

IN THE UNITED STATES BANKRUPTCY
FOR THE SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION

IN RE:)
BERNSTEIN FAMILY REALTY, LLC)
Debtor,) CASE NO. 22-13009-EPK
) Chapter 13

BANKRUPTCY MOTION HEARING
BEFORE THE HONORABLE ERIK P. KIMBALL
AUGUST 25, 2022

REPORTED BY:

Dawn Leonard, CRD

TRANSCRIBED BY:

Kimberly Jones, CET

AAERT-1411

A P P E A R A N C E S

ON BEHALF OF JOANNA SAHM, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF WALTER SAHM; PATRICIA SAHM; AND JOANNA SAHM:

BRADLEY SHRAIBERG, ESQ.

ERIC PENDERGRAFT, ESQ.

ON BEHALF OF TED S. BERNSTEIN, AS SUCCESSOR TRUSTEE OF SIMON BERNSTEIN TRUST:

ALAN ROSE, ESQ.

ALSO PRESENT:

TED S. BERNSTEIN

I N D E X

MS. JOHANNA SAHM

Direct Examination by Mr. Shraiberg Page 8

E X H I B I T S

No. 1 -27

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PROCEEDINGS

2 THE COURT: We're here in the matter of Bernstein
3 Family Realty, LLC. Could I have appearances? Mr.
4 Shraiberg, good morning.

5 MR. SHRAIBERG: Good morning, Your Honor. Brad
6 Shraiberg on behalf of Joanna Sahm, as personal
7 representative of the Estate of Walter Sahm and Patricia
8 Sahm. They are the movants. I'm joined today with my
9 partner, Mr. Eric Pendergraft, and Ms. Joanna Sahm, my
10 client.

11 THE COURT: Good morning. Ma'am, good morning.

12 MS. SAHM: Good morning, Your Honor.

13 THE COURT: Now we have nobody on the other side
14 of the courtroom. Yeah. Why don't you stay at the podium
15 for a moment? And then I'm going -- oh, please, yes.

16 MR. ROSE: You want me to wear the mask or --

17 THE COURT: It's -- that's entirely up to you.

18 I'm very far away from you, and I've had so many shots that
19 I feel like --

20 MR. ROSE: I'll just follow the rules.

21 THE COURT: But it's -- yeah.

22 MR. ROSE: Alan Rose, R-O-S-E, on behalf of Ted S.
23 Bernstein, as successor trustee of the Simon Bernstein
24 Trust.

25 THE COURT: Right. Thank you. You don't need to

1 bend over for the microphones, by the way. And good
2 morning.

3 Alright. So, yeah, this is sort of an interesting
4 circumstance. We don't have any of the respondents right
5 now, so I have a motion for sanctions at ECF 69, which has
6 been set for evidentiary hearing today. I initially set it
7 for a nonevidentiary hearing, and then I decided that would,
8 frankly, be a waste of time.

9 And so a month ago, or maybe 31 days ago, I set
10 this evidentiary hearing, used a very brief scheduling
11 provision providing for the exchange of exhibits four
12 business days ago under the local rules. I think I only
13 have exhibits from the movant. There has been nothing filed
14 by any of the respondents, who are Joshua Bernstein, Jacob
15 Bernstein, Daniel Bernstein, and, also, their parents, Eliot
16 and Candice Bernstein.

17 Now, I think it was yesterday, or was it the day
18 before, Mr. Eliot Bernstein filed a motion that I
19 interpreted as partly a motion to deny the motion for
20 sanctions without a hearing and partly a motion to continue
21 the hearing today. I did a written order on that knowing
22 that it would otherwise go out in the mail.

23 The clerk sent it to several email addresses that
24 they found for him in the docket, so I'm assuming that he
25 got it. But I note for the record that that document was

1 filed only on behalf of Eliot Bernstein, and there are four
2 other respondents to this motion, so they didn't even file
3 anything. I have no reason not to go forward with the
4 hearing today. And so what would you like to present?

5 MR. SHRAIBERG: Your Honor, it may make sense, due
6 to the litigious nature of the parties that we are seeking
7 sanctions against, to make a formal record versus
8 proffering. I do think that this will not take long.

9 THE COURT: I have no -- I have no objection to
10 that.

11 MR. SHRAIBERG: With that, we would like to
12 introduce and move Exhibits 1 through 27 into evidence. We
13 uploaded the exhibits and our amended exhibit register via
14 CMECF at 2 p.m. on Friday, August 19th. Prior to 3 p.m., we
15 separately emailed a Microsoft OneDrive cloud-based, file-
16 sharing, service link containing the exhibits and the
17 amended exhibit register to each of the Bernsteins and
18 requested that receipt be confirmed.

19 Prior to 3:00 p.m., we sent, via Federal Express
20 priority overnight delivery, a USB drive containing
21 everything, as well as a paper copy of the amended exhibit
22 register, to the Bernstein's physical address at 2753
23 Northwest 34th Street in Boca Raton, 33434. And we filed a
24 certificate of service at ECF No. 91.

25 The order setting today's hearing, which was at

1 ECF No. 76, states that parties must exchange exhibits per
2 the procedures of Local Rule 9070-1 and that failure to do
3 so may result in denial of admission into evidence.

4 We received no written objections to our exhibits
5 under Local Rule 9070-1(a)(3), and no good cause exists for
6 the Court to allow objections by the Bernsteins that are not
7 based on Rule 402 or 403 for unfair prejudice or confusion,
8 etc.

9 THE COURT: Let me comment for the record, also,
10 that that particular local rule has an entire segment which
11 is tailored to those who are not represented by counsel in
12 order to assist them in complying with the rule. And so it
13 -- this is not something designed just for lawyers, and they
14 have failed to comply with, apparently, the provisions that
15 the Court has fashions for pro se parties.

16 MR. SHRAIBERG: Even more so, I believe the order
17 setting today's hearing gave an actual link to those rules.

18 THE COURT: Yes, I know.

19 MR. SHRAIBERG: So for those reasons, we seek to
20 admit Exhibits 1 through 27 into evidence.

21 THE COURT: Exhibits 1 through 27 are admitted.

22 (Exhibit 1 through 27 are admitted into evidence)

23 MR. SHRAIBERG: Thank you. At this time, we would
24 like to call Ms. Joanna Sahm to the witness stand.

25 THE COURT: Very good.

1 Good morning. If you can make your way over to
2 the box and when you get there, remain standing. I'll swear
3 you in.

8 THE WITNESS: I do.

12 THE WITNESS: Thank you.

15 THE WITNESS: Okay. Thank you.

16 MR. SHRAIBERG: Can we give her a physical exhibit
17 binder?

22 MR. SHRAIBERG: Perfect. Thank you.

23 DIRECT EXAMINATION

24 BY MR. SHRAIBERG:

25 Q Please introduce yourself.

1 A My name is Joanna Eileen Sahm.

2 Q And where do you currently reside?

3 A In The Villages, Florida.

4 Q And to the -- do you know who Walter Sahm and Patricia
5 Sahm are?

6 A Those are my parents.

7 Q Are you currently the personal -- Mr. -- your father has
8 passed away, correct?

9 A He passed away last year.

10 Q Are you the personal representative of his estate?

11 A I am.

12 THE COURT: Hold on a moment. Ms. Leonard, are
13 the -- is the witness's -- witness box -- Yeah, just --

14 THE WITNESS: Closer?

15 THE COURT: -- just move closer or move the
16 microphone closer to you. It doesn't need to be right --

17 THE WITNESS: I'm fine. I just don't want to
18 scream and --

19 THE COURT: No, we'll be fine.

20 THE WITNESS: -- blow you guys are out of here.

21 THE COURT: We'll be fine.

22 BY MR. SHRAIBERG:

23 Q And how old is -- your mother is still alive, correct?

24 A She is. She just turned 81.

25 Q And are you a representative on her behalf in any

1 capacity?

2 A Yes. I am her preneed guardian and power of attorney.
3 She has documented cognitive impairment, so I handle all of
4 her affairs.

5 Q Can you look in the exhibit binder in front of you at
6 Exhibit 27?

7 THE COURT: If you just give me a moment.

8 THE WITNESS: Okay.

9 BY MR. SHRAIBERG

10 Q Do you recognize Exhibit 27?

11 A Yes. This is the mortgage that was written up between my
12 parents and the Bernstein Family Realty, LLC.

13 Q And do you know if there was a foreclosure action with
14 regard to this mortgage?

15 A There was, in April of -- April -- well, it was - the --
16 the final judgment was issued in December of 2021 for a
17 foreclosure sale in April of 2022.

18 Q Out of curiosity, are you familiar with the real estate
19 that this mortgage encumbers?

20 A I am. I am.

21 Q How are you familiar with it?

22 A It's where I grew up. It's my childhood home.

23 Q And you stated that there was a final judgment of
24 foreclosure. Was that foreclosure set for a judicial sale?

25 A It was. It was set for April 20th of 2022.

1 Q And that judicial sale did not go forward, correct?

2 A It did not.

3 Q How come?

4 A The Bernstein Family Realty filed a bankruptcy on the
5 19th -- April 19th of 2022, and that canceled the foreclosure
6 sale with the clerk of court.

7 Q To the best of your knowledge, Exhibit 27, did the
8 borrower, the debtor in this case, Bernstein Family Realty,
9 ever make a mortgage payment?

10 A No, they did not.

11 Q Did your parents ever have to advance real estate taxes
12 to prevent a real estate -- did your parents ever advance
13 real estate taxes?

14 A Yes, they did. There were several years between 2008 and
15 2021 that my parents had to pay the taxes on this property.

16 Q Do you know who currently resides at the real estate
17 located at 2753 Northwest 34th Street?

18 A To the best of my -- I know that Eliot Bernstein and
19 Candice Bernstein reside there. To the best of my knowledge,
20 the three sons also reside at the residence.

21 Q Alright. Can you turn to Exhibit 35?

22 THE COURT: Ms. Sahm, could you give the names of
23 the three sons you just referred to?

24 THE WITNESS: Jacob, Daniel, and I don't know the
25 third name of the third child. I'm sorry. I don't know all

1 their names.

