UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF SOUTH CAROLINA

IN RE: Robert S. Evans, Debtor.	C/A No. 98-05148-W Adv. Pro. No. 98-80212-W
Helen B. Brown, Plaintiff, v. Robert S. Evans, Defendant.	**JUDGMENT** Chapter 7

Based upon the Findings of Fact and Conclusions of Law as recited in the attached Order of the Court, the Plaintiff's motion for summary judgment is granted and the debt owed to the Plaintiff, Helen B. Brown, in the amount of Nine Hundred and Eighty Three Thousand, Nine Hundred Nineteen Dollars ($983,919.00) is excepted from discharge pursuant to 11 U.S.C. § 523(a)(4).

UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina,
April 23, 1999.

UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF SOUTH CAROLINA

IN RE: Robert S. Evans, Debtor.	C/A No. 98-05148-W Adv. Pro. No. 98-80212-W
Helen B. Brown, Plaintiff, v. Robert S. Evans, Defendant.	**ORDER** Chapter 7

THIS MATTER comes before the Court upon the Motion for Summary Judgment filed by the Plaintiff Helen B. Brown ("Ms. Brown"), seeking an Order of the Court finding that a debt owed to her from the Defendant/Debtor Robert S. Evans ("Mr. Evans" or "Debtor") in the amount of Nine Hundred and Eighty Three Thousand, Nine Hundred Nineteen Dollars ($983,919.00) is excepted from discharge pursuant to 11 U.S.C. §§ 523(a)(2), (a)(4) and/or (a)(6).[1] Based upon the arguments of counsel and a review of the exhibits, the Court makes the following Findings of Fact and Conclusions of Law pursuant to Rule 52 of the Federal Rules of Civil Procedure, made applicable by Rule 7052 of the Federal Rules of Bankruptcy Procedure.[2]

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[1] Further references to the Bankruptcy Code, 11 U.S.C. § 101 *et seq.*, shall be by section number only.

[2] The court notes that to the extent any of the following Findings of Fact constitute Conclusions of Law, they are adopted as such, and to the extent any Conclusions of Law constitute Findings of Fact, they are so adopted.

33

FINDINGS OF FACT

On February 2, 1996, Ms. Brown filed a lawsuit against Mr. Evans in the Superior Court of Clarke County, Georgia, Civil Action No. SU-96-CV-0209-G ("State Court"), alleging several causes of action based upon Mr. Evan's alleged breach of fiduciary duty to Ms. Brown as her stockbroker. While the causes of action included fraud, failure to exercise due diligence, recommendation of unsuitable investment, breach of fiduciary duty, conversion, gross negligence, negligence per se, violation of securities laws, violation of state and federal RICO statutes, intentional infliction of emotional distress and a request for attorney's fees, the common factual allegations related to Mr. Evan's alleged fraud or defalcation while acting in a fiduciary duty as Ms. Brown's stockbroker. The factual allegations contained in Paragraphs Seven (7) through Twenty-Six (26) of the State Court Complaint are as follows:

> 7. Mrs. Brown is an elderly lady who has been debilitated by illness and disease, including three cancer operations, a nervous disorder, and cataracts in both eyes. She is heavily medicated for these health problems.
>
> 8. Prior to 1990, Mrs. Brown had limited experience in investments and no market acumen.
>
> 9. In early 1990, Mrs. Brown had her entire life savings and sole source of income invested primarily in government backed investment bonds. Mrs. Brown lived off the income produced by her savings and bought over $1,000 per month worth of medicine with this income.
>
> 10. In mid-1990 Defendant Evans began contacting Mrs. Brown on nearly a daily basis in order to establish a relationship of trust. At that time Defendant Evans transferred Mrs. Brown's entire account from Merrill Lynch Pierce Fenner & Smith, Inc. ("Merrill Lynch") to J.C. Bradford.
>
> 11. Over time, and without authorization, Defendant Evans

transferred Mrs. Brown's entire life savings into limited partnership investments that appeared on their face to be government backed bonds such as the Krupp Government Income Trust and the Krupp Government Income Trust II. Defendant Evans made other unauthorized transactions on Mrs. Brown's behalf including, but not limited to, the purchase and sale of securities for Rocky Shoes & Boots, Inc.

