached, Masoud contacted HTI's attorney, Herb Southern, and requested that HTI and Foster supply the settlement funds to him in cash. When Southern refused, Masoud asked Southern to have HTI and Foster write the settlement check to one of Masoud's corporations–A & M–rather than to Masoud personally. Again, Southern refused. On June 11, 2012, a check drawn on an HTI bank account was tendered to Masoud and Reed in the amount of $107,785.64 in settlement of his state court lawsuit against Foster. At Masoud's direction, Reed withheld his attorney fees and wrote a check to A & M for the remaining $104,000.00.

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[4] A "skeleton petition" usually consists of a signed petition and a list of creditors and does not include schedules or a statement of financial affairs. *In re Bost*, 341 B.R. 666, 670 n.2 (Bankr. E.D. Ark. 2006).

[5] At trial, Bond acknowledged the impropriety of filing schedules that the Pourmehdis had neither seen nor signed. *See Briggs v. LaBarge* (*In re Phillips*), 317 B.R. 518, 523 (B.A.P. 8th Cir. 2004), *aff'd in part, rev'd in part*, 433 F.3d 1068 (8th Cir. 2006) ("there are no circumstances . . . that justify an attorney filing a petition without the debtor's signature."). Bond testified that he has since changed his procedures.

On June 25, 2012, Bond met with the Pourmehdis and advised them that he had to amend the inaccurate schedules that he had filed on May 7 prior to the upcoming § 341(a) meeting of creditors [341 meeting] scheduled for July 3, 2012. Bond's records reflect that on June 29, 2012, Amber provided Bond with some of the information that Bond had requested for the purpose of filing accurate schedules. Bond filed amended–though still incomplete–schedules on July 1, 2012, based upon the information that Amber had supplied.[6] Prior to the 341 meeting on July 3, 2012, Bond met with the Pourmehdis to prepare them for their 341 meeting. During the "prep meeting," Bond gave the Pourmehdis the opportunity to review their schedules and attempted to familiarize them with the standard questions that would be posed by their chapter 7 trustee, John T. Lee [Lee or chapter 7 trustee], during the 341 meeting. Before the conclusion of the prep meeting, Amber told Bond that she had failed to schedule a small personal injury claim resulting from a car accident that she had been involved in on July 25, 2011. Masoud, however, did not tell Bond about his lawsuit against Foster or its recent settlement. At the 341 meeting, Lee asked the Pourmehdis under oath if they had read their bankruptcy petition and schedules prior to signing them and if they were true and correct. Masoud and Amber answered both questions affirmatively. Bond clarified to Lee that all debts had been scheduled but that there were still some issues with the accuracy of the Pourmehdis' assets as they were currently scheduled. Bond told Lee about Amber's unscheduled personal injury claim and Amber explained to Lee that she had not realized that she was required to disclose the personal injury claim as an asset. Masoud interjected to Lee that Amber would not receive any money from the settlement of the

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[6] Although the Court does not know whether the Pourmehdis reviewed the July 1 set of amended schedules prior to Bond filing them, the July 1 amended schedules accurately reflect the handwritten information provided by Amber. The July 1 schedules disclosed for the first time: three parcels of real estate, three bank accounts, a piano, three insurance policies, a brokerage account worth $38,000.00 held in A & M's name and pledged to Bunch, ownership of P & B, a boat that was sold four months prior to filing, a claim of exemptions in assets on schedule C, additional income on the statement of financial affairs, and the Liberty Bank lawsuit in which the Pourmehdis were defendants.

personal injury claim because the insurance company was merely paying the medical bills and repairing Amber's vehicle. Before adjourning and continuing the 341 meeting, Lee directed Bond to amend the Pourmehdis' schedules to disclose Amber's personal injury claim and to disclose A & M's assets. Specifically, Lee stated to the Pourmehdis that "Mr. Bond will have to amend." Bond assured Lee that he would do so.

On July 6, 2012, Southern (HTI's attorney) received a letter from Masoud's state-court attorney, Reed, advising Southern that Masoud had transferred his preferred HTI stock to Bunch and seeking HTI's permission (on behalf of Bunch, whom Reed also represented) to convert the preferred stock to common stock. Around the same time, Southern learned that Masoud was in a chapter 7 bankruptcy and contacted Lee to disclose that HTI had recently disbursed a check to Masoud in settlement of a pre-petition lawsuit and that Masoud had transferred his shares of preferred HTI stock to Bunch.