2 BY MR. SHRAIBERG:

3 Q Do you know if it is Josh?

4 A Josh. That's it. Thank you very much. Joshua.

5 Q You said that you are familiar with the property because
6 it is where you grew up, correct?

7 A Correct.

8 Q And you also have a mortgage -- the first mortgage on
9 that property?

10 A Yes.

11 Q If you were to rent the property, do you know what you
12 would rent it for, an amount?

13 A 5,000.

14 Q How do you come up with that number?

15 A There are listings out there for area code 33434, and
16 33431, and 33433 that are all the surrounding areas and that
17 actual neighborhood, and that is -- the neighborhood is
18 humble, and the house is very humble, and it -- that is the
19 below average amount for what a three bedroom, two-and-a-half
20 bath, pool home in that neighborhood and surrounding area
21 would rent for.

22 Q You said it's below average. What do you think the
23 average is?

24 A About fifty-five hundred, I would say, based on the
25 comparisons.

1 Q Because of the filing of this involuntary proceeding,
2 you, obviously, hired counsel, correct?

3 A Correct.

4 Q And that -- that counsel was my law firm?

5 A Correct.

6 Q And you've agreed to pay us a reasonable fee for our
7 services?

8 A Yes.

9 Q And to date, you have paid all of the invoices timely
10 that you have received?

11 A Yes.

12 Q But due to the actions in -- due to the state of the
13 case, are you aware that there is significant work in
14 progress that you have not been invoiced for to date?

15 A Yes.

16 Q As of August 16th, that amount that you have combined
17 paid and owe our firm is \$34,758.30?

18 A Correct.

19 Q And in between August 16th and through today, there have
20 been 21.6 additional hours of service performed?

21 A Yes.

22 Q Which was an additional \$9,120?

23 A Yes.

24 Q To the best of your knowledge, the Bernsteins have lived
25 in the premises during this bankruptcy?

1 A Yes.

2 Q And they still live there today?

3 A Yes.

4 MR. SHRAIBERG: One moment, Your Honor. I have no
5 further questions.

6 THE COURT: Just a moment, please. Alright. It's
7 okay.

8 MR. SHRAIBERG: Oh, I apologize. I do have one
9 question.

10 THE COURT: Go ahead. Yes.

11 BY MR. SHRAIBERG:

12 Q Do you know if the judicial sale has been reset?

13 A I -- the motion has been filed to reset it. It's going
14 to be -- from what I'm told, approximately 60 days -- between
15 now and 60 days from now.

16 Q For the actual sale.

17 A Right.

18 Q Thank you.

19 A To be set.

20 THE COURT: Thank you.

21 THE WITNESS: Thank you.

22 (The witness exits the stand)

23 MR. SHRAIBERG: Today we are seeking monetary
24 sanctions against the three petitioning creditors: Joshua
25 Bernstein, Jacob Bernstein, and Daniel Bernstein for the

1 legal fees incurred, as well as six months' rent that they
2 have been able to stay in the property improperly. Due to
3 this improper bankruptcy, it would've been sold the next
4 day, and they have now been -- they have now enjoyed free
5 rent for what appears to be six additional months.

6 THE COURT: But it's not necessarily about them,
7 those three petitioners. It's the fact that your clients
8 were unable to obtain the property and therefore couldn't
9 rent it --

10 MR. SHRAIBERG: Correct.

11 THE COURT: -- correct?

12 MR. SHRAIBERG: Yes.

13 THE COURT: I -- for example, I don't have
14 evidence that the three petitioners live there. Ms. Sahm
15 just said she doesn't know.

16 MR. SHRAIBERG: Right.

17 THE COURT: I don't think that -- I don't -- I
18 don't think that matters.

19 MR. SHRAIBERG: Sure.

20 THE COURT: The -- you're saying that because the
21 petition was inappropriate --

22 MR. SHRAIBERG: Yes.

23 THE COURT: -- and you have two different
24 arguments under 9011 --

25 MR. SHRAIBERG: Yes.

1 THE COURT: -- that -- and you want me to make
2 those findings, and I would -

3 MR. SHRAIBERG: Right.

4 THE COURT: I would like you to get to that.
5 Also, it would be nice if you talked about the evidence that
6 I admitted.

7 MR. SHRAIBERG: Sure, I will.

8 THE COURT: Okay. I don't know if you're
9 intending to do that --

10 MR. SHRAIBERG: Yes.

11 THE COURT: -- but I would like to be walked
12 through it.

13 MR. SHRAIBERG: Yes.

14 THE COURT: But let's assume there's a violation
15 under (b) (1) or (b) (3), and then I go to (c) to determine
16 sanctions --

17 MR. SHRAIBERG: Correct.

18 THE COURT: -- and one of the components that you
19 have is that -- but for the petition, assuming I find that
20 it was wrongfully filed, that you would've got your client -
21 - clients would have obtained title --

22 MR. SHRAIBERG: Yes.

23 THE COURT: -- long ago -

24 MR. SHRAIBERG: Correct.

25 THE COURT: -- and you want rent for that. That's

1 what you just said. So it's not about the fact that the
2 three petitioners have rent -- are rent free; it's the
3 denial of the damages to the clients, not the petitioner's
4 benefit, right?

5 MR. SHRAIBERG: Correct. Plus the legal fees that
6 my clients have incurred due to this wrongful -- the
7 improper filing,

8 THE COURT: Not just on the motion itself, but
9 everything that follows from the petition.

10 MR. SHRAIBERG: Correct.

11 THE COURT: Right.

12 MR. SHRAIBERG: And second is with regard to Eliot
13 Bernstein and Candice Bernstein, along with the three
14 petitioning creditors, we are asking that their pleadings in
15 this file be stricken. And that comes from -- just going
16 full circle.

17 We think that it's ironic that in this case they
18 have completely taken the position of the best -- the best
19 defense is an offense, and every one of their pleadings is
20 name calling with regard to every lawyer that has touched
21 this file, as well as, I believe, every judge that has
22 touched this file, both in the state court matters and the
23 bankruptcy court, have all committed fraud.

24 There was a fraud that occurred here, and it was
25 nothing to do with any of the petitioning creditors who

1 didn't -- excuse me, any of the actual creditors that are
2 here today with Mr. Rose's clients and myself. We didn't
3 ask to come to bankruptcy court. It was an involuntary
4 petition by the debtor against itself, which is as wrongful
5 of -- as improper as can be.

6 And then in support of this motion, Eliot
7 Bernstein, Candice Bernstein, and the petitioning creditors
8 have laced this file with allegations of fraud that are as
9 improper as can be. Our client has a judgment. If they
10 believed that the judgment -- that there was something wrong
11 with the judgment, there were state court remedies to fix
12 that. They -- the borrower itself didn't even do that.
13 There was a final non-appealable judgment against this
14 debtor.

15 THE COURT: Which is the actual fee owner of the
16 property in question.

17 MR. SHRAIBERG: Correct. Parties that were named
18 because they lived there -- one -- two parties actually
19 appealed. Eliot Bernstein appealed, and we put in our
20 exhibit binder the dismissal of that appeal because the
21 fourth DCA said he cannot file pro se pleadings anymore. So
22 that was the basis of the dismissal of his appeal. I
23 believe the children, as -- they're not tenants, they're
24 entities that just -- that are there. And we -- the
25 plaintiff suspected that to clear the title. There is an

1 appeal pending, and today is their deadline to file a brief.
2 We would be surprised if they filed a brief today.

3 But either way, the judicial sale will go forward.
4 There was, as this Court may remember, a motion by them
5 filed to stay the foreclosure sale pending the appeal.
6 Judge Kastrenakes has heard that hearing pre-petition and
7 entered an order post-petition that this Court granted
8 retroactive stay relief.

9 THE COURT: So -- okay. Hold on.

10 MR. SHRAIBERG: Sure.

11 THE COURT: You just said something I didn't know.
12 So there was actually a hearing on that motion.

13 MR. SHRAIBERG: I wasn't the pre-petition.

14 THE COURT: Okay. Fine. No. It's fine.

15 MR. SHRAIBERG: Yeah. Okay. So --

16 THE COURT: I remember at a recent hearing going
17 through all of the briefs that were filed in connection with
18 that. There were many --

19 MR. SHRAIBERG: Okay.

20 THE COURT: -- filed in connection with that --
21 those motions, and they were ruled on. Anyway, go ahead.

22 MR. SHRAIBERG: Sure. But, regardless, just
23 taking it to the simplest form, our client has a judgment.
24 Under the bankruptcy code, we are a creditor. We've never
25 committed fraud; we have standing in this bankruptcy case;

1 the case was filed because of us. There's never fraud. And
2 to lace a -- I always think that plagiarism -- excuse me --
3 liable and slander are unique, because in courtroom, there's
4 an exemption so that they can say whatever they want in a
5 pleading.

6 And I have no idea what my future is when -- who
7 would ever look at cases that I've filed, that Mr.
8 Pendergraft, Mr. Rose, Ms. Fineman, any lawyer that touched
9 this file, who would ever look at anything -- fraud is in
10 there, and it's improper. And I think anyone that would
11 look at the next 200 pages would realize, okay, this person
12 isn't -- these claims are ridiculous. But we shouldn't have
13 to defend ourselves and say the claims are ridiculous.

14 And for that reason, we believe that they should
15 all be stricken. So we are also seeking that remedy today.

16 THE COURT: Yes. Let me point out to you -- and I
17 believe the argument there is that those documents were
18 filed for the improper purpose of frustrating and -- a word
19 actually used in the statute -- in the rule. But the effect
20 of striking a document does not remove it from the docket.
21 It still stays there.

22 MR. SHRAIBERG: Understood.

23 THE COURT: It's just an order that says they're
24 stricken. And let me also point out that each of the ECF
25 numbers that you have referenced in the motion for sanctions

1 that I'm hearing today, I've already considered all of those
2 documents. They are filed in connection with prior matters.
3 There's no pending matter that they relate to.

4 MR. SHRAIBERG: Correct.

5 THE COURT: So striking them doesn't affect
6 anybody, and it also doesn't remove them from the docket.
7 But there would be the benefit of an order that says they
8 are stricken.