12. Defendant Evans purchased the above securities with Mrs. Brown's money primarily because the sales commissions from these investments were higher than for other types of investments.

13. Defendant Evans never provided Mrs. Brown with any information concerning these securities including, but not limited to, a prospectus or private placement memorandum. Defendant Evans did not have authority for these transactions and, therefore, sent no confirmations.

14. The Krupp Government Income Trusts have been investigated by state and federal governments. They have been found to have been frequently misrepresented as safe, liquid and having tremendous returns, while in fact they are speculative, illiquid, and unsuitable for its safety-conscious and conservative investors. Several states have taken action against brokers such as Defendant Evans for the very issues at the heart of this matter. The U.S. Attorney General's office has also threatened action over these issues.

15. Subsequent to the purchases, Defendant Evans fraudulently concealed Mrs. Brown's losses by reporting false values on her account. Mrs. Brown was further misled as to her account by statements such as money was taken out of her account to meet requirements of certain governmental bodies.

16. Mrs. Brown was further fraudulently misled into believing that it would be impossible for her to modify these investments until after the year 2001. Mrs. Brown was further misled concerning her account the investments made with her money by fraudulent statements concerning her ability to pursue legal action and fraudulent statements attempting to convince Mrs. Brown to use some form of loan such as a credit card to overcome some of the illequidity problems.

17. Defendant Evans was investigated by his former employer J.C. Bradford & Co. not only for his improper actions with the Brown account, but also for several other accounts as well. Defendant Evans established a pattern and practice of three or more violations of securities laws and other state and federal laws concerning his dealings with Mrs. Brown and similar victims within a four year period.

18. Throughout the relevant time period Mr. Evans continued to work his fiduciary relationship with Mrs. Brown and take advantage of both that relationship and her incapacities. For example, in one instance, Defendant Evans fraudulently obtained a personal check made out to himself for $10,000. Defendant Evans used his fiduciary relationship and his manipulative tactics to convince Mrs. Brown that he was going to get paid in a week, but that he needed $10,000 to pay some alimony that he needed to pay and that he could pay it back by the first of the next month. In reality, Defendant Evans used the $10,000 to purchase a car and furniture. Defendant Evans had no present intention to pay back the $10,000 by the first of the next month. Later, when Mrs. Brown demanded a return of the money, Defendant Evans told her that he had used the $10,000 to buy her more stock. Mrs. Brown told Defendant Evans she did not want him to invest that or any other money. To this day, Mrs. Brown is not sure whether Defendant Evans took her money and invested it in his own accounts.

19. Upon information and belief, Defendant Evans continues today the same patterns and practices alleged herein. For example, upon information and belief, Mr. Evans illegally and without permission opened an account with Dean Witter on behalf of Mrs. Brown and has continued to solicit the improper use of her monies for his benefit.

20. Due to the acts of Defendant Evans, Mrs. Brown lost the use of her life savings through the year 2001.

21. Due to the acts of Defendant Evans, Mrs. Brown has endured a great deal of stress, aggravation, pain and suffering.

22. Due to the acts of Defendant Evans, Mrs. Brown has lost considerable value in her life savings.

23. Defendant Evans is responsible for Plaintiff's injuries and damage to Plaintiff and her estate.

24. Defendant Evans acted willfully, wantonly and with complete disregard for the rights and well-being of others in committing torts against Plaintiff.

25. Defendant Evans has violated various laws and ordinances passed to protect Plaintiff.

26. Defendant Evans has acted in bad faith, has been stubbornly litigious, and has put Plaintiff to unnecessary cost and expense.

On March 8, 1996, Mr. Evan's, through counsel, filed an Answer to the State Court Complaint. Mr. Evan's attorney subsequently withdrew from the State Court case and returned a $ 5,000.00 retainer to Mr. Evans and notified Mr. Evans, pursuant to Georgia Superior Court Rules, of the requirements of maintaining contact with the State Court and keeping the State Court advised of a current address. Mr. Evans did not appear further in defense of the litigation, nor did he retain replacement counsel to represent him.