Lee retained attorney Ronald Boyer to represent the Pourmehdis' bankruptcy estate. On July 17, 2012, Boyer sent a letter to Reed (with a copy to Bond) demanding that Masoud turn over to Lee his shares of HTI stock and the settlement funds from his lawsuit against Foster. Bond forwarded a copy of Boyer's correspondence to the Pourmehdis on July 19, 2012, along with his own letter to the Pourmehdis expressing concern that their file contains no mention of any lawsuit against Foster and demanding that they explain to him the nature of the matters that Boyer referenced in his letter so that he could amend their schedules. On July 25, Bond again wrote to the Pourmehdis, enclosing the motion to compel turnover and a motion to extend time to object to discharge that Lee had filed on July 24. Bond stated in his July 25 letter that Masoud had not delivered documents to Bond on July 23 as promised and impressed upon the Pourmehdis that the full and immediate disclosure of their assets–and turnover of those that were property of the estate–was imperative if they hoped to avoid a denial of their discharge. On September 6, Bond advised the Pourmehdis that, despite two purposeful nonappearances at continued 341 meetings, their case had not been dismissed because the United States Trustee had become interested in their case, and that the only remaining option in Bond's

estimation was to turn over the entire sum of the Foster settlement to Lee and seek different counsel that might see alternatives for the Pourmehdis that Bond did not. Lee filed two adversary proceedings on September 24, 2012, one objecting to the Pourmehdis' discharge and the other against the Pourmehdis and A & M seeking to avoid the post-petition transfer to A & M of the Foster lawsuit proceeds. The United States Trustee filed the instant adversary proceeding on October 1, 2012.

The Pourmehdis retained their current attorney, Nixon, and appeared with him at their continued 341 meeting on November 6, 2012 [November 341 meeting]. Both Lee and Boyer questioned Masoud at the November 341 meeting regarding his ownership of A & M and P & B, the Foster lawsuit and settlement, and the status of his debt to Bunch as of Masoud's bankruptcy filing on April 20, 2012. Masoud testified that he was the sole owner of A & M at the time that he filed bankruptcy and thereafter, that he owned P & B when he filed bankruptcy but that it was defunct as of the November 341 meeting, and was equivocal about whether he still owed Bunch part of the $90,000.00 loan when he filed bankruptcy based on his alleged lack of knowledge about the value of the stock that he had transferred to Bunch as payment. Masoud further testified that he could not provide an accounting of the proceeds of the $107,785.64 settlement without more time, but recalled that he paid a $12,500.00 lumber bill of A & M's and gave Bunch $22,000.00. Although Amber appeared at the November 341 meeting, neither Boyer nor Lee inquired about the status of her personal injury settlement. In fact, no questions were posed to Amber regarding any subject at the November 341 meeting. On December 21, 2012, Nixon filed a second set of amended schedules on behalf of the Pourmehdis, scheduling several assets, liabilities, and transfers for the first time–including the settlement of Masoud's lawsuit against Foster, the settlement of Amber's personal injury claim for $5800.00, Amber's claim of exemption in the personal injury proceeds, Masoud's transfers of stock and money to Bunch, three vehicles, ownership of A & M,

and corporate assets belonging to A & M and P & B.[7]

Both of Lee's adversary proceedings against the Pourmehdis were settled for $75,000.00 on December 2, 2013. The settlement provided that the Pourmehdis would pay Lee in periodic installments. The Court entered an order approving a revised payment schedule on June 26, 2014. The Pourmehdis made no payments to Lee under the original settlement or the revision.[8] The United States Trustee's adversary proceeding went forward on January 13, 2015, and is based upon the Pourmehdis' failure to disclose their interest in Masoud's lawsuit against Foster, three vehicles, Masoud's HTI stock, and A & M, as well as Masoud's post-petition transfer of the settlement proceeds from his lawsuit against Foster to A & M. The United States Trustee contends that the Pourmehdis' failure to schedule these assets and disclose the transfer to A & M on their schedules and statement of financial affairs, as well as their testimony at the July 3, 2012 meeting of creditors that they reviewed their schedules and had listed all of their assets and liabilities, constitute false oaths under § 727(a)(4)(A), and are also tantamount to a concealment of assets under § 727(a)(2)(B). In response, Masoud contends that every asset and transfer that he failed to disclose in the context of his bankruptcy is the fault of his previous attorney, Stanley Bond. Masoud argues that he never reviewed nor signed any of the schedules filed on his behalf by Bond other than the skeletal petition filed on April 20, 2012, and that he hired Bond to take care of his bankruptcy so that he did not have to do so. Masoud lacks a coherent or credible explanation for his failure to disclose

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[7] The December 21 schedules also added bank account balances, a second "complete household" full of furniture, Masoud's ownership of a patent, additional medical and tax liens, additional tax debt, a loan from Bunch to A & M, debts of P & B's, additional income, and gambling losses.