9 MR. SHRAIBERG: Right.

10 THE COURT: That's what you want.

11 MR. SHRAIBERG: Correct, Your Honor.

12 THE COURT: Okay. It is -- a couple things --

13 MR. SHRAIBERG: Sure.

14 THE COURT: -- that will be helpful to me. First,
15 I've admitted all the documents. I would like to know why
16 you want me to consider them.

17 MR. SHRAIBERG: Sure.

18 THE COURT: And we have plenty of time to do that.
19 And, next, you have alleged against each of the respondents
20 -- well, that's not true -- against three of the
21 respondents, violations under 9011(b)(1) and (b)(3) --

22 MR. SHRAIBERG: Yes.

23 THE COURT: -- and against all of the respondents,
24 also under (b)(3), I believe. It might be (b)(1). Which
25 one is it? Whichever one is the improper purpose standard.

1 So that's the first step, violations. And then the next
2 step is appropriate sanction. And there are some -- there's
3 some guidance in 9011(c). And I'd like you to address why
4 you think the sanctions you've requested are appropriate
5 there. So I'd like all of that addressed in presentation.

6 MR. SHRAIBERG: Okay. Beyond speculative
7 litigation claims, the sole asset of Bernstein Family
8 Realty, LLC, is the non-income producing real estate at --
9 in Boca Raton. Movant's Exhibit 8 is the bankruptcy
10 schedules filed by Eliot -- signed by Eliot - or filed by
11 Eliot Bernstein on July 13, 2022, at ECF No. 53, which show
12 the real property valued at \$800,000, other assets listed at
13 unknown values.

14 In part 11, at paragraph 74 and 75, it lists
15 claims for wrongful foreclosure and conversion against
16 various persons. There are no leases on Schedule G and no
17 income on Statement of Financial Affairs.

18 THE COURT: Who signed this?

19 MR. SHRAIBERG: I believe Eliot Bernstein.

20 THE COURT: The debtors, members, are three
21 trusts.

22 MR. SHRAIBERG: Correct.

23 THE COURT: Does -- do I have any evidence as to
24 who the trustees -- I'm using plural of those trusts -- are?
25 Is there any evidence here of that?

1 MR. SHRAIBERG: No.

2 THE COURT: I don't think anybody has ever told me
3 who the trustees are. I'm -- I can't figure out how Mr.
4 Bernstein was allegedly selected as the manager. He always
5 says acting manager. I don't know what that means. There's
6 no such thing as an acting manager under Florida law.
7 You're either the manager or you're not.

8 Mr. Ted Bernstein, you can weigh in, but only if
9 it's evidentiary. I mean --

10 MR. BERNSTEIN: I was -- I just want to confirm --

11 THE COURT: You can consult with him. Please go
12 ahead.

13 MR. SHRAIBERG: There is -- there is no evidence
14 in the record of who the trustees are. I believe there was
15 a -- well, in the transcript at the last hearing, Eliot
16 Bernstein did say, for what it's worth, that the -- he
17 believed the three trusts had been dissolved, and the three
18 owners are his children. I remember that testimony.

19 THE COURT: How old -- this is probably not in the
20 evidence either. How old are each of the petitioners now?

21 MR. SHRAIBERG: They're all over 20 years old.
22 They're all --

23 THE COURT: Okay. Are they all 25 or older? I've
24 read the trust agreements.

25 MR. SHRAIBERG: Right.

1 THE COURT: The trusts aren't released to them
2 unless they're 25. So -- okay. So he thinks that the
3 assets of the trusts have been transferred to their sole
4 beneficiaries in each case.

5 MR. SHRAIBERG: He made a comment about that. I
6 have found that his comments, both in writing and in court,
7 he uses phrases -- he uses words improperly and -- legal
8 terms improperly, and it's tough to decipher what is and
9 what is not correct.

10 THE COURT: Alright. Let me -- I apologize for
11 that sidetrack. Let's go back to -- you were pointing me to
12 Exhibit 8, the schedules, which show the real property,
13 other assets -- a number of assets shown of unknown value,
14 although this -- there's often nothing listed at all --

15 MR. SHRAIBERG: Correct.

16 THE COURT: -- in those categories, and then some
17 claims, primarily, against lawyers.

18 MR. SHRAIBERG: That's right. And nothing was
19 brought during the short period that this was in bankruptcy.
20 And we've never seen any tangible -- there's been no
21 evidence of these claims. There's a final judgment of
22 foreclosure that has not been appealed by the borrower.

23 THE COURT: And is not stayed.

24 MR. SHRAIBERG: Correct. Exhibit 3 is the order
25 dismissing the bankruptcy which had numerous statements of

1 findings of fact. Specifically -- first, the debtor owns
2 one real estate asset. This is on page 2 of ECF 79, which
3 is Exhibit 3 in our binder.

4 The debtor owns one real estate asset, the single-
5 family home located in Boca Raton. Since prior to the
6 initiation of this case, the debtor has had no employees --
7 no operations or employees. The debtor has, at most, a few
8 minor unsecured creditors.

9 The petitioning Bernstein's, as well as their
10 parents, Eliot Bernstein and Candice Bernstein, all either
11 reside at the real property or utilize the real property as
12 their mailing address.

13 Movant's Exhibit 2, the bankruptcy petition, lists
14 the address for the debtor and each of the petitioning
15 Bernstein's at 2753 Northwest 34th Street in Boca Raton.

16 Movant's Exhibits 9, 10, and 11 -- those are
17 jointers by petitioning Bernsteins at ECFs Nos. 36, 37 and
18 38 -- lists the address for each of the petitioning
19 Bernsteins as 2753 Northwest 34th Street, Boca Raton, and
20 which state that Eliot Bernstein is their father.

21 THE COURT: Alright. So that means I actually do
22 have evidence that they live there.

23 MR. SHRAIBERG: Correct.

24 THE COURT: Let me point out that when you file a
25 petition, including an involuntary petition, you need to

1 show your driver's license, and each of the three
2 petitioner's licenses is available to me. They're not
3 publicly accessible. At the time of the filing of the
4 petition, Jacob was 23, Joshua was 25, and Daniel was 19.

5 MR. SHRAIBERG: Exhibit 12 --

6 THE COURT: Which, by the way, means that based on
7 the attachments to Exhibit -- which one is the petition?

8 MR. SHRAIBERG: 2.

9 THE COURT: 2? 2 -- oh, yeah.

10 MR. SHRAIBERG: Yes.

11 THE COURT: -- which I think include the trust
12 agreements, don't they?

13 MR. SHRAIBERG: I think so.

14 THE COURT: -- only one of them would have access
15 to the trust race -- they're not?

16 MR. SHRAIBERG: XXXXXX.

17 THE COURT: XXXXXXXX, which means that as of
18 today, none of them are 25, and under their own trust, they
19 would not have access to the race.

20 MR. SHRAIBERG: Moving to Exhibit 12 is a joinder
21 by Candice Bernstein at ECF No. 39, which lists her address
22 as 2753 Northwest 34th Street, and which states that the
23 petitioning creditors are her son's and that Eliot Bernstein
24 is her husband.

25 Movant's Exhibit 13, motion for reconsideration

1 filed by Eliot Bernstein at ECF No. 44, lists his address as
2 2753 Northwest 34th Street. The secured creditors hold a
3 claim against the debtor that is secured by the real
4 property.

5 Specifically, the secured creditors are the holder
6 of that certain final judgment of foreclosure in the amount
7 of \$353,574.68 against the debtor, which are foreclosed on
8 the real property, entered on December 23, 2021, by the
9 Circuit Court for the 15th Judicial Circuit.

10 Movant's Exhibit 1 is the final judgment of the --
11 of foreclosure.

12 Movant's Exhibit 27 is a mortgage in favor of
13 Walter Sahm and his wife, Patricia Sahm. This we put in --
14 well, pursuant to the final judgment of foreclosure, a
15 foreclosure sale of real property was scheduled for April
16 20, 2022. And also part of the -- the intent of putting the
17 mortgage in is that Mr. Eliot Bernstein has repeatedly said
18 that this is a fraud, a dead person is moving in this court.
19 It's not true.

20 First, there is a judgment that has Walter Sahm as
21 a creditor, but, secondly, the review of the mortgage is
22 it's owned tendency by the entirety. It says Walter Sahm
23 and his wife, Patricia Sahm, when he passed by law, Patricia
24 Sahm was the owner of that -- of that mortgage. This is a
25 red herring. It's just going toward why we want these

1 pleadings stricken.

2 Movant's Exhibit 1, which was the final judgment
3 of foreclosure, the petitioning Bernsteins filed this case
4 as an involuntary case against the debtor, yet the
5 petitioning Bernsteins are not creditors of the debtor;
6 rather, the petitioning Bernsteins are the beneficial owners
7 of the debtor. That's found in Movant's Exhibit 2, which is
8 the petition, at ECF No. 87-2, page 6 of 15 at paragraph 3.
9 "We are ... the sole owners and members of this company."

10 That's their quote.

11 THE COURT: Right. Although, when you read the
12 entire document, what you learn is that they are, in fact,
13 the beneficiaries of three trusts, which are, in fact, the
14 members, and so they're not the direct members of the
15 debtor.

16 MR. SHRAIBERG: Right.

17 THE COURT: I don't know how you would reach
18 another conclusion, reading the document.

19 MR. SHRAIBERG: Right.

20 THE COURT: Debtor has three members, the debtor's
21 three members are three trusts, the petitioners are each the
22 sole beneficiary of one of those trusts. And, apparently,
23 since one of them is not yet -- none of them are yet 25,
24 even today -- and by the way, if anybody orders the
25 transcript, the statement that someone is turning 25 on

1 Saturday needs to be stricken -- needs to be blacked out.

2 The -- since none of them are 25 as of today, I've
3 already looked at the trust for another purpose earlier in
4 the case, and I know that the trust still exists, at least
5 by -- unless they've been amended, and you would think they
6 would've included the amendment in their petition.

7 MR. SHRAIBERG: They claimed -- well, by signing
8 the schedule -- excuse me, the petition, the involuntary
9 petition, they're claiming to be creditors, but then on --
10 included in their petition, at ECF pages 7 to 8 of 15, at
11 paragraphs 12 through 14, they describe their payments as
12 capital contributions.

