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Monday, May 8, 2000

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## UNITED STATES BANKRUPTCY COURT

### NORTHERN DISTRICT OF CALIFORNIA

In re

MICHAEL and JUDITH MEYERS,

No. 99-11824

[Debtor](#) ⓘ(s).

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RAYMOND CAREY, [Trustee](#) ⓘ,

[Plaintiff](#) ⓘ(s),

v.

A.P. No. 99-1219

MICHAEL and JUDITH MEYERS,

[Defendant](#) ⓘ(s).

\_\_\_\_\_ /

## **Memorandum of Decision**

In their bankruptcy [schedules](#), [Chapter 7](#) debtors Michael and Judith Meyers included as a [secured debt](#) an obligation which had been fully paid. They also scheduled a fake [lien](#) on an automobile they had purchased for their son, and failed to schedule certain partnership interests. For these reasons, the trustee seeks denial of their [discharge](#). In both the schedule of assets and the schedule of debts, the Meyers falsely listed [creditor](#) Richard Gianni as having a [claim](#) for \$9,000.00 secured by a lien on the Meyers' residence and a claim for \$11,000.00 secured by their 1997 Chevrolet S-10 pickup truck. Neither debt actually existed. There had at one time, well before bankruptcy, been a valid obligation on the real property, but that had been paid in full two years before the bankruptcy and Gianni asserted no further claim against the property. The lien on the pickup truck was entirely false, created for the sole purpose of making creditors believe that the Meyers had no equity in the truck when they in fact owned it free and clear.<sup>(1)</sup> As to the residence, the Meyers argue that the misrepresentation was of no consequence due to valid liens senior to the false lien. As to the truck, they argue that the truck was driven by their son and only placed in their name for insurance purposes. The court accepts these explanations as true. However, they are not exculpatory. The Meyers created the false lien on the truck solely because "they did not want any of their judgment creditors to attach [their son's] truck." This admission alone renders them unqualified for a discharge pursuant to §§ 727(a)(3)[falsification of records] and 727(a)(4)(A)[false oath]. The former section does not require intent. The latter requires that the false oath be made knowingly and fraudulently, which the Meyers have admitted by their testimony that they knew the scheduled information was false and that they created the lien to deceive their creditors. The Meyers also lost their right to a discharge by scheduling the lien on their real property when they knew full well that it no longer existed. There is no requirement in the law that a false oath turn out to be of consequence to the estate; all the trustee must show is that the debtors made a material false statement knowingly and fraudulently. The Meyers scheduled the Gianni debt on their home knowing it to be false, and intending to deceive the trustee and the creditors into thinking that the property was more heavily encumbered than it actually was. The misrepresentation was material, notwithstanding lack of consequence to the estate.

The Meyers' only defense to their failure to schedule several partnership interests is that those interests had no value to the estate. This is no defense at all. Their motivation for omitting these interests is clear: they had conducted considerable financial transactions involving the partnerships in the year before bankruptcy, and did not want the trustee to know about them. This is independent grounds for loss of their discharge pursuant to both § 727(a)(1)[concealment of property of the estate after filing the petition] and § 727(a)(4)(A)[false oath]. A debtor is not entitled to a discharge where he has knowingly and fraudulently failed to schedule a business interest, even if the interest had no value to the estate. Matter of Beauboeuf, 966 F.2d 174 (5<sup>th</sup> Cir.1992)[failure to list interest in corporation material despite debtor's claim that interest had no value]; In re Chalik, 748 F.2d 616, 618 (11<sup>th</sup> Cir. 1984) ["The recalcitrant debtor may not escape a section 727(a)(4)(A) denial of discharge by asserting that the admittedly omitted or falsely stated information concerned a worthless relationship or holding; such a defense is specious."]. For the foregoing reasons, the court will enter a judgment denying the Meyers' discharge. The trustee shall also recover his costs of suit. This memorandum constitutes the court's findings and conclusions pursuant to FRCP 52(a) and FRBP 7052. Counsel for the trustee shall submit an appropriate form of judgment forthwith.

Dated: May 8, 2000

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Alan Jaroslovsky

U.S. [Bankruptcy Judge](#) 

1. The Meyers represented to the Department of Motor Vehicles that Gianni was the lienholder on the vehicle. When he received the pink slip, he signed it and gave it to the M

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