According to the Plaintiff and without dispute from the Defendant, the trial judge in the State Court litigation was the same judge who presided over Mr. Evan's previous divorce proceedings and because Mr. Evans was in default on his marital obligations, he became more concerned with facing contempt charges before that judge arising out of the marital litigation than defending the lawsuit filed by Ms. Brown. Mr. Evans therefore evidently chose not to participate in the litigation with Ms. Brown and failed to participate in discovery. A motion to impose sanctions for failure to comply with discovery was then filed by Ms. Brown's counsel and a hearing on the motion was scheduled with notice of the motion sent to Mr. Evans. However, despite the notice, Mr. Evans did not respond to the motion or appear at the hearing.

As a sanction for failing to comply with discovery, the State Court struck Mr. Evan's Answer and a Default Judgment was entered against him. The State Court then scheduled a damages hearing. Following the damages hearing, on or about June 30, 1997, the State Court entered an Order granting judgment in favor of Ms. Brown against Mr. Evans in the amount of $ 94,360.00 for actual damages, $ 94,360.00 for emotional distress, $ 566,160.00 for treble damages, $ 400,000.00 for punitive damages, $ 17,759.00 for attorney fees, and all costs of the action.

CONCLUSIONS OF LAW

Section 523(a)(4) provides that "a discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt-- (4) for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny." 11 U.S.C. § 523(a)(4).

> Section 523(a)(4) requires the Plaintiff to prove two elements.
> First, a showing that the Defendant acted in a fiduciary capacity.
> Second, a showing that the Defendant committed fraud or
> defalcation while acting in a fiduciary capacity.

In re Watkins, 95-76152-W, C-96-8062 (Bkrtcy.D.S.C. 11/27/96). The creditor has the burden of proving these two elements by a preponderance of the evidence. Grogan v. Garner, 498 U.S. 279 (1991).

In this case, Ms. Brown asserts that the elements of § 523(a)(4) have already been determined by the State Court litigation and Mr. Evans is precluded from re-litigating the issues in this adversary proceeding. The Court agrees.

Collateral estoppel applies to dischargeability proceedings under Section 523(a). Grogan

v. Garner, 498 U.S. 279, 284 n. 11 (1991). The collateral estoppel doctrine has been defined as follows:

> Prior judgment between same parties on different causes of action is an estoppel as to those matters in issue or points controverted, on determination of which finding or verdict was rendered. E.I duPont de Nemours & Co. v. Union Carbide Corp., D.C. Ill., 250 F.Supp. 816, 819. When an issue of ultimate fact has been determined by a valid judgment, that issue cannot be again litigated between the same parties in future litigation. City of St. Joseph v. Johnson, Mo. App. 539 S.W. 2d 784, 7845.

Black's Law Dictionary 237 (5th ed. 1979). As shown in the Findings of Fact, the allegations of the Complaint unquestionable allow this Court to make a finding that the actions of Mr. Evan's occurred while he was acting in a fiduciary capacity to Ms. Brown as her stockbroker. Additionally, it is the finding of the Court that the acts involved defalcation on the part of Mr. Evans.

> The Bankruptcy Code does not define the term defalcation. An opinion from the Bankruptcy Court for the Northern District of Oklahoma conducted an exhaustive review of the case law and chose to follow the definition supplied by Judge Learned Hand that defalcation "implies some moral dereliction" citing Central Hanover Bank & Trust Co. v. Herbst, 93 F.2d 510 (2d Cir. 1937).
>
> > Unlike the case law under the Bankruptcy Act, the court interpreting the scope of defalcation under the Bankruptcy Code are in agreement on several points. First, defalcation is the failure to account for money or property that has been entrusted to one. See, In re Wolfington, 48 B.R. 920, 923 (Bkrtcy.E.D.Pa.1985); In re Owens 54 B.R. 162 [(Bkrtcy.D.S.C.1984)]; In re Cowley, 35 B.R. 526 (Bkrtcy.D.Kan.1983); In re Waters, 20 B.R. 277 (Bkrtcy.W.D.Tex.1982). Second, defalcation is a broader term than either embezzlement or misappropriation. See In re Wolfington, supra; In re Weaver, 41 B.R. 649 (Bkrtcy.W.D.Okla.1984); In re Cowley, supra; In re Waters, supra. Third,

defalcation is evaluated by an objective standard and no element of intent or bad faith need be shown. See In re Gonzales, 22 B.R. 58 (Bkrtcy. 9th Cir.1982); American Ins. Co. v. Lucas, 41 B.R. 923 (D.W.D.Pa.1984); Martino v. Brown, 34 B.R. 116 (D.N.M.1983); In re Petersen, 51 B.R. 486 (Bkrtcy.D.Kan.1985); In re Gagliano, 44 B.R. 259 (Bkrtcy.N.D.Ill. 1984); In re Waters, supra.