[8] During the January 13, 2015 trial, the United States Trustee questioned Masoud regarding the lack of payments to Lee under the settlement terms of Lee's two adversary proceedings, but has neither alleged nor proven that the Pourmehdis' failure to make settlement payments to Lee was willful.

the Foster lawsuit at the July 341 meeting.[9] Amber contends that Masoud did not tell her that he had loaned money to Foster, and, likewise, did not tell her that he had filed a lawsuit against Foster in state court. She also explained that she believed that the vehicles were owned by A & M, and that they were not disclosed on the July 1 schedules for that reason.

Findings of Fact and Conclusions of Law

Denial of a discharge is a '"harsh and drastic penalty."' *Korte v. U.S. Internal Revenue Serv*. (*In re Korte*), 262 B.R. 464, 471 (B.A.P. 8th Cir. 2001) (quoting *Am. Bank v. Ireland* (*In re Ireland*), 49 B.R. 269, 271 n.1 (Bankr. W.D. Mo. 1985)). Because the remedy dictated by § 727 is severe, the statute's provisions are "'strictly construed in favor of the debtor.'" *Id.* at 471 (quoting *Fox v. Schmit* (*In re Schmit*), 71 B.R. 587, 589-90 (Bankr. D. Minn. 1987)). However, § 727 is also intended to "avoid the debtor's abuse of the Bankruptcy Code." *In re Schmit*, 71 B.R. at 590. In a denial of discharge case under § 727, the burden of proof is on the objecting party. *In re Korte*, 262 B.R. at 471. Therefore, the United States Trustee must prove each element of § 727(a)(4)(A) or (a)(2)(B) by a preponderance of the evidence as to each debtor in order for the Court to deny their respective discharges.

I. Section 727(a)(4)(A)

Under § 727(a)(4)(A), the Court shall grant a debtor a discharge, unless "the debtor knowingly and fraudulently, in or in connection with the case, made a false oath or account." 11 U.S.C. § 727(a)(4)(A). The bankruptcy code "requires nothing less than a full and complete disclosure of any and all apparent interests of any kind." *In re Korte*, 262 B.R. at 474. Section 727(a)(4)(A) promotes truthfulness in schedules and statements. *Daniel v. Boyd* (*In re Boyd*), 347 B.R. 349, 354 (Bankr. W.D. Ark. 2006). The implications of the disclosure and veracity requirements of the bankruptcy code

[9] In fact, the Court finds that much of Masoud's testimony throughout the trial lacked credibility.

reach beyond each individual case. *Nat'l Am. Ins. Co. v. Guajardo* (*In re Guajardo*), 215 B.R. 739, 742 (Bankr. W.D. Ark. 1997). "The failure to comply with the requirements of disclosure and veracity necessarily affects the creditors, the application of the Bankruptcy Code, and the public's respect for the bankruptcy system as well as the judicial system as a whole." *Id.* A party objecting to a debtor's discharge under § 727(a)(4)(A) has the burden of proving five elements by a preponderance of the evidence–

(1) that the debtor made a statement under oath;

(2) that the statement was false;

(3) that the statement was made with fraudulent intent;

(4) that the debtor knew the statement was false; and

(5) that the statement related materially to the debtor's bankruptcy.

Helena Chem. Co. v. Richmond (*In re Richmond*), 429 B.R. 263, 307 (Bankr. E.D. Ark. 2010). The United States Trustee argues that the Pourmehdis made false oaths sufficient to bar their discharge under subsection (a)(4)(A) when they filed inaccurate schedules on May 7 and July 1, and when they testified under oath at the July 341 meeting that they had reviewed their bankruptcy schedules prior to filing them and had listed all of their assets.

The Court finds that the United States Trustee proved by a preponderance of the evidence that Masoud and Amber made a false statement under oath, and that the false statement related materially to their bankruptcy. When Masoud and Amber testified at the July 341 meeting that they had reviewed their schedules prior to filing them, that statement was false as to the May 7 schedules because the Pourmehdis did not review that set of schedules before or after Bond filed them. Although it is unclear based upon the record whether the Pourmehdis reviewed the July 1 schedules prior to Bond filing them, it makes no difference in this particular set of circumstances because the Court finds that the United States Trustee did not prove by a preponderance of the evidence that the Pourmehdis *knowingly* made the false statement that they had, in fact, reviewed their schedules before they signed them. During the January 13 trial, Bond and the Pourmehdis testified that the Pourmehdis had reviewed and signed the skeletal petition

prior to its filing on April 20. The United States Trustee did not prove that the Pourmehdis were not simply (but confusedly) referring to the wrong set of documents–i.e., the skeletal petition–when they falsely testified at the July 341 meeting that they had reviewed their schedules prior to signing them. Therefore, the Court finds that the United States Trustee failed to prove the requisite fraudulent intent regarding the Pourmehdis' false statements under oath that they had read their schedules prior to signing them.