13 THE COURT: Yeah. Hold on a moment. And then
14 they divide the total in thirds, and that's what they
15 included in -- for amounts in -- on the petition.

16 MR. SHRAIBERG: Correct.

17 THE COURT: Go ahead.

18 MR. SHRAIBERG: Movant's Exhibit 3 is the order
19 dismissing bankruptcy case which states that, quote, this
20 case was initiated when the petitioning Bernsteins filed an
21 involuntary Chapter 11 petition against the debtor.
22 However, the petitioning Bernsteins are not creditors of the
23 debtor.

24 Despite this fact, in the petition, each of the
25 petitioning Bernsteins falsely stated under penalty of

1 perjury that they were creditors of the debtor. That's in
2 Movant's Exhibit 2, the petition, and that's found at
3 paragraph 13 of the petition describing each petitioner's
4 claim.

5 This case was filed as an involuntary case because
6 the petitioning Bernstein's could not file a voluntary
7 bankruptcy petition for the debtor as the debtor was
8 dissolved and had no manager. This could be found at
9 Movant's Exhibit 15, a resignation of manager filed in 2016
10 with the Florida Department of State Divisions of
11 Corporation and Movant's Exhibit 3, an order dismissing the
12 bankruptcy case, which states on page 2, this case was filed
13 as an involuntary case because the debtor had been dissolved
14 and had no manager, and, thus, nobody to sign a voluntary
15 bankruptcy petition on behalf of the debtor; that is, the
16 petitioning creditors effectively caused the debtor, of
17 which they are the beneficial owners, to file an involuntary
18 case against itself.

19 The petitioning Bernstein's did not act alone in
20 initiating this involuntary bankruptcy case. Rather, they
21 acted in concert with their parents, Eliot Bernstein and
22 Candice Bernstein.

23 Movant's Exhibit 4, Candice Bernstein's
24 Certificate of Service, showing that Candice Bernstein
25 served the summons and involuntary petition of the debtor.

6 The joinders were filed on June 24th, the motion
7 for reconsideration, which is Movant's Exhibit 13, was filed
8 on June 30th. These are ECFs No. 43 and 44.

25 Once the case was filed and the automatic stay

1 went into effect, the debtor did nothing during the case and
2 the case was converted to Chapter 7. Movant's Exhibit 6,
3 which is the order converting the case, Movant's Exhibit 7
4 is July -- on July 4 -- the July 14th order at ECF No. 57,
5 recounting the debtor's failures on pages 3 to 4, and
6 stating on page 4 that the debtor's failure -- failures
7 caused, quote, a secret bankruptcy putting creditors in the
8 position of potentially taking actions in violation of the
9 automatic stay.

10 And Movant's Exhibit 3, the order dismissing
11 bankruptcy case at ECF No. 79, at page 2: "Once such stay
12 was achieved, the debtor did nothing in this bankruptcy
13 case."

25 Movant's Exhibit 26 is my retainer agreement

1 setting forth the terms of the engagement.

2 Movant's --

3 THE COURT: Just hold on minute.

4 MR. SHRAIBERG: Sorry. Yes.

5 THE COURT: 26?

6 MR. SHRAIBERG: Yes.

7 THE COURT: From April, 2022? -- which has the
8 client properly represented. Why was the initial -- this
9 caused a lot of trouble in the case.

10 MR. SHRAIBERG: Yeah, I know.

11 THE COURT: Why is the initial notice of
12 appearance -- okay. Let me -- let me comment briefly.

13 MR. SHRAIBERG: Sure.

14 THE COURT: Looking at the judgment and how the
15 mortgage is worded, you are right that Patricia Sahm would
16 have automatically become the sole owner of the rights under
17 the mortgage. And so it does -- it just doesn't matter, and
18 there's no fraud involved in that. But now I see your
19 engagement letter, and it is -- the client is Joanna Sahm,
20 personal representative of the Estate of Walter Sahm,
21 thereby acknowledging that Mr. Sahm had deceased and
22 Patricia Sahm. If that's the case, why the notice of
23 appearance in the form that it was filed?

24 MR. SHRAIBERG: It was a mistake. And what I
25 think happened was left hand not speaking with right. When

1 I first spoke with Ms. Sahm, as you can appreciate --

2 THE COURT: The one who's here. Yes, the --

3 MR. SHRAIBERG: Yes, correct. Joanna --

4 THE COURT: Right.

5 MR. SHRAIBERG: -- the daughter.

6 THE COURT: Right.

7 MR. SHRAIBERG: As you can appreciate, because of
8 the status of her parents and that she's the one that
9 initially called me, we had to make sure that this was done
10 properly, and that's why the retainer letter was done
11 properly. I have a feeling, then, shame on me, I sent it to
12 the autopilot that would happen in my office, and I believe
13 autopilot looked at the judgment, and that was the notice of
14 hearing. And, shame on me, I signed the notice of
15 appearance. That was a mistake.

16 But I literally put the retainer letter -- there
17 is no evidentiary reason for that retainer letter to be in
18 the exhibit binder, other than to show if they were here and
19 wanted to talk about the great fraud. It never existed. It
20 clearly was a mistake from day one.

21 THE COURT: Alright. Go ahead.

22 MR. SHRAIBERG: Movant's Exhibit 21 sets forth the
23 line items with regard to the expenses. And I have to step
24 back and say, when looking at what happened here, I believe
25 that \$40,000, on its face, is a lot of money, especially

1 when you consider the amount of actual contested matters in
2 this case. There were very few. But --

3 THE COURT: You mean contested matters at which
4 substantive issues were presented --

5 MR. SHRAIBERG: Correct.

6 THE COURT: -- because I'm confident that if I've
7 been spending nights working until 10:00 on this case, that
8 everybody else has, as well, and they don't have nothing to
9 do with the substantive request for relief.

10 MR. SHRAIBERG: Absolutely right. Every document
11 they file includes a 200-page diatribe of irrelevant
12 information. We don't know it's irrelevant until we have
13 read all 200 pages. And then when it's time to seek
14 sanctions or actually seek a dismissal, you have to go
15 through everything to prepare for these hearings. And we
16 didn't know what to expect today. And that's why these fees
17 keep adding up.

18 So -- and, I repeat, we didn't ask to come here.
19 This was the filing of an involuntary petition that was as
20 improper as the day is long. And that's why it hit at
21 40,000. And I'm jumping ahead because one of the reason --
22 when we -- I will hit this in more detail in a moment, but
23 one of the purposes of sanctions through 9011 is to prevent
24 this behavior and to punish. When I was thinking, wow, what
25 could we be entitled to, it's this --

1 THE COURT: Well, does 9011 say "punish"? It says
2 "deter" --

3 MR. SHRAIBERG: Deter. Sorry.

4 THE COURT: -- twice.

5 MR. SHRAIBERG: Yes.

6 THE COURT: Two different times.

7 MR. SHRAIBERG: I apologize. It does. It says
8 "deter."

9 THE COURT: It would be unlikely that a bankruptcy
10 rule provided that I could punish somebody. There is one
11 instance, but unlikely.

12 MR. SHRAIBERG: Right.

13 THE COURT: So it's intended to be deterrence, and
14 that's because this Court's -- in general, unless a contempt
15 happens in front of me -- in general, my -- the limit of my
16 contempt power is civil contempt. And that's what 9011 is
17 designed for.

18 MR. SHRAIBERG: Absolutely. But to deter someone,
19 they would know that if they -- that the filing of an
20 involuntary bankruptcy is a very serious matter and it has
21 very serious consequences.

22 THE COURT: If you read Section 303, that is
23 obvious.

24 MR. SHRAIBERG: Right. To deter, one would need
25 to know -- well, if the filing of an improper bankruptcy,

1 the petitioners, and even if there was a lawyer -- there
2 isn't one here -- that signed the petition is going to be
3 subject to serious sanctions that would be a deterrent.

4 There is no question that Southern Florida, or the
5 district that we're in, would need to know, you cannot file
6 an involuntary petition against yourself to try to stop a
7 foreclosure sale when there is no hint of rehabilitation.
8 Let me take that back. You can't file a bankruptcy against
9 yourself, period. Petitioning creditors -- you can't
10 organize -- you can't collude to have an involuntary filed
11 against you by, say, three legitimate creditors for an
12 improper purpose. We don't even have that here. We have
13 actual beneficiaries of equity that filed this case.

14 THE COURT: We have the indirect beneficial owners
15 of the debtor.

16 MR. SHRAIBERG: Correct. So I was thinking that
17 we actually could ask for more than our legal fees and the -
18 - legal fees and the rent in this instance from the -- I'll
19 use air quotes saying settlement negotiations, from a lawyer
20 that has appeared in this case but never entered an
21 appearance, Ms. Angela Garcia (ph.). I believe that the
22 amount of legal fees and rent is enough of a deterrent in
23 this specific instance, so we're not asking for more than
24 that. But from my conversations with her, I have said, we
25 would have a right to ask for it. We could --

1 THE COURT: Okay. Now I'm confused.

2 MR. SHRAIBERG: Sure.

3 THE COURT: So Ms. Garcia has, in fact, appeared
4 early in the case on behalf of the petitioners.

5 MR. SHRAIBERG: Correct.

6 THE COURT: Later, she listened in on a hearing
7 and specifically said she was not appearing on their behalf.

8 MR. SHRAIBERG: Correct.

9 THE COURT: Okay. Since then, has she been
10 negotiating on behalf of any of the respondents in today's
11 motion? I don't want to know the terms of what was
12 discussed, but --

13 MR. SHRAIBERG: Alright. We -- correct.

14 THE COURT: -- does -- she represented herself as
15 -- to you as -- or one of your colleagues, as counsel to any
16 of the petitioners?

17 MR. SHRAIBERG: To me, I would say she uses the
18 phrase "trying to help them," which is counseling. You
19 can't be kind of --

20 THE COURT: Okay. Well --

21 MR. SHRAIBERG: -- pregnant.

22 THE COURT: Well, seems to me that in Florida, if
23 a lawyer is helping somebody, they have just undertaken
24 representation.

