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Miller v. Bauer

The Bankruptcy Court concluded both that Bauer's debt to Miller was non-dischargeable pursuant to 11 U.S.C. § 523(a), and that Bauer should be denied a discharge of all scheduled debt pursuant to 11 U.S.C. § 727(a). The BAP, however, properly determined § 523(a) to be inapplicable in this case. We also agree with the BAP's reasoning concerning Miller's § 727(a) claim. Bauer argues that the Bankruptcy Court's analysis on this issue was incorrect because it employed a fraud rationale, and because it placed too onerous a burden of production on Bauer. However, the Bankruptcy Court properly held that Bauer failed to explain satisfactorily the depletion of settlement funds pursuant to § 727(a)(5), and that she failed to preserve information pursuant to § 727(a)(3). The Bankruptcy Court did not err in requiring Bauer to supply documentation or corroborating testimony as part of providing a "satisfactory explanation" of expenditures under § 727(a)(5). The Bankruptcy Court found Bauer's testimony to be "extremely vague" on some matters and, given Bauer's considerable business sophistication and familiarity with the dispute over the settlement funds, it was reasonable to question Bauer's failure to substantiate major expenditures. *See Strzesynski v. Devaul (In re Devaul)*, 318 B.R. 824, 840 (Bankr. N.D. Ohio 2004).

Further, we affirm the Bankruptcy Court's valuation of Bauer's debt to Miller at \$62,780.00. It does appear that the BAP was incorrect in finding that a state court judgment in Miller's favor in that amount was final, and in finding that the Bankruptcy Court therefore did not have jurisdiction to review the amount. The Bankruptcy Court had properly exercised jurisdiction over this question. The Bankruptcy Court correctly concluded that, because Bauer's legal malpractice claim against

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Miller was unlikely to succeed, the amount of damages reflected in the state court jury verdict should stand.

AFFIRMED.