In addition to Lee asking the Pourmehdis whether they had reviewed their schedules before signing them, Lee also asked them if they had listed all of their assets and liabilities.[10] Masoud testified that he had listed everything and made no clarifications or verbal additions. Amber, likewise, testified that she had listed everything, but because she had disclosed to Bond immediately prior to the 341 meeting that she had failed to schedule a small personal injury claim, Bond was able to alert Lee to its existence at the July 341 meeting *before* Lee–or any other party–discovered it and confronted her with it. Lee told Bond to amend the schedules to reflect Amber's claim and he agreed–but subsequently failed–to do so. Because Bond had previously filed schedules without the Pourmehdis' review in this case, the Court does not discount the possibility that Amber believed that Bond filed amended schedules after the July 341 meeting to schedule her personal injury claim based upon his representation to Lee that he would do so–a representation made in Amber's presence. Bond's convoluted handling of this case, combined with: (1) Lee's failure to ask Amber a single question about the status of the personal injury claim at the November 341 meeting; (2) Lee's failure to include Amber's personal injury settlement proceeds in the motion for turnover that he filed three weeks after learning of her pending settlement; (3) Lee's and the United States Trustee's omission of any mention of Amber's personal injury claim in any of the three adversary

[10] Whether or not the Pourmehdis had reviewed the July 1 schedules prior to signing them, they had, as of the July 341 meeting, seen them during their prep meeting with Bond.

proceedings; (4) Amber's claim of exemption in the personal injury settlement proceeds on December 21, 2012, that failed to garner an objection by anyone; and, finally, (5) the failure of the United States Trustee to ask Amber one question about her personal injury settlement during the trial of this adversary proceeding on January 13, 2015, leads this Court to conclude that Amber did not have the fraudulent intent necessary for a denial of discharge under § 727(a)(4)(A) when she failed to schedule her personal injury claim on the July 1 schedules. A denial of discharge is a harsh penalty that, under these circumstances, should not be imposed upon Amber because Bond failed to amend the schedules as he told Lee that he would do, and both Lee and the United States Trustee either forgot to follow up on (or chose not to pursue) Amber's personal injury settlement as they, understandably, focused their collective energies on recovering Masoud's much larger settlement of the Foster lawsuit and his HTI stock. Similarly, the Court finds credible Amber's testimony that she believed the three vehicles (that were not disclosed until December 21, 2012) were titled in A & M's name. In fact, Bunch confirmed during the January 13 trial that he depreciated these vehicles on A & M's tax returns. The Court likewise finds credible Amber's testimony that Masoud did not tell her about his loan to Foster or the resulting lawsuit, and there is no evidence that Amber knew about Masoud's ownership or attempted transfer of the HTI stock. Amber and Masoud have been separated since 2009, and there is no evidence before the Court that Masoud discussed his financial transactions with her. To the contrary, with a contemplated divorce on the horizon, Masoud had a reason *not* to confide in her. For these reasons, the Court overrules the United States Trustee's § 727(a)(4)(A) objection to Amber's discharge.

Masoud, however, is a different story. He was afforded the same opportunity as Amber during the "prep meeting" with Bond to disclose anything that was not listed on the July 1 schedules. Despite hearing Amber tell Bond that she had failed to schedule her pending personal injury claim, Masoud remained silent about his pre-petition lawsuit against Foster and its recent settlement. When Lee told Amber during the July 341 meeting that she should have scheduled her personal injury claim, Masoud failed to take