25 MR. SHRAIBERG: Correct. And I'll add, I know

1 that, sir.

2 THE COURT: Yeah. Make sure if you speak in the
3 courtroom, that you do it way far away from the microphones
4 or else it'll be in the record. If that is your intention
5 to be in the record, that's great. But know that that's the
6 case. Yes.

7 MR. SHRAIBERG: What I believe Mr. Rose was going
8 to tell me is, and this is something that Ms. Garcia did
9 tell me --

10 THE COURT: Yes, I know that you are Mr. Rose and
11 not Mr. Bernstein. I apologize. Go ahead.

12 MR. SHRAIBERG: -- she filed an emergency motion
13 in state court on behalf of the three children, because they
14 accused me of fraud left and right -- I don't know if her
15 client was the three children or their trusts -- for an
16 emergency hearing that is taking place tomorrow with regard
17 to a separate matter that Mr. Rose is involved in, not the
18 foreclosure. In that case, I believe there is \$300,000 put
19 into the court registry due to Simon Bernstein. That is
20 Eliot's father's estate. I think it's a remnant, but Mr.
21 Rose would know what that's about, the hearings.

22 THE COURT: Okay. But that isn't -- that's
23 something else entirely.

24 MR. SHRAIBERG: Correct.

25 THE COURT: But you said that they were -- you

1 mentioned --

2 MR. SHRAIBERG: Sure.

3 THE COURT: -- that there may have been settlement
4 negotiations with some of the respondents and that Ms.
5 Garcia was involved. I'm just curious whether she
6 represented herself. If she made an offer on behalf or in -
7 - or negotiated on behalf of one of these parties, I -- I'm
8 trying to figure out why she's not here making an
9 appearance.

10 MR. SHRAIBERG: She -- there certainly was an
11 offer made on that phone call.

12 THE COURT: Okay. So there's a lawyer who's not a
13 lawyer who has appeared but has now -- no longer appearing,
14 but hasn't withdrawn. Okay.

15 MR. SHRAIBERG: Yeah. And one other thing that --
16 we were always wondering are the Bernsteins going to show,
17 and it especially came from the last pleading that Eliot
18 filed two days ago, that I believe there's a sentence in
19 there that says, In lieu of my appearance, I am making this
20 objection. Of course that doesn't mean the children. Ms.
21 Garcia -- this is not a settlement negotiation -- was
22 concerned -- was today -- she wanted clarification from me -
23 - was today a criminal proceeding or a civil proceeding? I
24 assured her that it is a civil proceeding. And that, too,
25 was -- for that, yeah --

1 THE COURT: Okay. Whatever that means.

2 MR. SHRAIBERG: So that --

3 THE COURT: Let me just point out, also, I think
4 Mr. Eliot Bernstein's document was ECF 94, and when I ruled
5 on it, I did say that I would treat it as an objection. I
6 assumed that he would also be here. I did see that
7 language, but I took that in the context of his argument
8 that because he wrongfully thought that transcripts would
9 not be available to discuss, that he didn't think the
10 hearing was going to happen.

11 Let me also point out that anything that I said
12 during the bankruptcy case would have nothing to do with the
13 analysis of whether the petition was filed appropriately,
14 which obviously happened before I had any hearings. But,
15 anyway, go ahead.

16 MR. SHRAIBERG: Excuse me. The EC -- sorry.
17 Exhibit 26 was the retainer agreement. Exhibit 21 are my
18 firm's time records through August 16th. And I will proffer
19 to the Court that we have billed an additional 21.6 hours
20 through yesterday totaling \$9,120 in fees.

21 THE COURT: Okay. So that is in the record or not
22 in the record?

23 MR. SHRAIBERG: It -- Ms. Sahm testified --

24 THE COURT: Testified to that.

25 MR. SHRAIBERG: -- that she has incurred that

1 additional fee. We have not sought our fees for today, and
2 I don't think it's necessary. If the -- we won't seek
3 additional fees over and above than 9,120.

4 Moreover, the Bernsteins utilize this bad faith
5 bankruptcy case as a platform to publish false and
6 defamatory statements about the movants, myself and other
7 persons who have had the misfortunes to cross paths with the
8 Bernsteins. And we've set forth those ECF numbers in the
9 motion. I can do it again. I don't know if it's necessary.

10 THE COURT: No, that's not necessary.

11 MR. SHRAIBERG: And as demonstrated by the orders
12 of other courts cited in the motion and tendered as Movant's
13 Exhibits 16, 17, 18, 19, and 20, prior admonitions and
14 sanctions by other courts against Eliot Bernstein have not
15 served as sufficient deterrent to his abhorrent litigation
16 tactics.

17 Exhibit 16 is the fourth DCA sanctioning Eliot
18 Bernstein in 2017 by directing the clerk not to accept any
19 more of his pro se filings.

20 Exhibit 17, on page 45 of the Southern District of
21 New York Order from 2008 dismissing complaint and stating
22 Eliot Bernstein has, quote, burdened this Court and hundreds
23 of defendants, many of whom are not alleged to have engaged
24 in wrongdoing with more than 1000 paragraphs of allegations,
25 but have not been able to state a legally cognizable federal

1 claim against a single defendant.

17 And Movant's Exhibit 20 is the fourth DCA's order
18 from earlier this month dismissing Eliot Bernstein's appeal
19 of foreclosure judgment due to the prior prohibition against
20 pro se filings.

21 Rule 9011(b)(1) and three sanctions. Federal Rule
22 of Bankruptcy Procedure 9011(b) states, in pertinent part,
23 that by presenting to the Court, whether by signing, filing,
24 submitting, or later advocating a petition, pleading,
25 written motion, or other paper, an attorney or unrepresented

1 party is certifying that to the best of the person's
2 knowledge, information, and belief formed after an in
3 inquiry reasonable under the circumstances, that, one, it is
4 not being presented for any improper purpose, such as to
5 harass or to cause unnecessary delay or needless increase in
6 the cost of litigation. And, three, that the allegations
7 and other factual contentions have evidentiary support or,
8 if specifically so identified, are likely to have
9 evidentiary support after a reasonable opportunity for
10 further investigation or discovery.

11 Rule 9011(c) goes on to state, in pertinent part,
12 that if, after notice and a reasonable opportunity to
13 respond, the Court determines that subdivision (sic) b has
14 been violated, the Court may subject the conditions stated
15 below, impose an appropriate sanction upon the attorney's
16 law firm or parties that have violated subdivision b or are
17 responsible for the violation. It's -- was initiated by a
18 motion. As I believe this court knows, the filing of a
19 bankruptcy petition is an exception to the 21-day safe
20 harbor period and in the nature of the sanctions and the
21 limitations, a sanction imposed for violation of this rule
22 should be limited to what is sufficient to deter repetition
23 of such conduct or comparable conduct by others similarly
24 situated.

25 The facts of this case, while unique, are very

1 similar to a case of *In re Letourneau*, L-E-T-O-U-R-N-E-A-U.
2 There, like -- the debtor caused the filing of an
3 involuntary Chapter 7 petition against himself and falsely
4 listed three petitioning creditors on the petition who were
5 not, in fact, his creditors in order to delay a foreclosure
6 action and, quote, save his home. That's at 422 B.R. 132 at
7 page 140. It's a Northern District of Illinois bankruptcy
8 case from 2010.

9 The Letourneau Court determined that, quote, there
10 is no circumstance under which a debtor's filing of an
11 involuntary case against himself can be proper, and
12 involuntary bankruptcy is a remedy for creditors not
13 debtors. Moreover, quote, the filing of an involuntary case
14 for the purpose of holding off a single creditor of the
15 alleged debtor is improper and violates Rule 9011. That's
16 at pages 138 and 139 of the Letourneau case.

17 Furthermore, while the debtor in Letourneau,
18 quote, probably did file the case to save his home, the
19 improper purpose portion of 9011 is evaluated objectively
20 and does not require a showing of subjective bad faith; that
21 is, the file document does, in fact, lead to needless delay
22 or cost or is in some way improper. It violates 9011
23 regardless of the subjective belief in the need to file the
24 document. There is nothing improper in wanting to save
25 one's home, but it is highly improper to go about it by

1 filing an involuntary case against oneself using a
2 fraudulent petition. That's at page 141 of the opinion.

3 After determining that the offending petition was
4 objectively improper and thus violated Rule 9011(b)(1), the
5 Letourneau Court turned to the appropriate sanction under
6 Rule 9011(c)(2), found that the monetary equivalent of a
7 slap on the wrist would be enough to prevent the debtor's
8 recidivism but concluded that a heavier sanction must be
9 imposed, however, to deter comparable conduct by others
10 similarly situated, because the maneuver of the debtor
11 employed here is a serious abuse of the bankruptcy system.

12 Therefore, by effectively causing the debtor to
13 file its own involuntary petition for the sole purpose of
14 thwarting our April 20th foreclosure sale of the real
15 property, the petitioning Bernsteins, acting in concert with
16 Eliot and Candice Bernstein, clearly filed the petition with
17 an improper purpose and in violation of Rule 9011(b)(1), the
18 improper purpose section.

19 Moreover, the petitioning Bernsteins, acting in
20 concert with Eliot Bernstein and Candice Bernstein, clearly
21 violated 9011(b)(3) when they falsely stated in the petition
22 that petitioning Bernstein's were creditors of the debtor.

23 Based on, one, the gravity of the Bernsteins'
24 improper conduct, the fact -- two, the fact that the past
25 admonitions and sanctions from multiple courts have thus far

1 failed to deter such improper conduct, and, three, the
2 importance of nipping similar involuntary bankruptcy schemes
3 by others in the bud, like, the Letourneau case states, the
4 Court should impose substantial monetary sanctions on the
5 petitioning Bernsteins as they, while acting in concert with
6 their parents, actually signed and filed this petition.

7 Seeking a sanctions judgment for the \$34,758.30,
8 plus 9,120, which -- plus \$5,000 for the 6 months that we
9 were not able to rent the -- the real estate, totals
10 \$73,878.30.