> ... For example, the court in Cowley wrote that defalcation "is the slightest misconduct, and it may not involve misconduct at all. Negligence or ignorance may be defalcation." 35 B.R. at 529.

. . .

Bankruptcy purposes would actually be best served if "fiduciary capacity" were read broadly (in the manner of the 10th Circuit Court in Devery Implement Co. v. J.I. Case Co., supra) while "defalcation" were read narrowly (as by Judge Learned Hand in Central Hanover Bank & Trust Co. v. Herbst, supra). This would allow most confidential relationships the benefit of protection, but would limit such protection (and the corresponding penalty to debtors) to the more heinous breaches of such confidences. This would except from discharge most "dishonest" debts, and discharge most "honest" ones.

This Court agrees with Judge Learned Hand that "the authorities are not indeed very satisfactory." The most satisfactory of the lot is Judge Learned Hand's own opinion in Central Hanover Bank & Trust Co. v. Herbst, which this Court will attempt to follow.

In re Turner, 134 B.R. 646 (Bkrtcy.N.D.Okl. 1991). With a respect of the broad spectrum of definitions of defalcation, at a minimum it does require some degree of misconduct, negligence or ignorance.

Pasco v. Youmans (In re Pasco), 97-04421-W, Adv. 97-80289-W (Bkrtcy.D.S.C. 10/28/98). It appears to the Court that based upon the allegations of the State Court Complaint, Mr. Evans'

acts constitute defalcation.

However, Mr. Evans takes the position that this Court can not apply collateral estoppel to the State Court Judgment because it was a default judgment. Again, the Court disagrees.

> Recently, the Fifth, Eleventh, and Ninth Circuits have held that when a party has appeared and litigated a matter, a default judgment subsequently entered for discovery violations can act as collateral estoppel in a later case. See Gober v. Terra + Corporation (In re Gober), 100 F.3d 1195, 1205- 06 (5th Cir.1996) (fact that state court default judgment was entered "only after Gober had repeatedly impeded the course of the proceedings by refusing to comply with discovery and by defying court orders" bolstered court's conclusion that the bankruptcy court "properly afforded collateral estoppel effect" to the state default judgment); Bush v. Balfour Beatty Bahamas, Ltd., 62 F.3d 1319, 1325 (11th Cir.1995) ("Where a party has substantially participated in an action in which he had a full and fair opportunity to defend on the merits, but subsequently chooses not to do so, and even attempts to frustrate the [proceedings] a district court [may] apply the doctrine of collateral estoppel to prevent further litigation of the issues resolved by the default judgment in the prior litigation."); FDIC v. Daily (In re Daily), 47 F.3d 365, 368 (9th Cir.1995) ("A party who deliberately precludes resolution of factual issues through normal adjudicative procedures may be bound, in subsequent, related proceedings involving the same parties and issues, by a prior judicial determination reached without completion of the usual process of adjudication.").

In re Ansari, 113 F.3d 17 (4th Cir. 1997). As stated by the Fourth Circuit Court of Appeals in the Ansari decision, when applying collateral estoppel to preclude the re-litigation of a matter decided by a state court judgment in a subsequent dischargeability proceeding, the bankruptcy court must apply the state law of the forum state in which the judgment was entered.

> We have previously explored the proper approach to this question, explaining:
>
> > In Grogan v. Garner, [498 U.S. 279, 284 & n. 11, 111 S.Ct. 654, 658 n. 11, 112 L.Ed.2d 755 (1991)] the Supreme Court concluded explicitly that

> principles of collateral estoppel apply in dischargeability proceedings in bankruptcy. In determining the preclusive effect of a state-court judgment, the federal courts must, as a matter of full faith and credit, apply the forum state's law of collateral estoppel.... "Congress has specifically required all federal courts to give preclusive effect to state-court judgments whenever the courts of the State from which the judgments emerged would do so."
>
> Hagan v. McNallen (In re McNallen), 62 F.3d 619, 624 (4th Cir.1995) (quoting Allen v. McCurry, 449 U.S. 90, 96, 101 S.Ct. 411, 415-16, 66 L.Ed.2d 308 (1980)). Thus, in order to determine whether the bankruptcy court correctly applied collateral estoppel principles, we must examine the law of Virginia, where the judgment relied upon originated.