advantage of yet another chance to disclose his own recent lawsuit and settlement. Masoud's silence at the July 341 meeting is consistent with his history of attempting to keep the Foster matter separate from his bankruptcy. Masoud and Bunch met with Bond on December 29, 2011–just two weeks after Masoud sued Foster. Yet, Bond's file contains no reference to the Foster lawsuit, despite Foster being a long-time business client of Bond's. It is evident from the tenor of Bond's July 19, 2012 letter to the Pourmehdis that Masoud had never told Bond about suing Foster. Additionally, the record is devoid of any evidence that Masoud responded to Bond's July 19 letter by reminding Bond of the alleged previous conversations that Masoud maintains that he had with Bond about the Foster lawsuit. Finally, the Court finds that Masoud's request that Southern ask HTI to provide the settlement funds to him in cash indicates that Masoud had the fraudulent intent required under subsection (a)(4)(A). Based upon the evidence before the Court, the Court finds that Masoud made a false oath under § 727(a)(4)(A) when he failed to disclose his pre-petition lawsuit against Foster and its post-petition settlement. In addition to being a grounds for denial of discharge under (a)(4)(A), failing to list assets on bankruptcy schedules and statements is tantamount to an act of concealment falling under § 727(a)(2). *See Fowler v. Weathers* (*In re Weathers*), No. 5:09-ap-7203, 2011 WL 3207950, at *3 (Bankr. W.D. Ark. 2011) (citing *Cobb v. Hadley* (*In re Hadley*), 70 B.R. 51, 53 (Bankr. D. Kan. 1987)).

II. Section 727(a)(2)(B)

Under § 727(a)(2) the Court shall grant a debtor a discharge, unless–

> (2) the debtor, with intent to hinder, delay, or defraud a creditor or an officer of the estate charged with custody of the property under this title, has transferred, removed, destroyed, mutilated, or concealed, or has permitted to be transferred, removed, destroyed, mutilated, or concealed–
>
> > (A) property of the debtor, within one year before the date of the filing of the petition; or
> > (B) property of the estate, after the date of the filing of the petition[.]

11 U.S.C. § 727(a)(2). Section 727(a)(2) is fundamental to the concept that a debtor's chapter 7 discharge is granted upon the condition that he has disclosed all of his assets

and made them available for distribution. *In re Richmond*, 429 B.R. at 302. "'Section 727(a)(2) is intended to prevent the discharge of a debtor who attempts to avoid payment to creditors by concealing or otherwise disposing of assets.'" *Id.* (quoting 6 Collier on Bankruptcy ¶ 727.02 [1], at 727-13 (15th ed. rev. 2010)). In this case, the United States Trustee argues that the Pourmehdis' discharge should be denied under § 727(a)(2)(B) because they concealed property when they failed to disclose all of their assets in their chapter 7 voluntary petition, and because they transferred the Foster settlement proceeds–funds that Masoud obtained after the Pourmehdis filed bankruptcy–to A & M rather than turning the money over to Lee for distribution to their unsecured creditors.

As an initial matter, the Court finds that the Pourmehdis are not responsible for the inaccuracy of the first set of schedules filed by Bond on May 7, 2012. Bond testified that he filed the May 7 schedules of his own volition and without the Pourmehdis' approval and the Court finds his testimony credible. For the reasons discussed above in Section I., the Court finds that Masoud's discharge should be denied under the additional ground of concealment under § 727(a)(2)(B). Although he eventually disclosed his lawsuit against Foster and its settlement in the December 21 set of schedules, he did so only after three adversary proceedings and a motion for turnover were filed against him (all based, in large part, on the Foster lawsuit and settlement). Amendments filed after the falsity of the original documents is revealed do not negate the fact that the original schedules and statements were inaccurate. *Sholdra v. Chilmark Fin. LLP* (*In re Sholdra*), 249 F.3d 380, 382-83 (5th Cir. 2001). Additionally, Masoud transferred or attempted to transfer over two million shares of HTI stock to Bunch within a few weeks of filing bankruptcy. The evidence at trial was that the shares were worth as little as nothing or as much as $400,000.00 at the time of the ostensible transfer. Even if the shares were valueless, Masoud had a duty to disclose the transfer. *See Chalik v. Moorefield* (*In re Chalik*), 748 F.2d 616, 618 (11th Cir. 1984). For these reasons, the Court denies Masoud's discharge under the additional subsection (a)(2)(B). Also, for the reasons discussed in Section I., the Court finds that Amber did not conceal assets under (a)(2)(B)–she disclosed her personal injury claim to Bond and Lee prior to any other party discovering the existence

of her claim, and had a credible explanation for her failure to list the vehicles that were omitted from the July 1 schedules.

Conclusion

For the reasons stated above, the Court denies Masoud Pourmehdi's discharge under both § 727(a)(4)(A) and (a)(2)(B). The Court finds that the United States Trustee did not carry his burden of proof as to Amber Pourmehdi. Therefore, Amber Pourmehdi is entitled to her chapter 7 discharge.

IT IS SO ORDERED.

Ben Barry
United States Bankruptcy Judge
Dated: 03/10/2015

cc: David G. Nixon, attorney for debtors
Patricia J. Stanley, attorney for United States Trustee
Joseph DiPietro, attorney for United States Trustee
R. Ray Fulmer, II, successor chapter 7 trustee
Stanley Bond, former attorney for debtors