11 THE COURT: Could I focus for a moment --

12 MR. SHRAIBERG: Sure.

13 THE COURT: -- on the rent request?

14 MR. SHRAIBERG: Yes.

15 THE COURT: Now, when you look at subsection (c),
16 there's one provision that talks about fees and costs to the
17 successful party on the motion for sanctions. That's
18 included in your request.

19 MR. SHRAIBERG: Yes.

20 THE COURT: Then there are the two components that
21 you've referred to deterrence, both of acts by the party in
22 question and similarly situated parties, and you've
23 addressed that.

24 MR. SHRAIBERG: And then a little bit further down
25 in the same subsection, it says that the sanction can

1 include fees and costs resulting from the filing of the
2 thing that's complained of -- in this case, the petition,
3 which would be everything in the case -- if necessary, for
4 purposes of deterrence. And so we have a specific mention
5 of fees and costs.

6 Now, the measure of that is not a damages measure;
7 it's a measure of whether the sanction is appropriate to
8 deter both the party in question and others similarly
9 situated. But the rent requests sounds more like damages,
10 and I'm not sure that that is the purpose of the sanction in
11 9011(c). I'm confident it's not.

12 MR. SHRAIBERG: Sure.

13 THE COURT: Could you -- is there any case law in
14 which you found that taking that kind of request into
15 account was appropriate for purposes of a sanction under
16 9011(c) ?

17 MR. SHRAIBERG: No. Other than the cases that --
18 and we haven't specifically looked for the rent provision
19 that the cases do say that it can be something to deter, and
20 we did cite the language from the Letourneau case that says
21 a slap on the wrist would not be sufficient.

22 The -- that's, I guess, where we're coming from,
23 that the purpose of -- they've accomplished their goal.
24 They have improperly filed a bankruptcy and -- or have been
25 allowed to live for free for six more months. The deterrent

1 for -- to prevent people from doing that is you're not going
2 to get that remedy. We're not going to reward your bad
3 behavior, and that's the deterrent. If the court would
4 like, we can look for additional cases that have a sanction
5 of that kind and supplement, but we think that we have
6 enough just from the statute and the language of the case
7 that we -- that we have cited.

8 THE COURT: May I ask you --

9 MR. SHRAIBERG: Yes.

10 THE COURT: -- do you -- do you believe that the
11 standard that I apply under (b) (1) and (b) (3) is the same,
12 and I ask that --

13 MR. SHRAIBERG: Sure.

14 THE COURT: There is some case law that suggests
15 that the improper purpose analysis is a subjective of one I
16 need to consider. Obviously, we don't have the petitioners
17 testifying today because they have failed to show. We don't
18 have their testimony, so I can't -- I can't look to that and
19 make any credibility determinations and the like, and
20 they've chosen not to show up and defend themselves. I can
21 consider all the circumstances of the case in order to reach
22 -- make inferences of their intent.

23 They -- of course, you've asked me to admit, and
24 I've admitted, the petition, which includes a lengthy
25 statement, which is very unusual, attached to the petition

1 in which they make contrary --they say contrary things about
2 what their intention was in filing the case. But based on
3 what I've seen, the standard in -- for that particular
4 subsection is a subject of one.

5 But the factual statement that you're pointing to,
6 the fact that they are -- they hold claims that are -- that
7 are not contingent, et cetera, and they state particular
8 amounts, that's false. It's false based on their own
9 statements. It seems to me, based on the case law of that
10 I've seen that my analysis under that provision is actually
11 an objective one. Alright. So I -- and I realize I'm
12 laying a lot of things on before you get to weigh in on
13 this.

14 But in either case, including in the objective
15 one, because the rule says, after reasonable inquiry under
16 the circumstances, do I take into account who the
17 petitioners are? They are young people, none of them older
18 than 24 at this point. One is 19. Do I take that -- and
19 not lawyers and not represented, obviously. Do I take that
20 into, kind of -- either of those, (b) (1) or (b) (3)
21 standards?

22 MR. SHRAIBERG: The Letourneau case for 9011(b)
23 used --

24 THE COURT: That was (b) (1), I think.

25 MR. SHRAIBERG: Yes. Well, it just -- it just

1 says (b), but I think you're correct. I think it's (b) (1).

2 THE COURT: Because the whole thing is about
3 improper purpose. It's not -- right.

4 MR. SHRAIBERG: Right. Uses the objective
5 standard.

6 THE COURT: Okay. So for improper purpose, they
7 have an objective standard.

8 MR. SHRAIBERG: Right. But I think that we don't
9 have to go there. I think that they would -- that -- the
10 fact that they're not here when this is a damage that we are
11 -- have been seeking from day one, coupled with the
12 pleadings that have been filed, their conduct throughout the
13 case, and the pleadings that have been filed -- their own
14 pleadings that have been filed, we would meet both the
15 subjective and objective standards, regardless. So I don't
16 --

17 THE COURT: Because the documents filed later are
18 indicative of the intent at the time the petition was filed.

19 MR. SHRAIBERG: Correct.

20 THE COURT: I see.

21 MR. SHRAIBERG: Coupled with when -- they knew
22 they were going to lose today. Today was going to be -- at
23 best, a mitigating day. They -- there's already been a
24 dismissal for bad faith. So some sanction, realistically,
25 is going to be rewarded -- awarded. Today, if they were

1 here, it would've been about mitigation, and they would
2 have, I'm sure ,if I was representing them, testified, "All
3 I wanted to do was save my house." The case law -- we were
4 prepared for that. The case law says that's a noble cause,
5 but that you still can't file an improper bankruptcy to stop
6 that. You can't abuse the court systems.

7 THE COURT: If it's a quixotic cause, you are not
8 permitted to ignore that fact.

9 MR. SHRAIBERG: That's right. So they'll fail
10 both tests, subjective or objective, with the evidence
11 that's been provided. I don't know that it is a subjective
12 test, though. I would argue that it's objective. That was
13 for (b). You're asking it for (c), as well?

14 THE COURT: Well, no, no, no. Right now, I'm
15 focusing on the violation. For example, there -- and, you
16 know, there's really no good case law on this. It's kind of
17 all over the place. There is one Eleventh Circuit case, 610
18 F.3d 628 -- this is a Rule 11, not 9011, but it doesn't
19 matter. It's the same provision -- where the Court suggests
20 that the improper purpose test requires a subjective
21 analysis that likely would require testimony, meaning the
22 opportunity for testimony, which I have provided and they
23 are not here. And so, that leaves me without any evidence
24 offered by the respondents and that is their problem.

25 But I reference that case only because it does

1 suggest a subjective analysis for that particular provision.
2 And then also the lead-in to the rule says, a reasonable
3 inquiry under the circumstances. And so that suggests an
4 objective standard. What's the reasonable inquiry?

5 On the other hand, do I need to take into account
6 the identity of the party that you're seeking sanctions
7 from? If it's a very sophisticated person who happens to
8 also be a lawyer, well, then a reasonable inquiry in this
9 instance, any -- definitely for a lawyer, a reasonable
10 inquiry would lead you to conclude, for example, on the
11 (b) (3) request, that there is no claim.

12 I mean, they should -- first of all, it's amazing
13 they filed that document along with the petition. But there
14 is no claim. They are not creditors. They -- it --
15 whatever right they have isn't even against the debtor; it's
16 against the trust. So -- trusts, the three trusts, which
17 they conveniently attached to their -- to their petition.

18 So I'm just struggling a little bit with -- I'm
19 not struggling now. I've struggled over the last couple
20 weeks looking at this -- with figuring out exactly what the
21 standard would be as I was getting ready to, hopefully, hear
22 evidence presented by all the five respondents, which they
23 have chosen not to -- not to do.

24 By the way, the clerk advises me that at 10:23
25 this morning, Mr. Eliot Bernstein ordered the audio CDs of

1 this hearing. So he's elected not to be here, but he would
2 like to know what happened. Alright. Back to your
3 presentation.

4 I should also point out, that means that Eliot
5 Bernstein knows that the hearing is going forward, which
6 means he has received at least one of the multiple email
7 addresses the clerk sent my most recent order to, that he
8 received it.

9 MR. SHRAIBERG: With -- in support of our request
10 to strike their pleadings, we have a case from the Northern
11 District of Illinois, *In re American Telecom Corp*, found at
12 319 B.R. 857, at page 873.

13 The Court states: "Among the arsenal of sanctions
14 are fines payable to the court clerk, an award of attorney's
15 fees, and costs to the sanctioned party's opponent. In
16 order to discourage fees paid to the sanctioned attorney, an
17 injunction prohibiting specific types of future filings,
18 mandatory legal education, stricken pleadings, referrals to
19 disciplinary bodies and reprimands that are on or off the
20 record."

21 We believe that the Court clearly has the
22 authority to strike those pleadings. And we've presented
23 our evidence, and I've gone through it, that there's been no
24 fraud by any of the creditors or the United States Trustee
25 or this Court or the lower courts.

1 The fraud occurred. It was by the petitioning
2 creditors. And to try to say that a great defense is a good
3 offense, that doesn't work, and it's an improper purpose to
4 -- those pleadings were filed for an improper purpose just
5 to smear any lawyer that files something adverse to the
6 Bernsteins. For that reason, we ask that the motion be
7 granted.

8 THE COURT: Alright. I am going to -- I intend to
9 rule from the bench on the motion. I'm going to take a
10 substantial break before I do that. It is now quarter to
11 11. Noon?

12 MR. SHRAIBERG: Perfect.

13 THE COURT: I hate to keep you around, but I think
14 it'd be wise for me to be able to rule on it directly.

15 MR. SHRAIBERG: Perfect.

16 THE COURT: And you can all go have early lunch,
17 which I will not be doing, and I'll reconvene at noon. Any
18 questions?

19 MR. SHRAIBERG: No questions.

20 THE COURT: Very good. Alright. Thank you.

21 MR. SHRAIBERG: Thank you.

22 THE COURT: Court is in recess until noon.

23 MR. SHRAIBERG: Oh, one last -- I do.

24 THE COURT: Yes. Go ahead.

25 MR. SHRAIBERG: If the Court is inclined to grant

1 sanctions, we would ask that the vehicle be -- in
2 anticipation that it will not be paid in a certain time
3 period, that give the -- give them X amount of days to pay
4 whatever monetary sanction, and then we could petition the
5 Court for a judgment in the event that it's not paid.