In re Ansari, 113 F.3d 17 (4th Cir. 1997). In this case, the Court must apply Georgia state law which affords collateral estoppel effect to default judgments.

> Collateral estoppel precludes the relitigation of issues "already adjudicated between the parties or their privies in a prior action." (Citations and punctuation omitted.) Block v. Woodbury, 211 Ga.App. 184, 185(1), 438 S.E.2d 413 (1993). No question exists that the issue of whether Walker had permission was "adjudicated" in the prior action. "A judgment by default properly entered against parties sui juris operates as an admission by the defendant of the truth of the definite and certain allegations and the fair inferences and conclusions of fact to be drawn from the allegations of the declaration. Conclusions of law, and facts not well pleaded and forced inferences are not admitted by a default judgment." (Citations and punctuation omitted.) Stroud v. Elias, 247 Ga. 191, 193(1), 275 S.E.2d 46 (1981).

American States Insurance Co. v. Walker, 223 Ga. App. 360, 477 S.E. 2d 360. Additionally, as recognized by the Eleventh Circuit Court of Appeals, a party should not be allowed to re-litigate a state court default judgment in a subsequent bankruptcy non-dischargeability proceeding when the party substantially participated in the earlier proceeding and had the full and fair opportunity

to defend the complaint on the merits but chose not to.

> Where a party has substantially participated in an action in which he had a full and fair opportunity to defend on the merits, but subsequently chooses not to do so, and even attempts to frustrate the effort to bring the action to judgment, it is not an abuse of discretion for a district court to apply the doctrine of collateral estoppel to prevent further litigation of the issues resolved by the default judgment in the prior action. Bush had ample warning from the prior court and could reasonably have foreseen the conclusive effect of his actions. In such a case, collateral estoppel may apply to bar relitigation of the issues resolved by the default judgment. See Klingman v. Levinson, 831 F.2d 1292, 1296 (7th Cir.1987) (quoting 1B. J. Moore, J. Lucas & T. Currier, Moore's Federal Practice ¶ 0.444[1], at 794 (2d ed. 1984)) ("Justice, then, is probably better served if ... collateral estoppel does not apply to ... default judgments ... unless it can be said that the parties could reasonably have foreseen the conclusive effect of their actions.") (emphasis added).

Bush v. Balfour Beatty Bahamas, Ltd. (In re Bush), 62 F.3d 1319 (11th Cir. 1995). In this case, Mr. Evans, through counsel, filed an Answer to the Complaint. The Default Judgment was not entered because Mr. Evan's failed to appear in the State Court lawsuit, it was entered as a sanction for discovery abuse and as stated in the Findings of Fact, it appears that the reason Mr. Evans may have chosen not to further participate in discovery or in the State Court litigation was because he objectively decided to avoid appearance before the same State Court judge presiding in a lawsuit involving Mr. Evan's divorce proceedings in which he was in default.

Additionally, the Default Judgment became a final order of the Court. Mr. Evans did not file a motion to reconsider or set aside the Default Judgment, or file an appeal thereof. For all of these reasons, the Court finds that Mr. Evans had a full and fair opportunity to defend against and participate in the State Court litigation.

Mr. Evans however also attempts to rely upon a Bankruptcy Court decision from the

Northern District of Georgia, In re Hritz, 197 B. R. 702.(Bkrtcy. N.D. Ga. 1996), for the proposition that when there are distinctive causes of action in the underlying state court complaint, some of which may lead to a finding of non-dischargeability and some of which may not, the Bankruptcy Court is precluded from applying collateral estoppel if a default judgment was entered in the state court and the specific cause of action on which the judgment was entered was not stated.

> Under Georgia law, four elements must be present in order for a party to be estopped from relitigating an issue:
>
> (1) There must exist an identity of issues between the first and second actions;
> (2) The duplicated issues must have been necessarily litigated and actually decided in the prior court proceeding;
> (3) Determination of the issue must have been essential to the prior judgment; and
> (4) The party to be estopped must have had a full and fair opportunity to litigate the issue in the course of the earlier proceeding.
>
> Harry M. League v. Graham, U.S. Postamatic, Inc. and Schwartz (In re Graham), 191 B.R. 489, 494 (Bankr.N.D.Ga.1996) (J, Drake).