6 THE COURT: Yes, I'll consider that.

7 MR. SHRAIBERG: Thank you, Your Honor.

10 (Recess at 10:45 a.m. until 12 p.m.)

11 THE COURT: Good afternoon, everyone. Alright.
12 Thank you. Please have a seat. Ms. Leonard, let me know
13 when we're all set.

14 Okay. We are back on the record in Bernstein
15 Family Realty, LLC, and all the same parties are in the
16 courtroom. Any questions before I rule? No?

17 MR. ROSE: No, Your Honor.

18 THE COURT: Alright. Thank you. This is the
19 Court's ruling on the motion for sanctions filed by Joanna
20 Sahm, as personal representative of the Estate of Walter
21 Sahm, and Patricia Sahm. The motion is in the docket at ECF
22 No. 69.

23 Today I held an evidentiary hearing on the motion
24 for sanctions. None of the five respondents appeared at
25 today's evidentiary hearing. I initially set the motion for

1 sanctions for non-evidentiary hearing on August 16, 2022,
2 but then determined to set it directly for an evidentiary
3 hearing on this date.

18 I note that the document filed at ECF No. 94 was
19 filed only by and on behalf of Eliot Bernstein, and so there
20 was not a request for a continuance from the other
21 respondents. There was ample notice of today's evidentiary
22 hearing and due process was served. The respondents failed
23 to appear today at their own peril.

24 I have considered the evidence admitted and the
25 arguments of the movants. In the motion, the movants seek

1 monetary sanctions under Bankruptcy Rule 9011(c) against
2 Joshua Bernstein, Jacob Bernstein, and Daniel Bernstein for
3 alleged violations of Bankruptcy Rule 9011 (b) (1) and (b) (3)
4 in connection with the filing of the involuntary petition in
5 this case.

6 In particular, the movants seek their reasonable
7 attorney's fees and costs for the entire bankruptcy case,
8 including the preparation and prosecution of the motion for
9 sanctions, plus five months' rent for the real property
10 owned by the debtor at a market rental rate. The movants
11 also seek nonmonetary sanctions against the same petitioners
12 and also against Eliot Bernstein and Candice Bernstein in
13 the form of an order striking certain specified documents
14 filed by them that the movants alleged contain false and
15 defamatory statements and striking any future documents
16 filed by them that contain similar statements.

17 I typically make a point of referring to each
18 party as Mr. or Ms. So-and-so. In this case, because all
19 the respondents have the same surname, I may refer to them
20 by first names. I apologize about the informality, but,
21 otherwise, it will be difficult or cumbersome to present a
22 concise and clear ruling. I mean no disrespect in doing
23 this.

24 In addition, when I say "petitioners," this refers
25 only to Joshua Jacob and Daniel Bernstein.

1 Bankruptcy Rule 9011 mirrors Federal Rule of Civil
2 Procedure 11. Much of the case law applying the federal
3 rule applies to the bankruptcy rule.

4 It is useful to quote only those components of
5 Bankruptcy Rule 9011 that are applicable here. If you
6 remove the language not applicable in the context of a
7 petition, this is the relevant language from Subsection (b).

19 I have quoted only from Subsections (b) (1) and
20 (b) (3) because those are the ones relied on in the motion
21 for sanctions. Subsection (c) of Bankruptcy Rule 9011
22 addresses how sanctions are requested and provides that the
23 Court may award sanctions against a party if it finds a
24 violation of subsection (b). There must be notice and a
25 reasonable opportunity to respond. The motion must describe

1 the specific conduct alleged to violate subsection (b) .

2 In this case, there is a formal motion providing
3 specific allegations and arguments and the Court provided
4 more than a month to prepare for an evidentiary hearing.
5 The motion must be served under Bankruptcy Rule 7004. The
6 motion for sanctions and the notice of hearing were so
7 served.

8 There is a safe harbor provision requiring 21
9 days' notice of a motion for sanctions under Bankruptcy Rule
10 9011, but the rule explicitly excepts motions in connection
11 with petitions and so the safe harbor does not apply here.

12 Subsection (c) (1) (a) provides that the Court may
13 award reasonable expenses and attorney's fees to the
14 prevailing party for presenting or opposing a motion for
15 sanctions. Subsection (c) (2), further provides that if the
16 Court finds a violation of subsection (b), the Court may
17 award sanctions limited to what is sufficient to deter
18 repetition of such conduct or comparable conduct by others
19 similarly situated.

20 The sanction may include, if imposed on motion and
21 warranted for effective deterrence, an order directing
22 payment of the movant -- to the movement of some or all of
23 the reasonable attorney's fees and other expenses incurred
24 as a direct result of the violation.

25 In this case, I note that if there is a violation

1 of Subsection (b) by the filing of the involuntary petition
2 itself, the subject legal fees and expenses could be for the
3 entire bankruptcy case.

4 The debtor in this case, Bernstein Family Realty,
5 LLC, is a Florida limited liability company. At the time
6 this case was commenced, the debtor was dissolved by the
7 state of Florida for failure to file annual reports. The
8 debtor is a manager managed limited liability company. When
9 this case was filed, it had no manager.

10 It appears that the debtor's only real asset is a
11 home in Boca Raton. The movants hold a claim against the
12 debtor secured by that home. They hold a final judgment of
13 foreclosure entered by a Florida State Court in an amount of
14 about \$353,000. A foreclosure sale was set for April 20,
15 2022. On April 19, 2022, the petitioners filed an
16 involuntary petition commencing this case. This resulted in
17 cancellation of the foreclosure sale scheduled for the
18 following day.

19 In the involuntary petition, the petitioners list
20 the address of the home owned by the debtor as both the
21 debtor's mailing address and their own mailing address. It
22 appears that the petitioners and their parents, Eliot and
23 Candice, use the home as their residence.

24 In the involuntary petition, as required by
25 section 303(b)(1) of the bankruptcy code, each of the

1 petitioners represent that he holds a claim against the
2 debtor, but by their own admission in a document attached to
3 the involuntary petition, the petitioners are not creditors
4 of the debtor. They state that they are each a beneficiary
5 of a trust, which trusts are, in turn, the equity owners of
6 the debtor. Thus, the petitioners are the indirect
7 beneficial owners of the debtor.

8 In that same attachment to the petition, the
9 petitioners state that they have a right against the debtor
10 for, quote, capital contributions, end quote, and they
11 reference both the initial contributions in connection with
12 acquiring the home and later contributions such as to pay
13 taxes. By their own description, the debtor would not have
14 any direct obligation to the petitioners. If there was any
15 right to a distribution of capital, it would be payable to
16 the trusts who are the members of the debtor.

17 For purposes of Section 303(b)(1), this is not an
18 empty distinction, but, more importantly, the right of
19 equity to return of capital is not a claim at all.

20 Because the petitioners control the debtor, there
21 was no response to the involuntary petition, and the clerk
22 entered an order for relief on May 23, 2022. The debtor
23 repeatedly failed to comply with deadlines provided by the
24 Court and the case was converted to Chapter 7.

25 After conversion, the debtor continued in its

1 abject failure to do anything required by the Court or the
2 Chapter 7 trustee. Recently, I dismissed the case with two
3 years' prejudice but retained jurisdiction to determine the
4 motion for sanctions.

5 Eliot Bernstein claims to be the acting manager of
6 the debtor, appointed after the filing of the involuntary
7 petition. Under Florida Law, there is no such thing as an
8 acting manager. If a limited liability company is a manager
9 managed entity, as is the debtor, then the manager is the
10 manager, period.

11 Under existing Florida statute, it does not matter
12 that the debtor remains dissolved. The trusts, as the
13 members of the debtor, could select a manager. It is
14 unclear whether the trust, as members, have formally
15 appointed Eliot Bernstein as manager and if they did, when
16 that took place.

17 Candice Bernstein is not a representative of the
18 debtor. She claims to be a creditor, but the source of her
19 claim is unclear. Eliot Bernstein, Candice Bernstein, and
20 the petitioners have filed numerous documents in this case
21 that contain unsupported and often defamatory statements
22 regarding counsel for the movants, Alan Rose, Robert
23 Sweetapple, Patricia Sahm, Ted Bernstein, Tescher and
24 Spallina P.A., Judge Diana Lewis, who is deceased, Steven
25 Lesney, Brian O'Connell, Judge John Kastrenakes, Heidi

1 Feinman, and me.

2 Without any factual support, they allege that
3 these persons committed acts of fraud, breaches of fiduciary
4 duty and extortion, among other shocking statements. Eliot
5 Bernstein has previously been sanctioned by other courts
6 preventing him from filing similar documents. It is
7 apparent that past sanctions against him had no impact on
8 his behavior in this case.

9 The first question is whether any of this amounts
10 to a violation of Subsections (b) (1) or (b) (3) of Bankruptcy
11 Rule 9011. If so, then I must determine appropriate
12 sanctions. I should comment at this point that there is no
13 basis for sanctions under Bankruptcy Rule 9011 against Eliot
14 Bernstein or Candice Bernstein in connection with the filing
15 of the involuntary petition itself. They did not sign that
16 document.

17 While the movants several times in the motion for
18 sanctions say that the petitioners acted in concert with
19 Eliot and Candice and it does appear that Eliot Bernstein
20 orchestrated the filing of the petition, that does not
21 expand the reach of the rule with regard to the filing of
22 the petition. Eliot and Candice Bernstein are subject to
23 Rule 9011 sanctions only with regard to those documents they
24 signed and filed themselves.

25 My analysis will start with the petition. The

1 movants argue that the petitioners violated Subsection
2 (b) (1) by filing an unfounded involuntary petition against
3 their own entity solely for the improper purpose of -- for
4 stalling a foreclosure sale.

5 As the Eleventh Circuit has commented, the Court's
6 analysis under Subsection (b) (1) involves application of a
7 subjective standard. Did the petitioners file the
8 involuntary petition with an actual improper purpose? The
9 movants say the petitioner's motive was solely to delay the
10 foreclosure, to retain use of the home without paying for a
11 few more months, at least.