In re Hritz, 197 B. R. 702.(Bkrtcy. N.D. Ga. 1996). In Hritz, the Court was concerned with the element of identity of issues. In Hritz, the Court noted that there were at least two causes of action upon which the default judgment could have been based and because one of these causes of action was for breach of contract, a cause of action that does not necessarily result in a non-dischargeability finding pursuant to § 523(a)(2) or § 523(a)(6), the Court declined to apply collateral estoppel in the subsequent non-dischargeability adversary proceeding. This is not the case within. As stated in the Findings of Fact, the allegations in the State Court Complaint are fraud, failure to exercise due diligence, recommendation of unsuitable investment, breach of

fiduciary duty, conversion, gross negligence, negligence per se, violation of securities laws, violation of state and federal RICO statutes and intentional infliction of emotional distress. More importantly, all of these allegations arise out of Mr. Evan's representation of Ms. Brown as her stockbroker and as stated previously, these acts involved defalcation while acting in a fiduciary capacity. Further support for this finding is based upon the State Court's judgment awarding punitive damages which under Georgia law, cannot be awarded for breach of contract. O.C.G.A §13-6-10.

In accordance with the full faith and credit mandate, in the absence of fraud, the bankruptcy courts must give preclusive effect to findings of Georgia State Courts even when those findings arise by way of a default judgment.

> Further, in Georgia, a judgment by default is considered to be "on the merits" and is not subject to collateral attack on grounds that it is erroneous, as distinguished from a challenge based on an allegation that the original court lacked jurisdiction. See Butler v. Home Furnishing Co., 163 Ga.App. 825, 296 S.E.2d 121 (1982); see also Fierer v. Ashe, 147 Ga.App. 446, 448, 249 S.E.2d 270 (1978); compare Wright, supra, 57 B.R. at 964. In the absence of fraud, the effectiveness of a summary or even a default judgment entered by a court having jurisdiction is not diminished by such character. In addition, entry of such a judgment does not deprive a litigant of his day in court because although a litigant must be afforded an opportunity to appear and be heard, that right does not extend to the actual presentation of a case. Fierer, supra, 147 Ga.App. at 448, 249 S.E.2d 270.

In re Betts, 174 B. R. 636 (Bkrtcy. N. D. Ga. 1994). Because the default judgment against Mr. Evans acted as his admission to the truth of the allegations contained in the State Court Complaint and because the definite and certain allegations contained the necessary elements for a finding of non-dischargeability pursuant to § 523(a)(4), the Court will apply collateral estoppel

principals to the State Court Default Judgment to this adversary proceeding and finds that the debt owed to Ms. Brown is non-dischargeable pursuant to § 523(a)(4).

Pursuant to Rule 56(c) of the Federal Rules of Civil Procedure, made applicable to adversary proceedings pursuant to Rule 7056 of the Federal Rules of Bankruptcy Procedure, summary judgment is appropriate in those cases in which there is no genuine issue of material fact. In this adversary proceeding, based upon issues of collateral estoppel, there is no remaining genuine issue of material fact pursuant to § 523(a)(4).[3] For the reasons stated within, it is therefore,

ORDERED, that the Plaintiff's motion for summary judgment is granted and the debt owed to the Plaintiff in the amount of Nine Hundred and Eighty Three Thousand, Nine Hundred Nineteen Dollars ($983,919.00) is excepted from discharge pursuant to 11 U.S.C. § 523(a)(4).

AND IT IS SO ORDERED.

UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina,
April 23, 1999.

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[3] Based upon the finding of the Court that the debt is non-dischargeable pursuant to § 523(a)(4), the Court need not address the dischargeability of the debt pursuant to § 523 (a)(2) or § 523 (a)(6).

CERTIFICATE OF MAILING

The undersigned deputy clerk of the United States Bankruptcy Court for the District of South Carolina hereby certifies that a copy of the document on which this stamp appears was mailed on the date listed below to:

APR 23 1999

DEBTOR, DEBTOR'S ATTORNEY, TRUSTEE

JUDY G. SMITH

Deputy Clerk

RDA
Hausman
Nossokoff
USTR
Index
99-74