12 The petitioners chose not to attend today's
13 evidentiary hearing, so I do not have the benefit of their
14 testimony. For purposes of the motion for sanctions, I have
15 only their statements in the attachment they included with
16 the involuntary petition. They said, quote, we file this
17 petition in good faith for a proper purpose to seek the
18 equal distribution of the assets of BFR to proper creditors,
19 end quote.

20 They also state: Quote, "so we think there is a
21 good chance of a plan to save BFR and restore its status but
22 at least pay all proper creditors," end quote.

23 In light of the overwhelming evidence submitted
24 today, I do not believe these were the true reasons for the
25 filing of the involuntary petition. If the petitioners

1 actually intended this bankruptcy case to achieve an equal
2 distribution of the debtors' assets to proper creditors,
3 they would've caused the debtor to act accordingly. Rather
4 than timely retain counsel, timely file schedules and a
5 statement of financial affairs, respond to the reasonable
6 requests of the United States Trustee, and appear at the
7 meeting of creditors, among other things, the petitioners
8 did nothing.

9 I converted this case because the debtor
10 repeatedly failed to comply with deadlines. The only thing
11 the petitioners obtained was delay. In the end. I
12 dismissed this case with prejudice for two years because it
13 was filed in bad faith. The evidence admitted today only
14 reinforces this conclusion. In light of their actions or
15 more appropriate failures to act, their statements to the
16 contrary are not credible.

17 I find that the petitioners filed an improper
18 petition against their own entity primarily to stymie the
19 efforts of the movants to foreclose on the debtor's
20 principle asset. The movants met their burden of showing
21 that the petitioners violated subsection (b) (1) of
22 Bankruptcy Rule 9011.

23 The next question is whether the petitioners'
24 statements in the involuntary petition that they are
25 creditors of the debtor constitute violations of Subsection

1 (b) (3) .

2 Under the case law, the appropriate analysis is an
3 objective one. The petitioners are not creditors of the
4 debtor. Indeed, they have no direct ability to obtain
5 anything from the debtor. At most, trusts of which they are
6 beneficiaries could have the ability to receive return of
7 capital from the debtor.

8 The question is whether a reasonable inquiry under
9 the circumstances would reveal that fact. Normally, when a
10 person is not represented, the Court gives some leeway to
11 the unrepresented party. But even a brief reading of
12 Section 303 would reveal that the filing of an involuntary
13 petition is a serious act that deserves careful attention.

14 In light of the admissions in their own attachment
15 to the involuntary petition, any reasonable inquiry would
16 have revealed that the petitioners were not proper
17 petitioning creditors under Section 303.

18 In Eliot Bernstein's filing in ECF No. 94, which I
19 treat as an objection here in spite of his lack of standing,
20 Eliot Bernstein argues that there is uncertainty in the case
21 law regarding who is a proper petitioning creditor. From
22 this, I believe he means to suggest that a reasonable
23 inquiry would have led to multiple conclusions perhaps
24 including that the petitioners are within the ambit of
25 proper creditors under Section 303.

1 Even if Mr. Bernstein was permitted to represent
2 the petitioners, and he is not, this argument is not
3 persuasive. It is true that there is substantial case law
4 on certain aspects of who may be a petitioning creditor, but
5 I am not aware of any case that suggests, even remotely,
6 that an indirect equity owner of the alleged debtor whose
7 only potential right is that an intermediate entity in which
8 he has a beneficial interest may have a right to return of
9 capital from the alleged debtor is a proper petitioning
10 creditor under Section 303.

11 The facts in this case do not even present a close
12 call. I conclude that the petitioner's statements in the
13 involuntary petition that they hold claims against the
14 debtor were false, that a reasonable inquiry under the
15 circumstances would have revealed this fact, and so those
16 statements are in violation of subsection (b) (3) of
17 Bankruptcy Rule 9011.

18 Having found two independent violations of
19 Subsection (b) by each of the petitioners, I must now
20 determine an appropriate sanction. Under Subsection
21 (c) (1) (a), I may award reasonable fees and expenses for
22 filing and presenting the motion for sanctions itself. I
23 find it is appropriate to do so.

24 In addition, under Subsection (c) (2), I may award
25 sanctions, quote, sufficient to deter repetition of such

1 conduct or comparable conduct by others similarly situated,
2 end quote, and may include legal fees and expenses resulting
3 from the filing of the offending document to the extent
4 necessary for effective deterrence. In this context, the
5 movants seek payment of the entirety of their legal fees and
6 expenses in this bankruptcy case, plus five months' rent of
7 the home at a rate of \$5,000 per month.

8 The standard in Subsection (c) (2) directs me to
9 consider both deterrence of repetition of such conduct by
10 the petitioners, as well as deterrence of comparable conduct
11 by others similarly situated. I do not have the benefit of
12 testimony of any of the petitioners as they chose not to
13 attend today's evidentiary hearing. I have only the
14 evidence admitted during the hearing.

15 In light of that evidence, I have concluded that
16 the petitioners, who are not proper creditors, filed an
17 involuntary petition against an entity in which they are the
18 indirect equitable owners solely to prevent a foreclosure
19 sale of the entity's principle asset, their home. This
20 desperate act followed extensive litigation in a Florida
21 state court where the unstayed foreclosure judgment was
22 entered.

23 Under the circumstances of this case, the
24 petitioners' filing of the involuntary petition was highly
25 improper. While it seems unlikely that the petitioners

1 themselves will do this again, under the explicit text of
2 Bankruptcy Rule 9011, it is appropriate to consider
3 deterrence of similarly situated parties. No one should
4 ever file an involuntary petition against their own entity
5 solely to prevent a foreclosure sale.

6 In light of the severity of the infraction here, I
7 find it appropriate deterrent for future violations by
8 similarly situated parties towards sanctions against the
9 petitioners on a joint and several basis in the form of
10 legal fees and expenses incurred by the movants for the
11 entirety of this bankruptcy case.

12 Based on the evidence admitted today, that sum is
13 \$43,878.30. I note that this sum, taken from Ms. Sahm's
14 testimony, is slightly less than the sum of the invoices in
15 evidence, plus the additional fees and expenses incurred
16 after those invoices. I think the difference is \$240.

17 Taking into account the skill and experience of
18 counsel to the movants and the demands of this case, I find
19 that their hourly rates are reasonable and appropriate. I
20 also find that the time spent by them in this case and the
21 tasks undertaken are reasonable under the circumstances of
22 the case.

23 As part of the requested sanction for the filing
24 of the petition, the movants asked the Court to order the
25 petitioners to pay a sum equal to the rent that the movants

1 would've obtained during the delay represented by this
2 bankruptcy case. This request sounds like a request for
3 damages.

4 Bankruptcy Rule 9011(c) authorizes the Court to
5 award sanctions for the purpose of deterrence and not in the
6 way of damages. While the rule does specifically permit the
7 Court to award sanctions in compensation for legal fees and
8 expenses, again, that is only to the extent necessary for
9 deterrence. I find that the legal fees and expenses awarded
10 today are appropriate for purposes of deterrence. I find
11 that those sanctions are alone sufficient to the purpose. I
12 will not award additional sanctions tied to the lost rent
13 the movants claim to have suffered as a result of the delay.

14 Finally, I must consider whether the petitioners,
15 Eliot Bernstein and Candice Bernstein, violated bankruptcy
16 rule 9011(b) (3) by filing numerous documents with
17 unsupported and scandalous allegations. Eliot Bernstein
18 filed most of these shocking documents, but the petitioners
19 and Candice Bernstein often joined in them. These filings
20 listed in the motion for sanctions are not supported by
21 anything other than their apparent belief that anyone who
22 opposes them is corrupt and has committed or is in the
23 process of committing crimes.

24 Almost without exception, the documents listed in
25 the motion for sanctions failed to present any arguments

1 actually relevant to the matters that were then under
2 consideration. I find that those documents were filed
3 solely to harass parties and interest and me and to cause
4 delay and frustration. The documents were filed in
5 violation of Subsection (b) (3) of Rule 9011.

6 Under Subsection (c), I can order sanctions of a
7 nonmonetary nature. I note that each of the previously
8 filed documents listed in the motion for sanctions have
9 already been considered by the Court. So the requested
10 relief that the documents be stricken will have no impact on
11 the Court's rulings. In light of the scandalous and
12 sometimes defamatory nature of the unsupported allegations
13 in those documents, they will be stricken.

14 The movants also ask that if any of the
15 petitioners, Eliot Bernstein or Candice Bernstein, filed
16 documents with similar allegations in the future, that the
17 Court strike those documents. In light of repeated filings
18 stating essentially the same unsupported allegations, which
19 I have ruled on multiple times, all of which appear intended
20 only to frustrate the parties and the Court, I find that the
21 requested relief is appropriate. I will include in the
22 order on the motion for sanctions that if any of the
23 petitioners, Eliot Bernstein or Candice Bernstein, file any
24 document other than under Article 8 of the bankruptcy rules
25 that contains similar scandalous or defamatory allegations

1 against the parties listed in the motion for sanctions or
2 others, the Court will strike such documents without further
3 notice or hearing. Are there any questions?

4 MR. SHRAIBERG: No questions, Your Honor.

5 THE COURT: Yes. Very good. Thank you for your
6 presentation. I'll enter a brief order incorporating
7 today's oral ruling and providing the relief.

8 MR. SHRAIBERG: I may have spoken too fast. With
9 regard to the sanctions, will it have a mechanism of --

10 THE COURT: Yes. I will include a provision that
11 says if the sanction amount is not paid within 30 days, that
12 the movants may seek a separate judgment, and I will enter
13 separate judgment.

14 MR. SHRAIBERG: Thank you, Your Honor.

15 THE COURT: Yes. Good morning -- or afternoon --
16 good afternoon, everyone.

17 (End of proceedings)

C E R T I F I C A T E

I, KIMBERLY JONES, do hereby certify that this transcript was prepared from the digital audio recording of the foregoing proceeding, that said transcript is a true and accurate record of the proceedings to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

KIMBERLY JONES

AAERT CET-1411